

CHAPTER 6 CIVIL RIGHTS

Narrative Lecture Outline

The term "civil rights" refers to the positive acts governments take to protect individuals against arbitrary or discriminatory treatment by government or individuals. Since the Constitution was written, the conception of civil rights has changed dramatically. The addition of the Fourteenth Amendment after the Civil War made equality a constitutional right by specifying that the states could not "deny any person within its jurisdiction equal protection of the laws." This amendment has generated more litigation than any other constitutional provision. Those seeking equality have used the Constitution and litigation strategies as well as other methods of attaining their goal such as protest, lobbying, civil disobedience, and appeals to public opinion. The Civil Rights Act of 1964 and the Voting Rights Act of 1965 were seminal pieces of legislation in the fight for equal rights. The government officials charged with enforcing these laws are housed in the Civil Rights Division of the Department of Justice.

In 2006, this section of the government was decimated by large numbers of retirements and many career lawyers who left the division for other parts of the government. Many of those who left the CRD claimed that the Bush Administration had politicized the department and its work. The nonpolitical appointees in the CRD are disheartened by the changes taking place under President Bush. The opening vignette in the chapter offers more details but it is with this situation in mind that we turn to the past.

Slavery, Abolition, and Winning the Right to Vote, 1800-1890

Slavery and Congress

Congress banned the slave trade in 1808 as soon as the constitutional prohibition on banning it passed. Slavery was a divisive issue in the early republic. The South was becoming more heavily dependent on the cheap labor of slaves for agriculture, while the North was rapidly becoming industrial. This division between North and South intensified cultural and political differences and caused much animosity. A particularly controversial issue was the admission of new states. Would they be slave or free? This became a crisis in 1820 when Missouri applied for admission as a slave state. This would have given the slave-holding states a majority in the Senate and so was strongly opposed in the North. The Missouri Compromise of 1820 allowed the admission of Missouri as a slave state along with the admission of Maine (formed out of Massachusetts' territory) as a free state, thus preserving the balance of power. But the controversies raged on.

The First Civil Rights Movements: Abolition and Women's Rights

The abolitionist movement and private charities purchased slaves and transported them back to Africa in the early 1800s. In the 1820s, 88 former slaves formed the independent state of Liberia, but this "solution" to slavery was expensive and unpopular. The abolitionist movement began to fizzle out, but the arrival of William Lloyd Garrison reinvigorated the movement by founding the American Anti-Slavery Society.

People were also beginning to question the second-class status of women. As a matter of fact, Frederick Douglass—a well-known black abolitionist writer—quit the American Anti-Slavery Society because they refused to allow women to participate equally.

In 1848, Elizabeth Cady Stanton and Lucretia Mott sent out a call for the first women's rights convention in Seneca Falls, New York. The conference, attended by hundreds of men and women, called for equal rights of citizenship regardless of gender. The calls to change moral codes, divorce and property rules, criminal laws, and to extend educational opportunities to women all passed unanimously. Only the call to extend voting rights to women failed to win unanimous approval.

In 1850, Harriet Beecher Stowe published *Uncle Tom's Cabin*, a novel on the evils of slavery, and rallied public opinion behind the abolitionists. At about the same time as national passions were fanned by Stowe's novel, a major civil rights case came before the Supreme Court: *Dred Scott v. Sanford*. In their ruling on *Scott*, the Court ruled the Missouri Compromise unconstitutional and found that slaves were not citizens and could not sue in court. (This case was covered in chapter 3.)

The Civil War and its Aftermath: Civil Rights Laws and Constitutional Amendments

The Civil War had many causes, including:

- political conflict between North and South over nullification, a doctrine allowing states to declare federal law null and void
- political conflict between North and South over the right to secession
- the Northern states increasing political strength in the House of Representatives
- Southern agriculture vs. Northern industry
- the clash of Southern conservative culture with more progressive Northern ideas
- and, of course, slavery

During the war, abolitionists kept up pressure on Lincoln to abolish slavery. In 1863, he issued the Emancipation Proclamation that freed all slaves living in states in active rebellion against the United States. It did not free all slaves, just those in the Confederacy. Slavery was not truly abolished until the ratification of the Thirteenth Amendment in 1865.

