5.9 U.S. Governmental Policies or Court Decisions Affecting Racial, Ethnic, or Religious Groups

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[Figure 1]

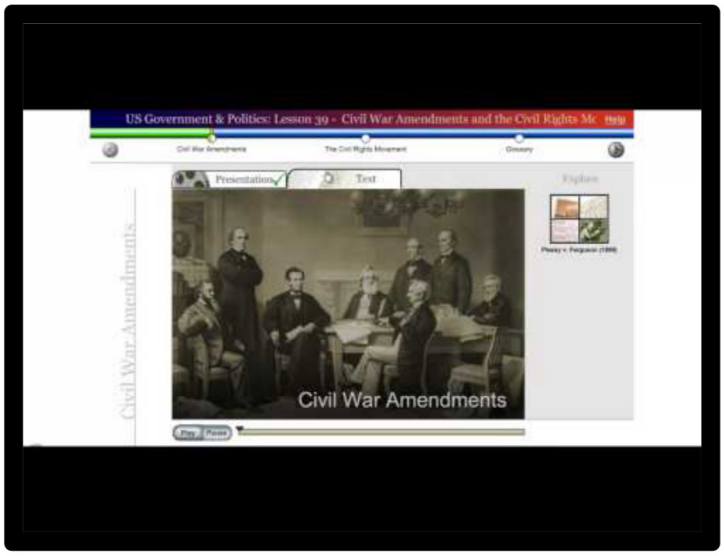
In 2008, a mixed-race man (Barrack Obama) and a white woman (Hillary Clinton) make history as the leading contenders for the Democratic nomination for president.

The campaign for the Democratic party's nomination for president in 2008 culminated in a contest between a mixed-race man and a white woman. Both candidates addressed their identities directly and with pride. Barack Obama gave a notable speech about race, saying that black anger and white resentments were grounded in legitimate concerns and that Americans must work together to move beyond their racial wounds. Conceding defeat in June, Hillary Clinton told her supporters, "Although we weren't able to shatter that highest, hardest glass ceiling this time, it's got about eighteen million cracks in it."

Civil rights protect people against discrimination. They focus on equal access to society and to political activities such as voting. They are pursued by disadvantaged groups who,

because of a single characteristic, have historically been discriminated against. In this chapter, we consider race and ethnicity, gender, sexual orientation, and disability.

Video: An Introdction to the Civil Rights Era



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The Civil War Amendments

Equality did not enter the Constitution until the Civil War Amendments (the Thirteenth, Fourteenth, and Fifteenth) set forth the status and rights of former slaves.

The Thirteenth Amendment

In early 1865, with the Union's triumph in the Civil War assured, Congress passed the Thirteenth Amendment. Quickly ratified by victorious Union states, it outlawed slavery and "involuntary servitude." It authorized Congress to pass laws enforcing the amendment—giving it the power to eradicate not simply slavery but all "badges of servitude."

Abraham Lincoln, assassinated in 1865, was succeeded as president by Andrew Johnson who pushed for a quick reunion of North and South. Republicans in Congress feared that the rights of newly freed slaves would be denied by a return to the old order. Distrusting Johnson, they decided protections had to be put into the Constitution. Congress enacted the Fourteenth Amendment in 1868 and made its ratification a condition for the Southern states' reentry into the Union.

The Fourteenth Amendment

First, anyone born in the United States is a U.S. citizen, and anyone residing in a state is a citizen of that state. So it affirmed African Americans as U.S. and state citizens.

Second, the amendment bars states from depriving anyone, whether a citizen or not, of “life, liberty, or property, without due process of law.” It thereby extended the Bill of Rights’ due process requirement on the federal government to the states.

Third, the amendment holds that a state may not “deny to any person within its jurisdiction the equal protection of the laws.” This equal protection clause is the Supreme Court’s major instrument for scrutinizing state regulations. It is at the heart of all civil rights. Though the clause was designed to restrict states, the Supreme Court has ruled that it applies to the federal government, too.

The Fifteenth Amendment

The 15th Amendment, ratified in 1870, bars federal and state governments from infringing on a citizen’s right to vote “on account of race, color, or previous condition of servitude.”

The Bill of Rights limited the powers of the federal government; the Civil War Amendments expanded them. These amendments created new powers for Congress and the states to support equality. They recognized for the first time a right to vote.

Political debate and conflict surround how, where, and when civil rights protections are applied. The complex U.S. political system provides opportunities for disadvantaged groups to claim and obtain their civil rights. At the same time, the many divisions built into the Constitution by the separation of powers and federalism can be used to frustrate the achievement of civil rights.

The status of African Americans continued to be a central issue of American politics after the Civil War.

Disenfranchisement and Segregation

The federal government retreated from the Civil War Amendments that protected the civil rights of African Americans. Most African Americans resided in the South, where almost all were disenfranchised and segregated by the end of the 19th century by Jim Crow laws that enforced segregation of public schools, accommodation, transportation, and other public places.

Link: Jim Crow Laws

Jim Crow in Durham - "Jim Crow" was a derogatory term for African Americans, named after "Jump Jim Crow," a parody of their singing and dancing as performed by a white actor in blackface.

Voting Rights

Enforcing the 15th Amendment's right to vote proved difficult and costly. Blacks voted in large numbers but faced violence from whites. Vigilante executions of blacks by mobs for alleged or imagined crimes reached new highs. In 1892 alone, 161 lynchings were documented, and many more surely occurred.

In 1894, Democrats took charge of the White House and both houses of Congress for the first time since the Civil War. They repealed all federal oversight of elections and delegated enforcement to the states. Southern states quickly restricted African American voting. They

required potential voters to take a literacy test or to interpret a section of the Constitution. Whites who failed an often easier test might still qualify to vote by virtue of a "grandfather clause," which allowed those whose grandfathers had voted before the Civil War to register.

