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CHAPTER
5

CIVIL RIGHTS AND PUBLIC POLICY

CHAPTER OUTLINE AND LEARNING OBJECTIVES

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AFRICAN AMERICANS' CIVIL RIGHTS

5.2 Trace the evolution of protections of the rights of African Americans and explain the application of nondiscrimination principles to issues of race.

THE RIGHTS OF OTHER MINORITY GROUPS

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UNDERSTANDING CIVIL RIGHTS AND PUBLIC POLICY

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Politics in Action

LAUNCHING THE CIVIL RIGHTS MOVEMENT

On December 1, 1955, a 42-year-old seamstress named Rosa Parks was riding in the "colored" section of a Montgomery, Alabama, city bus. A white man got on the bus and found that all the seats in the front, which were reserved for whites, were taken. He moved on to the equally crowded colored section. J. F. Blake, the bus driver, then ordered all four passengers in the first row of the colored section to surrender their seats because the law prohibited whites and Black Americans from sitting next to or even across from one another.

Three of the African Americans hesitated and then complied with the driver's order. But Rosa Parks, a politically active member of the National Association for the Advancement of Colored People (NAACP), said no. The driver threatened to have her arrested, but she refused to move. He then called the police, and a few minutes later two officers boarded the bus and arrested her.

At that moment the civil rights movement went into high gear. There had been substantial efforts to use the courts to end racial segregation, some of which had yielded significant successes. But Rosa Parks's refusal to give up her seat was the catalyst for the extensive mobilization of African Americans. Protestors employed a wide range of methods, including nonviolent resistance. A new preacher in town, Dr. Martin Luther King Jr., organized a boycott of the city buses. He was jailed, his house was bombed, and his wife and infant daughter were almost killed, but neither he nor the African American community wavered. Although they were harassed by the police and went without motor transportation, instead walking or even riding mules, they persisted in boycotting the buses.

It took the U.S. Supreme Court to end the boycott. On November 13, 1956, the Court declared that Alabama's state and local laws requiring segregation on buses were illegal. On December 20, federal injunctions were served on the city and bus company officials, forcing them to follow the Supreme Court's ruling.

On December 21, 1956, Rosa Parks boarded a Montgomery city bus for the first time in over a year. She could sit wherever she liked, and she chose a seat near the front.

Americans have never fully come to terms with equality. Most Americans favor equality in the abstract—a politician who advocated inequality would not attract many votes—yet the concrete struggle for equal rights under the Constitution has been our nation's most bitter battle. It pits person against person, as in the case of Rosa Parks and the nameless white passenger, and group against group. Those people who enjoy privileged positions in American society have been reluctant to give them up.

Individual liberty is central to democracy. So is a broad notion of equality, such as that implied by the concept of "one person, one vote." Sometimes these values conflict, as when individuals or a majority of the people want to act in a discriminatory fashion. How should we resolve such conflicts between liberty and equality? Can we have a democracy if some citizens do not enjoy basic rights to political participation or suffer discrimination in employment? Can we or should we try to remedy past discrimination against minorities and women?

Many people have called on government to protect the rights of minorities and women, increasing the scope and power of government in the process. Ironically, this increase in government power is often used to *check* government, as when the federal courts restrict the actions of state legislatures. It is equally ironic that society's collective efforts to use government to protect civil rights are designed not to limit individualism but to enhance it, freeing people from suffering and from prejudice. But how far should government go in these efforts? Is an increase in the scope of government to protect some people's rights an unacceptable threat to the rights of other citizens?

* * * * *

The phrase "All men are created equal" is at the heart of American political culture, yet implementing this principle has proved to be one of our nation's most enduring struggles. Throughout our history, a host of constitutional questions have been raised by issues involving African Americans, other racial and ethnic minorities, women, the elderly, persons with disabilities, and LGBTQ Americans—issues ranging from slavery and segregation to unequal pay and discrimination in hiring. The rallying cry of minority groups has been **civil rights**, which are policies designed to protect people against arbitrary or discriminatory treatment by government officials or individuals.

civil rights
Policies designed to protect people against arbitrary or discriminatory treatment by government officials or individuals.