Three amendments were passed following the war. They came to be known as the Civil War Amendments. They are:

- Thirteenth Amendment—banned all forms of slavery and involuntary servitude
- Fourteenth Amendment—guarantees equal protection of the laws and due process to all citizens
- Fifteenth Amendment—specifically gives blacks the right to vote

Southern states were required to ratify these three amendments as a condition of being readmitted to the Union. However, shortly after ratification they devised ways around the spirit and intent of the amendments by passing laws restricting opportunities

for African Americans. These Black Codes forbade blacks from jury duty, appearing in public places, and other indignities. In response, Congress passed the Civil Rights Act of 1866 to invalidate the Black Codes but President Andrew Johnson vetoed it. For the first time in history, Congress overrode a presidential veto. The law gave Congress the power to intervene when states attempted to restrict black male citizenship rights. They were also allowed to sue in federal court since they were unlikely to win in the elected state courts.

The Fourteenth Amendment was opposed by many women's groups because it specifically added the word “male” to the Constitution. Women's groups were also not pleased with the Fifteenth Amendment, which guaranteed the right of citizens to vote regardless of race, color, or previous condition of servitude with no mention of gender. These two “slights” to women caused them to leave the abolitionist movement and form an organization to work solely for women's rights. So Stanton and Susan B. Anthony formed the National Woman Suffrage Association (NWSA) in 1870.

Civil Rights, Congress, and the Supreme Court

Congress was quite clear in its desire to support the rights of African Americans. The Supreme Court was not. The Court ruled in a number of cases against a broad interpretation of the Fourteenth Amendment in *The Slaughterhouse Cases* and *Bradwell v. Illinois*. The Court continued to reject claims for expanded rights and requests for clear definitions of U.S. citizenship rights.

Judicial decisions also upheld Jim Crow Laws. These laws grew out of the Black Codes and required segregation in public schools and facilities. Jim Crow also barred interracial marriage. These laws conflicted with the Civil Rights Act of 1875 but by 1883 the Supreme Court heard five cases, called the Civil Rights Cases, involving people who had been convicted of refusing to allow African Americans in theaters, hotels, and a railroad. The Supreme Court ruled that Congress could not prohibit individual acts of discrimination, thus seriously limiting the scope of the Fourteenth Amendment and provided moral reinforcement for Jim Crow laws.

Southern states also tried to undermine the intent of the Fifteenth Amendment. Since the Fifteenth Amendment specifically said states could not deny anyone the right to vote based on race or color, they decided to exclude blacks from suffrage on other bases. They used poll taxes, property-owning qualifications, literacy tests and other voting restrictions. Many Southern states added grandfather clauses that prevented from voting those whose grandfathers had not been able to vote.

The Push for Equality, 1890-1954

The Progressive Era (1890-1920) was a concerted effort to reform political, economic, and social affairs. Child labor, monopolies, and prejudice were all targets of the reformers. The concerns over the treatment of African Americans grew worse after the Supreme Court ruled in *Plessy v. Ferguson*, a case that some refer to as the darkest hour in the history of the Supreme Court.

In 1892, a group of African Americans decided to test the constitutionality of a Louisiana law mandating racial segregation on all trains. They asked Homer Adolph Plessy—a man 7/8ths white, and 1/8th black—to challenge the law. Plessy boarded a train in New Orleans and went to the whites-only car. He was arrested when he refused

to leave and sit in the colored section. He sued, arguing that the Fourteenth Amendment made such racial segregation illegal.

The Supreme Court disagreed. They ruled that the Louisiana law was constitutional and that separate facilities for blacks and whites did not violate the Equal Protection Clause. This came to be known as the "separate but equal" doctrine. The Jim Crow system flourished. In 1898, the Supreme Court upheld the constitutionality of literacy tests. Again and again, the Supreme Court sanctioned racial segregation.

The Founding of the National Association for the Advancement of Colored People

In 1909, a number of progressive individuals gathered to discuss the idea of forming a group devoted to the problems of "the Negro." This group evolved into the NAACP. The first leaders of the NAACP included Jane Addams of Hull House and W.E.B. DuBois.

Key Women's Groups

In 1890, the National American Woman Suffrage Association (NAWSA) was formed when the National and American Woman Suffrage Movements merged. This group was devoted to securing women's suffrage.

By 1920, a coalition of women's groups secured ratification of the Nineteenth Amendment guaranteeing all women the right to vote. Following this victory, the otherwise diverse groups splintered off, and widespread, organized activity on behalf of women did not reemerge until the 1960s.

Litigating for Equality

During the 1930s, the NAACP decided it was time to challenge *Plessy*. Legislative strategies had not worked due to the limited political power of blacks so a litigation strategy was their most lucrative avenue to pursue. The NAACP mapped out a long-range litigation strategy that began by targeting segregation in graduate and professional schools. Such schools admitted only adults and a small percentage of the population therefore desegregation in graduate and professional schools would be less threatening to whites than some other arenas.

