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Civil Rights and Federalism

An Inquiry Pack to Accompany LegalTimelines.org

Inquiry Question: How has the system of federalism impacted civil rights in the United States?

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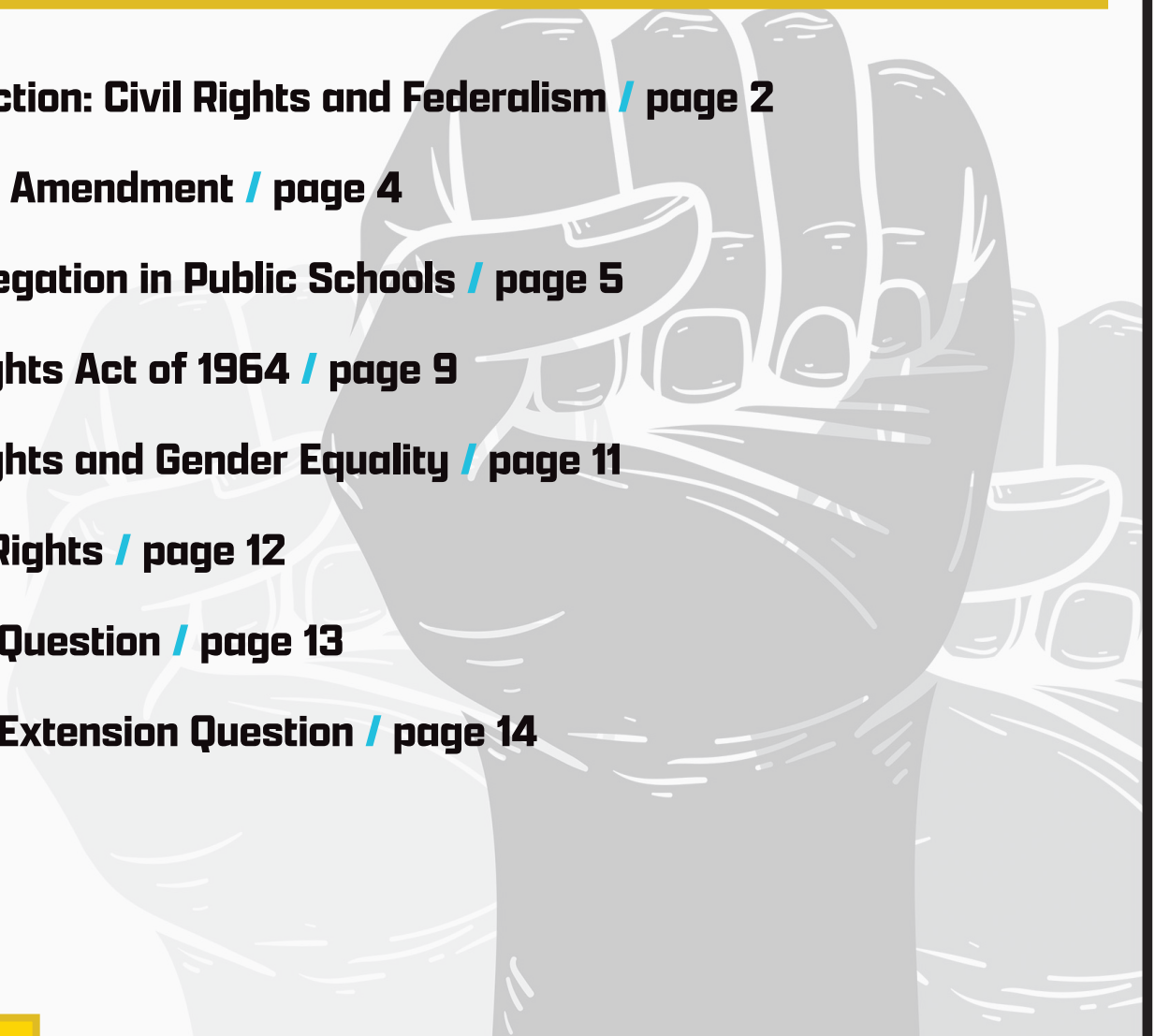

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Introduction: Civil Rights and Federalism

Civil rights laws ensure that people are treated equally and are not discriminated against by government at the national (federal), state, or local level or in public accommodations. Discrimination occurs when people are treated unfairly simply because of their membership in a group that has a shared characteristic like race, gender, religion, age, or sexual orientation. Today, civil rights issues include equal access to education, voting rights, protection against discrimination in employment, and others.

In the early years of the nation, civil rights were not yet guaranteed—but these rights do have roots in this period. The Declaration of Independence sets forth equality as a principle of government when it states, "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights …" However, because the Declaration did not have the force of law, it acted only to describe a philosophical ideal for America's future government and not the reality of the day. As written, that ideal did not include *women,* and it in reality it did not even include *all* men. The Declaration of Independence was penned by Thomas Jefferson, an enslaver, and signed by a number of people who enslaved human beings. Based on their actions and other writings, it is clear they did not intend to treat all people as equal citizens of the new republic. Equality was not immediately achieved when the nation was founded and, in fact, was not mentioned in the original Constitution as ratified in 1787.

