OVERVIEW

Civil Rights Acts

By Edward R. Crowther

Introduction

The Civil Rights Acts are a series of federal laws passed between 1866 and 1991 to ensure equal treatment of citizens who, because of membership in a particular group, suffered unequal treatment at the hands of the various states or individuals. These laws, which were often the focus of challenges before the Supreme Court, attempted to protect the rights of Black Americans, women, and other underrepresented demographic groups from public and private discrimination.

Understanding the Discussion

- **Affirmative action:** Policies to rectify systemic discrimination, especially in employment or education.
- **Desegregation:** The process of reversing segregation.
- **Disparate impact:** An inequitable result of a policy, regardless of the policy's intent.
- **Quotas:** Numerical goals.
- **Racial apartheid:** Systemic discrimination in which people are classified and segregated by race.
- **Reconstruction:** Post–US Civil War period from 1865 to 1877, during which the federal government attempted to redress the legacy of slavery while also readmitting eleven former Confederate states to the Union.
- **Restrictive covenants:** Private contracts in which individual members of a homeowners or neighborhood association agree to avoid selling property to certain buyers on the basis of race, ethnicity, religion, or other agreed-upon characteristics.
- **Segregation:** Enforced separation of racial groups.
- **Sovereign immunity:** A policy of protecting a state government from being sued without its consent.

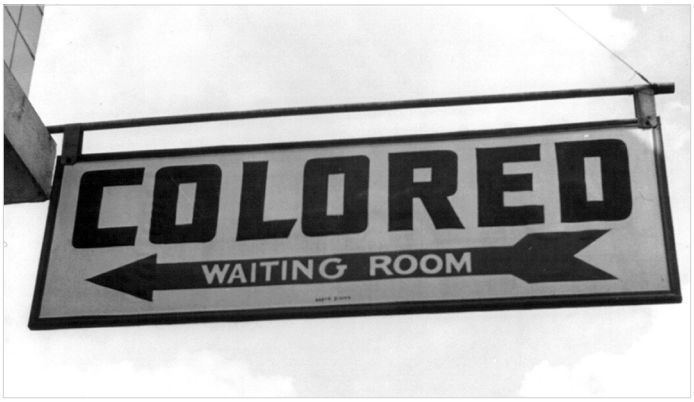
History

Following the Civil War (1861–65), Congress approved the Civil Rights Act of 1866 to ensure that formerly enslaved people were treated as US citizens and possessed various rights commonly associated with freedom. Among these were the rights "to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property." Formerly enslaved people were to enjoy "full and equal benefits of the laws," the same benefits enjoyed by White people. In 1870 Congress outlawed conspiracies to deprive persons of their civil rights. In 1871 Congress made it illegal for in-

Group of freedmen with the ruins of Richmond in the background, April 1865.

Photo: Library of Congress.

dividuals to deprive persons of their civil rights and permitted aggrieved parties to sue for damages. Although Southern states found many formal and informal ways to blunt the intent of Congress, parts of these statutes, codified as Title 42, sections 1981–1983, of the U.S. Code remain good law, and the Supreme Court upheld them during the twentieth century.



A sign, pictured in 1943 in Rome, Georgia, indicates separate facilities for Black customers. Segregation continued to be common in the South despite Congress passing the Civil Rights Act of 1866 and further statutes.

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For example, in *Monroe v. Pape* (1961), the court relied on section 1983 to endorse a damage suit filed against police officers who unlawfully invaded a private home and subjected it to an illegal search. In *United States v. Price* (1966), the court affirmed the use of sections 1981 and 1982 to prosecute private citizens who conspired to murder three civil rights workers in Mississippi, not only because public officials actively involved themselves in the conspiracy, but also because the conspiracy interfered with rights secured by the Constitution. That same day, the court broadened the scope of these statutes to reach actions by private citizens, in *United States v. Guest*, a case that involved the murder of civil rights worker Lemuel Penn, because the conspiracy to murder Penn interfered with his right to interstate travel, secured by the Constitution.