Lloyd Gaines, a black university graduate, applied for admission to the all-white University of Missouri Law School in 1936. He was rejected. In the spirit of *Plessy's* "separate but equal" doctrine, the state offered to build a law school for blacks (but no funds were allocated) or they would pay his tuition at an out-of-state law school. He appealed and ended up in the Supreme Court. The Court had changed dramatically in the last few years and seemed more sympathetic to cases about individual freedoms and rights. The justices ruled that the state of Missouri had failed to meet the "separate but equal" requirements of *Plessy*. They ordered Missouri to admit Gaines or set up a law school for him.

This partial success led the NAACP to set up a legal defense fund to pursue more such test cases. The first head of the NAACP-LDF was Thurgood Marshall (later to be the first African American on the Supreme Court). The LDF began to bring a carefully orchestrated series of test cases to the Court.

H.M. Sweatt was a 46-year-old African American mail carrier who in 1946 applied for admission to the all-white University of Texas Law School. He was rejected and sued. The judge gave the state six months to establish a law school for blacks or admit Sweatt to the UofT. The university rented rooms in downtown Houston and hired two local black attorneys to be part-time faculty members. The state legislature authorized \$3 million for the creation of a Texas State University for Negroes and a small new law school for blacks in Austin. It would have three small basement rooms, a library of 10,000 books, access to the state law library, and three part-time, first-year instructors as faculty. Sweatt opted to continue his legal challenge rather than accept such a poor alternative.

While working on *Sweatt*, Marshall began another case based on a 68-year-old African American who was denied admission to a doctoral program at the University of Oklahoma. Marshall thought that George McLaurin would be immune from charges of wanting integration in order to intermarry due to his age. A lower court ordered him admitted. The university allowed him to eat at the cafeteria during off hours and forced him to sit outside classrooms while lectures and seminars were held.

The Supreme Court bundled these two cases together. Southern states lobbied with a friend of the court brief (*amicus curiae*) that *Plessy* should govern both cases. But the U.S. government joined the NAACP. The Truman Administration urged the Court to overrule *Plessy*. This was a first. But the Court did not overrule *Plessy*. Instead they argued that measures taken by the states failed to live up to "separate but equal." In *Sweatt*, the Court ruled that it would be impossible for the state to provide an equal legal education in a separate setting. These partial victories convinced the NAACP-LDF that the time was ripe for a full-scale attack on legal segregation and *Plessy*.

The next major case, though actually it was a series of four cases, was known as *Brown v. Board of Education of Topeka, Kansas*. All four cases involved public elementary or high schools that mandated racial segregation. In *Brown*, the NAACP again argued that *Plessy's* "separate but equal" doctrine violated the Fourteenth Amendment's Equal Protection Clause. The strategy was to prove that the intellectual, psychological, and financial damage that befell African Americans as a result of segregation precluded any court from finding that equality was served by the separate but equal policy. The Court, under Chief Justice Earl Warren, overruled *Plessy* saying that separate was inherently unequal. The question then turned to implementation of the ruling and whether the ruling could be extrapolated to other realms of segregation.

The Civil Rights Movement **School Desegregation After *Brown***

One year after *Brown*, in *Brown II*, the Court ruled that segregated systems must be dismantled "with all deliberate speed." Implementation was given over to federal district court judges who were deemed more immune from local political pressure than state judges.

In Arkansas, Governor Orval Faubus announced that he would prevent the desegregation of Little Rock's Central High School using the National Guard. Finally,

President Eisenhower sent federal troops to Little Rock to protect the rights of the black students who had tried to attend Central High. Desegregation would prove to be a long and costly battle.

A New Move for African American Rights

Shortly after their victory in *Brown II*, the civil rights movement challenged another vestige of segregation: public transportation. Rosa Parks, an NAACP employee, challenged the segregated bus system in Montgomery, Alabama. She refused to leave her seat and move to the back to make room for a white male passenger. She was arrested. The city clergy and others got together and called for a bus boycott. Martin Luther King, Jr. was selected to lead the Montgomery Improvement Association and the bus boycott. After a year, the boycott succeeded and a federal court ruled that buses should integrate. The tactic of nonviolent protest would become a staple of the civil rights movement.

Formation of New Groups

King went on to found the Southern Christian Leadership Conference (SCLC) in 1957. This group had a Southern, Christian base, was run mostly by clergy, and reflected a growing belief in the importance of nonviolent protest.