THE STRUGGLE FOR EQUALITY

5.1 Differentiate the Supreme Court's three standards of review for classifying people under the equal protection clause.

The struggle for equality has been a persistent theme in our nation's history. Slaves sought freedom, free African Americans fought for the right to vote and to be treated as equals, women pursued equal participation in society and politics, and the economically disadvantaged called for better treatment and economic opportunities. The fight for equality has affected all Americans.

Conceptions of Equality

What does *equality* mean? Jefferson's statement in the Declaration of Independence that "all men are created equal" did not mean that he believed everybody was exactly alike or that there were no differences among human beings. The Declaration went on to speak, however, of "unalienable rights" to which all are equally entitled. American society does not emphasize *equal results* or *equal rewards*; few Americans argue that everyone should earn the same salary or have the same amount of property. Instead, a belief in *equal rights* has led to a belief in *equality of opportunity*; in other words, everyone should have the same chance to succeed.

The Constitution and Inequality

The Constitution creates a plan for government, not guarantees of individual rights. Although the Bill of Rights guarantees individual rights, it does not mention equality. It does, however, have implications for equality in that it does not limit the scope of its guarantees to specified groups within society. It does not say, for example, that only whites have freedom from compulsory self-incrimination or that only men are entitled to freedom of speech. The First Amendment guarantees of freedom of expression, in particular, are important because they allow all those who are discriminated against to work toward achieving equality. As we will see, this kind of political activism has proven effective for groups fighting for civil rights.

Fourteenth Amendment
The constitutional amendment adopted after the Civil War that declares, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

equal protection of the laws
Part of the Fourteenth Amendment emphasizing that the laws must provide equivalent "protection" to all people.

The first and only place in which the idea of equality appears in the Constitution is in the **Fourteenth Amendment**, one of the three amendments passed after the Civil War. (The Thirteenth Amendment abolished slavery. The Fifteenth Amendment extended the right to vote to African Americans.) Ratified in 1868, the Fourteenth Amendment forbids the states from denying to anyone "**equal protection of the laws**." This *equal protection clause* became the principal tool for waging struggles for equality. Laws, rules, and regulations inevitably classify people. For example, some people are eligible to vote while others are not; some people are eligible to attend a state university while others are denied admission. Such classifications are permissible as long as they do not violate the equal protection of the law.

How do the courts determine whether a classification in a law or regulation is permissible or violates the equal protection clause? For this purpose, the Supreme Court

TABLE 5.1 STANDARDS OF REVIEW FOR CLASSIFICATIONS UNDER THE EQUAL PROTECTION CLAUSE

The Supreme Court has three standards of review for evaluating whether a classification in a law or regulation is constitutionally permissible. Most classifications must bear only a rational relationship to some legitimate governmental purpose. The burden of proof is on anyone challenging such classifications to show that they are not reasonable, but arbitrary. At the other extreme, the burden of proof is on the rule maker. Racial and ethnic classifications are inherently suspect, and courts presume that they are invalid and uphold them only if they serve a compelling public interest and there is no other way to accomplish the purpose of the law. The courts make no presumptions about classifications based on gender. Such laws must bear a substantial relationship to an important governmental purpose, a lower threshold than serving a compelling public interest.

Basis of Classification	Standard of Review	Applying the Test
Race and ethnicity	Inherently suspect—*difficult to meet*	Is the classification necessary to accomplish a compelling governmental goal? Is it the least restrictive way to achieve that goal?
Gender	Intermediate scrutiny—*moderately difficult to meet*	Does the classification bear a substantial relationship to an important governmental goal?
Other (age, wealth, etc.)	Reasonableness—*easy to meet*	Does the classification have a rational relationship to a legitimate governmental goal?

developed three levels of scrutiny, or analysis, called *standards of review* (see Table 5.1). The Court has ruled that to pass constitutional muster, most classifications must only be *reasonable*. In practice, this means that a classification must bear a rational relationship to some legitimate governmental purpose—for example, to educating students in colleges. The courts defer to rule makers, typically legislatures. Anyone who challenges classifications has the burden of proving that those classifications are not reasonable but arbitrary. (A classification that is arbitrary—a law singling out, say, people with red hair or blue eyes for inferior treatment—is unconstitutional.) Thus, for example, the states can restrict the right to vote to people over the age of 18; age is a reasonable classification and hence a permissible basis for determining who may vote.