The Supreme Court also reduced the scope of the Civil War Amendments by nullifying federal laws banning discrimination. The Court ruled that the Fourteenth Amendment did not empower the federal government to act against private persons.

De jure segregation—the separation of races by the law—received the Supreme Court's blessing in the 1896 case of *Plessy v. Ferguson*. A Louisiana law barred whites and blacks from sitting together on trains. A Louisiana equal rights group, seeking to challenge the law, recruited a light-skinned African American, Homer Plessy, to board a train car reserved for whites. Plessy was arrested. His lawyers claimed the law denied him equal protection. By a vote of 8–1, the justices ruled against Plessy, stating that these accommodations were acceptable because they were "separate but equal." Racial segregation did not violate equal protection, provided both races were treated equally.

Plessy v. Ferguson gave states the green light to segregate on the basis of race. "Separate but equal" was far from equal in practice. Whites rarely sought access to areas reserved for blacks, which were of inferior quality. Such segregation extended to all areas of social life, including entertainment media. Films with all-black or all-white casts were shot for separate movie houses for blacks and whites.

Mobilizing Against Segregation

At the dawn of the twentieth-century, African Americans, segregated by race and disenfranchised by law and violence, debated how to improve their lot. One approach accepted segregation and pursued self-help, vocational education, and individual economic advancement. Its spokesman, Booker T. Washington, head of Alabama's Tuskegee Institute, wrote the best-selling memoir *Up from Slavery* (1901) and worked to build institutions for African Americans, such as colleges for blacks only. Sociologist W. E. B. Du Bois replied to Washington with his book *The Soul of Black Folk* (1903), which argued that blacks should protest and agitate for the vote and for civil rights. Du Bois's writings gained the attention of white and black Northern reformers who founded the National Association for the Advancement of Colored People (NAACP) in 1909. Du Bois served as director of publicity and research, investigating inequities, generating news, and going on speaking tours.

The NAACP brought test cases to court that challenged segregationist practices. Its greatest successes came starting in the 1930s, in a legal strategy led by Thurgood Marshall, who would later be appointed to the Supreme Court. Marshall urged the courts to nullify programs that provided substandard facilities for blacks on the grounds that they were a violation of "separate but equal." In a key 1937 victory, the Supreme Court ruled that, by providing a state law school for whites without doing the same for blacks, Missouri was denying equal protection. Such triumphs did not threaten segregation but made Southern

states take “separate but equal” more seriously, sometimes forcing them to give funds for black colleges, which became centers for political action.

During World War I, Northern factories recruited rural Southern black men for work, starting a “Great Migration” northward that peaked in the 1960s. In Northern cities, African Americans voted freely, had fewer restrictions on their civil rights, organized themselves effectively, and participated in politics. They began to elect black members of Congress and built prosperous black newspapers. When the United States entered World War II, many African Americans were brought into the defense industries and the armed forces. Black soldiers who returned from fighting for their country engaged in more militant politics.

President Harry S.Truman saw black citizens as a sizable voting bloc, a group of voter motivated by a specific cause or concern. In 1946, he named an advisory commission to recommend civil rights policies. Amid his 1948 election campaign, Truman issued executive orders that adopted two of its suggestions: desegregating the armed forces and creating review boards in each cabinet department to monitor discrimination. With the crucial help of Northern black votes, Truman won in an upset.

The End of *De Jure* Segregation

In the 1940s, Supreme Court decisions on lawsuits brought by the NAACP and argued by Thurgood Marshall chipped away at “separate but equal.” In 1941, Arthur Mitchell, a black member of Congress from Chicago, was kicked out of a first-class sleeping car when his train entered Arkansas. The Court ruled that the Arkansas law enforcing segregation was unconstitutional. In 1944, the Court ruled that the 15th Amendment barred Texas from running an all-white primary election. In 1948, it stopped enforcement of covenants that home buyers signed that said they would not resell their houses to blacks or Jews.

Marshall decided to force the justices to address the issue of segregation directly. He brought suit against school facilities for blacks that were physically equal to those for whites. With the 1954 decision, *Brown v. Board of Education*, the Supreme Court overturned *Plessy v. Ferguson*and ruled unanimously that racial segregation in public education violated the Constitution.

Video: Brown v. Board of Education

Only six percent of Southern schools had begun to desegregate by the end of the 1950s. In 1957, Arkansas Governor Orval Faubus, backed by white mobs, mobilized the National Guard to fight a federal court order to desegregate Little Rock's public schools. President Eisenhower took charge of the Arkansas National Guard and called up US troops to enforce the order. Television images of the nine Little Rock students attempting to enter Central High surrounded by troops and an angry mob brought the struggle for civil rights into American living rooms.

Link: Central High Conflicts

[Figure 3]

Learn more about the conflicts at Central High online at Little Rock Central High School National Historic Site.

The Effects of *De Facto* Segregation

While the Supreme Court effectively put an end to *De Jure* segregation (segregation enforced by law) with the landmark case of ***Brown v. Board of Education*** and through federal legislation such as the Civil Rights Act of 1964 and the Voting Rights Act of 1965, it was limited in its ability to change the way people acted towards each other. Centuries of cultural segregation between whites and blacks could not be ended by simply changing the law or enforcing federal control over the states. It takes many generations to change the way people think and act towards each other. When people are segregated through tradition, behavior, and custom, this is called *De Facto Segregation*.

In Southern states, the tradition of *De Jure* segregation (Jim Crow Laws) were ended during the Civil Rights era of the 1950s and 1960s BUT many Northern states had long-held traditions of *De Facto* segregation which were reinforced through unofficial (yet equally crippling) forms of segregation. When African Americans began to move to northern states in the late 1800s, this was called "The Great Migration." Yet as the "Great Migration" took place, many urban whites began to leave the cities and moved to newly established suburbs (particularly in the 1940s through 1970s). This has been characterized by the term *"White Flight"* and is the best example of how *De Facto* segregation continued even as *De Jure* segregation was ending in the South.