So how are civil rights protected? After the Civil War, the 14th Amendment was ratified granting equal citizenship to formerly enslaved people. It also guaranteed that, *"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 Equal Protection Clause of the 14th Amendment guaranteed civil rights to all in theory. However, some people were still expressly excluded from certain rights. For example, Section 2 of the 14th Amendment made clear that only "male inhabitants" had the right to vote, and women did not obtain the right to vote until the 19th Amendment was ratified in 1920. Moreover, many states, especially those that once endorsed the institution of slavery, continued to pass and enforce laws that discriminated against people based on their race, gender, and other identities regardless of the Equal Protection Clause. These states often relied on the 10th Amendment, which reserves all powers not expressly given to the federal government to the states and the people. The 10th Amendment is sometimes called the "states' rights amendment," and many states that wanted to keep discriminating claimed that the Amendment gave them that right because states (rather than the federal government) traditionally had the power to regulate issues such as education, public accommodations (e.g., restaurants, hotels, theaters, etc.), and marriage.

However, the 14th Amendment's Equal Protection Clause allowed people to challenge their state in federal court if the state discriminated against them. To help secure civil rights, the Supreme Court used the power of judicial review, which allows the Court to declare state laws unconstitutional when they conflict with the U.S. Constitution (in this case often the Equal Protection Clause). Shortly after the ratification of the 14th Amendment, the Supreme Court used this authority to strike down a few discriminatory state laws, such as a West Virginia law permitting only white citizens to serve on juries (*Strauder v. West Virginia,* 1880) and a San Francisco law that discriminated against Chinese business owners (*Yick Wo v. Hopkins,* 1886). In other cases, however, the Supreme Court did not intervene. In 1896, the Court released its infamous opinion in *Plessy v. Ferguson,* in which it ruled that a Louisiana law did not violate the 14th Amendment even though it required white and Black passengers on a train to ride in different compartments. The Court concluded that so long as the state required "separate but equal" accommodations, the law was constitutional. Decisions like *Plessy v. Ferguson* meant that, for the most part, state governments (and even the federal government) were able to continue discriminating despite the 14th Amendment.

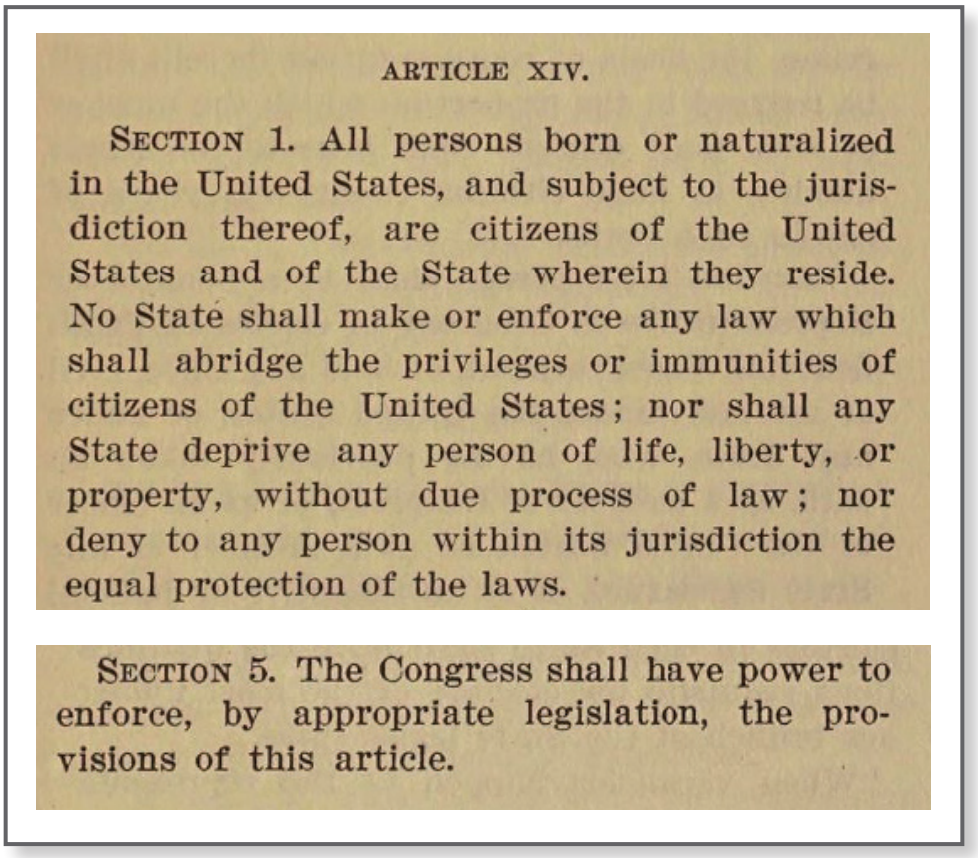
In the 1950s, the civil rights movement was born. It was the fight led by African Americans and later joined by other people of color to end racial discrimination by both the government and in public accommodations and to achieve equal opportunities to their white counterparts. The civil rights movement used many strategies such as legislation, Supreme Court challenges, executive orders, and non-violent resistance to fight discrimination. A pivotal event in the civil rights movement was the desegregation of public schools. In 1954, the Supreme Court ruled in *Brown v. Board of Education of Topeka, Kansas,* that when state and local governments require white and Black students to attend separate schools, it violates the Equal Protection Clause, even if the schools (in theory) offer the same educational opportunities. The Supreme Court ruled that, at least in the context of public education, *Plessy v. Ferguson* was wrong and "separate but equal" is not really equal at all. However, desegregation was not accomplished quickly as there was massive resistance in most Southern states and open defiance of the *Brown* decision. This prompted President Eisenhower to use his authority to issue an executive order that sent National Guard troops to Central High School in Little Rock, Arkansas, to enforce the desegregation required by *Brown v. Board of Education.*

