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4 Federalism and Race

Federalism's powerful influence on American political development is most clear in the enduring political battles about race and the government's role in the economy. These two issues have been the most basic, persistent, far-reaching, and passionate conflicts in American life. In turn, the relentless use of federalism in these conflicts legitimized it as a weapon in all other major conflicts. This chapter and the next focus on the way federalism affected the way the United States has grappled with these issues over its history.

Conflict over the place of African Americans in the United States has been an agonizing "American dilemma" for generations, from battles over slavery until the 1860s, then racial segregation and white supremacy until the 1960s, and remedies for the consequences of this history ever since. Race has permeated American politics from the beginning.¹

Federalism has had three effects on the politics of race in America. First, it decentralized key choices about the status of African Americans. In the early American republic, slave owners used state government authority to strengthen their domination of slaves. But while slavery thrived in the South, it withered in the Northern states, where opposition to slavery inspired Northern state laws that defied it.

Second, federalism allowed the slaveholding states to prolong the exclusion of blacks for generations, even after abolition and the military defeat of the slave states in the nineteenth century. The Civil War settled the issue of state secession but it did not permanently remove the states' authority legally to subjugate African Americans, or the political incentives for the Democratic and Republican Parties to allow the Southern states to continue to subordinate their black residents. In the late nineteenth century, the former slave states all but eliminated the voting rights of blacks, and they segregated blacks into inferior roles in Southern society. The Federal government left the Southern states' racial order intact as it became more active in the first half of the twentieth century.

Third, federalism severely complicated efforts to overcome the cumulative consequences of this heritage, and helped produce widely varied results for the legal, social, and economic inclusion of African American citizens. As demands for an end to legal segregation gathered strength after World

War II, segregationists dug in behind the bulwark of "states' rights" to resist and delay these changes. The civil rights laws of the 1960s finally eliminated legal segregation, but the cumulative effects of decades of the legal subordination of blacks left African Americans excluded from full participation in American life. New, more active government efforts to incorporate blacks into the American mainstream have yielded very uneven results, with strong protections for voting and employment rights, but continuing disadvantages for minorities in sharing in American prosperity. Federalism remains an important battlefield for efforts to deal with the consequences of America's racial history for employment, housing, and education.

Why Race Matters

Americans' struggle with racial exclusion has been intense and continuous, and has strongly influenced the development of American culture, the nation's economy, its political parties and interest groups, its public policy, and all its governing institutions. In the words of political scientist Robert Lieberman, "Race—particularly the color line dividing white from black (or white from everything else)—has always been central to American political life."² As political scientist Rogers Smith pointed out, while America lacked the feudalism that created a hierarchy of nobles and commoners in Europe, race and gender constituted equally important hierarchies in the United States. White European men built the American republic, and they assumed that white male descendants of Europeans would control it. Though these men treasured freedom, equality, and democracy for themselves, they viewed blacks, Indians, and women as inferiors. The white men who built the American republic did not fully incorporate members of these groups into the nation's civic life.³ Race always has divided Americans, and it has often divided Americans with otherwise similar economic interests. Political scientists identify race as a major dimension of political conflict in the United States, one that cuts across economic divisions, the other major dimension of political division in American history. James L. Sundquist showed how race contributed to fundamental realignments of American politics in the nineteenth and twentieth centuries. In their landmark study of 70,000 congressional votes from 1789 to 1985, Keith T. Poole and Howard Rosenthal found that racial conflicts often constituted a fundamental cleavage in American politics.⁴ As Americans cope with the enduring consequences of racial exclusion today, many still retain clear personal and family memories of legal segregation and the civil rights movement. Racial discrimination is burned into the American memory. The effects are evident in many areas of fundamental importance to the American future, including employment, housing, education, and the distribution of wealth.⁵

America's struggle with race was fought out on the battlefield of federalism. No conflicts in American history involved federalism more openly. No

conflicts did more to mark out the boundaries of Federal and state power in the nation's formative years. Southern states used their policy discretion to ensure whites' control over slaves before the Civil War, and to ensure white dominance over freed blacks after it. Southern leaders forcefully invoked "states' rights" to fend off national interference with slavery and racial segregation. Laws, institutions, and precedents set in this period became the deeply entrenched state racial laws that were surmounted with difficulty in the twentieth century. Ironically, laws in other states that aimed to erase barriers to black citizenship laid a foundation for the national civil rights revolution of the 1960s. In the United States, then, federalism and race have been deeply and inseparably intertwined.⁶

Federalism, Citizenship, and Slavery in the Early Republic

In the early United States, the states defined who was fully included in and who was excluded from the American community.⁷ No state treated African Americans, Native Americans, or women as equals of white men. States restricted the right to vote, an essential part of participation in the political society, and as late as 1855, only four New England states allowed blacks to vote. In the same period, voting rights for Native Americans were limited, and New Jersey, the lone American state that had permitted suffrage for women, restricted voting rights to men in 1807.⁸ Native Americans were distinctly inferior if they lived in the states, and considered dependent nations if they lived beyond it.⁹