With some classifications, however, the burden of proof is on the rule maker. The Court has ruled that racial and ethnic classifications, such as those that would prohibit African Americans from attending school with whites or that would deny a racial or ethnic group access to public services such as a park or swimming pool, are *inherently suspect*. Courts presume that these classifications are invalid and uphold them only if they serve a "compelling public interest" and there is no other way to accomplish the purpose of the law. In the case of a racial or ethnic classification, the burden of proof is on the government that created the classification to prove that it meets these criteria. It is virtually impossible to show that a classification by race or ethnicity that serves to disadvantage a minority group serves a compelling public interest. What about classifications by race and ethnicity, such as for college admissions, that are designed to *remedy* previous discrimination? As we will see in our discussion of affirmative action, the Court is reluctant to approve even these laws.

Classifications based on gender receive *intermediate scrutiny*; the courts presume them to be neither constitutional nor unconstitutional. A law that classifies people by gender, such as one that makes men but not women eligible for a military draft, must bear a substantial relationship to an important governmental purpose, a lower threshold than serving a "compelling public interest."

Conditions for women and minorities would be radically different if it were not for the equal protection clause.[1] The following sections show how equal protection litigation has worked to the advantage of minorities, women, and other groups seeking protection under the civil rights umbrella.

Associated Press

The African American struggle for equality was one of several efforts that women and minorities undertook in their struggle for civil rights. Here, civil rights leaders Roy Wilkins, James Farmer, Dr. Martin Luther King Jr., and Whitney Young meet with President Lyndon B. Johnson.

AFRICAN AMERICANS' CIVIL RIGHTS

5.2 Trace the evolution of protections of the rights of African Americans and explain the application of nondiscrimination principles to issues of race.

African Americans have always been the most visible minority group in the United States. They have blazed the constitutional trail for securing equal rights for all Americans. They made very little progress, however, until well into the twentieth century.

Slavery

For the first 250 years of American settlement, most African Americans lived in slavery. Slaves were the property of their masters. They could be bought and sold; they could neither vote nor own property. The Southern states, whose plantations relied on large numbers of unpaid workers, were the primary market for slave labor. Policies of the slave states and the federal government accommodated the property interests of slave owners, who were often wealthy and enjoyed substantial political influence.

Dred Scott v. Sandford
The 1857 Supreme Court decision ruling that a slave who had escaped to a free state enjoyed no rights as a citizen and that Congress had no authority to ban slavery in the territories.

In 1857 the Supreme Court bluntly announced in ***Dred Scott v. Sandford*** that a Black man, slave or free, was "chattel" and had no rights under a white man's government. The Court declared that Congress had no power to ban slavery in the western territories. Thus it invalidated the hard-won Missouri Compromise (1820), which had allowed Missouri to become a slave state on the condition that northern territories would remain free of slavery. As a result, the *Dred Scott* decision was an important milestone on the road to the Civil War.

Thirteenth Amendment
The constitutional amendment ratified after the Civil War that forbade slavery and involuntary servitude.

The Union victory in the Civil War and the ratification of the **Thirteenth Amendment** ended slavery. The promises implicit in this amendment and the other two Civil War amendments, the Fourteenth and Fifteenth Amendments, were first honored and then broken in the subsequent eras of Reconstruction and segregation.

Reconstruction and Segregation

After the Civil War ended, Congress imposed strict conditions on the former Confederate states before it would seat their representatives and senators. No one who had served in secessionist state governments or in the Confederate army could hold state office, the legislatures had to ratify the new amendments to the Constitution, and the U.S. military would govern the states like "conquered provinces" until they complied with the tough federal plans for Reconstruction. Many African American men held state and federal offices during the 10 years following the war. Some government agencies, such as the Freedmen's Bureau, provided assistance to former slaves who were making the difficult transition from slavery to freedom.

