



US Politics and Government

Civil Rights and Liberties

Politics Edexcel and AQA – revision notes – based on Hodder Education revision guides

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Key dates and events in the history of race and rights in the USA

1861-1865 – American civil war.

1865-1870 – 13th, 14th and 15th amendments banning slavery, and introducing the right to vote and to be equal before the law, regardless of race.

1896 – *Plessy v Ferguson* Facilities could be ‘separate but equal’ (allowing for segregation and ‘Jim Crow’ laws).

1954 – *Brown v Board of Education* effectively overturned *Plessy v Ferguson*.

1955-1965 – Civil rights campaigns (including Rosa Parks, Martin Luther King) and legislation such as the Civil Rights Act 1964 and the Voting Rights Act 1965.

1978 – Affirmative Action in college admission upheld by *University of California v Bakke* and many subsequent similar rulings.

2009-2017 – Barack Obama elected as the first African American president. Introduced executive orders to protect undocumented immigrants; one was overturned by the court, and a few others were reversed by Trump.

2020 – Black Lives Matter protests.

Civil rights = positive acts by the government that are designed to protect citizens against the powers of the state and against any arbitrary or discriminatory measures by the government or individuals.

Racial and ethnic equality = individuals of any racial and ethnic background are not subjected to any arbitrary or discriminatory measures by the government or individuals, and enjoy equal access to services, institutions, rights and freedoms.

Constitutional rights = individual rights that are enumerated and protected by the US constitution.

Civil liberties = advanced and protected primarily by the **Bill of Rights** = Amendments I-X of the constitution, and in subsequent rulings by the Court.

The Court and the Bill of Rights

The first ten amendments of the US constitution are considered the Bill of Rights providing entrenched rights:

I Freedom of speech, religion, association, etc.

II The right to bear arms.

III No involuntary quartering soldiers.

IV Freedom from unreasonable searches.

V Freedom from self-incrimination (hence people 'plead the fifth').

VI Right to a fair and timely trial.

VII The right to trial by jury.

VIII Freedom from cruel and unusual punishment (no torture).

- *Roper v Simmons* (2005) = declared it is unconstitutional to sentence anyone to death for a crime they committed when under the age of 18.
- *Glossip v Gross* (2015) = declared that lethal injection did not infringe the Eight Amendment.

IX Making it clear that these rights are not the only rights people have.

X Some rights are reserved to the states (reinforcing federalism).

Further amendments added:

XI Suits against states, state sovereignty and immunity = federal courts cannot have the authority to hear cases that were privately brought forward by parties against a state in which they are not citizens, or by citizens of a foreign state. Effectively the states are protected from suits by citizens of other states or foreign countries.

XII Made a series of adjustments to the electoral college, specifically to allow for the president and vice-president to be elected together.

XIII Slavery is illegal.

XIV Prevention of racial discrimination; equal protection before the law.

XV Right to vote, regardless of race.

XIX Granted women the right to vote.

XXIV Right to vote without a poll tax or other fee to vote.

XXVI The right to vote at 18.

Impact of the Supreme Court on public policy

Public policy = any action enacted by the government to address matters that are going to have an effect of the public at large, such as health or education policy, abortion, same-sex marriage, etc.

Key features of influence

- (1) **Removes policy** = striking a policy down as unconstitutional.
- (2) **Defends policy** = ruling a policy to be constitutional.
- (3) **Policy creation** = while in theory the court should not create new policies = legislation, effectively it has the power to do so, especially an activist court.

For example

By ruling in favour of same-sex marriage in *Obergefell v Hodges* (2015) the Court effectively legalised **same-sex marriages** in the 13 states that had not yet legalised it.

Abortion = established by *Roe v Wade* (1973) and several subsequent rulings overturning some federal and state laws restricting a woman's right to choose. Despite that, since 2021 many Republican states introduced new restrictions, effectively threatening the 1973 ruling.

Euthanasia = established by *Gonzales v Oregon* (2006); states can legislate in favour of physician-assisted suicide without federal interference.

Some argue that these features make the Court into a **quasi-government** that in effect is the sovereign, yet unelected and unaccountable, with inadequate checks and balances.

Affirmative Action

Affirmative action = a programme that provides members with a disadvantaged background or from a discriminated against minority groups, a head-start in areas such as education and employment.

Quota = a programme by which a certain percentage of places is reserved for members of disadvantaged groups.

Busing = a mandated movement of children between racially homogenous neighbourhoods, such as white suburbs and black inner cities, to establish mixed-race schools.

Quota and busing were essential within the Affirmative Action measures.

A range of measures aimed to redress historic injustices against certain groups. It moves beyond the concept of **equality of opportunity**, as it actively prioritises such disadvantaged individuals (from minority-ethnic groups, women, etc) and allocates a

quota where relevant – such as college entry must recruit a minimum number of black students, women, etc.

Affirmative Action measures were meant to foster **diversity**, **multiculturalism** and **pluralism**.

It important to note that Affirmative Action went way beyond measures to foster equality of opportunity because it was a proactive and deliberate attempt to encourage **equality of outcome**.

While equality of opportunity focuses on providing the same rights and opportunities to all, the focus of equality of outcome is on results, in specific measures such as education and employment. Affirmative Action was deemed necessary to encourage equality of outcome because it minimises the gaps and fosters equality.

Several Supreme Court rulings upheld the right of universities to recruit by Affirmative Action and quota, despite the criticism of ‘positive discrimination’.

Surveys find that the majority of Americans support Affirmative Action, although it tends to be divided across party lines with Republicans more likely to oppose.

- *What is the status of Affirmative action now?*
- *Link with political ideologies.*

Voting rights and minority representation

Voting rights were widened progressively, yet some concerns remain:

- The introduction by some states of a phot ID requirement at polling stations.
- The removal of voting rights for convicted criminals.

Minority representation also increased over the last few decades:

- **In Congress:** increase in Black and Hispanic members.
- **In presidential candidates:** Barack Obama won the Democratic nomination and the presidency (2008); in 2020 six minority ethnic candidates ran for the Democratic nomination, and Kamala Harris became the first African American and the first Asian American vice-president in 2021.
- **In the president’s cabinet:** Obama’s cabinet 2009 was the most racially diverse; out of 15 heads of executive departments, seven were from minority ethnic groups. Biden’s first cabinet 2020 included ten women and eight minority ethnic appointments, out of a total of 25 members.

Immigration reform

Obama

- Promised 'to fix our broken immigration system'.
- Failed to pass his immigration bill (the DREAM Act, Development, Relief, and Education for Alien Minors) through the Congress; this bill would have granted undocumented and unauthorised immigrants a conditional residency and the right to work.
- Issued a few executive orders to protect children from deportation.
- The Court ruled one of them unconstitutional.

Trump

- Elected with the promise to 'build a wall' between the USA and Mexico and to prevent immigration. A wall, in part, was built, and national guards positioned.
- Series of executive orders and proclamations including the controversial 'Muslim travel ban', banning entry to the USA from a few mostly Muslim countries.
- Reversed some of the executive orders given by Obama.
- Increased deportation and restricted asylum applications.
- Separated children from parents at the borders and detention centres.

2021 – Biden signed several executive orders reversing many of Trump's reforms.