As a result of "white flight" in such large cities as Boston, Massachusetts, many urban schools became segregated, not through law but through action, as white families fled the inner city for suburban school districts, leaving inner city schools underfunded and unable to provide the same level of education as their suburban neighbors. In response to this phenomenon, the federal courts began to take action in the late 1960s and early 1970s through a system of forced bussing which required white students from the suburbs to be sent to inner city schools and allowed predominantly African American students from the inner city to attend schools in the suburban school districts.

As one might expect, this was not a popular decision among the families of students who were bussed from suburban neighborhoods to inner city schools. In the late 1990s, the last of the forced-bussing plans was ended by the federal courts as the level of integration in urban and suburban school districts was deemed to be equal, and the system was argued to be no longer necessary. There is a great deal of evidence even today that *De Facto* segregation is still a problem and equal access to a quality education has yet to be achieved.

More Information about De Facto Segregation:

Go to the links below to discover more about the history of De Facto Segregation and the forced-busing system in Boston.

http://en.wikipedia.org/wiki/Boston_busing_desegregation

http://socialistworker.org/2013/03/29/struggle-for-busing

http://greatergreaterwashington.org/post/19285/de-facto-segregation-threatens-montgomery-public-schools/

http://www.wbur.org/2014/09/05/boston-busing-anniversary

http://www.wbur.org/2014/09/05/boston-busing-effects

The Civil Rights Act of 1964, enacted July 2, 1964, is a landmark civil rights and labor law in the United States that outlaws discrimination based on race, color, religion, sex, or national origin. It prohibits the unequal application of voter registration requirements, and racial segregation in schools, employment, and public accommodations.

Initially, powers given to enforce the act were weak, but these were supplemented during later years. Congress asserted its authority to legislate under several different parts of the United States Constitution, principally its power to regulate interstate commerce under Article One, its duty to guarantee all citizens equal protection of the laws under the Fourteenth Amendment, and its duty to protect voting rights under the Fifteenth Amendment.

The legislation had been proposed by President John F. Kennedy in June 1963, but opposed by filibuster in the Senate. After Kennedy was assassinated in November 1963, President Lyndon B. Johnson pushed the bill forward, which in its final form was passed in the U.S. Congress by a Senate vote of 73–27 and House vote of 289–126. The Act was signed into law by President Johnson on July 2, 1964, at the White House.

Affirmative Action

In recent years, the main mass-media focus on African American civil rights has been affirmative action: efforts made or enforced by government to achieve equality of opportunity by increasing the percentages of racial and ethnic minorities and women in higher education and the workplace. Most members of racial and ethnic minorities support affirmative action; majorities of whites are opposed. Supporters tend to focus on remedying the effects of past discrimination; opponents respond that the government should never discriminate on the basis of race. The media largely frame the issue as a question of one side winning and the other side losing.

The Supreme Court first weighed in on affirmative action in 1978. Allan Bakke, a white applicant, was denied entrance to the medical school of the University of California, Davis. Bakke noted that his test scores were higher than other applicants admitted on a separate track for minorities. He sued, charging “reverse discrimination.” The Court concluded that UC Davis’s approach of separating white and minority applicants into two separate groups violated the principle of equal protection. School programs like Harvard’s, which considered race as one of many criteria, were permissible.

Grutter vs. Bollinger

The 2003 Supreme Court decision in *Grutter vs. Bollinger* affirmed this position by voiding the undergraduate admission program at the University of Michigan that added points to a candidate’s application on the basis of race but upholding the graduate admission approach that considered race in a less quantitative way.

The United State Supreme Court case of *Grutter v. Bollinger* (539 U.S. 306, (2003) would ultimately uphold the use of an affirmative action admissions policy at the University of Michigan Law School with an extremely close 5-4 decision on June 23, 2003.

In 1996, Ms. Grutter, applied to the University of Michigan Law School and despite her 3.8 GPA and 161 LSAT score was ultimately denied admission. Ms. Grutter would allege that she was rejected because the Law School uses race as a “predominant” factor, giving applicants belonging to certain minority groups a significantly greater chance of admission than students with similar credentials from disfavored racial groups; and that the university had "no compelling interest to justify that use of race." Ms. Grutter was basically alleging that the school had discriminated against her on the basis of race in violation of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, and 42 U.S.C. § 1981. In essence, she claimed "reverse discrimination" in that she was denied enrollment not because she wasn't academically qualified but because she was white.

This case would first go to the District Court, where it was ruled that the Law School’s use of race as an admissions factor was, indeed, unlawful. The district court concluded that the law school's use of race as a factor in making admission decisions was unlawful and initially granted the Ms. Grutter's request to stop the law school from using race as a factor in its admissions decisions. But as the case proceeded through the appeals process, the Sixth Circuit reversed the lower court's decision justifying their decision on the basis of a Supreme Court case that took place almost 25 years earlier (*California v. Bakke* 1978) which considered the topic of race classifications as an important tool in achieving minority equality in university admissions.

When the case was argued before the Supreme Court, the justices affirmed the Sixth Circuit's reversal of the District Court decision, thereby upholding the University's admissions policy. Their decision was based on the Equal Protection Clause of the Fourteenth Amendment which provides that “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” The United States Supreme Court, in the

Grutter decision, determined that a Michigan law school's admissions program, designed to reach the goal of attaining a "critical mass" of underrepresented minority students by using race as a "plus factor" in admissions decisions to promote student body diversity, met the requirements of the Equal Protection Clause.