The court also affirmed basic provisions of liberty mandated by the Civil Rights Act of 1866. In *Buchanan v. Warley* (1917), the court struck down a residential segregation ordinance passed by Louisville, Kentucky, because it violated the right of a Black homeowner to make a contract to purchase a home in a White neighborhood, a contractual right explicitly guaranteed by the Civil Rights Act. However, the court refused to extend this right to purely private actions between individuals in *Corrigan v. Buckley* (1926), because the reach of federal civil rights laws to acts of discrimination by private individuals was limited.

Although Reconstruction-era statutes could and did protect Black Americans and other people of color to some degree from racial and ethnic discrimination by municipal and state governments, discriminatory actions by private citizens remained outside the scope of federal law and the enforcement power of the federal courts into the 1960s. Congress had passed the Civil Rights Act of 1875, which prohibited racial discrimination in privately owned places of public accommodation such as hotels, amusement parks, and trains. In the *Civil Rights Cases* (1883), the Supreme Court held that Congress had no constitutional authority to regulate the owners of private property in such a manner. The Fourteenth Amendment, for example, forbade discrimination by state laws, not acts of discrimination by private citizens.

Another post-Reconstruction decision, *Plessy v. Ferguson* (1896), allowed state governments to use race to classify and regulate their citizens. Such rulings permitted Southern states to craft a legal system of racial apartheid enforced by law, augmented by private racial discrimination beyond the reach of federal law. Not until the civil rights movement of the 1950s and 1960s did Congress successfully pass further civil rights legislation.

Congress enacted the Civil Rights Act of 1957 and the Civil Rights Act of 1960 to deal with deprivation of voting rights of Black Americans by Southern states and their White citizens. However, the major piece of legislation came in 1964. The Civil Rights Act of 1964, the cornerstone of modern federal civil rights law, contained a number of major provisions, including one outlawing acts of private

Civil rights March on Washington, DC, August 28, 1963.

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discrimination by property owners whose businesses are associated with interstate commerce. In *Heart of Atlanta Motel v. United States* (1964), the court affirmed this provision and forbade a hotel owner to deny Black Americans accommodation at his facility. In *Katzenbach v. McClung* (1964), the court extended this provision to restaurant owners, who could no longer lawfully refuse service to persons because of their race.

The Civil Rights Act of 1964 also overturned the practice of racially segregating public facilities, such as swimming pools and public restrooms. States and municipalities could lose their federal funding for failure to desegregate their public accommodations. The court affirmed the power of Congress to compel desegregation of public facilities in *Daniel v. Paul* (1969) and *Tillman v. Wheaton-Haven Recreation Association* (1973).

Additionally, the Civil Rights Act of 1964 broadened the federal approach to civil rights. Race, color, religion, and national origin appear among the enumerated list of classifications that cannot be used for discriminatory purposes. In matters of employment, gender became a suspect category under federal law. Title VII of the act also authorizes remedial policies in employment, commonly called "affirmative action," and brought court scrutiny to practices that led to gender and racial exclusion from employment opportunities.

For example, in *Griggs v. Duke Power Co.* (1971), the Supreme Court challenged practices in hiring and promoting workers that had the effect (disparate impact) of placing Black workers in lower-paying, racially segregated job categories. Later, the court's decision in *United Steelworkers of America, AFL-CIO-CLC v. Weber* (1979) upheld employers' ability to create affirmative-action recruitment programs for "minority groups" who had been excluded from employment in certain industries. Otherwise race-neutral hiring and promotion practices were unlawful if they resulted in the continuation of practices rooted in historic discrimination. Indeed, in *United States v. Paradise* (1987), the court extended this reasoning to its broadest conclusion. Where the evidence of past discrimination was so severe, and especially where state government was the author of the discrimination, the court held that racial quotas and adjustments in hiring and promotional exams could be employed as a temporary remedy to past race discrimination in hiring.

Supreme Court of the United States.

Photo courtesy Unsplash.

