

# Theme 1: Democracy and Authority

Wellesley High School  
Social Studies Department  
2014-2015 school year  
US History ACP: Bartels/Despo/Gordon

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## **Thematic Unit I Outline: Democracy & Authority**

### **Abstract for Unit:**

This unit examines the tension between the increasing power of the federal government and the rights of the people in the United States. The power of the federal government fluctuates at various times depending on circumstances, including the cultural and political climate. The growth of the federal government and the ability of the people to retain rights will be taught through the three threads relating a type of right or particular circumstance. One thread is voting, which will follow the increase in the number of people in the electorate as the national government assumes greater responsibility for the franchise. The second thread follows the restriction of civil liberties by the government as it seeks to assert greater authority in the face of foreign policy challenges and domestic pressures. This includes rights contained in the Bill of Rights and other freedoms that Americans typically enjoy during peacetime.

### **Essential Question:**

- How effectively has the federal government maintained its authority while protecting the rights of the individual and of states?

### **Unit Questions:**

1. Through what mechanisms has our electorate been expanded over time?
2. How have foreign policy challenges and domestic pressures impacted civil liberties?
3. How has the relationship between the national and state government evolved over time?

*This unit has three threads that answer the essential and unit questions.*

### **Thread #1: Civil Liberties** (This thread has three parts)

**Civil Liberties:** Civil Liberties have been restricted and expanded over time. During times of crisis, the national government has restricted civil liberties. Other times, the national government restricts civil liberties for a perceived greater good.

#### **Part A: Voting**

The electorate increases over time from the Founding Period. During certain time periods there is contraction and expansion of this electorate through the federal, state and local governments policies and legislation. Historically state and local governments have regulated voting, but over time the national government has assumed a greater role in

expanding and protecting the franchise. This section of the unit examines the changing electorate over time and the tension it generates among the stakeholders.

**Part B: *Bill of Rights with the 14th Amendment***

In history, various people have had to battle to protect the rights guaranteed to them in the Constitution. This section explores the extent in which the federal government has extended or infringed the rights guaranteed to citizens in our Constitution.

**Part C: *Wartime***

During times of war, civil liberties have been restricted as the authority of the federal expands. This section also examines how the federal government has maintained their expanded presence in the lives of American citizens.

***Thread #2:***

***Federalism:*** This theme will explore how the national government increases its power over time. The unit will examine the relationship between the national and state governments in promoting or restricting the rights of the people.

**Vocabulary:**

1. **Democracy-** The rights of citizens under the government. These include voting, due process, freedom of speech, press, Bill of Rights.
  
1. **Authority-** Government regulating and/or restricting the political rights of the people in the United States.

### Democracy and Authority from the beginning...

Your homework is to go through the Declaration of Independence in your pocket Constitution and fill out the chart below. **ONLY** use the Declaration of Independence.

What do the people want to be protected from? <i>Think behaviors, concerns, fears, etc.</i>	What do the people want to protect? <i>Think rights, needs, wants, etc.</i>
Overall, what were the concerns of the American colonist regarding <i>authority</i> ?	Overall, what did the American colonists want as part of their <i>democratic</i> country?

### The Declaration of Independence

Action of Second Continental Congress,  
July 4, 1776.

The unanimous Declaration of the thirteen united States of America,

When in the Course of human Events, it becomes necessary for one People to dissolve the Political Bands which have connected them with another, and to assume among the Powers of the Earth, the separate and equal Station to which the Laws of Nature and of Nature's God entitle them, a decent Respect to the Opinions of Mankind requires that they should declare the causes which impel them to the Separation.

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, that among these are Life, Liberty, and the Pursuit of Happiness—That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles, and organizing its Powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient Causes; and accordingly all Experience hath shewn, that Mankind are more disposed to suffer, while Evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long Train of Abuses and Usurpations, pursuing invariably the same Object, evinces a Design to reduce them under absolute Despotism, it is their Right, it is their Duty, to throw off such Government, and to provide new Guards for their future Security. Such has been the patient Sufferance of these Colonies; and such is now the Necessity which constrains them to alter their former Systems of Government. The History of the present King of Great-Britain is a History of repeated Injuries and Usurpations, all having in direct Object the Establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid World.

He has refused his Assent to Laws, the most wholesome and necessary for the public Good.

He has forbidden his Governors to pass Laws of immediate and pressing Importance, unless suspended in their Operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the Accommodation of large Districts of People, unless those People would relinquish the Right of Representation in the Legislature, a Right inestimable to them, and formidable to Tyrants only.

He has called together Legislative Bodies at Places unusual, uncomfortable, and distant from the Depository of their public Records, for the sole Purpose of fatiguing them into Compliance with his Measures.

He has dissolved Representative Houses repeatedly, for opposing with manly Firmness his Invasions on the Rights of the People.

He has refused for a long Time, after such Dissolutions, to cause others to be elected; whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the Dangers of Invasion from without, and Convulsions within.

## The Declaration of Independence: Read the Declaration *(Continued)*

He has endeavoured to prevent the Population of these States; for that Purpose obstructing the Laws for Naturalization of foreigners; refusing to pass others to encourage their Migrations hither, and raising the Conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his assent to Laws for establishing Judiciary Powers.

He has made Judges dependent on his Will alone, for the Tenure of their Offices, and the Amount and Payment of their Salaries.

He has erected a Multitude of new Offices, and sent hither Swarms of Officers to harrass our People, and eat out their Substance.

He has kept among us, in Times of Peace, Standing Armies, without the consent of our Legislatures.

He has affected to render the Military independent of and superior to the Civil Power.

He has combined with others to subject us to a Jurisdiction foreign to our Constitution, and unacknowledged by our Laws; giving his Assent to their Acts of pretended Legislation:

For quartering large Bodies of Armed Troops among us:

For protecting them, by a mock Trial, from Punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all Parts of the World:

For imposing Taxes on us without our Consent:

For depriving us, in many Cases, of the Benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended Offences:

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an arbitrary Government and enlarging its Boundaries, so as to render it at once an Example and fit Instrument for introducing the same absolute Rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the forms of our Governments:

For suspending our own Legislatures, and declaring themselves invested with Power to legislate for us in all Cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our Seas, ravaged our Coasts, burnt our Towns, and destroyed the Lives of our People.

## The Declaration of Independence: Read the Declaration *(Continued)*

He is, at this Time, transporting large Armies of foreign Mercenaries to compleat the Works of Death, Desolation, and Tyranny already begun with circumstances of Cruelty and Perfidy, scarcely paralleled in the most barbarous Ages, and totally unworthy of the Head of a civilized Nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the Executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic Insurrections amongst us, and has endeavoured to bring on the Inhabitants of our Frontiers, the merciless Indian Savages, whose known Rule of Warfare, is an undistinguished Destruction, of all Ages, Sexes and Conditions.

In has refused every stage of these Oppressions we have Petitioned for Redress in the most humble Terms: Our repeated Petitions have been answered only by repeated Injury. A Prince, whose Character is thus marked by every act which may define a Tyrant, is unfit to be the Ruler of a free People.

Nor have we been wanting in Attentions to our British Brethren. We have warned them from Time to Time of Attempts by their Legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the Circumstances of our Emigration and Settlement here. We have appealed to their native justice and Magnanimity, and we have conjured them by the Ties of our common Kindred to disavow these Usurpations, which, would inevitably interrupt our Connections and Correspondence. They too have been deaf to the Voice of Justice and of Consanguinity. We must, therefore, acquiesce in the Necessity, which denounces our Separation, and hold them, as we hold the rest of Mankind, Enemies in War, in Peace, Friends.

We, therefore, the Representatives of the UNITED STATES OF AMERICA, in General Congress, Assembled, appealing to the Supreme Judge of the World for the Rectitude of our Intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly Publish and Declare, That these United Colonies are, and of Right ought to be, FREE AND INDEPENDENT STATES, that they are absolved from all Allegiance to the British Crown, and that all political Connection between them and the State of Great-Britain, is and ought to be totally dissolved; and that as FREE AND INDEPENDENT STATES, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which INDEPENDENT STATES may of right do. And for the support of this Declaration, with a firm Reliance on the Protection of divine Providence, we mutually pledge to each other our Lives, our fortunes, and our sacred Honor.



To learn more about the Constitution – the people, the events, the landmark cases – order a copy of “The U.S. Constitution and Fascinating Facts About It” today!

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### ***Constitution and Democracy and Authority***

***Directions:***

Read the Constitution and identify specific sections that illustrates the theme of Democracy and Authority.

Section of Constitution	Summarize in bullet-point format how this section addresses the theme of Democracy and Authority. Think specifically about the threads of voting, war and federalism. (see above for definitions)
Article I	
Article II	
Article III	
Article IV	
Article V	
Article VI	
Article VII	
Bill of Rights	

### Discussion Questions: The Constitution and Democracy and Authority

**Directions:**

After the class discussion of the bottom lines work with your group members and respond to the below three questions.

1. What power does the people have according to the Constitution?
2. According to the Constitution, how can the government assert its authority?
3. To what extent do people dictate what happens in government?

## VOTING RIGHTS

When the United States was founded, only adult males who owned property could vote. The history of the amendments to the Constitution is, in one sense, a history of the expansion of certain political rights, including voting.

The Founders saw governments as existing to protect natural (or "inalienable") rights. Natural rights are rights people are born with, and which can be exercised without anyone else taking any action. Examples are freedom of speech and freedom of religious belief. Political rights, such as voting, require positive action on the part of others – if you have a right to vote, then someone else must have the obligation to set up a polling place, count the votes, and do other things to secure that ability.

Many believe they have a constitutional right to vote in our democratic republic, but there is actually no such right listed in the Constitution. Rather, several amendments to the Constitution list conditions that the states cannot use to stop people from voting.

The Constitution may one day be amended to guarantee the right to vote, but the current document only says what the government cannot do to "deny or abridge" your rights.

### Former Male Slaves/African American Men: The Fifteenth Amendment

Many of the individuals who fought against the institution of slavery were among those who supported voting rights for former slaves. Frederick Douglass, an influential writer and lecturer who was also a former slave, believed

**Many believe they have a constitutional right to vote in our democratic republic, but there is actually no such right listed in the Constitution.**

that full equality could not come without the right to vote. He asked President Lincoln to fight for abolition, and he worked to recruit blacks to fight for the Union during the Civil War.

The Fourteenth Amendment was ratified after the war, and provided that no state could deny equal protection of the law to its citizens. But many former slaves were still turned away when they tried to vote. The Fifteenth Amendment was written to clearly ban the denial of voting rights to former slaves. Ratified in 1870, it barred states from stopping people from voting on the basis of "race, color, or previous condition of servitude."

Though former slaves could not constitutionally be barred from voting, many blacks who attempted to register to vote often faced harassment and violence. Fannie Lou Hamer, an African American woman from Mississippi, worked on voter registration drives in the mid-twentieth century. Guards at Montgomery County Jail beat her and fellow civil rights workers when she tried to register to vote in 1963. She spoke out at the Democratic presidential convention about people being illegally prevented from voting. A year later in 1965, President Johnson signed the Voting Rights Act into law, which many see as a fulfillment of the Fifteenth Amendment's promise.

### Women and the Seneca Falls Convention: The Nineteenth Amendment

The first American women's rights convention was held in 1848 in Seneca Fall, New York. It was organized by Elizabeth Cady Stanton, Lucretia Mott, and others. Frederick Douglass and Sojourner Truth were among the 300 people in attendance.

## VOTING RIGHTS (CONT.)

The delegates signed the Declaration of Sentiments and Resolutions, which used the same wording as the Declaration of Independence, to list the ways women had been deprived of equal rights, including "the inalienable right to the elective franchise." The Declaration of Sentiments and Resolutions was signed by 100 people, including thirty-two men.

Women suffragists continued to campaign for the vote and other rights for the next eighty years. During that time, many states approved votes for women at the state level. After the Nineteenth Amendment was ratified in 1920, states could not stop people from voting because they were female.

## Native Americans

No constitutional amendment secures the right to vote for Native Americans. Through American history, many states imposed severe restrictions on the ability of Native Americans to vote. Many states passed laws that excluded those Native Americans living in traditional American Indian culture, requiring that voters prove that they were "civilized."

In other cases, laws that appeared fair on their face—requiring voters to be citizens, for example—had the intended result of stopping Native Americans from voting, as they were not granted citizenship rights until 1924 when

Congress passed the Indian Citizenship Act. After this law was passed, many states imposed other restrictions meant to keep Native Americans from voting. The last state to grant voting rights to Native Americans did so in 1947.

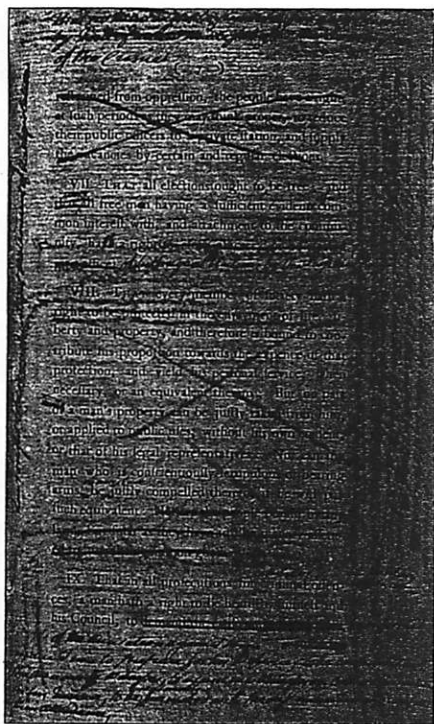
The 1965 Voting Rights Act was amended in 1975 and 1982 to include federal protections for Native Americans.

## Washington, DC, Poll Taxes, and Eighteen to Twenty-One Year Olds

When the District of Columbia was established, it was planned to serve merely as a seat of government. By the twentieth century, however, its population was greater than those of several states. The Twenty-third Amendment gave the right to vote in national elections to residents of Washington, D.C. It did not, however, make the District of Columbia into a state.

The Twenty-fourth Amendment prohibited states from stopping people who could not pay a poll tax from voting. Poll taxes had historically been used to keep poor African Americans from voting.

Finally, the Twenty-sixth Amendment lowered the voting age from twenty-one to eighteen years of age. This amendment came during the Vietnam War in response to the objection that eighteen-year-old men were being drafted into the military, yet had no right to vote.



John Dickinson's copy of the Pennsylvania constitution of 1776, with handwritten proposals for changes. Dickinson, one of the more conservative advocates of independence, felt the new state constitution was far too democratic. He crossed out a provision that all "free men" should be eligible to hold office, and another declaring the people not bound by laws that did not promote "the common good."

schools with low fees be established in every county. It also included clauses guaranteeing "freedom of speech, and of writing," and religious liberty.

### THE NEW CONSTITUTIONS

Like Pennsylvania, every state adopted a new constitution in the aftermath of independence. Nearly all Americans now agreed that their governments must be republics, meaning that their authority rested on the consent of the governed, and that there would be no king or hereditary aristocracy. The essence of a republic, Paine wrote, was not the "particular form" of government, but its object: the "public good." But as to how a republican government should be structured so as to promote the public good, there was much disagreement.

Pennsylvania's new constitution reflected the belief that since the people had a single set of interests, a single legislative house was sufficient to represent it. In part to counteract what he saw as Pennsylvania's excessive radicalism, John Adams in 1776 published *Thoughts on Government*, which insisted that the new constitutions should create "balanced governments" whose structure would reflect the division of society between the wealthy (represented in the upper house) and ordinary men (who would control the lower). A powerful governor and judiciary would ensure that neither class infringed on the liberty of the other. Adams's call for two-house legislatures was followed by every state except Pennsylvania, Georgia, and Vermont. But only his own state, Massachusetts, gave the governor an effective veto over laws passed by the legislature. Americans had come to believe that excessive royal authority had undermined British liberty. They had long resented efforts by appointed governors to challenge the power of colonial assemblies. They preferred power to rest with the legislature.

### THE RIGHT TO VOTE

The issue of requirements for voting and officeholding proved far more contentious. Conservative patriots struggled valiantly to reassert the rationale for the old voting restrictions. It was ridiculous, wrote one pamphleteer, to think that "every silly clown and illiterate mechanic [artisan]" deserved a voice in government. To John Adams, as conservative on the internal affairs of America as he had been radical on independence, freedom and equality were opposites. Men without property, he believed, had no "judgment of their own," and the removal of property qualifications, therefore, would "confound and destroy all distinctions, and prostrate all ranks to one common level." Eliminating traditional social ranks, however, was precisely the aim of the era's radical democrats, including the most influential promoter of independence, Thomas Paine.

The provisions of the new state constitutions reflected the balance of power between advocates of internal change and those who feared excessive democracy. The least democratization occurred in the southern states, whose highly deferential political traditions enabled the landed gentry to retain their control of political affairs. In Virginia and South Carolina, the new constitutions retained property qualifications for voting and authorized the gentry-dominated legislature to choose the governor.

Maryland combined a low property qualification for voting with high requirements for officeholding, including £5,000—a veritable fortune—for the governor.

The most democratic new constitutions moved much of the way toward the idea of voting as an entitlement rather than a privilege, but they generally stopped short of universal suffrage, even for free men. Vermont's constitution of 1777 was the only one to sever voting completely from financial considerations, eliminating not only property qualifications but the requirement that voters pay taxes. Pennsylvania's constitution no longer required ownership of property, but it retained the taxpaying qualification. As a result, it enfranchised nearly all of the state's free male population but left a small number, mainly paupers and domestic servants, still barred from voting. Nonetheless, even with the taxpaying requirement, it represented a dramatic departure from the colonial practice of restricting the suffrage to those who could claim to be economically independent. It elevated "personal liberty," in the words of one essayist, to a position more important than property ownership in defining the boundaries of the political nation.

#### DEMOCRATIZING GOVERNMENT

Overall, the Revolution led to a great expansion of the right to vote. By the 1780s, with the exceptions of Virginia, Maryland, and New York, a large majority of the adult white male population could meet voting requirements. New Jersey's new state constitution, of 1776, granted the suffrage to all "inhabitants" who met a property qualification. Until the state added the word "male" (along with "white") in 1807, property-owning women, mostly widows, did cast ballots. The new constitutions also expanded the number of legislative seats, with the result that numerous men of lesser property assumed political office. The debate over the suffrage would, of course, continue for many decades. For white men, the process of democratization did not run its course until the Age of Jackson; for women and non-whites, it would take much longer.

Even during the Revolution, however, in the popular language of politics if not in law, freedom and an individual's right to vote had become interchangeable. "The suffrage," declared a 1776 petition of disenfranchised North Carolinians, was "a right essential to and inseparable from freedom." Without it, Americans could not enjoy "equal liberty." A proposed new constitution for Massachusetts was rejected by a majority of the towns in 1778, partly because it contained a property qualification for voting. "All men were born equally free and independent," declared the town of Lenox. How could they defend their "life and liberty and property" without a voice in electing public officials? A new draft, which retained a substantial requirement for voting in state elections but allowed virtually all men to vote for town officers, was approved in 1780. And every state except South Carolina provided for annual legislative elections, to ensure that representatives remained closely accountable to the people. Henceforth, political freedom would mean not only, as in the past, a people's right to be ruled by their chosen representatives but also an individual's right to political participation.

awarded her a soldier's pension. Other patriotic women participated in crowd actions against merchants accused of seeking profits by holding goods off the market until their prices rose, contributed homespun goods to the army, and passed along information about British army movements.

In Philadelphia, Esther Reed, the wife of patriot leader Joseph Reed, and Sarah Franklin Bache, the daughter of Benjamin Franklin, organized a Ladies' Association to raise funds to assist American soldiers. They issued public broadsides calling for the "women of America" to name a "Treasuress" in each county in the United States who would collect funds and forward them to the governor's wife or, if he were unmarried, to "Mistress Washington." Referring to themselves as "brave Americans" who had been "born for liberty," the Ladies' Association illustrated how the Revolution was propelling women into new forms of public activism.

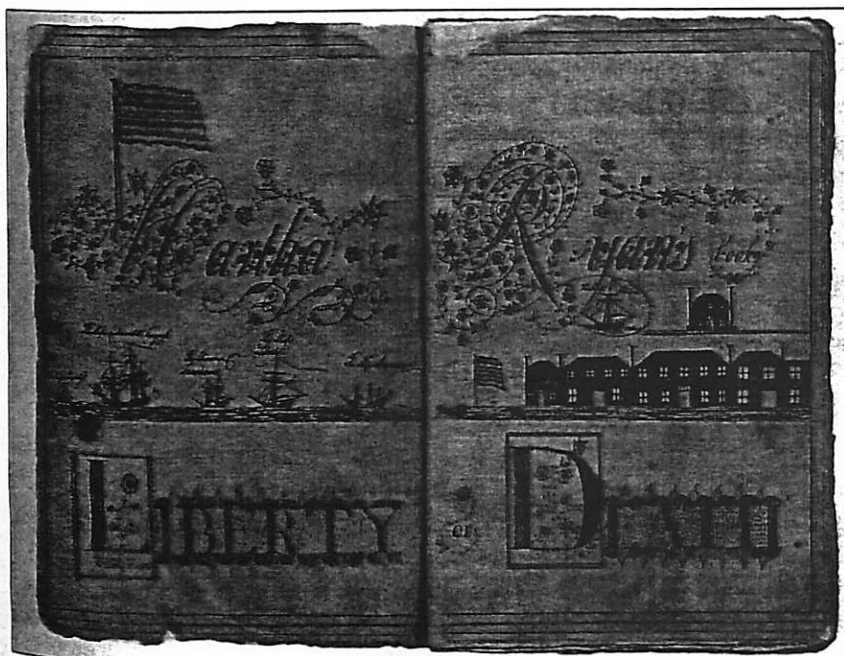
Within American households, women participated in the political discussions unleashed by independence. "Was not every fireside," John Adams later recalled, "a theater of politics?" Adams's own wife, Abigail Adams, as has been mentioned, was a shrewd analyst of public affairs. Mercy Otis Warren—the sister of James Otis and wife of James Warren, a founder of the Boston Committee of Correspondence—was another commentator on politics. She promoted the revolutionary cause in poems and dramas and later published a history of the struggle for independence.

#### GENDER AND POLITICS

Gender, nonetheless, formed a boundary limiting those entitled to the full blessings of American freedom. Lucy Knox, the wife of General Henry Knox, wrote her husband during the war that when he returned home he should not consider himself "commander in chief of your own house, but be convinced that there is such a thing as equal command." But the winning of independence did not alter the family law inherited from Britain. The principle of "coverture" (described in Chapter 1) remained intact in the new



In this painting from 1797, Deborah Sampson, who donned men's clothes to fight in the War of Independence, is portrayed in genteel female attire.



The 1781 cipher book (a notebook for mathematics exercises) of Martha Ryan, a North Carolina girl, contains images of ships and a port town and the patriotic slogan "Liberty or Death," illustrating how women shared in the political culture of the revolutionary era.



Keep within Compass, a late-eighteenth-century engraving, illustrates the happiness of a "virtuous woman" if she remains within the world of the home and family, and some of the "troubles" awaiting her if she ventures outside. The woman appears in a space marked off by a compass, an instrument for drawing a circle.

nation. The husband still held legal authority over the person, property, and choices of his wife. The words "to have and to hold" appeared in deeds conveying land from one owner to another, and in common marriage vows. Despite the expansion of democracy, politics remained overwhelmingly a male realm.

For men, political freedom meant the right to self-government, the power to consent to the individuals and political arrangements that ruled over them. For women, however, the marriage contract superseded the social contract. A woman's relationship to the larger society was mediated through her relationship with her husband. In both law and social reality, women lacked the essential qualification of political participation—the opportunity for autonomy based on ownership of property or control of one's own person. Since the common law included women within the legal status of their husbands, women could not be said to have property in themselves in the same sense as men.

Men took pride in qualities like independence and masculinity that distinguished them from women, and still considered control over their families an element of freedom. Among the deprivations of slavery cited by a group of black male petitioners in 1774 was that it prevented their wives from "submitting themselves to husbands in all things," as the natural order of the universe required. Many women who entered public debate felt

the need to apologize for their forthrightness. A group of Quaker women who petitioned Congress during the War of Independence protesting the mistreatment of men who would not take an oath of loyalty hoped the lawmakers would "take no offense at the freedom of women."

Most men considered women to be naturally submissive and irrational, and therefore unfit for citizenship. While public debate in the revolutionary era viewed men's rights as natural entitlements, discussions of women's roles emphasized duty and obligations, not individual liberty. Their rights were nonpolitical, deriving from their roles as wives and mothers.

Overall, the republican citizen was, by definition, male. In a notable case, a Massachusetts court returned to James Martin confiscated property previously owned by his mother, who had fled the state during the Revolution with her Loyalist husband. Like other states, Massachusetts seized the land of those who had supported the British. But, the court ruled, it was unreasonable to expect a wife to exercise independent political judgment. To rebel against the king was one thing, but one could hardly ask Mrs. Martin to rebel against her husband. Therefore, the court reasoned, she should not have been punished for taking the British side.

#### REPUBLICAN MOTHERHOOD

The Revolution nonetheless did produce an improvement in status for many women. According to the ideology of "republican motherhood" that emerged as a result of independence, women played an indispensable role by training future citizens. The "foundation of national morality," wrote John Adams, "must be laid in private families." Even though republican motherhood ruled out direct female involvement in politics, it encouraged the expansion of educational opportunities for women, so that they could

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1790, Murray insisted that women had as much right as men to exercise all their talents and should be allowed equal educational opportunities to enable them to do so. Women's apparent mental inferiority to men, she insisted, simply reflected the fact that they had been denied "the opportunity of acquiring knowledge." "The idea of the incapability of women," she maintained, was "totally inadmissible in this enlightened age."

## WOMEN AND THE REPUBLIC

Were women part of the new body politic? Until after the Civil War, the word "male" did not appear in the Constitution. Women were counted fully in determining representation in Congress, and there was nothing explicitly limiting the rights outlined in the Constitution to men. A few contributors to the pamphlet debate on women's rights admitted that, according to the logic of democracy, women ought to have a voice in government. The Constitution's use of the word "he" to describe officeholders, however, reflected an assumption so widespread that it scarcely required explicit defense: politics was a realm for men. The time had not yet arrived for a broad assault on gender inequality. But like the activities of the Democratic-Republican societies, the discussion of women's status helped to popularize the language of rights in the new republic.

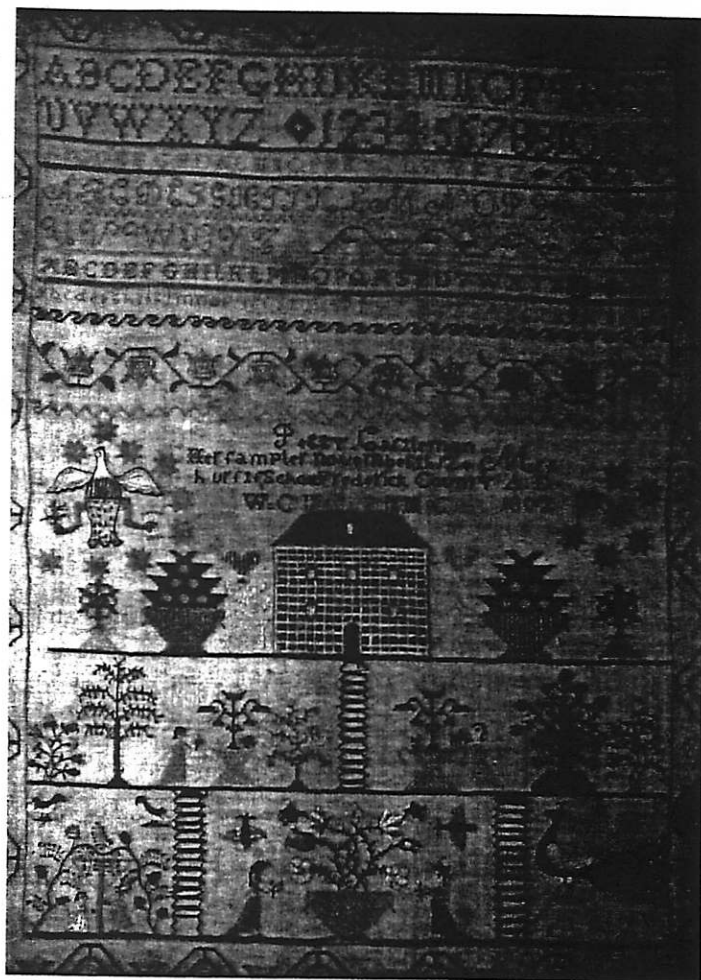
The men who wrote the Constitution did not envision the active and continuing involvement of ordinary citizens in affairs of state. But the rise of political parties seeking to mobilize voters in hotly contested elections, the emergence of the "self-created societies," the stirrings of women's political consciousness, and even armed uprisings like the Whiskey Rebellion broadened and deepened the democratization of public life set in motion by the American Revolution.

## THE ADAMS PRESIDENCY

In 1792, Washington won unanimous reelection. Four years later, he decided to retire from public life, in part to establish the precedent that the presidency is not a life office. In his Farewell Address (mostly drafted by Hamilton and published in the newspapers rather than delivered orally; see the Appendix for excerpts from the speech), Washington defended his administration against criticism, warned against the party spirit, and advised his countrymen to steer clear of international power politics by avoiding "permanent alliances with any portion of the foreign world."

## THE ELECTION OF 1796

George Washington's departure unleashed fierce party competition over the choice of his successor. In this, the first contested presidential election,



This sampler was made by Peggy Castleman, a student in Frederick County, Virginia, in 1802. It includes an American eagle, a symbol of patriotism, along with more conventional decorations and domestic imagery. Women as well as men shared in the enthusiasm for early American nationalism.



## John Adams Explains Why Men Without Property Should Not Be Able to Vote

*James Sullivan, a state court judge in Massachusetts and colleague of John Adams, was often sympathetic to those who thought women and non-elite men should have a voice in the new nation's government. Adams disagreed, explaining to Sullivan why men without property and women should be excluded. Some spelling changes and edits have been made to improve clarity.*

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May 26, 1776

It is certain in theory, that the only moral foundation of government is the [agreement] of the people, but to what an extent shall we carry this principle? Shall we say, that every individual of the community, old and young, male and female, as well as rich and poor, must [agree] to every act of legislation?...

Is it not equally true, that men in general in every society, who [are poor and do not own property], are also [unfamiliar] with public affairs to form a right judgment, and too dependent upon other men to have a will of their own? ...Few men, who have no property, have any judgment of their own. They talk and vote as they are directed by some man of property, who has attached their minds to his interest.

Depend upon it, sir, it is dangerous to open [such a] source of controversy and **altercation**, as would be opened by attempting to [change] the qualifications of voters. There will be no end of it. New claims will arise. Women will demand a vote. **Lads** from 12 to 21 will think their rights not enough attended to, and every man, who has not a [dime], will demand an equal voice with any other in all acts of state. It tends to confound and destroy all distinctions, and [surrender] all ranks, to one common level.

### Vocabulary

**Altercation:** fighting

**Lads:** an old-fashioned term for boys and young men

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Source: John Adams to James Sullivan, 26 May 1776; from Charles Francis Adams, ed., *The Works of John Adams, Second President of the United States* (Boston: Little, Brown, and Company, 1854).

insisted that the tariff and “internal improvements” would work together to tie the different regions into a harmonious and prosperous whole.

Clay also favored reestablishment of a national bank. The charter for the first Bank of the United States, created during Washington’s administration, expired in 1811. That freed private and state banks to print their own money, which caused widespread uncertainty about the value of money. A national bank, Clay argued, would provide federal control over the nation’s money supply and banking practices. In 1816, Congress established the second Bank of the United States. But most congressmen opposed using federal funds for internal improvements.

**Marshall and the Supreme Court Boost Federal Power** Under John Marshall, who served as Chief Justice from 1801 to 1835, the Supreme Court favored a strong federal government and a national economy. Marshall applied several Federalist principles to interpret the Constitution. For example, the Marshall Court claimed the power to review the acts of Congress and of the President for their constitutionality. This was established in the landmark decision *Marbury v. Madison* (1803). Marshall also insisted upon the “sanctity of contracts.” In *Dartmouth College v. Woodward* (1819) and *Fletcher v. Peck* (1810), the Marshall Court limited a state government’s power to interfere in business contracts.

Further, the Marshall Court insisted that federal law was superior to state law. This point was famously established in *McCulloch v. Maryland* (1819). The case involved the renewed Bank of the United States. When it was reestablished in 1816, branches were placed in states across the country. In effect, the bank competed with and threatened many state and local banks. In Maryland, state officials tried to defend their banks by levying a tax on the operations of the Bank of the United States.

The Marshall Court struck down this Maryland law. Embracing a broad interpretation of the Constitution, Marshall insisted that Congress had the power to charter a national bank. Further, no state could destroy such a bank with taxes.

Finally, Marshall broadly interpreted the Constitution to give greater power to the national government. In the 1824 case *Gibbons v. Ogden*, Marshall rejected a steamboat monopoly granted by the state of New York. The monopoly threatened the business of a steamboat operator who had run a service between New Jersey and New York. Marshall ruled that steamboat traffic was “commerce” and that the power to regulate commerce involving more than one state—interstate commerce—belonged to the federal government. As in *McCulloch v. Maryland*, the ruling extended federal power by creating a broad definition of commerce and by asserting the supremacy of federal over state law.

In general, Marshall’s Court encouraged the development of large, far-flung business corporations by freeing them from meddling by the states. (Think, for example, how difficult it might have been to build a railroad company that covered several states if each state had the power to establish its own monopolies within its borders.) Corporations took the place of the older, smaller, and simpler forms of business—single proprietorships and limited partnerships whose reach was confined to a small area. Due in part to the Marshall Court, the United States increasingly became one large integrated market.

**Economy Experiences Panics** As the national market emerged and more enterprises became interconnected over greater distances, the economy became subject to periodic shocks, or panics. These panics were the result of “busts” in a “boom-and-bust” cycle that is common in capitalism. In capitalism, individuals own most productive property—factories

#### Vocabulary Builder

**advocate**—(AD vuh kiht) *n.* a person who supports or urges something

**Primary Source** “The question is, in truth, a question of supremacy. And if the right of the states to tax the means employed by the general government be conceded [accepted], the declaration that the Constitution, and the laws made in pursuance thereof, shall be the supreme law of the land, is empty and unmeaning. . . .”

—John Marshall,  
*McCulloch v. Maryland*, 1819

**The Monroe Doctrine** Adams also formulated the famous foreign policy doctrine named for President Monroe—the **Monroe Doctrine**. This policy responded to threats by European powers, including France, to help Spain recover Latin American colonies that had declared their independence. Monroe and Adams were eager to protect those new republics. The British shared that goal and proposed uniting with the United States to warn the other European powers to stay out of Latin America. Adams and Monroe, however, preferred to act without a British partner. In 1823, Monroe issued a written doctrine declaring that European monarchies had no business meddling with American republics. In return, the United States promised to stay out of European affairs.

**Primary Source**

“... [T]he occasion has been judged proper for asserting, as a principle in which the rights and interests of the United States are involved, that the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers. . . .”

—James Monroe, address to Congress, December 2, 1823

The Monroe Doctrine meant little in 1823 when the Americans lacked the army and navy to enforce it. The Latin American republics kept their independence with British, rather than American, help. The doctrine did, however, reflect the nation's growing desire for power. The doctrine became much more significant in the 1890s and in the twentieth century, when the United States increasingly sent armed forces into Latin American countries.



**Checkpoint** What foreign policy actions did John Quincy Adams take that reflected nationalism?



## The Nation Compromises Over Slavery

The spirit of nationalism failed to suppress regional differences in the United States. Such differences made the nation more difficult to govern. In 1819, this difficulty became evident in a crisis over Missouri's admission to the Union as a new state. At that point, the Union had an equal number of slave and free states—which meant equal regional power in the United States Senate. If Missouri entered the Union as a slave state, it would tip the balance in favor of the South. This prospect alarmed northern congressmen. A New York congressman proposed banning slavery in Missouri as a price for joining the Union. The proposed ban outraged southern leaders, who claimed a right to expand slavery westward.

In 1820, after a long and bitter debate, Henry Clay crafted the **Missouri Compromise**. The northern district of Massachusetts would enter the Union as the free state of Maine to balance admission of Missouri as a slave state. To discourage future disputes over state admissions, the compromise also drew a line across the continent from the southwestern corner of Missouri to the nation's western boundary. Territories south of that line would enter as slave states. Those north of the line would become free states.

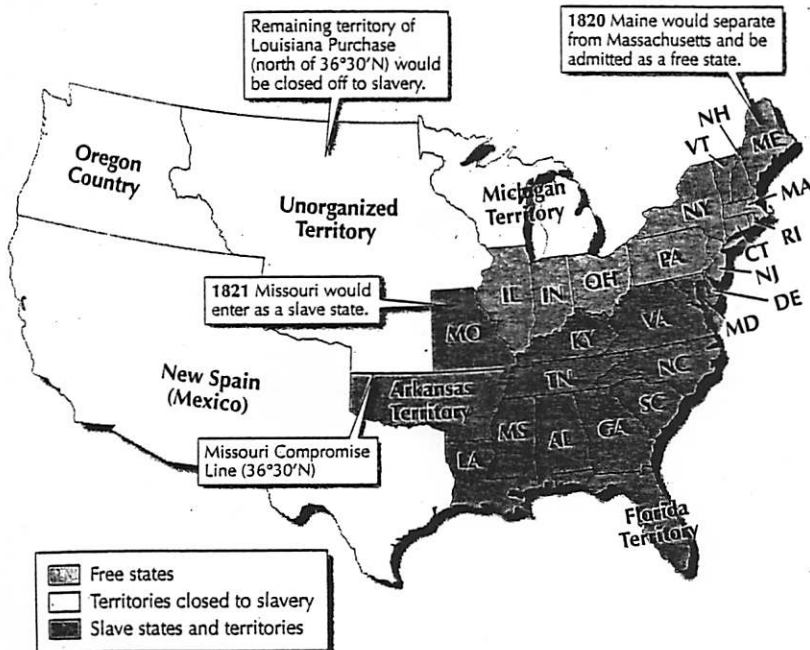
The compromise solved the short-term crisis. But that crisis had exposed the growing division between the North and the South over the expansion of slavery. Jefferson worried, “This momentous question, like a fire-bell in the night, awakened and filled me with terror. I considered it at once the [death] knell of the Union.”

