From Promise to Reality:
Hubert Humphrey, Affirmative Action, the Rebirth of the Fourteenth Amendment

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As the Senate floor echoed arguments that the Civil Rights Act would destroy constitutional equality, Senator Hubert Humphrey rose to defend an active vision of the Fourteenth Amendment. On March 30, 1964, the debate began on the senate floor, lasting nearly 3 months, this filibuster was an attempt to block the Civil Rights Act. Hubert Humphrey voiced support for the bill, arguing that the passage of the bill would require congress to "create a framework of law" that is capable of correcting the persistent racial inequality.[1] He insisted that constitutional guarantees were "not being fulfilled", suggesting the need for federal intervention and remedial efforts.[2] The opposition led by Senator Storm Thurmond argued that this bill "would sacrifice the constitutional rights of every citizen and would…suppress the liberty of all." [3] The opposition warned that the bill's employment provisions would allow the federal government to pressure employers and unions to racial balance using affirmative action by coercion. The debate was not merely a clash of political beliefs, but a constitutional struggle over whether the Fourteenth Amendment empowers Congress to actively enforce equal protection with remedial efforts.

By the mid-twentieth century, the United States faced a constitutional dilemma as the Fourteenth Amendment promised equal protection under the law, yet its present interpretation had proven to be incapable of ending racial inequality. Affirmative action, as articulated and defended by the Civil Rights Act of 1964, constituted a practical constitutional transformation in which the federal government's understanding of equal protection within the Fourteenth Amendment was redefined with the extension to remedial race conscious efforts. Hubert Humphrey played a central role in shaping this shift with his arguments on the senate floor that advanced a constitutional

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[1] United States Senate, "Civil Rights Filibuster: Humphrey–Thurmond Debate," in *Senate Congressional Record*, (Senate Congressional Record, 1964), PDF, 6428. https://www.senate.gov/artandhistory/history/resources/pdf/CivilRightsFilibuster_HumphreyThurmondDebate.pdf.
[2] United States Senate, "Civil Rights Filibuster: Humphrey–Thurmond Debate," 6428.
[3] United States Senate, "Civil Rights Filibuster: Humphrey–Thurmond Debate," 6428.

vision of the Fourteenth Amendment as an active remedial principle rather than a passive guarantee of formal equal protection.

Although the Fourteenth Amendment promised equal protection under the law, for nearly a century it was interpreted as a narrow, formal guarantee rather than an enforceable remedy. In practice, the Amendment did little to dismantle racial inequality as methods like literacy tests, poll taxes, and grandfather clauses excluded black citizens from political participation while preserving the appearance of legality. These barriers were reinforced by groups like the Klu Klux Klan which used violence to suppress black voting. In response, Congress passed the Enforcement Acts of 1870-71 which criminalized interference with voting rights, and empowered the use of military force against violent groups. Ultimately, despite their short-term success against the Ku Klux Klan, the Enforcement Acts collapsed under federal retreat and judicial resistance, enabling the rise of the Jim Crow era.[4] As the persistence of racial violence revealed the weakness of equal protection in practice, responsibility increasingly fell on Congress, whose inconsistent and inconsistent enforcement ultimately failed to fulfill the Fourteenth Amendment's guarantees. As Historian Eric Foner asserts, immediately following the passing of the Fourteenth Amendment began "the battle over its meaning" in which Congress was constitutionally empowered to enforce its guarantees while the Supreme Court assumed authority to interpret it.[5] Yet, as Foner explains, that "in almost every instance, the Court chose to restrict the scope," by "reducing the 'privileges or immunities' guaranteed to citizens." [6] The judicial narrowing transformed the Fourteenth Amendment from a dynamic instrument of racial justice into a passive safeguard that prohibited only the most explicit forms of discrimination. In 1896, the Supreme Court constitutionalized

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[4] U.S. Senate, "The Enforcement Acts of 1870 and 1871," *Senate Art & History*, accessed December 16, 2025, https://www.senate.gov/artandhistory/history/common/generic/EnforcementActs.htm

[5] Eric Foner, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution* (New York: W.W. Norton & Company, Inc., 2019), 127.