The enslavement of Africans in the Southern states made federalism an incendiary political issue for over seventy years after the Constitutional Convention. The U.S. Constitution coupled slave ownership to power in Congress, allowed the states to govern slaves as they wished and import slaves for a generation. Yet, while delegates were hammering out the Constitution in Philadelphia, the Confederation Congress in New York enacted a Northwest Land Ordinance that banned slavery in the territory that became Ohio, Michigan, Indiana, Illinois, and Wisconsin. As the Northern economy developed and nurtured small family farms, cities, and manufacturing, slavery became unnecessary in the North.¹⁰ Northern states increasingly committed themselves to treating all workers as "free labor," that is, free to be hired, to be fired, and to quit as individual workers and employers chose.¹¹ By 1804, Pennsylvania, New York, and all of New England provided for the elimination of slavery by state constitution or state law.¹² While the South was using law to strengthen slavery, Northern states were using state power to expand commerce and industry (see Chapter 5).

While slavery faded in the North, slaves became ever more indispensable in the South. Blessed with abundant land and water, a favorable climate, and increasing demand for cotton from the booming factories of England and the Northern states, the South doubled down on its commitment to produce cotton and collect its extraordinary profits. The hunger for cotton

drove the plantation economy and the expansion of slavery westward across Alabama, Mississippi, and Louisiana. By the early 1860s, there were nearly four million slaves in the United States. The value of these slaves amounted to three billion dollars, or forty-four percent of the South's entire wealth. The per capita income of free Southerners had grown faster and exceeded the income of Northerners between 1840 and 1860. Southerners never had a greater stake in protecting their regional economy than they did when at the outbreak of the Civil War.¹³ Northern and Southern states were developing along radically different—and incompatible—paths.

From 1787 to 1861, Southern states used their legal authority to safeguard slavery and tighten control of their slaves. Southern slave codes aimed to reinforce complete white domination. State law allowed masters virtually unlimited power to punish their slaves. While many slave states made it illegal to mistreat a slave and required that an owner provide adequate food, clothing, and shelter, there are few recorded trials of violators of these laws. In effect, then, there was little or no limit to the violence that an owner could impose on his slave. Slaves could not own property, and they could be bought, sold, inherited, and repossessed like physical property or real estate. Laws prohibited them from marrying, from learning to read and write, and from assembling together. They could not vote or serve on juries. In states like Virginia, South Carolina, and North Carolina, slave patrols limited slaves' movements, harassed slaves, and mistreated innocent blacks (and sometimes whites).¹⁴

The U.S. Congress, designed to balance the representation of slave and other states, tried to smooth over the disparate interests of the South and North as they grew apart. With no debate and little opposition, Congress in 1793 enacted a law that required the return of runaway slaves. Slave owners or bounty hunters could cross state lines, seize an escaped slave, and appear before any magistrate to obtain a certificate permitting the transport of the recovered slave back to the owner. Any interference with this process could be prosecuted as a Federal crime.¹⁵ The emerging Democratic-Republican Party used federalism tactically to deflect controversies over slavery that could divide its Northern supporters from its Southern ones. In 1797, four North Carolina blacks freed by their owner petitioned the House of Representatives for help. A new North Carolina law required them to be re-enslaved. Representative James Madison and other Democratic-Republicans successfully argued that these petitioners should take their claim to the North Carolina courts because the dispute was a state problem outside of Congress's responsibility.¹⁶ Congress banned slave imports in 1808, as soon as the Constitution authorized it to do so. The elimination of legal imports, however, limited the supply of slaves as the Southern economy expanded, so it increased the value of slaves and the wealth of those who already owned them. Illegal slave smuggling survived, and occasionally some free blacks in the United States were kidnapped and sold into slavery.¹⁷

When the addition of new Western states made it impossible to avoid conflict over the balance of slave and free state representation in Congress, national legislators used federalism to work out political deals that perpetuated slavery westward. Missouri, a slave territory, asked Congress for statehood in 1818, and when it did, conflict over slavery exploded onto the floor of Congress. Admitting Missouri as a slave state would tilt the balance of power in Congress to the South. When a Northern Representative proposed to phase out slavery in Missouri as a condition of its admission, defenders of slavery argued that Congress had no authority to restrict the new state's right to govern slavery as it wanted. The legislators compromised, perpetuating the fragmentation of African Americans' status. Missouri was admitted as a slave state, and Maine as a free state, thus maintaining the balance of slave and free-state power in Congress. This Missouri Compromise banned slavery in territories north of Missouri's southern boundary.¹⁸