Southern whites felt insulted by the northern attacks on their region's reliance on slavery. They also felt threatened. In 1822, they blamed the Missouri

## The Missouri Compromise

### Geography Interactive

For: Interactive map  
Web Code: ncp-0706



**Map Skills** The Missouri Compromise admitted Maine as a free state, Missouri as a slave state, and prohibited slavery north of 36°30'N latitude.

- 1. Region** Which would cover more land under the compromise—new free states or new slave states?
- 2. Draw Conclusions** What did the compromise reveal about the state of the Union?

debates for inspiring Denmark Vesey to plan a slave revolt. Vesey, a black freedman, prepared slaves to seize control of Charleston, South Carolina. The revolt, however, never took place because Charleston officials learned of the plot. These officials arrested, tried, convicted, and hanged Vesey and 34 others. Anxious over their close call, southern politicians insisted that their safety required northern silence on slavery.

**Checkpoint** How did sectionalism threaten the expansion of the Union?

### SECTION

## 3 Assessment

### Progress Monitoring Online

For: Self-test with vocabulary practice  
Web Code: nca-0707

#### Comprehension

- 1. Terms and People** How does each term below demonstrate the increasing nationalism in the years following the War of 1812? Answer the question in a paragraph that uses each term.
  - American System
  - Adams-Onís Treaty
  - Monroe Doctrine

#### 2. NoteTaking Reading Skill:

**Understand Effects** Use your completed concept web to answer the Section Focus Question: How did domestic and foreign policies reflect the nationalism of the times?

#### Writing About History

- 3. Quick Write: Write a Thesis** As in other types of essays and reports, the backbone for a research report is the thesis, or main idea. Reread the text in this section on Henry Clay's American System. Then, write a thesis statement for a research report on this topic.

#### Critical Thinking

- 4. Recognize Sufficient Evidence** How did the fact that James Monroe won reelection in 1820 nearly unanimously reflect the nationalism of the era?
- 5. Draw Conclusions** How did the spirit of nationalism contribute to the Monroe Doctrine?
- 6. Analyze Information** What did the Missouri Compromise suggest about the limits of nationalism in the United States in the 1820s?

# 11 THE JACKSONIAN ERA

Tennessee militia soldiers, inspired by his toughness, had nicknamed Andrew Jackson "Old Hickory" during the War of 1812. Since that time, less inspired than aggravated, his political opponents called him quite a number of other names. Jackson probably deserved all of the monikers, good and bad, for he was a complex man whose personal and professional decisions produced conflicting reactions during his lifetime and thereafter. Although negative evaluations mounted in the late twentieth century, Jackson was a hero to most of his contemporaries. He seemed to embody the image many Americans had, or wanted to have, of themselves. They embraced the image of the frontiersman, someone they saw as self-reliant, someone whose character was based in action not intellect: someone who used might to make right and who knew instinctively what right was. These Americans applauded him as a self-made man: he was an example to their sons that in America any boy, through self-determination, direction, and diligence, could indeed become powerful. Jackson's opponents, however, pointed out that his conduct also demonstrated how action without full reflection could have negative repercussions. To them, his decisions showed why there had to be checks on the delegation and execution of power.

Jackson, over time, came to epitomize the myth and reality of a new era in American democracy. The Jacksonian Age was a time when many Americans started to define democracy more inclusively and equality more broadly than the Founders had. They celebrated greater participation by white men, no matter what their economic and social rank, in the political life of the nation. Yet in doing so, showing the complexity and contradictory nature of this age, they also expounded more fully on the ethnic and gendered limits to American democracy, equality, and opportunity. Some Americans did protest those restrictions, using the language of revolutionary America and building on the broader interpretations of Jacksonian America. During this period there was growing debate about the abolition of slavery and Native American rights and property.

Another issue of increasing concern was that of the allocation and exercise of power between national and state governments. Old compromises were fraying and new ones increasingly difficult to forge. In this new era of the common man there was no question of sovereignty remaining with the people, but there were many heated debates over which government—state or national—best protected the common man's rights and interests. When national and state legislation came into conflict, which one did citizens ultimately want to have precedence? Did they want the one that confirmed rule by the majority to hold sway, or did they want those that protected minorities (state contingents) to have the power to check a possible tyranny by the majority? Some believed that the primacy of the national government had already been spelled out in the Constitution and confirmed by Supreme Court decisions; others believed that the state governments, which were more closely tied to the people, better represented citizens' interests, and they increasingly challenged the former.

Jackson initially straddled the debate, but when put to the test during the nullification controversy, he came down firmly for the supremacy of the national government. Yet as a believer and practitioner in self-reliance, he also seemed to believe that the nation should not do what the state could do, nor should the state do what the individual could do. This showed in his constitutional scruples about national power in terms of internal improvements. As did Madison and Monroe before him, Jackson opposed federal support for local projects. Even so, Jackson was not a states-rights proponent; he supported issues only if they fit within his concept of national interests.

As a general and then as president, Jackson's duty was to execute national policy. In pursuing that end—ensuring the security and developing the strength of the country—Jackson assumed and exercised ever greater power, which sometimes got him into trouble. When he was a general, politicians accused him of exceeding his orders and delegating authority, and during his presidency, political opponents accused him of exceeding his constitutional authority. Operating within a rather expansive interpretation of executive limits, Jackson strengthened the power of the presidency through his use of appointments and the veto. While willing to work with the legislative branch, he refused to be ruled by it, just as he refused to allow the Supreme Court or the state governments to have the last say in national affairs. He believed that he knew what was best for the country and acted on that belief. His popularity with the voters suggests that they agreed with him.



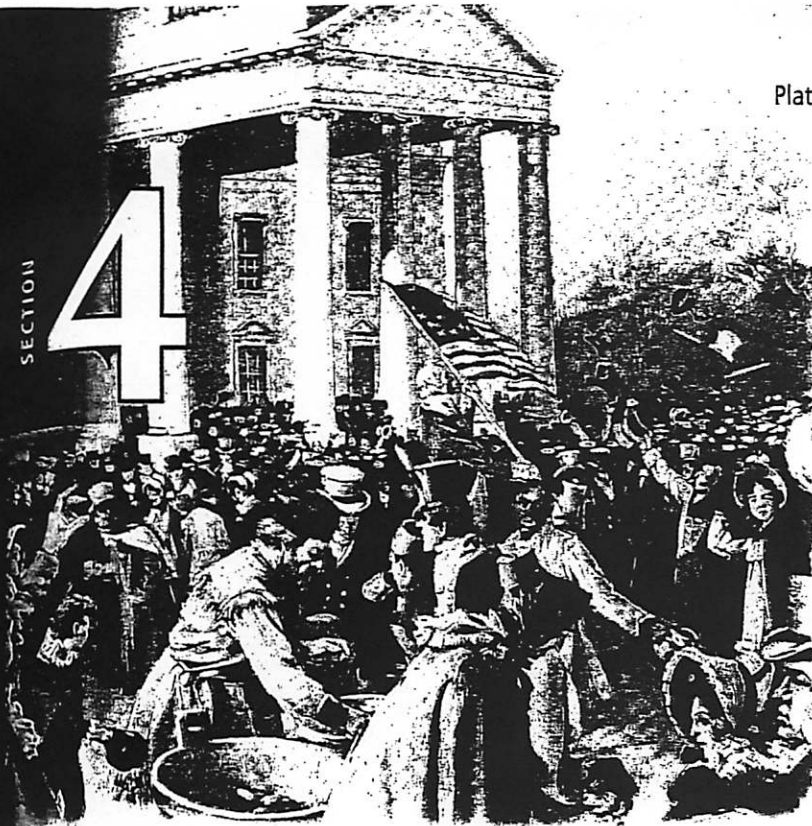
**WITNESS HISTORY** AUDIO

**The "People's President"**

After a disappointing loss in the election of 1824, Andrew Jackson rode a wave of popular support to the presidency in 1828. At his inauguration, many of those same voters caused a wild scene at the White House when they arrived in large numbers to celebrate the historic event.

"Ladies fainted, men were seen with bloody noses and such a scene of confusion took place as is impossible to describe. . . . But it was the People's day, and the People's President, and the People would rule."

—Margaret Bayard Smith in a letter to Mrs. Kirkpatrick, March 11, 1829



▲ A crowd gathers for Jackson's inauguration

# Democracy and the Age of Jackson

## Objectives

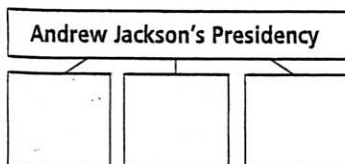
- Analyze the movement toward greater democracy and its impact.
- Describe the personal and political qualities of Andrew Jackson.
- Summarize the causes and effects of the removal of Native Americans in the early 1800s.

## Terms and People

- |                      |                    |
|----------------------|--------------------|
| caucus               | spoils system      |
| Andrew Jackson       | Indian Removal Act |
| Martin Van Buren     | Trail of Tears     |
| Jacksonian Democracy |                    |

## NoteTaking

**Reading Skill: Understand Effects** Use a flowchart like the one below to record the effects of Jackson's presidency.



**Why It Matters** The election of 1824 signaled a shift in American political and social life. As a new political party emerged, the nation expanded its concept of democracy in some ways and narrowed it in others. The era became known for one of American history's towering and controversial figures—Andrew Jackson. **Section Focus Question:** What changes did Andrew Jackson represent in American political life?

## The Election of 1824

As the presidential election of 1824 approached, two-term President James Monroe announced that he would not seek a third term. As you have read, his presidency was marked by what appeared to be general political harmony. There was only one major political party, and the nation seemed to be united in its purpose and direction. Beneath this surface, however, there were differences. These would become obvious in the election of 1824.

**A Four-Way Race** Four leading Democratic Republicans hoped to replace Monroe in the White House. John Quincy Adams, Monroe's Secretary of State, offered great skill and experience. A caucus of Democratic Republicans in Congress preferred William Crawford of Georgia. A **caucus** is a closed meeting of party members for the purpose of choosing a candidate. War hero **Andrew Jackson** of Tennessee and Henry Clay of Kentucky provided greater competition for Adams.

### Vocabulary Builder

**exploit**—(ehk SPLOYT) *v.* to take advantage of; utilize

**A Troubled Outcome** The crowded race produced no clear winner. Jackson won more popular votes than did Adams, his next nearest competitor. Jackson did well in many southern states and in the western part of the country. Adams ran strongest in the Northeast. But neither won a majority of the electoral votes needed for election. As a result, for the second time in the nation's history (the first was in 1800), the House of Representatives had to determine the outcome of a presidential election. There, Clay threw his support to Adams, who became President. When Adams appointed Clay as Secretary of State, Jackson accused them of a "corrupt bargain," in which he thought Clay supported Adams in exchange for an appointment as Secretary of State.

Jackson's opposition weakened Adams's presidency. Taking a broad, nationalist view of the Constitution, he pushed for an aggressive program of federal spending for internal improvements and scientific exploration. Jackson and other critics denounced this program as "aristocratic" for allegedly favoring the wealthy over the common people. This would become a growing theme in national politics.

**Jackson Begins His Next Campaign** Much of the criticism of Adams's presidency came from Andrew Jackson. Indeed, Jackson and his supporters spent much of Adams's term preparing for the next election. Jackson especially relied upon New York's **Martin Van Buren**, who worked behind the scenes to build support for Jackson. Meanwhile, Jackson traveled the country drumming up support among the voters—a new practice.

Jackson hoped to **exploit** the increasingly democratic character of national politics. In the 1824 presidential election, a growing number of states had chosen their presidential electors based on popular vote. This was a shift from the method used in the first presidential elections, in which state legislatures chose electors. By 1836, every state but South Carolina was choosing electors based on the popular vote. Voters also had an increased role in choosing other state and local officials across the country. For example, the use of caucuses was replaced in many cases by more public conventions in which voters had a greater say in who became a candidate for office.

During the 1810s and 1820s, many states rewrote their constitutions. Those documents had originally restricted the right to vote and hold office to men who owned property. In 1776, about three fourths of all free men could meet the property-ownership requirement because they owned a farm or a shop. But that qualified proportion slipped as more men worked for wages in the expanding industries. Without their own farm or shop, they could not vote. The losses caused by the Panic of 1819 had also removed many voters from the rolls.

The new state constitutions expanded the electorate by abolishing the property requirement. In most states, any white man who paid a tax could vote and hold office. These changes increased participation in elections. Male voter turnout that had been less than 30 percent in the elections of the early 1800s reached almost 80 percent in 1840.

Unfortunately, the expansion of democracy did not benefit all Americans. Most of the new constitutions also took the vote away from free blacks—even those

## HISTORY MAKERS

### Andrew Jackson (1767–1845)

As a major general in the War of 1812, Andrew Jackson became a national hero when he defeated the British at New Orleans.

Bitter over his defeat in the presidential election of 1824, Jackson came back four years later and won decisively, despite a campaign that was rife with personal attacks on his character and that of his wife. Elected by the "common man," Jackson was the first President who was not an aristocrat from Massachusetts or Virginia, but rather from the Tennessee frontier. His presidential victory was marred, however, when his wife Rachel died before he moved to Washington to assume office. Jackson believed in a strong presidency and used his power to veto 12 congressional acts—more than all the previous six Presidents combined.

with property. Nor did the new constitutions allow women to vote. (With the exception of New Jersey, in which a loophole in the state constitution allowed property-owning women to vote until 1807, no state had ever allowed women to cast a ballot.) In addition, American Indians, who were not citizens of the United States, were denied the vote. Democracy was limited to white men.

● **Checkpoint** How did Jackson respond to his defeat in the 1824 presidential election?

## Jackson Emerges

During the mid-1820s, Andrew Jackson became the symbol of American democracy. Historians refer to the movement as **Jacksonian Democracy**. In his speeches and writings, Jackson celebrated majority rule and the dignity of the common people. He projected himself as a down-to-earth common man with humble roots, which contrasted with the image of the aristocratic leaders of the past.

Jackson's life reflected the nation's own story of expanding opportunity. He was born in a log cabin, orphaned as a boy, and wounded during the American Revolution. Moving west to the then-frontier, he had become a wealthy lawyer and planter in Tennessee. (In fact, Jackson was wealthier than Adams.) Jackson won military fame in the War of 1812 and in the wars against the Creeks and Seminoles.

**The Election of 1828** By the election of 1828, Jackson's supporters called themselves Democrats, not Democratic Republicans. Jacksonian Democracy triumphed in the presidential election of 1828. With 56 percent of the popular vote and two thirds of the electoral votes, Jackson defeated Adams. A rowdy crowd attended Jackson's inauguration in Washington, D.C. Their raucous conduct symbolized the triumph of the democratic style over the alleged aristocracy represented by John Quincy Adams.

Jackson owed his victory to his campaign manager Martin Van Buren, who revived the Jeffersonian partnership of southern planters and northern common people. The party promised a return to Jeffersonian principles: strong states and a weak federal government that would not interfere in slavery. Only those principles, Van Buren argued, could keep sectional tensions from destroying the Union.

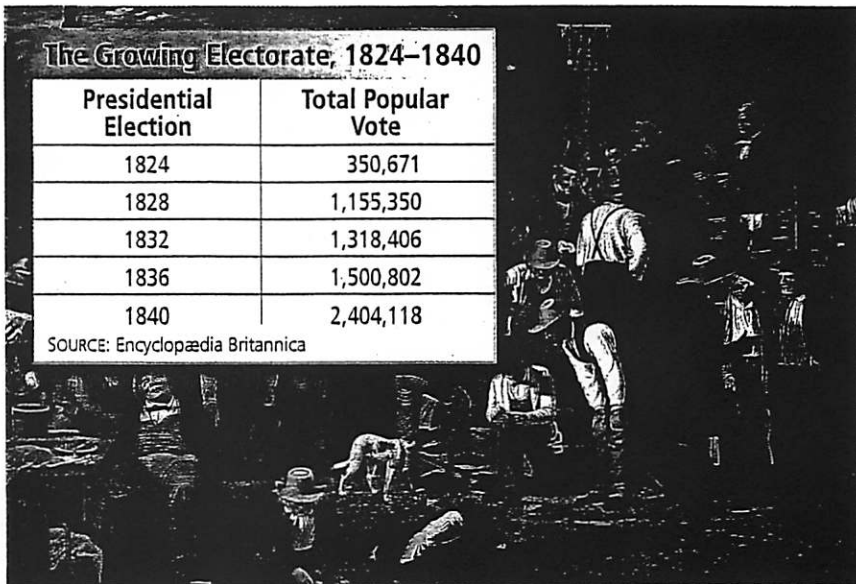
**A New Party Structure** While returning to old principles, the Democrats innovated in party structure. They developed a disciplined system of local and state committees and conventions. The party cast out anyone who broke with party discipline. While becoming more democratic in style, with carefully planned appeals to voters and great public rallies, elections also became the business of professional politicians and managers.

The new party rewarded the faithful with government jobs. Where Adams had displaced only a dozen government officials when he became President, Jackson replaced hundreds. He used the government jobs to reward Democratic activists. Van Buren's "reward" was appointment as Secretary of State, the

**The Growing Electorate, 1824–1840**

Presidential Election	Total Popular Vote
1824	350,671
1828	1,155,350
1832	1,318,406
1836	1,500,802
1840	2,404,118

SOURCE: Encyclopædia Britannica



## The Growing Electorate

Before 1824, presidential election results did not include a popular vote count. By 1840, the number of voters had skyrocketed. The painting, entitled *The County Election* by George Caleb Bingham, reflects this trend. Which Americans were not represented on the table above?

## Why Limit Slavery Only in the Territories?

The Free-Soil Party argued that slavery should not expand into the territories. Senator Jefferson Davis questioned the new party's motives. Why would they only try to limit slavery in the territories but not in the states? Rather than true concern for the slaves, Davis believed they had another purpose.

"It is not humanity that influences you. . . . It is that you may have an opportunity of cheating [the South that you want to limit slave territory. . . . It is that you may have a majority in the Congress of the United States and convert the Government into an engine of northern aggrandizement. It is that your section may grow in power and prosperity upon treasures unjustly taken from the South. . . . [Y]ou want . . . to promote the industry of the New England states, at the expense of the people of the South and their industry."

—Senator Jefferson Davis of Mississippi

# Slavery, States' Rights, and Western Expansion

## Objectives

- Contrast the economies, societies, and political views of the North and the South.
- Describe the role of the Free-Soil Party in the election of 1848.
- Analyze why slavery in the territories was a divisive issue between North and South and how Congress tried to settle the issue in 1850.

## Terms and People

Wilmot Proviso	secede
Free-Soil Party	Compromise of 1850
popular sovereignty	Fugitive Slave Act

## NoteTaking

**Reading Skill: Categorize** Organize people, groups, and ideas by their position on slavery.

Position on Slavery		
For	Against	Compromise
• •	• Wilmot Proviso •	• •

**Why It Matters** From the nation's earliest days, the issue of slavery divided Americans. As the nation expanded, the problem became more pressing. Should slavery be allowed in the new western territories? Southerners said yes; many northerners said no. **Section Focus Question:** How did Congress try to resolve the dispute between North and South over slavery?

## Slavery Divides the Nation

After the American Revolution, the North and the South developed distinctly different ways of life. The North developed busy cities, embraced technology and industry, and built factories staffed with paid workers. As immigrants arrived in northern ports, the North became an increasingly diverse society.

The South, on the other hand, remained an agrarian, or agricultural, society. The southern economy and way of life was based largely on a single crop: cotton. To grow cotton, southern planters depended on the labor of enslaved African Americans.

By the mid-nineteenth century, cotton cultivation and slavery had spread across the Deep South—that is, through Florida and Alabama into Louisiana, Mississippi, and Texas. As the country continued to expand, Americans faced a crucial question: Should slavery be allowed to spread to new American territories west of the Mississippi River?

**Wilmot Proviso Seeks to Limit Slavery** Americans had long avoided the troubling issue of the expansion of slavery. But when the United States gained new territories as a result of the Mexican War in the late 1840s, the nation had to decide whether to admit these lands as slave territories or free territories. The delicate balance of power between North and South—free and slave—depended on this decision.

During the early days of the Mexican War, Pennsylvania congressman David Wilmot had predicted the dilemma. He proposed a law stating, “neither slavery nor involuntary servitude shall ever exist in any” lands won from Mexico. Southerners angrily denounced the **Wilmot Proviso**. The northern-dominated House of Representatives approved the law, but the Senate voted it down.

**Northern Views of Slavery** Slavery ended early in the North, but slowly. By 1800, there were 50,000 enslaved people in the North, compared to nearly one million in the South. In 1860, there were still 18 slaves in New Jersey, but none in the other northern states. Most white northerners at the time viewed blacks as inferior. Laws in the northern states severely limited the rights of free African Americans and discouraged or prevented the migration of more. As a result, many white northerners had little personal experience with African Americans, slave or free, and only a few held strong opinions about slavery.

A vocal minority of northerners were abolitionists, or people who wanted to end slavery. They believed that slavery was morally wrong. Some abolitionists favored a gradual end, while others demanded that all slavery be outlawed at once.

Not all northerners wanted to end slavery. Some white northern bankers, mill owners, and merchants earned a lot of money on southern cotton and tobacco or by trading or transporting enslaved people. They were sympathetic to Southern plantation owners and did not want to abolish slavery. Some northern workers—especially those in unskilled, low-paying jobs—also opposed abolition, fearing that freed slaves might come north and compete with them for work.

**Southern Views of Slavery** Slavery was an integral part of southern life. Many southerners believed that God intended that black people should provide the labor for white “civilized” society. In a speech before Congress in 1837, planter John Calhoun of South Carolina firmly defended and even praised the virtues of slavery. “I hold it [slavery] to be a good . . .,” he said, “. . . and [it] will continue to prove so if not disturbed by the . . . spirit of abolition.” Calhoun’s words expressed the feelings of many white southerners.

By the 1850s, many southern politicians, journalists, and economists had begun to argue that the northern free labor system harmed society more than slavery did. Southerners claimed that enslaved people were healthier and happier than northern wage workers.

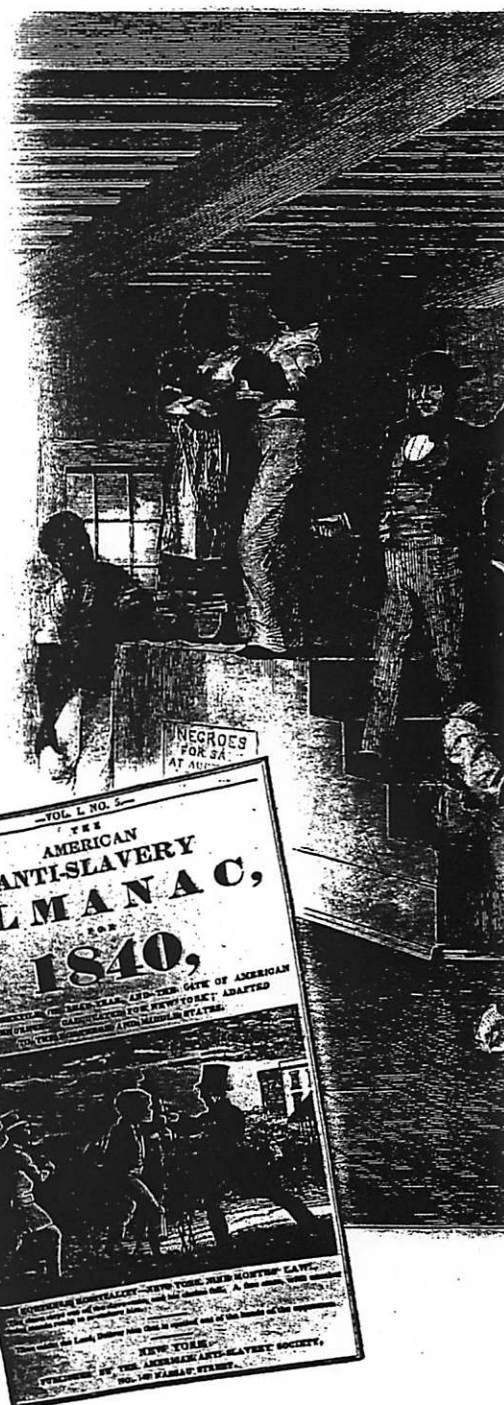
● **Checkpoint** How did northerners and southerners view slavery?

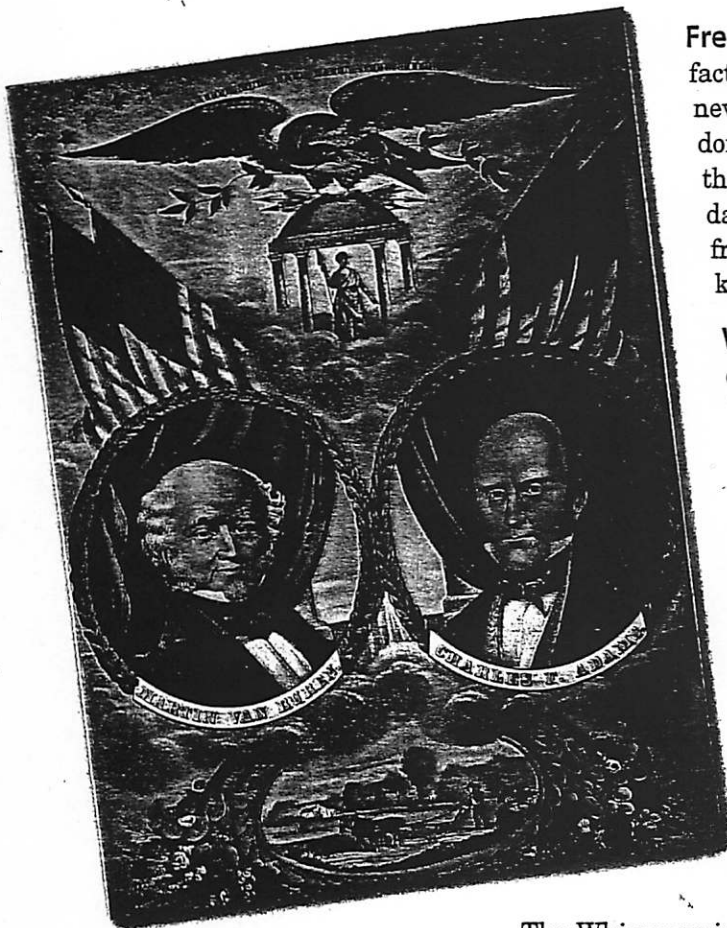
## The Election of 1848

The Wilmot Proviso had given the nation’s political parties a new focus. In the 1848 presidential campaign, both Democrats and Whigs split over the question of whether to limit the expansion of slavery. New political factions emerged, with slavery at the center of debate.

## A Slave Auction

An 1861 English engraving depicts a slave auction. The horrors of slavery led to the growth of the antislavery movement.





### Van Buren Runs as a Free-Soil Candidate

Former President Martin van Buren was the Free-Soil candidate for the presidency in 1848. *What do the pictures on this poster tell you about the party?*

**Free-Soil Party Vows to Keep Territories Free** Several factions united in support of the Wilmot Proviso to form the new **Free-Soil Party**. Pledged to a “national platform of freedom” that would “resist the aggressions of the slave power,” they nominated New Yorker Martin Van Buren as their candidate for President. The Free-Soil Party promised “free soil, free speech, free labor, and free men.” Their main goal was to keep slavery out of the western territories.

**Whigs and Democrats Dodge the Slavery Issue** For decades, the major parties—the Whigs and Democrats—had avoided the slavery issue, thus managing to win support in both the North and the South. In 1848, they hoped once again to attract voters from all sides of the slavery debate. But with the Free-Soilers calling for limits to slavery in the territories, the major parties were forced to take a stand.

Both Democrats and Whigs addressed the problem by embracing the idea of **popular sovereignty**, a policy stating that voters in a territory—not Congress—should decide whether or not to allow slavery there. This idea had wide appeal, since it seemed in keeping with the traditions of American democracy. Furthermore, it allowed Whigs and Democrats once again to focus on the personal exploits and triumphs of their candidates rather than on the issues.

The Whigs nominated Zachary Taylor, a general and a hero of the Mexican War. The Democrats put forward Governor Lewis Cass of Michigan. Cass opposed the Wilmot Proviso and supported popular sovereignty. Taylor, who was primarily a military man, revealed little of his political opinions. But Taylor was a slaveholding Louisiana planter, so many southern voters automatically assumed that he supported slavery.

When the votes were counted, Taylor won the election, with slim majorities in both northern and southern states. Van Buren did not carry any states, but he did draw sufficient votes to cause Cass to lose. The Free-Soil Party, which had won 10 percent of the vote with its antislavery platform, had clearly captured Americans’ attention.

 **Checkpoint** What role did the Free-Soil Party play in the election of 1848?

## A Compromise Avoids a Crisis

To expand slavery or restrict it—this dilemma came to haunt the rapidly growing nation. In 1848, gold was discovered in California, and soon thousands of adventurers were headed west to seek their fortune. Before long, the burgeoning western territories would petition for entry into the Union. Should these new states allow slavery? Who would decide?

**California Statehood Threatens the Balance of Power** “Gold fever,” as it came to be known, drew people from all over the world. They literally dug into the western foothills of California’s Sierra Nevada, setting up towns with names that reflected their hopes and their origins: Gold Run, Eldorado (Spanish for “gilded one”), Dutch Flats, Chinese Camp, French Corral, Negro Bar, Iowa Hill.

Within a year, more than 80,000 people had journeyed to California. As the influx continued without a letup, California became a wild and lawless place.

Californians recognized that they needed a government to bring order to the chaos. In 1849, they drafted a constitution and asked to be admitted to the Union as a free—nonslave—state.

California's request created an uproar in the nation. For years, the North and the South had accused each other of being "aggressors" on the issue of slavery. And for years, the two sides had maintained a delicate balance of slave and free states in Congress. Now, inflamed southerners angrily noted that admission of California would tip the balance in favor of the free states.

Other concerns simmered around the edges of the slavery issue, threatening to come to an explosive boil. Texas, a slave state, and the federal government were locked in a dispute over Texas's northwestern border. New Mexico and Utah were organizing to become territories but seemed likely to someday join the Union as free states. In the North, abolitionists seemed to be gaining ground in their bid to ban slavery in Washington, D.C.

In the meantime, southerners demanded that the federal government enforce the weak and often-neglected Fugitive Slave Law of 1793. The law stated that runaway slaves must be returned to their masters, but it provided no government aid to do so. The South felt that its property and its honor were at stake. Many northerners insisted that the federal government should not help to enforce slavery.

**Clay Offers a Compromise** Since the War of 1812, the Senate had benefited from the leadership of three extraordinary statesmen: Daniel Webster from the North, John Calhoun from the South, and Henry Clay from the West. Clay's ability to work out compromises to the thorniest problems had earned him the title the "Great Pacificator." In the crisis now brewing, Clay, although in his seventies and ailing, once again came forward.

Clay urged the North and South to reach an agreement. He advanced a series of compromise resolutions, offering concessions to both the South and the North (see chart). The most significant proposed that Congress admit California as a free state but also enact a stricter fugitive slave law. Popular sovereignty would decide the slavery issue in the Utah and New Mexico territories. Clay's attempt at sectional justice garnered wide support.

**Calhoun and Webster Speak** The Senate's other two giants—Calhoun and Webster—prepared long and deeply passionate responses to Clay's proposal. Calhoun was too sick and weak to deliver his own speech, but he watched defiantly from his seat as a younger colleague read it for him.

Calhoun's speech expressed his fear "that the agitation on the subject of slavery would, if not prevented by some timely and effective measure, end in disunion." But Calhoun did not believe that Clay's proposal gave the South enough protection. If the North would not submit to the South's demands, "let the states agree to separate and part in peace. If you are unwilling that we should part in peace, tell us so, and we shall know what to do." In other words, if the North did not agree, the South would **secede**, or break away, from the Union.

Daniel Webster, also ill and nearing the end of his life, tried to rally both northerners and southerners to the cause of unity. In an emotional speech, Webster urged senators to accept Clay's compromise. He suggested that the cotton and tobacco crops that flourished under slavery would not grow in California. Thus, he argued, popular sovereignty would allow the South to feel a measure of comfort but would not result in the spread of slavery to the West. (In fact, California eventually became a cotton-producing state—although a free one.)

### Clay's Compromise of 1850

1. Congress would admit California as a free state.
2. The people of the territories of New Mexico and Utah would decide the slavery question by popular sovereignty.
3. The slave trade—but not slavery—would be ended in Washington, D.C.
4. Congress would pass a strict new fugitive slave law.
5. Texas would give up its claims to New Mexico in return for \$10 million.



### Clay Proposes a Compromise

Henry Clay urged the Senate to adopt a compromise on the slavery issue. It was one of his last major actions in the Senate.

## Should the Union be saved?

The settling of the West made it impossible to maintain equal numbers of free and slave states. Western territories wanted to become free states. The argument over California statehood showed how the North and South were moving toward a civil war.

### JOHN CALHOUN

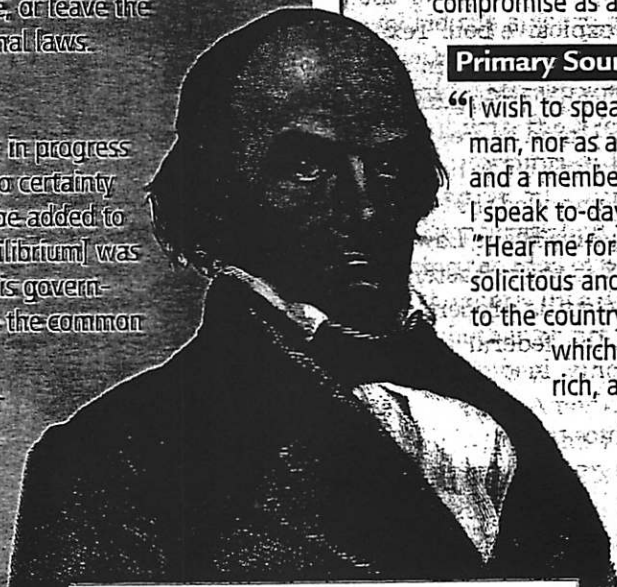
Calhoun, from South Carolina, was a passionate supporter of slavery. As a senator, he argued that any state had the right to secede, or leave the Union, if it disagreed with national laws.

#### Primary Source

"[T]here is not a single Territory in progress in the Southern section, and no certainty that any additional State will be added to it. [This destruction of the equilibrium] was caused by the legislation of this government, which was appointed as the common agent of all....

If you admit [California] under all the difficulties that oppose her admission, you compel us to infer that you intend to exclude [the South] from the whole of the acquired Territories, with the intention of destroying... the equilibrium between the two sections."

—Senator John Calhoun,  
March 4, 1850



### DANIEL WEBSTER

Webster, from Massachusetts, was a strong nationalist. As a senator, he supported sectional compromise as a way to preserve the Union.

#### Primary Source

"I wish to speak to-day, not as a Massachusetts man, nor as a Northern man, but as an American, and a member of the Senate of the United States. I speak to-day for the preservation of the Union. 'Hear me for my cause.' I speak to-day, out of a solicitous and anxious heart, for the restoration to the country of that quiet and that harmony which make the blessings of this Union so rich, and so dear to us all.

[T]he strength of America will be in the Valley of the Mississippi. [What can we] say about the possibility of cutting that river in two? I would rather hear of war, pestilence, and famine, than to hear talk of secession.... [T]o dismember this glorious country!... No, Sir!"

—Senator Daniel Webster,  
March 7, 1850

#### Compare

1. What does Webster mean when he says "the strength of America will be in the Valley of the Mississippi"? What would cut the Mississippi River in two?
2. What does Calhoun accuse the U.S. government of doing?

Though some abolitionists felt betrayed by Webster's conciliatory three-hour speech, it persuaded many northerners to support the compromise.

**Checkpoint** How did California statehood spark a new crisis over slavery?

## Senate Adopts the Compromise of 1850

Over the years, Congress had adopted a variety of measures in order to preserve the Union. The Northwest Ordinance of 1787 had limited slavery. The Missouri Compromise of 1820 had maintained the balance between slave and free states. Now, in yet another effort to ward off division, the Senate adopted legislation based on Clay's proposals. It became known as the **Compromise of 1850**.

The debate over ratification of the compromise raged for months. Young northern radicals like New York's William Seward argued that the morality of God's "higher law" against slavery was more important than popular sovereignty or national unity. Equally radical southerners organized boycotts against northern goods, and a few even promoted separation from the Union.

The proceedings erupted into violence in the Senate when Senator Thomas Hart Benton of Missouri, who supported California's admission as a free state, denounced Mississippi senator Henry Foote, who opposed it. Furious, Foote rose from his seat and aimed a loaded revolver at Benton. The alarmed senators tried to restore order. But Benton was defiant, shouting "I am not armed! I have no pistols! I disdain to carry arms! Stand out of the way, and let the assassin fire!" At last, a senator from New York seized the revolver and locked it in a desk. Order was restored.

Still, debate dragged on. With dozens of speeches—one lasting two days—an exhausted Clay struggled to gain supporters for the compromise. But in the end, the young senator Stephen A. Douglas of Illinois took charge. Working tirelessly, Douglas steered each **component** of Clay's plan through the Congress, persuading the Senate to adopt each measure separately.

By September 1850, the obstacles to agreement had melted away: Both Calhoun and the slaveholding President Taylor were dead. Unlike Taylor, the new President, Millard Fillmore, supported the compromise. At last, the Senate passed the Compromise of 1850. California was admitted as a free state, and the policy of popular sovereignty was applied to the territory acquired from Mexico. Texas relinquished its claims on New Mexico in return for \$10 million from the federal government with which to settle its debts.