[6] Foner, 128.

segregation in *Plessy v. Ferguson* by upholding Lousinians's "equal, but separate" law regarding train cars.[7] This decision enabled and justified the continuation of Jim Crow laws which mandated racial separation in schools, housing, employment, transportation, and other public accommodations. The inability of Congress and the courts to consistently enforce the Fourteenth Amendment set the stage for decades of federal inaction and ineffective civil rights legislation.

Before 1964, federal efforts to enforce the Fourteenth Amendment consistently fell short, exposing the gap between constitutional promise and practical enforcement. Efforts to enforce the Fourteenth Amendment such as the Civil Rights Acts of 1866, 1875, and 1957, attempted to define and protect civil rights but ultimately failed to produce a lasting constitutional change. President John F. Kennedy's Executive Order 10925 in 1961 introduced the phrase "affirmative action," but it proved to be limited, requiring contractors to "recruit aggressively" but continue to make decisions using "traditional criteria of merit selection." [8] Prior efforts fell short of transforming equal protection into a constitutional remedy. These repeated failures fostered a growing sense of federal responsibility in the face of an emerging constitutional crisis. On June 11, 1963, President John F. Kennedy delivered his Civil Rights Address framing racial inequality as a constitutional crisis rooted in the nation's unfulfilled promises and unenforced guarantees. In the speech he emphasized the urgency of ending institutionalized discrimination, declaring that "[o]ne hundred years of delay have passed since President Lincoln freed the slaves, yet their heirs…are not fully free…from the bonds of injustice…[and] social and economic oppression." [9] Kennedy

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[7] Roger Davis Jr. and Giselle Aviles, "Increasing Access and Opportunity," (Library of Congress, 2022), https://www.loc.gov/ghe/cascade/index.html?appid=ce6c8e9130104911b6afd2103237086e&bookmark=Introduction

[8] Graham, Hugh Davis. "The Origins of Affirmative Action: Civil Rights and the Regulatory State." *The Annals of the American Academy of Political and Social Science* 523 (1992), 54. http://www.jstor.org/stable/1047580.

[9] John F. Kennedy, *"Radio and Television Report to the American People on Civil Rights,"* June 11, 1963, John F. Kennedy Presidential Library and Museum, https://www.jfklibrary.org/archives/other-resources/john-f-kennedy-speeches/civil-rights_19630611.

highlights the persistence of historical disadvantage, laying the constitutional groundwork for remedial federal action.

By the early 1960s, mass protests and resistance acts exposed and publicized the flawed enforcement of a purely formal understanding of equal protection and highlighted the need for change. The Freedom Rides of 1961 were organized by the Congress of Racial Equality (CORE) to challenge segregated bus terminals. Percy Sutton, a prominent black lawyer, describes a scene from a ride where he saw a boy with his "head split open from behind and blood streaming, somehow gushing over the front of his face," a graphic image capturing the human cost of constitutional neglect.[10] The violence inflicted on the Freedom Riders combined with the Kennedy Administration's initial reluctance for action, highlighted the constitutional crisis developing. The crisis intensified in the spring of 1963, when Dr. Martin Luther King Jr. and other civil rights activists organized the Birmingham Campaign to challenge a city ordinance that banned "any parade or procession or other public demonstration." [11] King's subsequent arrest led to an outrage of violence with headlines that read, "Negros Protesting Arrest Hurl Rocks at Police." [12] The escalation of violent protests prompted King to write the seminal *Letter from Birmingham Jail* which magnified media coverage, and forced federal officials to confront the consequences of their inaction. Louis Martin, a prominent journalist for the Kennedy and Johnson administrations, recorded that, "[n]egro demonstrations in Birmingham and the South and North have intensified the race-relations dilemma and forced the attention of everyone from the President on down"