The majority of justices in the Grutter case held that "the Law School had a compelling interest in attaining a diverse student body" and that the Law School's plan was narrowly tailored to that end but that the Law School's program had to have a "logical endpoint," probably in about 25 years. But as a reaction to this ruling the people of Michigan held a public referendum (vote) in November 2006 and a majority of voting Michiganders (58%), apparently disagreeing with the Court majority, passing the referendum and banning state-education affirmative action, essentially negating the effect of Grutter in Michigan (*Grutter v. Bollinger*, 2003).

Fisher v. University of Texas and the Future of Affirmative Action

In the fall of 2012, the Supreme Court heard oral arguments from attorneys representing Abigail Fisher – a young woman denied entrance to the University of Texas in 2008 – and the U.S. Solicitor General representing the university. Ms. Fisher, a Caucasian woman, filed suit against the university claiming it violated the equal protection clause of the 14th Amendment when it used race as a factor during its admissions selection process. Previous affirmative action cases involving admissions to publicly funded universities, such as UCLA and the University of Michigan, set a precedent that race could be used as a factor in admissions. However, Ms. Fisher contends that the University of Texas' policy of using race does not meet the standard set in those cases.

Universities nationwide have used race as a factor when determining which students to admit because they claim to have a compelling interest to create a "critical mass" of diverse students make up their student body. Roughly half (49.9%) of the students at the University of Texas are Caucasian and the remaining half are minority and international students. Until recently, the University of Texas has practiced a Top Ten Percent (TTP) policy where any student in the top ten percent of their class automatically is accepted to the university.

Over 80% of the student body at UT is accepted this way. Given the de facto racial segregation of the school districts throughout Texas, the TTP policy diversifies the overall student body makeup at the UT. The remaining 20% of students are admitted based on test scores, grades, and a Personal Achievement Index (PAI). Some of the factors within the PAI are written essays, leadership experience, and race. Ms. Fisher was in the top twelve percent of her class and believes she did not get accepted to UT because of the race component of the PAI.

The question before the Court is to what extent may race be a factor in the admissions process at the University of Texas? The Court ruled in a 4-3 majority that the university's consideration of race in the admissions process did not violate the Equal Protection Clause of the 14th Amendment.

Civil Rights Issues Persist

The legacy of slavery and segregation is evident in not only the higher rates of poverty, unemployment, and incarceration but also the lower life expectancy and educational test scores of African Americans compared to whites. Visitors to the website of the NAACP will find many subjects connected to race, such as police practices of racial profiling of suspects. But the NAACP also deals with issues that disproportionately affect African Americans and that some might think to have "nothing to do with race." These include a practice the NAACP labels "environmental racism," whereby polluting factories are placed next to poor, largely African American neighborhoods.

The mass media tend to focus on incidents of overt discrimination rather than on damage caused by the poverty, poor education, and environmental hazards that disadvantaged groups often face. This media frame explains why television reporters, facing the devastation of New Orleans by Hurricane Katrina, were so thunderstruck by the overwhelming number of black faces among the victims. The topic of black urban poverty is simply not something the press routinely covers.

Other Minorities

[Figure 4]

Policies protecting African Americans' civil rights automatically extend to other racial and ethnic minorities. Most prominent of these groups are Latinos, Asian Americans, and Native Americans. They all have civil rights concerns of their own.

Latinos

Latinos have displaced African Americans as the largest minority group in the United States. They are disproportionately foreign-born, young, and poor. They can keep in touch with issues and their community through a burgeoning Spanish-language media. Daily newspapers and national television networks, such as Univisión, provide a mix of news and advocacy.

Politicians court Latinos as a growing bloc of voters. [1] As a result, Latinos have had some success in pursuing civil rights, such as the use of Spanish in voting and teaching. After Latino groups claimed that voting rights were at risk for citizens not literate in English, the Voting Rights Act was amended to require ballots to be available in a language other than English in election districts where that language was spoken by five percent or more of the electorate. And the Supreme Court has ruled that school districts violate the Civil Rights Act of 1964 when students are taught in a language that they do not understand. [2]

Latino success has not carried over to immigration. [3] Illegal immigrants pose vexing questions in terms of civil rights. If caught, should they be jailed and expelled? Should they be eligible to become citizens?

In 2006, Congressman Jim Sensenbrenner (R-WI) introduced legislation to change illegal immigration from a violation of civil law to a felony and to punish anyone who provided assistance to illegal immigrants, even church ministers. Hundreds of thousands rallied in cities across the country to voice their opposition. President George W. Bush pushed for a less punitive approach that would recognize illegal immigrants as "guest workers" but would still not allow them to become citizens.

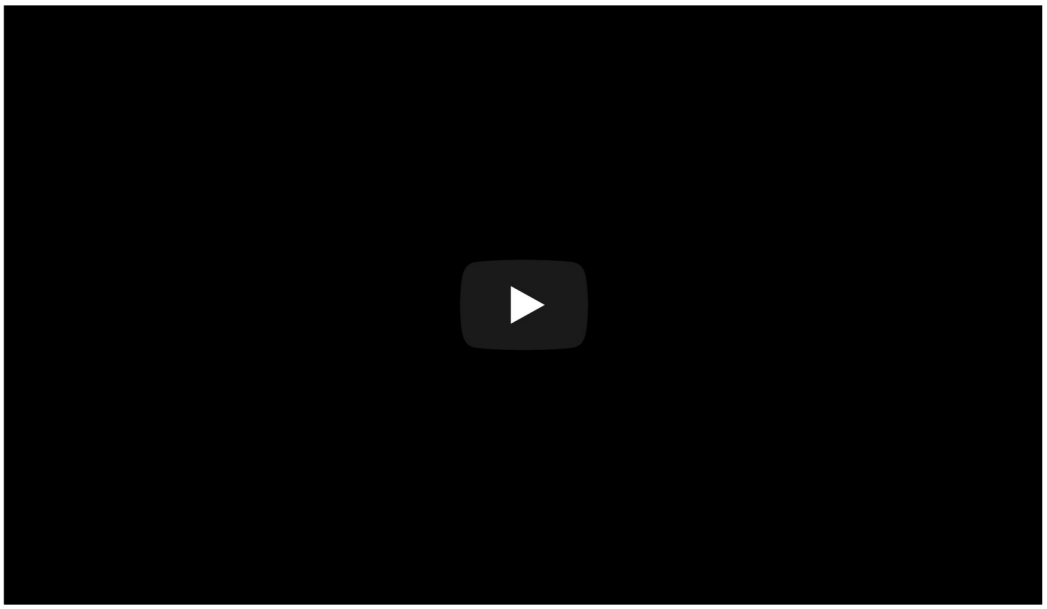
Other politicians have proposed legislation. Mired in controversy, none of these proposals have become law. President Obama revisited one aspect of the subject in his 2011 State of the Union message:

"

> *"Today, there are hundreds of thousands of students excelling in our schools who are not American citizens. Some are the children of undocumented workers, who had nothing to do with the actions of their parents. They grew up as Americans and pledge allegiance to our flag, and yet they live every day with the threat of deportation....It makes no sense.*
>
> *Now, I strongly believe that we should take on, once and for all, the issue of illegal immigration. I am prepared to work with Republicans and Democrats to protect our borders, enforce our laws, and address the millions of undocumented workers who are now living in the shadows. I know that debate will be difficult and take time.* [4]

President Trump's controversial plan to build a wall along the border has once agian stirred the pot of racial segreagation and discrimination. Additionally, the practice of separating illegal immigrant children from their parents at border crossings and keeping them in fenced areas or tent cities has provoked an outcry from leaders across the country.

Video: How Donald Trump Plans to Build a U.S.-Mexico Border Wall



Hernandez v. Texas

Pete Hernandez, an agricultural worker, was indicted for the murder of Joe Espinoza by an all-Anglo (white) grand jury in Jackson County, Texas. Claiming that Mexican-Americans were barred from the jury commission that selected juries, and from petit juries, Hernandez' attorneys tried to quash the indictment. Moreover, Hernandez tried to quash the petit jury panel called for service because persons of Mexican descent were excluded from jury service in this case. A Mexican-American had not served on a jury in Jackson County in over 25 years and thus, Hernandez claimed that Mexican ancestry citizens were discriminated against as a special class in Jackson County. The trial court denied the motions. Hernandez was found guilty of murder and sentenced by the all-Anglo jury to life in prison. In affirming, the Texas Court of Criminal Appeals found that "Mexicans are...members of and within the classification of the white race as distinguished from members of the Negro Race" and rejected the petitioners' argument that they were a "special class" under the meaning of the Fourteenth Amendment. Further, the court pointed out that "so far as we are advised, no member of the Mexican nationality" challenged this classification as white or Caucasian.

Question Before the Court

Is it a denial of the Fourteenth Amendment equal protection clause to try a defendant of a particular race or ethnicity before a jury where all persons of his race or ancestry have, because of that race or ethnicity, been excluded by the state?

The Ruling of the Court

In a unanimous 9-0 ruling, the Supreme Court said “Yes”. The Court held that the Fourteenth Amendment protects those beyond the two classes of white or Negro, and extends to other racial groups in communities depending upon whether it can be factually established that such a group exists within a community. In reversing, the Court concluded that the Fourteenth Amendment "is not directed solely against discrimination due to a 'two-class theory'" but in this case covers those of Mexican ancestry. This was established by the fact that the distinction between whites and Mexican ancestry individuals was made clear at the Jackson County Courthouse itself where "there were two men's toilets, one unmarked, and the other marked 'Colored Men and 'Hombres Aqui' ('Men Here')," and by the fact that no Mexican ancestry person had served on a jury in 25 years. Mexican Americans were a "special class" entitled to equal protection under the Fourteenth Amendment.

To learn more about Latino civil rights, visit the National Council of La Raza online at UnidosUS.

Asian Americans

Many landmark cases on racial discrimination going back to the nineteenth century stemmed from suits by Asian Americans. World War II brought more discrimination out of an unjustified, if not irrational, fear that some Japanese Americans might be loyal to Japan and thus commit acts of sabotage against the United States: the federal government imposed curfews on them. Then after President Roosevelt signed Executive Order 9066 on February

19, 1942, roughly 120,000 Japanese Americans (62 percent of them U.S. citizens) were forcibly moved from their homes to distant, desolate relocation camps. Ruling toward the end of the war, the Supreme Court did not strike down the internment policy, but it did hold that classifying people by race is unconstitutional. [5]

Japanese Americans who had been interred in camps later pressed for redress. Congress eventually responded with the Civil Liberties Act of 1988, whereby the U.S. government apologized to and compensated camp survivors. [6]

Korematsu v. United States

On December 18, 1944, the Supreme Court handed down one of its most controversial decisions when it upheld the government's decision to intern of all persons of Japanese ancestry (both alien and non-alien) on the grounds of national security. Over two-thirds of the Japanese in America were citizens, and the internment took away their constitutional rights.

In 1942, Fred Korematsu, a 22-year-old Japanese American, refused an evacuation order and was arrested, then convicted of a felony. He challenged his conviction in court on constitutional grounds, and the case was appealed to the Supreme Court. Korematsu lost his Supreme Court case in a 6-3 decision, but when new evidence surfaced 40 years later proving the government had withheld evidence, Korematsu went back to federal court to have his conviction vacated. This time, he won.

> *As long as my record stands in federal court, any American citizen can be held in prison or concentration camps without trial or hearing. I would like to see the government admit they were wrong and do something about it, so this will never happen again to any American citizen of any race, creed, or color. Fred Korematsu (1983), on his decision to again challenge his conviction 40 years later*

Today, however, the troublesome Supreme Court precedent still stands as "good law." Fred Korematsu was an ordinary citizen who took an extraordinary stand. Through his pursuit of justice, the country learned about what can happen when national security trumps civil liberties.