Another milestone in the civil rights movement was the passage of the Civil Rights Act of 1964, which gave the federal government the authority to combat discrimination in employment, voting, public accommodations, public schools, and federal programs. It was a pivotal victory for the civil rights movement. Protections against discrimination in voting were expanded in the Voting Rights Act of 1965 and the 24th Amendment to the Constitution, which bars "poll taxes"—taxes on voting that were often used to try to keep people of color and poor people (and especially poor people of color) from voting. Protections against discrimination in housing were expanded in the Civil Rights Act of 1968 (also called the Federal Fair Housing Act).

Over time, the civil rights movement broadened to include the fight for equal rights for other racial and ethnic minority groups (e.g., Latinos, etc.), for women, religious minorities, people with disabilities, and people who are LGBTQ+. However, there have also been some limitations to the scope of civil rights protections including the recent striking down of some sections of the Voting Rights Act (*Shelby County v. Holder,* 2013 and *Brnovich v. DNC,* 2021). Today, the Equal Protection Clause is still used to challenge discriminatory acts by all levels of government.

14th Amendment Equal Protection Clause

Source A: The 14th Amendment to the U.S. Constitution[1]



ARTICLE XIV.

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.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Source A Information: After the Civil War, in 1868, the 14th Amendment was ratified to guarantee citizenship to enslaved people and establish birthright citizenship (all people born in the United States are automatically citizens). The 14th Amendment also guaranteed equal protection of the laws to all people and extended the fundamental freedoms by prohibiting states from passing or enforcing laws that conflicted with those established in the Constitution. (See source at Library of Congress.)

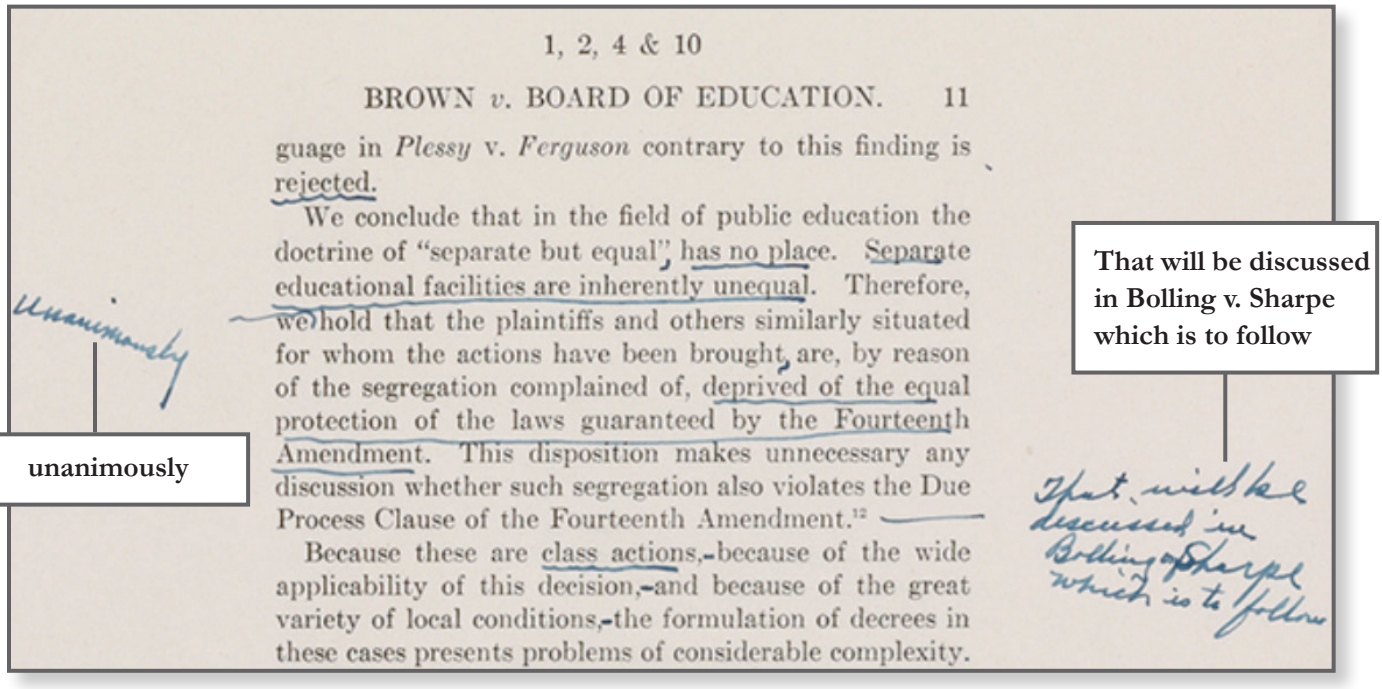
Questions to Consider for Source A:

1. **Observe:** What words stand out to you in this source?
2. **Reflect:** What guarantees and protections are established in Section 1? What might it mean for a state to deny someone the "equal protection of the laws? How might Section 5 expand the power of the federal government (Congress) to secure civil rights to people within states? How does the 14th Amendment change the balance of power between the federal government and the states?
3. **Question:** What questions do you have about this source?