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[10] Percy Sutton, *"Percy Sutton on the Freedom Rides,"* interview by ABC Network, Library of Congress, September 19, 1961. Audio, 2:42. https://www.loc.gov/exhibits/civil-rights-act/multimedia/percy-sutton.html.
[11] Federal Judicial Center, *"Walker v. City of Birmingham," Cases That Shaped the Federal Courts*, accessed December 16, 2025, https://www.fjc.gov/history/cases/cases-that-shaped-the-federal-courts/walker-v-city-birmingham.
[12] Foster Hailey, "Fighting Erupts at Birmingham: Birmingham Negroes Given Differing Receptions at White Churches," *New York Times*, April 15, 1963, 1, accessed via ProQuest, https://www.proquest.com/newspapers/fighting-erupts-at-birmingham/docview/116640593

noting that civil rights had become "the central theme of private and public discussion." [13] Martin's observations highlight how grassroot protests transformed the idea of equal protection into an crucial national issue. On June 11, 1963, President Kennedy spoke to the nation in the Civil Rights Address voicing that "[t]he events in Birmingham and elsewhere have so increased the cries for equality" and he announces that "[n]ow the time is come for this nation to fulfill its promise." [14] Kennedy's language gave the country the new promise that the federal government would actively work to fulfill the currently passive promise of equal protection to all individuals. As historian Hugh David Graham concludes, the combination of these movements in resistance created a "national demand for change, " [15] prepared the way for the Civil Rights Act of 1964.

Hubert Humphrey emerged as a leader in the constitutional fight to redefine the enforcement of the equal protection clause of the Fourteenth Amendment. This role was a product of a political career shaped by early and sustained engagement in civil rights, federal power, and moral obligations of constitutional governance. Humphrey was elected the mayor of Minneapolis in June of 1945. He worked to resolve labor disputes, organize efforts to combat racism, and ensure fair employment practices.[16] These early efforts reflected his belief that formal legal equality was insufficient without active enforcement. Humphrey's national political emergence came at the 1948 Democratic National Convention where he famously said, "There are those who say to you, 'We are rushing this issue of civil rights.' I say we are 172 years late." [17] This speech framed civil rights as a delayed constitutional obligation, positioning Humphrey as a leading advocate for remedial interpretation of the Fourteenth Amendment. Humphrey represented

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[13] Louis Martin, *Civil Rights, Kennedy and Johnson Administrations, April 1961–May 16, 1967*, autograph notebook, Louis Martin Papers (136.00.00), Manuscript Division, Library of Congress, accessed via Library of Congress, https://www.loc.gov/exhibits/civil-rights-act/images/cr0136_enlarge.jpg

[14] Kennedy, *"Radio and Television Report,"* June 11, 1963.

[15] Graham, "The Origins of Affirmative Action," 54.

[16] Mary T. Curtin, "Humphrey, Hubert Horatio (27 May 1911–13 January 1978)," *American National Biography*, February 1, 2000, https://www.anb.org/view/10.1093/anb/9780198606697.001.0001/anb-9780198606697-e-0700365.

[17] Hubert H. Humphrey, quoted in "The Happy Legacy of Hubert Humphrey," *New York Times*, January 15, 1978, https://www.nytimes.com/1978/01/15/archives/the-happy-legacy-of-hubert-humphrey.html.

Minnesota in the Senate from 1949 until 1964. As a senator, he pressed Presidents Eisenhower, Kennedy, and Johnson, for executive action to end segregation. After losing the 1960 Democratic Presidential primaries to Kennedy, Humphrey's appointment as Senate Majority Whip placed him in a strategic position to translate his constitutional philosophy into legislative action, setting the stage for his decisive role in shaping and defending the Civil Rights Act of 1964.[18] Humphrey wrote to the National Urban League Executive Director, Whitney Young for support on September 5, 1963 in which he says, "I am sure you know of my total commitment to President Kennedy's civil rights bill" calling the bill "the most vital of any which have come to the Senate in many years." [19] This leadership role was recognized by other civil rights activists as the debate in the Senate began. On March 27, 1964, the Director of the Washington Bureau, Clarence Mitchell wrote to the Executive Secretary of the NAACP Roy Wilkins, saying, "[w]e have a great team of senators led by Senators Hubert Humphrey (D-Minn.) and Thomas Kuchel (R.-California)" while cautioning that "[t]he fight has begun." [20] Mitchell's letter reveals that civil rights leaders viewed Humphrey as the chief architect and core strategist of the federal effort. But, he also warns of the fierce resistance, grounded in an opposing vision of constitutional equal protection, that would cause backlash against affirmative action and the Civil Rights Act.

