The 14th Amendment and the Expansion of Civil Rights

Inquire: What Power Does the Federal Government Have to Control Discrimination?

Overview

In 1954, the Supreme Court decision in Brown v. Board of Education in Topeka, Kansas overturned 58 years of legalized segregation and discrimination allowed by the Plessy v. Ferguson case. Throughout the United States' history, Civil Rights legislation has also passed, creating real legal reform: the Civil Rights Act of 1957 which, though too weak to be very effective, was the first civil rights act passed since the Civil Rights Act of 1875, was followed by the Civil Rights Act of 1964.

The federal government can only act in areas wherein it has power through the Constitution (the expressed, implied, and inherent powers). This raises the question: where is Congress’ power to enact civil rights legislation? And how does other legislation based on prohibiting discrimination — the 19th Amendment, the ERA, Voting Rights Act of 1965, etc. — fit in?

Big Question: Who is, and who is not, protected by Federal Civil Rights legislation in the U.S.?

Watch: In the Beginning, Many Came from Different Ones - Now, the One Comes from Many

America is a unique country. While every country will claim that they too are unique, no country is as different from others as is America. Let’s consider some statistics to back up that claim.

For instance, over 90% of the population in Germany, Austria, and Japan come from the ancestry of those countries.

America, on the other hand, has a diverse populous, which includes Hispanic, African-Americans, Asians, and many others.

Further, the people of Germany, Austria, and Japan have occupied their respective areas for thousands of years.

What about Americans? The first permanent English Settlement occurred in 1607, a little over 400 years ago - making the U.S. much younger than the civilizations in Europe, Africa and Asia.
And it’s not just America’s youthfulness that makes it unique. In the U.S., the backgrounds are so diverse and lost in the translation of time, that we simply use the designation, “white”, or “caucasian.” Even our ethnicity is diverse!

Understanding America’s diversity is the key to dealing effectively with racism, prejudice and discrimination. It is one thing to try to create a society based on equality in a country like Japan, where 98% of the people are racially, ethnically and genetically the same, and have been living together for 2000 years. The abuses are more easily identifiable, the issues and lines of demarcation are more clearly drawn, and the problems more easily repaired.

In a young country with a wide range of diverse backgrounds, the goals of preventing discrimination and ensuring civil rights present unique challenges. And yet, in the struggle to overcome these challenges we see growth, progress, and, hopefully, eventual victory.

*https://www.cia.gov/library/publications/the-world-factbook/fields/2075.html note that numbers are updated regularly, and are subject to change

Read: The Feminist Movement

The Struggle for Gender Equality

At the time of the American Revolution, and for many of the following decades, married women did not have the right to control property, vote, or run for public office. Beginning in the 1840s, the first American Women’s Movement began among women active in the Abolition and Temperance Movements and in other social reforms. Although these women achieved some of their goals — such as achieving property rights for married women — their biggest goal, the right to vote, required a later amendment to the Constitution. In 1920, with the passage of the 19th Amendment, women finally were granted the right to vote.

Women’s Rights 1920-1960

Just as the 13th, 14th, and 15th Amendments were necessary but not sufficient in securing true equality for African Americans, the 19th Amendment did not end discrimination against women. Discriminatory practices against women legally continued in education, employment, and other areas of life. Although women could vote, they very rarely ran for or held public office. Women continued to be underrepresented in most professions, and relatively few sought advanced degrees.

The Second Wave

Women were not deterred and continued to fight battles across America against discrimination, stereotypes, and unequal pay. In the 1960s, a second movement emerged to address these and other problems, commonly referred to as the Second Wave of the Feminist Movement. Title VII of the Civil Rights Act of 1964 prohibited discrimination in employment on the basis of sex as well as race, color, national origin, and religion. Nevertheless, discrimination and sexual harassment in the workplace remained commonplace. In 1966, feminists who were angered by the government’s lackluster enforcement of Title VII, and that gender inequality persisted, organized the National Organization for Women (NOW). NOW promoted workplace equality including equal pay for women. It also called for the greater presence of women in public office, underrepresented professions, and graduate and professional degree programs.
NOW also declared its support for the Equal Rights Amendment (ERA), which mandated equal treatment for all, regardless of sex. The ERA, written by suffragists Alice Paul and Crystal Eastman, was first proposed to Congress unsuccessfully in 1923. It was introduced in every Congress thereafter but did not pass both the House and the Senate until 1972. The amendment was then sent to the states for ratification with a deadline of March 22, 1979. Although many states ratified the amendment in 1972 and 1973, the ERA still lacked sufficient support as the deadline drew near. Opponents, including both women and men, argued that passing the ERA would subject women to military conscription and deny divorced women alimony and child custody.