Sit-ins, boycotts, and other forms of nonviolent protest were used to open up segregated lunch counters, waiting rooms, and more. Many college students from around the South joined together to challenge Jim Crow Laws in this fashion.

In a series of meetings beginning in 1960, white and black students got together to form the Student Nonviolent Coordinating Committee (SNCC). Among the first leaders of SNCC were John Lewis, Marion Barry, and Marion Wright Edelman. SNCC was more radical than the SCLC. Among SNCC's tactics were "freedom rides" to focus attention on segregated public accommodations. College students and civil rights activists, black and white, from all over the country headed South to travel by bus and force desegregation. Local police attacked them or chose not to defend them from attacking segregationists.

Meanwhile, SCLC and Martin Luther King, Jr. launched a series of massive nonviolent demonstrations in Birmingham, Alabama. Thousands of blacks and whites marched together in a show of solidarity and equality. Peaceful marchers were met by the Birmingham Police Commissioner who ordered his officers to use dogs, clubs, and fire hoses to disburse the march. The television news covered these events, and the nation was shocked. Not only did public opinion turn in favor of civil rights, but President John F. Kennedy was convinced to propose important civil rights legislation.

The Civil Rights Act of 1964

In 1963, President Kennedy requested that Congress pass a law banning discrimination in public accommodation—the first major piece of civil rights legislation since the post-Civil War years. Reverend King seized the moment and planned a massive show of support that came to be known as the March on Washington. King wanted a law that would ban discrimination in all aspects of life, not just public accommodations. In August 1963, more than 250,000 people marched peacefully on Washington and King delivered his "I Have a Dream" speech. Before Congress could vote, Kennedy was assassinated in November.

Lyndon B. Johnson became president and put civil rights at the top of the agenda and Congress passed the Civil Rights Act despite filibustering by Southern Senators. Senator Strom Thurmond (SC) and his allies held the bill up for eight weeks before a cloture vote finally stopped the filibuster.

The Civil Rights Act of 1964:

- outlawed arbitrary discrimination in voter registration and expedited voting rights lawsuits
- barred discrimination in public accommodations engaged in interstate commerce
- authorized the U.S. Justice Department to initiate lawsuits to desegregate schools and public facilities
- allowed the federal government to withhold funds from discriminatory state and local programs
- prohibited discrimination on the basis of race, color, religion, national origin, or sex
- created the Equal Employment Opportunity Commission (EEOC) to monitor and enforce bans on employment discrimination

Meanwhile, ghetto riots rocked the Northeast. Although they did not have to contend with Jim Crow, many blacks in the North lived in poverty and faced pervasive discrimination. There was a growing black power movement under leaders like Malcolm X, arguing that blacks needed to establish their own power separate from whites to survive. From 1964 to 1968, many Northern African Americans burned and looted to vent their rage and frustration. The fight was far from over.

The Impact of the Civil Rights Act of 1964

Southerners were adamant that the Civil Rights Act violated the Constitution and was an unwarranted use of federal power. The Supreme Court disagreed. They argued that the Commerce Clause gave the federal government the power to implement the Civil Rights Act.

Despite the Act and Supreme Court rulings, desegregation still needed to be fought on many fronts. The Court ruled that state-imposed segregation (*de jure*) must be eliminated at once. However, a full decade after *Brown*, less than 1 percent of African American children in the South attended integrated schools.

The Act also prohibited employment discrimination (in 1978 it was amended to prohibit discrimination based on pregnancy). Slowly, the Court (and lower courts) ruled on arbitrary policies like height and weight restrictions, special tests, etc. saying that if the effect of the rules was discriminatory, the practice was unconstitutional. Over time, these rulings opened up numerous occupations to minorities but especially to women.

In 1966, the National Organization for Women (NOW) was formed to address the many remaining problems faced by women including laws against jury duty for women. The Supreme Court continued to deny women the protection of the Fourteenth Amendment so NOW and other women's groups began to press for an Equal Rights Amendment. In 1972, Congress passed it by an overwhelming majority in both houses. Within a year, 22 states had ratified. But in 1973, the Supreme Court handed down a

ruling in *Roe v. Wade* concluding that women had a constitutional right to privacy including, in certain circumstances, the right to terminate a pregnancy. *Roe* gave ERA opponents valuable ammunition to use against the ERA. Radical arguments by opponents about coed bathrooms, mandatory military service for women, and abortion on demand frightened many people into opposing the amendment. Two states rescinded ratification. Though Congress extended the deadline for ratification, the amendment failed anyway. The ERA failed in part due to opposition but also due to successes for women's rights in the courtroom that made some people think the amendment was unnecessary.