Opponents of the Civil Rights Act challenged affirmative action as a constitutional violation, arguing that remedial measures undermined the Fourteenth Amendment's guarantee of equal protection by substituting federal coercion, racial classification, and preferential treatment. On March 30, 1964, southern senators launched a filibuster to block the bill which began the 75

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[18] Curtin, "Humphrey, Hubert Horatio."
[19] Hubert H. Humphrey to Whitney Young, September 5, 1963, typed letter, National Urban League Records, Manuscript Division, Library of Congress (155.00.00), accessed via Library of Congress, https://www.loc.gov/exhibits/civil-rights-act/images/cr0155_enlarge.jpg
[20] Clarence Mitchell to Roy Wilkins, March 27, 1964, Senate Letter no. 3, typed letter, NAACP Records, Manuscript Division, Library of Congress (174.00.00), accessed via Library of Congress, https://www.loc.gov/exhibits/civil-rights-act/civil-rights-act-of-1964.html#obj174

day stand-off, the longest in history. The filibuster functioned as a procedural weapon to defend an older constitutional order in which equal protection meant restraint, not intervention. Senator Storm Thurgood of South Carolina emerged as the most visible face of opposition, speaking for twenty-four hours straight and repeatedly invoking constitutional language. Thurgood argued that "in order to bestow preferential rights on a favored few" the bill "would sacrifice the constitutional rights of every citizen" and warned that the bill "would concentrate in the National Government arbitrary powers." [21] His argument rested on the claim that equal protection required uniform treatment and that any remedial distinction based on race allowed unconstitutional favoritism. Democratic Senator Richard Russell of Georgia echoed these concerns, focusing on the perceived harm of an expansion of federal authority to manage employment practices and private conduct. [22] Opposition to affirmative action fused equal protection with fears of centralized government. A different opposing argument came from conservative constitutionalists in which they argued that the Fourteenth Amendment mandated absolute racial neutrality. These critics invoked Justice John Marshall Harlan's dissent of *Plessy v. Ferguson* in which he famously stated that "[o]ur Constitution is color-blind, and neither knows nor tolerates classes among citizens" [23] Under this view, any action that acknowledged race, even for remedial purposes, violated equal protection. Some supporters of the Act expressed constitutional unease. Republican Senator Everett Dirksen whose eventual backing helped end the filibuster, was adamantly against racial quotas, which were originally proposed by the Act. He warned that "any deliberate attempt to maintain a racial balance…would require an employer to hire or refuse to hire on the basis of race" [24] Dirksen feared that such practices would institutionalize racial decision making rather than eliminate it.

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[21] United States Senate, "Civil Rights Filibuster: Humphrey–Thurmond Debate," 6428.
[22] U.S. Senate, "Filibuster Debate," *Landmark Legislation: Civil Rights Act of 1964*, https://www.senate.gov/legislative/landmark-legislation/civil-rights-act-of-1964/filibuster-debate.htm.
[23] *Plessy v. Ferguson*, 163 U.S. 537 (1896), https://www.law.cornell.edu/supremecourt/text/163/537
[24] Graham, "The Origins of Affirmative Action," 55.

Dirksen's position illustrated the concern of how far remedial measures could go without undermining equal protection.

Humphrey, among proponents, countered that equal protection demanded active federal intervention to dismantle accumulated effects of racial discrimination. During the 1960s, this argument gained intellectual and political force as the Kennedy and Johnson administrations increasingly embraced new theories of social justice. Historian Hugh Davis Graham describes this shift as a recognition of a "culture of poverty" that "trapped its victims in a chain of disadvantage." [25] This theory proposed that "black disadvantage was explained…as a consequence of institutionalized racism woven into the fabric of American life." [26] This theory reframed racial inequality as a structural issue, undermining the opposition's claim that neutrality alone could produce equality. Statistical disparities were often cited by proponents. Kennedy emphasized frequently the unemployment rate of black Americans being "two or three times as many compared to whites," [27] alongside lower rates of educational attainment and economic mobility in life. This theory implied the need for remedies in order to outweigh the disadvantages that minorities appeared to be trapped in. Humphrey and other supporters treated these disparities as proof that the Fourteenth Amendment had gone unrealized. Humphrey further grounded these disparities in moral examples drawing attention to everyday indignities that revealed the persistence of discrimination. On the Senate floor, he cited examples in which dogs were accommodated more than black Americans, noting that, In Columbus Georgia, "there are six places for dogs [to stay] and none for Negroes." and in Charelston South Carolina, "there are ten places where a dog can stay, and none for a Negro." [28] These comparisons underscored how deeply segregation distorted American life and exposed the inadequacy of a purely formal interpretation