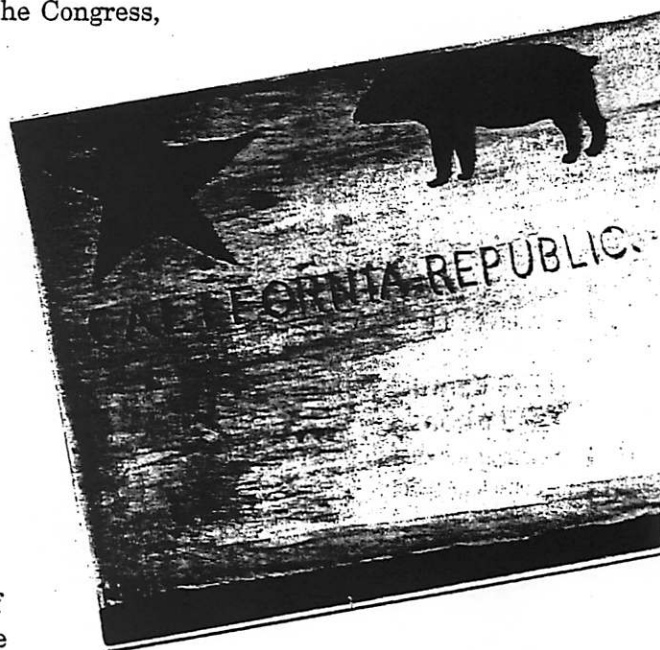
One by one, the other provisions passed. Slavery would remain undisturbed in Washington, D.C., but the slave trade was prohibited. And a new **Fugitive Slave Act** added stringent amendments to the earlier law, including the requirement that private citizens assist with apprehending runaway slaves. Citizens who assisted a fugitive slave could be fined or imprisoned.

Most Americans, in both the North and South, breathed a sigh of relief that the crisis had been laid to rest. Though the Compromise of 1850 restored calm for the moment, it carried the seeds of new crises to come.

**Checkpoint** What were the provisions of the Compromise of 1850?

### Vocabulary Builder

**component**—(kuhm POH nuht) *n.*  
piece or element



American settlers in California declared independence from Mexico in 1846. Their symbol, the Bear Flag, later became California's state flag.

## SECTION

# 1

## Assessment

### Progress Monitoring Online

For: Self-test with vocabulary practice  
Web Code: nca-1002

### Comprehension

- Terms and People** For each item below, write a sentence explaining its significance.
  - Wilmot Proviso
  - Free-Soil Party
  - popular sovereignty
  - secede
  - Compromise of 1850
  - Fugitive Slave Act

### 2. NoteTaking Reading Skill:

**Categorize** Use your flowchart to answer the Section Focus Question: How did Congress try to resolve the dispute between North and South over slavery?

### Writing About History

- Quick Write: Gather Evidence** Make a chart outlining arguments for and against adopting the Compromise of 1850. Your outline may include moral, economic, and political issues.

### Critical Thinking

- Compare Points of View** How did the northern and southern views of slavery differ?
- Make Generalizations** What role did the issue of slavery play in the election of 1848?
- Identify Central Issues** Why did California's application for statehood cause a crisis?
- Draw Conclusions** How did the Compromise of 1850 appease both North and South?



Tags used to identify slaves ►

## WITNESS HISTORY AUDIO

### Slavery and Union

By the time Congress debated the Compromise of 1850, white Boston abolitionist William Lloyd Garrison had been protesting against slavery for more than two decades and a growing number of Americans were joining his cause. He stated his resistance to compromise clearly:

“I am for union! . . . [but] I am not for SLAVERY and UNION. . . . [T]his is the issue we make before the country and the world.”

—William Lloyd Garrison, 1850

◀ This image first appeared around 1835 and became an abolitionist symbol.

# A Rising Tide of Protest and Violence

## Objectives

- Analyze why the Fugitive Slave Act increased tensions between the North and South.
- Assess how the Kansas-Nebraska Act was seen differently by the North and South.
- Explain why fighting broke out in Kansas and the effects of that conflict.

## Terms and People

personal liberty laws  
Underground Railroad  
Harriet Tubman  
Harriet Beecher Stowe

Kansas-Nebraska Act  
John Brown  
“Bleeding Kansas”

## NoteTaking

**Reading Skill: Understand Effects** Use a concept web to record the effects of the Fugitive Slave Act on different groups of people.

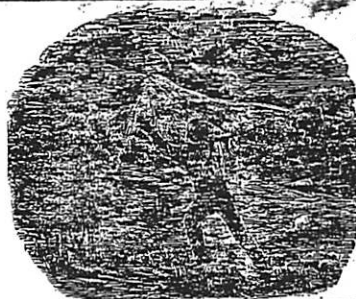


**Why It Matters** Americans had greeted the Compromise of 1850 with relief. But the ink on the document had barely dried before the issue of slavery resurfaced, this time with violent results. **Section Focus Question:** How did the Fugitive Slave Act and the Kansas-Nebraska Act increase tensions between the North and the South?

## Resistance Against the Fugitive Slave Act

The Compromise of 1850 was meant to calm the fears of Americans. But one provision, the new Fugitive Slave Act, had the opposite effect. The law, which required citizens to catch and return runaway slaves, enraged many northerners. The anger was not restricted to abolitionists; it extended to other northerners who felt forced to support the slave system.

Northerners also resented what they saw as increasing federal intervention in the affairs of the independent states. A few northern states struck back, passing **personal liberty laws**. These statutes nullified the Fugitive Slave Act and allowed the state to arrest slave catchers for kidnapping. Many northerners agreed with abolitionist William Lloyd Garrison when he demanded “nothing less than . . . a Revolution in the Government of the country.”



ROCHESTER NEW YORK, THURSDAY, JULY 18, 1850

## THE FUGITIVE SLAVE ACT

Before 1850, many white northerners assumed that slavery was not their problem. When a new Fugitive Slave Act forced them to participate in the slave system, they resisted. In several northern cities, crowds tried to rescue fugitive slaves from their captors.

The free black community also took action. The law meant that no African American could feel safe. Through urban networks known as "Vigilance Committees," and through antislavery newspapers, African Americans remained in constant communication. The committees looked out for slave hunters and helped fugitives avoid capture. In his paper, the *North Star*, Frederick Douglass printed the names of "every slavehunter who meets a bloody death..."

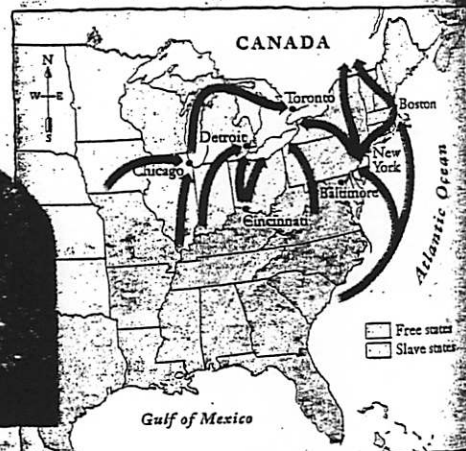
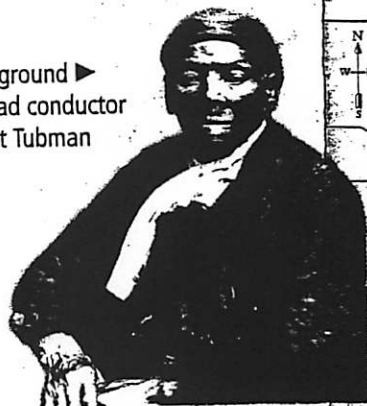
### 300 DOLLARS REWARD!

**RUNAWAY** from John S. Deak on the 21st inst., two NEGRO MEN; LOGAN 43 years of age, bald-headed, one or more crooked fingers; DAN 21 years old, six feet high. Both black.

Fugitive slaves were often aided by an informal network of abolitionists, known as the Underground Railroad. If fugitives were caught and returned to slavery, they could be forced to wear devices meant to prevent another escape, such as a collar with bells on it (above right).



Underground ►  
Railroad conductor  
Harriet Tubman



▲ The map above shows approximate routes of the Underground Railroad.

### A MAN KIDNAPPED!

A PUBLIC MEETING AT  
FANEUIL HALL!  
THIS FRIDAY EVEN'G,  
May 26th, at 7 o'clock.

To secure justice for A MAN CAPTURED AS A SLAVE by  
**VIRGINIA  
KIDNAPPER!**

Soldiers sometimes escorted ►  
slave hunters and captured slaves  
because crowds often gathered to  
try to free the captives.



### Thinking Critically

- 1. Infer** Why do the arrows showing routes of the Underground Railroad start at the borders of slave states rather than in slave states?
- 2. Draw Conclusions** In what ways did the Fugitive Slave Act affect free African Americans?

Black Americans, of course, despised the law. Some of the captured “fugitive slaves” were really free people who had been kidnapped and sold into slavery. Although the imprisoned African Americans could appeal to a judge for their release, the law awarded \$10 to judges who ruled in favor of slave owners but only \$5 to those who ruled that the captive should be set free. Slaves, fugitives, and free black people plotted and carried out resistance. Through the succeeding decade, tempers flared and violence erupted as far north as Canada, as far west as Kansas, and as far south as Virginia.

**Northern Blacks Mobilize** In 1851, a small group of free African Americans gathered in a farmhouse in Christiana, Pennsylvania. Heavily armed, they had come to protect several fugitives from their Maryland master, who had brought a federal official to reclaim them. In the scuffle that followed, the slave owner was killed. White bystanders refused to intervene to help the slave-hunting party. Although more than 30 people were tried for conspiracy, none was found guilty. No one was tried for the murder of the slave owner.

The “Christiana Riot” was a dramatic enactment of a scene that was played out in many northern communities. In Vermont and New Hampshire, in New York City, in Oberlin, Ohio, and in Baltimore, Maryland, African Americans and white bystanders defied officials who tried to reclaim fugitives to slavery.

**Underground Railroad to Freedom** Northern abolitionists and free black people risked their lives and safety to help enslaved people escape to freedom through a loosely organized network known as the **Underground Railroad**. Though it had no tracks or cars, this escape system used railroad terminology to describe its actions. A secret network of “conductors” hid runaway slaves in farm wagons and on riverboats and then moved them to destinations in the North or in Canada—sometimes even as far as England. Using complex signals and hiding places, the Underground Railroad carried its passengers over hundreds of miles of dangerous terrain.

Underground Railroad conductors had to be resourceful and daring. One of the most courageous was **Harriet Tubman**, a Maryland-born fugitive slave. She was known as “Black Moses” because, like Moses in the Bible, she led her people out of bondage. After her own escape in 1849, Tubman made almost two dozen trips into the South, guiding hundreds of slaves, including her own parents, to safety. Southern planters placed a large reward on her head, but she was never captured.

Several fugitive slaves published dramatic escape stories that inspired black Americans and struck fear in the hearts of southerners. In one account, six-foot-tall Henry “Box” Brown described how he had himself packed into a small crate and shipped from Richmond, Virginia, to the Underground Railroad agents in Philadelphia. Light-skinned Ellen Craft and her husband, William, made their escape by posing as an invalid gentleman and his loyal servant.

**Stowe Portrays the Sufferings of Slavery** In 1852, Harriet Beecher Stowe published *Uncle Tom’s Cabin*, a powerful condemnation of slavery. Stowe’s sympathetic main character, Uncle Tom, gave slavery a face for those who had never witnessed it firsthand. Set in the slave-owning South, Stowe’s story features the gentle and patient Uncle Tom, a frightened slave mother, and both kind and cruel slave owners. Selling 300,000 copies in its first year, the novel spread compassion for enslaved people in the North, but it infuriated people in the South.

Black abolitionist Martin Delany also wrote an antislavery novel, called *Blake*. It is the story of an African American who chooses to rebel violently, rather than to submit like Uncle Tom. The protagonist, Blake, murders a white

## WITNESS HISTORY DVD

Watch *The Struggle Over Slavery* on the United States Witness History DVD to explore the slavery controversy.



## Vocabulary Builder

intervene—(ihn tuhr VEEN) *v.* to get involved in a situation in order to prevent a certain outcome

slave owner in order to make his escape, a scenario that terrified slave owners. In the following excerpt, Blake stands up to his master's threat to whip him:

### Primary Source

"I won't be treated like a dog. You sold my wife away from me, after always promising that she should be free. . . . And now you talk about whipping me. Shoot me, sell me, or do anything else you please, but don't lay your hands on me, as I will not suffer you to whip me!"

—Martin R. Delany, *Blake*

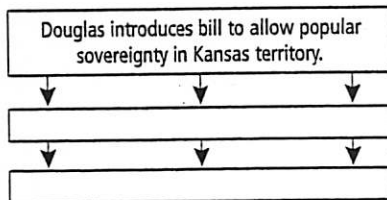
White southerners responded by writing their own versions of southern life. In these accounts, slaves were happy and carefree, gently cared for and taught Christianity by kind masters. They claimed that only mentally ill slaves ran away. A southern doctor even reported his discovery of a disease he called Drapetomania, which supposedly caused slaves to flee. "With the advantages of proper medical advice," he claimed "this troublesome practice" could be eliminated.

 **Checkpoint** How did northerners respond to the Fugitive Slave Act?

## NoteTaking

### Reading Skill: Understand

**Effects** Use the chart below to trace the series of events that led up to and followed the passage of the Kansas-Nebraska Act.



## The Kansas-Nebraska Act Undoes the Missouri Compromise

Although Congress meant well, its repeated attempts to resolve the question of slavery resulted in a jumble of contradictory, and often unenforceable, policies. The Missouri Compromise, the Wilmot Proviso, the Compromise of 1850: Each seemed to offer the solution. But, in reality, the issue lay beyond the ability of patchwork legislation to resolve.

**Douglas Presses for Popular Sovereignty** It was Senator Douglas who forced the issue of slavery to the surface once again. In 1854, Douglas introduced a bill to set up a government in the Nebraska Territory. The area would be organized, Douglas proposed, according to the principle of popular sovereignty. That is, the people of the territory themselves would decide whether to allow slavery or outlaw it when they applied for statehood. On the surface, Douglas's plan made sense. In fact, it seemed to be a democratic solution. But would it work in practice?

**Congress Debates the Kansas-Nebraska Act** Once again, Congress was gripped in bitter debate. After pressure from the South, which feared Nebraska might decide to enter as a free state, Douglas amended the bill to divide the region into two distinct territories, Kansas and Nebraska. The idea was that Kansas would become a slave state and Nebraska would organize as a free state, but those assumptions were not written into the bill. In the spring of 1854 Congress accepted this proposal and passed the **Kansas-Nebraska Act**. Some northerners pointed out that, in effect, the Kansas-Nebraska Act nullified the Missouri Compromise by allowing slavery to spread to areas that had been free for more than 30 years.

 **Checkpoint** How did the Kansas-Nebraska Act revive the issue of slavery?

## A Battle Rages in "Bleeding Kansas"

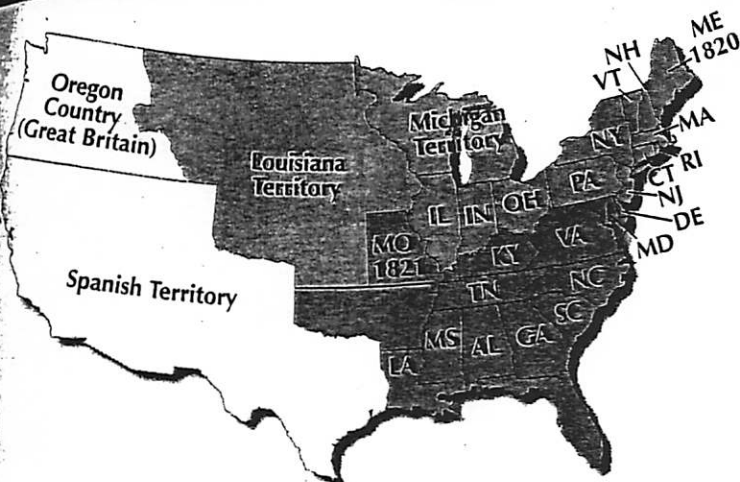
Most of the people who came to the newly opened territory of Kansas were farmers looking for land. But Kansas also attracted settlers—northern and southern—with political motives. Each group wanted to outnumber the other so that when it came time to vote, they could control the government. Their competition to settle the territory would have deadly consequences.

## Territories Open to Slavery

### Geography Interactive

For: Interactive map skills

Web Code: ncp-1003



### Missouri Compromise, 1820

- Slavery prohibited in the Louisiana Territory north of 36°30', except in Missouri
- Maine entered as a free state
- Missouri entered as a slave state

**Significance:** Sponsored by Henry Clay, the compromise preserved the balance of free and slave states in the Senate. However, it marked the beginning of the sectional conflict that would lead to civil war.



### Compromise of 1850

- California entered as a free state
- Slavery issue to be decided by popular sovereignty in Utah and New Mexico territories
- New, stricter Fugitive Slave Act
- Slave trade but not slavery is ended in Washington, D.C.

**Significance:** Stephen Douglas steered each of the provisions through Congress as a separate bill. It showed that compromise was not a good solution to the sectional conflict, as it pushed many moderates toward more radical positions.



### Kansas-Nebraska Act, 1854

- Created potential for slavery in Kansas and Nebraska territories by allowing for popular sovereignty

**Significance:** Sponsored by Stephen Douglas, this bill overturned the Missouri Compromise. Although it was meant to unite the nation, it caused further division and led to the creation of the Republican Party.

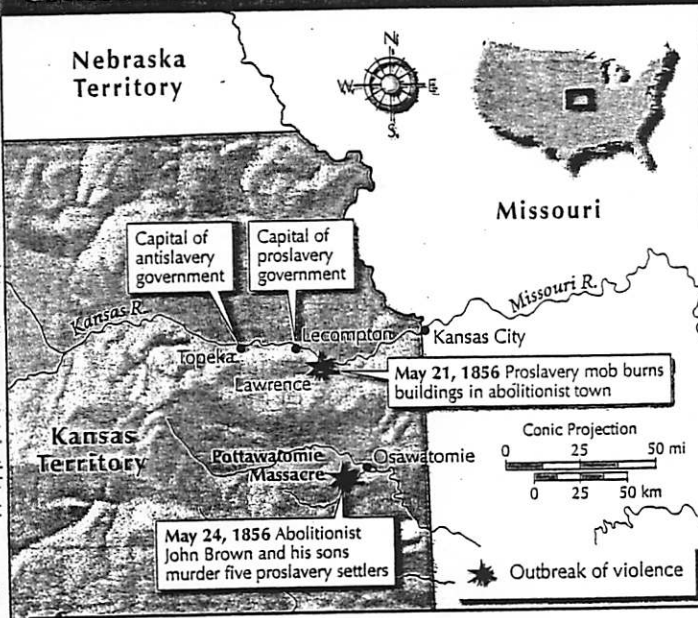
Conic Projection  
0 500 1000 mi  
0 500 1000 km

- Slave states
- Territories open to slavery by popular sovereignty
- States and territories closed to slavery
- Missouri Compromise line (36°30'N)

**Map Skills** Between 1820 and 1854, three compromises changed the territories that were opened to slavery.

- 1. Identify** Which territories were open to slavery after (a) the Missouri Compromise, (b) the Compromise of 1850, and (c) the Kansas-Nebraska Act?
- 2. Analyze** Why were so many people upset by the Kansas-Nebraska Act?

## Confrontation in Kansas



**Map Skills** Kansas became a battleground over slavery.

- 1. Locate:** (a) Lawrence, (b) Missouri, (c) Topeka
- 2. Draw Conclusions** What problems could result from having two governments in Kansas?

### The Sack of Lawrence

On May 21, 1856, proslavery men attacked the Free-Soil town of Lawrence, Kansas. They burned the hotel and destroyed the newspaper. *Why did proslavery forces attack Lawrence?*

and coerced local voters into voting for proslavery candidates. They also cast their own illegal votes. The new legislature quickly passed proslavery laws including penalties for antislavery agitation and a requirement that officeholders take a proslavery oath. Within two years, they had called a convention and developed a constitution that would have legalized slavery and punished those who spoke or wrote against it.

Northern abolitionists also rushed into Kansas. The New England Emigrant Aid Society raised money to help several thousand free-state supporters establish the town of Lawrence, a few miles east of the proslavery capital. These settlers joined other free-state advocates in establishing an antislavery government in Topeka. By early 1856, this Topeka government had petitioned Congress for statehood. Kansas now had two governments petitioning for statehood. It was sure setup for disaster.

**Violence Grips the Territory** On May 21, 1856, Border Ruffians raided the antislavery town of Lawrence, Kansas. They pillaged homes, burned down the Free State Hotel, and destroyed the presses of *The Kansas Free State* newspaper.

Swift retaliation came from **John Brown**, a New York abolitionist who had moved his family several times in pursuit of opportunities to confront slave head-on and who now made his home near Lawrence. With his sons and a few friends, Brown carried out a midnight execution of five proslavery settlers near Pottawatomie Creek, about 20 miles south of Lawrence.

When stories of the incident reached the East, abolitionists were stunned. While they were outraged at the events that triggered it, they condemned Brown's massacre. In Kansas, both sides armed for battle. Throughout the fall of 1856, violent outbreaks occurred in various locales around Lawrence. Reporters characterized the territory as "**Bleeding Kansas.**" By now, it was clear that popular sovereignty was not a solution to the slavery issue.



### Two Governments Are Established

By 1855 proslavery settlers had set up a territorial government near the border of Missouri, a slave state. During the election, proslavery residents from Missouri known as Border Ruffians, had swept into Kansas

Over the next several years, the question of how to admit Kansas to the Union baffled local residents, political parties, the U.S. Congress, and the Supreme Court. Although the Border Ruffians had determined the outcome of the election, President Franklin Pierce urged Congress to admit Kansas as a slave state in 1858. However, Congress refused and Kansas submitted four constitutions before it finally entered as a free state in 1861, after the Civil War had already begun.

**Violence Spreads to the Senate** The violent battles over slavery were not limited to Kansas. Tempers ran high in Congress, and some members went to work armed not only with words but with pistols and canes. In May 1856, just as fighting broke out in Kansas, Massachusetts senator Charles Sumner delivered a blistering speech on the Senate floor, which came to be known as “The Crime Against Kansas.” He blasted southerners for their bullying and fraud in the Kansas elections, and he referred to the Border Ruffians from Missouri as “hirelings, picked from the drunken spew and vomit of an uneasy civilization—in the form of men.”

Then, Sumner invited trouble. He insulted South Carolina senator Andrew Butler, who was absent. But a few days later, Butler’s nephew, South Carolina representative Preston Brooks, attacked Sumner in the Senate, beating him unconscious with a cane.

What happened next illustrates the division of the two sides. Congress tried to punish Brooks by removing him from office. His constituency simply reelected him and sent him back. Sumner was so badly injured that he could not return to the Senate for three years. The Massachusetts voters reelected him anyway, using his empty seat as a public reminder of southern treachery. The divide between North and South grew ever wider and deeper.



**SOUTHERN CHIVALRY — ARGUMENT <sup>VERSUS</sup> CLUB'S.**

### Violence in the Senate

Representative Brooks beat Senator Sumner with a cane meant to train dogs. *What does this depiction tell you about the event?*

## Checkpoint Why did violence break out in Kansas?

### SECTION

## 2 Assessment

### Progress Monitoring Online

For: Self-test with vocabulary practice  
Web Code: nca-1005

### Comprehension

- Terms and People** Place each of the items below into one of these two categories: advancing slavery or working against slavery
  - personal liberty laws
  - Underground Railroad
  - Harriet Tubman
  - Harriet Beecher Stowe
  - Kansas-Nebraska Act
  - John Brown
  - “Bleeding Kansas”

### 2. NoteTaking Reading Skill:

**Understand Effects** Use your concept web to answer the Section Focus Question: How did the Fugitive Slave Act and the Kansas-Nebraska Act increase tensions between the North and the South?

### Writing About History

- Quick Write: Outline an Argument** List points supporting or opposing the Kansas-Nebraska Act, and then rank them in order of importance.

### Critical Thinking

- Recognize Effects** What were the consequences of the Fugitive Slave Act for slaveholders, white northerners, free African Americans, and fugitive slaves?
- Summarize** How did the Kansas-Nebraska Act undo the Missouri Compromise?
- Synthesize** How did “Bleeding Kansas” embody the slavery controversy?



◀ President Buchanan

**WITNESS HISTORY**  AUDIO**The President Falters**

Outgoing President James Buchanan condemned South Carolina's secession from the Union but was unwilling to use force to stop it. Many northerners criticized his weak response to the crisis. In an address to Congress, he seemed almost baffled that the situation had deteriorated so far:

“How easy it would be for the American people to settle the slavery question forever and to restore peace and harmony to this distracted country! . . . All that is necessary to accomplish the object, and all for which the slave States have ever contended, is to be let alone and permitted to manage their domestic institutions in their own way. As sovereign States, they, and they alone, are responsible before God and the world for the slavery existing among them.”

—President Buchanan, December 3, 1860

# Lincoln, Secession, and War

**Objectives**

- Compare the candidates in the election of 1860, and analyze the results.
- Analyze why southern states seceded from the Union.
- Assess the events that led to the outbreak of war.

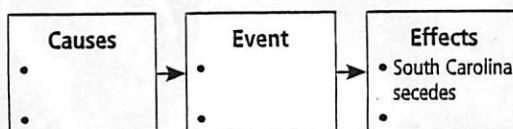
**Terms and People**

Jefferson Davis  
John C. Breckinridge  
Confederate States of America

Crittenden Compromise  
Fort Sumter

**NoteTaking****Reading Skill: Identify Causes and Effects**

Use a cause-and-effect chart to show the events that led to secession.



**Why It Matters** Despite repeated attempts at compromise, disagreement between the North and the South over the issue of slavery continued to deepen. With the election of Republican President Abraham Lincoln in 1860, the crisis came to a head. The Union of states that had been formed less than a hundred years before was about to dissolve. **Section Focus Question:** How did the Union finally collapse into a civil war?

**The Election of 1860**

John Brown's raid and execution were still fresh in the minds of Americans as the 1860 presidential election approached. Uncertainty about Kansas—would it be a slave state or a free state?—added to the anxiety. In the North, loss of confidence in the Supreme Court resulting from the *Dred Scott* decision and rage about the Fugitive Slave Act's intrusion into the states' independence further aggravated the situation.

The issue of states' rights was on southern minds as well. Would northern radicals conspire to eliminate slavery not only in the territories but also in the original southern states? In the spring of 1860, Mississippi senator **Jefferson Davis** convinced Congress to adopt resolutions restricting federal control over slavery in the territories. The resolutions also asserted that the Constitution prohibited Congress or any state from interfering with slavery in the state

where it already existed. Even southerners who did not own slaves felt that their way of life and their honor were under attack.

With ill will running so deep, the upcoming elections posed a serious dilemma. It was hard to imagine that either northerners or southerners would accept a President from the other region. Could the Union survive?

**Democrats Split Their Support** The Democrats held their nominating convention in Charleston, North Carolina. For ten days, they argued about the issue that had plagued the nation for decades: slavery. The southern Democrats called for a platform supporting federal protection of slavery in the territories. The northern Democrats, who backed Stephen Douglas, supported the doctrine of popular sovereignty. When the Douglas forces prevailed, the delegates from eight southern states walked out and formed a separate convention.

The Democrats were now split into two parties. The northern Democrats nominated Stephen A. Douglas. The southern Democrats nominated the Vice President, **John C. Breckinridge** of Kentucky. Breckinridge was committed to expanding slavery into the territories.

**Whigs Make a Last Effort** In the meantime, the few remaining Whigs teamed up with the Know-Nothings to create the Constitutional Union Party. They hoped to heal the split between North and South. Their candidate was John Bell, a little-known moderate from Tennessee. Their platform condemned sectional parties and promised to uphold "the Constitution of the country, the Union of the States and the enforcement of the laws."

**Republicans Nominate Lincoln** The Republicans, who had gained great strength since their formation, held their nominating convention in Chicago. After several ballots, they nominated Abraham Lincoln as their candidate. When the party convened, seasoned politician William H. Seward of New York had been the favorite to win the nomination. But when many delegates began to worry that Seward's antislavery views were too radical, the convention went with the more moderate Lincoln.

## The Candidates for President

### Abraham Lincoln

- Republican
- Illinois
- Platform:

Slavery must not be allowed in the territories.

### Stephen Douglas

- Northern Democrat
- Illinois
- Platform:

Popular sovereignty should decide the issue of slavery in the territories when they become states.

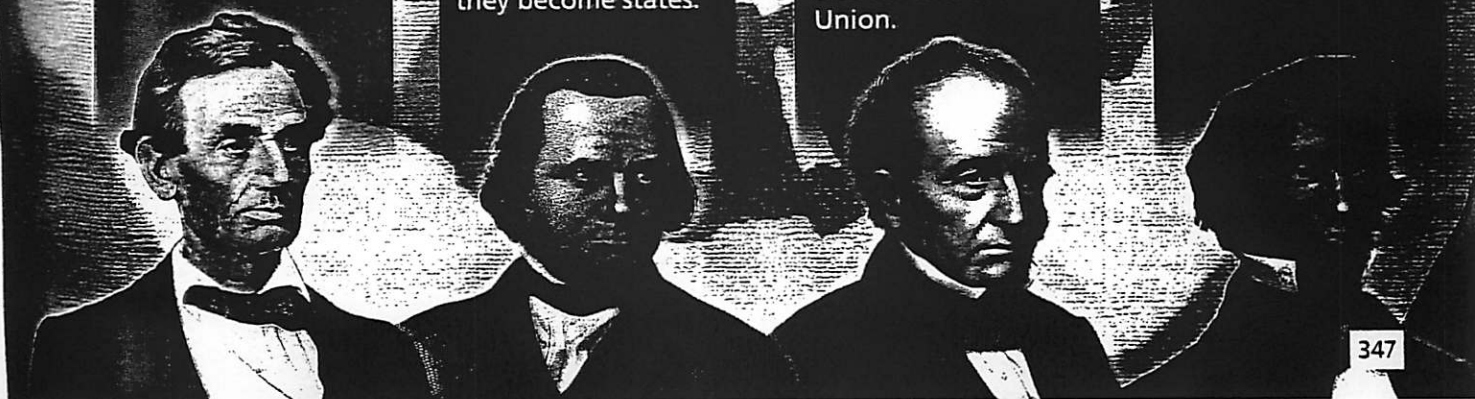
### John Bell

- Constitutional Unionist
  - Tennessee
  - Platform:
- The federal government should support slavery and also defend the Union.

### John Breckinridge

- Southern Democrat
- Kentucky
- Platform:

The federal government must protect slavery.



### Vocabulary Builder

**stipulate**—(STIH-p yuh layt) *v.* to specify or indicate

The Republican platform called for the end of slavery in the territories. At the same time, the Republicans defended the right of each state to control its own institutions and stipulated that there should be no interference with slavery in the states where it already existed. Abraham Lincoln—with his great debating skills, his moderate views, and his reputation for integrity—was seen as the ideal candidate to carry the Republican platform to victory.

**Lincoln Wins the Election** Benefiting from the fracturing among the other political parties, Lincoln won the election handily, with 40 percent of the popular vote and almost 60 percent of the electoral vote. Still, he did not receive a single southern electoral vote. In fact, he was not even on the ballot in most southern states.

Breckinridge was the clear favorite among southern voters, carrying every cotton state, along with North Carolina, Delaware, and Maryland. The border

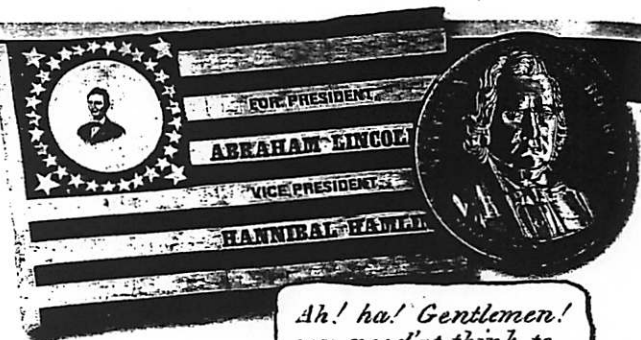
## Events That Changed America

# THE ELECTION OF 1860

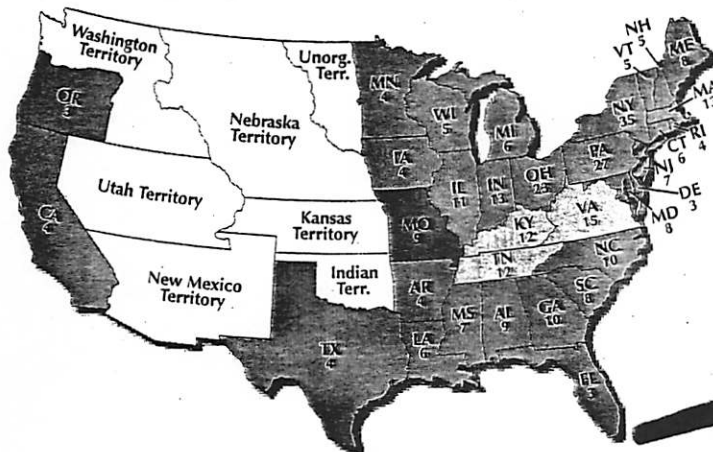
**The Election of 1860** The election of 1860 was a turning point for the United States. Looking at an election map shows clearly how the country was divided.

Look at the cartoon to the right to see one viewpoint of the campaign for the presidency. Try to figure out what the cartoonist thinks of each of these candidates. Lincoln is on the left, dressed as a member of a Republican support group called the "Wide Awakes." As he approaches the White House, the other candidates try to sneak in.

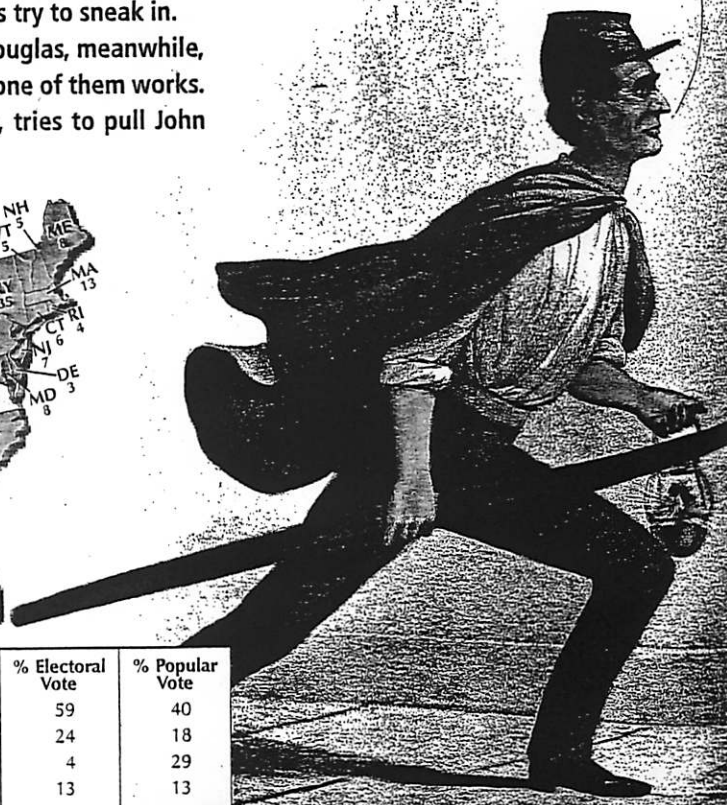
John Bell tells Stephen Douglas to hurry up. Douglas, meanwhile, tries to unlock the door with different keys, but none of them works. In the far right, the current President, Buchanan, tries to pull John Breckinridge in through the window.



▲ Election propaganda for Lincoln and Douglas



Candidate (Party)	Electoral Vote	Popular Vote	% Electoral Vote	% Popular Vote
■ Abraham Lincoln (Republican)	180	1,866,452	59	40
■ John C. Breckinridge (Southern-Democratic)	72	847,953	24	18
■ Stephen A. Douglas (Democratic)	12	1,380,202	4	29
■ John Bell (Constitutional Union)	39	590,901	13	13



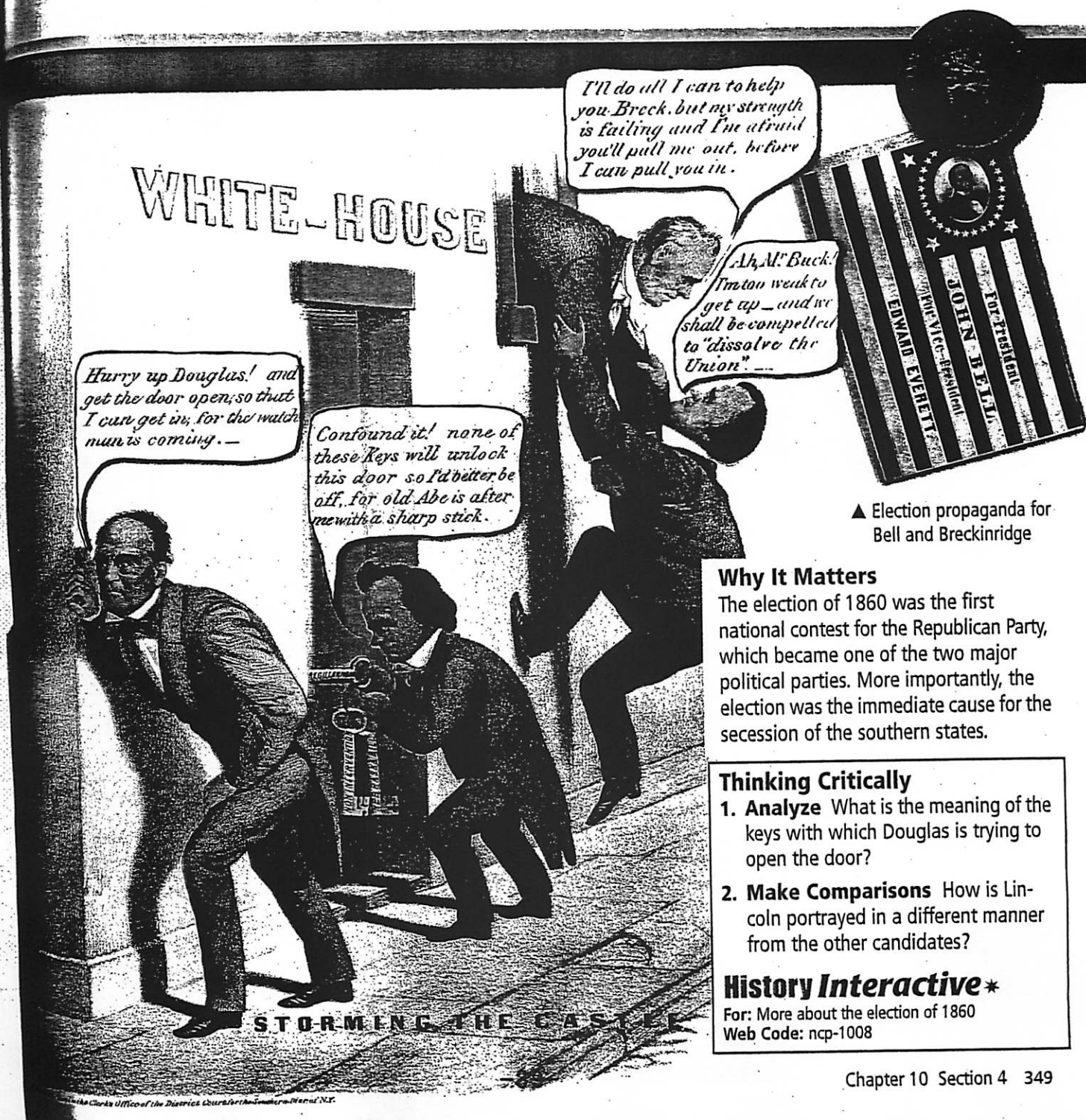
states of Virginia, Kentucky, and Tennessee—whose economic interests were not as closely tied to slavery as the cotton states were—gave their votes to Bell. Stephen A. Douglas, although running second to Lincoln in the popular vote, won only in Missouri and New Jersey.