In 1978, Congress voted to extend the deadline for ratification to June 30, 1982. Even with the extension, however, the amendment failed to receive the support of the required 38 states. By the time the deadline arrived, only 35 states had ratified the ERA. In fact, no new states ratified it during the extension period, and some states actually rescinded their ratifications.

The failure of the ERA to pass can be attributed to many factors, not least of which being the frustration felt by many women that there should not be a need for the ERA. Many of these objectors felt that the path to gender equality lay in the enforcement of previous laws as they related to gender discrimination rather than in the creation of a new amendment. Women found it patronizing that a group of white men (the House was 95% white and 97% male, the Senate was 96% white and 98% male) felt they needed to pass a social law to protect women because women were not sufficiently covered (as men were) by the 14th Amendment or that women were not covered by two previous acts passed by these same men – the Civil Rights Act of 1964 and the Fair Labor Standards Act of 1958 – as amended (Equal Pay Act of 1963 - [EPA]). Some men and women argued that by not including women in these previous Constitutional protections, women were not being treated as equal citizens.

The 14th Amendment says, "Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State
shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United
States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor
deny to any person within its jurisdiction the equal protection of the laws."

The Civil Rights Act of 1964 says, "Section 703 (a) it is unlawful for an employer to "fail or refuse to hire or
to discharge any individual, or otherwise to discriminate against any individual with respect to his
compensation, terms, conditions or privileges or employment, because of such individual's race, color,
religion, sex, or national origin."*

wage discrimination is prohibited. It further prohibits paying employees of one sex lower wages than those
of the opposite sex for performing substantially equal work. Substantially equal work means that the jobs
require equal skills, effort, and responsibility, and that the jobs are performed under similar working
conditions.*

The argument continued: a new law would be redundant, especially when considering the amendment
and two laws listed above. Additionally, to need to be "rescued" by these same men who passed the
earlier laws gave pause as to why, if the earlier laws were insufficient, new laws would have any benefit.
Thus, redundancy and the idea that it was belittling to women that they were not covered in the 14th
Amendment, or by the other two laws, diluted arguments in favor of ratification.

Advocates for the ERA pointed to such trends as America’s gender wage gap as proof that regardless of
the 14th Amendment and other laws, gender discrimination continues in the absence of constitutional or
legislative intervention. In 2011, Supreme Court Justice Antonin Scalia further complicated the ERA
debate when he opined,

"Certainly the Constitution does not require discrimination on the basis of sex. The only
issue is whether it prohibits it. It doesn’t. Nobody ever thought that that’s what it meant.
Nobody ever voted for that. If the current society wants to outlaw discrimination by sex,
hey we have things called legislatures, and they enact things called laws. You don’t need
a constitution to keep things up-to-date. All you need is a legislature and a ballot box."**

In essence, Justice Scalia said that sex discrimination is neither mandated nor prohibited by the 14th
Amendment, or anywhere else in the Constitution.

Although the ERA was not ratified, incremental progress toward equality occurred on other fronts. Title IX
of the United States Education Amendments of 1972 passed into law as a federal statute (rather than
as an amendment, as the ERA was meant to be). Title IX applies to all educational institutions that
receive federal aid and prohibits discrimination on the basis of sex in academic programs, dormitory
space, health-care access, and school activities including sports. Thus, if a school receives federal aid, it
cannot spend more funds on programs for men than on programs for women.

Continuing Challenges for Women

There is no doubt that women have made great progress since the first national Women’s Rights meeting,
the Seneca Falls Convention, in 1848. Today, more women attend college than men, and female
students are more likely to graduate than their male peers. Further, women are represented in all
professions and approximately half of all law and medical school students are women. Women have held
Cabinet positions and been elected to Congress. They have run for the offices of president and vice
president, and three female justices currently serve on the Supreme Court. Women are also represented
in all branches of the military and can serve in combat.
Increasingly, women are afforded the right to make decisions about matters that pertain to them and their bodies. As a result of the 1973 Supreme Court decision, *Roe v. Wade*, women now have legal access to abortion.