The bitter debate over Missouri's self-governance decisively coupled "states' rights" to race, and it crystallized the deeply felt idea that the South was a distinct, exceptional section of the nation.¹⁹ Americans came to believe that the "North and South had evolved separate societies with institutions, interests, values, and ideologies so incompatible, so much in deadly conflict that they could no longer live together in the same nation."²⁰ When the Congress passed a high tariff in 1828 (the "Tariff of Abominations"), the South went to the brink of revolt. Southern plantations required a very low tariff on imported goods, so that other nations would reciprocate with low tariffs and import more cotton from the Southern plantations. The higher Tariff of Abominations thus posed a very serious threat to the Southern states. South Carolina's leaders, including U.S. Vice-President John C. Calhoun, argued that it was "impossible to deny to the States the right of deciding on the infractions of their powers." Its sovereignty allowed a state like South Carolina to "interpose" itself between the national government and its people by "nullifying" the law, or refusing to allow it to be enforced within the state if it believed the law unconstitutional. According to historian Daniel Walker Howe, Calhoun turned his exceptional political talents "to immobilizing the [F]ederal government in the service of a slave economy."²¹ In 1832, a South Carolina convention declared two national tariffs unconstitutional and unenforceable within the state, threatening secession if the national government used military power to force the state to comply. President Andrew Jackson responded by threatening to send troops—but he also agreed to reduce the tariff. With tariff cuts, the nullification crisis passed. But the possibility of state secession continued to haunt the nation.

The relentless expansion of the nation made it impossible to find a political accommodation that could cushion the growing conflict over slavery indefinitely. In the North, a strengthening social movement demanded abolition. While the United States was acquiring half a million square miles of Western land in the 1840s, David Wilmot, a Democratic

U.S. Representative from Pennsylvania, proposed to ban slavery in all these new territories, just as the Northwest Ordinance had excluded slavery. This Wilmot Proviso never passed Congress, but it created a bitter division between Southern and Northern Democrats.²²

When California's application for statehood threatened to tilt the congressional balance of power against the South, Democratic leader Stephen A. Douglas of Illinois proposed a new political bargain, the Compromise of 1850, which became law. California joined the Union as a free state, but Utah and New Mexico were allowed to choose for themselves whether or not to permit slavery (that is, to exercise "popular sovereignty"). Congress also added a stronger Fugitive Slave Act in 1850, providing punishment for all Federal, state, and local law enforcement officials who refused to arrest a runaway slave.²³

Angered by this interference with their state prerogatives, most of the Northern states passed "personal liberty" laws that obstructed enforcement of the new Fugitive Slave Act within their borders. These Northern personal liberty laws guaranteed suspected escaped slaves a fair judicial process, and limited the role of state officials in helping recover slaves. These laws established the legitimacy and practicality of legal language that found its way into the Fourteenth Amendment to the U.S. Constitution.²⁴

The terms of statehood for Kansas and Nebraska finally wrecked the increasingly fragile balance of state power in Congress. These two territories were north of the Missouri Compromise line, and if they were admitted as free states as the compromise required, they would give the anti-slavery states a decisive majority in Congress. Douglas's Kansas-Nebraska Act, enacted in 1854, repealed the Missouri Compromise and allowed "popular sovereignty" in both states. Pro- and anti-slave settlers poured into Kansas, and their struggle to control the state deteriorated into armed violence. When the Whig Party collapsed over the slavery issue, coalitions of anti-slavery Whigs and Democrats formed new party alliances in each Northern state. These parties convened as the Republican Party in 1856, and their election victories quickly made the Republicans the strongest party in the North. In 1857, the Supreme Court, with loyal Jacksonian Democrat Roger Taney as chief Justice, made animosities much worse. In *Dred Scott v. John F. A. Sandford*, the Court concluded that blacks "have for more than a century been regarded as beings of an inferior order, unfit associates for the white race" and thus "had no rights which white men were bound to respect." In his majority opinion in this case, Taney wrote that blacks were not entitled to Constitutional protections and that Congress had no authority to prohibit slavery in any of the Federal territories.²⁵

Statehood for Minnesota (1858) and Oregon (1859) finally gave the free states a majority in the Senate for the first time in the nation's history. The Democrats split into factions in the 1860 presidential election, and none of the three Democratic presidential candidates could compete effectively

across the North. The Republican candidate, Abraham Lincoln, was not even on the ballot in most Southern states, but he won outright majorities in fifteen Northern states. After seventy-three years, the Southern states no longer could use the presidency or the U.S. Senate to defend their prerogatives. Eleven Southern states declared their independence of the United States when they lost their political defenses in the U.S. Congress.