Civil Rights: Desegregation of Public Schools

Source B: Unanimous Opinion in *Brown v. Board of Education of Topeka, Kansas* (1954)[2]

In the early 1950s, in many states white children went to one school, and Black children went to a different school. This system was called segregation. During this time, segregation in schools and other public facilities was legal because of past court decisions called precedents. In 1896, the Supreme Court of the United States decided a case, *Plessy v. Ferguson,* in which the Court said that segregation was legal when the facilities for both races were similar in quality. Under segregation, all-white and all-Black schools sometimes had similar buildings, busses, and teachers, but often they were lower in quality in all-Black schools. It was common for Black children to travel far to get to their school, passing white schools on the way. In Topeka, Kansas, a Black student named Linda Brown had to walk through a dangerous railroad to get to her all-Black school. Her family believed that segregated schools should be illegal. The Brown family sued the school system (Board of Education of Topeka). The case went to the Supreme Court where the question was: Does segregation of public schools based on race violate the Equal Protection Clause of the 14th Amendment?



1, 2, 4 & 10

BROWN *v.* BOARD OF EDUCATION. 11

guage in *Plessy* v. *Ferguson* contrary to this finding is rejected.

We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought, are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. This disposition makes unnecessary any discussion whether such segregation also violates the Due Process Clause of the Fourteenth Amendment.[12]

Because these are class actions,-because of the wide applicability of this decision,-and because of the great variety of local conditions,-the formulation of decrees in these cases presents problems of considerable complexity.

Unanimously

unanimously

That will be discussed in Bolling v. Sharpe which is to follow

Transcription of Source B:

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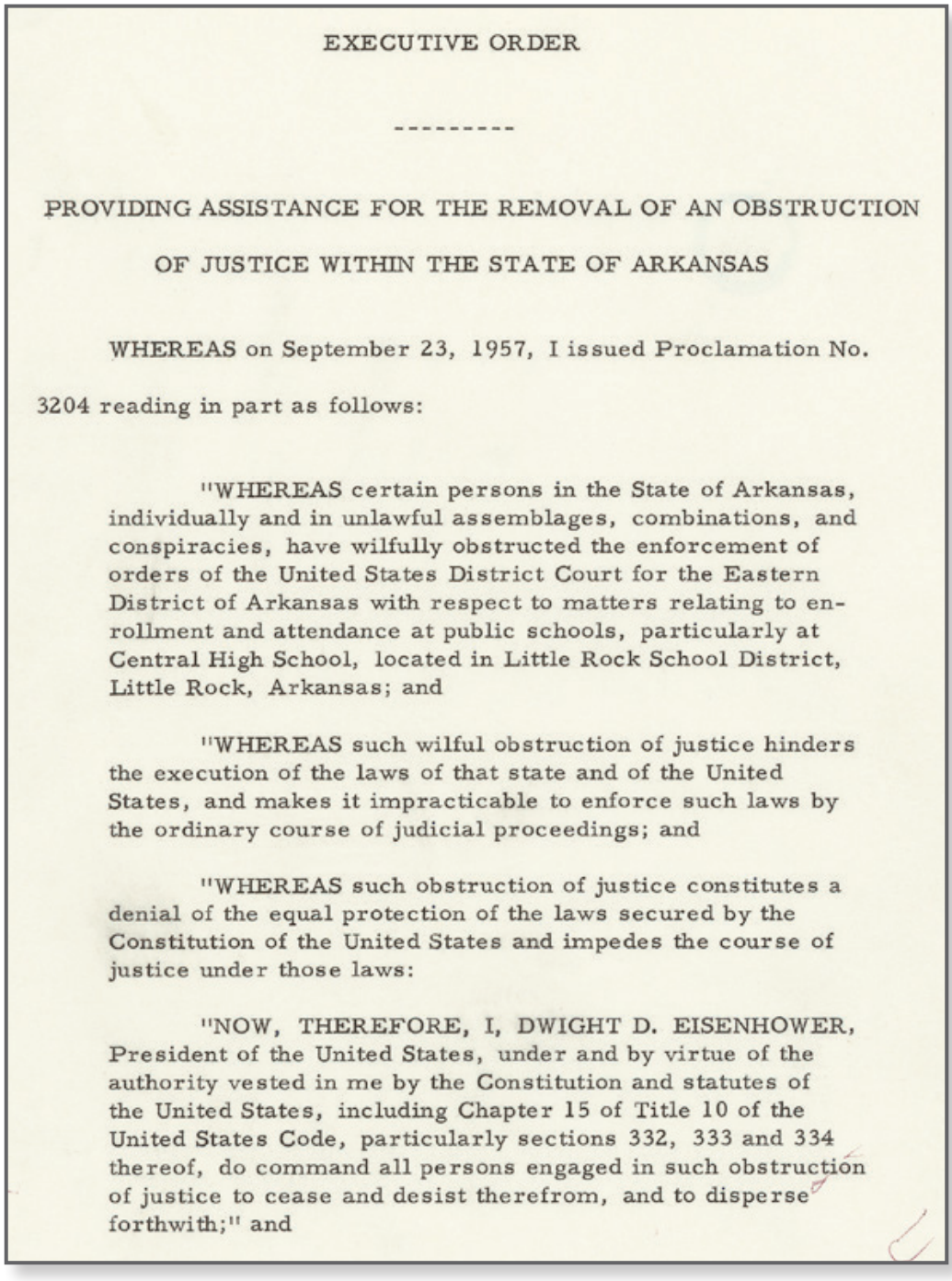
Because these are class actions, because of the wide applicability of this decision, and because of the great variety of local conditions the formulation of decrees in these cases presents problems of considerable complexity.