The Women's Rights Movement

Women from all walks of life participated in the civil rights movements. They worked hard yet were often considered second-class citizens, so they began to mobilize for their own rights as well as those of minorities.

Litigation for Equal Rights

For many years, the Supreme Court refused to consider that the Fourteenth Amendment covered women's right to vote. As late as 1961, Florida had restrictions on jury duty for women. Also in 1961, a woman who clubbed her adulterous husband to death with a baseball bat argued that a jury with women on it would have been more sympathetic to her case and upheld her claim of temporary insanity. The Supreme Court disagreed saying that the Fourteenth Amendment didn't apply to women (thus incorporating the right of trial by jury in a state criminal trial and recognizing that a jury of peers should include women) and further stated that women are "still regarded as the center of home and family life." This case, *Hoyt v. Florida*, was finally overturned in 1975.

The Civil Rights Act of 1964 took up the issue of sex as well. It prohibited discrimination on the basis of race and sex. The sex clause was added by southern Democrats who thought it would be a joke and derail the bill, but it didn't. This legal basis opposed to sex discrimination emboldened women and in 1966 women activists formed the National Organization for Women (NOW). Their goal was to work within the system to attain their goals of equality for all.

Not every woman was in favor of equal rights as defined by NOW and other activist groups. Some groups formed to protect the idea of "protecting" women from equal rights. However, each year from 1923 to 1972 a constitutional amendment on equal rights was broached by Congress. Every president since Truman had formally backed the idea and in 1972 Congress finally passed the Equal Rights Amendment (ERA) by overwhelming majorities. It was very simple: "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article."

Within a year, 22 states had ratified the amendment by large majorities. The Supreme Court decision in *Roe v. Wade* (1973) seemed to change the momentum of the ERA. In *Roe*, the Court ruled that women had a constitutional right to privacy that included the limited right to terminate a pregnancy. This gave ERA opponents ample political fuel to begin the process of defeating the ERA. Anti-ERA forces billed the ERA

as anti-family and pro-abortion. The ERA was accused of promoting unisex bathrooms and forcing women to leave their homes and children to join the workforce. The issue of whether women could be drafted under the ERA was also a hot topic. A couple of states ratified in 1974, but by slim margins, and some repealed them. The tide had turned. Congress extended the deadline for ratification but no new states ratified and more rescinded ratification.

In addition, the courts began ruling in favor of women's rights even without the ERA. The courts began to apply the Fourteenth Amendment to women's issues thus protecting women from many kinds of discrimination. The ERA died without ratification in 1982.

The Equal Protection Clause and Constitutional Standards of Review

The Fourteenth Amendment protects all U.S. citizens from state action that violates equal protection of the laws. However, in practice, the Supreme Court regards certain rights as so fundamental that they deserve a higher standard of scrutiny. When a fundamental right, such as free speech, or a suspect classification such as race are involved in a case, the Supreme Court uses a heightened standard of review called strict scrutiny to determine its constitutional validity. Beginning with *Korematsu v. U.S.* (1944) and the internment of Japanese Americans during WWII, the Supreme Court said that any legal restriction that curtailed the right of a single racial group is immediately suspect and should be given "the most rigid scrutiny." The Court also used strict scrutiny in *Brown*. Under strict scrutiny, a statute is presumed to be unconstitutional unless the state can provide "compelling affirmative justifications"—that means that the law must be necessary to attain a permissible goal and be the least restrictive means to that goal.

In *Reed v. Reed* (1971), the Supreme Court finally extended Fourteenth Amendment protections to gender as well as race. Gender was not made a suspect classification but created an intermediate standard of review for such cases. Since that time many practices have been found to violate the Fourteenth Amendment, including:

- single-sex public nursing schools
- laws that consider men adults at 21 but women adults at 18
- laws that allow women, but not men, to receive alimony
- preemptory challenges in jury selection based on gender
- Virginia's all-male, publicly funded military college, the Virginia Military Institute

But the Court has upheld the following practices and laws as constitutional:

- draft registration for males only
- statutory rape laws that apply only to female victims

Other Groups Mobilize for Rights

Hispanic or Latino/a Americans

Latino/a Americans can date their push for equal rights to 1965-75. They also borrowed tactics from the African American civil rights movement including sit-ins, boycotts, marches, and activities that drew publicity.

The Latino/a community has also relied heavily on litigation strategies. Key groups include the Mexican American Legal Defense and Educational Fund (MALDEF) and the Puerto Rican Legal Defense and Educational Fund. These groups have been quite successful in expanding voting rights and opportunities for Latinos/as. Since 2002, MALDEF has been working to oppose restrictions on obtaining driver's licenses for undocumented immigrants among other issues.