Civil War and Reconstruction

The ensuing Civil War marked a critical turning point in American political, economic, and social development. The Emancipation Proclamation of 1863 freed slaves in Confederate territory, and the Thirteenth Amendment of 1865 ended slavery completely. Wartime devastation, the evaporation of the wealth held in slaves, and reduced demand for Southern cotton retarded the economic development of the South for generations. For decades after the Civil War, the Southern states resisted change while the rest of the nation changed dramatically.²⁶ The South isolated itself from the dynamic investment and economic growth that were driving industrialization and urbanization in the North. Cotton plantations were divided into smaller, low-income tenant farms. With a policy of poor education for blacks and a practice of tightly restricted job opportunities, low wages were rooted in the Southern economy. By the 1870s, "the South was a low-wage region in a high-wage country." Income per capita in the South fell to half the level of the North, and remained there until World War II.²⁷ The South remained outside the economic mainstream of the United States, one with a self-conscious regional identity forged in war and remembered in symbols like the Confederate flag.

For an exceptional period from 1865 through 1877, "Radical" Republicans dominated Congress and pursued a policy of reconstructing the Southern states by imposing extensive national protections for African American citizens. The Federal government placed the South under military control and imposed new state governments that protected civil rights, voting, and office-holding for African Americans. Enforcement Acts established Federal supervision of elections and allowed the president to declare martial law in areas where the racist Ku Klux Klan intimidated blacks. The Federal Freedmen's Bureau attempted to bypass Southern governments to help newly freed slaves become self-sufficient and acquire lands in the former Confederacy. The Fourteenth Amendment (1868), inspired by the pre-war Northern personal liberty laws and the *Dred Scott* decision, designated "all persons born or naturalized in the United States" to be "citizens of the United States," and of the State wherein they reside." No state could "abridge the privileges or immunities of citizens of the United States," nor could any state "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The Fifteenth Amendment (1870) specified that

neither the national nor the state governments could restrict voting rights "on account of race, color, or previous condition of involuntary Servitude" (but the Amendment did not prohibit laws that denied women the right to vote). The Fifteenth Amendment enfranchised more than a million black men outside the South, encouraged vibrant African American communities in Northern cities, and laid the groundwork for building black participation in political party coalitions as well as interest groups (most notably, the National Association for the Advancement of Colored People, or NAACP, founded in 1909).²⁸ The Civil Rights Act of 1875 made it illegal to discriminate in schools, jury selection, hotels, restaurants, railroad cars, and other public accommodations (but it suggested that racially separate schools that provided equal educational advantages to all children could be legal).²⁹

The fragmentation of American government made it impossible for Congress to ensure that the other branches of government and the states would adhere to its Reconstruction policy faithfully and permanently. First, Lincoln's successor as president, Andrew Johnson, was a Tennessee Democrat who slowed Reconstruction in its most important phase, immediately after the war. Johnson, likely aiming to reconstruct an all-white political coalition of Northern Democrats and Southern conservatives, used his powers to slow and frustrate important reforms such as land redistribution and the elimination of ex-Confederates from state and local offices in the South.³⁰ Second, the Republican Party needed to build a durable presence in the South to ensure that Reconstruction would endure. But after Northern support for Reconstruction waned, the party failed to sustain its Southern wing.³¹ Third, the Federal courts interpreted Reconstruction narrowly, upholding extensive state authority and limiting the scope of national rules. The *Civil Rights Cases* drastically limited the reach of the Fourteenth Amendment by declaring that Congress could not prohibit legal racial discrimination because such a national law violated state authority. The Federal government, said the Court, could only legislate after a state took a specific action that abridged the protections listed in the Amendment.³² Largely in response to the ruling in the *Civil Rights cases*, eighteen Northern and Western states enacted their own laws banning racial discrimination in public accommodations by 1900 (these laws were not very effective, however).³³

After the 1876 election, Republican President Rutherford Hayes withdrew Federal troops from the region, and Southern Democrats gradually returned to power in the Southern states.³⁴ These states regained control of managing race, and used their power to ensure the economic, political, and social supremacy of whites over blacks.

Southern State Restrictions on African American Citizenship after Reconstruction

As Federal protection of African Americans evaporated, the former slaveholding states extended their subordination for another century. State governments

in the South began to legislate white supremacy in 1881, when Tennessee enacted the first "Jim Crow" law, mandating the segregation of whites and blacks in railroad cars. These "Jim Crow" laws spread across the Southern states, requiring racially separate facilities in trains, ships, streetcars, and waiting rooms. Blacks were legally banned from white hotels, restaurants, saloons, restrooms, and courtrooms—that is, anywhere blacks and whites could come together.³⁵ In states with a significant Hispanic population, such as Texas, such laws also were applied to Latinos. By 1890, all the former Confederate states legally segregated their public schools by race, as did Oklahoma, Missouri, Kentucky, West Virginia, Maryland, and Delaware. Four other states (Kansas, Arizona, New Mexico, and Wyoming) permitted locally segregated public schools. Northern states banned legal segregation in schools, but many localities physically closer to the South segregated schools anyway, and gerrymandering of school districts and residential segregation established de facto segregation in many other places.³⁶