[25] Graham, "The Origins of Affirmative Action," 57.
[26] Graham, "The Origins of Affirmative Action," 57.
[27] Kennedy, *"Radio and Television Report,"* June 11, 1963.
[28] U.S. Senate, "Filibuster Debate."

of equal protection. As Humphrey argued in an interview with Senator George Smathers of Florida, these realities reflected the "patterns of discrimination that call for new legislation," [29] rather than continued deference to states or private actors. These arguments framed affirmative action and the Civil Rights Act as a fulfillment of constitutional promises. By demonstrating that systematic nature of discrimination, Humphrey along with other supporters constructed a constitutional justification for federal intervention that ultimately paved the way for the passage of the Act.

Title VII of the Civil Rights Act redefined the federal government's constitutional role by authorizing the use of race conscious remedies to ensure equal protection. After months of constitutional deadlock, and the longest filibuster in Senate history, Senator Everett Dirksen's carefully negotiated compromises finally broke the impasse. Clarence Mitchell wrote to Roy Wilkins on June 20, 1964 announcing, "In a jammed chamber of the U.S. Senate there came the solemn moment on Friday, June 19, when the eleven title Civil Rights Bill was approved by a vote of 73 to 27." [30] Mitchell's excitement helps to emphasize the historical and constitutional weight of the vote. On July 2, 1964, Lyndon B. Johnson signed the bill into law, declaring that "those who are equal before God shall now also be equal." [31] Johnson's message to Americans frames the act as fulfillment of a constitutional promise. The Civil Rights Act declared "discrimination based on race, color, religion, or national origin" unconstitutional while Article VII allowed the Court to take "affirmative action as may be appropriate" to ensure that no discriminatory practices occur specifically within employment. [32] The provision codified a national standard of equality which

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[29] George Smathers, interview of Hubert Humphrey, Spring 1964, video, State Library and Archives of Florida, accessed via U.S. Senate, https://www.senate.gov/artandhistory/history/video/CivilRights_SmathersHumphrey.htm.
[30] Clarence Mitchell to Roy Wilkins, June 20, 1964, Senate Letter no. 15, typed letter, NAACP Records, Manuscript Division, Library of Congress (193.00.00), courtesy of the NAACP.
[31] "Radio Coverage of President Johnson's Remarks upon Signing the Civil Rights Act of 1964: The Complete Speech," audio recording, accessed December 16, 2025, Library of Congress, https://www.loc.gov/exhibits/civil-rights-act/multimedia/johnson-signing-remarks.html
[32] U.S. National Archives and Records Administration, "Civil Rights Act (July 2, 1964)," *National Archives*, https://www.archives.gov/milestone-documents/civil-rights-act.

transformed the Fourteenth Amendment's language into an enforceable federal law. Congress explicitly rejected the idea of colorblind inaction and instead embraced a remedial interpretation and recognized the necessity of race conscious enforcement.

The Civil Rights Act legitimized remedial race conscious governance, leading to multiple future actions to expand affirmative action. To set forth this new constitutional understanding of equal protection, a series of executive orders and statutory expansions were passed. On September 24, 1965, President Lyndon B. Johnson passed Executive Order 11246 which explicitly required contractors to "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin." [33] This order extended the enforcement principle that was touched upon in Title VII of the Civil Rights Act, fully justifying the use of race conscious remedial efforts during the employment process. Executive Order 11375 passed by Johnson on June 6, 1967, added "sex"as a protected category. On August 8, 1969, President Richard Nixon passed Executive Order 11478 which stated that "the head of each executive department and agency shall establish and maintain an affirmative program of equal employment opportunity." [34] This order made affirmative action a formal requirement for federal agencies. Then on July 21, 2014, President Barack Obama signed Executive Order 13672 which amended the previous orders again to include "gender identity" and "sexual orientation." [35] The continuous amendments and additions into present day demonstrates the enduring influence of the Civil Rights Act's reinterpretation of equality. The Act created a