Japanese Americans being shipped to internment camps during World War II.

Asian Americans have united against discrimination. During the Vietnam era, Asian American students opposing the war highlighted its impact on Asian populations. Instead of slogans such as “Bring the GIs home,” they chanted, “Stop killing our Asian brothers and sisters.”

These Asian American student groups—and the periodicals they spawned—provided the foundation for a unified Asian American identity and politics. [7]

A dazzling array of Asian American nationalities, religions, and cultures has emerged since 1965 after restrictions on immigration from Asia were removed. Yet vestiges of discrimination remain. For example, Asian Americans are paid less than their high education would warrant. [8] They point to mass-media stereotypes as contributing to such discrimination.

Native Americans

Native Americans from the Osage tribe have their picture taken with President Calvin Coolidge after he signed legislation officially granting citizenship to Native Americans in 1924.

Native Americans represent many tribes with distinct languages, cultures, and traditions. Nowadays, they obtain protection against discrimination just as members of other racial and ethnic groups do. Specifically, the Indian Civil Rights Act (ICRA) of 1968 guaranteed them many civil rights, including equal protection under the law and due process; freedom of

speech, press, and assembly; and protection from unreasonable search and seizure, self-incrimination, and double jeopardy.

Native Americans' civil rights issues today center on tribal autonomy and self-government on Indian reservations. Thus some of the provisions of the Bill of Rights, such as the separation of church and state, do not apply to tribes. [9] Reservations may also legally discriminate in favor of hiring Native Americans.

For much of history, Native Americans residing outside of reservations were in legal limbo, being neither members of self-governing tribal nations nor US citizens. For example, in 1881, John Elk, a Native American living in Omaha, claimed that he was denied equal protection of the laws when he was prevented from voting. The Supreme Court ruled that since he was "born to an Indian nation," Elk was not a citizen and could not claim a right to vote. [10] Today, Native Americans living on or outside reservations vote as any other citizens.

Women

Women fought for the right to vote and were finally victorious when the 19th Amendment took effect in 1920.

Women constitute a majority of the population and of the electorate, but they have never spoken with a unified voice for civil rights, nor have they received the same degree of protection as racial and ethnic minorities.

The First Wave of Women's Rights

In the American republic's first years, the right to vote was reserved for property owners, most of whom were male. The expansion of the franchise to "universal white manhood suffrage" served only to lock in women's disenfranchisement.

Women's activism arose in the campaign to abolish slavery. Women abolitionists argued that the case against slavery could not be made as long as women did not have political rights as well. In 1848, women and men active in the antislavery movement, meeting in Seneca Falls, New York, adopted a Declaration of Sentiments. Emulating the Declaration of

Independence, it argued that “all men and women are created equal” and cataloged “repeated injuries and usurpations on the part of man toward woman.” [11]

After the Civil War, women abolitionists hoped to be rewarded with the vote, but women were not included in the Fifteenth Amendment. In disgust, Susan B. Anthony and Elizabeth Cady Stanton, two prominent and ardent abolitionists, launched an independent women’s movement. [12] Anthony drafted a constitutional amendment to guarantee women’s right to vote: “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.” [13] Modeled on the 15th Amendment, it was introduced in the Senate in 1878.

At first, the suffragists demurely petitioned and testified. By 1910, their patience was at an end. They campaigned against members of Congress and picketed the White House. They went to jail and engaged in hunger strikes. Such efforts, widely publicized in the news, eventually paid off in 1920 when the 19th Amendment was added to the Constitution. [14]

Women picketing in front of the White House embarrassed President Woodrow Wilson during World War I. They pointed out that his promise “to make the world safe for democracy” did not include extending the vote to women. Wilson changed his position to one of support for the 19th Amendment.

The Second Wave of Women's Rights

When the vote won, the women’s movement lost its central focus. Women were split by a proposed Equal Rights Amendment (ERA) to the Constitution, mandating equal treatment of men and women under the law. It was proposed in 1923 by well-to-do Republican working professional women but was opposed by women Democrats in labor unions, who had won “specific bills for specific ills”—minimum wage and maximum hours laws for working women. Meanwhile, women constituted an increasing proportion of voters and made inroads in party activism and holding office. [15]

Then came an unexpected breakthrough: Conservative Southern House members, hoping to slow down passage of the 1964 Civil Rights Bill, offered what they deemed frivolous amendments—one of which expanded the act to protect women. Northern and Southern

male legislators joined in derision and laughter. The small contingent of congresswomen berated their colleagues and allied with Southern conservatives to pass the amendment.

Thus, the Civil Rights Act ended up also barring discrimination in employment based on sex. However, the Equal Employment Opportunity Commission (EEOC), created to implement the act, decided that its resources were too limited to focus on anything but race.

In 1967, women activists reacted by forming the National Organization for Women (NOW), which became the basis for a revived women's movement. NOW's first president was Betty Friedan, a freelance writer for women's magazines. Her 1963 best seller, *The Feminine Mystique*, showed that confining women to the domestic roles of wife and mother squelched opportunities for middle-class, educated women. [16] Women's organizations adopted the slogan "the personal is political." They pointed out that even when men and women in a couple worked outside the home equally, housework and child care fell more heavily on wives, creating a "second shift" limiting women's opportunity for political activism.