Most of the South also ensured white supremacy and black subordination by virtually eliminating African Americans' voting rights.³⁷ Thirteen states enacted such laws as literacy tests, poll taxes, and "grandfather" clauses (that exempted voters from educational requirement and poll taxes if their grandfather had been eligible to vote, that is, if they were not former slaves) and the all-white primary election. Hostile local election officials, fraud, violence, and intimidation ensured these laws were effective. Black voting was virtually non-existent in the former Confederate states by 1912.³⁸ The suppression of black voting weakened the potential strength of working class voters, undermining their ability to challenge wealthy elites for control of Southern governments.³⁹

In *Plessy v. Ferguson* (1896), the U.S. Supreme Court confirmed that the U.S. government would uphold states' rights to control the quality of American citizenship for racial minorities. Homer Plessy, who was seven-eighths white, was required by Louisiana law to sit in a racially segregated railroad car, and was arrested for violating the law. Plessy challenged Louisiana's law as a violation of the Thirteenth and Fourteenth Amendment. The Court overwhelmingly ruled that Louisiana's segregation law was consistent with the Constitution. The majority opinion stated that the Fourteenth Amendment "could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality, or a commingling of the two races upon terms unsatisfactory to either." Thus, laws that required racial

separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power.

Legal segregation:

as applied to the internal commerce of the State, neither abridges the privileges or immunities of the colored man, deprives him of his property without due process of law, nor denies him the equal protection of the laws within the meaning of the Fourteenth Amendment.

The states had "a large discretion" to decide what laws were reasonable, given established customs and the need to preserve order.⁴⁰

The South, the Democrats, and Government Activism

With uncontested political control reinforced by legal segregation, conservative whites overwhelmingly dominated the Democratic Party in the South. The Democratic Party controlled Southern politics from Reconstruction until the middle of the twentieth century. In 1880, the first presidential election after Federal troops left the South, all of the former Confederate states voted for the Democratic presidential candidate. These same states voted overwhelmingly for Democratic presidents for the next sixteen presidential elections, through 1944. Because Republicans could win the presidency and congressional majorities without winning the South, Republicans wrote off the region and did little to challenge the Democrats there. National Democratic leaders, in turn, refused to challenge the South's segregation laws directly, because Democrats could not win the national election for president or a majority in Congress without the solid block of Southern support.

When Democrats took charge of the Federal government in the 1910s and in the 1930s, they activated the Federal and state governments without disturbing the Southern states' racial arrangements. Soon after progressive Democrat Woodrow Wilson, a Virginian by birth, won the presidency in 1912, he put Southern Democrats in charge of the Post Office, the Treasury Department, and the Navy. These cabinet officers imposed segregation in their departments. Photographs were required of all applicants for Federal civil service positions, a rule that made it easier to exclude blacks. Supervisors in the South were empowered to fire black employees. During World War I, the Army segregated blacks and assigned them to minor roles; the Marine Corps did not accept black recruits. The Republicans who succeeded Wilson in the 1920s sustained this segregation.⁴¹ By the late 1930s, ninety percent of blacks employed by the Federal government in Washington, DC were custodians, and almost all the rest were clerical employees.⁴²

Franklin Roosevelt's New Deal in the 1930s greatly expanded Federal and state activism, and these efforts reached African Americans. Several New Deal initiatives included provisions that banned racial discrimination. The Civilian Conservation Corps enrolled blacks and provided literacy programs. The Roosevelt administration opened a Civil Rights Division in the Justice Department and appointed liberal appointees to the Federal

courts. When civil rights marchers converged on Washington in 1941, the president responded by creating a Fair Employment Practices Committee.

But the New Deal also reinforced white supremacy and the low wages of the Southern states, as well as the practice of racial segregation in the North, by allowing state and local officials to discriminate against blacks and other minorities in many New Deal programs. Farm workers and domestic workers—an especially important part of the Southern low-wage workforce—were not included in the old-age insurance or unemployment insurance titles of the Social Security Act, or protected by the National Labor Relations Act, which guarded the right to unionize, or covered by the Fair Labor Standards Act, which established minimum wages and maximum working hours. Southerners objected to the Fair Labor Standards Act because "you cannot prescribe the same wages for the black man as for the white man."⁴³ As Robert Lieberman put it,

Where African Americans were potentially included among a policy's beneficiaries, Southerners demanded institutional structures that preserved a maximum of local control. Conversely, strong, national social policy institutions [such as the old-age insurance title of the Social Security Act] were politically possible only when African Americans were excluded from the center.⁴⁴

The Federal Housing Authority reinforced the bias in access to housing, home loans, and residential segregation outside the South, institutionalizing discrimination in its own underwriting manual.⁴⁵ While Roosevelt viewed the underdevelopment of the South as the "the nation's No. 1 economic problem" in the late 1930s, and initiated a massive effort to bring modern prosperity to the region, the administration's leading effort to develop the South, the Tennessee Valley Authority, ultimately reinforced segregation in its agricultural programs.⁴⁶

During World War II, segregation endured despite the unprecedented role of the national government in American life. Racial segregation persisted in the armed forces and in defense industries.⁴⁷ According to historian Patricia Sullivan, "[b]y most measures, the war exacerbated racial discrimination and repression in the South and underscored [F]ederal complicity with Southern racial mores."⁴⁸ After the war, veterans, both white and black, had access to housing and education benefits through the GI bill. Existing racial obstacles to higher education and employment, as well as local administration, severely limited the ability of African American veterans to take full advantage of the GI Bill.⁴⁹ Meanwhile, the political foundations of legal segregation were weakening.