Regardless of the progress that has been made in the past two centuries, women continue to face many challenges, particularly in regards to sexual harassment and equality in the workplace. As the Feminist Movement continues its Third Wave now, the goal of gender equality continues to be one facet in the struggle for equal opportunities for all Americans.

*https://www.archives.gov/eeo/laws  
**https://en.wikiquote.org/wiki/Antonin_Scalia*

**Reflect: ERA - Yes or No?**

**Poll**

Many believed the ERA was/is necessary to promote equal rights for women. Many others objected, for a variety of reasons. What do you think about the ERA? If you could vote yes or no on the ERA, which way would you vote?

- Yes
- No

**Expand: The Serendipity of the 14th Amendment**

**Discover**

**Serendipity** - the faculty or phenomenon of finding valuable or agreeable things not sought for; also an instance of this ("Serendipity." Merriam-Webster.com. Merriam-Webster, n.d. Web. 20 Nov. 2017)

All three “Civil War Amendments” to the Constitution introduced deliberate, profound changes to life in 19th-century America. These amendments were the 13th (abolished slavery), the 14th (granted citizenship for and fair treatment of African Americans), and the 15th (provided voting rights for African Americans). The 14th Amendment is noteworthy in that its effects extended beyond its original intentions.

The serendipitous impact of the 14th Amendment, including its flexibility and broad application, could not have been foreseen by its authors nor by those who fought for and/or voted for its ratification. For instance, the *Due Process Clause* in the 14th Amendment was used to apply the Bill of Rights to the states, so that all levels of the government have to ensure due process of the law. This, in itself, is monumental, but it was not its only long term impact. The 14th Amendment continues to be at the forefront of all civil rights discussions; its *Equal Protection Clause* became the foundation of the Civil Rights Movement.

This rings true not just for African Americans, the original group the 14th Amendment was designed to protect, but for every citizen in the United States — the 64.86% who are white, regardless of ancestry; the 15.1% who are Hispanic; the 12.85% who are black; the 4.43% who are Asian, and for everyone else whose races and ethnicities make up smaller percentages of the population.*
Modern Civil Rights Movement

The early Civil Rights Movement focused on securing equal rights for African Americans by entreat ing other Americans and organizations to join in the fight. Leaders like Martin Luther King Jr. and the nonviolent methods (demonstrations, sit-ins, boycotts) employed by King and other Civil Rights leaders moved public opinion and led to Congressional action: the passing of the Civil Rights Act of 1964 and the Voting Rights Act of 1965. While these laws ended \textit{de jure segregation} (separation by law), significant \textit{de facto segregation} (separation by fact) remains to this day through residential segregation and many American schools continuing to be predominantly segregated.

The Congressional Power to Enforce Desegregation

The question of \textit{Congressional authority} (whether Congress has expressed, implied, or inherent authority to act) must be established, or actions — such as the Civil Rights Act of 1964 and the Voting Rights Act of 1965, etc. — would be unconstitutional. Liberties such as due process and equal protection under the law fall easily under Congressional jurisdiction, but what of actions taken to end segregation in hiring practices or force integration of lunch counters? What power or right does Congress have to order private businesses to \textit{desegregate}?

When Congress passed the Civil Rights Act of 1964, it claimed it had the implied power to control segregation in private businesses and elsewhere due to the expressed power to regulate \textit{interstate commerce}. In other words, since businesses, stores, etc. were all engaged in interstate commerce in some fashion — through goods bought and sold, raw materials used, supplies used in construction, or at the very least, some customers crossing state lines — Congress should have power to regulate segregation.**

The commerce power's broad interpretation allowed Congress to issue and enforce integration of businesses, restaurants, retail stores, etc. all across the United States.

Equal Rights for All Americans

The Civil Rights Movement and \textbf{Feminist Movements} have inspired many groups in America to fight for their own civil rights and equal protection under the law. Activism has increased in recent years to ensure equal rights for many people including Latino, LGBTQ, elderly, and disabled communities. Thanks to the movements that came before, there is now an increased awareness of the discrimination these groups, and others, face. Women and African Americans also continue to face discrimination in America, but build upon their predecessors by enabling public awareness through platforms like the Me Too Movement and Black Lives Matter.