By 1970, Democrats and Republicans alike backed the ERA and women's rights. One House member, Bella Abzug (D-NY), later exulted, "We put sex discrimination provisions into everything. There was no opposition. Who'd be against equal rights for women?" [17]

Such laws could be far reaching. Title IX of the Education Act Amendments of 1972, outlawing sex discrimination in federally funded educational programs, prompted little debate when it was enacted. Today it is controversial. Some charge that it pushes funds to women's sports, endangering men's sports. Defenders respond that all of women's sports put together get less funding at universities than men's sports, such as basketball or football. [18]

NOW and other organizations focused on the ERA. It passed by huge bipartisan margins in the House in 1970 and the Senate in 1972; thirty of the thirty-eight states necessary to ratify approved it almost immediately. However, opposition to the ERA, led and generated by conservative women, arose among the general public, including women. While women working outside the home generally favored the ERA to fight job discrimination, housewives feared that the ERA would remove protection for them, such as the legal presumptions that women were more eligible than men for alimony after a divorce. The public's support of the ERA declined because of fears that it might allow military conscription of women and gay marriage. The political consensus crumbled, and in 1980, the Republican platform opposed ERA for the first time. ERA died in 1982 when the ratification process expired. [19]

Although women have made strides toward equality, they still fall behind on important measures. The United States is twenty-second among the thirty most developed nations in its proportion of women in Congress. The percentage of female state legislators and state elective officials is between 20 and 25 percent. The top twenty occupations of women are

the same as they were fifty years ago: they work as secretaries, nurses, and grade school teachers and in other low-paid white-collar jobs.

Sexual Harrassment

In 1980, the EEOC defined sexual harassment as unwelcome sexual advances or sexual conduct, verbal or physical, that interferes with a person's performance or creates a hostile working environment. Such discrimination on the basis of sex is barred in the workplace by the Civil Rights Act of 1964 and in colleges and universities that receive federal funds by Title IX. In a series of decisions, the Supreme Court has ruled that employers are responsible for maintaining a harassment-free workplace. Some of the elements of a sexually hostile environment are lewd remarks and uninvited and offensive touching. [20]

Schools may be held legally liable if they have tolerated sexual harassment. [21]Therefore, they establish codes and definitions of what is and is not permissible. The College of William and Mary, for example, sees a power difference between students and teachers and prohibits any and all sexual contact between them. Others, like Williams College, seek to ensure that teachers opt out of any supervisory relationship with a student with whom they are sexually involved. The news often minimizes the impact of sexual harassment by shifting focus away from a public issue of systematic discrimination to the question of personal responsibility, turning the issue into a private "he said, she said" spat.[22]

Gay Rights

Gay people, lesbians and gay men are at the forefront of controversial civil rights battles today. They have won civil rights in several areas but not in others. [23]

Gay people face unique obstacles in attaining civil rights. Unlike race or gender, sexual orientation may or may not be an "accident of birth" that merits constitutional protection. The gay rights movement is opposed by religious conservatives, who see homosexuality as a flawed behavior, not an innate characteristic. Moreover, gay people are not "born into" a visible community and identity into which they are socialized. A history of ostracism prompts many to conceal their identities. According to many surveys of gay people, they experience discrimination and violence, actual or threatened.

Election exit polls estimate that lesbians, gay men, and bisexuals make up 4 percent of the voting public. When candidates disagree on gay rights, gays vote by a three-to-one margin for the more progay of the two. [24] Some progay policies are politically powerful. For instance, the public overwhelmingly condemns discrimination against gay people in the workplace.

The anti-Communist scare in the early 1950s spilled into worries about "sexual perverts" in government. Gay people faced harassment from city mayors and police departments pressured to "clean up" their cities of "vice."

The first gay rights movement, the small, often secretive Mattachine Society, emerged to respond to these threats. Mattachine's leaders argued that gay people, rather than adjust to society, should fight discrimination against them with collective identity and pride. Emulating the African American civil rights movement, they protested and confronted authorities. [25]

In June 1969, during a police raid at a gay bar in New York City's Greenwich Village, the Stonewall Inn, customers fought back. Street protests and violent outbursts followed over several days and catalyzed a mass movement. The Stonewall riots were overlooked by network television and at best got only derisive coverage in the back pages of most newspapers. But discussion of the riot and the grievances of gay people blossomed in alternative newspapers such as *The Village Voice* and emerging weeklies serving gay urban enclaves. By the mid-1970s, a national newsmagazine, *The Advocate*, had been founded.

Lesbian and gay activists picked up a cue from the African American civil rights movement by picketing in front of the White House in 1965—in demure outfits—to protest government discrimination. Drawing on this new openness, media discussion in both news and entertainment grew dramatically from the 1950s through the 1960s.

By the early 1980s, the gay movement boasted national organizations to gather information, lobby government officials, fund electoral campaigns, and bring test cases to courts. [26] The anniversary of the Stonewall riots is marked by "gay pride" marches and celebrations in cities across the country.

Political Efforts

The gay rights movement's first political efforts were for laws to bar discrimination by sexual orientation in employment, the first of which were enacted in 1971. [27] President Bill Clinton issued an executive order in 1998 banning discrimination on the basis of sexual orientation in federal government employment outside the military. By 2003, nondiscrimination laws had been enacted in 40 percent of American cities and towns.

The first legal victory for lesbian and gay rights occurred in 1965: a federal district court held that the federal government could not disqualify a job candidate simply for being gay. [28] In 1996, the Supreme Court voided a 1992 Colorado ballot initiative that prevented the state

from passing a law to ban discrimination on the basis of sexual orientation. The justices said the amendment was so sweeping that it could be explained only by "animus toward the class" of gay people—a denial of equal protection. [29]

In 2003, the Court rejected a Texas law banning same-sex sexual contact on the grounds that it denied equal protection of the law and the right to privacy. The decision overturned a 1986 ruling that had upheld a similar law in Georgia. [30]

