

Introduction to American Politics

Week 3: Constitutional Framework II

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Attendance



Outline

- Civil rights
- Civil liberties
- Additional materials
- Wrap-up

Section 1

Civil Rights

Civil Rights

- Protections *by* the government
- More than simply civic rights (e.g., participation and expression)
- Safeguards against efforts by the government and/or other majorities to take advantage of another group
- Slavery is the quintessential example of a self-interested faction dismantling the civil rights of a defenseless one
- Some of the tensions in Madison's writings are very evident here, such as the benefits of a diverse/moderating national government juxtaposed with empowered and autonomous states

1808-1865: “Containment” Era

- Many prominent abolitionist groups dated back to the pre-Revolution era → vocal from the founding about the disconnect between the promises of the early constitutional framework and the institution of slavery
- End of the slave *trade* in 1807, but vicious political and social fighting over the issue in the lead-up to the Civil War (1861-1865)
 - Missouri Compromise (1820)
 - Wilmot Proviso (1846)
 - “Compromise” in 1850
 - Supreme Court’s decision in *Dred Scott v. Sandford* (1857)

1865-1877: Reconstruction Era

- Slaves formally emancipated (XIII), granted citizenship (XIV), and guaranteed the right to vote (XV)
- Intended to be the Republican solution to transform the South into a free society → the Fourteenth Amendment was particularly important for this
 - Naturalization
 - Due process rights (for citizens *and* non-citizens)
 - Reconstruction Act of 1867 required states ratify the amendment prior to readmission to the Union
- Conditions deteriorated significantly after the Republican defeat in 1874 midterms

1877-1933: Jim Crow & Segregation

- Emphasized prevention of African American voting → white primaries, poll tax, literacy test, grandfather clauses
- The Supreme Court consistently relied on extremely narrow readings of the Fourteenth and Fifteenth Amendments to uphold states' Jim Crow laws and strike down federal laws attempting to expand these protections
- Culminated with the 1896 ruling in *Plessy v. Ferguson*, where the justices established the notorious doctrine of **separate but equal**

1933-1940s: Growing Support

- Nondiscrimination language added to many new federal laws creating New Deal programs
- Justice Department revived their civil liberties division
- Nearly 20 years of Democratic control allowed for the appointment of many Supreme Court justices and lower court judges who were relatively more sympathetic to civil rights claims
- The fragile Democratic coalition began to break around 1948:
 - Truman began courting the African American vote
 - Southern “Dixiecrats” (racially-conservative Democrats) broke off from the liberal and civil rights-oriented northern Democrats

1940s-1950s: Emerging Coalition

- Important expanding role of the NAACP and its litigation strategy
- *Brown* overruling and repudiating *Plessy*
- Passage of the 1957 Civil Rights Act

1960s: Civil Rights Movement

- Shifting strategy from litigation to mass demonstrations → Birmingham and Selma demonstrations upped the political pressure on the Kennedy and Johnson administrations to stop accommodating southern Democrats
- Explosion in filibuster use, primarily by southern Democrats attempting to stop civil rights legislation in its tracks
- Civil Rights Act of 1964 and Voting Rights Act of 1965

Civil Rights Today

- Many of the 1960s laws remain in force today, but questions of how well they've worked continue to loom large
- Especially since COVID, voting laws have once again been a topic of national conversation and debate
- Affirmative action and quotas in higher education
- Legacy of the Civil Rights Movement
 - Women's suffrage and rights
 - Hispanic rights (and immigrant rights more broadly)
 - LGBTQ+ rights

Section 2

Civil Liberties

Civil Liberties

- Protections *from* government power and abuse
- Generally, these are freedoms that the government can not take away
- Tendency of **nationalization** of civil liberties over the last century
- Examples:
 - First Amendment protections (freedoms of speech, press, religion, assembly, petition)
 - Right to bear arms
 - Right to a fair and speedy trial
 - Right to privacy*

Rights, Liberties & the Constitution

- Ratification era arguments over whether to explicitly include rights and liberties of the citizenry in the Constitution proper
- Generally, the Anti-Federalists won early on (e.g., *Barron v. Baltimore* [1833])
- These protections eventually came into being over time:
 - Creation of the Bill of Rights after ratification
 - Ratification of the Fourteenth Amendment
 - **Incorporation** of the Bill of Rights against the states

Section 3

Additional Materials

Levitt (Kernell & Smith 4-2)

- Critique of recent voting restrictions, largely by Republican-controlled state legislatures
- Restrictions on:
 - Registration
 - Early voting
 - At-poll restrictions
- Concerns are one thing, but there's essentially no empirical evidence to support claims of pervasive voting crimes often used to justify these extremely restrictive laws
- Lower federal courts routinely strike these state-level restrictions down, but states can (and do) easily amend their laws despite a general lack of justification to support them

Rauch (Kernell & Smith 5-1)

- Core argument is that we must protect, not eliminate, hate speech (and prejudice more generally)
- Intellectual pluralism relies (in part) on unpleasant motives to move it along
- **Purism** → “the modern anti-racist and anti-sexist and anti-homophobic campaigners are *totalists*, demanding not that misguided ideas and ugly expressions be corrected or criticized but that they be eradicated”

Addt'l Materials

- Levy → critique of the Electoral College as an institution designed to maintain white supremacy
- Unger → creation of the Electoral College, “faithless electors” problem
- Fandos → high bar for rejecting Electoral College results at the congressional certification
- Wolf → raises questions of “equal” population-based representation, legislative (in)efficiency
- Sagal video
- *John Lewis: Good Trouble*

Section 4

Outro

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- Be sure to check the due dates for quizzes!
- If you email Forrest, please be sure to CC your TA (*me!*)

Attendance