The election of 1860 demonstrated that Americans' worst fears had come to pass. There were no longer any national political parties. Bell and Breckinridge competed for southern votes, while Douglas and Lincoln competed in the North and West. The North and South were now effectively two political entities, and there seemed no way to bridge the gap.

### Vocabulary Builder

entity—(EHN tuh tee) *n.*  
something that exists as a  
single and complete unit

**Checkpoint** How did Lincoln's election reflect the break between the North and the South?



▲ Election propaganda for Bell and Breckinridge

### Why It Matters

The election of 1860 was the first national contest for the Republican Party, which became one of the two major political parties. More importantly, the election was the immediate cause for the secession of the southern states.

### Thinking Critically

- Analyze** What is the meaning of the keys with which Douglas is trying to open the door?
- Make Comparisons** How is Lincoln portrayed in a different manner from the other candidates?

### History Interactive \*

For: More about the election of 1860  
Web Code: ncp-1008

### Long-term Causes of the Civil War

- Sectional economic and cultural differences
- Debate over expansion of slavery into the territories
- Political compromises failed to ease sectional differences and resolve question of expanding slavery
  - Missouri Compromise (1820)
  - Compromise of 1850
  - Kansas-Nebraska Act (1854)
- Laws increased sectional tension
  - Fugitive Slave Act (1850)
  - Dred Scott decision
  - Tariff policy
- Growth of the antislavery movement
- *Uncle Tom's Cabin*

### Short-term Causes of the Civil War

Kansas-Nebraska Act splits political parties



Breakdown of the party system



Lincoln elected President



South Carolina secedes from the Union

## The Union Collapses

Southerners were outraged that a President could be elected without a single southern vote. In the southerners' perception the South no longer had a voice in the national government. They decided to act.

**Southern States Leave the Union** As soon as Lincoln's election was confirmed, the South Carolina legislature summoned a state convention. Meeting in Charleston on December 20, 1860 and without a dissenting vote, the convention declared that "the union now subsisting between South Carolina and the other States, under the name of the 'United States of America,' is hereby dissolved." They cited as their reason for seceding the election of a President "whose opinions and purposes are hostile to slavery." They further declared:

### Primary Source

"On the 4<sup>th</sup> of March next, [a new administration] will take possession of the Government. It has announced . . . that a war must be waged against slavery until it shall cease throughout the United States. . . .

The Guarantees of the Constitution will then no longer exist; the equal rights of the States will be lost. The slaveholding States will no longer have the power of self-government, or self-protection, and the Federal Government will have become their enemy."

—Declaration of the Immediate Causes Which Induce and Justify the Secession of South Carolina From the Federal Union, December 20, 1860

In the next few weeks, six other states of the Deep South seceded from the Union. Sentiments favoring secession were not always unanimous, with the gravest doubts surfacing in Georgia. State senator Alexander H. Stephens, though alarmed by Lincoln's election, was devoted to the Union of states under the Constitution: "This government of our fathers, with all its defects, comes nearer the objects of all good government than any other on the face of the Earth," he said. But Georgia voted to secede anyway. Like delegates in the other slave-dependent, cotton-growing states, they believed they had to take this step to protect their property and way of life.

**The Confederacy Is Formed** In February 1861, the seven seceding states established the **Confederate States of America**. They then proceeded to frame a constitution for the new government. The Confederate constitution closely resembled the U.S. Constitution. However, it stressed the independence of each state and implied that states had the right to secede. It also guaranteed the protection of slavery. To win the support of Britain and France, which adamantly opposed the slave trade, it prohibited importing new slaves from other countries.

Not all southerners backed the Confederacy. Some large planters with economic ties to the North still hoped for a compromise. So, too, did many small farmers with no vested interest in slavery. To gain the loyalty of such citizens, the Confederacy chose former Mississippi senator Jefferson Davis as their president. Davis had supported the Compromise of 1850, but he had also insisted that the South should be left alone to manage its own culture and institutions—including slavery.

**A Final Compromise Fails** Some politicians sought a final compromise. Kentucky senator John Crittenden proposed a constitutional amendment allowing slavery in western territories south of the Missouri Compromise line. He also called for federal funds to reimburse slaveholders for unreturned fugitives.

## Focus On Geography

### Slavery and Secession

Cotton cultivation increased substantially in the nineteenth century. Harvesting cotton (right) was a time-consuming and difficult task that required a large labor force. This led planters to buy more enslaved people. In 1861, more than 50 percent of the population was enslaved in some areas of the Deep South. Tension built over extending slavery into the territories. The states with the largest slave populations seceded. Border states, which had fewer enslaved people, stayed in the Union.

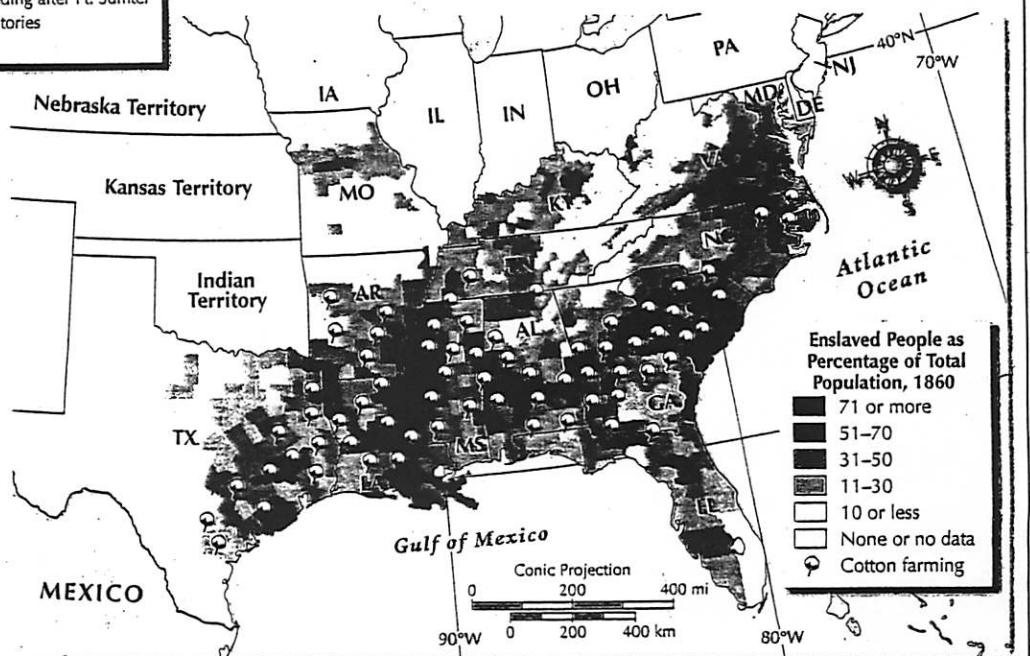


#### States Seceding from the Union

- Free Union states
- Union states with slavery
- Confederate states seceding before Ft. Sumter, April 1861
- Confederate states seceding after Ft. Sumter
- Territories

### Geography and History

- Which states had the greatest concentrations of enslaved people?
- What was the relationship between the percentage of enslaved people and secession?



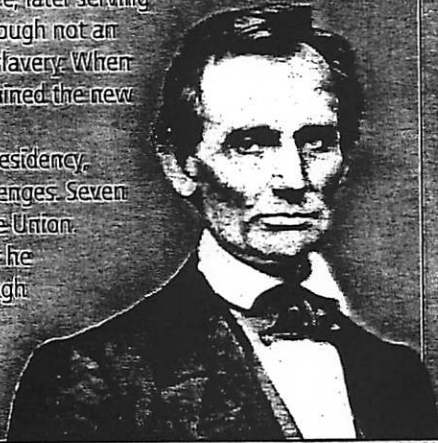
## HISTORY MAKERS

### Abraham Lincoln (1809–1865)

Lincoln grew up on the Kentucky frontier and moved to Illinois as a young man. Although he had little formal education, he enjoyed reading and disliked farming. In 1836, he began practicing law in Illinois.

Lincoln began his political career as a Whig in the Illinois state legislature, later serving in the U.S. Congress. Although not an abolitionist, he opposed slavery. When the Whigs fell apart, he joined the new Republican Party.

Upon assuming the presidency, Lincoln faced tough challenges. Seven states had already left the Union. Lincoln won reelection as he steered the country through the Civil War. He is best remembered for ending slavery in the United States.



### Jefferson Davis (1808–1889)

Davis is best known for his role as president of the Confederate States of America. Before the Civil War, he served in the U.S. House of Representatives in 1845 but left to join the army during the war with Mexico in 1846.


Returning home to Mississippi as a hero, Davis became a U.S. Senator and, later, the Secretary of War. He opposed South Carolina's secession, still hoping for a compromise. Even when his own Mississippi seceded a few weeks later, he left the Senate by appealing for peace.

Two weeks later, he became president of the Confederate States of America. Despite his strong leadership, the Confederacy lacked the manpower and manufacturing capability to defeat the Union. He was imprisoned for treason after the war but was never tried.



Lincoln, now President-elect, warned that Crittenden's plan would "lose us everything we gained by the election." A narrow margin of senators voted down this **Crittenden Compromise**.

President Buchanan, in his last few weeks in office, told Congress that he had no authority to prevent secession. He lamented the breakup of the Union and he sympathized with the South's concerns, but he made no serious effort to resolve the crisis. Other pacifying attempts also failed. A secret peace convention held in Washington, which drew delegates from the border states as well as the North and South, failed to reach a compromise that could save the Union.

 **Checkpoint** Why did the states of the Deep South leave the Union?

## The Civil War Begins

Amid this turmoil, the new President took office. Lincoln had no illusion about the challenge he faced. He confronted "a task," he feared, "greater than that which rested upon [President George] Washington."

**Lincoln Takes Office** Lincoln was sworn in as President on March 4, 1861. In his inaugural address, he took a firm but conciliatory tone toward the South. "I have no purpose, directly or indirectly, to interfere with the institution of slavery in the states where it exists," he began. But he *did* intend to preserve the Union. "No state, upon its own mere action, can lawfully get out of the Union," he said. Still, he would avoid violence. There would be no war, he pledged, unless the South started it. He concluded with an appeal to the South to live in peace:

### Primary Source

"We are not enemies, but friends. We must not be enemies. Though passion may have strained, it must not break our bonds of affection. The mystic chords of memory, stretching from every battle-field, and patriot grave, to every living heart and hearthstone, all over this broad land, will yet swell the chorus of the Union, when again touched, as surely they will be, by the better angels of our nature."

—Abraham Lincoln, March 4, 1861

**Lincoln Decides to Act** When the southern states seceded, they seized the federal forts and arsenals within their borders. Only four forts remained in Union hands. The most important of these was **Fort Sumter**, which guarded the harbor at Charleston, South Carolina. In January 1861, President Buchanan tried to send troops and supplies to the fort, but the unarmed supply ship sailed away when Confederate guns fired on it. Upon taking office, Lincoln had to decide whether to take the risk required to hold on to these forts or yield to Confederate demands that they be surrendered.

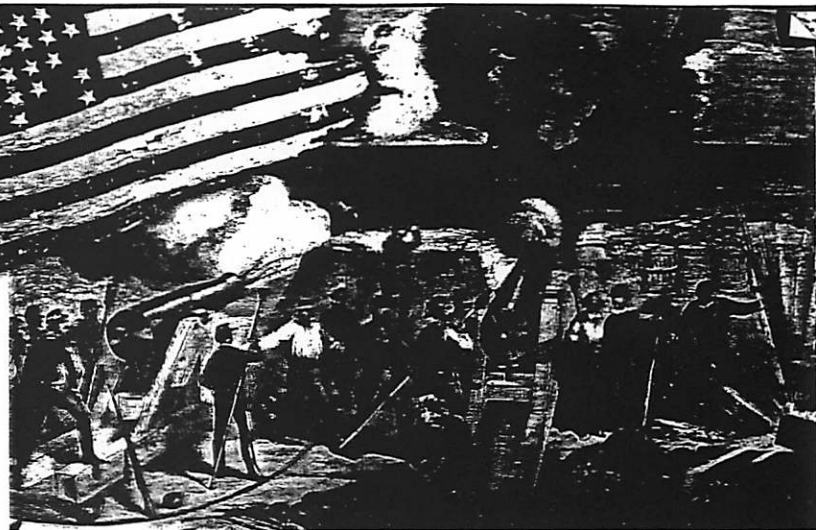
By April, the troops at the fort desperately needed food and supplies. Lincoln, who still hoped to bring back the South without bloodshed, faced a dilemma. Should he try to resupply the fort? Or should he let the Confederates take it? Lincoln struggled to make a decision. During his inaugural address, he had promised southerners that “the government will not assail you.” But as President, he was sworn to defend the property of the United States. A wrong move could touch off a war. At last, trying to steer a middle course, Lincoln notified South Carolina that he was sending supplies—food only, no arms—to the fort.

**Fort Sumter Falls** South Carolinians were suspicious of Lincoln’s motives and ordered the Fort Sumter garrison to surrender to the Confederacy. When the Union troops refused, the Confederates fired on the fort. The Union troops eventually ran out of ammunition, forcing the commander to surrender.

Northerners responded to the attack on Fort Sumter with shock and anger. A few days later, on April 15, President Lincoln declared that “insurrection” existed and called for 75,000 volunteers to fight against the Confederacy.

The South responded just as strongly. At the outbreak of hostilities, the states of Virginia, Arkansas, Tennessee, and North Carolina joined the Confederacy. As in the North, the South raised troops quickly and struggled to equip and train them before sending them into battle.

Both sides predicted a short skirmish, with victory only a few days or months away. These predictions were unfounded. Americans faced years of terrible suffering before the fighting that had begun at Fort Sumter finally ended.



The flag above flew over Fort Sumter as Confederate troops attacked (pictured above).

**Checkpoint** What event led to the outbreak of war?

SECTION

## 4 Assessment

### Progress Monitoring Online

For: Self-test with vocabulary practice  
Web Code: nca-1010

#### Comprehension

**1. Terms and People** For each item below, write a sentence explaining its significance.

- Jefferson Davis
- John C. Breckinridge
- Confederate States of America
- Crittenden Compromise
- Fort Sumter

**2. NoteTaking Reading Skill:** Use your cause-and-effect chart to answer the Section Focus Question: How did the Union finally collapse into a civil war?

#### Writing About History

**3. Quick Write: Outline an Argument** Outline an answer to this question: Was secession the only option for the South?

#### Critical Thinking

**4. Recognize Effects** How did the election of 1860 increase sectional tensions?

**5. Recognize Causes** Why did the southern states secede?

**6. Demonstrate Reasoned Judgment** How could Buchanan have prevented war?

### Causes of the Civil War

<i>Document</i>	<i>Connection to Democracy and Authority</i>	<i>According to the source, what caused the Civil War?</i>
<i>SC Declaration of Secession</i>		
<i>MI Declaration of Secession</i>		
<i>GA Declaration of Secession</i>		
<i>TX Declaration of Secession</i>		
<i>Fugitive Slave Act</i>		
<i>Dred Scott v Sandford</i>		

1. Which documents reveal that people feel the national government is being too authoritative? In what specific area is the government being too authoritative? Cite **three pieces** of specific evidence for your answer.
  
2. Which documents neglect to mention democracy and authority? In those cases, what do they see as the major problem in the nation?

Deciding the case Dred Scott v Sandford (1857) based on the Constitution

Answer the 3 judicial questions below making a reference to the Constitution. The first time, use a strict interpretation of the Constitution. The 2<sup>nd</sup> time, use a loose interpretation of the Constitution.

Define: Loose interpretation:

Strict Interpretation:

1. Did Scott have the right to sue?

Strict:

Loose:

2. Was Scott free as a result of living in a state and territory where slavery was illegal?

Strict:

Loose:

3. Was it constitutional for the Congress to limit slavery in the territories?

Strict:

Loose:

*The relevant articles of the Constitution are as follows:*

Article 1, Section 2: "Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons."

Article 1, Section 9: "The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person."

Article 4, Section 1: "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof."

The Missouri Compromise (1820) concerned the territory acquired from the Louisiana Purchase, which both expanded America's land holdings, while also posing a threat to the delicate balance achieved in Congress. The dilemma began with the application of Missouri as a slave-state. If admitted, Missouri would upset the even proportion of slave states and free states within the U.S. Senate. Thus the Missouri Compromise was created which called for the admittance of Missouri as a slave state and Maine as a free state. The balance was maintained, yet the vast territories were suddenly a problem. The Missouri Compromise addressed such issues, prohibiting slavery above the 36° 30' latitude line.

During the time of the MO compromise, which gov't controlled slavery (national or state)?

**Classifying Arguments in the Case:** The following is a list of arguments used in *Dred Scott v. Sandford*. Read through each argument and decide whether it supports Dred Scott's side in favor of his freedom (DS), Sanford's position in favor of Scott's continued slavery (SAN), both sides (BOTH), or neither side (N). Label each argument next to the number.

1. The Missouri Compromise of 1820 outlawed slavery forever in certain areas. Dred Scott's owner took him to these free areas. Thus, Scott became free forever.
2. Dred Scott is not a citizen because if he were he would be entitled to all of the privileges and immunities of a citizen, one of which is the right of free movement. It is clear that the laws governing slavery do not permit this, thus he cannot be a citizen.
3. Even before the Constitution, some states allowed blacks to vote. The Constitution does not say explicitly that blacks cannot be citizens.
4. The U.S. Constitution is the supreme law of the land. Neither Congress nor states can pass laws that conflict with the Constitution.
5. It was law in many states and had been common law in Europe for centuries that a slave who legally traveled to a free area automatically became free.
6. In the case of *Strader v. Graham* (1850), the Supreme Court of the United States heard the case of three slaves who had been taken from Kentucky to Indiana and Ohio and then back to Kentucky. The Court declared that the status of the slave depended on the laws of Kentucky, not Ohio.
7. The Constitution recognized the existence of slavery. Therefore, the men who framed and ratified the Constitution must have believed that slaves and their descendants were not to be citizens.
8. The Missouri Compromise of 1820 that outlawed slavery in some future states was unconstitutional because Congress does not have the authority to deny property rights of law-abiding citizens. Thus, Scott was always a slave in areas that were free.
9. At the time of the Dred Scott case, women and minors could sue in federal court even though they could not vote.

**The Decision:**

"The decision was 7 to 2. Chief Justice Roger B. Taney delivered the opinion of the Court."

... Can a negro, whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities, guaranteed by that instrument to the citizen? One of which rights is the privilege of suing in a court of the United States in the cases specified in the Constitution. We think they [people of African ancestry] are not [citizens], and that they are not included, and were not intended to be included, under the word "citizens" in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States.

... [T]he legislation and histories of the times, and the language used in the Declaration of Independence, show, that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument."

What is the effect of this case on slaves?

Article 4, Section 2: "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

Article 4, Section 2: "No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

Article 4, Section 3: "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state."

Article 6, Section 2: "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."

#### Deciding a Dred Scott vs. Sandford (1857) case based on Past Precedent

Answer the 3 judicial questions based on precedents set by the Supreme Court or applicable state rulings in cases that dealt with similar judicial issues occurring before 1857. In your answer, refer to the case that helped you decide your answer.

1. Did Scott have the right to sue?

2. Was Scott free as a result of living in a state and territory where slavery was illegal?

3. Was it constitutional for the Congress to limit slavery in the territories?

4. What are some inconsistencies between the precedents?

# SECTIONS OF THE UNITED STATES CONSTITUTION

**Directions:** Read the scenario below. Does the President have the power to suspend *habeas corpus* throughout the entire nation, hold Mr. Milligan, and try him a military court? Use the documents below, along with information from Handouts A and B, to prepare an argument for or against the President.

It is 1866. Mr. Milligan has been charged with conspiracy against the United States government; affording aid and comfort to rebels against authority of the US; inciting insurrection; disloyal practices; and violation of the laws of war.

Mr. Milligan is a private citizen living in Indiana. He is not connected with military service, and had not been a resident of any of the states in the rebellion or a prisoner of war. He was not participating in hostile activities against the US when he was captured.

Mr. Milligan has petitioned the Supreme Court for a writ of *habeas corpus*.

## SECTIONS OF THE UNITED STATES CONSTITUTION (1787)

**Article I, Section 8.** The Congress shall have power to ... provide for the common defense and general welfare of the United States...

**Article I, Section 9.** ...The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

**Article II, Section 2.** The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states...

**Article II, Section 3.** [The President] shall take care that the laws be faithfully executed...

**Amendment VI (1791).** In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

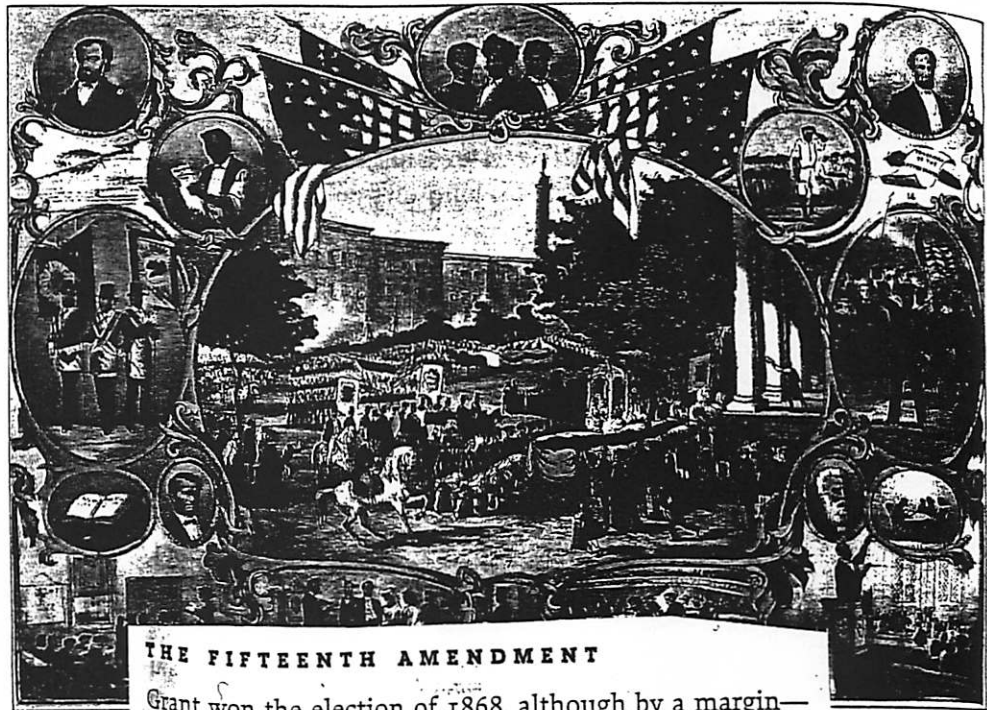
# THE RULING

In *ex parte Milligan* (1866), the Supreme Court ruled that the President could not create military tribunals to try citizens as long as civil courts were operational. Mr. Milligan had the right to be tried by a jury in a civil court.

The Court noted the government's power to suspend *habeas corpus* in rebellion or invasion, but pointed out that the citizens' Sixth Amendment right to trial by jury needed to be preserved.

The Court reasoned that the Founders knew that "trial by an established court, assisted by an impartial jury, was the only sure way of protecting the citizen against oppression and wrong. Knowing this, they limited the suspension to one great right [*habeas corpus*], and left the rest to remain forever inviolable."

The ruling also defined conditions for martial law and asserted the civilian power over the military. "Martial law [military control of the justice system] cannot arise from a threatened invasion. The necessity must be actual and present; the invasion real, such as effectually closes the courts and deposes the civil administration.... Martial rule can never exist where the courts are open, and in the proper and unobstructed exercise of their jurisdiction. It is also confined to the locality of actual war."



### THE FIFTEENTH AMENDMENT

Grant won the election of 1868, although by a margin—300,000 of 6 million votes cast—that many Republicans

The Fifteenth Amendment, an 1870 lithograph marking the ratification of the constitutional amendment prohibiting states from denying citizens the right to vote because of race. Surrounding an image of a celebration parade are portraits of Abraham Lincoln; President Ulysses S. Grant and his vice president, Schuyler Colfax; abolitionists John Brown, Martin R. Delany, and Frederick Douglass; and Hiram Revels, the first black to serve in the U.S. Senate. At the bottom are scenes of freedom—education, family, political representation, and church life.

found uncomfortably slim. The result led Congress to adopt the era's third and final amendment to the Constitution. In February 1869, it approved the Fifteenth Amendment, which prohibited the federal and state governments from denying any citizen the right to vote because of race. Bitterly opposed by the Democratic Party, it was ratified in 1870.

Although the Fifteenth Amendment opened the door to suffrage restrictions not explicitly based on race—literacy tests, property qualifications, and poll taxes—and did not extend the right to vote to women, it marked the culmination of four decades of abolitionist agitation. As late as 1868, even after Congress had enfranchised black men in the South, only eight northern states allowed African-American men to vote. With the Fifteenth Amendment, the American Anti-Slavery Society disbanded, its work, its members believed, now complete. "Nothing in all history," exclaimed veteran abolitionist William Lloyd Garrison, equaled "this wonderful, quiet, sudden transformation of four millions of human beings from . . . the auction-block to the ballot-box."

### THE "GREAT CONSTITUTIONAL REVOLUTION"

The laws and amendments of Reconstruction reflected the intersection of two products of the Civil War era—a newly empowered national state, and the idea of a national citizenry enjoying equality before the law. What Republican leader Carl Schurz called the "great Constitutional revolution" of Reconstruction transformed the federal system and with it, the language of freedom so central to American political culture.

Before the Civil War, American citizenship had been closely linked to race. The first Congress, in 1790, had limited to whites the right to become a naturalized citizen when immigrating from abroad. No black person, free or slave, the Supreme Court had declared in the *Dred Scott* decision of 1857, could be a

The most basic reason for opposition to Reconstruction, however, was that most white southerners could not accept the idea of former slaves voting, holding office, and enjoying equality before the law. In order to restore white supremacy in southern public life and to ensure planters a disciplined, reliable labor force, they believed, Reconstruction must be overthrown. Opponents launched a campaign of violence in an effort to end Republican rule. Their actions posed a fundamental challenge both for Reconstruction governments in the South and for policymakers in Washington, D.C.

### "A REIGN OF TERROR"

The Civil War ended in 1865, but violence remained widespread in large parts of the postwar South. In the early years of Reconstruction, violence was mostly local and unorganized. Blacks were assaulted and murdered for refusing to give way to whites on city sidewalks, using "insolent" language, challenging end-of-year contract settlements, and attempting to buy land. The violence that greeted the advent of Republican governments after 1867, however, was far more pervasive and more directly motivated by politics. In wide areas of the South, secret societies sprang up with the aim of preventing blacks from voting and destroying the organization of the Republican Party by assassinating local leaders and public officials.

The most notorious such organization was the Ku Klux Klan, which in effect served as a military arm of the Democratic Party in the South. From its founding in 1866 in Tennessee, the Klan was a terrorist organization. It quickly spread into nearly every southern state. Led by planters, merchants, and Democratic politicians, men who liked to style themselves the South's "respectable citizens," the Klan committed some of the most brutal criminal acts in American history. In many counties, it launched what one victim called a "reign of terror" against Republican leaders, black and white.

The Klan's victims included white Republicans, among them wartime Unionists and local officeholders, teachers, and party organizers. William Luke, an Irish-born teacher in a black school, was lynched in 1870. But African-Americans—local political leaders, those who managed to acquire land, and others who in one way or another defied the norms of white supremacy—bore the brunt of the violence. In York County, South Carolina, where nearly the entire white male population joined the Klan (and women participated by sewing the robes and hoods Klansmen wore as disguises), the organization committed eleven murders and hundreds of whippings.

On occasion, violence escalated from assaults on individuals to mass terrorism and even local insurrections. In Meridian, Mississippi, in 1871, some thirty blacks were murdered in cold blood, along with a white Republican judge. The bloodiest act of violence during Reconstruction took place in Colfax, Louisiana, in 1873, where armed whites assaulted the town with a small cannon. Hundreds of former slaves were murdered, including fifty members of a black militia unit after they had surrendered.

Unable to suppress the Klan, the new southern

A Prospective Scene in the City of Oaks, a cartoon in the September 1, 1868, issue of the *Independent Monitor*, a Democratic newspaper published in Tuscaloosa, Alabama. The cartoon sent a warning to the Reverend A. S. Lakin, who had moved from Ohio to become president of the University of Alabama, and Dr. N. B. Cloud, a southern-born Republican serving as Alabama's superintendent of public education. The Ku Klux Klan forced both men from their positions.





Two Members of the Ku Klux Klan in Their Disguises, from Harper's Weekly, December 19, 1868. The Klan did not adopt its familiar white robes until after Reconstruction.

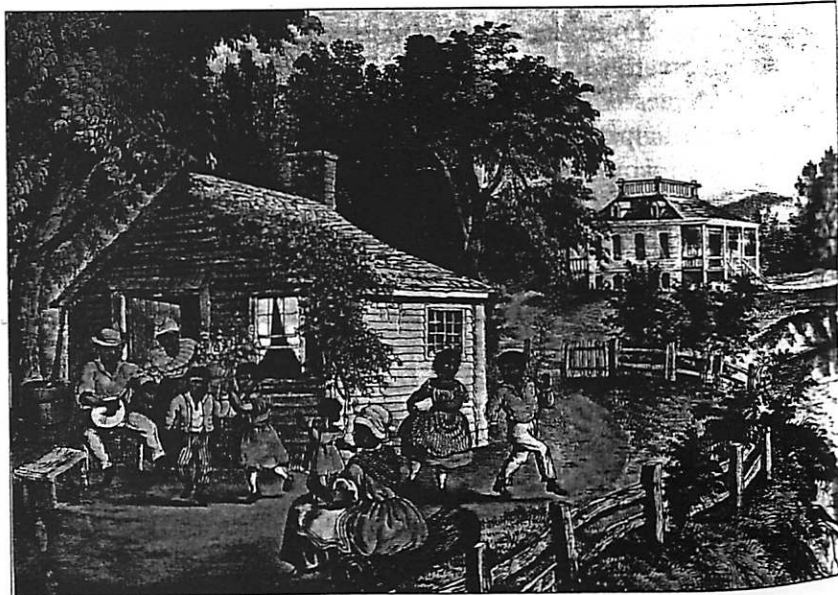
governments appealed to Washington for help. In 1870 and 1871, Congress adopted three Enforcement Acts, outlawing terrorist societies and allowing the president to use the army against them. These laws continued the expansion of national authority during Reconstruction. They defined crimes that aimed to deprive citizens of their civil and political rights as federal offenses rather than violations of state law. In 1871, President Grant dispatched federal marshals, backed up by troops in some areas, to arrest hundreds of accused Klansmen. Many Klan leaders fled the South. After a series of well-publicized trials, the Klan went out of existence. In 1872, for the first time since the Civil War, peace reigned in most of the former Confederacy.

### THE LIBERAL REPUBLICANS

Despite the Grant administration's effective response to Klan terrorism, the North's commitment to Reconstruction waned during the 1870s. Many Radicals, including Thaddeus Stevens, who died in 1868, had passed from the scene. Within the Republican Party, their place was taken by politicians less committed to the ideal of equal rights for blacks. Northerners increasingly felt that the South should be able to solve its own problems without constant interference from Washington. The federal government had freed the slaves, made them citizens, and given them the right to vote. Now, blacks should rely on their own resources, not demand further assistance.

In 1872, an influential group of Republicans, alienated by corruption within the Grant administration and believing that the growth of federal power during and after the war needed to be curtailed, formed their own party. They included Republican founders like Lyman Trumbull and prominent editors and journalists such as E. L. Godkin of *The Nation*. Calling themselves Liberal Republicans, they nominated Horace Greeley, editor of the *New York Tribune*, for president.

The Old Plantation Home, a lithograph from 1872 produced by the prominent firm of Currier and Ives in New York City, illustrates how a nostalgic image of slavery as a time of carefree happiness for African-Americans was being promoted even as Reconstruction took place.



**The State of Louisiana 1890's**

**Literacy Test (This test is to be given to anyone who cannot prove a fifth grade education.)**

**Do what you are told to do in each statement, nothing more, nothing less. Be careful as one wrong answer denotes failure of the test. You have 10 minutes to complete the test.**

1. Draw a line around the number or letter of this sentence.
2. Draw a line under the last word in this line.
3. Cross out the longest word in this line.
4. Draw a line around the shortest word in this line.
5. Circle the first, first letter of the alphabet in this line.
6. In the space below draw three circles, one inside (engulfed by) the other.

7. Above the letter X make a small cross.
8. Draw a line through the letter below that comes earliest in the alphabet.

**Z V S B D M K I T P H C**

9. Draw a line through the two letters below that come last in the alphabet.

**Z V B D M K T P H S Y C**

10. In the first circle below write the last letter of the first word beginning with "L".



11. Cross out the number necessary, when making the number below one million.

**10000000000**

12. Draw a line from circle 2 to circle 5 that will pass below circle 2 and above circle 4.



13. In the line below cross out each number that is more than 20 but less than 30.

**31 16 48 29 53 47 22 37 98 26 20 25**

14. Draw a line under the first letter after "h" and draw a line through the second letter after "j".

a b c d e f g h i j k l m n o p q

15. In the space below, write the word "noise" backwards and place a dot over what would be its second letter should it have been written forward.

16. Draw a triangle with a blackened circle that overlaps only its left corner.

17. Look at the line of numbers below, and place on the blank, the number that should come next.

2 4 8 16 \_\_\_\_

18. Look at the line of numbers below, and place on the blank, the number that should come next.

3 6 9 \_\_\_\_ 15

19. Draw in the space below, a square with a triangle in it, and within that same triangle draw a circle with a black dot in it.

20. Spell backwards, forwards.

21. Print the word vote upside down, but in the correct order.

22. Place a cross over the tenth letter in this line, a line under the first space in this sentence, and circle around the last the in the second line of this sentence.

23. Draw a figure that is square in shape. Divide it in half by drawing a straight line from its northeast corner to its southwest corner, and then divide it once more by drawing a broken line from the middle of its western side to the middle of its eastern side.

For nearly a generation after the end of Reconstruction, despite fraud and violence, black southerners continued to cast ballots. In some states, the Republican Party remained competitive. In Virginia, a coalition of mostly black Republicans and anti-Redeemer Democrats formed an alliance known as the Readjuster movement (the name derived from their plan to scale back, or "readjust," the state debt). They governed the state between 1879 and 1883. Tennessee and Arkansas also witnessed the formation of biracial political coalitions that challenged Democratic Party rule. Despite the limits of the Populists' interracial alliance, the threat of a biracial political insurgency frightened the ruling Democrats and contributed greatly to the disenfranchisement movement. In North Carolina, for example, the end of the Populist-Republican coalition government in 1898—accomplished by a violent campaign that culminated in a riot in Wilmington in which scores of blacks were killed—was quickly followed by the elimination of black voting.

#### THE ELIMINATION OF BLACK VOTING

Between 1890 and 1906, every southern state enacted laws or constitutional provisions meant to eliminate the black vote. Since the Fifteenth Amendment prohibited the use of race as a qualification for the suffrage, how were such measures even possible? Southern legislatures drafted laws that on paper appeared color-blind, but that were actually designed to end black voting. The most popular devices were the poll tax (a fee that each citizen had to pay in order to retain the right to vote), literacy tests, and the requirement that a prospective voter demonstrate to election officials an "understanding" of the state constitution. Six southern states also adopted a "grandfather clause," exempting from the new requirements descendants of persons eligible to vote before the Civil War (when only whites, of course, could cast ballots in the South). The racial intent of the grandfather clause was so clear that the Supreme Court in 1915 invalidated such laws for violating the Fifteenth Amendment. The other methods of limiting black voting, however, remained on the books.