The Civil Rights Revolution

As the nation changed at an accelerating pace in the 1940s, leaders reconsidered Southern segregation. The crusade against Nazism in World

War II compelled some Americans to acknowledge the gap between the ideals of justice the United States espoused and the reality of the legalized black subjugation in the South.⁵⁰ During both World Wars, millions of blacks moved to Northern cities, attracted by higher wages and better conditions. Many of these African Americans could and did vote, and Democrats and Republicans began to compete for the allegiance of black voters in large, closely contested Northern states.⁵¹ President Harry Truman reached out to African Americans in part to solidify the Democrats' weakened post-World War II electoral position.⁵² Meanwhile, the system of low-wage farm labor in the South declined because of New Deal policies, the development of more manufacturing, the modernization of farming, and the migration of low-wage workers to Northern factories.⁵³ Within the South, some reformers had very cautiously begun to question the practicality of some elements of the Jim Crow order.⁵⁴ In 1944, the U.S. Supreme Court struck down the white primary, opening the choice of candidates in the South to African American participation.⁵⁵ When Southern Democrats walked out of the party in 1948 and ran South Carolina Governor Strom Thurmond for president as the candidate of the States' Rights Democratic Party (or the "Dixiecrat") Party, Thurmond was only able to win South Carolina, Alabama, Louisiana, and Mississippi, losing the rest of the South to Truman.⁵⁶

States outside the South were beginning to lead the way to more forceful action against segregation in their borders. By 1941, half the states banned discrimination in their civil service, and a third of the states banned discrimination in public works employment. New York initiated the nation's first law against discrimination in employment based on race, creed, color, and national origin (but not gender) in 1945. By 1964, twenty-five states had enacted such laws.⁵⁷ In 1945, New York state also enacted the first fair employment practice act. New York formed a Committee on Discrimination in Housing in 1949, and in 1961 enacted a state fair housing law banning discrimination in housing. By 1968, twenty-two states had enacted fair housing laws.⁵⁸

All these developments encouraged proponents of racial inclusion to step up their efforts to destroy legal segregation, but the uneven advance of civil rights in the states made the campaign for racial inclusion difficult, costly, and lengthy. Black churches became organizing cornerstones against Jim Crow locally in the South.⁵⁹ The NAACP filed lawsuits in Federal courts against segregation in the public schools, and won cases against segregation in public colleges.⁶⁰ In 1954, the Supreme Court's *Brown v. Board of Education* ruling struck down laws that segregated education. The majority opinion in *Brown* stated that "education is perhaps the most important function of state and local governments" and "is a right which must be available to all on equal terms ... Separate educational facilities are inherently unequal." While its decision struck down segregation laws in seventeen states, the District of Columbia, and the four states that

allowed local segregation, it did not lay out a plan for implementing its decision. In a later decision, the Court urged that desegregation proceed with "With all deliberate speed." Missouri, Kentucky, West Virginia, Maryland, and Delaware soon complied with the *Brown* decision.⁶¹

The former Confederate states bitterly fought the *Brown* decision, however, using "states' rights" as their first line of defense. Evoking John C. Calhoun, the state of Mississippi declared interposition against the Federal government in 1956, vowing to take all measures to "void this illegal encroachment." The same year, Mississippi set up a State Sovereignty Commission, explicitly to "resist the usurpation of the rights and powers reserved to this state and our sister states." During the next seventeen years, this Commission actively spied on civil rights activists and funneled money to segregationist groups.⁶² Ninety-six Southern U.S. Representatives and Senators signed a "Southern Manifesto" in 1956, in which they promised to use "all lawful means" to reverse the *Brown* decision as unconstitutional and because it "is destroying the amicable relations between the white and Negro races that have been created through 90 years of patient effort by the good people of both races. It has planted hatred and suspicion where there has been heretofore friendship and understanding."⁶³ Georgia, Alabama, and Virginia prohibited desegregation regardless of Federal court rulings.⁶⁴

