

Racial Justice

“The real question is whether you mean to make good to us the promises of your Constitution.”

– Frederick Douglass,
*speaking at the Republican
National Convention of 1876*

Slavery was this country's original sin, infecting the Constitution at its conception. It took more than 75 years after the Constitution was adopted, and a bloody civil war, before civil rights amendments were added to the Bill of Rights. It would take another hundred years after that before laws were passed outlawing racial discrimination in employment, housing, public education and accommodations, and voting. Despite enormous progress, however, the promise of fair and equal treatment for people of color remains frustratingly elusive.

In some regions of the country, our schools are more segregated and profoundly unequal than before the U.S. Supreme Court's 1954 decision in *Brown v. Board of Education*. Equal, adequate public education is far from a reality in the U.S., with minority school districts having substantially fewer resources than white public schools in every area from teacher qualification to money spent on schoolbooks.

The so-called war on drugs and war on crime disproportionately target people of color, with one-third of all black men in their twenties either behind bars or on parole. On highways and in neighborhoods across the country, people are regularly subjected to stop-and-search procedures based on racially biased “drug courier profiles.”

Voting districts created to provide equal electoral opportunity and fair representation have been negated by Congress.

Segregation and discrimination in housing opportunity sustains what the 1968 Kerner Commission described as “two societies, separate and unequal.” Our nation's poor neighborhoods – overwhelmingly populated by people of color – are wracked with poverty, violence, illness and police brutality.

Further, a backlash against affirmative action increasingly slams the door of opportunity in the faces of those who need it most, and a draconian sweep of anti-immigrant legislation and court rulings have stripped away basic civil rights for many of our nation's minorities.

We have come a long way since Jim Crow ruled the South, but deeply



entrenched discrimination, subjugation, subordination, and racial violence are still pervasive. The sense of moral urgency that fueled the Civil Rights era is just as imperative today as it was one or two generations ago. That is why the ACLU's commitment to racial justice is much more than a legal, advocacy or educational strategy: it permeates all of the work that we do.

BEYOND BLACK AND WHITE

While the Civil Rights and Black Power movements of the 1960s were a model for other rights movements (the Chicano/Latino rights movement, women's rights, gay rights, disability rights, immigrants' rights etc.), the discussion of racial justice in America is hardly limited to the African American experience.

Because our nation has always been and still is a nation of immigrants, the U.S. today is not a melting pot as much as it is a stir-fry or a curry with many different ingredients and flavors – some blending, some standing out – but all a necessary part of the overall mix. Still, too many people of color – resident and citizen, newly arrived, and many-generational – are discriminated against because their skin color, language, religious practices or other customs are “different,” with “different” played out far too often as “subordinate.”

Latinos Although “Hispanic” is not officially a “race,” according to the Census Bureau (indeed, many self-identify as white), Latinos today comprise 9% of the population and are our fastest-growing ethnic group.

In tandem with this demographic growth, Latinos in the United States face entrenched racism, often based on the color of their skin or their accent or surname. The disproportionately high number of Latinos living in poverty or under the criminal justice system is on par with that of black Americans.

Furthermore, several political movements that adversely target Latinos have proliferated across the nation. California's anti-affirmative action Proposition 209, anti-immigrant Proposition 187 and anti-bilingual education Proposition 227 are all

attacks on the civil liberties of minorities. The spread of the “English-only” movement across the nation effectively seeks to relegate Spanish speakers (as well as those of other languages) to second-class citizenship, robbing them of equal opportunity, equal access and equal representation.

Asian Americans Americans of Asian descent constitute another enormously diverse demographic group, comprised of people with roots in Southeast Asia, the Pacific Rim, and more than twenty Pacific Island nations, as well as the Indian subcontinent. Asians have shouldered a heavy burden of discrimination and mistreatment that dates back to the Reconstruction Era, when great numbers of Chinese laborers were brought here to complete the Transcontinental Railroad. A series of immigration laws in the late 19th and early 20th centuries drastically curtailed Asian immigration. Indeed, the last law disqualifying Asians from citizenship was not repealed until 1952.

As begrudgingly as they were “tolerated” in the early 20th century, Asians were, and continue to be, looked upon as outsiders. Never was this discrimination as blatant as during World War II when, in a tremendous violation of civil liberties, 120,000 Japanese-Americans were held captive in internment camps.

Today, Asian Americans struggle for educational and economic opportunity, and against “English-only” laws, as well as police brutality and hate crimes. And although slavery may be officially banned in the U.S., many newly arrived Asians are smuggled to this country under false pretenses and forced into indentured sweatshop servitude.