Some white leaders presented disenfranchisement as a "good government" measure—a means of purifying politics by ending the fraud, violence, and manipulation of voting returns regularly used against Republicans and Populists. But ultimately, as a Charleston newspaper declared, the aim was to make clear that the white South "does not desire or intend ever to include black men among its citizens." Democrats persistently raised the

threat of "Negro domination" to justify the denial of the right to vote. Although election officials often allowed whites who did not meet the new qualifications to register, numerous poor and illiterate whites also lost the right to vote, a result welcomed by many planters and urban reformers. Louisiana, for example, reduced the number of blacks registered to vote from 130,000 in 1894 to 1,342 a decade later. But 80,000 white voters also lost the right. Disenfranchisement led directly to the rise of a generation of southern "demagogues," who mobilized white voters by extreme appeals to racism. Tom Watson, who as noted before had tried to forge an interracial Populist coalition in the 1890s, reemerged early in the twentieth century as a powerful figure in Georgia public life through vicious speeches whipping up prejudice against blacks, Jews, and Catholics.

As late as 1940, only 3 percent of adult black southerners were registered to vote. The elimination of black and many white voters, which reversed the nineteenth-century trend toward more inclusive suffrage, could not have been accomplished without the approval of the North. In 1891, the Senate defeated a proposal for federal protection of black voting rights in the South. Apart from the grandfather clause, the Supreme Court gave its approval to disenfranchisement laws. According to the Fourteenth Amendment, any state that deprived male citizens of the franchise was supposed to lose part of its representation in Congress. But like much of the Constitution, this provision was consistently violated so far as African-Americans were concerned. As a result, southern congressmen wielded far greater power on the national scene than their tiny electorates warranted. As for blacks, for decades thereafter, they would regard "the loss of suffrage as being the loss of freedom."



## The Supreme Court Declares that the Constitution Does Not Protect Women's Right to Vote

Female suffragists were disappointed when the final language of the 15<sup>th</sup> Amendment did not specifically protect the right of women to vote. Some women activists opposed the amendment for this reason. Virginia Minor was one of those activists. Partly inspired by western territories granting universal suffrage, partly to test how well the 14<sup>th</sup> and 15<sup>th</sup> Amendment would protect women's rights, Minor tried to register to vote in 1872. After she was denied, Minor and her husband sued the **registrar**; the case went all the way to the United States Supreme Court. The court delivered this unanimous decision.

The question is presented in this case, whether, since the adoption of the 14<sup>th</sup> amendment, a woman, who is a citizen of the United States...has the right of **suffrage**...

There is no doubt that women may be citizens...sex has never been made one of the elements of citizenship in the United States. In this respect men have never had an advantage over men... The direct question is...whether all citizens are necessarily voters.

It certainly is nowhere made so in express terms. ...It cannot for a moment be doubted that if it had been intended to make all citizens of the United States voters, the framers of the Constitution **would not have left it to implication**.

...[It] is now too late to contend that a government is not **republican**...because women are not made voters... If suffrage was intended to be included within its obligations, language better adapted to express that intent would have been employed.

...If the law is wrong, it ought to be changed; but the power for that is not with us... No argument as to woman's need of suffrage can be considered. We can only act upon her rights as they exist...

### Vocabulary

**Registrar:** the person who keeps official voting records

**Suffrage:** right to vote

**Would not have left it to implication:** would have spelled it out

**Republican:** a form of government in which people elect leaders to represent them

Source: U.S. Supreme Court, *Minor vs. Happersett*, 1875; in Linda K. Kerber and Jane De Hart Matthews, *Women's America; Refocusing the Past* (New York and Oxford: Oxford University Press, 1982).

Ware, Susan. Modern American Women. Boston: Mice Hill, 2002.



## CHAPTER 5

# *The Final Push for Suffrage*

The woman suffrage movement called on the energies and political skills of three generations of American women. Even as the movement melded into the mainstream of Progressive reform in the early 20th century, its success was never a foregone conclusion. A combination of factors, including women's patriotic contributions to the home front during World War I, helped to push the 19th Amendment over the top. On election day 1920, 26 million women were eligible to go to the polls as a result.

Dividing the suffrage movement into three distinct periods—1848–1869, 1869–1890, and 1890–1920—helps explain its shifting priorities and tactics over its more than seven decades of existence. The first period, from 1848 to 1869, began at the Seneca Falls convention, the first women's rights convention ever held in the world, where the Declaration of Sentiments included a controversial call for the ballot. Historian Ellen DuBois has pointed out how radical such a demand was in the mid-19th century, because it challenged the separation of the spheres into men's (public) and women's (private). The suffrage plank barely passed the assembled convention.

During the first 20 years of the women's rights movement, it was closely allied with abolitionism and the struggle to end slavery. Disagreements in the immediate post-Civil War period about the priorities of freed blacks versus women's rights led to a severing of this link. With the passage of the 13th, 14th, and 15th Amendments, black people won their freedom and black men won the right to vote. As feminists such as Elizabeth Cady Stanton and Susan B. Anthony pointed out, however, now that the word *male* was in the constitution as a definition of voting rights, it would take another constitutional amendment to enfranchise women.

By 1869, an independent woman suffrage movement had emerged in the United States. The period between 1869 and 1890 was not marked by any great breakthroughs for the cause. Only two territories allowed women the vote—Utah in 1869 and Wyoming in 1870. The suffrage movement on the national level split into two rival wings, mainly over whether to work on a state basis or the federal level. In 1890, the rival wings reunited as the National American Woman Suffrage Association (NAWSA).

By 1890, the suffrage movement was on the threshold of new activism and success. In part, the movement was more palatable because it was less radical. Instead of early demands by feminists such as Stanton for divorce and women's economic emancipation, the movement leaders now stuck very closely to the sole demand of the vote. And increasingly suffragists argued for the vote not as a challenge to conventional notions about women's proper sphere, but as an extension of that sphere. Women cited their domestic orientation as the reason they needed the vote: They could do for the country what they did for their homes and families. Suffragists also played up women's supposed moral superiority. This tactic of accepting conventional views of women and exploiting them was highly successful, especially as the Progressive reform spirit gathered strength.

As late as 1910, the woman suffrage movement had won the vote in only four states, but the tide was turning. New leadership, notably the NAWSA presidency of Carrie Chapman Catt from 1915 to 1920, revitalized the movement with a winning plan. Attention-grabbing tactics, such as suffrage parades and open-air meetings, won publicity. The movement also branched out into immigrant and working-class urban communities to mobilize support. Suffragists effectively pointed out the irony of fighting to make the world safe for democracy in World War I, while the female population remained disfranchised at home. Militant tactics, such as picketing the White House and conducting hunger strikes for the cause, won support.

But probably the main reason women finally won the vote in 1920 was that it was now a far less radical demand than it had been in 1848. Try to imagine how 19th-century political history would have been revolutionized if women had actually received the vote around the time of the Civil War. Compare that to the small ripple that occurred when women were finally granted the vote in 1920. Women's roles had changed dramatically since the mid-19th century, with women actively participating in work, education and voluntary organizations outside the home. The meaning of politics had also changed, so that the vote was less a potent symbol of political participation for men by 1920 than it had been at the height of the separate male political culture of the previous century.

Although granting the vote can be seen as a conservative measure that had little impact on women's equality, it is wrong to underestimate what the vote meant to the millions of women who campaigned so hard for its attainment. To the "new women" of the late 19th and early 20th centuries, it was an affront, a slap in the face, that they were not allowed this basic democratic right. Going to the polls would be confirmation of women's new roles as full citizens, the public equals of men. Of course, such sentiments were more likely held by white middle-class women, who shared most of the privileges of their class with men except the vote. But black women and working-class women also campaigned for the vote, seeing it as a tool that could be useful in broader political and economic struggles.

What made the suffrage movement so powerful was that it brought together a diverse range of individuals and organizations in a broad coalition dedicated to a common goal. To attain that goal, women's groups pioneered in innovative political tactics and legislative strategies that showed that women could work

together effectively on common causes. While we may look back at the vote and see it as a fairly minor reform, women at the time had a far different perspective.

Name:

US 32

Date:

*The Women's Suffrage Movement in the Progressive Era*

The Final Push for Suffrage:

3 periods of the women's suffrage movement:

The First 20 years: 1848-1869

Independent Women's Suffrage Movement: 1869-1890

New Activism & Success: 1890-1920

How did women win the vote?

What was the impact?

## ALICE PAUL

*"I resorted to the hunger strike method twice. ...When the forcible feeding was ordered, I was taken from my bed, carried to another room and forced into a chair, bound with sheets and sat upon bodily by a fat murderer, whose duty it was to keep me still. Then the prison doctor...placed a rubber tube up my nostrils and pumped liquid food through it into the stomach. Twice a day for a month... this was done."*

*This is how Alice Paul, a women's suffragist, described her experience in a British prison.*

Alice Paul was born in 1885 on a New Jersey farm. Her parents encouraged her love of learning, and her mother often brought her along to women's suffrage meetings. Paul attended prestigious universities and earned a master's degree in sociology. In 1907, Paul moved to England where she continued her studies in economics and political science.

While in England, Paul joined a group working to win voting rights for women in Britain. She was arrested three times while attending demonstrations. In prison, Paul and her fellow activists began hunger strikes to bring attention to their imprisonment. British authorities force-fed the women by putting tubes down their throats through their nostrils. They would often vomit through the violent process.

When Paul came back to the U.S. in 1910, she turned her attention to the fight for women's suffrage in America. She wrote her Ph.D. dissertation on the legal position of women in Pennsylvania. She joined the National American Woman Suffrage Association (NAWSA) and chaired the committee working for a federal amendment, but by that time the NAWSA had all but given up on a federal amendment and was instead focusing efforts on the state level.

Paul saw Woodrow Wilson's upcoming presidential inauguration as an opportunity to bring national attention to the cause of voting rights for women. She organized a parade to coincide with the inaugural parade. The parade was a historic spectacle with more than twenty floats and over 5,000 marchers.



The parade was not without its challenges. Paul recalled years later: "We did hear a lot of shouted insults... the usual things about why aren't you home in the kitchen where you belong." Other men shoved and tripped the marchers, while police did little to assist. One hundred marchers were taken to the hospital.

Paul went to the White House two weeks after the parade to talk to Wilson. The President promised to give the idea of voting rights for women his "most careful consideration," but this promise did little to satisfy Paul and the suffragists.

Paul soon grew frustrated by NAWSA, finding the group's efforts to be disorganized and inadequate, and in 1913 founded her own suffrage organization. It would be called the National Woman's Party. Noting that she did not look at all like a political agitator, the *Chicago Tribune* described her as a "delicate slip of a girl." But "Miss Paul," as she preferred to be called, was in fact an agitator of the most effective kind.

Paul began to organize demonstrations and parades in support of women's suffrage. She wrote and distributed leaflets, and she organized daily pickets in front of the White House. The picket signs addressed Wilson directly and used his own

words to make their case, "Mr. President, you say liberty is the fundamental demand of the human spirit," and "Mr. President, how long must women wait for liberty?" Demonstrators burned Wilson's copies of his speeches, calling them "meaningless words" on democracy. They even burned an effigy of Wilson at the White House gates.

Unlike NAWSA, Paul's party did not suspend their efforts during World War I. They believed World War I made women's suffrage even more vital. The war was being fought "so that democracies may be safe," as Wilson said, but the suffragists claimed the United States was itself not a democracy, as twenty million women were without the means for self-government.

Growing frustrated, police announced that picketers would be given six months in prison. The next day, October 17, 1917, Paul defiantly led a march to the White House. The marchers, including Paul, were sentenced to six months in jail.

During her sentence in Virginia, Paul was placed in solitary confinement. Her diet of bread and water weakened her so much that she was taken to the prison hospital. But instead of eating more,

Paul decided to use the strategy she'd learned in England eight years before: a hunger strike. Just as the British had done, prison officials force-fed Paul to prevent her from dying and becoming a martyr for the cause. Paul wrote to a friend of her experience during the force feeding, describing the constant "cries and shrieks and moans." She would later explain that the form of non-violent protest was "the strongest weapon left with which to continue... our battle."

Paul's actions alienated some who believed the women's suffragists were becoming too militant. On the other hand, Paul and the 500 others who were arrested for speaking, publishing, peaceably assembling, and petitioning became known as political prisoners, which mobilized their cause. Wilson eventually acknowledged public opinion and ordered the suffragists released from prison.

Paul's efforts, coupled with NAWSA's newly focused and effective strategy of lobbying on the local, state, and federal levels, had led the suffragists to victory. Wilson lent his support to the Women's Suffrage Amendment in January of 1918. Congress approved it within a year and it was ratified by the states in 1920.



## CRITICAL THINKING QUESTIONS

1. Why was Alice Paul arrested in London?
2. Why do you think she decided to go on a hunger strike?
3. How did Paul's National Woman's Party work for women's suffrage?
4. Paul's militant actions alienated some people. Why do you think Paul chose to continue them?
5. If you were writing a eulogy for Alice Paul, what would you say? How should Paul's efforts on behalf of women's suffrage be remembered?

# VOICES OF FREEDOM

A Documentary History

Third Edition

EDITED BY

ERIC FONER



Volume 2

2011



W.W. NORTON & COMPANY • NEW YORK • LONDON

[Theodore Roosevelt believes that] big business and the government could live on amicable terms with one another. . . .

Now, I say that in that way lies no thoroughfare for social reform, and that those who are hopeful of social reform through the instrumentality of that party ought to realize that in the very platform itself is supplied the demonstration that it is not a serviceable instrument. They do propose to serve civilization and humanity, but they can't serve civilization and humanity with that kind of government.

### Questions

1. Why does Wilson say, "the history of liberty is a history of the limitation of governmental power"?
2. How does he propose to protect "our freedom for the next generation"?

## 119. The Progressive Party Platform (1912)

Source: Donald B. Johnson, comp., *National Party Platforms (Urbana, Ill., 1978)*, Vol. 1, pp. 175-79.

Drafted by a group of female activists, labor reformers, and social scientists, the Progressive Party platform of 1912 laid out a blueprint for a modern, democratic welfare state, complete with women's suffrage, federal supervision of corporate enterprise, national labor and health legislation for women and children, an eight-hour work day and "living wage" for all workers, and a national system of social insurance covering unemployment, medical care, and old age. Described by the party's presidential candidate, Theodore Roosevelt, as the "most important document" since the end of the Civil War, the platform brought together many of the streams of thought and political experiences that flowed into Progressivism and anticipated many policies adopted two decades later during the New Deal. In economic matters it reflected Roosevelt's New Nationalism,

which envisioned heavy taxes on personal and corporate fortunes, and federal regulation of industries including railroads, mining, and oil. Unlike Wilson, Roosevelt insisted that big business was here to stay and that federal government must protect the public interest by regulating its activities.

THE CONSCIENCE OF the people, in a time of grave national problems, has called into being a new party, born of the nation's sense of justice. We of the Progressive party here dedicate ourselves to the fulfillment of the duty laid upon us by our fathers to maintain the government of the people, by the people and for the people whose foundations they laid.

We hold with Thomas Jefferson and Abraham Lincoln that the people are the masters of their Constitution, to fulfill its purposes and to safeguard it from those who, by perversion of its intent, would convert it into an instrument of injustice. In accordance with the needs of each generation the people must use their sovereign powers to establish and maintain equal opportunity and industrial justice, to secure which this Government was founded and without which no republic can endure.

This country belongs to the people who inhabit it. Its resources, its business, its institutions and its laws should be utilized, maintained or altered in whatever manner will best promote the general interest.

It is time to set the public welfare in the first place.

### THE OLD PARTIES

Political parties exist to secure responsible government and to execute the will of the people.

From these great tasks both of the old parties have turned aside. Instead of instruments to promote the general welfare, they have become the tools of corrupt interests which use them impartially to serve their selfish purposes. Behind the ostensible government

sits enthroned an invisible government owing no allegiance and acknowledging no responsibility to the people.

To destroy this invisible government, to dissolve the unholy alliance between corrupt business and corrupt politics is the first task of the statesmanship of the day.

The deliberate betrayal of its trust by the Republican party, the fatal incapacity of the Democratic party to deal with the new issues of the new time, have compelled the people to forge a new instrument of government through which to give effect to their will in laws and institutions.

Unhampered by tradition, uncorrupted by power, undismayed by the magnitude of the task, the new party offers itself as the instrument of the people to sweep away old abuses, to build a new and nobler commonwealth.

#### A COVENANT WITH THE PEOPLE

This declaration is our covenant with the people, and we hereby bind the party and its candidates in State and Nation to the pledges made herein.

#### THE RULE OF THE PEOPLE

The National Progressive party, committed to the principles of government by a self-controlled democracy expressing its will through representatives of the people, pledges itself to secure such alterations in the fundamental law of the several States and of the United States as shall insure the representative character of the government.

In particular, the party declares for direct primaries for the nomination of State and National officers, for nation-wide preferential primaries for candidates for the presidency; for the direct election of United States Senators by the people; and we urge on the States the policy of the short ballot, with responsibility to the people secured by the initiative, referendum and recall.

...

#### NATION AND STATE

Up to the limit of the Consitution, and later by amendment of the Constitution, it found necessary, we advocate bringing under effective national jurisdiction those problems which have expanded beyond reach of the individual States.

It is as grotesque as it is intolerable that the several States should by unequal laws in matter of common concern become competing commercial agencies, barter the lives of their children, the health of their women and the safety and well being of their working people for the benefit of their financial interests.

The extreme insistence on States' rights by the Democratic party in the Baltimore platform demonstrates anew its inability to understand the world into which it has survived or to administer the affairs of a union of States which have in all essential respects become one people.

#### EQUAL SUFFRAGE

The Progressive party, believing that no people can justly claim to be a true democracy which denies political rights on account of sex, pledges itself to the task of securing equal suffrage to men and women alike.

#### CORRUPT PRACTICES

We pledge our party to legislation that will compel strict limitation of all campaign contributions and expenditures, and detailed publicity of both before as well as after primaries and elections.

#### PUBLICITY AND PUBLIC SERVICE

We pledge our party to legislation compelling the registration of lobbyists; publicity of committee hearings except on foreign affairs, and recording of all votes in committee; and forbidding federal

appointees from holding office in State or National political organizations, or taking part as officers or delegates in political conventions for the nomination of elective State or National officials.

#### THE COURTS

The Progressive party demands such restriction of the power of the courts as shall leave to the people the ultimate authority to determine fundamental questions of social welfare and public policy. To secure this end, it pledges itself to provide:

1. That when an Act, passed under the police power of the State, is held unconstitutional under the State Constitution, by the courts, the people, after an ample interval for deliberation, shall have an opportunity to vote on the question whether they desire the Act to become law, notwithstanding such decision.
2. That every decision of the highest appellate court of a State declaring an Act of the Legislature unconstitutional on the ground of its violation of the Federal Constitution shall be subject to the same review by the Supreme Court of the United States as is now accorded to decisions sustaining such legislation.

...

#### SOCIAL AND INDUSTRIAL JUSTICE

The supreme duty of the Nation is the conservation of human resources through an enlightened measure of social and industrial justice. We pledge ourselves to work unceasingly in State and Nation for:

Effective legislation looking to the prevention of industrial accidents, occupational diseases, overwork, involuntary unemployment, and other injurious effects incident to modern industry;

The fixing of minimum safety and health standards for the various occupations, and the exercise of the public authority of State and Nation, including the Federal Control over interstate commerce, and the taxing power, to maintain such standards;

The prohibition of child labor;

Minimum wage standards for working women, to provide a "living wage" in all industrial occupations;

The general prohibition of night work for women and the establishment of an eight hour day for women and young persons;

One day's rest in seven for all wage workers;

The eight hour day in continuous twenty-four-hour industries;

The abolition of the convict contract labor system; substituting a system of prison production for governmental consumption only; and the application of prisoners' earnings to the support of their dependent families;

Publicity as to wages, hours and conditions of labor; full reports upon industrial accidents and diseases, and the opening to public inspection of all tallies, weights, measures and check systems on labor products;

Standards of compensation for death by industrial accident and injury and trade disease which will transfer the burden of lost earnings from the families of working people to the industry, and thus to the community;

The protection of home life against the hazards of sickness, irregular employment and old age through the adoption of a system of social insurance adapted to American use;

The development of the creative labor power of America by lifting the last load of illiteracy from American youth and establishing continuation schools for industrial education under public control and encouraging agricultural education and demonstration in rural schools;

The establishment of industrial research laboratories to put the methods and discoveries of science at the service of American producers;

We favor the organization of the workers, men and women, as a means of protecting their interests and of promoting their progress.

...

## HEALTH

We favor the union of all the existing agencies of the Federal Government dealing with the public health into a single national health service without discrimination against or for any one set of therapeutic methods, school of medicine, or school of healing with such additional powers as may be necessary to enable it to perform efficiently such duties in the protection of the public from preventable diseases as may be properly undertaken by the Federal authorities, including the executing of existing laws regarding pure food, quarantine and cognate subjects, the promotion of vital statistics and the extension of the registration area of such statistics, and co-operation with the health activities of the various States and cities of the Nation.

## BUSINESS

We believe that true popular government, justice and prosperity go hand in hand, and, so believing, it is our purpose to secure that large measure of general prosperity which is the fruit of legitimate and honest business, fostered by equal justice and by sound progressive laws.

We demand that the test of true prosperity shall be the benefits conferred thereby on all the citizens, not confined to individuals or classes, and that the test of corporate efficiency shall be the ability better to serve the public; that those who profit by control of business affairs shall justify that profit and that control by sharing with the public the fruits thereof.

We therefore demand a strong National regulation of inter-State corporations. The corporation is an essential part of modern business. The concentration of modern business, in some degree, is both inevitable and necessary for national and international business efficiency. But the existing concentration of vast wealth under a corporate system, unguarded and uncontrolled by the Nation, has placed in the hands of a few men enormous, secret, irresponsible power over

the daily life of the citizen—a power insufferable in a free Government and certain of abuse.

This power has been abused, in monopoly of National resources, in stock watering, in unfair competition and unfair privileges, and finally in sinister influences on the public agencies of State and Nation. We do not fear commercial power, but we insist that it shall be exercised openly, under publicity, supervision and regulation of the most efficient sort, which will preserve its good while eradicating and preventing its ill.

To that end we urge the establishment of a strong Federal administrative commission of high standing, which shall maintain permanent active supervision over industrial corporations engaged in inter-State commerce, or such of them as are of public importance, doing for them what the Government now does for the National banks, and what is now done for the railroads by the Inter-State Commerce Commission.

Such a commission must enforce the complete publicity of those corporation transactions which are of public interest; must attack unfair competition, false capitalization and special privilege, and by continuous trained watchfulness guard and keep open equally all the highways of American commerce.

Thus the business man will have certain knowledge of the law, and will be able to conduct his business easily in conformity therewith; the investor will find security for his capital; dividends will be rendered more certain, and the savings of the people will be drawn naturally and safely into the channels of trade.

Under such a system of constructive regulation, legitimate business, freed from confusion, uncertainty and fruitless litigation, will develop normally in response to the energy and enterprise of the American business man.

We favor strengthening the Sherman Law by prohibiting agreement to divide territory or limit output; refusing to sell to customers who buy from business rivals; to sell below cost in certain areas while maintaining higher prices in other places: using the power of

transportation to aid or injure special business concerns; and other unfair trade practices.

...

### Questions

1. What reforms does the platform propose to improve the functioning of American democracy?
2. How does the platform seem to define economic freedom?

## CHAPTER 19

# Safe for Democracy: The United States and World War I, 1916–1920

### 120. Woodrow Wilson, A World "Safe for Democracy" (1917)

*Source: 65th Congress, 1st Session, Senate Document No. 5.*

More than any other individual in the early twentieth century, President Woodrow Wilson articulated a new vision of America's relationship to the rest of the world. His foreign policy, called by historians "liberal internationalism," rested on the conviction that economic and political progress went hand in hand, and that it was the job of the United States to promote both free markets and political democracy. He came to see World War I as a great opportunity to promote these goals.

Although Wilson declared American neutrality when the war began in Europe in 1914 and ran for reelection in 1916 pledging to keep the United States out of the war, Germany's resumption of unrestricted submarine warfare early in 1917, including the targeting of American ships transporting goods to England, convinced Wilson that the United States must enter the war. On April 2, 1917, he called on Congress for a declaration of war against Germany. His speech promised that victory would lead to a new world order based on "peace and justice" among the "free and

## DOCUMENT 22.3

### ***Laws Affecting Women and Children in the Suffrage and Non-suffrage States***

#### ***Alabama***

Until 1915 Alabama was one of the most backward states in regard to protective legislation for women and children. A great advance was made in the child labor law passed in the session of 1915. The chief provisions of the Alabama laws are as follows:

No child under 13 shall be permitted to work in any gainful employment except domestic service or agriculture. (After Sept. 1, 1916, this age limit is raised to 14.) Provided, that boys over 12 may be employed out of school hours in offices or mercantile establishments in towns and cities of less than 25,000 population. No person under 18 shall be employed as messenger in any city of 25,000 or over in the distribution of goods or messages, between 9 P.M. and 5 A.M.; or in cities of less than 25,000 population between 10 P.M. and 5 A.M., and no person under 21 shall be employed in any place where intoxicating liquors are manufactured, packed, or sold.

No child under 16 shall be employed about dangerous machinery or on railroads or vessels, or among dangerous acids or poisonous dyes, or gases, nor on scaffolding, nor in building trades, nor in any tunnel or mine, coal breaker, coke oven, or quarry, nor in manufacturing or packing tobacco, nor in any concert hall, or theater stage, or other exhibition or show.

No child under 16 shall be employed in any mill, factory, or manufacturing establishment for more than six days, or 60 hours a week, or 11 hours a day; nor between 6 P.M. and 6 A.M.

No child between 16 and 18 shall be detained in any mill, factory, or manufacturing establishment for more than eight hours in any one night. No woman, or boy under 16, shall be employed in or about any mine.

No child under 16 shall be employed in any factory, mill, or mercantile establishment, unless such child attend school eight weeks in each year of employment, six weeks of which shall be consecutive.

No child under 16 shall be employed unless he first present an employment certificate issued by the school authorities. Such certificates must contain proof of the age of the child and that he has attended school for at least 60 days in the preceding year. Schools must be provided in the vicinity of factories employing children.

Factories must be inspected without previous notice at least four times a year. No boy under 12, nor girl under 18, in any city of 25,000 or over, shall sell newspapers or engage in any street trade. Provided, that boys over 10 may distribute newspapers on routes. No boy under 16 shall engage in street trading between 8 P.M. and 5 A.M., nor unless he wear a badge issued by the school authorities.

Seats must be provided in every store or shop where girls or women are employed and their use permitted to such employees when not actively engaged in work.

After October 1, 1917, school attendance will be compulsory on all children between 8 and 15 for 80 days in each school year, unless the child shall have completed seven grades, or unless the services of the child are necessary for its own support or for the support of a widowed mother or disabled father.

*Source: From Laws Affecting Women and Children in the Suffrage and Non-suffrage States, 2nd ed. (New York: National Woman Suffrage Publishing Co., 1917).*

## DOCUMENT 22.6

### **Sixteenth Amendment**

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.

## DOCUMENT 22.7

### **Seventeenth Amendment**

The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Berenson/Tallevi  
JS32

Read & annotate

**ESPIONAGE AND SEDITION ACTS** In June 1917 Congress passed the Espionage Act, and in May 1918 it passed the Sedition Act. Under the **Espionage and Sedition Acts** a person could be fined up to \$10,000 and sentenced to 20 years in jail for interfering with the war effort or for saying anything disloyal, profane, or abusive about the government or the war effort.

Like the Alien and Sedition Acts of 1798, these laws clearly violated the spirit of the First Amendment. Their passage led to over 2,000 prosecutions for loosely defined antiwar activities; of these, over half resulted in convictions. Newspapers and magazines that opposed the war or criticized any of the Allies lost their mailing privileges. The House of Representatives refused to seat Victor Berger, a socialist congressman from Wisconsin, because of his antiwar views. Columbia University fired a distinguished psychologist because he opposed the war. A colleague who supported the war thereupon resigned in protest, saying, "If we have to suppress everything we don't like to hear, this country is resting on a pretty wobbly basis."

The Espionage and Sedition Acts targeted socialists and labor leaders. Eugene V. Debs was handed a ten-year prison sentence for speaking out against the war and the draft. The anarchist Emma Goldman received a two-year prison sentence and a \$10,000 fine for organizing the No Conscription League. When she left jail, the authorities deported her to Russia. "Big Bill" Haywood and other leaders of the Industrial Workers of the World (IWW) were accused of sabotaging the war effort because they urged workers to strike for better conditions and higher pay. Haywood was sentenced to 30 years in prison. Under such federal pressure, the IWW faded away. ②

**Vocabulary**  
sedition: rebellion  
against one's  
government;  
treason



▲ This Industrial Workers of the World (IWW) sticker encourages workers to join the union.

**MAIN IDEA**

**Analyzing Effects**

② What impact did the Espionage and Sedition Acts have on free speech?

Name:  
Date:

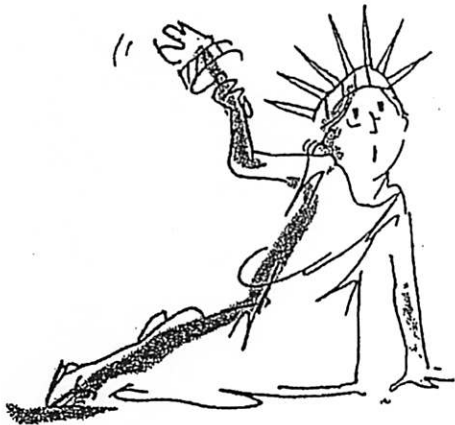
US33  
Tallevi/Berenson

## Free Speech in Wartime Scenarios

*Imagine you are a Senator during WWI. For which of these reasons, if any, would you support the government's suppression of dissent? Mark these situations with a Star (\*). Explain Why!?*

1. A newspaper may disclose information that is useful to the enemy, such as invasion plans or the vulnerabilities of the navy.
  2. Moral condemnation of the war may lead people to refuse induction into the army or even to blow up military installments.
  3. Antiwar dissent may strengthen the enemy's resolve and make it more difficult for the nation to achieve victory or negotiate a just peace.
  4. Persistent criticism of the nation's leaders in wartime may demoralize citizens and weaken their will to fight.
  5. Dissent may persuade people to vote for political candidates who will end the war, even though those in authority are certain this is contrary to the national interest.
  6. Critics may disseminate false information, such as inflated casualty counts, in an effort to mislead the public and turn people against war.
-

## 10. FEAR OVERWHELMS THE BILL OF RIGHTS



Attorney Clarence Darrow, People v. Elkins, 1920

What do you think would happen if you read the Bill of Rights outdoors before a large audience? Would you get blank looks? Signs of interest? Applause?

Almost certainly you would not be kidnapped by the police. That's what happened in 1923 to a famous writer, Upton Sinclair. He began a speech before a large group of striking workers in San Pedro Harbor, California by reading aloud the Bill of Rights. Before he could finish the First Amendment – guaranteeing the right to freedom of speech and assembly – police surrounded him, removing him from the speaker's platform.

As Sinclair later wrote in a letter to the Los Angeles chief of police, the police officers told him that "this Constitution stuff does not go at the Harbor."<sup>13</sup> He was driven from police station to police station in Los Angeles for many hours, without

actually being charged with anything. The Los Angeles police apparently hoped to hold him indefinitely without anyone knowing of his whereabouts.

However, someone tipped off Sinclair's lawyer and he was brought into court after being held in secret for twenty-two hours. He was charged with "discussing, arguing, orating and debating certain thoughts and theories...calculated to cause hatred and contempt of the government of the United States of America, and...detrimental and in opposition to the orderly conduct of affairs of business, affecting the rights of private property and personal liberty...."

In the mind of the local authorities, "personal liberty" and the "rights of private property" went hand in hand. Both appeared threatened when the Bill of Rights was read by someone who sympathized with striking

o A British visitor to the United States in the 1920s wrote: "America is the land of liberty – liberty to keep it all." What of the men who gave us this golden?

o [www.thismatter.org](http://www.thismatter.org) is the place to go to discover more about the Red Scare

o and the fear of immigrants

o and the fear of immigrants

o and the fear of immigrants

o and the fear of immigrants

o and the fear of immigrants

o and the fear of immigrants

workers.

We have learned that the civil liberties guaranteed by the Bill of Rights counted for little when the basic civil and human rights of large parts of the population were denied. We have also seen that after the Civil War, there was an opportunity for the country to change direction. If the Fourteenth Amendment to the Constitution had been interpreted differently by the courts, there may have been a different climate in the country by the following century.

But instead, "Jim Crow segregation" replaced slavery, as the federal government retreated from the promise of Reconstruction. And at the same time, more and more people, both immigrants and citizens, experienced the kind of government tyranny that the Founders had tried to prevent. During a time of fear, not unlike the climate surrounding today's "war on terrorism," people were targeted solely because of their ideas and political beliefs.

One hundred years ago, "anarchists" were believed responsible for many violent acts, including the planting of dozens of bombs in public places. Anarchists, who were mostly immigrants from

Europe, maintained that in a just world there would be no government, but people would govern themselves, hold property in common and work for the common good.

When an American-born anarchist assassinated President William McKinley in 1901, Congress passed laws to keep anarchists out of the country and to deport those who were here already – even if they were totally law-abiding and did not advocate violence for political ends. Under these laws, naturalized citizens (those who were not born here) could be deprived of citizenship if it could be shown they were, or had once been, anarchists.

Anarchists were not the only people to be treated as dangerous subversives. Any "political radical" who questioned the American

economic system, or helped organize trade unions so workers could demand better pay and conditions, was at risk. Called "communists" or "Reds" because of the red flags they carried, they faced mob violence and government raids. Public fears associated with the first "Red Scare" intensified when, in 1917, there was a successful revolution in Russia, which became the Soviet Union.

This "Bolshevik" or communist revolution occurred shortly after the United States entered the First World War. The war was not popular with the American people, and there were large anti-war demonstrations around the country. The government claimed that communists were stirring up anti-war sentiment.

In June 1917, Congress passed an Espionage Act. It



provided for a \$10,000 fine and up to twenty years in prison for disloyal utterances attempts to obstruct military recruitment. The next year, Congress passed a Sedition Act. It applied the same penalties to "uttering, printing, writing, or publishing" language that was seen as disloyal and which was intended "to cause contempt" towards the "government of the United States, or the Constitution, or the flag." Over 2,000 persons were prosecuted under these acts.

State legislatures and local towns also passed laws barring "seditious expression." There were tens of thousands of prosecutions for distributing literature on the streets, for holding public meetings and for displaying a red flag. So extreme was the fear of dissent and what were called "foreign ideas" that teachers were screened for "loyalty" and several states banned foreign languages in schools.

The attack on dissenting ideas did not end with the end of the war in 1918. In 1919, there was an economic slump and widespread unemployment among returning war veterans. The result was nearly 4,000 major strikes involving four million workers, feeding fears

that society was coming apart, as it had in Russia.

These fears were fanned by the media, especially after bombs went off in eight cities in June 1919. One exploded in the Massachusetts legislature. In September 1919, when the Boston police went on strike for higher pay, the press became nearly hysterical. It depicted the events as "a Bolshevik nightmare" with the city under the control of subversives. In the words of the September 12<sup>th</sup> *New York Times*, the strike provided "a long look at the fires of anarchy and crime that smolder asleep under civilization."

To inflame fears further, white mobs attacked African Americans in twenty-two cities across the country between April and October 1919. State and local authorities claimed to be powerless in the face of these race riots, which left seventy-eight people dead. But they were prepared to arrest those African Americans who defended themselves.

The government seemed less concerned with the actual violence directed against African Americans and trade unionists, than with the imagined nightmare of a violent attack against the established

order. As organizations like the Ku Klux Klan mobilized to "save" American values from dangerous immigrants and radicals, the U.S. Justice Department, under Attorney General A. Mitchell Palmer, ordered raids on homes, meeting places, pool halls and other public places in thirty-three American cities.

The "Palmer raids" of January 1920 resulted in as many as 10,000 arrests of suspected "radicals." Most were made without warrants or probable cause of wrongdoing. Nearly a thousand immigrants were deported without any kind of a fair hearing. Many people agreed with the Massachusetts Secretary of State who said if he could, he would take those who were arrested "out in the yard every morning and shoot them, and the next day would have a trial to see whether they were guilty."<sup>14</sup>

The attack on the rights of



some led to the loss of rights for all. Everyone had to think the same way – or else. As one British journalist put it, “America is the land of liberty – liberty to keep in step.”<sup>15</sup>

Against this background, it is easy to see how Upton Sinclair could get arrested for reading the Bill of Rights. But the news was not all bad. The Palmer Raids led to the creation of an organization to challenge violations of rights, and ensure that “liberty” could have its day in court. In 1920, the American Civil Liberties Union (ACLU) was formed by private individuals to be an enforcement mechanism for the Bill of Rights.

In the same year, after more than seventy years of organized struggle, women finally won the vote with the ratification of the Nineteenth Amendment. Their importance in the labor force during the First World War had made it politically impossible to continue to deny them suffrage.

The U.S. Supreme Court was not yet prepared to uphold the First Amendment in the cases it heard involving dissenting ideas. But in this period the court at last took steps to define when speech and ideas *should* be protected, not just from interference by the federal

AUGUST 24, 1927.

TWO CENTS

## PARIS MOBS LOOT SHOPS, BATTLE POLICE, LONDON RADICALS IN NIGHT RIOTING AS SACCO DEMONSTRATIONS GO ON ABROAD

government, but also from state and local repression.

During the 1920s, the Sacco and Vanzetti case offered a unique opportunity for public education. In May 1920, Nicola Sacco and Bartholomeo Vanzetti, who were Italian immigrant anarchists, were arrested and charged with the robbery and murder of a factory paymaster and guard in Braintree, Massachusetts.

The enormous world-wide publicity given their case focused international attention on America's fear of foreigners and radical ideas, and on possible violations of their due process rights. On the day of their execution, August 23, 1927, *The New York Times* devoted five full pages to the event, and newspapers in several countries gave it front-page headlines. Their deaths in a Massachusetts electric chair sparked huge and angry demonstrations in London, Paris, Geneva and other cities in Europe, South America, Africa and Australia, and the streets of Boston were

besieged. Writers and musicians made sure that Sacco and Vanzetti would not be forgotten.

