



Incorporating Rights

During the 1950s and 1960s, Supreme Court decisions addressed issues involving individual rights in the civil rights movement, the apportionment of voting, police procedures, and the scope of state power in areas such as birth control and school prayer.

Background

In the 1950s, the United States was still experiencing the hopes and challenges of the post-World War II era. Mass hysteria about the threat of **communism** swept the country as the U.S. engaged in a **Cold War** with the Soviet Union. **Civil liberties** were threatened by Senator Joseph McCarthy and the House Un-American Activities Committee, which accused hundreds of people of being communists, ending the careers of many. The threats of nuclear war and the spread of communism lingered throughout the decade. At home, schoolchildren practiced “**duck and cover**” drills. Abroad, U.S. soldiers fought communist powers in Korea and developed an increasing presence in Vietnam.

The end of World War II also created unprecedented economic growth. Between 1945 and 1960, the average family income increased from \$2,200 to \$8,000 per year. Additionally, the GI Bill financed college tuition for returning veterans and made buying a home more affordable. By 1960, the rate of homeownership in the U.S. reached 62 percent, compared to 43.6 percent 20 years earlier. However, these economic benefits were largely enjoyed by the white middle class. Across the nation, Black Americans were systematically excluded from the benefits of the GI Bill. They were frequently denied mortgages, and the new suburban neighborhoods where many white families moved often had racially restrictive **housing covenants**. In addition, **Jim Crow laws** and other racially biased legislation segregated all aspects of public life, from schools to movie theaters to water fountains. Other groups also continued to face discrimination, including Mexican Americans, Native Americans, women, and the LGBTQ+ community.

Throughout the 1950s and 1960s, civil rights advocates fought for marginalized groups and challenged the status quo. They raised questions about constitutional rights, using the **Fourteenth Amendment** to argue that all persons are entitled to equal protection under the law. They also brought cases to the Supreme Court about the protections of the First Amendment and the rights of the accused. From 1953 to 1969, under Chief Justice Earl Warren, the Supreme Court addressed pressing constitutional questions about individual rights and freedoms.

The Civil Rights Movement

The Supreme Court’s decision in *Brown v. Board of Education* (1954) challenged the constitutionality of segregated schools. In 1896, *Plessy v. Ferguson* legalized segregation based on the “separate but equal” principle. States across the country created separate, all-Black schools that were often underfunded, of inferior quality, or further from students’ homes. In *Brown*, future Supreme Court Justice Thurgood Marshall, head of the NAACP’s **Legal Defense Fund**, argued that segregation in schools was inherently unequal. The Court agreed in a **unanimous** decision overturning the *Plessy* case,

stating that “in the field of public education, ‘separate but equal’ has no place.” Though the *Brown* decision was met with significant opposition, it paved the way for legal challenges to other segregationist laws throughout the country.

In the wake of *Brown*, the lynching of Black teenager Emmett Till in August 1955 brought renewed national attention to the need for the Civil Rights Movement. This movement challenged inequalities in housing, voting rights, and public accommodations such as hotels, bathrooms, and transportation. Civil rights activists used many tactics, including nonviolence and court challenges. One of the most famous examples of non-violent protest was the 1955 Montgomery Bus Boycott, which challenged the city’s bus segregation laws. Both a city ordinance and Alabama law required Black passengers to enter through the rear of the bus and give up their seats to white riders if the bus was full. The boycott officially began on December 5, 1955 after police arrested Rosa Parks for refusing to give up her bus seat. For 381 days, boycotters walked and coordinated carpools to avoid taking the bus. After the Supreme Court held that the city and state bus segregation laws were unconstitutional in *Browder v. Gayle* (1956), the boycott ended. The activists had successfully and peacefully challenged one component of racial discrimination in Montgomery, Alabama.

The bus boycott popularized nonviolent **direct action** as a strategic approach in the Civil Rights Movement. This prompted a series of cases in which the Supreme Court was asked to address the rights of protesters and the scope of segregation. For example, in the 1960s, **sit-ins** spread across the nation. Young Black activists, mainly students, sat at whites-only lunch counters knowing they would be refused service and harassed. Indeed, many were arrested and charged with trespassing and disorderly conduct. After hearing several cases, the Court held that sit-in demonstrations could not be prosecuted under federal or state trespass laws. Additionally, the Congress for Racial Equality (CORE) organized “**freedom rides**” to highlight the widespread violation of the Supreme Court’s decision in *Boynton v. Virginia* (1960). According to *Boynton*, segregation on interstate bus routes was unconstitutional. Freedom riders rode buses from Washington, D.C. to cities throughout the South, facing violence and terrorism from white segregationists along the way.