To ensure his election in 1876, Rutherford B. Hayes promised to pull federal troops out of the South and let the Southern states do as they pleased. Southerners lost little time reclaiming power and imposing a code of *Jim Crow laws*, or segregationist laws, on African Americans. ("Jim Crow" was the name of a stereotypical African American in a nineteenth-century minstrel song.) These laws relegated African Americans to separate public facilities, separate school systems, and even separate restrooms. Not only had most whites lost interest in helping former slaves, but much of what the Jim Crow laws mandated in the South was also common practice in the North. Indeed, the national government practiced segregation in the armed forces, employment, housing programs, and prisons.[2] At the time, racial segregation affected every part of life, from the cradle to the grave. African Americans were delivered by African American physicians or midwives and buried in African American cemeteries. Groups such as the Ku Klux Klan terrorized African Americans who violated the norms of segregation, lynching several thousand people.

The Supreme Court was of little help. It did void a law barring African Americans from serving on juries (*Strauder v. West Virginia* [1880]). However, in the *Civil Rights Cases* (1883), it held that the Fourteenth Amendment did not prohibit racial discrimination by private businesses and individuals.

The Court then provided a constitutional justification for segregation in the 1896 case of ***Plessy v. Ferguson***. The Louisiana legislature had required "equal but separate accommodations for the white and colored races" in railroad transportation. Although Homer Plessy was seven-eighths white, he had been arrested for refusing to leave a railway car reserved for whites. The Court upheld the law, saying that segregation in public facilities was not unconstitutional as long as the separate facilities were substantially equal. Moreover, the Court subsequently paid more attention to the "separate" than to the "equal" part of this ruling, allowing Southern states to maintain high schools and professional schools for white Americans even where there were no such schools for Black Americans. Significantly, until the 1960s, nearly all the African American physicians in the United States were graduates of two medical schools: Howard University in Washington, D.C., and Meharry Medical College in Tennessee.

Plessy v. Ferguson
An 1896 Supreme Court decision that provided a constitutional justification for segregation by ruling that a Louisiana law requiring "equal but separate accommodations for the white and colored races" was constitutional.

Nevertheless, some progress on the long road to racial equality was made in the first half of the twentieth century. The Niagara Movement was an early civil rights organization, founded in 1905. It folded into the National Association for the Advancement of Colored People (NAACP), which was formed in 1908, partly in

Bettmann/Getty Images

In the era of segregation, Jim Crow laws, such as those requiring separate drinking fountains for African Americans and whites, governed much of life in the South.

response to the continuing practice of lynching and a race riot that year in Springfield, Illinois. The Brotherhood of Sleeping Car Porters, the first labor organization led by African Americans, was founded in 1928.

In the meantime, the Supreme Court voided some of the most egregious practices limiting the right to vote (discussed later in this chapter). In 1941 President Franklin D. Roosevelt issued an executive order forbidding racial discrimination in defense industries, and in 1948, President Harry S. Truman ordered the desegregation of the armed services. The leading edge of change, however, was in education.

Equal Education

Education is at the core of Americans' beliefs in equal opportunity. It is not surprising, then, that civil rights advocates focused many of their early efforts on desegregating schools. To avoid the worst of backlashes, they started with higher education. The University of Oklahoma admitted George McLaurin, an African American, as a graduate student but forced him to use separate facilities, including a special table in the cafeteria, a designated desk in the library, and a desk just outside the classroom doorway. In *McLaurin v. Oklahoma State Regents* (1950), the Supreme Court ruled that a public institution of higher learning may not provide different treatment to a student solely because of his or her race. In the same year, in *Sweatt v. Painter,* the Court found the "separate but equal" formula generally unacceptable for professional schools. Nevertheless, many Southern universities resisted integration. In some instances, as at the University of Alabama in 1963, the president had to federalize the National Guard to integrate a campus.

