The passage of the Nineteenth Amendment was a major milestone in the history of the right to vote. Yet significant barriers to universal suffrage remained in place, and they were not shaken by either the prosperity of the 1920s or the Great Depression of the 1930s. African Americans in the South remained disfranchised, many immigrants still had to pass literacy tests, and some recipients of relief in the 1930s were threatened with exclusion because they were “paupers.” Pressures for change, however, began to build during World War II, and they intensified in the 1950s and 1960s. The result was the most sweeping transformation in voting rights in the nation’s history: almost all remaining limitations on the franchise were eliminated as the federal government overrode the long tradition of states’ rights and became the guarantor of universal suffrage. Although focused initially on African Americans in the South, the movement for change spread rapidly, touching all regions of the nation.

Not surprisingly, such a major set of changes had multiple sources. World War II itself played a significant role, in part because of its impact on public opinion. Americans embraced the war’s explicitly stated goals of restoring democracy and ending racial and ethnic discrimination in Europe; and it was not difficult to see—as African American political leaders pointed out—that there was a glaring contradiction between those international goals and the reality of life in the American South. That contradiction seemed particularly disturbing at a time when hundreds of thousands of disfranchised African Americans and Native Americans were risking their lives by serving in the armed forces. Accordingly, when Congress passed legislation authorizing absentee balloting for overseas soldiers, it included a provision exempting soldiers in the field from having to pay poll taxes—even if they came from poll tax states. In 1944 the Supreme Court—partially populated by justices appointed during the New Deal and comfortable with an activist federal government—reversed two previous decisions and ruled, in Smith v. Allwright, that all-white primaries (and all-white political parties) were unconstitutional. Diplomatic considerations—particularly with regard to China and other allies in the Pacific—also led to the dismantling of racial barriers, as laws prohibiting Asian immigration, citizenship, and enfranchisement were repealed.

During the cold war, foreign affairs continued to generate pressure for reforms. In its competition with the Soviet Union for political support in third world nations, the United States found that the treatment of African Americans in the South undercut its claim to be democracy’s advocate. As Secretary of State Dean Acheson noted, “the existence of discrimination against minority groups in the United States is a handicap in our relations with other countries.” The impetus for change also came from within the two major political parties, both because of a broadening ideological embrace of democratic values and because the sizable migration of African Americans out of the South, begun during World War I, was increasing the number of black voters in northern states. Meanwhile, the postwar economic boom took some of the edge off class fears, while the technological transformation of southern agriculture led to a rapid growth in the proportion of the African American population that lived in urban areas where they could mobilize politically more easily. The changes that occurred were grounded both in Washington and in a steadily strengthening civil rights movement across the South and around the nation.

This convergence of forces, coupled with the political skills of Lyndon Johnson, the first Southerner elected to the presidency in more than a century, led to the passage in 1965 of the Voting Rights Act (VRA). The VRA immediately suspended literacy tests and other discriminatory “devices” in all states and counties where fewer than 50 percent of all adults had gone to the polls in 1964. It also authorized the attorney general to send examiners into the South to enroll voters, and it prohibited state and local governments in affected areas from changing any electoral procedures without the “preclearance” of the civil rights division of the Justice Department. (This key provision, section 5, prevented cities or states from developing new techniques for keeping African Americans politically powerless.) The VRA also instructed the Justice Department to begin litigation that would test the constitutionality of poll taxes in state elections. (Poll taxes in federal elections had already been banned by the Twenty-Fourth
Amendment, ratified in 1964.) The VRA, in effect, provided mechanisms for the federal government to enforce the Fifteenth Amendment in states that were not doing so; designed initially as a temporary, quasi-emergency measure, it would be revised and renewed in 1970, 1975, 1982, and 2006, broadening its reach to language minorities and remaining at the center of federal voting rights law.

Not surprisingly, six southern states challenged the VRA in federal courts, arguing that it was an unconstitutional federal encroachment "on an area reserved to the States by the Constitution." But the Supreme Court, led by Chief Justice Earl Warren, emphatically rejected that argument in 1966, maintaining that key provisions of the VRA were "a valid means for carrying out the commands of the Fifteenth Amendment." In other cases, the Supreme Court invoked the equal protection clause of the Fourteenth Amendment. In subsequent decisions, the Court ruled that lengthy residency requirements for voting (in most cases, any longer than 30 days) were also unconstitutional.

Three other elements of this broad-gauged transformation of voting rights law were significant. First was that in the late 1940s and early 1950s, all remaining legal restrictions on the voting rights of Native Americans were removed. Although the vast majority of Native Americans were already enfranchised, several western states with sizable Native American populations excluded "Indians not taxed" (because they lived on reservations that did not pay property taxes) or those construed to be "under guardianship" (a misapplication of a legal category designed to refer to those who lacked the physical or mental capacity to conduct their own affairs). Thanks in part to lawsuits launched by Native American military veterans of World War II, these laws were struck down or repealed.