With the 14th Amendment came "equal protection of the law," however, more than 130 years later, many Americans are still fighting for such equal protection. Yet, at the time of the 14th Amendment, it was unfathomable that an African American student would eat at a lunch counter with a white student in a private establishment or that a hamburger stand would serve people of all races and genders equally.

The goal was equal treatment of African Americans under the law; the result was an integrated society.

*http://www.indexmundi.com/about.html
**42 U.S.C. § 2000a©
Lesson Toolbox

Additional Resources and Readings

Equal Protection: Crash Course Government and Politics #29
- A Crash Course video distinguishing Civil Rights and Civil Liberties, as well as the 14th Amendment
- https://youtu.be/qKK5KVl9_Q8

The 1960s in America: Crash Course US History #40
- A Crash Course video covering both the Civil Rights Movement and the Second Wave of the Women’s Movement in the 1960s
- https://www.youtube.com/watch?v=IkXFb1sMa38

Ainsley Hayes on the Equal Rights Amendment
- A clip from the TV Drama, The West Wing, in which two characters discuss their opinions of the ERA
- https://youtu.be/NXPLirJRGDQ

2.18: 17 PEOPLE (With Richard Schiff, Emily Procter, Rebecca Walker, And More)
- A West Wing Weekly podcast segment, featuring a number of activists discussing the previous West Wing clip about the ERA

Schoolhouse Rock - Sufferin Till Suffrage
- A Schoolhouse Rock video about women’s path to suffrage in America
- https://www.youtube.com/watch?v=CGHGDO_b_q0

Title II Of The Civil Rights Act (Public Accommodations)
- Title II of the Civil Rights Act, which prohibits certain types of discrimination in many public places

Second Wave Feminism without White Women
- A Stuff Mom Never Told You video by How Stuff Works, covering the Second Wave of Feminism from a perspective of women of color
- https://youtu.be/Uc0xwxae6Q4

Lesson Glossary

civil rights: policies designed to protect people against arbitrary or discriminatory treatment by government officials or individuals, and often deal with physical attributes: skin color, gender, age, physical disabilities, race, nationality, and other differences

heterogeneous: diverse in character or content

diversity: a range of different things, often in regards to a variety of people based on the different groups, classes, or categories they belong to

discrimination: in human social affairs, the treatment or consideration of, or making a distinction in favor of or against, a person based on the group, class, or category to which the person is perceived to belong rather than on individual attributes
**Feminist Movements**: a range of political movements, ideologies, and social movements that share a common goal: to define, establish, and achieve political, economic, personal, and social equality of the sexes

**Seneca Falls Convention**: the first women's rights convention, advertised as "a convention to discuss the social, civil, and religious condition and rights of women"

**segregation**: the enforced separation of different racial groups in a country, community, or establishment

**de jure segregation**: separation by law

**de facto segregation**: separation by fact

**Desegregate**: actions taken to eliminate laws or behavior in which people from different groups — often different racial groups — are given separate or restricted access to facilities, services, or accommodations

**suffragists**: people advocating for the right to vote, usually for women’s right to vote

**Congressional authority**: whether Congress has expressed, implied, or inherent authority to act

**interstate commerce**: interstate commerce refers to the purchase, sale, or exchange of commodities, transportation of people, money, or goods, and navigation of waters between different states. Interstate commerce is regulated by the federal government as authorized under Article I of the U.S. Constitution

**Title IX of the United States Education Amendments of 1972**: Title IX is a comprehensive federal law that prohibits discrimination on the basis of sex in any federally funded education program or activity

### Check Your Knowledge

1. In 1966, feminists who were angered by the government’s lackluster enforcement of Title VII and frustrated that gender inequality persisted organized the ________________.
   - A. National Womanhood For Good (NWFG)
   - B. National Association of Woman (NAW)
   - C. National Female League (NFL)
   - D. National Organization for Women (NOW)

2. The Equal Rights Amendment was first proposed to Congress unsuccessfully in 1923 but did not pass both the house and Senate until 1932.
   - A. True
   - B. False

3. The Civil Rights Movement and the Feminist Movements have inspired groups like the LGBTQ to fight for their own rights and equal protection under the law.
   - A. True
   - B. False

**Answer Key:**
1. D  2. B  3. A

### Citations

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