Throughout the 1950s and 1960s, the Supreme Court recognized on a case-by-case basis that segregation violated the Constitution. Congress, however, had the power to make one overarching law to eliminate Jim Crow laws. After the 1963 March on Washington for Jobs and Freedom, where Dr. Martin Luther King Jr. gave his “I Have a Dream” speech, Congress passed the **Civil Rights Act of 1964**. The act officially banned segregation in public spaces. The same year, the states ratified the Twenty-Fourth Amendment, outlawing **poll taxes**. The **Voting Rights Act of 1965** then eliminated **grandfather clauses**, poll taxes, and other racially discriminatory legislation used by local governments to **disenfranchise** voters.

The African-American Civil Rights Movement inspired other marginalized groups to organize and demand equal opportunities. The women's rights movement picked up momentum, aided in part by the Food and Drug Administration's approval of the birth control pill in 1960, which allowed women more freedom in family planning. Still, many states had strict laws regulating **contraceptives**. The Planned Parenthood League of Connecticut challenged its state's law and appealed their case to the Supreme Court. The case, *Griswold v. Connecticut* (1965), was the first time the Supreme Court linked reproductive rights to a right to privacy. The following year, the National Organization for Women (NOW) was founded and launched a fierce campaign to secure women's full economic equality and reproductive rights. Additionally, after an earlier legal victory in *Hernandez v. Texas* (1954), the Mexican-American Civil Rights Movement gained prominence in the 1960s with the leadership of Cesar Chavez and Dolores Huerta. *Hernandez* recognized Mexican Americans as a protected group under the Fourteenth Amendment, but discrimination continued. Chavez and Huerta organized a **strike** of migrant farm workers in California, who were largely Mexican American. Like the African-American Civil Rights Movement, women and Mexican Americans, along with Asian Americans, Native Americans, and the LGBTQ+ community, made progress during the wave of activism in the 1960s.

Protecting Voices

Challenges to the status quo of the 1950s and 1960s, like the Civil Rights Movement, tested the Constitution's protection of individual rights. The Warren Court affirmed these protections after hearing cases about voting representation, First Amendment rights, and the rights of the accused.

Voter discrimination stemmed from major population shifts during the 20th century. In some states, votes of people who lived in rural areas weighed more than votes of people in urban areas. For example, one vote in the rural Chester County, Tennessee, where 13 percent of residents were nonwhite, weighed eight times more than a vote in the urban Shelby County (home to the city of Memphis), where 36 percent of residents were nonwhite. After the Supreme Court established the one-person, one vote rule in its *Baker v. Carr* (1962) decision, representation was proportional to population, and the political process became more accessible.

The Warren Court also clarified First Amendment rights. Fear of communism, which began before the Cold War but escalated at the end of World War II, drove Congress to pass measures restricting free speech and freedom to assemble. The Smith Act of 1940, for example, made it a federal crime to be part of a group that advocates overthrowing the government. Initially, the Supreme Court upheld the constitutionality of the Smith Act in *Dennis v. United States* (1951). Then, in 1957, the Supreme Court's decision in *Yates v. United States* overturned the convictions of 14 individuals under the Smith Act and severely weakened the law. *Yates* was one of several Supreme Court decisions in the late 1950s and early 1960s to hold that anti-Communist laws violated civil liberties under the First Amendment.

In *Engel v. Vitale* (1962), the Court protected religious freedom by holding that school-sponsored prayer is unconstitutional. *New York Times Company v. Sullivan* (1964) protected free speech and free press, allowing the media to voice opinions about the government without fear of a **libel** suit. Later, the Court clarified student free speech rights in *Tinker v. Des Moines* (1969). A group of students in Des Moines, Iowa wore black armbands to school to protest the Vietnam War. When the school disciplined them, their families challenged the punishment as a violation of freedom of expression. The Supreme Court held that the school was in violation of the students' rights because the protest was peaceful and non-disruptive. However, the Court clarified that schools are within their rights to discipline any behavior that creates a "substantial disruption."

Through a series of cases in the 1960s, the Warren Court articulated the rights of the accused (see table below). Using a process called **selective incorporation**, the Justices applied provisions of the Bill of Rights to the states on a case-by-case basis. (Before an amendment is incorporated to the states, the rights guaranteed by the Bill of Rights only apply to the federal government.) The Court decided in cases like *Mapp v. Ohio* (1961), *Gideon v. Wainwright* (1962), *Escobedo v. Illinois* (1964), and *Miranda v. Arizona* (1966) that there are certain parts of the Bill of Rights that are, as stated in *Gideon*, "fundamental to a fair trial."