Slowly but surely, political imperatives trumped white supremacy. The highly publicized Montgomery bus boycott (1955–56), protesting segregation on public transportation in that city, accelerated a broad social movement for civil rights and elevated the national influence of its leaders, most notably the Reverend Martin Luther King. African American students defied segregation by sitting in whites-only sections of lunch counters, and "freedom riders" defied segregation on intercity Greyhound and Trailways buses. The Federal government established a Civil Rights Commission in 1957 and strengthened the investigative authority of the Civil Rights Division of the U.S. Justice Department. Presidents Eisenhower and Kennedy sent Federal troops to intervene when Southern governors fought the desegregation of Central High School in Little Rock, Arkansas in 1957 and the University of Mississippi in 1962. In the spring of 1963, when children and adults marched for civil rights in Birmingham, Alabama, city police chief "Bull" Connor commanded police to unleash attack dogs and open powerful fire hoses on the marchers. Television broadcast these brutal scenes across the nation and the world. Gradually, the ordinary Americans who propelled the civil rights movement built the foundation for the elimination of Jim Crow. Public support for integrating public schools grew from thirty percent of Northern whites in 1942 to seventy-five percent in 1963, and among Southern whites, it grew from just two percent to thirty percent in the same period.⁶⁵ Southern support for legal segregation began to splinter, with some local governments acceding to change. These local victories in the South allowed civil rights activists to build on their successes and target the strongest bastions of segregation.⁶⁶

The rising tide of civil rights finally washed away state segregation laws in the mid-1960s and laid down basic national rules for the inclusion of black citizens. President John F. Kennedy in 1963 sought Federal legislation to eliminate legal segregation in schools and public accommodations. After Kennedy's assassination, his successor, Lyndon Johnson, pressed for rapid passage of the proposal. Bipartisan support for this Civil Rights Act overcame the previously insurmountable roadblock of the Rules Committee in the House of Representatives, chaired by Virginia's Howard W. Smith, as well as a filibuster of the bill by Southern Senators. The 1964 Civil Rights Act banned segregation in schools, public accommodations, and the workplace. It outlawed discrimination in hiring, firing, training, or promoting employees because of their race, color, gender, or nationality, and established an Equal Employment Opportunity Commission (EEOC) to ensure compliance. The law also made illegal any discrimination in the use of Federal grant-in-aid funds by the state governments, local governments, and other grant recipients. The Voting Rights Act of 1965 outlawed literacy tests, allowed the Federal government to approve state election plans in advance, and permitted Federal supervision of voter registration and elections in several states, primarily in the South (after several extensions of this supervisory authority, it was renewed for another twenty-five years in 2006). The Twenty-Fourth Amendment, ratified in 1964, banned poll taxes as an obstacle to voting.⁶⁷

It took considerable effort to implement these rules in the states that resisted them, but national law eventually prevailed.⁶⁸ The deep Southern states of Mississippi and Alabama, despite their resistance, were largely desegregated by the early 1970s. Mississippi disbanded its Sovereignty Commission in the late 1970s.⁶⁹

The Continuing Racial Divide in American Politics

Civil rights leaders expanded the movement's agenda by tackling the consequences of racial exclusion throughout the country. These leaders focused on reducing "de facto" racial segregation, that is, segregation in housing, schools, and employment that existed without overt legal segregation. In Northern cities, real estate brokers, financial institutions, insurance companies, and others had long practiced "redlining," the practice of steering black (and other "undesirable" residents) together into aging areas of the city and allowing these areas to deteriorate. By the 1960s, such practices had produced stark segregation of whites and blacks in urban areas. Economic conditions were deteriorating in many areas of concentrated African American populations. High unemployment, a lack of investment, worn-out and dilapidated buildings, overcrowded schools, poor services, a lack of stores, and indifferent governments made the promise of desegregation ring hollow in these areas. Dr. Martin Luther King moved into the black ghetto in Chicago in 1966 and campaigned for effective fair housing laws in the North.⁷⁰

This new civil rights frontier resulted in new—and often very controversial—efforts to alleviate de facto segregation and expand Federal civil rights activism. The NAACP "mirrored the federal structure of the American state—with local, state, and national branches," enabling these individual branches to tailor different strategies for compliance to different places.⁷¹ Federal courts, Federal agencies, and the NAACP pressured state and local governments to equalize opportunities. The EEOC learned to work with the various state and local agencies around the country, gaining power from the alliances that federalism made possible.⁷² Efforts to address past employment and college admissions discrimination resulted in affirmative action programs. These programs explicitly take race, gender, ethnicity, disability, military service, or the economic status of job or college applicants into account. They aim to ensure that employers hire and schools admit a sufficient number of minorities or women to guarantee diverse workforces and classes. In 1971, *Swann v. Charlotte-Mecklenburg Board of Education*, the Supreme Court upheld the use of busing of students to correct a racial imbalance among schools.⁷³ Several cities, including Boston, Los Angeles, and San Francisco, then were required to use busing to achieve mixed racial balance in elementary and secondary schools.