Source B Information: The Supreme Court found unanimously (9-0) for Brown that segregated public schools violated the Equal Protection Clause. Chief Justice Earl Warren wrote the Court's opinion. This source pictures the Chief Justice's copy he used to read the decision in which he inserted the word "unanimously" in pen and underlined some phrases for emphasis. The word "unanimously" does not appear in the official opinion. When the chief justice read the word "unanimously" he reported a wave of emotion throughout the courtroom. (See source at Library of Congress.)

Source C: Executive Order 10730 Issued by President Eisenhower (1957)[3]

Source C Information: After the *Brown* decision, schools did not immediately desegregate. In 1955 a second case, *Brown v. Board of Education II,* directed schools and states to desegregate public schools "with all deliberate speed." Many states in the South participated in "massive resistance," refusing to comply with the *Brown* decisions. In response in 1957, President Eisenhower issued Executive Order 10730 deploying the National Guard (federal troops) to Little Rock, Arkansas, to enforce the *Brown* rulings by escorting Black students into Central High School. Executive orders are orders from the president to agencies of the executive branch that have the force of law but do not need Congressional approval. (See source at National Archives.)



EXECUTIVE ORDER

PROVIDING ASSISTANCE FOR THE REMOVAL OF AN OBSTRUCTION OF JUSTICE WITHIN THE STATE OF ARKANSAS

WHEREAS on September 23, 1957, I issued Proclamation No. 3204 reading in part as follows:

"WHEREAS certain persons in the State of Arkansas, individually and in unlawful assemblages, combinations, and conspiracies, have wilfully obstructed the enforcement of orders of the United States District Court for the Eastern District of Arkansas with respect to matters relating to enrollment and attendance at public schools, particularly at Central High School, located in Little Rock School District, Little Rock, Arkansas; and

"WHEREAS such wilful obstruction of justice hinders the execution of the laws of that state and of the United States, and makes it impracticable to enforce such laws by the ordinary course of judicial proceedings; and

"WHEREAS such obstruction of justice constitutes a denial of the equal protection of the laws secured by the Constitution of the United States and impedes the course of justice under those laws:

"NOW, THEREFORE, I, DWIGHT D. EISENHOWER, President of the United States, under and by virtue of the authority vested in me by the Constitution and statutes of the United States, including Chapter 15 of Title 10 of the United States Code, particularly sections 332, 333 and 334 thereof, do command all persons engaged in such obstruction of justice to cease and desist therefrom, and to disperse forthwith;" and