With the release of 2000 Census results and the dramatic increase in the Latino/a population, we have seen even more political action by this identity group. MALDEF, among other groups, works to ensure that redistricting does not dilute Hispanic voting rights. However, the Latino/a community is also divided by national origin. Within the Latino/a groups there are Brazilians, Cubans, Puerto Ricans, Colombians, El Salvadorans, and more. Sometimes these national groupings are more important than language as an identity marker. In addition, each national grouping can have different salient issues. For some it is citizenship, for others language and cultural rights, and for others the overthrow of a Communist dictator and American policy toward a certain country.

On May 1, 2006, these different groups came together and over one million marched across the country in forty states to draw attention to immigration issues. Called the "Day Without an Immigrant," this economic boycott and political march drew substantial attention and support, as well as opposition, throughout the country. Also during 2006, President Bush proposed legislation on immigration that would strengthen the border with Mexico, 43 states were considering their own laws on the topic, and finally in October, Bush signed a bill to build an additional 700 miles of fencing along the southern border.

Native Americans

Native Americans have a unique status under American law. In 1924, Indians were made U.S. citizens and given the right to vote but it was not until the 1960s that the Indians also began to mobilize for their rights and against the discrimination against themselves and their ancestors. There were, like with all groupings, radical Indian groups, moderate ones, and groups that were fairly timid in their demands.

Law suits were filed about fishing rights, hunting rights, tribal land claims, and the taxation of tribal profits. And, much like the NAACP, this strategy won on many occasions. Native Americans have managed to gain access to and protection of their holy places—particularly burial grounds. They have not fared as well in religious rights. The use of peyote has been limited and their access to religious sites during timber harvesting.

Recently, Native American groups have been electing more Native Americans to office as well. In 2005, the Indigenous Democratic Network was founded along with a concomitant PAC. They have a 'campaign camp' and are actively training candidates and encouraging existing candidates to consider interests important to Native Americans.

Gays and Lesbians

Gays and lesbians have had a harder time than many other groups in achieving fuller rights. Gays do, however, have on average higher educational and income levels and are beginning to turn that into clout at the ballot box. In general, the Supreme Court had been unwilling to expand privacy rights or special constitutional protections to homosexuals. In *Bowers v. Hardwick* (1986), the Court ruled that privacy rights did not extend to homosexuals even if they were consenting adults in private. However, in 2003, the Supreme Court, in *Lawrence v. Texas*, the Court overruled previous stipulations and said that a Texas statute banning sodomy was unconstitutional on the grounds that homosexuals have the right to liberty under the due process clause without the intervention of the government.

The right to serve in the military has been hotly contested. The current policy “Don’t Ask, Don’t Tell” was established during the Clinton Administration and remains in effect. However since then over 11,000 soldiers have been discharged for being gay, including a number of sorely needed Arabic speaking linguists.

Civil unions or gay marriage has also been a hot button issue. In 2000, Vermont officially recognized civil unions. A few other states followed suit. This led to a backlash by conservative and Republican groups who used the gay marriage issue as a wedge in elections through to the present. President Bush has called for a constitutional amendment banning gay marriage.

Disabled Americans

Disabled veterans often led the charge for anti-discrimination legislation. As the disabled saw the victories of other groups, they too began fighting for better treatment. In 1990, veterans and other disabled people were able to convince Congress to pass the Americans with Disabilities Act (ADA). The ADA defines a disabled person as someone whose physical or mental impairment seriously limits one or more life activities. The ADA requires that facilities be accessible to those in wheelchairs, that telecommunications devices be provided for deaf employees, that employers acquire or modify work equipment or work schedules to accommodate the disabled.

The Court has ruled that the ADA covers pregnant women and people with AIDS. In 1999, the Court ruled in a number of ADA cases. They argued that if disabilities were treatable—such as myopia with eyeglasses or diabetes with insulin—one did not qualify for ADA antidiscrimination protection. In 2004, the Court ruled that courthouses should be handicapped accessible (if it could be ‘reasonably done’) after a man sued the state of Tennessee. He was forced to crawl up flights of stairs to attend a hearing. If he hadn’t attended, he could have been jailed and the courthouse had no elevator.

Continuing Controversies in Civil Rights

Affirmative Action

Affirmative action generates a lot of controversy. Some violently oppose affirmative action as discrimination. Others see it as absolutely vital in providing basic opportunities for minorities and women. There often seems to be very little middle ground. Public opinion is badly split by race on the question of affirmative action. White men seem to be particularly opposed to affirmative action. This debate really heated up during the Reagan administration when the Court heard a number of reverse discrimination cases.