KEY CASES: RIGHTS OF THE ACCUSED

Case	Year	Amendment	Summary
<i>Mapp v. Ohio</i>	1961	4th	The Fourth Amendment's exclusionary rule is applied to the states. Evidence that was obtained in an unreasonable search or seizure may not be used in a trial.
<i>Gideon v. Wainwright</i>	1962	6th	The right to counsel is fundamental and essential to a fair trial.
<i>Escobedo v. Illinois</i>	1964	6th	A person's right to counsel begins as soon as they are taken into custody.
<i>Miranda v. Arizona</i>	1966	5th	The Fifth Amendment right against self-incrimination is fundamental to a fair trial. All persons arrested under state law must be informed of their constitutional rights when they are taken into custody.



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Conclusion

The Warren Court faced significant criticism. Billboards that appeared throughout the country declared, “Save Our Republic! Impeach Earl Warren!” The Impeach Earl Warren campaign was rooted in opposition to school desegregation and the *Brown* decision and continued throughout the Chief Justice’s tenure. Opponents also believed the Court overstepped its power and pushed a political agenda on issues that should have been left to the other two branches to resolve. Additionally, some feared that the Court’s decisions expanded the rights of criminals at the expense of police power to protect public safety.

Earl Warren resigned on his own accord in 1969. He was never impeached; and not all of his opponents subscribed to the Impeach Earl Warren movement. The backlash, however, was significant. The controversy over the Warren Court led future presidents Richard M. Nixon and Ronald Reagan to campaign on promises to reform the Supreme Court through their judicial appointments.

In the 16 years of the Warren Court, the Supreme Court’s opinions addressed a number of constitutional questions about justice and democracy that continue to impact the country today. Its decisions had major implications for the Civil Rights Movement, freedom of speech, and the rights of the accused. The advocacy of lawyers like Thurgood Marshall, Constance Baker Motley, Dorothy Kenyon, and Gus Garcia brought the Fourteenth Amendment to the forefront of their legal arguments, leading to increased application of the principles of equal protection and due process under the law.

Vocabulary

- **Communism** – a political ideology that advocates for a classless system where all property and wealth are owned communally instead of by individuals
- **Cold War** – the ideological conflict between the U.S. and the Soviet Union during the second half of the 20th century
- **Civil liberties** – fundamental rights and freedoms protected by the U.S. Constitution
- **“Duck and cover” drills** – “Duck and Cover” was an animated public service announcement that aimed to teach children how to protect themselves from a nuclear attack
- **Legal Defense Fund** – the NAACP’s legal organization dedicated to fighting for racial justice, founded by Justice Thurgood Marshall in 1940
- **Housing covenants** – contractual agreements for neighborhoods, especially in suburban areas, which regulate changes that can be made to a home; this sometimes included racially restrictive clauses that prohibited the sale of homes to Black families
- **Jim Crow Laws** – refer to the legalized segregation of the Black population of the United States in schools, restaurants, public transportation, and other institutions or facilities, and the denial of the right to vote, after the Civil War up until the 1960s

- **Fourteenth Amendment** – ratified in 1868, granted citizenship to all persons born or naturalized in the United States—including formerly enslaved people—and guaranteed all persons “equal protection of the laws”
- **Unanimous** – fully in agreement
- **Direct action** – a protest method involving using peaceful tactics, such as sit-ins, demonstrations, and boycotts
- **Sit-ins** – a protest method, first used by students in Greensboro, North Carolina, where African Americans would sit in a “whites-only” section of a public space
- **Freedom rides** – a direct action tactic where activists would ride interstate buses into the segregated South, where the buses and bus stations were legally segregated
- **Civil Rights Act of 1964** – outlawed discrimination on the basis of race, color, religion, sex or national origin
- **Grandfather clauses** – a part of the constitutions of some Southern states that required having a descendant who voted before 1867 to be eligible to vote.
- **Poll Taxes** – a payment required to vote, commonly used by Southern states to keep Black citizens from voting
- **Voting Rights Act of 1965** – outlawed discriminatory voting practices adopted in many Southern states after the Civil War, including literacy tests, as a prerequisite to voting
- **Disenfranchise** – to take away the right to vote
- **Contraceptive** – a drug, technique, or device used to prevent pregnancy
- **Strike** – an organized refusal to work
- **Libel** – a published false statement that is damaging to a person's reputation
- **Selective Incorporation** – the Supreme Court process of using individual cases to make the Bill of Rights apply to the states

Discussion Questions

1. Describe the impact of the Warren Court’s decisions on the Civil Rights Movement.
2. How did the African-American Civil Rights Movement impact other rights movements?
3. A democracy is a system of government by the whole population or all the eligible members of a state, typically through elected representatives. Why was the Court’s decision in *Baker v. Carr* important to democracy?
4. To what extent did the Supreme Court contribute to the expansion of individual rights from 1953-1969?

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