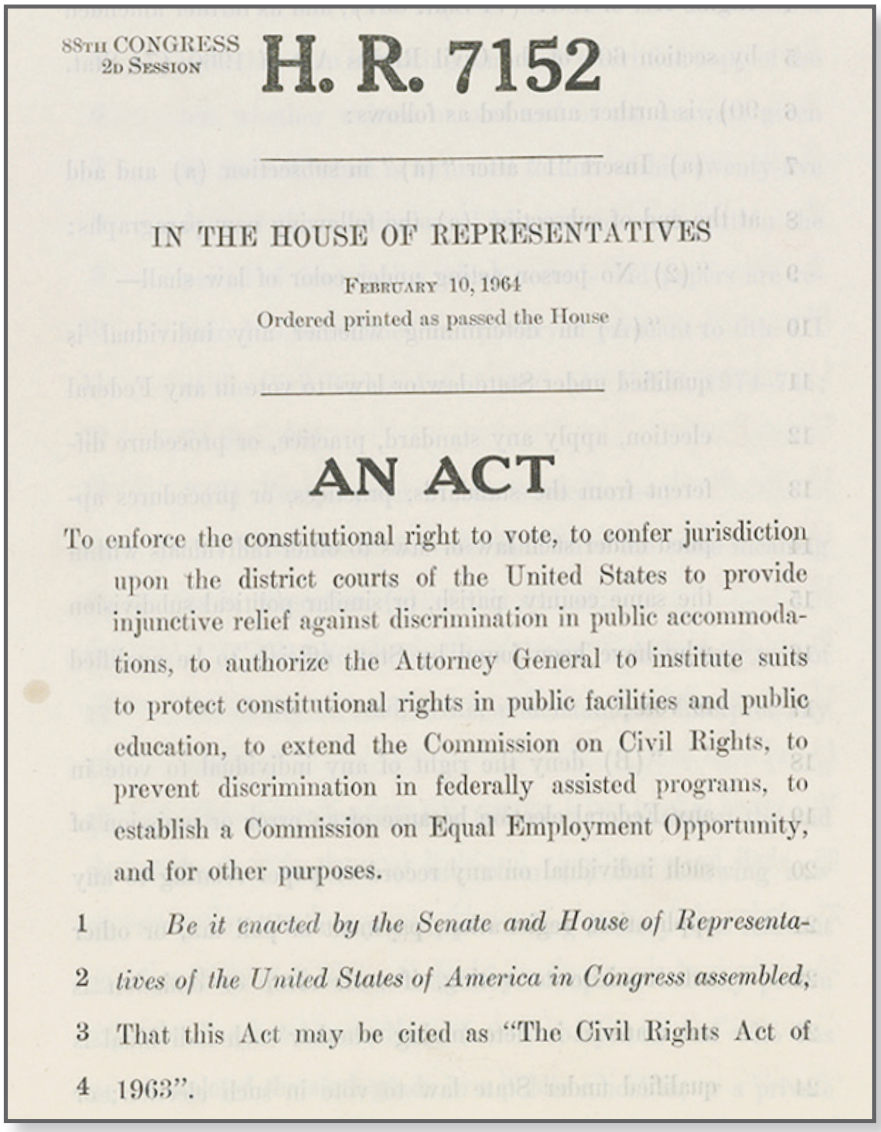
Questions to Consider for Sources B and C:

1. **Observe:** What do you notice about each source? What do you know about these sources just from looking at them?
2. **Reflect:** How are these two sources related? How is the 14th Amendment (Source A) applied in the decision in *Brown v. Board of Education* (Source B)? How did President Eisenhower use his authority as chief executive in Executive Order 10730 (Source C) to enforce the *Brown* decision (Source B)? What do these two sources tell us about this important turning point in the balance of power between the federal government and the states?
3. **Question:** What questions do you have about these sources?

The Civil Rights Act of 1964

Almost 100 years after the passage of the 14th Amendment, discriminatory state laws were still being passed and enforced, and segregation in the private businesses was not illegal. To combat this, the Civil Rights Act was proposed by President John F. Kennedy to give "all Americans the right to be served in facilities which are open to the public—hotels, restaurants, retail stores, and similar establishments" and to protect the right of all Americans to vote. After the March on Washington in 1963, President Kennedy met with civil rights leaders to discuss the bill and the need for the federal government to ban discrimination in public places and in voting. The first of its kind, this federal law would begin to protect against discrimination by non-government actors in the private sector. After Kennedy's assassination on November 22, 1963, his successor President Lyndon B. Johnson urged the earliest possible passage of the civil rights bill.

Source D: The Civil Rights Act of 1964[4]



88TH CONGRESS
2D SESSION

H. R. 7152

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 1964

Ordered printed as passed the House

AN ACT

To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

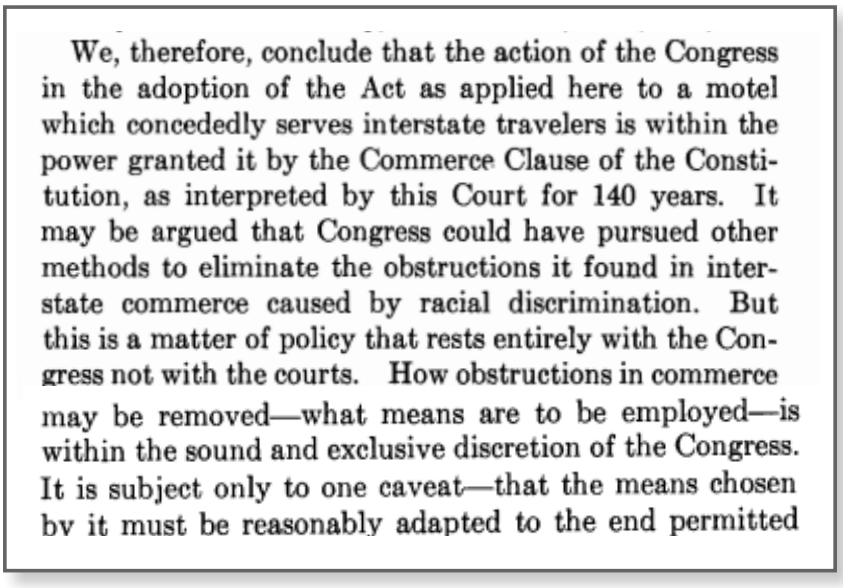
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That this Act may be cited as "The Civil Rights Act of 1963".

Source D Information: The Civil Rights Act (H.R. 7152) was passed by the House of Representatives on February 10th. After a 54-day filibuster it passed in the Senate on June 19th with amendments, so it had to be passed again in the House. It was signed into law by President Johnson on July 2, 1964. (See source at Library of Congress.)