American Indians Our nation's first peoples are no less culturally diverse than other minorities. According to the U.S. Census Bureau, there are approximately 235 Indian tribes in the lower United States and over 200 tribes in Alaska. This represents a population of some 2.5 million people, half of whom live on reservations, and a third of whom are fifteen years old or younger.

American Indians (generally their preferred nomenclature; indigenous Hawaiians are ethnically Asian American) have been made to live in poverty and decimation, both on and off the reservation. Theirs is the lowest life expectancy of any ethnic group in the country, and unemployment rates on reservations regularly surpass 70% (even in today's healthy economy).

This group falls below national averages for income and education; half the adult population lacks a high school diploma. Because they have been stripped of their very land and dignity, and are today controlled by a byzantine web of federal treaties and laws, Indians more than any other group experience severe limitations on their political and economic activity and progress.

Slavery, Segregation & Separatism

An African American "Racial Justice" Timeline



"Original sin" – Constitution and Bill of Rights legitimize slavery, counting a slave as 3/5 of a person, upholding the slave trade and guaranteeing return of all fugitive slaves to their owners. By 1860, slavery hits its highest numbers, with more than four million people living in bondage.

1857 – In *Dred Scott* decision, Supreme Court denies citizenship to black people, who, whether enslaved or free, have no constitutional rights because they are "subordinate, inferior beings." The Civil War erupts in 1861.

1863 – **Emancipation Proclamation** issued by President Lincoln frees all slaves.

1865 – Although the **Thirteenth Amendment** abolishes slavery, southern states find a loophole, reviving slavetime codes to create unattainable prerequisites for blacks to live, work or participate in society. The following year, the **First Civil Rights Act** invalidates these Black Codes, conferring the "rights of citizenship" on all black people.

1868 – **Fourteenth Amendment** grants citizenship to all persons born in the U.S., forbids states from denying "life, liberty or prosperity" without due process of law, and guarantees equal protection under the law.

1870 – **Fifteenth Amendment** gives freedmen the right to vote. In the wake of Reconstruction-era reform in the South, white supremacist groups embark upon a campaign of terror against blacks and their white supporters.

1875 – **Second Civil Rights Act** guarantees equal access to public accommodations to all people regardless of race or color. Two years later, President Hayes agrees, in "Compromise of 1877," to withdraw federal troops from the south, leaving southern blacks at the mercy of state rule.

1883 – In the "**Civil Rights Cases**" the U.S. Supreme Court invalidates the 1875 Civil Rights Act, setting the

stage for discrimination and segregation in privately owned businesses and facilities. The **Jim Crow** era begins. Between 1884 and 1914, 3,600 black lynchings will take place.

1896 – Supreme Court, in *Plessy v. Ferguson* decision, upholds Jim Crow, creating a legal sanction for the "separate but equal" rule, immediately resulting in a separate and unequal standard for black people. Segregation and terrorism against blacks becomes rampant in the south, and elsewhere, discrimination is widespread.

1909 – National Association for the Advancement of Colored People (**NAACP**) is formed, demanding equality in education and an end to segregation. By 1921, the NAACP will have 400 branches nationwide.

1940s – The **labor movement** is at an all-time high, World War II veterans are demanding increased dignity, and three Supreme Court decisions chip away at Jim Crow: banning segregation in interstate bus travel and in railway dining cars in *Morgan v. Commonwealth of Virginia* (1945); outlawing restrictions on the sale of private residential property to blacks in *Shelley v. Kramer* (1948); reaffirming desegregation in bus and train travel in *Henderson v. U.S.* (1950). In 1947, Jackie Robinson breaks baseball's color line.

1954 – A major boon for the nascent Civil Rights movement, as *Brown v. Board of Education* decision bans the "separate but equal" doctrine in public education, setting the precedent for desegregation. The next year, Rosa Parks' refusal to cede her seat to a white woman ignites a yearlong bus boycott, leading to eventual desegregation in the Montgomery, Alabama public bus system.

1960s – Lunch counter **sit-in protests** take place in Greensboro, North Carolina in 1960; **Mississippi Freedom Summer** takes place in the summer of 1964. Protesters are generally met with mob assault and police violence. In 1963, NAACP leader Medgar Evers is murdered; one month later, 250,000 people gather in Washington, D.C. in our nation's largest ever protest demonstration, to urge support for civil rights legislation, and hear Dr. King's historic "**I Have a Dream**" speech.