In 1925, the Scopes “monkey trial” in Tennessee got many people thinking for the first time about the importance of the First Amendment and the free exchange of ideas. Nearly a thousand people crammed into a Tennessee courtroom to witness this test of a law passed by the Tennessee legislature, which made it unlawful to teach in public schools “any theory that denies the story of divine creation of man as taught in the Bible.” Attorney Clarence Darrow defended the young biology teacher, John Scopes, who taught evolution in the classroom, while William Jennings Bryan, a renowned orator and politician, spoke in defense of the new law.

Scopes lost, and it would be decades before the U.S. Supreme Court would rule in cases involving religion and the public schools. But the Bill of Rights was stirring into life.

30

## Atmosphere in the 1920s

	<b>Red Scare/ Palmer Raids</b>	<b>Sacco &amp; Vanzetti</b>	<b>Rise of the Ku Klux Klan</b>	<b>Immigration Laws</b>
<b>Details of the event:</b> <ul style="list-style-type: none"> <li>• Major players and groups involved</li> <li>• Significant dates</li> <li>• Region or area where event took place</li> </ul>				
<b>What does each event illustrate about America during the 1920s?</b>				

## A. MITCHELL PALMER

## FROM The Case against the Reds (1920)

*After the outbreak of strikes and riots in 1919, Attorney General A. Mitchell Palmer organized a carefully coordinated series of raids against Communists and anarchists on January 3, 1920. He was a Quaker attorney from Pennsylvania who had served three terms in Congress. Driven by hatred of foreign radicals and a desire to gain the Democratic presidential nomination in 1920, he often acted on his own without informing or consulting President Wilson. In the article below, he sought to counter the many critics of the "Palmer raids."*

From A. Mitchell Palmer, "The Case against the Reds," *The Forum* 63 (February 1920): 63-75.

**L**ike a prairie-fire, the blaze of revolution was sweeping over every American institution of law and order a year ago. It was eating its way into the homes of the American workman, its sharp tongues of revolutionary heat were licking into the altars of the churches, leaping into the belfry of the school bell, crawling into the sacred corners of American homes, seeking to replace marriage vows with libertine laws, burning up the foundations of society.

Robbery, not war, is the ideal of communism. This has been demonstrated in Russia, Germany, and in America. As a foe, the anarchist is fearless in his own life, for his creed is a fanaticism that admits no respect for any other creed. Obviously it is the creed of any criminal mind, which reasons always from motives impossible to clean thought. Crime is the degenerate factor in society.

Upon these two basic certainties, first that the "Reds" were criminal aliens, and secondly that the American Government must prevent crime, it was decided that there could be no nice distinctions drawn between the theoretical ideals of the radicals and their actual violations of our national laws. An assassin may have brilliant intellectuality, he may be able to excuse his murder or robbery with fine oratory, but any theory which excuses

crime is not wanted in America. This is no place for the criminal to flourish, nor will he do so, so long as the rights of common citizenship can be exerted to prevent him. . . .

By stealing, murder and lies, Bolshevism has looted Russia not only of its material strength, but of its moral force. A small clique of outcasts from the East Side of New York has attempted this, with what success we all know. Because a disreputable alien—Leon Bronstein, the man who now calls himself Trotsky—can inaugurate a reign of terror from his throne room in the Kremlin; because this lowest of all types known to New York can sleep in the Czar's bed, while hundreds of thousands in Russia are without food or shelter, should Americans be swayed by such doctrines? . . .

My information showed that communism in this country was an organization of thousands of aliens, who were direct allies of Trotsky. Alien of the same misshapen cast of mind and indecencies of character, and it showed that they were making the same glittering promises of lawlessness, of criminal autocracy to Americans, that they had made to the Russian peasants. How the Department of Justice discovered upwards of 60,000 of these organized agitators of the Trotsky doctrine in the United States, is the confidential information

tion upon which the Government is now sweeping the nation clean of such alien filth. . . .

One of the chief incentives for the present activity of the Department of Justice against the "Reds" has been the hope that American citizens will, themselves, become voluntary agents for us, in a vast organization for mutual defense against the sinister agitation of men and women aliens, who appear to be either in the pay or under the spell of Trotzky and Lenine [sic]<sup>1</sup> . . . .

The whole purpose of communism appears to be a mass formation of the criminals of the world to overthrow the decencies of private life, to usurp property that they have not earned, to disrupt the present order of life regardless of health, sex, or religious rights. By a literature that promises the wildest dreams of such low aspirations, that can occur to only the criminal minds, communism distorts our social law. . . .

These are the revolutionary tenets of Trotzky and the Communist Internationale. Their manifesto further embraces the various organizations in this country of men and women obsessed with discontent, having disorganized relations to American society. These include the I. W. W.'s, the most radical socialists, the misguided anarchists,

the agitators who oppose the limitations of unionism, the moral perverts and the hysterical neurasthenic women who abound in communism. The phraseology of their manifesto is practically the same wording as was used by the Bolsheviks for their International Communist Congress.

. . . The Department of Justice will pursue the attack of these "Reds" upon the Government of the United States with vigilance, and no alien, advocating the overthrow of existing law and order in this country, shall escape arrest and prompt deportation.

It is my belief that while they have stirred discontent in our midst, while they have caused irritating strikes, and while they have infected our social ideas with the disease of their own minds and their unclean morals, we can get rid of them! And not until we have done so shall we have removed the menace of Bolshevism for good.

## REVIEW QUESTIONS

1. What crimes did Palmer accuse the "Reds" of committing?
2. How did Palmer address the legal rights of aliens?
3. What would be the public response to such a statement today?

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<sup>1</sup> Editorial insertion.

## The Sacco-Vanzetti Case (1927)

*The most controversial case associated with the Red Scare of the 1920s involved two Italian immigrants, Nicola Sacco and Bartolomeo Vanzetti. In 1920 they were charged with murdering a guard and a paymaster at a shoe company in South Braintree, Massachusetts. Both had guns when they were arrested and both told lies about their activities. That they were also aliens, atheists, anarchists, and conscientious objectors during the war made the circumstantial evidence against them seem even more damning. Convicted and sentenced to death, they appealed their convictions for years. Supporters argued that they were victims of the communist hysteria fomented by Attorney General Palmer and the prejudices of the trial judge, Webster Thayer. In August 1927, having exhausted their appeals, Sacco and Vanzetti were executed. Vanzetti's defiant last words to the judge are extracted below.*

*From The Sacco-Vanzetti Case: Transcript of the Record of the Trial . . . and Subsequent Proceedings, 1920-1927 (5 vols.; New York: Henry Holt Co., 1928-29), pp. 4898-99, 4904.*

**Y**ou see, it is seven years that we are in jail. What we have suffered during these seven years no human tongue can say; and yet you see me before you, not trembling, you see me looking in your eyes straight, not blushing nor changing color, not ashamed or in fear.

Eugene Debs<sup>1</sup> say that not even a dog—something like that—not even a dog that kill chickens would have been found guilty by an American jury with the evidence that the Commonwealth<sup>2</sup> have produced against us. I say that not even a leprous dog would have his appeal refused two times by the Supreme Court of Massachusetts—not even a leprous dog. . . .

We have proved that there could not have been another judge on the face of the earth more prejudiced and more cruel than you<sup>3</sup> have been against us. We have proven that. Still they refuse the new trial. We know, and you know in your heart, that you have been against us from the very beginning, before you see us. Before you see us you already knew that we were radicals, that we were underdogs, that we were the enemy of the institution that you can believe in good faith in their goodness—I don't want to condemn that—and that it was easy on the time of the first trial to get a verdict of guiltiness.

We know that you have spoke yourself and have spoke your hostility against us, and your despicement against us with friends of yours on the train, at the University Club of Boston, on the Golf Club of Worcester, Massachusetts. I am sure that if the people who know all what you say against us would have the civil courage to take the stand, maybe your Honor—I am sorry to say this because you are an old man, and I have an old father—but maybe you would be beside us in good justice at this time. . . .

This is what I say: I would not wish to a dog or to a snake to the most low and unfortunate creature of the earth—I would not wish to any of them what I have had to suffer for things that I am not guilty of. I am suffering because I am a radical and indeed I am a radical; I have suffered because I was an Italian, and indeed I am an Italian; I have suffered more for my family and for my beloved than for myself; but I am so convinced to be right that if you could execute me two times, and if I could be reborn two other times, I would live again to do what I have done already.

### REVIEW QUESTIONS

1. Why did Vanzetti believe he was found guilty?
2. According to Vanzetti, what injustices did the judicial system harbor?
3. How do you think Attorney General Palmer would have responded to Vanzetti's remarks?

<sup>1</sup> Socialist party leader.

<sup>2</sup> Massachusetts.

<sup>3</sup> Judge Webster Thayer.

## HIRAM W. EVANS

### FROM The Klan's Fight for Americanism (1926)

*The backlash against "alien" groups "infesting" American life after World War I assumed its most virulent form in a revival of the Ku Klux Klan. The organization had first emerged in the rural South after the Civil War, seeking to intimidate blacks from voting or holding office, and had pretty much died out by 1900. The*

*zealous patriotism fostered by American intervention in World War I helped revive the Klan. In its new form it was more of an urban than a rural phenomenon. It adopted a broader agenda than the original organization, and its membership grew across the nation. By 1926 it boasted over 3 million members. Klan intolerance now went beyond blacks to include Jews, Catholics, Communists, and labor unionists. Texas dentist Hiram Evans assumed leadership of the organization in 1926. In this speech he reveals that the Klan was fundamentally a protest against all of the ills associated with modern culture.*

From Hiram W. Evans, "The Klan's Fight for Americanism," *North American Review* 223 (March 1926):38-39.

... The Klan, therefore, has now come to speak for the great mass of Americans of the old pioneer stock. We believe that it does fairly and faithfully represent them, and our proof lies in their support. To understand the Klan, then, it is necessary to understand the character and present mind of the mass of old-stock Americans. The mass, it must be remembered, as distinguished from the intellectually mongrelized "Liberals."

These are, in the first place, a blend of various peoples of the so-called Nordic race, the race which, with all its faults, has given the world almost the whole of modern civilization. The Klan does not try to represent any people but these...

These Nordic Americans for the last generation have found themselves increasingly uncomfortable, and finally deeply distressed. There appeared first confusion in thought and opinion, a groping and hesitancy about national affairs and private life alike, in sharp contrast to the clear, straightforward purposes of our earlier years. There was futility in religion, too, which was in many ways even more distressing. Presently we began to find that we were dealing with strange ideas; policies that always sounded well but somehow always made us still more uncomfortable.

Finally, came the moral breakdown that has been going on for two decades. One by one all our traditional moral standards went by the boards or were so disregarded that they ceased to be binding. The sacredness of our Sabbath, of our

homes, of chastity, and finally even of our right to teach our own children in our own schools fundamental facts and truths were torn away from us. Those who maintained the old standards did so only in the face of constant ridicule. . . .

The old-stock Americans are learning, however. They have begun to arm themselves for this new type of warfare. Most important, they have broken away from the fetters of the false ideals and philanthropy which put aliens ahead of their own children and their own race. . . .

One more point about the present attitude of the old-stock American: he has revived and increased his long-standing distrust of the Roman Catholic Church. It is for this that the native Americans, and the Klan as their leader, are most often denounced as intolerant and prejudiced. . . .

The Ku Klux Klan, in short, is an organization which gives expression, direction and purpose to the most vital instincts, hopes, and resentments of the old-stock Americans, provides them with leadership, and is enlisting and preparing them for militant, constructive action toward fulfilling their racial and national destiny. . . . The Klan literally is once more the embattled American farmer and artisan, coordinated into a disciplined and growing army, and launched upon a definite crusade for Americanism! . . .

Thus the Klan goes back to the American racial instincts, and to the common sense which is their first product, as the basis of its beliefs and methods. . . .

There are three of these great racial instincts

ital elements in both the historic and the present attempts to build an America which shall fulfill the aspirations and justify the heroism of the men who made the nation. These are the instincts of loyalty to the white race, to the traditions of America, and to the spirit of Protestantism, which has been an essential part of Americanism ever since the days of Roanoke and Plymouth Rock. They are condensed into the Klan slogan: "Native, white, Protestant supremacy."

The Need for Immigration Restriction (1923) 187

### REVIEW QUESTIONS

1. What "evils" did Evans claim were infecting modern American society?
2. According to Evans, what were the implied objectives of the Klan?
3. To what extent do you think the Klan's philosophy was consistent with other American ideals and principles?

## The Need for Immigration Restriction (1923)

*The Red Scare after World War I helped generate pervasive fears of "foreign" radicals streaming into the United States. The postwar depression also sparked fears that a wave of new immigrants would take jobs away from Americans. At the same time, people continued to worry that "alien" peoples from eastern Europe and Asia could not be assimilated into American culture. These concerns took legislative form in the passage of restrictive immigration laws in 1921 and 1924. The 1921 act limited the number of immigrants from any country to 3 percent of that nation's proportion of the American population as of 1910. The 1924 act was even more restrictive. In the following selection, the federal official in charge of immigration policy explains the context for these new laws.*

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From U.S. Department of Labor, *Annual Report of the Commissioner-General of Immigration to the Secretary of Labor* (Washington, D.C., 1923), pp. 3-4.

Even a casual survey of congressional discussions of the immigration problem during the past quarter of a century demonstrates very clearly that while the law makers were deeply concerned with the mental, moral, and physical quality of immigrants, there developed as time went on an even greater concern as to the fundamental racial character of the constantly increasing numbers who came.

The record of alien arrivals year by year had shown a gradual falling off in the immigration of northwest European peoples, representing racial stocks which were common to America even in colonial days, and a rapid and remarkably large

increase in the movement from southern and eastern European countries and Asiatic Turkey. Immigration from the last-named sources reached an annual average of about 750,000 and in some years nearly a million came, and there seems to have been a general belief in Congress that it would increase rather than diminish. At the same time no one seems to have anticipated a revival of the formerly large influx from the "old sources," as the countries of northwest Europe came to be known.

This remarkable change in the sources and racial character of our immigrants led to an almost continuous agitation of the immigration problem

### REVIEW QUESTIONS

1. What did the distinction between "new" and "old" immigrants suggest about the ethnic and religious tensions of the era?
2. Why did support for a literacy test skyrocket during this period?
3. How would members of the Klan have responded to these immigration restrictions?

both in and out of Congress, and there was a steadily growing demand for restriction, particularly of the newer movement from the south and east of Europe. During the greater part of this period of agitation the so-called literacy test for aliens was the favorite weapon of the restrictionists, and its widespread popularity appears to have been based quite largely on a belief, or at least a hope, that it would reduce to some extent the stream of "new" immigration, about one-third of which was illiterate, without seriously interfering with the coming of the older type, among whom illiteracy was at a minimum.

Presidents Cleveland and Taft vetoed immigration bills because they contained a literacy test provision, and President Wilson vetoed two bills largely for the same reason. In 1917, however, Congress passed a general immigration bill which included the literacy provision over the President's veto, and, with certain exceptions, aliens who are unable to read are no longer admitted to the United States. At that time, however, the World War had already had the effect of reducing immigration from Europe to a low level, and our own entry into the conflict a few days before the law in question went into effect practically stopped it altogether. Consequently, the value of the literacy provision as a means of restricting European immigration was never fairly tested under normal conditions.

The Congress, however, seemingly realized that even the comprehensive immigration law of 1917, including the literacy test, would afford only a frail barrier against the promised rush from the war-stricken countries of Europe, and in December, 1920, the House of Representatives, with little opposition, passed a bill to suspend practically all immigration for the time being. The per centum limit plan was substituted by the Senate, however, and the substitute prevailed in Congress, but it failed to become a law at the time because President Wilson withheld executive approval. Nevertheless, favorable action was not long delayed, for at the special session called at the beginning of the present administration the measure was quickly enacted, and, with President Harding's approval,

became a law on May 19, 1921. This law expired by limitation June 30, 1922, but by the act of May 11, 1922, its life was extended to June 30, 1924, and some strengthening amendments were added.

The principal provisions of the per centum limit act, or the "quota," as it is popularly known, are as follows:

The number of aliens of any nationality who may be admitted to the United States in any fiscal year shall not exceed 3 per cent of the number of persons of such nationality who were resident in the United States according to the census of 1910. Monthly quotas are limited to 20 per cent of the annual quota. For the purposes of the act, "nationality" is determined by country of birth.

The law does not apply to the following classes of aliens: Government officials; aliens in transit; aliens visiting the United States as tourists or temporarily for business or pleasure; aliens from countries immigration from which is regulated in accordance with treaties or agreement relating solely to immigration, otherwise China and Japan; aliens from the so-called Asiatic barred zone; aliens who have resided continuously for at least five years in Canada, Newfoundland, Cuba, Mexico, Central or South America, or adjacent islands; aliens under the age of 18 who are children of citizens of the United States.

Certain other classes of aliens who are counted against quotas are admissible after a quota is exhausted. The following are included in this category: Aliens returning from a temporary visit abroad; aliens who are professional actors, artists, lecturers, singers, ministers of any religious denomination, professors for colleges or seminaries, members of any recognized learned profession, or aliens employed as domestic servants.

So far as possible preference is given to the wives and certain near relatives of citizens of the United States, applicants for citizenship and honorably discharged soldiers, eligible to citizenship who served in the United States military or naval forces at any time between April 6, 1917, and November 11, 1918.

Transportation companies are liable to a fine

of \$200 for each alien brought to a United States port in excess of the quota and where such fine is imposed the amount paid for passage must be returned to the rejected alien.

The quota limit law is in addition to and not in substitution for the provisions of the immigration laws.

## FOCUS QUESTIONS

• Who benefited and who suffered in the new consumer society of the 1920s?

• In what ways did the government promote business interests in the 1920s?

• Why did the protection of civil liberties gain importance in the 1920s?

• What were the major flash points between fundamentalism and pluralism in the 1920s?

• What were the causes of the Great Depression, and how effective were the government's responses by 1932?

In May 1920, at the height of the postwar Red Scare, police arrested two Italian immigrants accused of participating in a robbery at a South Braintree, Massachusetts, factory in which a security guard was killed. Nicola Sacco, a shoemaker, and Bartolomeo Vanzetti, an itinerant unskilled laborer, were anarchists who dreamed of a society in which government, churches, and private property had been abolished. They saw violence as an appropriate weapon of class warfare. But very little evidence linked them to this particular crime. One man claimed to have seen Vanzetti at the wheel of the getaway car, but all the other eyewitnesses described the driver quite differently. Disputed tests on one of the six bullets in the dead man's body suggested that it might have been fired from a gun owned by Sacco. Neither fingerprints nor possession of stolen money linked either to the crime. In the atmosphere of anti-radical and anti-immigrant fervor, however, their conviction was a certainty. "I have suffered," Vanzetti wrote from prison, "for things that I am guilty of. I am suffering because I am a radical and indeed I am a radical; I have suffered because I was an Italian, and indeed I am an Italian."

Although their 1921 trial had aroused little public interest outside the Italian-American community, the case of Sacco and Vanzetti attracted international attention during the lengthy appeals that followed. There were mass protests in Europe against their impending execution. In the United States, the movement to save their lives attracted the support of an impressive array of intellectuals, including the novelist John Dos Passos, the poet Edna St. Vincent Millay, and Felix Frankfurter, a professor at Harvard Law School and a future justice of the Supreme Court. In response to the mounting clamor, the governor of Massachusetts appointed a three-member commission to review the case, headed by Abbott Lawrence Lowell, the president of Harvard University (and for many years an official of the Immigration Restriction League). The commission upheld the verdict and death sentences, and on August 23, 1927, Sacco and Vanzetti died in the electric chair. "It is not every prisoner," remarked the journalist Heywood Broun, "who has a president of Harvard throw the switch for him."

The Sacco-Vanzetti case laid bare some of the fault lines beneath the surface of American society during the 1920s. The case, the writer Edmund Wilson commented, "revealed the whole anatomy of American life, with all its classes, professions and points of view and . . . it raised almost every fundamental question of our political and social system." It demonstrated how long the Red Scare extended into the 1920s and how powerfully it undermined basic American freedoms. It reflected the fierce cultural battles that raged in many communities during the decade. To many native-born Americans, the two men symbolized an alien threat to their way of life. To Italian-Americans, including respectable middle-class organizations like the Sons of Italy that raised money for the defense, the

\*In this reading, pay  
attention to how  
Carrie Buck is characterized  
what words, terms, etc are used  
to describe her  
and her "offense"

BUCK v. BELL, 274 U.S. 200 (1927)

Mr. Justice HOLMES delivered the opinion of the Court.

This is a writ of error to review a judgment of the Supreme Court of Appeals of the State of Virginia, affirming a judgment of the Circuit Court of Amherst County, by which the defendant in error, the superintendent of the State Colony for Epileptics and Feeble Minded, was ordered to perform the operation of salpingectomy upon Carrie Buck, the plaintiff in error, for the purpose of making her sterile. 143 Va. 310, 130 S. E. 516. The case comes here upon the contention that the statute authorizing the judgment is void under the Fourteenth Amendment as denying to the plaintiff in error due process of law and the equal protection of the laws.

Carrie Buck is a feeble-minded white woman who was committed to the State Colony above mentioned in due form. She is the daughter of a feeble-minded mother in the same institution, and the mother of an illegitimate feeble-minded child. She was eighteen years old at the time of the trial of her case in the Circuit Court in the latter part of 1924. An Act of Virginia approved March 20, 1924 recites that the health of the patient and the welfare of society may be promoted in certain cases by the sterilization of mental defectives, under careful safeguard, etc.; that the sterilization may be effected in males by vasectomy and in females by salpingectomy, without serious pain or substantial danger to life; that the Commonwealth is supporting in various institutions many defective persons who if now discharged would become a menace but if incapable of procreating might be discharged with safety and become self-supporting with benefit to themselves and to society; and that experience has shown that heredity plays an important part in the transmission of insanity, imbecility, etc. The statute then enacts that whenever the superintendent of certain institutions including the above named State Colony shall be of opinion that it is for the best interest of the patients and of society that an inmate under his care should be sexually sterilized, he may have the operation performed upon any patient afflicted with hereditary forms of insanity, imbecility, etc., on complying with the very careful provisions by which the act protects the patients from possible abuse.

The superintendent first presents a petition to the special board of directors of his hospital or colony, stating the facts and the grounds for his opinion, verified by affidavit. Notice of the petition and of the time and place of the hearing in the institution is to be served upon the inmate, and also upon his guardian, and if there is no guardian the superintendent is to apply to the Circuit Court of the County to appoint one. If the inmate is a minor notice also is to be given to his parents, if any, with a copy of the petition. The board is to see to it that the inmate may attend the hearings if desired by him or his guardian. The evidence is all to be reduced to writing, and after the board has made its order for or against the operation, the superintendent, or the inmate, or his guardian, may appeal to the Circuit Court of the County. The Circuit Court may consider the record of the board and the evidence before it and such other admissible evidence as may be offered, and may affirm, revise, or reverse the order of the board and enter such order as it deems just. Finally any party may apply to the Supreme Court of Appeals, which, if it grants the appeal, is to hear the case upon the record of the trial [274 U.S. 200, 207] in the Circuit Court and may

enter such order as it thinks the Circuit Court should have entered. There can be no doubt that so far as procedure is concerned the rights of the patient are most carefully considered, and as every step in this case was taken in scrupulous compliance with the statute and after months of observation, there is no doubt that in that respect the plaintiff in error has had due process at law.

The attack is not upon the procedure but upon the substantive law. It seems to be contended that in no circumstances could such an order be justified. It certainly is contended that the order cannot be justified upon the existing grounds. The judgment finds the facts that have been recited and that Carrie Buck 'is the probable potential parent of socially inadequate offspring, likewise afflicted, that she may be sexually sterilized without detriment to her general health and that her welfare and that of society will be promoted by her sterilization,' and thereupon makes the order. ... We have seen more than once that the public welfare may call upon the best citizens for their lives. It would be strange if it could not call upon those who already sap the strength of the State for these lesser sacrifices, often not felt to be such by those concerned, in order to prevent our being swamped with incompetence. It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. ... Three generations of imbeciles are enough...

Judgment affirmed.

Mr. Justice BUTLER dissents.

Questions:

1. Who is Buck and what will happen to her as a result of this decision?
2. What is the reasoning in this argument by Justice Holmes?
3. What amendment is the issue in this case?
4. Do you agree with the judgment? Why or why not?
5. Is this a progressive decision? Why or why not?

## Margaret Sanger and the Fight for Birth Control

Advertisers promised that modern electrical appliances would give women more time to spend with their children, and women's popular magazines offered a plethora of articles on how to use this additional time to raise children properly. Birth

**"No woman can call herself free who does not own and control her own body."**

Birth control advocate MARGARET SANGER

**21.13 Margaret Sanger Protests**  
When officials in Boston refused to let Margaret Sanger speak publicly about birth control, she appeared before a crowd with her mouth bandaged to protest their censorship. Her play garnered headlines across the nation, giving the birth control cause a boost.

control advocate and trained nurse Margaret Sanger viewed the mother's plight somewhat differently. Too many children, Sanger argued, ruined women's health and relegated them to the ranks of the poor. In her view providing women with information on safe and reliable contraception was more important than dispensing advice on how to raise children.

In 1916 Sanger opened the nation's first birth control clinic in Brooklyn, New York, where she passed out flyers to advertise the benefits of contraception over illegal and dangerous back-alley abortions. For nine days Sanger dispensed

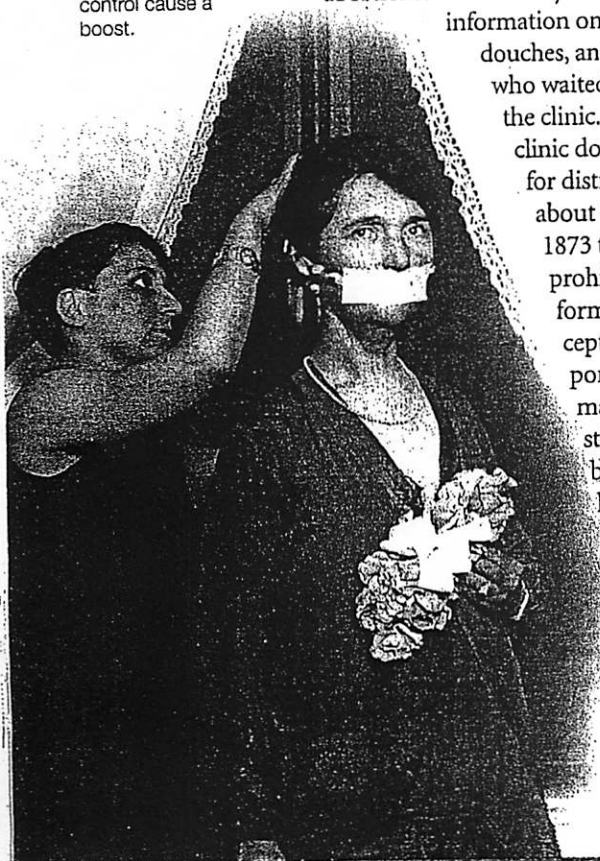
information on diaphragms, condoms, douches, and withdrawal to women who waited in long lines to enter the clinic. The police then shut the clinic down and arrested Sanger for distributing information about birth control. Since 1873 the Comstock Act had prohibited sending information about contraception, abortion, or pornography through the mails, and by 1878 every state except New Mexico banned all means of circulating material about contraception. Sanger served thirty days in jail, one of many unsuccessful attempts to silence her. In 1929, after she spoke on birth control before the Harvard Liberal

Club in Boston, the outraged mayor threatened to revoke the license of any hall that allowed her to speak again. In response Sanger appeared with her mouth bandaged before an audience in Boston's Ford Hall Forum (21.13). Her silent protest won headlines across the nation, helping Sanger publicize her cause even more widely.

By openly discussing birth control, Sanger made public the private contraception practices of middle-class couples. Poor mothers, she said, pleaded for her to share "the secret the rich have." Studies suggested that at least twice in their lifetimes, women living in poverty pulled their shawls over their heads to visit the five-dollar abortionist down the street. Sanger often told the story of Sadie Sachs (whose authenticity was never verified), a woman whom Sanger, as a young nurse, met when she accompanied a physician into the tenements to care for Sadie after she fell ill from a botched self-induced abortion. When Sadie begged the middle-class doctor to give her the information she needed to avoid another pregnancy, he replied, "Tell Jake to sleep on the roof." The next time Sanger saw Sadie, she lay in a coma dying from another abortion. Sanger used the story to personalize the extent of the abortion problem (nearly one million abortions that resulted in fifty thousand female deaths each year) and to dispel the misguided belief that no "decent" woman needed information about contraception.

Rather than counseling women to avoid sex, Sanger asserted that women had as much right as men to enjoy sexual intercourse without fearing for their lives. Contraception would not make women more promiscuous, she predicted. Once freed from the constant strain of childbearing, women would become more interesting spouses by developing their intellectual, political, and cultural interests much as popular advertising encouraged them to do.

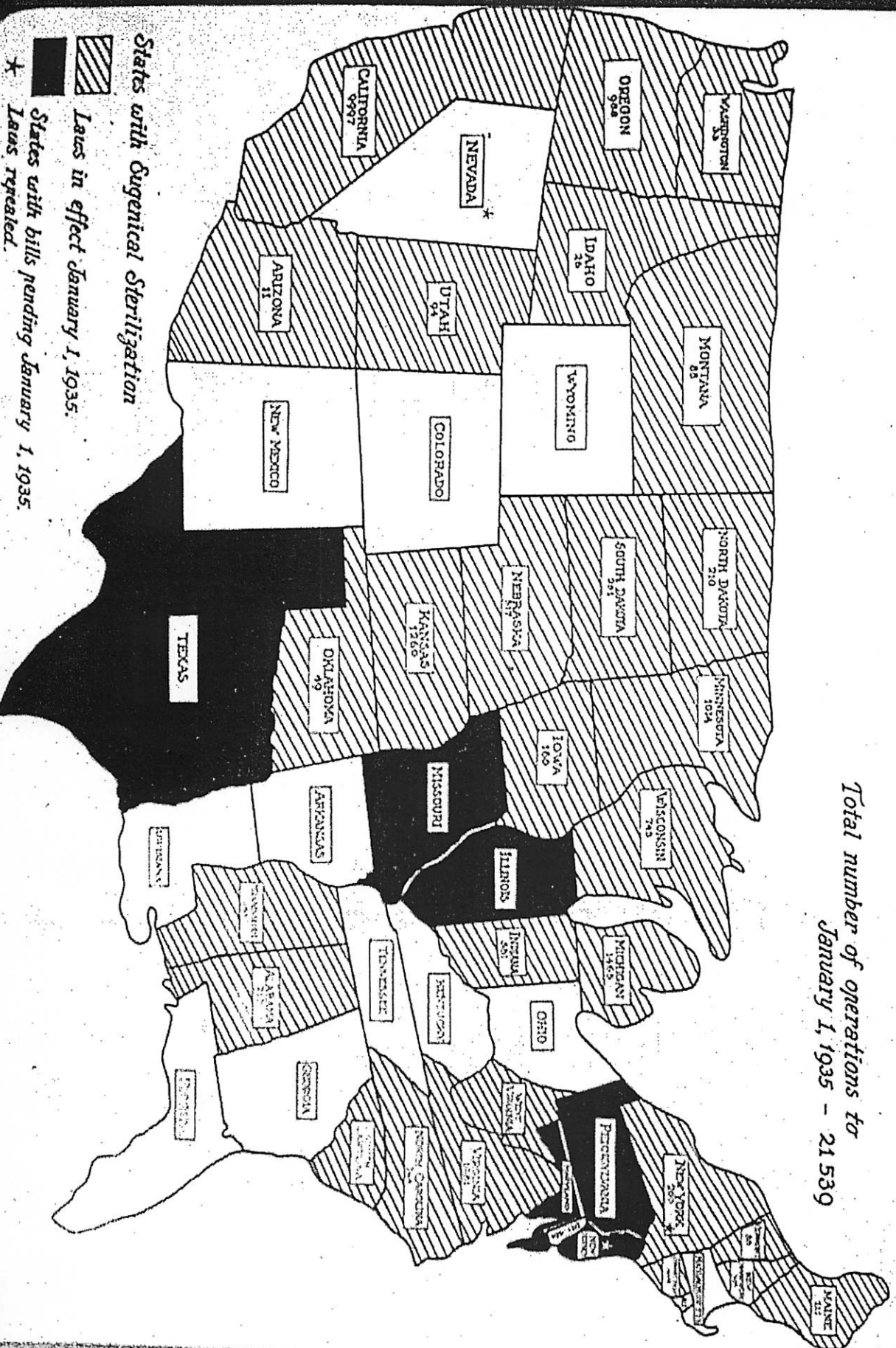
Through her arrests, clinics, and public lectures, Sanger gradually helped change attitudes toward birth control. Although laws censoring information about birth control remained part of the legal code until the 1970s, enforcement became rarer and rarer. By the late 1920s thirty birth control clinics operated nationwide. Eugenists, who wanted to improve the human race by controlling its hereditary qualities, also developed a strong interest in birth control. For Eugenists contraception could prevent those they viewed as "unfit" from reproducing. Under their influence many states authorized compulsory sterilization of the institutionalized mentally handicapped, criminals, and epileptics until the 1960s.



What arguments did Sanger make to support her campaign for legal contraception?

# LEGISLATIVE STATUS OF EUGENICAL STERILIZATION IN THE UNITED STATES AND THE TOTAL NUMBER OF OPERATIONS BY EACH STATE TO JANUARY 1, 1935.

*Total number of operations to  
January 1, 1935 - 21 539*



*Freedom of Movement Executive Order 9066: Resulting  
in the Relocation of Japanese (1942)*

**W**HEREAS THE SUCCESSFUL PROSECUTION OF THE WAR REQUIRES EVERY possible protection against espionage and against sabotage to national-defense material, national-defense premises, and national-defense utilities, . . . I hereby authorize and direct the Secretary of War, and the Military Commanders whom he may from time to time designate, whenever he or any designated Commander deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion. The Secretary of War is hereby authorized to provide for residents of any such area who are excluded therefrom, such transportation, food, shelter, and other accommodations as may be necessary, in the judgment of the Secretary of War or the said Military Commander, and until other arrangements are made, to accomplish the purpose of this order. The designation of military areas in any region or locality shall supersede designations of prohibited and restricted areas by the Attorney General under the Proclamations of December 7 and 8, 1941, and shall supersede the responsibility and authority of the Attorney General under the said Proclamations in respect of such prohibited and restricted areas.

Franklin D. Roosevelt  
The White House,  
February 19, 1942.

# Overview Essay

## JAPANESE-AMERICANS

### The Internment of Japanese-Americans During World War II

"I only ask that I be given a chance to fight to preserve the principles that I have been brought up on and which I will not sacrifice at any cost. Please give me a chance to serve in your armed forces." So wrote Henry Ebihara to Secretary of War Henry Stimson as the United States entered World War II. Eight thousand Japanese-Americans did eventually serve—with distinction—in the United States armed forces during World War II, despite the fact that over 110,000 were forced by the American government to relocate to remote and dismal internment camps. The Japanese-Americans living on the West Coast were declared a "security threat" by the government, and many Americans supported the federal government's decision to isolate those who seemed to pose such a threat. Fear, racism, and a desire for revenge after the bombing of Pearl Harbor—all fostered public support for a government policy that violated the civil rights of other American citizens.

The census of 1940 recorded 126,947 people of Japanese ancestry living in the United States, nearly two-thirds of them native-born Americans. Those first-generation Japanese who had emigrated from Japan or Hawaii were known as Issei. Their children were known as Nisei. The majority of these Japanese-Americans lived together in small communities on the West Coast. Here they operated small businesses and vegetable farms, pursuing their dreams just as other Americans did. However, unlike Americans of European ancestry, during World War II Japanese-Americans were to endure unjust treatment at the hands of their government.

### War Hysteria

The attack on Pearl Harbor pitched the government into a quandary. Because the West Coast was believed vulnerable to Japanese attack, military experts worried that Japanese-Americans there might cooperate with the enemy. The public, meanwhile, clamored for the government to take action against the "enemy race" in its midst. Soon after the attack on Pearl Harbor, the Federal Bureau of Investigation (FBI) identified

about 2,100 Japanese-Americans as "dangerous enemy aliens" and arrested them. This did little to calm the fears of residents on the West Coast. Many people considered a Japanese invasion imminent and believed that no one of Japanese heritage could be trusted. On February 19, 1942, President Franklin Roosevelt signed Executive Order No. 9066 authorizing the Secretary of War "to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded."

General John DeWitt, the military commander responsible for executing the order, designated entire regions of California as "military areas" and asked Japanese residents to relocate voluntarily. Complying with the request, about eight thousand Japanese-Americans abandoned their homes and moved to other parts of the country. On March 18 Roosevelt created the War Relocation Authority (WRA) to oversee the orderly evacuation of Japanese-Americans from the designated regions. DeWitt ordered Japanese residents on the West Coast to report to War Relocation Control Centers.

## Overview Essay Continued

### The Duration

By early August 1942, more than 110,000 Japanese-Americans had been forced to leave their homes. Permitted to take only a few possessions with them, many tried to sell their belongings but were forced to abandon what they could not carry or sell.

Japanese-Americans reported to centers to await transfer to internment camps. Patrolled by armed soldiers, the centers were hastily

converted racetracks, stadiums, and fairgrounds. There, the internees slept in horse stalls and under bleachers, sometimes for weeks at a time. Eventually they were moved to internment camps. To reach the camps, the internees were transported on crowded trains on which the shades were drawn so that the passengers would not know their destination.

Less than a year after Pearl Harbor, the government had evacuated most Japanese-Americans to WRA camps. Located in desolate areas and surrounded by barbed wire, the camps consisted of flimsy wooden barracks covered with tar paper. In some places, families occupied one-room "apartments" furnished only with cots and lit by a single light bulb. In others, candles and kerosene lamps provided the only light. The occupants bathed, dined, and laundered their clothes in communal areas; in Puyallup, Washington, one washroom served one hundred families.