In 1978, the Court first fully addressed the issue of affirmative action in the case *Bakke v. Regents of the University of California*. UC-Davis used two admissions committees—one for white students and one for minority students. Bakke was not admitted though his grades and test scores were higher than all of the African Americans admitted to the medical program. A sharply divided Court ruled that Bakke's rejection was unconstitutional due to the use of strict numerical quotas in the admissions process.

In general, at this time the Court upheld affirmative action programs when there was clear cut evidence of prior discrimination—usually by 5-4 votes. But in 1986, when William Rehnquist was elevated to Chief Justice, the Court began to rule against affirmative action.

The Democratic Congress responded by passing the Civil Rights Act of 1991 which, though watered down through bipartisan compromise, overruled several anti-affirmative action Court rulings—but it specifically prohibited the use of quotas.

The Supreme Court continued to challenge affirmative action programs. In 1995, they ruled that affirmative action must meet strict scrutiny tests. In 1996, the Fifth Circuit Court of Appeals threw out the University of Texas Law School's affirmative action program and the Supreme Court let the ruling stand. Since then the Supreme Court has chosen not to hear such cases or the cases have been settled before the Court could rule. In 1996, California voters chose to outlaw most forms of state affirmative action. This has had ramifications on colleges and universities in California and beyond. Minority admissions have dropped, as have minority applications for many programs.

Then in 2003, the Court issued a ruling in *Grutter v. Bollinger* (aka the Michigan affirmative action admissions case). The Court struck down a rigid point system but held that considering race and ethnicity in college admissions is constitutional as long as it was not the defining criteria and the programs were flexible and evaluated each individual fully.

Pay Equity and Other Issues of Workplace Discrimination

Pay equity continues to elude women and minorities. White women earn around 74 cents for every dollar earned by a white man. Black women earn only 64 cents for every dollar earned by a white man. In the last few years, a large number of major corporations have settled law suits on this issue including: Merrill Lynch, Home Depot, Wal Mart, Ingles, Kodak, PETCO, and others. This issue is being fought in the courts as we speak.

Web Sites for Instructors

America with Disabilities Act (ADA) offers information on this legislation and rights of the disabled.

www.usdoj.gov/crt/ada/adahom1.htm

Civil Rights Division, U.S. Department of Justice Web site offers an overview of the activities and programs of the DOJ on civil rights as well as links to documents, legislation, cases, and the Civil Rights Forum Newsletter.

www.usdoj.gov/crt/crt-home.html

Congressional Black Caucus offers information about its members in Congress.

www.congressionalblackcaucus.net/

Findlaw is a searchable database of SC decisions plus legal subjects, state courts, law schools, bar associations and international law.

www.findlaw.com

FLITE: Federal Legal Information Through Electronics offers a searchable database of Supreme Court decisions from 1937-1975.

www.fedworld.gov/supcourt/

The **Legal Information Institute** of Cornell University has an excellent site that offers extensive information about the legalities and definitions of civil rights. It begins with a prose definition of a civil right and includes links to U.S. Government laws, state laws, Supreme Court rulings, international laws on civil rights and more.

www.law.cornell.edu/topics/civil_rights.html

Mexican American Legal Defense and Education Fund (MALDEF) Web site offers information on Census 2000, scholarships, job opportunities, legal programs, regional offices information and more.

www.maldef.org

The **National Association for the Advancement of Colored People (NAACP)** Web site offers information about the organization, membership, and issues of interest to proponents of civil rights. Has sections on the Supreme Court, Census 2000, the Education Summit and includes links to other Web sites.

www.naACP.org

National Committee on Pay Equity collects information on pay equity and lobbies for fairer wages. Their fact sheets provide lots of statistical information about race and gender equity.

www.pay-equity.org/info.html

National Organization of Women (NOW) Web site offers information on the organization and its issues/activities including women in the military, economic equity,

reproductive rights, and so on. They offer an email action list and the ability to join NOW online. Also has links to related sites.

www.now.org

Native American Rights Fund (NARF) Web site offers profiles of issues, an archive, resources, a tribal directory, and treaty information as well as a lot of other information.

www.narf.org

Oyez-Oyez-Oyez is a comprehensive database of major constitutional cases, including multimedia aspects such as audio. Oyez now has blogs too!

www.oyez.com/oyez/frontpage

Rominger Legal Services provides U.S. Supreme Court links including history, pending cases, rules, bios, etc.