Typically, however, the Supreme Court has been loath to order promotional quotas and modify hiring practices. In *Washington v. Davis* (1976), the court distinguished between the discriminatory result of a policy, which may violate Title VII of the Civil Rights Act of 1964 and be subject to judicial remedy, and discriminatory intent, which must be present to violate the Constitution and is much more difficult to prove. This hair-splitting made employment discrimination suits more difficult to bring. In *Regents of the University of California v. Bakke* (1978), the court affirmed Allan Bakke's claim that the affirmative action program for admission into a university program violated Section VI of the Civil Rights Act of 1964, which prohibits racial and ethnic preferences in programs receiving federal funds. Because the university had established numerical quotas, it had violated Bakke's right to equal protection of the laws.

The Supreme Court subsequently limited how statistical disparities, such as more White workers or more men in high-ranking positions, could be applied in a Title VII case. In *Wards Cove Packing Co. v. Atonio* (1989), for example, the court established that a racial disparity within a job class cannot, on its own, prove disparate impact and that the plaintiff must account for the makeup of the relevant pool of potential applicants. Similarly, it ruled in *Price Waterhouse v. Hopkins* (1989) that a plaintiff must establish that the alleged discrimination occurred in the specific case, not infer it from a statistical pattern. In *Martin v. Wilks* (1989), the court required parties bringing class-action suits challenging discriminatory hiring practices to iden-

Congress, the Constitution, and the Supreme Court have eliminated the legal basis for racial and gender discrimination in federal and state law.

tify those parties that might be injured by the court's endorsing the plaintiff claims and join them to the suit. This procedure made challenging systematic employment discrimination more difficult. To instruct the court, Congress passed the Civil Rights Act of 1991, which shifted the burden of proof back to the employer to show that patterns of discrimination were not caused by unlawful practices and eliminated the defense of "business necessity." The overall thrust of the law was to ensure a broader, rather than a narrower, interpretation of the Civil Rights Act of 1964.

Congress, the Constitution, and the Supreme Court have eliminated the legal basis for racial and gender discrimination in federal and state law. Because businesses conduct interstate commerce and are chartered under state law, they too have been brought under the scope of federal civil rights laws. Actions by private individuals in purely private situations have been harder to regulate. Groups of individuals, for example, seeking to preserve the racial uniformity of a neighborhood, created restrictive covenants, private contracts by which they agreed not to sell to Black Americans or other people of color. Although the covenants themselves were "legal," the court held in *Shelley v. Kraemer* (1948) that they could not be enforced in court. If groups of private individuals, however, refused to sell or rent to individuals on the basis of their race, legal thinking of the time placed their behavior beyond the scope of federal civil rights laws.

That changed significantly in *Jones v. Alfred H. Mayer Co.* (1968), in which the court nearly overturned the *Civil Rights Cases* by extending the Civil Rights Act of 1866 to cover the sale of a private home. An individual may not refuse to sell a home to a buyer because the buyer is Black. In *Runyon v. McCrary* (1976), the power to regulate private contracts was extended to private schools, breathing new life into the 1866 Civil Rights Act. The court, however, revisited this broadened interpretation in *Patterson v. McLean Credit Union* (1989) and severely limited the judicial enforcement, by holding that the Civil Rights Act ensures broad contract-making power but does not create an equally broad right of remedy if the contract is then abrogated. Along with the employment decisions that same term, the *Patterson* decision led Congress to pass the Civil Rights Act of 1991.

In keeping with the judicial spirit of the *Jones* decision, Congress further strengthened its claim to regulate private contracts in housing by passing the Civil Rights Act of 1968. This act prohibited discrimination in advertising, financing, selling, or renting a house on the grounds of race, color, religion, or national origin. Amended in 1974 and 1988 to include sex, familial status, and disabilities as protected classes, this fair housing law primarily affects owners of apartment complexes, condominium associations, and anyone buying or selling through a realtor.

The Supreme Court has given the Civil Rights Act of 1968 a broad reading. In *Trafficante v. Metropolitan Life Insurance Co.* (1972), it held that tenants in an apartment complex could sue on behalf of those who were denied leases by owners who practiced racial discrimination. In *Gladstone v. Village of Bellwood* (1979), the court held that a municipality could sue realtors who directed potential buyers and renters of color to certain parts of town to buy or rent.