Yet despite such conditions, most Japanese-Americans endured their confinement with patience and even tried to aid the war effort by making camouflage nets, painting recruiting posters, and experimenting on the development of artificial rubber for the War Production Board. A few internees brought lawsuits against the government claiming that they had been imprisoned illegally. When these cases reached the Supreme Court, the justices upheld the government's actions.

By the end of 1944, the government had released almost 35,000 Japanese-Americans from internment. But their release depended

on passing a loyalty test that contained such questions as "Will you try to develop such American habits which will cause you to be readily accepted into American social groups?" and "Can you furnish any proof that you have always been loyal to the United States?"

The government began closing the camps early in 1945, once the threat of a Japanese invasion had subsided. Now Japanese-Americans

faced the daunting task of rebuilding their lives. Three years of confinement in internment camps had cost them an estimated total of \$350 million in lost property and income. Many would never fully recover their losses. Akana Inamura, a Japanese-

"We are told and encouraged to relocate again into the world as a stranger in strange communities! . . . Where shall we go?"

American who endured internment, wrote: "The life of most of us Issei is now well spent. We stand in the evening of life where there is no hope. . . . We are told and encouraged to relocate again into the world as a stranger in strange communities! We now have lost all security. WRA urges readjustment, relocating outside. Where shall we go? What shall we do at the twilight of the evening of our lives?"

When the last of the camps closed in 1946, many Japanese-Americans wanted nothing more than to put the whole grim experience behind them. Others, however, as loyal citizens desiring an apology and compensation, launched a long and frustrating campaign against the government.

In 1990, forty-five years later, the United States government finally admitted that it had violated the Constitution by internment Japanese-Americans during World War II and agreed to pay \$20,000 to each one of the sixty thousand surviving internees. "The U.S. must never again allow such a swerve from its principles," commented an article in the *Christian Science Monitor*. "When conflict abroad results in serious violations of liberty at home, the defeat is as serious as any a foreign adversary can deal."

# Korematsu v. United States (1944)

## Vocabulary

**executive order** A regulation or order issued by the President to enforce a treaty or law; it does not require congressional approval but has the force of law.

**curfew** A regulation requiring a certain group to be off the streets and in their homes at a certain time.

## Reviewing the Case

After the Japanese bombing of Pearl Harbor in December 1941, the United States entered the war against the Axis powers—Germany, Italy, and Japan. The attack on Hawaii had made many American leaders and ordinary citizens increasingly fearful about security on the West Coast of the United States. In response to those fears, President Franklin D. Roosevelt issued Executive Order #9066 in February 1942.

The order authorized the creation of military areas in which military authorities had the power to remove or exclude whomever they wished. The first area included the entire West Coast to about 40 miles inland. Based on the executive order, military officials first imposed a curfew on “all persons of Japanese ancestry,” including those born in the United States and those who had become citizens. Later, the military commander ordered all persons of Japanese ancestry to leave their homes and report to assembly centers. From there they were sent to relocation camps farther inland, away from the coast.

The government claimed the curfew and the relocations were necessary to prevent sabotage, spying, or giving help to a possible Japanese invasion force. Disobeying the military orders was made a crime by act of Congress. Several lawsuits were brought to challenge this violation of the civil rights of citizens.

Fred (Toyosaburo) Korematsu was arrested for staying in San Leandro, California, instead of going to a relocation center. Born in California, Korematsu was a defense-plant

worker in his 20's. He had tried to join the Army but could not pass the physical. Rather than going to a center, he posed as Chinese. After being caught and arrested, he was convicted in federal district court of violating the military's “Civilian Exclusion Order.” Conviction carried a maximum fine of \$5,000 or up to one year in prison, or both.

Korematsu appealed the decision, unsuccessfully, to the Ninth Circuit Court of Appeals for California on the grounds that his rights under the Fourth, Fifth, Eighth, and Thirteenth Amendments had been violated. He was sent to a relocation camp in Utah. Korematsu then appealed to the U.S. Supreme Court.

The issue before the Court: Are Executive Order #9066 and the act of Congress enforcing it constitutional uses of the war powers of the President and Congress?

The Supreme Court ruled by a vote of 6–3 to uphold the decision of the lower courts against Korematsu. The Court ruled according to the precedent set a year earlier in *Hirabayashi v. United States*. Kiyoshi Hirabayashi had been convicted of violating the curfew law, which applied only to Japanese Americans. On appeal, the Court had ruled that Hirabayashi's rights had not been violated unconstitutionally because the curfew was within the limits of the war powers. In the interests of national security, the Court said, military authorities could do what they thought was necessary in sensitive areas; Congress had the right to give this power.

The Court's reasoning in both cases can be summed up in the words of Justice Hugo Black's opinion in *Korematsu*:

It should be noted, to begin with, that all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny. . . . Compulsory exclusion of large groups of citizens from their

homes, except under circumstances of direst emergency and peril, is inconsistent with our basic governmental institution. But when under conditions of modern warfare our shores are threatened by hostile forces, the power to protect must be commensurate [equal] with the threatened danger. . . .

The majority opinion stated that the quick judgments necessary during a war served as justification for the action, even though it brought hardships to many loyal people of Japanese descent. Continuing the majority opinion, Black denied that the policy had a racist intent:

Korematsu was not excluded from the Military Area because of hostility to him or his race. He was excluded because we are at war with the Japanese Empire, because the properly constituted military authorities feared an invasion of our West Coast and felt constrained to take proper security measures, because they decided that the military urgency of the situation demanded that all citizens of Japanese ancestry be segregated from the West Coast temporarily, and finally, because Congress, reposing its confidence in this time of war in our military leaders . . . determined that they should have the power to do just this.

The Court at the time did not rule on the constitutional issues and the questions of civil rights involved in these cases, only on the use of the war powers.

The three dissenting justices—Roberts, Murphy, and Jackson—thought that the policy was racist and unconstitutional. Justice Jackson feared that the decision gave the approval of the Constitution to an emergency military policy. The dissenting justices also pointed out that no effort had been made to identify individual Japanese Americans who might be disloyal, as had been done with some Germans and Italians. They claimed the policy violated the civil rights of an entire group of citizens solely on the basis of their ancestry.

As a result of this policy, about 112,000 Japanese Americans were forced to spend the war years behind the barbed wire fences of remote and primitive camps in the West. Many lost pleasant homes and prospering farms and businesses. President Harry Truman officially lifted the order in 1946, after the war was over. In the mid-1980's, more Americans were coming to believe that the incident had been racist to at least some extent. Under pressure, Congress authorized the payment of damages to those who had been held in relocation camps.

**Duck and Cover Video:**

**<http://www.youtube.com/watch?v=-2kdpAGDu8s>**

1. What are the fears people face during the Cold War based on the video? (at least 5 fears)
  
  
  
  
  
  
  
  
  
  
2. Did you find any parts of the video to be inaccurate? Why are they inaccurate?
  
  
  
  
  
  
  
  
  
  
3. Who is this video directed to? How does you know? (refer to 2 specific times)
  
  
  
  
  
  
  
  
  
  
4. Was there any bias in the video? When?
  
  
  
  
  
  
  
  
  
  
5. Why is this video being produced? What are the goals of the video?
  
  
  
  
  
  
  
  
  
  
6. Is this an effective video in achieving its goals? (consider what you have read)
  
  
  
  
  
  
  
  
  
  
7. What does the video say about gender and race in the 1950s?

Thus it is my view that the priority attention of our combined study of disarmament should be upon the subject of inspection and reporting. . . .

Gentlemen, since I have been working on this memorandum to present to this Conference, I have been searching my heart and mind for something that I could say here that could convince everyone of the great sincerity of the United States in approaching this problem of disarmament.

I should address myself for a moment principally to the delegates from the Soviet Union, because our two great countries admittedly possess new and terrible weapons in quantities which do give rise in other parts of the world, or reciprocally, to the fears and dangers of surprise attack.

I propose, therefore, that we take a practical step, that we begin an arrangement, very quickly, as between ourselves—immediately. These steps would include:

To give to each other a complete blueprint of our military establishments, from beginning to end, from one end of our countries to the other; lay out the establishments and provide the blueprints to each other.

Next, to provide within our countries facilities for aerial photography to the other country—we to provide you the facilities within our country, ample facilities for aerial reconnaissance, where you can make all the pictures you choose and take them to your own country to study, you to provide exactly the same facilities for us and we to make these examinations, and by this step to convince the world that we are providing as between ourselves against the possibility of great surprise attack, thus lessening danger and relaxing tension. Likewise we will make more easily attainable a comprehensive and effective system of inspection and disarmament, because what I propose, I assure you, would be but a beginning. . . .

## B. The McCarthy Hysteria

### I. Joseph McCarthy Upholds Guilt by Association (1952)

*Senator Joseph R. McCarthy of Wisconsin, hitherto unknown to fame, rocketed into the headlines in 1950 when he declared in a political speech that there were scores of known communists in the State Department.\* The collapse of Chiang's China and the bloodily indecisive Korean War gave point to his charges, while accelerating the hunt for scapegoats. A few "pinks" and communist sympathizers were exposed and driven out of government. But persons with liberal or nonconformist ideas were indiscriminately branded as communists, with a subsequent loss of reputation and jobs. In McCarthy's view, birds that waddled like ducks, quacked like ducks, and*

<sup>1</sup>Quoted from Senator Joseph McCarthy, *McCarthyism: The Fight for America* (New York: Devin-Adair Company, 1952), pp. 7, 79–80.

\**Webster's Third International Dictionary* (1961) defines McCarthyism as "a political attitude of the mid-twentieth century closely allied to know-nothingism, and characterized chiefly by opposition to elements held to be subversive, and by the use of tactics involving personal attacks on individuals by means of widely publicized indiscriminate allegations, especially on the basis of unsubstantiated charges."

*associated with ducks were presumed to be ducks. Anti-McCarthyites cited the axiom that it was better to let ten guilty men escape than to condemn one innocent man. McCarthy here defends his tactics. How convincing is he?*

One of the safest and most popular sports engaged in today by every politician and office seeker is to "agree with McCarthy's aim of getting rid of Communists in government," but at the same time to "condemn his irresponsible charges and shotgun technique." It is a completely safe position to take. The Communist Party and their camp followers in press and radio do not strike back as long as you merely condemn Communism in general terms. It is only when one adopts an effective method of digging out and exposing the under-cover dangerous, "sacred cow" Communists that all of the venom and smear of the Party is loosed upon him.

I suggest to you, therefore, that when a politician mounts the speaker's rostrum and makes the statement that he "agrees with McCarthy's aims but not his methods," that you ask him what methods he himself has used against Communists. I suggest you ask him to name a single Communist or camp follower that he has forced out of the government by his methods. . . .

*Is not a person presumed innocent until proven guilty?*

Yes.

*Why do you condemn people like Acheson, Jessup, Lattimore, Service, Vincent,\* and others who have never been convicted of any crime?*

The fact that these people have not been convicted of treason or of violating some of our espionage laws is no more a valid argument that they are fit to represent this country in its fight against Communism than the argument that a person who has a reputation of consorting with criminals, hoodlums, gamblers, and kidnappers is fit to act as your baby sitter because he has never been convicted of a crime.

A government job is a privilege, not a right. There is no reason why men who chum with Communists, who refuse to turn their backs upon traitors<sup>†</sup> and who are consistently found at the time and place where disaster strikes America and success comes to international Communism, should be given positions of power in government. . . .

I have not urged that those whom I have named be put in jail. Once they are exposed so the American people know what they are, they can do but little damage. . . .

Strangely enough, those who scream the loudest about what they call guilt by association are the first to endorse innocence by association.

For example, those who object most strongly to my showing Jessup's affinity for Communist causes, the Communist money used to support the publication over which he had control, and his close friendship and defense of a Communist spy [Hiss], also argue Hiss' innocence by association. The argument is that Hiss was

\*Professors Philip C. Jessup and Owen Lattimore were prominent officials or advisers who were allegedly "soft" on communism; John S. Service and John C. Vincent were foreign service officers similarly branded by McCarthy.

<sup>†</sup>After State Department official Alger Hiss was convicted of perjury in connection with Soviet espionage, his friend Secretary of State Acheson loyally but indiscreetly declared, "I do not intend to turn my back [on him]."

innocent because Justices Frankfurter and Reed testified they were friends of his, because Acheson chummed and walked with him each morning, because Hiss was the top planner at the United Nations conference and helped to draft the Yalta agreement.

We are not concerned with GUILT by association because here we are not concerned with convicting any individual of any crime. We are concerned with the question of whether the individual who associates with those who are trying to destroy this nation, should be admitted to the high councils of those planning the policies of this nation: whether they should be given access to top secret material to which even Senators and Congressmen are not given access.

## 2. A Senator Speaks Up (1950)

*The infiltration of a few communists into government was perhaps inevitable, but the embarrassed Truman administration played into the hands of the McCarthyites by its cover-up tactics. In the interests of free debate, the Constitution exempts from libel suits anything that may be said on the floor of Congress. Senator McCarthy clearly abused this privilege. At a time when he was riding high and many Republicans regarded him as a political asset, the tall and gray-haired Republican Margaret Chase Smith of Maine, the only female U.S. senator, courageously spoke out against his excesses.\* (Later McCarthy vindictively invaded Maine in an unsuccessful effort to defeat her for reelection.) Why does she believe that McCarthy's tactics, whatever his aims, are contrary to the Constitution and basically un-American?*

I think that it is high time for the United States Senate and its Members to do some real soul searching, and to weigh out consciences as to the manner in which we are performing our duty to the people of America, and the manner in which we are using or abusing our individual powers and privileges.

I think it is high time that we remembered that we have sworn to uphold and defend the Constitution. I think it is high time that we remembered that the Constitution, as amended, speaks not only of the freedom of speech but also of trial by jury instead of trial by accusation.

Whether it be a criminal prosecution in court or a character prosecution in the Senate, there is little practical distinction when the life of a person has been ruined.

Those of us who shout the loudest about Americanism in making character assassinations are all too frequently those who, by our own words and acts, ignore some of the basic principles of Americanism—

The right to criticize.

The right to hold unpopular beliefs.

The right to protest.

The right of independent thought.

The exercise of these rights should not cost one single American citizen his reputation or his right to a livelihood, nor should he be in danger of losing his reputa-

<sup>2</sup>Congressional Record, 81st Cong., 2d sess. (June 1, 1950), pp. 7894-7895.

\*Senator Smith simultaneously presented "a Declaration of Conscience" signed by six fellow senators.

tion or livelihood merely because he happens to know someone who holds unpopular beliefs. Who of us does not? Otherwise none of us could call our souls own. Otherwise thought control would have set in.

The American people are sick and tired of being afraid to speak their minds lest they be politically smeared as Communists or Fascists by their opponents. Freedom of speech is not what it used to be in America. It has been so abused by some that it is not exercised by others.

The American people are sick and tired of seeing innocent people smeared and guilty people whitewashed. But there have been enough proved cases, such as the *Amerasia* case, the Hiss case, the Coplon case, the Gold case,\* to cause nation-wide distrust and strong suspicion that there may be something to the unproved, sensational accusations. . . .

Today our country is being psychologically divided by the confusion and the suspicions that are bred in the United States Senate to spread like cancerous tentacles of "know nothing, suspect everything" attitudes. . . .

As a United States Senator, I am not proud of the way in which the Senate has been made a publicity platform for irresponsible sensationalism. I am not proud of the reckless abandon in which unproved charges have been hurled from this [Republican] side of the aisle. I am not proud of the obviously staged, undignified countercharges which have been attempted in retaliation from the other [Democratic] side of the aisle.

I do not like the way the Senate has been made a rendezvous for vilification, for selfish political gain at the sacrifice of individual reputations and national unity. I am not proud of the way we smear outsiders from the floor of the Senate and hide behind the cloak of congressional immunity, and still place ourselves beyond criticism on the floor of the Senate.

As an American; I am shocked at the way Republicans and Democrats alike are playing directly into the Communist design of "confuse, divide, and conquer." As an American, I do not want a Democratic administration whitewash or cover-up any more than I want a Republican smear or witch hunt.

As an American, I condemn a Republican Fascist just as much as I condemn a Democratic Communist. I condemn a Democratic Fascist just as much as I condemn a Republican Communist. They are equally dangerous to you and me and to our country. As an American, I want to see our Nation recapture the strength and unity it once had when we fought the enemy instead of ourselves.

### 3. McCarthy Inspires Fear at Harvard (1954)

*Senator McCarthy overplayed his hand, notably in the televised investigation of the army. To millions of viewers he exposed his vindictiveness, arrogance, and intellectual*

\**Amerasia* was a communist-tainted magazine that acquired confidential government documents. Judith Coplon, a Justice Department employee, and Harry Gold, a Philadelphia biochemist, were both convicted in 1950 of spying for the Soviet Union.

<sup>3</sup>Cited in *Congressional Record*, 83d Cong., 2d sess., p. A6909. Reprinted by permission of the Harvard *Crimson*. The letters appeared in the issues of November 24 and 30, 1954. The Richardson letter ended in the *Crimson* with four dots after "crowd"; the five missing lines are published in the *Congressional Record*.

# Red Scare

## Cartoon Analysis Worksheet

Level 1	
Visuals	Words (not all cartoons include words)
<ol style="list-style-type: none"> <li>1. List the objects or people you see in the cartoon.</li> </ol>	<ol style="list-style-type: none"> <li>1. Identify the cartoon caption and/or title.</li>    <li>2. Locate three words or phrases used by the cartoonist to identify objects or people within the cartoon.</li>    <li>3. Record any important dates or numbers that appear in the cartoon.</li> </ol>
Level 2	
Visuals	Words
<ol style="list-style-type: none"> <li>2. Which of the objects on your list are symbols?</li>    <li>3. What do you think each symbol means?</li> </ol>	<ol style="list-style-type: none"> <li>4. Which words or phrases in the cartoon appear to be the most significant? Why do you think so?</li>    <li>5. List adjectives that describe the emotions portrayed in the cartoon.</li> </ol>
Level 3	
<ol style="list-style-type: none"> <li>A. Describe the action taking place in the cartoon.</li>   <li>B. Explain how the words in the cartoon clarify the symbols.</li>   <li>C. Explain the message of the cartoon.</li>   <li>D. What special interest groups would agree/disagree with the cartoon's message? Why?</li> </ol>	

The U.S. National Archives and Records Administration  
 8601 Adelphi Road, College Park, MD 20740-6001 • Telephone: 1-86-NARA-NARA or 1-866-272-6272

# What Rights Should an Accused Person Have?

Police officers try to obtain confessions from suspects. Yet, the Fifth Amendment protects people from self-incrimination—stating facts that will result in their being accused of a crime. The Sixth Amendment gives them the right to an attorney. How do those guaranteed rights come into play when a person is being questioned by police?

## Miranda v. Arizona (1966)

The Facts	The Issue	The Decision
<ul style="list-style-type: none"> <li>Ernesto Miranda, under questioning by police, confessed that he had kidnapped and assaulted a woman.</li> <li>Miranda was convicted in state court of the crimes in part because of the confession.</li> </ul>	Miranda claimed the confession should not be used because police had not warned him of his right to avoid self-incrimination or to have a lawyer present.	A 5:4 majority ruled that the conviction should be thrown out because police had violated Miranda's rights when it obtained the confession.

The majority based its reasoning on "the necessity for procedures which assure" the protection of Fifth Amendment rights. It spelled out those procedures:

"Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney."

That statement is familiar to many Americans from hearing it on television crime dramas. The majority also ruled that people who request a lawyer must be provided with one, even if they are too poor to pay for one themselves.

The decision has had a profound effect on the criminal justice system. Police officers must inform suspects of their rights. Only then can statements made by the suspect be used in a trial.

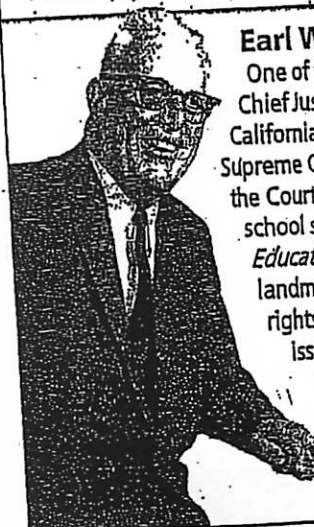
## The Supreme Court and Reform

During the 1960s, the Supreme Court demonstrated a willingness to take the lead on controversial social, religious, and political issues. Led by Chief Justice Earl Warren, the Supreme Court at this time—often called the Warren Court—became the most liberal in American history. Its decisions supported civil rights, civil liberties, voting rights, and personal privacy.

**Congressional Districts and Voters' Rights** In several decisions the Supreme Court ruled in favor of the "one man, one vote" principle. The problem was one of apportionment of seats in state legislatures. During the twentieth century, large numbers of voters moved from rural to urban areas, but many state governments had not changed, or reapportioned, electoral districts to reflect the new conditions. This led to an electoral imbalance. In many states, rural areas had more power and urban areas had less power than their populations actually mandated.

In *Baker v. Carr* (1962), the Supreme Court ruled in favor of reapportionment on the basis of "one man

### HISTORY MAKERS



#### Earl Warren (1891–1974)

One of the country's most influential Chief Justices, Earl Warren was governor of California before being named to head the Supreme Court. As Chief Justice, he guided the Court to a unanimous ruling outlawing school segregation in *Brown v. Board of Education*. The Warren Court issued many landmark rulings in the areas of civil rights, criminal justice, First Amendment issues, and legislative districting.


These decisions led many Americans to call for Warren's removal, though he remained on the Court until retiring in 1969.

one vote." Electoral districts, it said, had to reflect the numbers of people in those districts. In *Reynolds v. Sims* (1964), the Court reaffirmed its decision, adding that any arrangement other than "one man, one vote" violated the equal protection clause of the Fourteenth Amendment.

**Rights of the Accused** The Warren Court also showed a heightened concern for the constitutional rights of accused lawbreakers. In four landmark cases, the Court broadened the individual rights of accused criminals and narrowed those of federal, state, and local government officials. In *Mapp v. Ohio* (1961), the Court ruled that evidence obtained illegally violated the Fourth Amendment and had to be excluded from federal and state trials. In *Gideon v. Wainwright* (1963), the Court decided that all accused criminals had the right to a lawyer whether or not they could pay for one. In *Escobedo v. Illinois* (1964), the Warren Court expanded on *Gideon v. Wainwright* by adding that every accused lawbreaker had to be offered access to a lawyer before questioning, and all evidence obtained from a suspect who had not been informed of his or her right to a lawyer could not be used in court. Finally, in *Miranda v. Arizona* (1966), the Court ruled that an accused criminal had to be informed of his or her Fifth and Sixth Amendment rights before being questioned.

Critics of these decisions argued that the Warren Court had tipped the balance of justice in favor of the rights of accused criminals. Today, many conservative justices remain convinced that the Warren Court had overstepped its jurisdiction. The majority of the members of the Warren Court, however, have countered that the rights of individuals had to be protected, especially when freedom hung in the balance.

**Separation of Church and State** The Warren Court addressed the separation of church and state in the case of *Engle v. Vitale* (1962). The case involved whether or not a public school could require students to recite a state-sanctioned prayer. The Court ruled that school prayer was a violation of the First Amendment and an attempt by a governmental body to promote religion. The decision ignited, and continues to ignite, controversy. For more than 40 years, various religious groups have railed against the decision.

 **Checkpoint** What major court ruling allowed a person accused of a crime to have a lawyer?

SECTION

## 3 Assessment

**Progress Monitoring Online**

For: Self-test with vocabulary practice  
Web Code: nea-1505

### Comprehension

- Terms and People** Explain the relationship of the following terms to social reform.
  - War on Poverty
  - Great Society
  - Medicare
  - Medicaid
- NoteTaking Reading Skill: Identify Details** Use your chart to answer the Section Focus Question: How did Johnson's Great Society programs change life for most Americans?

### Writing About History

- Quick Write: Chart Arguments and Counterarguments** Identify one point of view regarding the use of government funds to support massive social programs. Then, make a chart with two columns. In the first column, list two arguments in favor of that point of view. In the second column, list two arguments against that point of view.

### Critical Thinking

- Make Comparisons** Were there differences in the goals of the New Frontier and the Great Society? Explain.
- Recognize Cause and Effect** How do you think the Immigration and Nationality Act of 1965 changed political activity in the nation?
- Identify Point of View** Why did some Americans feel that Supreme Court decisions during the 1960s only considered the rights of the poor?

Answer 2: 100% POP

Answer on SPQ

## Supreme Court Cases

**Directions:** Using your pocket Constitution, make a ruling on the following cases citing the specific sections of the Constitution (i.e. Article I, section 2, clause 3). Write your judgment underneath your decision with a brief explanation of your ruling.

1. New York State issued an injunction against Thomas Gibbons, prohibiting his steamboat operation between New York and New Jersey. Although Gibbons was federally licensed, his business was in violation of a state law that granted to Aaron Ogden a monopoly on all steamboat operation in New York. Gibbons appealed to the US Supreme Court. Who can operate the steamboats? Gibbons or Ogden? Why? (1824)
2. During Madison's term he approved a charter to allow states to establish their own banks. Many states did not want to open their own banks because the Bank of the United States was too powerful and they could not compete. One state opposed to the Bank of the United States was Maryland. In an attempt to drive the Baltimore branch of the Bank of the United States out of business, the Maryland State Legislature required that all banks chartered outside of Maryland pay an annual tax of \$15,000. There was a \$500 penalty for each violation of this law. James McCulloch, cashier of the Baltimore branch of the Bank of the United States, refused to pay the tax. The State of Maryland took him to court, arguing that because Maryland was a sovereign state, it had the authority to tax businesses within its border, and that because the Bank of the United States was one such business, it had to pay the tax. Does McCulloch have to pay the tax? Why or why not? (1819)
3. Police were suspicious that Dollree Mapp might be hiding a person suspected in a bombing, the police went to her home in Cleveland, Ohio. They knocked on her door and demanded entrance. On the advice of her lawyer, Mapp refused to let them in because they did not have a warrant. After observing her house for several hours and recruiting more officers to the scene, the police forced their way into Mapp's house. When Mapp confronted them and demanded to see their search warrant, one of the officers held up a piece of paper. He claimed it was the search warrant. Mapp grabbed the paper but an officer recovered it and handcuffed Mapp. The police dragged her upstairs and searched her bedroom. Finding nothing there they went to other rooms in the house, including the basement. As a result of their search of the basement, the police found a trunk containing pornographic books, pictures, and photographs. They arrested Mapp and charged her with violating an Ohio law against the possession of obscene materials. She was found guilty of this charge and sentenced to jail. Mapp appealed the conviction. Can the police use the evidence found at her home in the trial against her? Why or why not? (1961)

### Tinker v Des Moines (1969)

John and Mary Beth Tinker were public school students in Des Moines, Iowa in December of 1965. As part of a group against American involvement in the Vietnam War, they decided to publicize their opposition by wearing black armbands to school. Having heard of the students' plans, the principals of the public schools in Des Moines adopted and informed students of a new policy concerning armbands. This policy stated that any student who wore an armband to school would be asked immediately to remove it. A student who refused to take off his or her armband would be suspended until agreeing to return to school without the band.

Two days later and aware of the school policy, the Tinker children and a friend decided to wear armbands to school. Upon arriving at school, the children were asked to remove their armbands. They did not remove the armbands and were subsequently suspended until they returned to school without their armbands.

The children returned to school without armbands after January 1, 1966, the date scheduled for the end of their protest. However, their fathers filed suit in U.S. District Court. This suit asked the court for a small amount of money for damages and an injunction to restrain school officials from enforcing their armband policy. Although the District Court recognized the children's First Amendment right to free speech, the court refused to issue an injunction, claiming that the school officials' actions were reasonable in light of potential disruptions from the students' protest. The Tinkers appealed their case to the U.S. Court of Appeals but were disappointed when a tie vote in that court allowed the District Court's ruling stand. As a result they decided to appeal the case to the Supreme Court of the United States.

The case came down to this fundamental question: Do the First Amendment rights of free speech extend to symbolic speech by students in public schools? And, if so, in what circumstances is that symbolic speech protected? The First Amendment states "Congress shall make no law . . . abridging the freedom of speech." The Fourteenth Amendment extends this rule to state governments as well, of which school systems are a part. The First Amendment, however, does not identify which kinds of speech are protected. For example, it is not clear whether hate speech against an individual or group is protected. Neither does the First Amendment specify what types of expressive actions should be considered as speech.

The Supreme Court of the United States has made many attempts to determine what types of symbolic speech are protected under the First Amendment. In 1919, the Court decided in *Schenck v. United States* that an individual could be punished for distributing anti-World War I pamphlets urging non-compliance with the draft because the pamphlets "create[ed] a clear and present danger that they will bring about [a] substantive evil[ . . . ] Congress has a right to prevent"—draft obstruction. The Court wrestled with the issue of the right to symbolic speech again in the case of *Thornhill v. Alabama* (1940) when the Court ruled that picketing was a form of symbolic speech protected by the First Amendment because no clear and present danger of destruction of life or property or of breach of the peace was inherent in the action. Three years later in *West Virginia v. Barnette* (1943), the Court extended the First Amendment protection of symbolic speech to students in public schools. In *Barnette*, the Court held "[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion. . . ."

In 1968 the Supreme Court of the United States agreed to hear Tinker's case and consider the constitutionality of the Des Moines principals' anti-armband policy. The Court's decision in *Tinker v. Des Moines* was handed down in 1969.

#### QUESTIONS TO ANSWER

1. Do you think that the school policy banning armbands was fair? Why or why not?
  
  
  
  
  
  
  
  
  
  
2. The students knew they would be suspended if they wore armbands to school and chose to do so anyway. Why do you think they ignored the rule?
  
  
  
  
  
  
  
  
  
  
3. The First Amendment says "Congress shall make no law . . . abridging the freedom of speech." Why do you think the Supreme Court of the United States has ruled that certain actions should have the same protection as verbal speech? Are these reasons valid?
  
  
  
  
  
  
  
  
  
  
4. Do you think the Supreme Court should rule in favor of the students or the school district? Why?
  
  
  
  
  
  
  
  
  
  
5. Have you heard of a similar situation happening? What was it and how was it resolved?

**Directions:** Read the excerpt from the majority decision below. After you read the excerpts, write down what the court decided and three reasons they made that decision.

The Court ruled 7 to 2. Justice Fortas delivered the majority opinion of the Court.

Five justices agreed with the majority opinion. Two justices concurred, meaning that they agreed with the Court's decision that the school policy was unconstitutional, but they wrote separately to explain their reasoning. Two justices dissented. Justice Fortas delivered the majority opinion of the Court.

... First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. ...

... In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that engaging in the forbidden conduct would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school," the prohibition cannot be sustained. ...

... the record fails to yield evidence that the school authorities had reason to anticipate that the wearing of the armbands would substantially interfere with the work of the school or impinge upon the rights of other students. ... [and] the school officials banned and sought to punish petitioners for a silent, passive expression of opinion, unaccompanied by any disorder or disturbance on the part of petitioners. ...

It is also relevant that the school authorities did not purport to prohibit the wearing of all symbols of political or controversial significance. ... Instead, a particular symbol - black armbands worn to exhibit opposition to this Nation's involvement in Vietnam - was singled out for prohibition. Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible. In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views. ... "

What was the court's decision? What is their reasoning?

Do you agree with the Supreme Court's decision? Why or why not?

# Rightward Bound

MAKING AMERICA CONSERVATIVE  
IN THE 1970s

*Edited by*

Bruce J. Schulman

Julian E. Zelizer

HARVARD UNIVERSITY PRESS  
Cambridge, Massachusetts  
London, England  
2008

desegregation, and even the program that Nixon's administration had helped create, affirmative action.<sup>57</sup>

The Nixon strategy succeeded in bringing many northern urban workers into the Republican fold. In the end, the Nixon administration recognized and legitimated the category of white ethnic but in rhetoric rather than in policy. Instead, his policies and rhetoric directed ethnicity down the narrow channel of the politics of resentment. Rather than bringing ethnics into the civil rights coalition by including them in affirmative action programs, Nixon officials capitalized on white ethnics' animosity over the "special treatment" of blacks. Rather than investing in urban neighborhoods, Baroni-style, they stoked white fears of busing, housing integration, and crime, while disinvesting from black and white communities alike. Rather than developing labor and trade policies to stabilize wages and provide for greater employment security for the working class (black and white), they reinforced the redefinition of white working-class identities in ways that fostered a sense of cultural difference. The result of the Nixon efforts, for the creation of a conservative majority, was smashingly successful. But for the working class—white and black—whose incomes have stagnated and whose communities have remained largely separate and hostile in the period since the 1970s, it was a missed opportunity.

## CHAPTER 10

### The Conservative Struggle and the Energy Crisis

MEG JACOBS

The energy crisis of the 1970s marked the end of an era—the end of the post-World War II prosperity, the end of the country's obsession with the big gas-guzzling cars of the 1950s and 1960s, and the end of America's standing as an economic superpower. During the Arab boycott of 1973–1974, the Organization of Petroleum Exporting Countries (OPEC) cut oil shipments to the United States and raised prices sharply. Prices at the pump doubled and then tripled. Gas lines that snaked for miles appeared as a constant reminder of what seemed like the nation's imminent decay and decline. A second oil shock struck in 1979 in the wake of the Iranian Revolution, once again making Americans feel vulnerable. In his Pulitzer Prize-winning novel *Rabbit Is Rich*, written at the end of this tumultuous decade, John Updike captured the doomsday mentality. Published in 1979, the novel begins: "Running out of gas, Rabbit Angstrom thinks . . . The people out there are getting frantic, they know the great American ride is ending."<sup>1</sup>

To the nation's young conservative policymakers, just assuming positions of influence inside Washington, the energy crisis, as it turned out, marked an important beginning. For these anti-government

reformers, the energy crisis posed a serious challenge: how to govern, especially amid a crisis, without increasing the power of the federal government. Up until the 1970s, almost all modern crises, from war to depression to inflation to labor unrest to civil rights, increased the power, prestige, and regulatory authority of the federal government. The response of many Americans to the energy crisis was in favor of more government, not less.

But conservatives, who came to power under Richard Nixon, sought to fight against the impulse for a big government solution to a national crisis. A new breed of Washington policymakers and intellectuals, these young conservatives saw themselves more as crusaders than as policy wonks, as anti-bureaucrat ideologues working against establishment elites, even as they occupied the very seats of government power. Their historic challenge, as they understood it, was to transform the crisis in oil into a crisis of governance—that is, the challenge was to use the crisis as a way to discredit government activism and to renew faith in the free market.

Theirs was not an easy job. The Arab embargo brought into sharp relief the hesitating, halting nature of the nation's rightward turn. It proved hard to purge Americans of their expectations that Washington would come to the rescue, especially in moments of economic crisis. In 1973, many Americans were old enough to remember how the federal government had helped Americans through the Depression, defeated the Nazis, built the nation's highways, and sent a man to the moon. Just as a car that is running out of gas, New Deal liberalism came to a slow, sputtering halt; indeed, at moments, even after it appeared to have no more life in it, liberalism could continue running on fumes. Though twice winning election on promises of scaling back government, Republican Richard Nixon himself was willing to flirt with new forms of government intervention.

This chapter explores how, in the face of a crisis, conservatives fought liberalism from inside the corridors of power. If they did not

fully succeed, then at least they understood the challenge and began to devise new strategies, both ideological and political, for the battles ahead.

When Richard Nixon took office in 1969, liberalism was far from dead. Under Nixon's watch, the years that preceded the energy crisis witnessed anything but a rightward turn, with the 1960s leading to an enormous increase in government regulation of the economy. As corporate profits boomed in the 1960s, liberal activists won wide popular support for the idea that companies could afford to end poverty, make safer products, pollute less, protect their workers more, and still make a profit. Congress enacted a flurry of bills to mandate corporate social responsibility, and the environmental and consumer movements were at their peak.<sup>2</sup> In April 1970, 20 million Americans turned out for the inaugural Earth Day. The oil industry, long seen as the embodiment of corporate malfeasance and having recently scandalized the general public with a deadly spill off the coast of Santa Barbara, hardly escaped the regulatory avalanche. In that same year, Nixon signed the Clean Air Act Amendment and the Environmental Protection Act, both of which would saddle petroleum producers and refiners with costly and invasive regulations.

From the point of view of oil executives, the country was hardly shifting right in the early 1970s. They not only faced new threats, but in this charged political climate, they now worried about losing old privileges. Since 1926, the industry had been the beneficiary of the oil depletion allowance, an arcane, though very contentious, provision in the tax code that gave oil companies annual tax breaks worth billions of dollars to drill for new wells. For decades, oilmen spread money around to politicians to maintain the depletion allowance, funneling funds to oil-state senators to use for their own campaigns and to enhance their power by distributing donations, in turn, to other candidates in exchange for their political support. The nation's oil producers watched in horror when President Lyndon

Johnson, a friend of the industry during his days as a Texas politician, took the first stab at trimming oil's tax breaks. In 1969, even with Republican Richard Nixon in the White House, the much hated depletion allowance was finally scaled back.

Oil representatives cried that this legislative attack on the industry came at the worst possible moment. While much of the economy was booming in the late 1960s, the oil industry was running up against real geological constraints. In 1970, the American oil industry reached its peak of domestic production. American reserves were plenty, but never again would the daily number of barrels pumped out of the ground increase. Even as supply declined, the price of this increasingly scarce commodity remained fixed. The Federal Power Commission, a regulatory holdover from the New Deal, had continued its charge under both Democratic and Republican administrations to keep natural gas prices low, which in turn held down oil prices. In the summer of 1971, the Nixon administration imposed price controls directly on oil, as well as on other industries, in an effort to battle the inflation that was beginning to besiege the economy. Regulated U.S. prices, oilmen argued as they watched world prices begin to rise, prevented the accumulation of capital necessary for domestic exploration and alternative energy research. In 1971, the American Petroleum Institute spent \$4 million on its television and newspaper campaign to warn the public of an impending energy crunch and to push for deregulation: "A country that runs on oil," it cautioned the nation, "cannot afford to run short." Oil executives, meanwhile, gave Nixon \$5 million, which amounted to 10 percent of all donations, for his 1972 campaign war chest.<sup>3</sup>

On the eve of the Arab embargo, how, then, did Richard Nixon see oil politics? Supporting oil interests bolstered his electoral strategy of trying to capture the South from Democrats and appealed to newly rising southern Republicans like George H.W. Bush of Texas, who had been an independent oilman, served as a congressman in the late 1960s, and then became the Republican national

chairman. Promoting domestic oil interests also seemed vital for American national security. Between 1970 and 1973, American imports doubled and accounted for one-third of the U.S. energy supply. Just as domestic oil production began to decline, OPEC production levels soared. And so, too, did OPEC's willingness to use its market power to influence American foreign policy, particularly on the question of Israel. Through its control of oil, Arab leaders could disrupt Western economies and dictate foreign policy demands. In the wake of Vietnam, with the country constrained in its use of military force, it appeared that the United States could do little to exert its national interest.