www.romingerlegal.com/supreme.htm

The **Southern Poverty Law Center (SPLC)** is a nonprofit group dedicated to fighting hate and intolerance. Their Web site includes information on the center and their activities including a program titled "Teaching Tolerance," the Klanwatch, and Militia Task Force. They also have a state-by-state listing of "hate incidents."

www.splcenter.org

U.S. Commission on Civil Rights is a bipartisan, fact-finding agency established within the executive branch. The Web site offers news releases, publications, a calendar of events, and multimedia coverage of civil rights events.

www.usccr.gov/

U.S. Supreme Court Plus has decisions from the current term as well as legal research, bios, basic Supreme Court information and more. Also offers a free e-mail notification service of Supreme Court rulings. Some information requires a fee.

www.uscplus.com

Web Activities for Classes

- 1) Have students look on the Web for additional historical information on the struggle for civil rights including the process the U.S. went through from 1800-1890 in civil rights, 1900-1939 (impact of WWI, etc.), 1940-48 (the impact of WWII, GI Bill, etc.), 1948-1960, 1960-1965, 1966-1974 (impact of Vietnam and Watergate), 1974 to present.
- 2) Have students look on the Web for additional information on the history of the women's suffrage and rights movement up to and including the ERA and its ratification drive as well as the current situation. Give them some hints on key words such as: glass ceiling, pink collar work, equal pay, NOW, Phyllis Schaffley, etc.

- 3) Have students use the Web to research civil rights strategies, for example, the NAACP chose to use a litigation strategy to achieve desegregation and equal rights. How did they implement this strategy and what were their other choices?
- 4) Have students search the Web for examples of Supreme Court cases that explain the equal protection clause and constitutional standards of review.
- 5) Once African Americans and women had some success in the battle for equal rights, other groups mobilized to gain their rights. Have students do some Web research. What other civil rights groups formed after the two mentioned above? What tactics did they use? And how successful they have been?
- 6) Go to the U.S. Census homepage (www.census.gov). Look at the demographic breakdown from the 2000 Census and discuss the public policy ramifications of the new population numbers.
- 7) Same sex marriage has been a hot topic of discussion. Attitudes seem to differ dramatically depending upon how the polling questions are framed. Have students delve into this to explain it by looking at polls such as Zogby, Roper, and Gallup.

General Class Activities and Discussion Assignments

- 1) Have students look at the current Supreme Court docket. What civil rights cases do they see? Have students address the following questions: What are the constitutional arguments? How do the arguments differ from the cases the book discusses in the 1950s and 1960s? What might account for these changes? What might account for the similarities?
- 2) The use of *amicus curiae* briefs has increased dramatically in the last couple of decades and many people now argue that public opinion plays a role in Supreme Court decisions. Have students discuss how one might study these two issues. How would one characterize the role of such lobbying in civil rights cases? Does public opinion affect SC opinions? How and why?
- 3) Have students address the following: Choose one civil rights issue and research it in depth. What constitutional issues are used, what arguments, etc.? How do you feel the current Court would rule on this issue and why?
- 4) Have students look at the current Supreme Court. They should do some biographical and case research on each of the nine justices in the area of civil rights. Have them try to build a typography (classify the judges into groups of like-minded individuals) on how the current justices rule on civil rights. (Example: The simplest typography would be liberal—moderate—conservative.

But be sure to define each of those categories! A more complex system would tell us more about the Court.)

- 5) Congress also plays a role in civil rights. Have your class do some research to determine what types of civil rights issues Congress has been dealing with in the last 5-10 years. Why are these issues in Congress and not the Courts? Is this a symbol of progressive change or something else?
- 6) Have your students research the executive branch's activities regarding civil rights. What is their role, and how do they exercise it? What issues does the executive branch currently consider to be important in civil rights? What is the administration's position on certain issues such as: affirmative action, equal pay, handicapped access, etc.?

Possible Simulations

- 1) Have students debate a civil rights issue such as affirmative action, the ADA, funding of special education, etc.
- 2) Have students find a case on the current Supreme Court docket about civil rights. Assign each of them to determine how a given justice might choose to vote by doing some research on that justice's opinion (make sure all of the justices are represented). Then have them role-play a debate on the case they chose.
- 3) Affirmative action for admission to college is before the Supreme Court. Have students look at “admissions packets” (ask the admissions office for some with names blacked out) and determine what criteria are, can, and ought to be used for college admissions through interviews with admissions officers (ideally at more than one campus) and then have the class role-play as an admissions committee.

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