Civil Rights Acts Today

During the 110th Congress, Representative John Lewis, a Georgia Democrat and a prominent civil rights activist, introduced the Civil Rights Act of 2008. The CRA of 2008 was never enacted, but sought to amend previous CRAs. The CRA of 2008 included: setting requirements for establishing discrimination based on disparate impact and on the rights of action and recovery for unlawful discrimination; forcing states that receive federal assistance to waive sovereign immunity when sued by employees; authorizing federal civil actions for discrimination based on disability; making arbitration clauses in employment contracts unenforceable in most cases; repealing provisions of the Equal Remedies Act of 2008 that limited damages in cases

Representative John Lewis signing his book, *Across That Bridge*, for Senator Mazie Hirono.

Photo: United States Senate, The Office of Mazie Hirono, public domain, via Wikimedia Commons.

Rashida Tlaib, member of the US House of Representatives from Michigan's Thirteenth Congressional District.

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of intentional employment discrimination; and protecting undocumented immigrant workers from being denied back pay by their employers.

In October 2020, Representative Rashida Tlaib, a Democrat from Michigan, introduced the Justice for All (JFA) Act in the US House of Representatives. Like the Civil Rights Act of 2008, the JFA sought to restore and expand protections granted by previous CRAs. The legislation would have specifically restored the availability of civil rights claims based on discriminatory effect, or disparate impact, rather than discriminatory intent. The JFA would have provided a private right to action to fight discrimination against people based on actual or perceived race, color, religion, sex, disability, age, or national origin, whether such discrimination was intentional or unintentional. The JFA would also have protected Americans from discrimination in housing, schooling, public accommodations, employment, government facilities, privatized government functions, federally funded programs, and commercial establishments; prohibited compelled arbitration clauses that are used to limit the rights of employees and customers; eliminated qualified immunity for government employees; held employers accountable for the actions of their employees; compensated individuals subject to disparate impact discrimination; and clarified that civil rights laws against sexual discrimination protect individuals from discrimination based on sexual orientation, pregnancy, gender identity, sex stereotypes, and any sex-related traits. The bill died in committee, however.

Disparate impact continued to be a focus of government actions into the 2020s. In January 2021, the administration of Republican president Donald Trump sought in its final days to undo some CRA protections. In particular, the Department of Justice (DOJ) under outgoing attorney general William Barr sought to modify the interpretation of Title VI of the 1964 Civil Rights Act, which bars recipients of federal funding from discriminating on the basis of race, color, or national origin. The DOJ's new version of Title VI would have prohibited intentional discrimination but not discriminatory effect; eliminating protections against disparate impact has been a long-held goal of conservative legal activists. The House also reintroduced the Equity and Inclusion Enforcement Act in February 2021; that proposed amendment to the 1964 Civil Rights Act would affirm individuals' right to sue schools over alleged disparate-impact violations. Later that spring, the NAACP urged the DOJ to withhold federal funding from police departments, pending investigation into disparate negative impacts on people of color. The DOJ launched a related policy review that September.

Discrimination based on gender identity or sexual orientation also became another point of widespread contention by the 2010s and 2020s. In *Bostock v. Clayton County* (2020), the Supreme Court ruled that employment discrimination based on gender identity or sexual orientation represents sex discrimination prohibited under Title VII. As voter suppression had become more of a concern by that point due to new or planned state voting restrictions, efforts were also made to pass federal legislation strengthening protection against discrimination in voting. Though the John R. Lewis Voting Rights Advancement Act, named after the civil rights icon who had died in 2020, was introduced and passed in the House in the summer of 2021, it stalled in the Senate later that year. A package combining provisions of the John R. Lewis Voting Rights Advancement Act and the Freedom to Vote Act passed in the House in early 2022 but was blocked in the Senate. In June 2022, New York's mayor signed the John R. Lewis Voting Rights Act into law to ensure preclearance of new or altered voting policies proposed in areas of the state with histories of discrimination.

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