Source E: Majority Opinion in *Heart of Atlanta Motel v. United States* (1964)[5]

The Heart of Atlanta Motel in Georgia refused to rent rooms to Black travelers, which violated the Civil Rights Act of 1964. The owner of the motel challenged the requirements of the Act. He argued that the Civil Rights Act was unconstitutional because Congress had exceeded its commerce power as motels and restaurants are stationary and do not involve the exchange of goods, money, or services across state lines. The United States maintained that travelers from out of state were the most likely customers buying the services, which made public accommodations interstate commerce.



We, therefore, conclude that the action of the Congress in the adoption of the Act as applied here to a motel which concededly serves interstate travelers is within the power granted it by the Commerce Clause of the Constitution, as interpreted by this Court for 140 years. It may be argued that Congress could have pursued other methods to eliminate the obstructions it found in interstate commerce caused by racial discrimination. But this is a matter of policy that rests entirely with the Congress not with the courts. How obstructions in commerce may be removed—what means are to be employed—is within the sound and exclusive discretion of the Congress. It is subject only to one caveat—that the means chosen by it must be reasonably adapted to the end permitted

Source E Information: The Supreme Court decided unanimously for the United States in *Heart of Atlanta Motel v. United States.* Justice Clark wrote the majority opinion, which explained that since the motel was close to major interstate roads and received most of its business from travelers outside of Georgia, the motel's refusal to serve Black travelers had an impact on interstate commerce. Therefore, the Commerce Clause gave Congress a constitutional basis for this legislation and was justified. (See source at Library of Congress.)

Questions to Consider for Sources D and E:

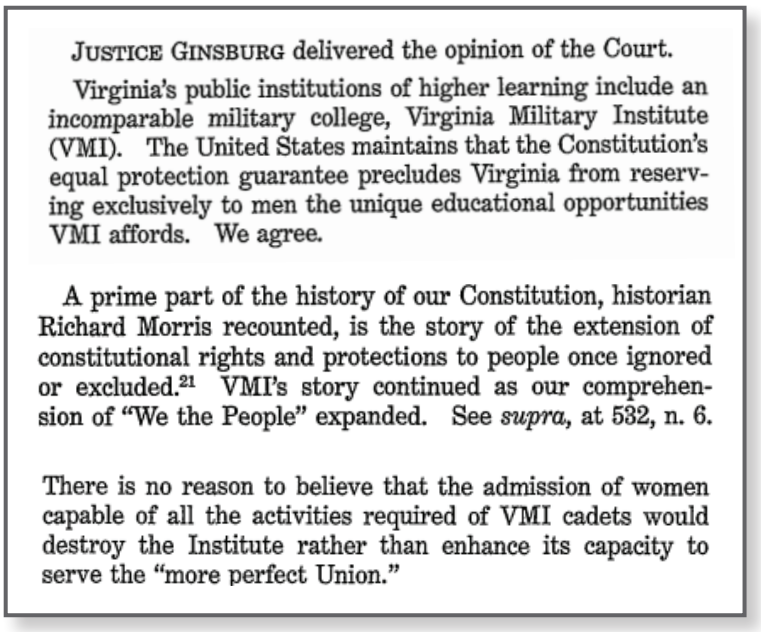
1. **Observe:** What stands out to you about Source D? What words do you notice first?
2. **Reflect:** How are these two sources related? What does the Civil Rights Act of 1964 (Source D) set out to do? How does the Civil Rights Act empower the federal government to protect civil rights? In *Heart of Atlanta Motel v. United States,* how did the Supreme Court justify Congress' extension of its commerce power to hotels and restaurants? What do these two sources tell us about this important turning point in the balance of power between the federal government and the states?
3. **Question:** What questions do you have about these sources?

Civil Rights and Gender Equality

Source F: Majority Opinion in *United States v. Virginia* (1995)[6]

Virginia Military Institute (VMI) was the only single-sex school among Virginia's 15 public institutions of higher education (colleges and universities). The school had a strong reputation for being a challenging military-style program with strict discipline and rules. VMI's exclusive curriculum was designed to produce students prepared for leadership in civilian or military service. The school was financially supported by and under the control of the Commonwealth of Virginia. Only men were admitted to the school.

The attorney general of the United States filed a complaint on behalf of a female high school student seeking admission to VMI. The case went to the Supreme Court where the question was: Does Virginia's exclusion of women from the educational opportunities provided by VMI deny women capable of all the individual activities required by VMI cadets, the equal protection of the laws guaranteed by the 14th Amendment?



JUSTICE GINSBURG delivered the opinion of the Court.

Virginia's public institutions of higher learning include an incomparable military college, Virginia Military Institute (VMI). The United States maintains that the Constitution's equal protection guarantee precludes Virginia from reserving exclusively to men the unique educational opportunities VMI affords. We agree.

A prime part of the history of our Constitution, historian Richard Morris recounted, is the story of the extension of constitutional rights and protections to people once ignored or excluded.[21] VMI's story continued as our comprehension of "We the People" expanded. See *supra*, at 532, n. 6.

There is no reason to believe that the admission of women capable of all the activities required of VMI cadets would destroy the Institute rather than enhance its capacity to serve the "more perfect Union."