Within the White House, the oil industry found friends who shared their growing concerns. A sympathetic young Kenneth Lay, who would later achieve fame, fortune, and disgrace as head of Enron, was then deputy secretary of energy. "Our problem," he told Richard Nixon as oil supplies fell, "has resulted from outmoded Government policies, from excessive tinkering with the time tested mechanisms of the free market." George Bush echoed Kenneth Lay. America would once again become self-sufficient in energy only if the federal government got out of the way. "The freer the market," said Bush, "the better." For foreign policy and domestic political considerations, Nixon was inching closer to the oil industry's point of view.

Then, in October 1973, the Nixon administration's worst fears were realized when the Arab-Israeli War (also known as the Yom Kippur War) began. On October 6, Egypt and Syria launched a surprise attack on Israel, and in retaliation for American support of Israel, OPEC cut off oil exports to the United States. The embargo lasted until March 1974 and led to a 10 percent decline in the nation's fuel supply. The energy crisis was dynamite. It reached into every home and workplace. As energy supplies dwindled and prices shot skyward, schools closed, factories shut down, and gas lines grew long and ugly. Station attendants began packing pistols for

self-protection while fistfights broke out among angry customers. A Miami Amoco dealer complained, "If you can't sell them gas, they'll threaten to beat you up, wreck your station, run you over with a car."<sup>4</sup> The most disruptive display of frustration came when the nation's 100,000 independent truckers staged a violent strike in February 1974, shutting down the country's highways for eleven days and leaving supermarket shelves bare as they demanded that the government roll back prices at the pump.

Nixon was in a bind. On the one hand, this shrewd politician devoted his time in office to creating what contemporaries called a "New Majority," one that would bring the white South into the Republican Party while also winning support from ethnic blue-collar Democrats in the North. Nixon successfully appealed to this "Silent Majority" in his landslide reelection in 1972 by promising to scale back expansive and intrusive government social programs, such as busing and welfare, that many white Democrats had come to resent. Nixon also appealed to millions of Americans who had taken a cultural turn to the Right, believing that it was time to rein in women's liberation, the sexual revolution, and the student protest movement against the Vietnam War. On the other hand, the idea that government should protect the public from corporate excesses, especially in hard times, still had a strong hold on American politics, particularly among working-class Democrats who had only recently and hesitantly come into Nixon's New Majority. Ever the political strategist, Nixon understood that the political loyalties of average Americans, from the small businessman in Peoria to the working-class housewife in Dayton—key members of Nixon's Silent Majority—were still up for grabs. In spite of the 1972 landslide, the New Majority was not fully cemented, and amid economic crisis, the white ethnic working-class Democrats might defect.

In the early weeks of the crisis, the president leaned to the Right. Addressing the nation, Nixon unveiled his Project Independence, a

centerpiece of conservative reform, which was an ambitious deregulatory program designed to stimulate domestic production, eliminate oil imports by 1985, and push back against environmental reforms Nixon had once supported. The very name suggested American independence from Arab oil and also business independence from government regulation. America's survival, the president declared, required the deregulation of natural gas prices, the acceleration of offshore drilling, and the construction of a Trans-Alaska pipeline. Now more than ever, it was essential to lift environmental restrictions. "If you are going to freeze to death," the president told the nation's governors, "it doesn't matter much whether or not the air is clean." To achieve self-sufficiency in energy, the government had to move out of the way. "We can't fight the economics of the market place," said Nixon.<sup>5</sup>

But this kind of small government conservatism was a hard sell as the energy crisis coincided and contributed to the biggest economic catastrophe since the Great Depression. In the 1970s, the American economy simultaneously experienced stagnant growth and rising prices, a new phenomenon contemporaries called *stagflation* and one that policymakers did not know how to cure. The energy crisis was not the sole cause of these economic woes, but energy prices compounded inflation, and to the public, the gas lines were emblematic of a declining economy, complete with a cast of villains to blame and hold accountable. The vast majority of Americans believed that Big Oil companies artificially engineered the crisis to jack up prices. Consumer advocate Ralph Nader called the shortage "the most phony crisis" in the nation's history while rumors swirled about oil tankers waiting offshore until prices went even higher. The public demanded that the government "do something" to check what was popularly perceived as excessive and corrupt corporate greed. The problem, it seemed, stemmed not from a shortage of gas but from a shortage of effective government leadership. From a rural village in North Carolina, a citizen wrote to the

was writing, a Democratic-sponsored windfall tax bill was working its way through Congress as was legislation requiring oil companies to roll back prices at the pump.<sup>8</sup>

Democratic senator Henry "Scoop" Jackson from the state of Washington took the lead on the energy situation. On foreign policy he was to the right of the Nixon administration, opposing détente (see Chapter 12 in this volume) and fighting for an increase in the military budget. But Jackson was also a New Deal liberal. Steeped in Depression-era liberalism, he believed that the federal government had to solve the energy crisis. A presidential aspirant, he also recognized he could tap into and fan populist sentiment; this crisis, in the hands of everyone to Nixon's left, from Jackson to the AFL-CIO's George Meany to Ralph Nader, followed a familiar narrative. For Jackson, Big Oil played a starring role as the profit-seeking villains, the suffering small independent oil refiners and gas dealers appeared as the virtuous little man being squeezed out of the market by the seven Big Oil major corporations, and the angry victimized public was the script's heart and soul. Casting himself as the hero, Jackson called for government to step in. Top on his list was a ten-year \$20 billion research and development program for alternative fuel, which he likened to the Manhattan Project or the 1960s Apollo space program. Jackson also fought to have the government roll back gas prices while forcing the major oil companies to sell their scarce products to independent retailers, whose historically lower prices served as competition to the majors' own gas stations.

As soon as the embargo began, Scoop Jackson, with the help of other leading Democrats, went on the warpath. He subpoenaed top oil executives to a televised Senate hearing, accusing them of conspiring against the American public and of reaping "obscene profits." This so-called cheat probe made good nightly news theatrics and kept pressure on the administration and its Republican allies. As conservatives feared, the cut in oil supply put intense pressure on Nixon as momentum gained for governmental action. Liberal

White House, expressing a newly commonplace state of alarm: "People are spending every waking hour worrying over the gasoline situation."<sup>6</sup>

Nixon would have a difficult time ignoring this growing discontent. As *Newsweek* reported, "the American people seem on the verge of psychic rebellion." The prominent pollster Daniel Yankelovich laid out the problem for the White House: "No issue has such a potential for producing social instability of the magnitude of the depression as does the energy crisis. This crisis entails a radical change . . . Their lives will be disrupted and altered at the gut level." This issue, Yankelovich warned the president's top advisers, would "either make him or break him." "If people get the impression that no one is in charge, or that there is no advance planning, or that they are being asked to make sacrifices while the oil industry raises big profits, they are going to get very angry and this issue will destroy Nixon." A Maryland citizen summed up the public mood: "We the American people are tired of the lack of competent and effective leadership."<sup>7</sup>

So what would Nixon do? This longtime politician was, above all, an opportunist, which in the early seventies meant the occasional lurch toward New Deal solutions when he was in trouble. At times, he could not escape support of some liberal programs, from environmentalism to minimum wages. Perhaps the greatest act of opportunism came with the president's imposition of wage and price controls in the summer of 1971 to clamp down on inflation. With inflation in check, he was then free to increase federal spending to prop up the economy before the 1972 election. As journalist and former Nixon adviser William Safire explained, "When his back is to the wall, Mr. Nixon tends to adopt the economic suggestions of his Democratic opponents, and with a vengeance." What infuriated those to his right, explained Safire, was the "President's willingness to make economic decisions for political reasons—that is, to listen to the populist demand to 'do something!'" As Safire

Democrats, especially those from the heavy oil-consuming states of the northeast, formed an alliance with representatives from regions, mostly in the Midwest and the Plains states, with a higher proportion of independent refiners and dealers, who were being driven out of business by the majors. Both political groups were eager to make the major oil companies pay. In November, Jackson got a mandatory allocation bill passed with overwhelming support, 93 to 3 in the Senate and 348 to 46 in the House, effectively putting the oil industry under government control; an amendment to the act requiring a World War II-style nationwide federal rationing program fell only eight votes short in the Senate. For the rest of the decade, the government would set the price of oil. A newly created Federal Energy Office would oversee these new bureaucratic regulations.<sup>9</sup>

As much as the political winds on the Hill and at the grassroots pushed him to the Left, Nixon also came under strong pressure from a new group of conservative advisers committed to scaling back government activism. The Nixon administration was only the second Republican administration since the New Deal. In contrast to the administration of Dwight D. Eisenhower, who as a military bureaucrat and supreme commander in Europe during World War II had presided over the single greatest moment of state building in American history, the Nixon administration had different ambitions. Eisenhower's advisers came from the ranks of big business, many of whom had accommodated themselves to a world of New Deal regulation. Nixon's people had a different ideological makeup: they were Californian entrepreneurs, Wall Street buccaneers, and independent oilmen from Texas. Nixon himself came from a lower-middle-class California grocer family and grew up with deep resentment for the establishment elite. From his earliest political days, he ran against New Deal government bureaucracies, including the wartime Office of Price Administration, where he developed his anti-government disdain while serving in the tire-rationing department. Like Assistant Treasury Secretary William Simon, who was

soon to become the nation's chief energy bureaucrat and had made millions as a Wall Street bond trader, many of Nixon's appointees cut their teeth in businesses that were very different from such big bureaucracies as General Motors, AT&T, and the U.S. Army. By the time Nixon took office, the Chicago school of free-market economics was in the ascendance, as was clear in the appointment of Herbert Stein, trained at the University of Chicago and recommended by Milton Friedman, as chairman of the Council of Economic Advisers. To be sure, there were others in the Nixon administration who came out of a New Deal world, like the labor mediator John Dunlop, who was in charge of wage and price controls, and even Nixon himself, who had after all served in the Office of Price Administration. But a big-government vision, while pushed opportunistically by some, was facing increasing competition from Nixon's own brain trust.

Inside government, there was a core ideological group who saw as their mission the undoing of the regulatory world that had been in place since the New Deal. Chief among them was Roy Ash, a longtime Nixon supporter who served as his budget director and had benefited from the booming Cold War economy of Southern California as cofounder of Litton Industries, a Beverly Hills-based multinational conglomerate and defense contractor. Ash made sure to bolster the president's resolve, telling Nixon that the energy situation was more of an ongoing problem, and not, in Ash's words, "a Presidential crisis." Ash therefore recommended that Nixon "avoid overreacting by getting government into activities that can and will be better done by private industry . . . What the government can most usefully do is remove impediments it has constructed, provide some incentives, and keep out of the way . . . *In short, this is not primarily a government problem.*" Instead, Ash told Nixon, this was a job for the private sector. "We must, of course, establish the perception of Federal leadership . . . but we should recognize the problem as essentially a market phenomenon."<sup>10</sup> All the president's

top advisers, including Ash, recommended that Nixon veto any bill to roll back prices.

Beyond his ideological sympathy with these anti-government arguments, the Watergate investigation was also pushing Nixon to the Right. In the winter of 1973, as the Watergate scandal escalated, Nixon faced a complicated political landscape. As the investigation drew closer to the president, it weakened Nixon's capacity to take independent action. His declining popularity made him cleave to the Right as he searched for political friends and loyal allies. In 1976, the fallout from Watergate would damage the electoral chances of the Republican Party, but in this instance, Nixon turned in a more conservative direction as he sought to shore up political support. Within the White House, the most ideologically committed policymakers had the greatest influence. As the Watergate investigations gained momentum, Nixon adopted a bunker mentality, surrounding himself with and soliciting advice from only the most dedicated. Someone like Roy Ash was one of Nixon's core supporters, loyal to him even at a personal level. His wife wrote "Support RN" on all her Christmas cards, bills, and letters, while thirty other top-level wives sold "Get Off His Back" stickers. William Simon's wife, Carol, displayed one on her Mercedes. In words that echoed those of his sympathizers, Nixon affirmed his resolve to resist calls for a federal response, telling his top aides, "Let's not lose sight of our goal to keep government out of people's pockets and off their backs."<sup>11</sup>

Yet, as Ash had counseled, the president had to create the perception of government leadership. On December 4, 1973, Nixon announced that William Simon would become the head of a newly created Federal Energy Office. It was set up explicitly as a temporary office to manage an immediate problem and to avoid institutionalizing a permanent role for government. Simon was the nation's most unlikely energy czar. He had no first-hand knowledge or experience in the oil industry; as a former Wall Street whiz kid,

Simon was fiercely committed to market solutions and had little faith in Washington bureaucrats. As he commented to chief of staff Alexander Haig, "It is really quite an experience to work in a place that has more horses' asses than horses." His appointment came from the support of his key allies, Secretary of the Treasury George Shultz and the Council of Economic Advisers' Herbert Stein, whom together William Safire had dubbed the "free market mohicans." All shared the belief that only higher prices, by stimulating domestic production, would end the energy crisis.<sup>12</sup>

Over the next few decades, conservatives mounted their campaign against government intervention from within the halls of power. In spite of his political beliefs, Simon, a proponent of the free market, sat atop a new government agency with vast regulatory powers given him by a Democratic-controlled Congress. Yet, much like foxes sent to guard a henhouse, these conservatives assumed control of the very institutions they sought to discredit. Exxon president John Jamieson told Simon, "I can sleep better each night knowing you are the energy czar." They would undermine the legitimacy of the twentieth-century state, if by a thousand self-administered cuts.

Here the political scuffle over rationing demonstrates the expansion of an increasingly hollow state. Unable to completely retrench the American state that had emerged in the New Deal and Great Society, conservatives learned that they would have to work at limiting and containing government by controlling the levers of power. During the 1970s, conservatism was transformed from an opposition ideology premised on radically eliminating government to an ideology of officeholders who struggled to contain and gradually undermine the government they so vehemently mistrusted. As the situation at gas stations grew increasingly chaotic, Democratic leaders, organized labor, consumer activists, liberal intellectuals, and every other political force to the left of the administration demanded that the federal government institute a nationwide system

of rationing to stop the mad scramble and long lines at the gas pumps. Under pressure, the president ordered Simon to print up monthly rationing booklets, each entitling its holder to thirty-five gallons. "Maybe that will shut them up," said Nixon. But Simon was careful in how he designed the program, making it function much like a market. Citizens could sell their unused coupons for whatever someone was willing to pay, thereby undermining the purpose of rationing and price controls. Even if this program would allow prices to rise as high as the market would bear, Simon had no real intention of allowing rationing to go forward. Instead, the White House urged Americans to save gas voluntarily. In the 1970s, environmentalists and anti-growth advocates often made the loudest calls for conservation. When Nixon and other conservatives asked Americans to change their "wastrel ways," they were adopting the message of the ecological Left, but for a larger political purpose. If individuals cut back on energy use, those voluntary efforts might help diminish the need for government to create an enormous bureaucracy to mandate conservation.<sup>13</sup>

Even as they presided over the regulatory institutions foisted on them by a Democratic Congress, these conservatives argued that the market, not the government, was the solution to national crisis. Simon took a leading role in discrediting the state's ability to act, crystallizing and articulating a free-market argument from the center of the state regulatory apparatus itself. The tools he had to combat the energy crisis, including allocations and price controls, were classic regulatory measures generated by a Democratic Congress and New Deal statecraft. But as they reluctantly deployed these statist measures, these anti-government conservatives repeatedly told themselves and the public that they were illegitimate. By his own account, Simon was a "rotten bureaucrat." In fact, as he explained, he was an "antibureaucrat." Set up in reaction to a crisis, the Federal Energy Office was an "outrage." If Simon had his way, he would "abolish the agency and close its doors tomorrow." As he

put it, "No group of men could be attacking the problem more sensibly than we are, but . . . no group of men, we or anyone else, could ever replace the free market."<sup>14</sup>

According to conservatives, the gas lines were but the most obvious symptom of liberalism's failing. The allocation measures designed by Congress were awkward and stifling, and price controls discouraged more gasoline from coming onto the market. When Simon stalled on rationing, states implemented their own programs by which owners of cars with license plates ending in even numbers could buy gas on even calendar days, and vice versa for odd-numbered plates. Fifteen states and the District of Columbia had alternating fuel purchase days, and nine other states drew up plans. But these were blunt instruments not well suited to the complexities of gasoline use. Without an elaborate bureaucracy—the Office of Price Administration employed over 100,000—to enforce equity, this improvised system seemed bungling at best. Whereas the automobile had once been the symbol of American preeminence, these long lines of cars with half-filled tanks were now a sign of the country's evident weakness, which the government seemed to be making worse rather than better.<sup>15</sup>

Conservatives in this era were feeling their way forward. They needed to solve pressing political problems while keeping in view their larger vision of smaller government. They would get there, but it would take time. And thus Nixon and his team, despite their ideology and efforts, did not succeed in thwarting the intrusion of government into energy markets. By the spring of 1974, Watergate was sapping his strength day by day, and the Democrats, with their commanding majorities, were making political hay. On May 7, 1974, Nixon signed legislation to extend controls and allocations for two years and to establish the Federal Energy Administration (FEA) to oversee these regulations. Six weeks later, the House Judiciary Committee passed three articles of impeachment against the president, and a newly released tape, the so-called smoking gun,

implicated Nixon directly in the Watergate cover-up. To avoid impeachment, Nixon resigned on August 9.

The FEA would live on. The conservatives were right: once controls were in place, they were hard to remove. Nixon's successor, Gerald Ford, who was even more committed to the market, surrounded himself with a coterie of young ideological advisers like Dick Cheney, Donald Rumsfeld, and Alan Greenspan. To them, freeing energy markets was essential both as a marker of conservative ascendancy and as the key to a revitalized foreign policy. Unless the United States achieved energy independence, it would be hamstrung in its efforts to assert its will not only in the Middle East but even among its Western allies. Yet Ford came under the same political pressure for governmental action as had Nixon, with a public unwilling to accept higher prices at the pump. After a protracted and unsuccessful political battle championed by his conservative staff, Ford signed legislation to extend the life of the FEA for three more years.<sup>16</sup>

The plan had not worked out exactly as these conservatives had hoped. When Richard Nixon had created the Federal Energy Office, Secretary George Shultz said to William Simon, "I'm so glad it's you who's heading up the energy bureaucracy. That way it will go out of business, and you'll be able to keep the damage in check." But it did not turn out that way. As Simon recalled with regret in 1976, "Well, I didn't keep the damage in check—it outlasted me. 'We' are all out now, 'they' are all in now, and 'our' detestable bureaucratic creations, devised by 'their' standards, are in place, waiting to be used for purposes 'we' privately deplore." Indeed, these conservatives had thought that if they were in charge, they could chart their own course, discrediting the government from within while restoring the free market. But, as Simon concluded after Jimmy Carter had taken office, "It is obvious to me that one does not acquire virtue by becoming a 'better type' of prostitute. Nor, obviously, does one win votes." For the moment, the hens had chased the foxes out of their henhouse.

And yet, the energy crisis taught these conservative reformers a valuable lesson: fighting liberalism was hard. Trench warfare over energy policy made clear that reforming government and changing popular expectations were no easy tasks. Out of office during the Carter years, they continued to refine their anti-government arguments. Their message was simple: the only solution to the energy crisis was less government, not more. As Milton Friedman, who would soon win the Nobel Prize in Economics, explained, if the Federal Energy Office shut down, as Simon had hoped it would, oil would flow freely and gas station attendants would once again wash customers' windshields. In 1977, Ronald Reagan, who would soon assume the conservative mantle and mobilize grassroots support for a rightward turn, announced, "Our problem isn't a shortage of oil. It's a surplus of government." It would not be until 1981, when Reagan came to power, that an ideologically conservative administration could finally decontrol the regulatory apparatus built up over half a century and chart a new conservative course.

## CHAPTER 5

### FOURTH AMENDMENT: OVERVIEW

#### § 5.01 A Warning Before Beginning the Fourth Amendment Journey<sup>1</sup>

According to one commentator, the Fourth Amendment contains "both the virtue of brevity and the vice of ambiguity."<sup>2</sup> Another scholar has stated that the amendment is "brief, vague, general, [and] unilluminating."<sup>3</sup> And, indeed, for almost a century the text remained "largely unexplored territory."<sup>4</sup> It did not take "full flower"<sup>5</sup> until 1961, when the Supreme Court

<sup>1</sup> There is a voluminous literature relating to the Fourth Amendment. Citations to some excellent sources will be provided throughout this text. By far the most cited Fourth Amendment source is Professor Wayne LaFare's five-volume treatise, *Search and Seizure* (3d ed. 1996).

For general discussion of Fourth Amendment jurisprudence, and an often critical perspective on some of the search-and-seizure law discussed in later chapters, see generally Akhil Reed Amar, *Fourth Amendment First Principles*, 107 Harv. L. Rev. 757 (1994); Anthony G. Amsterdam, *Perspectives On The Fourth Amendment*, 58 Minn. L. Rev. 349 (1974); Ronald J. Bacigal, *Putting the People Back into the Fourth Amendment*, 62 Geo. Wash. L. Rev. 359 (1994); Gerard V. Bradley, *The Constitutional Theory of the Fourth Amendment*, 38 DePaul L. Rev. 817 (1989); Morgan Cloud, *Pragmatism, Positivism, and Principles in Fourth Amendment Theory*, 41 UCLA L. Rev. 199 (1993); Tracey Maclin, *When the Cure for the Fourth Amendment Is Worse than the Disease*, 68 S. Cal. L. Rev. 1 (1994) (response to Amar, *supra*); Louis Michael Seidman, *The Problems With Privacy's Problem*, 93 Mich. L. Rev. 1079 (1995) (response to Stuntz, *Privacy's Problem*, *infra*); Carol S. Steiker, *Second Thoughts About First Principles*, 107 Harv. L. Rev. 820 (1994) (reply to Amar, *supra*); William J. Stuntz, *Privacy's Problem and the Law of Criminal Procedure*, 93 Mich. L. Rev. 1016 (1995); William J. Stuntz, *The Substantive Origins of Criminal Procedure*, 105 Yale L.J. 393 (1995); Scott E. Sundby, "Everyman" 's Fourth Amendment: *Privacy or Mutual Trust Between Government and Citizen?*, 94 Colum. L. Rev. 1751 (1994); Silas J. Wasserstrom & Louis Michael Seidman, *The Fourth Amendment as Constitutional Theory*, 77 Geo. L.J. 19 (1988); Lloyd L. Weinreb, *Generalities of the Fourth Amendment*, 42 U. Chi. L. Rev. 47 (1974).

<sup>2</sup> Jacob W. Landynski, *Search and Seizure and the Supreme Court: A Study in Constitutional Interpretation* 42 (1966).

<sup>3</sup> Amsterdam, Note 1, *supra*, at 353-54.

<sup>4</sup> Landynski, Note 2, *supra*, at 49.

<sup>5</sup> Wayne R. LaFare, *The Fourth Amendment Today: A Bicentennial Appraisal*, 32 Vill. L. Rev. 1061, 1064 (1987).

extended the provision's judicially-implied exclusionary rule to the states.<sup>6</sup>

Many years ago, Supreme Court Justice Felix Frankfurter observed that "[t]he course of true law pertaining to [the Fourth Amendment] . . . has not . . . run smooth."<sup>7</sup> This is an understatement. As two scholars observed, "[a]lmost no one has a kind word to say about fourth amendment jurisprudence."<sup>8</sup> According to one critic, "[t]he Fourth Amendment today is an embarrassment."<sup>9</sup> And, whether one agrees with his observation that "Fourth Amendment case law is a sinking ocean liner—rudderless and badly off course,"<sup>10</sup> it is true that criticism of Fourth Amendment law comes from widely divergent, and even opposite, political and philosophical poles.

Put simply, the single sentence that constitutes the Fourth Amendment (as set out in subsection [B]) has resulted in billions of words of interpretive text by the Supreme Court, state and lower federal courts, and commentators. The Fourth Amendment today looks to some like a Rorschach blot,<sup>11</sup> its jurisprudence described by one observer as "a mass of contradictions and obscurities."<sup>12</sup> The goal of anyone studying Fourth Amendment law, therefore, is to make as much sense of it as possible, as well as to consider ways to improve upon what has been constructed (or, to continue one metaphor, to save the ocean liner before it sinks).

### § 5.02 The Text<sup>13</sup>

The Fourth Amendment to the United States Constitution is a mere 54 words long. It reads:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

<sup>6</sup> *Mapp v. Ohio*, 367 U.S. 643 (1961). For discussion of the exclusionary rule, see § 5.04[B] and chapter 21, *infra*.

<sup>7</sup> *Chapman v. United States*, 365 U.S. 610, 618 (1961)(concurring opinion).

<sup>8</sup> Wasserstrom & Seidman, Note 1, *supra*, at 19.

<sup>9</sup> Amar, Note 1, *supra*, at 757.

<sup>10</sup> *Id.* at 759.

<sup>11</sup> Amsterdam, Note 1, *supra*, at 375.

<sup>12</sup> Craig M. Bradley, *Two Models of the Fourth Amendment*, 83 Mich. L. Rev. 1468, 1468 (1985).

<sup>13</sup> For shorthand purposes, this treatise speaks of the provisions of the Fourth Amendment as if they applied directly to the states, although it is the Fourteenth Amendment due process clause that recognizes the fundamental right to be secure from unreasonable searches and seizures by state agents. *Wolf v. Colorado*, 338 U.S. 25 (1949); *overruled on other grounds*, *Mapp v. Ohio*, 367 U.S. 643 (1961). See generally chapter 3, *supra*.

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In reading the text, one can divide the Fourth Amendment into two general parts. The first portion of the Fourth Amendment tells us what the amendment seek to prohibit (or, if you will, what right we hold against the government). In this portion, the text states *who* is covered ("the people"); *what* is covered ("persons, houses, papers, and effects"); and the nature of the protection ("to be secure . . . against unreasonable searches and seizures"). This portion of the Fourth Amendment, in particular the latter language, is sometimes described as the "reasonableness clause" (or "reasonableness requirement") of the Fourth Amendment.

The second portion of the Fourth Amendment relates to warrants. It tells us what is required before a warrant may properly be issued (only "upon probable cause [for the search or seizure], supported by oath or affirmation"), and tells us something about the form of the warrant itself ("particularly describing the place to be searched, and the persons or things to be seized"). This portion of the text is often described as the "warrant clause," with its "particularity requirement."

One of the great debates in Fourth Amendment jurisprudence relates to the connection, if any, between the reasonableness clause and the warrant clause. How does one clause inform the other, if at all? More particularly, does the Fourth Amendment stand for the proposition that any search or seizure conducted without a valid warrant is unreasonable (and, thus, impermissible under the reasonableness requirement of the Fourth Amendment)?

Alternatively, is the warrant clause entirely independent? That is, does it tell us simply *how* warrants should be issued (with probable cause, etc.), but tell us nothing about *whether* warrants need to be issued?<sup>14</sup> The debate on this matter is summarized elsewhere in this text,<sup>15</sup> and is at the center of much of the controversy in Fourth Amendment jurisprudence.

### § 5.03 Why the Fourth Amendment?

The Supreme Court once observed that "the Fourth Amendment's commands grew in large measure out of the colonists' experience with the writs of assistance and their memories of the general warrants formerly in use in England."<sup>16</sup> Specifically, a writ of assistance authorized the use of "assistants"—local officials, such as the sheriff—to assist the Crown's agents to forcible enter and search a colonist's home (or any other place), virtually at will, for smuggled goods. Similarly, general warrants were used

<sup>14</sup> Under this view, "[t]he Warrant Clause says only when warrants may not issue [in the absence of probable cause], not when they may, or must." Amar, Note 1, *supra*, at 774.

<sup>15</sup> See § 11.01, *infra*.

<sup>16</sup> *United States v. Chadwick*, 433 U.S. 1, 7-8 (1977).

in England to ferret out what the Crown considered to be seditious publications. The warrants empowered agents of the Crown, on very little basis, to forcibly enter and search (indeed, ransack) homes for books and papers for use in seditious libel prosecutions.<sup>17</sup>

Although abusive general warrants and writs constituted the immediate evils that the framers sought to prohibit (the "aboriginal subject of the fourth amendment"<sup>18</sup>), the Supreme Court has since stated "that the evil the Amendment was designed to prevent was broader than the[se] abuse[s]. Unreasonable searches or seizures conducted without any warrant at all are condemned by the plain language of the first clause of the Amendment."<sup>19</sup> Although the Court has never said so expressly, the view of some members of the Court (a majority, in some eras), has been that "the fourth amendment is quintessentially a regulation of the police—that, in enforcing the fourth amendment, courts *must* police the police."<sup>20</sup>

Whether or not the latter statement is correct, the remaining question is "what concerns and judgments are implied in the decision to establish a constitutional restriction upon a category of official activity generically described as 'searches and seizures.'" <sup>21</sup> That is, beyond specific *means* of intrusion that are barred (by means of general warrants or writs), what *values* underlie the Fourth Amendment?

Originally, the United States Supreme Court believed that the Fourth Amendment was primarily intended to prevent violations of the "sacred and incommunicable" right to private property, which was described as "[t]he great end for which men entered into society."<sup>22</sup> The more recent interpretation of the amendment is that the framers intended to protect people's

<sup>17</sup> See Osmond K. Fraenkel, *Concerning Searches and Seizures*, 34 Harv. L. Rev. 361, 362-63 (1920).

<sup>18</sup> Amsterdam, Note 1, *supra*, at 363.

<sup>19</sup> Payton v. New York, 445 U.S. 573, 585 (1980).

<sup>20</sup> Amsterdam, Note 1, *supra*, at 371. Professor Robin Magee asserts that Fourth Amendment jurisprudence is "distorted" by a "good cop paradigm"—actually, a "good cop myth"—which treats a police officer as "a law-abiding citizen who is chiefly, if not totally, motivated by law enforcement interests . . . and who can be trusted to behave within constitutional parameters." Robin K. Magee, *The Myth of the Good Cop and the Inadequacy of Fourth Amendment Remedies for Black Men: Contrasting Presumptions of Innocence and Guilt*, 23 Cap. U. L. Rev. 151, 160-61 (1994). One who believes that law enforcement officers do not fit the paradigm is especially likely to support Professor Amsterdam's claim that the Fourth Amendment should be premised on the principle that the police require policing by the courts.

<sup>21</sup> Amsterdam, Note 1, *supra*, at 364.

<sup>22</sup> Boyd v. United States, 116 U.S. 616, 627 (1886) (quoting Lord Camden).

legitimate expectations of effects."<sup>23</sup>

Under both historical and the view that "physical en chief evil against which th this view, the unwarrant home"<sup>25</sup> is the clearest vi seen, even as the Court's d the Justices have remained of the home and other "p

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<sup>23</sup> However, the Fourth Am 'right to privacy.' " Katz v. Ur of the property rights and priv

<sup>24</sup> United States v. United S

<sup>25</sup> Payton v. New York, 44

<sup>26</sup> California v. Acevedo, 5

<sup>27</sup> Stuntz, *Privacy's Problem*

<sup>28</sup> Seidman, Note 1, *supra*,

<sup>29</sup> *Id.* at 1088.

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legitimate expectations of privacy in their "persons, houses, papers, and effects."<sup>23</sup>

Under both historical interpretations, the Court has frequently expressed the view that "physical entry of the home [without a valid warrant] is the chief evil against which the . . . Fourth Amendment is directed."<sup>24</sup> Under this view, the unwarranted "breach of the entrance to an individual's home"<sup>25</sup> is the clearest violation of Fourth Amendment values. As will be seen, even as the Court's devotion to search warrants has ebbed and flowed, the Justices have remained rather firm in their commitment to the protection of the home and other "privately owned building[s]."<sup>26</sup>

Some contemporary scholars believe that the Court's modern privacy analysis is wrong-footed. In reading subsequent chapters, students of the Fourth Amendment may wish to consider various suggestions for change. Professor William Stuntz, for example, believes that the law of criminal procedure, in particular the Fourth Amendment, has focused too much on informational privacy, *i.e.*, on the right to keep information hidden from the government, rather than on dignitary interests. According to Stuntz,

criminal procedure would be better off with less attention to privacy, at least as privacy is defined in the doctrine today. Were the law of criminal procedure to focus more on force and coercion [used by the government] and less on information gathering . . . , it would square better with other constitutional law and better protect the interests most people value most highly.<sup>27</sup>

In reply, Professor Michael Seidman contends that the focus of Fourth Amendment law is precisely where Stuntz would want it, on the matters of "violence, disruption, and humiliation."<sup>28</sup> He reasons that, for example, the harm of a forcible entry and search of a home is less "the revelation of information [inside] but [more] the invasion of broader, more amorphous, but no less real, dignity interests."<sup>29</sup> The distinction between informational privacy and freedom from "violence, disruption, and humiliation" is one that lawyers and scholars of the Fourth Amendment may wish to focus on more fully in coming years.

<sup>23</sup> However, the Fourth Amendment "cannot be translated into a general constitutional 'right to privacy.'" *Katz v. United States*, 389 U.S. 347, 350 (1967). For fuller discussion of the property rights and privacy interpretations, see §§ 7.02-.03, *infra*.

<sup>24</sup> *United States v. United States District Court*, 407 U.S. 297, 313 (1972).

<sup>25</sup> *Payton v. New York*, 445 U.S. 573, 589 (1980).

<sup>26</sup> *California v. Acevedo*, 500 U.S. 565, 585 (1991) (Scalia, J., concurring).

<sup>27</sup> Stuntz, *Privacy's Problem*, Note 1, *supra*, at 1020.

<sup>28</sup> Seidman, Note 1, *supra*, at 1087.

<sup>29</sup> *Id.* at 1088.

Another approach to the Fourth Amendment has been suggested by Professor Scott Sundby. He would choose a new "constitutional metaphor" by which to think about the amendment: "Justice Brandeis's famous image of 'the right to let alone,' no longer fully captures the values that are at stake. . . . [T]he animating principle . . . is the idea of reciprocal government-citizen trust."<sup>30</sup>

According to Sundby, government action draws its legitimacy from the trust that the people place in their representatives by choosing them to govern. This mandate is not valid, however, unless there is voluntary consent of the governed, which only occurs if the government acts in a manner demonstrating its trust in the People to exercise liberty responsibly. That trust, however, "is jeopardized when the government is allowed to intrude into the citizenry's lives without a finding that the citizenry has forfeited society's trust to exercise its freedoms responsibly."<sup>31</sup>

Sundby believes that the value of the metaphor of trust is not that it offers a simple rule for evaluating police conduct in specified circumstances, but rather that it directs attention beyond the privacy expectations of the individual, and beyond the short-term justifications for the government intrusion, to the broader normative issue of what relationship should exist between citizens and their government in a democratic, rather than totalitarian, society. In essence, Professor Sundby would have us (and the courts) think more about "the long-term dangers attendant to not protecting the citizen's independence from the government."<sup>32</sup>

#### § 5.04 Some Things To Know at the Outset

##### [A] Standing to Raise Fourth Amendment Claims<sup>33</sup>

A defendant in a criminal prosecution may not raise a claim of a Fourth Amendment violation unless she is the alleged victim of the unreasonable search or seizure. In other words, Fourth Amendment rights are personal; they may not be vicariously asserted. This is sometimes called the "standing" requirement.

Conceptually, standing to raise a Fourth Amendment claim is a threshold issue. A defense lawyer who wishes to have evidence that was seized by the police suppressed at trial under the Fourth Amendment "exclusionary rule" (see [B] below) must first demonstrate that her client is the alleged victim of the unreasonable search or seizure.

<sup>30</sup> Sundby, Note 1, *supra*, at 1754.

<sup>31</sup> *Id.* at 1777.

<sup>32</sup> *Id.* at 1809.

<sup>33</sup> This subject is discussed in detail in chapter 20, *infra*.

The Supreme Court no longer focuses on the substantive merits of the claim. Nonetheless, it is often possible to win a claim because it is possible to show that the claimant's interests have been violated, just as the claim is not the proper one.

##### [B] Exclusionary Rule

The issue of the scope of the exclusionary rule is an unreasonable search or seizure of the remedy for a Fourth Amendment violation. In criminal proceedings,<sup>34</sup> as the Amendment remedy has been applied in general terms, this rule of exclusion is a violation of the Fourth Amendment in a criminal trial of

The Fourth Amendment is under judicial and legislative control. The use by the government of the exclusionary rule, as a result, significant limits on the government's power. There are continuing efforts to limit the arguments for a

##### [C] Pretrial Nature

In light of the exclusionary rule, the police, are admissible in criminal proceedings. The admissibility issue is raised by a judge, whose response to a seizure was reasonable or not. The issue involved in this determination

There is some historical context. The Supreme Court has noted, in the eyes of the law, not the heroes, but the law. It was they who authorized the assistance that the ame

<sup>34</sup> *Rakas v. Illinois*, 439 U.S. 128, 143 (1979).

<sup>35</sup> *Weeks v. United States*, 232 U.S. 383, 393 (1913).

<sup>36</sup> *Mapp v. Ohio*, 367 U.S. 403, 411 (1961).

<sup>37</sup> Akhil R. Amar, *The Bill of Rights*, 114 Harv. L. Rev. 461, 481 (2001).

<sup>38</sup> See § 5.03, *supra*.