In 1992, presidential candidate Bill Clinton endorsed lifting the ban on gay people serving openly in the military. In a post-election press conference, Clinton said he would sign an executive order to do so. The news media, seeing a dramatic and clear-cut story, kept after this issue, which became the top concern of Clinton's first days in office. The military and key members of Congress launched a public relations campaign against Clinton's stand, highlighted by a media event at which legislators toured cramped submarines and asked sailors on board how they felt about serving with gay people. Clinton ultimately supported a compromise that was closer to a surrender—a "don't ask, don't tell" policy that has had the effect of substantially increasing the number of discharges from the military forhomosexuality. [31]

Over years of discussion and debate, argument, and acrimony, opposition to the policy increased and support declined. President Obama urged repeal, as did his secretary of defense and leaders of the military. In December 2010, Congress passed and the president signed legislation repealing "don't ask, don't tell." As the president put it in his 2011 State of the Union message, "Our troops come from every corner of this country—they are black, white, Latino, Asian, and Native American. They are Christian and Hindu, Jewish and Muslim. And yes, we know that some of them are gay. Starting this year, no American will be forbidden from serving the country they love because of who they love." [32]

Same-Sex Marriage

Same-sex couples brought suits in state courts on the grounds that preventing them from marrying was sex discrimination barred by their state constitutions. In 1996, Hawaii's state supreme court agreed. Many members of Congress, concerned that officials might be forced by the Constitution's "full faith and credit" clause to recognize same-sex marriages from Hawaii, quickly passed a Defense of Marriage Act, which President Clinton signed. It defines

marriage as the union of a man and a woman and denies same-sex couples federal benefits for married people. Many states followed suit, and Hawaii's court decision was nullified when the state's voters amended the state constitution before it could take effect.

In 2000, the highest state court in Vermont ruled that the state may not discriminate against same-sex couples and allowed the legislature to create civil unions. These give same-sex couples "marriage lite" benefits such as inheritance rights. Going further, in 2003, Massachusetts's highest state court allowed same-sex couples to legally wed. So did the California and Connecticut Supreme Courts in 2008.

Voters in thirty states, including California in 2008 (by 52 percent of the vote), passed amendments to their state constitutions banning same-sex marriage. President George W. Bush endorsed an amendment to the US Constitution restricting marriage and its benefits to opposite-sex couples. It received a majority of votes in the House, but not the two-thirds required.

In 2010, a federal judge in San Francisco struck down California's voter-approved ban on same-sex marriage on the grounds that it discriminates against gay men and women. In 2011 New York allowed same-sex marriage.

The Supreme Court heard the case of *Obergefell v. Hodges* (2013-2015) and found that state bans on same-sex marriage to be unconstitutional under the 14th Amendment. (Overturned *Baker v. Nelson*)

On 26 June 2015, the US Supreme Court ruled that same-sex marriage is a constitutional right under the 14th Amendment to the Constitution, thereby making same-sex marriage legal throughout the United States

Americans With Disabilities Act

People with disabilities have sought and gained civil rights protections. When society does not accommodate their differences, they view this as discrimination. They have clout because, by U.S. Census estimates, over 19 percent of the population has some kind of disability.

President George H. W. Bush signs the Americans With Disabilities Act into Law in 1990.

Early in the twentieth-century, federal policy began seeking the integration of people with disabilities into society, starting with returning veterans of World War I. According to these policies, disabilities were viewed as medical problems; rehabilitation was stressed.

By the 1960s, Congress began shifting toward civil rights by enacting a law requiring new federal construction to be designed to allow entrance for people with disabilities. In 1972, Congress voted, without debate, that work and school programs receiving federal funds could not deny benefits to or discriminate against someone "solely by reason of his handicap." [33] Civil servants in the Department of Health, Education and Welfare built on this language to create a principle of reasonable accommodation. In the workplace, this means that facilities must be made accessible (e.g., by means of wheelchair ramps), responsibilities restructured, or policies altered so that someone with disabilities can do a job. At schools, it entails extra time for tests and assignments for those with learning disabilities.

The Americans with Disabilities Act (ADA) passed Congress by a large margin and was signed into law in 1990 by President George H. W. Bush. The act moves away from the "medical model" by defining disability as including a physical or mental impairment that limits a "major life activity." It gives the disabled a right of access to public building. It prohibits discrimination in employment against those who, given reasonable opportunity, could perform the essential functions of a job.

However, the courts interpreted the law and its definition of disability narrowly; for example, to exclude people with conditions that could be mitigated (e.g., by a hearing aid or artificial limb), controlled by medication, or were in remission.

In response, on September 29, 2008, President Bush signed legislation overturning the Supreme Court's decisions. It expanded the definition of disability to cover more physical and mental impairments and made it easier for workers to prove discriminatory.

Religious discrimination involves treating a person (an applicant or employee) unfavorably because of his or her religious beliefs. The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical or moral beliefs.

Religious discrimination can also involve treating someone differently because that person is married to (or associated with) an individual of a particular religion.

The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

It is illegal to harass a person because of his or her religion. Harassment can include, for example, offensive remarks about a person's religious beliefs or practices. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that aren't very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or

offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

Title VII also prohibits workplace or job segregation based on religion (including religious garb and grooming practices), such as assigning an employee to a non-customer contact position because of actual or feared customer preference.

[Figure 12]

Study/Discussion Questions

1. What basic protections did the Civil War Amendments introduce? How would life in America be different if these amendments had never been passed?
2. How were blacks denied the right to vote and equal protection even after the Civil War Amendments passed? When did that begin to change and why?
3. How did civil rights protestors seek to bring discrimination to the public's attention? Why do you think their strategy worked?
4. To what extent do you think that the legacy of slavery and segregation is responsible for the inequalities that persist in America? How do you think the law should deal with those inequalities?
5. What is the difference between De Jure and De Facto segregation? Which do you consider to be the biggest problem today? Explain your answer and defend with examples. What civil rights challenges have Latinos, Asian Americans, and Native Americans faced?
6. What is the 19^{th} Amendment?
7. What is the Equal Rights Amendment?
8. What is sexual harassment?