[33] U.S. Equal Employment Opportunity Commission, "Executive Order No. 11246," https://www.eeoc.gov/history/executive-order-no-11246.
[34] EEOC, "Executive Order No. 11246."
[35]U.S. Federal Register, "Implementation of Executive Order 13672 Prohibiting Discrimination Based on Sexual Orientation and Gender Identity in Federal Employment," *Federal Register*, December 9, 2014, https://www.federalregister.gov/documents/2014/12/09/2014-28902/implementation-of-executive-order-13672-prohibiting-discrimination-based-on-sexual-orientation-and

constitutional and political foundation for affirmative action policies that sought correction of historical inequalities.

Affirmative action policies immediately generated backlash, transforming the Civil Rights Act from a legislative solution to a decade long political and judicial battle over the meaning of equal protection that continues into the present day. Colleges began creating policies to help increase opportunities for disadvantaged students, imitating affirmative action practices that were required in employment, which raised controversy. On June 26, 1978, the Supreme Court confronted affirmative action for the first time in *Regents of California v. Bakke*. In the case, Allan Bakke challenged a medical school admissions program that reserved seats for minority applicants, arguing this was a violation of the Equal Protection Clause. The court ruled against the constitutionality of racial quotas but upheld race as a factor in admissions. [36] Then on June 23, 2003, the Supreme Court reaffirmed and refined the Bakke decision in *Grutter v. Bollinger*. The Court ruled that student body diversity constitutes the school's individualized consideration of race. The court suggested a limited use of affirmative action, emphasizing that previous policies were justified as temporary measures. [37] Then on June 29, 2023, the Supreme Court overturned all decisions allowing affirmative action in college admissions in dual cases; *Students for Fair Admissions v. Harvard/ UNC*. The court ruled that race based admission at both Harvard and the University of North Carolina violated the Equal Protection Clause. [38] This case marked a shift toward a colorblind interpretation of the equal protection, and rejection of the race conscious remedies that Hubert Humphrey and supporters worked diligently for. While these subsequent court cases have overturned elements of affirmative action policies, the measures of the 1960s effectively addressed the constitutional crisis and advanced equal protection at the time.

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[36] *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978), https://www.oyez.org/cases/1979/76-811.
[37] *Grutter v. Bollinger*, 539 U.S. 306 (2003), https://www.oyez.org/cases/2002/02-241.
[38] *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. ___ (2023), https://supreme.justia.com/cases/federal/us/600/20-1199/

The constitutional struggle surrounding the Civil Rights Act of 1964 illustrates the ways in which constitutional change often occurs through political conflict over interpretation and enforcement rather than through a formal amendment. The Fourteenth Amendment promised equal protection under the law but was originally interpreted narrowly and without an enforceable remedy. Mass protests publicized the flawed enforcement of a purely formal understanding of equal protection and highlighted the need for change. Hubert Humphrey emerged as a leader in the constitutional fight to redefine the Equal Protection Clause of the Fourteenth Amendment arguing that the clause demanded active federal intervention to overcome the effects of racial discrimination. Opponents challenged affirmative action as a constitutional violation, arguing that remedial measures undermined the Fourteenth Amendment's guarantee of equal protection. The Civil Rights Act legitimized remedial race conscious governance, leading to future expansions of affirmative action. Affirmative action policies immediately generated backlash, causing a decade long judicial battle over the meaning of equal protection. Although modern court decisions have limited or overturned aspects of the affirmative action policies established in the 1960s, the passage of the Civil Rights Act and related federal actions nonetheless addressed a pressing constitutional crisis at the time. The Civil Rights Act of 1964's passage marked a practical constitutional transformation, translating the perceived dormant constitutional promises into an enforceable, remedial, reality, even if the long term durability has been tested.