As the remedies for racial exclusion expanded, conflict over civil rights became emotional and divisive throughout the nation. Busing and affirmative action in employment and education sparked a strong backlash. Boston, a city that once had been a hotbed of abolition, exploded in violence between working class whites and African Americans over the busing issue in the 1970s.⁷⁴ A string of important Supreme Court cases trimmed back, but did not destroy, affirmative action in education and employment.⁷⁵ Opponents of affirmative action turned to the states to advance their cause. In 1996, California voters approved Proposition 209, which banned preferential treatment for "any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting." Michigan voters approved a similar proposal in 2006.⁷⁶

Racial differences increasingly defined the two political parties after the 1960s. African Americans voted overwhelmingly Democratic in elections after 1964, and the national Democratic Party more strongly embraced racial liberalism and expanded national protection of civil rights. Many white Southerners and some white Northern voters, however, became alienated from the Democratic Party. Some drifted to the third party candidacy of Alabama's segregationist governor, George Wallace, in 1968. Meanwhile, "the Republican Party, from political circumstances and deliberate choice," evolved from a party of racial liberalism and active national government in the 1860s into a party of racial and economic conservatism in the late twentieth century.⁷⁷ The Republican Party gained new strength among Southern voters by opposing Federal power and arguing for states' rights on economic and racial issues. Republican

presidential nominee Barry Goldwater emphasized states' rights and opposition to national power in his 1964 campaign, and he won five Southern states. In 1968, Republican Richard Nixon and third party candidate Wallace won all the former Confederate states except President Lyndon Johnson's home state of Texas. No Democratic presidential candidate from 1968 through 2008 received a majority of the white popular vote in the United States, and only Jimmy Carter in 1976 received the electoral votes of a majority of the Southern states.

Ronald Reagan's administration opposed busing to remedy school segregation and affirmative action to remedy segregation in education and employment, and it did not hesitate to use national power to restrict state and local discretion in this area. The Reagan Justice Department challenged state and local affirmative action programs in Detroit, New Orleans, and Boston, and joined busing opponents who sought to stop judicially mandated busing programs in Norfolk, Virginia, Nashville, Tennessee, and Charleston, South Carolina.⁷⁸ It reduced the ability of the Federal government to enforce civil rights by cutting enforcement budgets and staff, and virtually stopped lawsuits on housing and employment discrimination. It used federalism skillfully, delegating some enforcement of civil rights to the state and local governments, and at the same time tried to void local employment agreements based on quotas and timetables. States generally relaxed antidiscrimination enforcement as the Reagan administration delegated them more control of grants-in-aid.

Race in American Political Development: Today's Inheritance

Federalism has shaped the treatment of race deeply and relentlessly in American history. Federalism helped entrench slavery, delay the incorporation of blacks on equal terms with whites, and fragment the efforts to extend that incorporation. Since the 1960s, states have continued to serve as a key battleground in struggles over the legacy of legalized and de facto racial discrimination.

The consequences of the long struggle over racial inclusion profoundly affect American life today. There is no doubt that African Americans are financially better off than they were in 1960, and that the black middle class is stronger. But decade after decade of unskilled low-wage labor, the lack of access to quality education, legal segregation in the South and de facto segregation in the North systematically deprived many African American families of the accumulated advantages that allowed many whites to vault readily into the middle class. Black Americans have confronted much greater obstacles than whites in building wealth over generations. The Federal Reserve Board pointed out in 2008 that for "every dollar of wealth held by the typical white family, the African American family has only one dime."⁷⁹ Segregation in neighborhoods remains a legacy of years

of residential segregation practices. Schools are resegregating.⁸⁰ Tough state crime policies have produced more prisoners, and more than half of all prisoners were African Americans in the mid-2000s. There were more African American men in prison than in colleges and universities.⁸¹

While the election of Barack Obama to the presidency in 2008 signals that the United States has come a long way in dealing with its racial problems, public opinion indicates that race remains a deep fault line in American politics.⁸² Perceptions and attitudes remain deeply divided by race. Thirty-seven percent of African Americans believe they have been stopped by the police because of their race; thirty-five percent say they have been denied a job because of their race, and twenty percent say they have been denied housing because of their race.⁸³ Whites see things very differently. Over eighty percent of whites believe that blacks have just as good a chance as whites to be hired for a job for which they are qualified, and that blacks are treated equally in housing and while shopping. Only thirty-eight percent of blacks believe that blacks have an equal chance at jobs, less than half believe that blacks are treated equally in housing or shopping.⁸⁴ Outright racial prejudice, while constantly shrinking, is still present in American life. In a 2001 referendum, for example, Alabama became the last state to repeal its law banning interracial marriages. However, in that vote, more than forty percent of the electorate voted to support laws that outlawed marriages between blacks and whites.⁸⁵

The central role of federalism in America's racial dilemma cemented the power of states' rights as a strategic political weapon in American politics. In conflicts over the growth of the American economy, federalism played an equally important and enduring role.