1964 – The most far-reaching **Civil Rights Act** is passed, outlawing discrimination in privately owned facilities, as well as in federally funded programs and in employment. One year later, President Johnson uses the term "**affirmative action**" to describe new policies for redressing discrimination in education and employment. The following year, the **Voting Rights Act** finally enforces the Fifteenth Amendment.

1968 – The nation's first open-housing law, the **Fair Housing Act** is passed. Supreme Court and Congress embark on a decade-long reversal of many discriminatory laws and practices that had prevailed for two centuries. Dr. Martin Luther King, Jr. is assassinated in November.

1971 – The Nixon administration's attempt to pass a constitutional amendment to **ban busing** as a means of achieving desegregation marks the rising of a new anti-civil rights and anti-affirmative action backlash.

1980 – Under the **Reagan and Bush Administrations**, and the Rehnquist Supreme Court, key sections of the Voting Rights Act and affirmative action laws are under attack.

1992 – L.A. jury acquits four police officers in the videotaped beating of **Rodney King**, leading to the biggest race riots in almost twenty-five years in California, and in other locations throughout the country.

1995 – The U.S. Sentencing Commission recommends Congress end the **100-to-1 disparity in sentencing** between crack and powder cocaine, with crack offenders receiving far longer prison sentences. Although most of the nation's crack users are white, 88 percent of the those convicted of federal crack offenses are African American. It is the first time Congress rejects the Commission's recommendation.

1999 – In *Chicago v. Morales*, the Supreme Court strikes down Chicago's anti-loitering law. The city ordinance had disproportionately targeted African American and Latino youth, who were not engaged in criminal activity, and resulted in the arrest of 45,000 innocent people.

Arab Americans The rights of many of the three million Arab Americans in the U.S. are wrongly denied for so-called "national security" reasons. Airport profiling and laws such as the 1996 Anti-terrorism and Effective Death Penalty Act, which gravely undermines free speech and association rights and allows for deportation based on secret evidence, are used disproportionately and in a discriminatory manner against Arab Americans and Arabs in the United States.

HOW THE ACLU FIGHTS FOR RACIAL JUSTICE

Here is just a small sampling of the ACLU's recent work on behalf of people of color across the nation.

Education In 1999, the ACLU sued U.C. Berkeley, whose new admissions policies have brought a dramatic drop in the number of students of color. More than 750 African American, Latino and Filipino-American applicants with a GPA of 4.0 or better were denied admission in 1998.

Incarceration and Criminal Justice In 1999 the ACLU won a case before the Supreme Court on behalf of minority youth who were being unconstitutionally targeted by "anti-gang loitering" statutes in Chicago. (See *Sidebar above*.)

Poverty A 1998 lawsuit now obliges the Pittsburgh public defender's office to increase and improve its services and basic resources so that it can provide adequate counsel to poor clients. We also are involved in litigation on behalf of people who suffered housing discrimination, in violation of the Fair Housing Act.

Employment In 1996, the ACLU launched a class-action lawsuit to challenge a Dade County ban on "public loitering" for temporary employment, which singles out Latino men seeking day labor in and around Miami.

Police Brutality and Racial Profiling Curtailing police brutality is a major focus of the ACLU's work nationwide. We monitor incidents of abuse and fight for civilian review of police agencies. The ACLU has brought a number of lawsuits against racial profiling on the highways ("Driving While Black/Brown") by the police, and has established a toll-free complaint hotline for victims of racial profiling.

Voting and Representation The ACLU argued for the elimination of "census undercounting," a practice which typically happens in urban communities of color due to overcrowding, mobility and other factors, and results in fewer legislative seats for these communities. We presented a friend-of-the-court brief in a 1998 Supreme Court case opposing census sampling.

Linguistic and Religious Freedom The ACLU filed a 1999 lawsuit in Alaska to stop the state's new "English-only" initiative, which would undermine free speech, equal access and equal protection for speakers of Spanish and Alaska's many indigenous languages. We won a 1997 lawsuit on behalf of two Sikh elementary school children who were suspended for wearing tiny ceremonial knives, called kirpans, to school. We settled an agreement in 1998 allowing Native Americans to conduct an annual "Thanksgiving Day of Mourning" protest in Plymouth, Massachusetts.

These brief examples only give the most perfunctory sampling of the ACLU's work for racial justice. It is our mission to make sure that Frederick Douglass' question of making good the promises of the Constitution is answered with a resounding "Yes!" – for all of our nation's people.

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