The second development affected a much broader swath of the country: the Supreme Court, even before the passage of the Voting Rights Act, challenged the ability of the states to maintain legislative districts that were of significantly unequal size—a common practice that frequently gave great power to rural areas. In a series of decisions, the Court concluded that it was undemocratic "to say that a vote is worth more in one district than in another," and effectively made "one person, one vote" the law of the land.

The third key change was precipitated by the Vietnam War and by the claim of young protesters against that war that it was illegitimate to draft them into the armed services at age 18 if they were not entitled to vote until they were 21. Congress responded to such claims in 1970 by lowering the voting age to 18. After the Supreme Court ruled that Congress did not have the power to change the age limit in state elections, Congress acted again in 1971, passing a constitutional amendment to serve the same purpose. The Twenty-Sixth Amendment was ratified in record time by the states.

The post–World War II movement to broaden the franchise reached its limit over the issue of felon disfranchisement. Most states in the 1960s deprived convicted felons of their suffrage rights, either for the duration of their sentences or, in some cases, permanently. Many of these laws, inspired by English common law, dated back to the early nineteenth century and were adopted at a time when suffrage was considered a privilege rather than a right. Others, particularly in the South, were expressly tailored in the late nineteenth century to keep African Americans from registering to vote.

The rationales for such laws had never been particularly compelling, and in the late 1960s they began to be challenged in the courts. The grounds for such challenges, building on other voting rights decisions, were that the laws violated the equal protection clause and that any limitations on the franchise had to be subject to the "strict scrutiny" of the courts. (Strict scrutiny meant that there had to be a demonstrably compelling state interest for such a law and that the law had to be narrowly tailored to serve that interest.)

The issue eventually reached the Supreme Court, in Richardson v. Ramirez (1974), which decided that state felon disfranchisement laws were permissible (and not subject to strict scrutiny) by a phrase in the Fourteenth Amendment that tacitly allowed adult men to be deprived of the suffrage "for participation in rebellion, or other crime." The meaning of "or other crime" was far from certain (in context it may have been referring to those who supported the Confederacy), but the Court interpreted it broadly in a controversial decision. In the decades following the ruling, many states liberalized their felon disfranchisement laws, and permanent or lifetime exclusions were consequently imposed in only a few states by the early twenty-first century. During the same period, however, the size of the population in jail or on probation and parole rose so rapidly that the number of persons affected by the disfranchisement laws also soared—reaching 5.3 million by 2006.

The significant exclusion of felons ought not obscure the scope of what had been achieved between World War II and 1970. In the span of several decades, nearly all remaining restrictions on the right to vote of American citizens had been overturned: in different states the legal changes affected African Americans, Native Americans, Asian Americans, the illiterate, the non–English speaking, the very poor, those who had recently moved from one locale to another, and everyone between the ages of 18 and
21. Congress and the Supreme Court had embraced democracy as a national value and concluded that a genuine democracy could only be achieved if the federal government overrode the suffrage limitations imposed by many states. The franchise was nationalized and something approximating universal suffrage finally achieved—almost two centuries after the Constitution was adopted. Tens of millions of people could vote in 1975 who would not have been permitted to do so in 1945 or 1950.

New and Lingering Conflicts

Yet the struggle for fully democratic rights and institutions had not come to an end. Two sizable, if somewhat marginal, groups of residents sought a further broadening of the franchise itself. One was ex-felons, who worked with several voting rights groups to persuade legislators around the country to pass laws permitting those convicted of crimes to vote as soon as they were discharged from prison. The second group consisted of noncitizen legal residents, many of whom hoped to gain the right to vote in local elections so that they could participate in governing the communities in which they lived, paid taxes, and sent their children to school. Noncitizens did possess or acquire local voting rights in a handful of cities, but the movement to make such rights widespread encountered substantial opposition in a population that was increasingly apprehensive about immigration and that regarded “voting and citizenship,” as the San Francisco Examiner put it, as “so inextricably bound in this country that it’s hard to imagine one without the other.” Indeed, many Americans believed that ex-felons and noncitizens had no legitimate claim to these political rights—although they were common in many other economically advanced countries.

More central to the political life of most cities and states were several other issues that moved to center stage once basic questions about enfranchisement had been settled. The first involved districting: the drawing of geographic boundaries that determined how individual votes would be aggregated and translated into political office or power. Politicians had long known that districting decisions (for elections at any level) could easily have an impact on the outcome of elections, and partisan considerations had long played a role in the drawing of district boundaries. The equation changed, however, when the Supreme Court’s “one person, one vote” decisions, coupled with the passage of the Voting Rights Act, drew race into the picture. This happened first when (as expected) some cities and states in the South sought to redraw district boundaries in ways that would diminish, or undercut, the political influence of newly enfranchised African Americans. The courts and the Department of Justice rebuffed such efforts, heeding the words of Chief Justice Earl Warren, in a key 1964 districting case, that “the right of suffrage can be denied by a . . . dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.”

