

# Chapter Five

## Civil Liberties

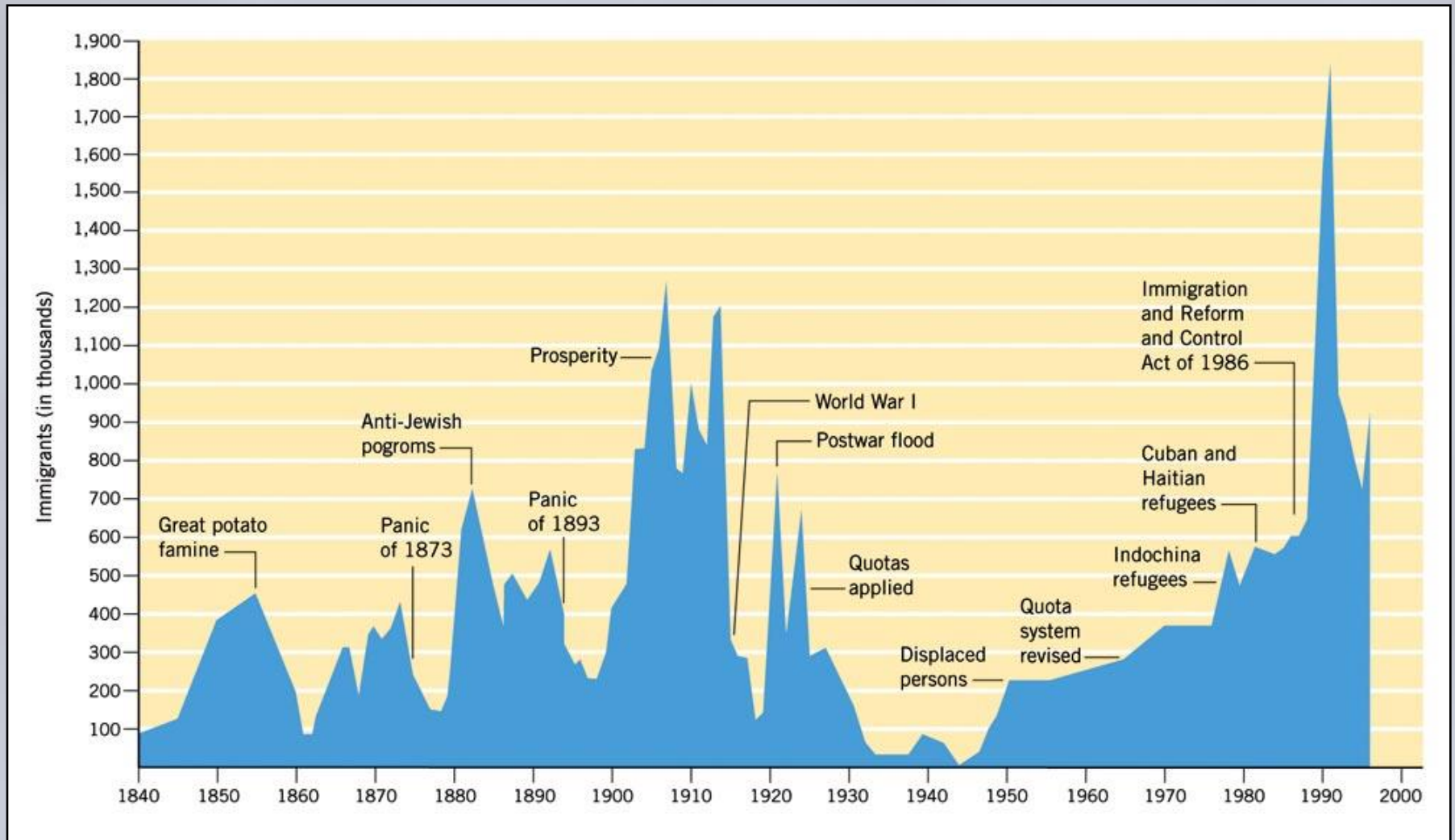
# The Politics of Civil Liberties

- **Civil liberties:** protections the Constitution provides against the abuse of government power
- The Framers believed that the Constitution limited government
- State ratifying constitutions demanded the addition of the Bill of Rights

# Culture and Civil Liberties

- The Constitution and Bill of Rights contain a list of *competing* rights and duties
- War has been the crisis that has most often restricted the liberty of some minority group
- Conflicts about the meaning of some constitutionally protected freedoms surround the immigration of “new” ethnic, cultural, and/or religious groups

# Figure 5.1: Annual immigration, 1840-1996



*Statistical Abstract of the United States, 1998, 10.*

# The Fourteenth Amendment (1868)

- **Due Process Clause:** “*no state* shall deprive any person of life, liberty or property without due process of law”
- **Equal Protection Clause:** “*no state* shall deny to any person within its jurisdiction the equal protection of the laws”

# Supreme Court Cases

- 1897: no state can take private property without just compensation
- 1925 (*Gitlow*): federal guarantees of free speech and free press also apply to states
- 1937 (*Palko v. Connecticut*): certain rights must apply to the states because they are essential to “ordered liberty” and they are “principles of justice”
- These cases begin the process of “selective incorporation”

# Libel

- **Libel:** a written false statement defaming another
- **Slander:** a defamatory oral statement
- Public figures must also show the words were written with “actual malice”—with reckless disregard for the truth or with knowledge that the words were false

# Obscenity

- 1973 definition: judged by “the average person, applying contemporary community standards” to appeal to the “prurient interest” or to depict “in a patently offensive way, sexual conduct specifically defined by applicable state law” and lacking “serious literary, artistic, political, or scientific value”
- Balancing competing claims remains a problem: freedom v. decency



# Symbolic Speech

- Cannot claim protection for an otherwise illegal act on the grounds that it conveys a political message (example: burning a draft card)
- However, statutes cannot make certain types of symbolic speech illegal: e.g., flag burning is protected speech

# The Free Exercise Clause

- Insures that no law may impose particular burdens on religious institutions
- But there are no religious exemptions from laws binding all other citizens, even if that law oppresses your religious beliefs
- Some conflicts between religious freedom and public policy continue to be difficult to settle.

# The Establishment Clause

- Government involvement in religious activities is constitutional if it meets the following tests:
  - Secular purpose
  - Primary effect neither advances nor inhibits religion
  - No excessive government entanglement with religion

# Exclusionary Rule

- **Exclusionary rule:** evidence gathered in violation of the Constitution cannot be used in a trial
- Stems from the Fourth Amendment (freedom from unreasonable searches and seizures) and the Fifth Amendment (protection against self incrimination)
- *Mapp v. Ohio* (1961): Supreme Court began to use the exclusionary rule to enforce a variety of constitutional guarantees

# Search and Seizure

- With a properly obtained search warrant: an order from a judge authorizing the search of a place and describing what is to be searched and seized; judge can issue only if there is probable cause
- What can the police search, incident to a lawful arrest?
  - The individual being arrested
  - Things in plain view
  - Things or places under the immediate control of the individual

# Confessions and Self Incrimination

- *Miranda* case: confessions are presumed to be involuntary unless the suspect is fully informed of his or her rights
- Courts began allowing some exceptions to the rule

# Terrorism and Civil Liberties

- U.S. Patriot Act meant to increase federal government's powers to combat terrorism
- An executive order then proclaimed a national emergency; non-citizens believed to be terrorists, or to have harbored a terrorist, will be tried by a military court
- Many controversial provisions of the Patriot Act automatically expire in 2005