Source F Information: The Supreme Court ruled 7-1 in favor of the United States, stating that VMI's policy of admitting only men to the school violated the Equal Protection Clause and the civil rights of women wishing to attend the school. Justice Ginsburg wrote the opinion of the Court. (See source at Library Congress.)

Questions to Consider for Source F:

1. **Observe:** What do you notice about this source?
2. **Reflect:** How does the decision in *United States v. Virginia* protect the civil rights of women? How did the Supreme Court apply the Equal Protection Clause? Why might Justice Ginsburg make references to the preamble of the constitution when she quotes "We the People" and "more perfect union"? How does this decision show an "extension of constitutional rights and protections to people once ignored or excluded"?
3. **Question:** What questions do you have about this source?

Voting Rights

Source G: Majority Opinion in *Shelby County v. Holder* (2013)[7]

Article 1, Section 4 of the Constitution states, "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators." The 15th Amendment states, "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." After the Civil War, these two provisions came into conflict.

The Voting Rights Act of 1965 (VRA) was passed in response to voting descrimination, especially in Southern states. The VRA outlawed literacy tests and provided for the appointment of federal examiners who were empowered to register people to vote. Section 5 of the VRA required that nine states and the counties in the states obtain "preclearance" from the District Court of the District of Columbia or the attorney general of the United States to ensure the policy would not be discriminatory before they put any new voting laws or procedures in place. This changed the relationship between the federal government and state governments in regard to voting laws. Section 5 was challenged as unconstitutional by Shelby County, Alabama, in *Shelby County v. Holder* (2013) arguing that the provision could not single out some states to require preclearance and that the 10th Amendment gave the power to regulate elections to the states.

(1) State legislation may not contravene federal law. States retain broad autonomy, however, in structuring their governments and pursuing legislative objectives. Indeed, the Tenth Amendment reserves to the States all powers not specifically granted to the Federal Government, including "the power to regulate elections." *Gregory* v. *Ashcroft*, 501 U. S. 452, 461–462. There is also a "fundamental principle of equal sovereignty" among the States, which is highly pertinent in assessing disparate treatment of States. *Northwest Austin*, *supra*, at 203.

The Voting Rights Act sharply departs from these basic principles. It requires States to beseech the Federal Government for permission to implement laws that they would otherwise have the right to enact and execute on their own. And despite the tradition of equal sovereignty, the Act applies to only nine States (and additional counties). That is

Source G Information: The Supreme Court ruled 5-4 in favor of Shelby County, stating that sections of the Voting Rights Act which required pre-clearance were unconstitutional. Therefore, the provisions were struck down. Chief Justice Roberts wrote the opinion of the Court. (See source at Library of Congress.)

Questions to Consider for Source G:

1. **Observe:** What do you notice about this source?
2. **Reflect:** How did the Court apply the 10th Amendment to this case? How is the principle of equal sovereignty (ability to rule within borders) related to the Voting Rights Act? How does this opinion describe the relationship between states and the federal government? Do you agree that the Voting Rights Act "sharply departs from these basic principles"? Did this decision expand or restrict the power of the federal government to influence voting regulations and laws?
3. **Question:** What questions do you have about this source?

Inquiry Question

How has the system of federalism impacted civil rights in the United States?

In your answer, use the timeline and the available sources.

Inquiry Extension Question

Although legal segregation in public schools was ended almost 70 years ago, many students attend public schools that have little or no racial diversity.

Can the federal government address the lack of diversity in public schools? Should the federal government address this issue?

Suggested Resources:

- Human Rights Watch, United States
- Types of Educational Opportunities Discrimination, U.S. Department of Justice
- Office for Civil Rights, U.S. Department of Education

Notes

[1] United States, *The Constitution of the United States of America,* Print, Washington: U.S. Government Printing Office, 1920. From Library of Congress General Collections, https://www.loc.gov/item/20013929/.

[2] "Earl Warren's reading copy of *Brown* opinion," May 17, 1954. From Library of Congress Manuscript Division, Earl Warren Papers, https://www.loc.gov/exhibits/civil-rights-act/civil-rights-era.html#obj084.

[3] "Executive Order 10730 of September 23, 1957, Providing Assistance for the Federal Removal of an Obstruction of Justice within the State of Arkansas." From National Archives, General Records of the United States Government, Record Group 11, https://www.archives.gov/milestone-documents/executive-order-10730?_ga=2.263853900.1171228173.1749501499-284635982.1749501499.

[4] U.S. Congress, House, Civil Rights Act of 1964, HR 7152, 88th Cong., 2nd sess., February 10, 1964, Printed document. From Library of Congress Manuscript Division, NAACP Records (162.00.00) https://www.loc.gov/exhibits/civil-rights-act/civil-rights-act-of-1964.html#obj162.

[5] *Atlanta Motel v. United States,* 379 U.S. 241 (1964). From Library of Congress U.S. Reports, www.loc.gov/item/usrep379241.

[6] *United States v. Virginia,* 518 U.S. 515 (1995). From Library of Congress U.S. Reports, www.loc.gov/item/usrep518515.

[7] *Shelby County v. Holder,* 570 U.S. 529 (2013). From Library of Congress U.S. Reports, www.loc.gov/item/usrep570529.