Yet the task of considering race in the drawing of district boundaries involved competing values, opening a host of new questions that federal courts and legislatures were to wrestle with for decades. What was the appropriate role for race in districting decisions? Should districting be color-blind, even if that meant that no minorities would be elected to office? (The courts thought not.) Should race be the predominant factor in drawing boundaries? (The courts also thought not.) In jurisdictions where African Americans constituted a sizable minority of the population, should legislatures try to guarantee some African American representation? (Probably.) Should the size of that representation be proportional to the size of the African American population? (Probably not.) Did nonracial minorities—like Hasidic Jews in Brooklyn—have similar rights to elect their own representatives? (No.) The courts and legislatures muddled forward, case by case, decade by decade, without offering definitive answers to questions that were likely insoluble in the absence of a coherent theory of representation or a widely accepted standard of fairness. Between 1970 and the beginning of the twenty-first century, the number of African Americans, Hispanics, and Asian Americans elected to public office rose dramatically, but clear-cut, definitive guidelines for districting without “vote dilution” remained out of reach.

A second cluster of issues revolved around the procedures for voter registration and casting ballots. Here a core tension was present (as it long had been) between maximizing access to the ballot box and preventing fraud. Procedures that made it easier to register and vote were also likely to make it easier for fraud to occur, while toughening up the procedures to deter fraud ran the risk of keeping legitimate voters from casting their ballots. By the 1970s, many scholars (as well as progressive political activists) were calling attention to the fact that, despite the transformation of the nation’s suffrage laws, turnout in elections was quite low, particularly among the poor and the young. (Half of all potential voters failed to cast ballots for presidential elections, and the proportion was far higher in off-year elections.) Political scientists engaged in lively debates about the sources of low turnout, but there was widespread agreement that one cause could be found in the complicated and sometimes unwieldy registration procedures in some states. As a result, pressure for reforms mounted, generally supported by Democrats (who thought they would benefit) and opposed by Republicans (who were concerned about both fraud and partisan losses). Many states did streamline their procedures, but others did not, and, as a result, Congress began to consider federal registration guidelines.

What emerged from Congress in the early 1990s was the National Voter Registration Act, a measure that would require each state to permit citizens to
voting

register by mail, while applying for a driver’s license, or at designated public agencies, including those offering public assistance and services to the disabled. First passed in 1992, the “motor voter bill” (as it was called) was vetoed by President George H. W. Bush on the grounds that it was an “unnecessary” federal intervention into state affairs and an “open invitation to fraud.” The following year, President Bill Clinton signed the measure into law, placing the federal government squarely on record in support of making it easier for adult citizens to exercise their right to vote. Within a few years, the impact of the bill on registration rolls had been clearly demonstrated, as millions of new voters were signed up. But turnout did not follow suit in either 1996 or 1998, suggesting that registration procedures alone were not responsible for the large numbers of Americans who did not vote. During the following decade, some Democratic activists turned their attention to promoting registration on election day as a new strategy for increasing turnout.

Meanwhile, Republican political professionals sought to push the pendulum in the opposite direction. Concerned that procedures for voting had become too lax (and potentially too susceptible to fraud), Republicans in numerous states began to advocate laws that would require voters to present government-issued identification documents (with photos) when they registered and/or voted. The presentation of “ID” was already mandated in some states—although the types of identification considered acceptable varied widely—but elsewhere voters were obliged only to state their names to precinct officials. Concerned for the poor, the young, and the elderly (the three groups least likely to possess driver’s licenses), such laws were passed in Georgia and Indiana in 2005, among other states. After a set of disparate rulings by lower courts, the Indiana law was reviewed by the Supreme Court, which affirmed its constitutionality in 2008 in a 6-to-3 decision. Although the Court’s majority acknowledged that there was little or no evidence that voting fraud had actually occurred in Indiana, it concluded that requiring a photo ID did not unduly burden the right to vote. In the wake of the Court’s decision, numerous other states were expected to pass similar laws. How many people would be barred from the polls as a result was unclear. In Indiana’s primary election in the spring of 2008, several elderly nuns who lacked driver’s licenses or other forms of photo ID were rebuffed when they attempted to vote.

Conflict over the exercise of the right to vote could still be found in the United States more than 200 years after the nation’s founding. Indeed, the disputed presidential election of 2000, between Al Gore and George W. Bush, revolved in part around yet another dimension of the right to vote—the right to have one’s vote counted, and counted accurately. Perhaps inescapably, the breadth of the franchise, as well as the ease with which it could be exercised, remained embedded in partisan politics, in the pursuit of power in the world’s most powerful nation. The outcomes of elections mattered, and those outcomes often were determined not just by how people voted but also by who voted. The long historical record suggested that—however much progress had been achieved between 1787 and 2008—there would be no final settlement of this issue. The voting rights of at least some Americans could always be potentially threatened and consequently would always be in need of protection.

See also civil rights; race and politics; woman suffrage.


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