At this point, civil rights leaders turned to elementary and secondary education. After searching carefully for the perfect opportunity to challenge legal public school segregation, the Legal Defense Fund of the NAACP selected the case of Linda Brown. Brown was an African American student in Topeka, Kansas, required by Kansas law to attend a segregated school. In Topeka, African American schools were fairly equivalent to white schools with regard to the visible signs of educational quality—teacher qualifications, facilities, and so on. The NAACP chose the case in order to test the *Plessy v. Ferguson* doctrine of "separate but equal." It wanted to force the Supreme Court to rule directly on whether school segregation was inherently unequal and thereby violated the requirement in the Fourteenth Amendment that states guarantee "equal protection of the laws."

President Dwight D. Eisenhower had just appointed Chief Justice Earl Warren. So important was the case that the Court heard two rounds of arguments, one before Warren joined the Court, and the other afterward. Believing that a unanimous decision would have the most impact, the justices negotiated a broad agreement and then determined that Warren himself should write the opinion.

Brown v. Board of Education
The 1954 Supreme Court decision holding that school segregation is inherently unconstitutional because it violates the Fourteenth Amendment's guarantee of equal protection. This case marked the end of legal segregation in the United States.

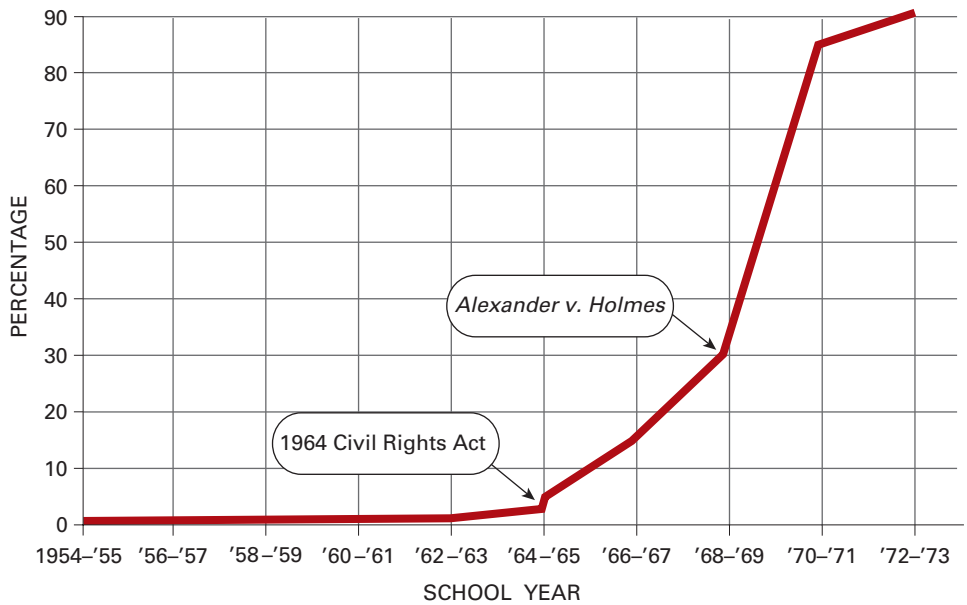
In ***Brown v. Board of Education*** (1954), the Supreme Court set aside its precedent in *Plessy* and held that school segregation was inherently unconstitutional because it violates the Fourteenth Amendment's guarantee of equal protection. Legal segregation had come to an end.

A year after its decision in *Brown*, the Court ordered lower courts to proceed with "all deliberate speed" to desegregate public schools. Desegregation proceeded slowly in the South, however. A few counties threatened to close their public schools; white enrollment in private schools soared. In 1957 President Eisenhower had to send troops to desegregate Central High School in Little Rock, Arkansas. In 1969, 15 years after its first ruling that school segregation was unconstitutional, and in the face of continued massive resistance, the Supreme Court withdrew its earlier grant of time to school authorities and declared, "Delays in desegregating school systems are no longer tolerable" (*Alexander v. Holmes County Board of Education*). Thus, after nearly a generation of modest progress, Southern schools were suddenly integrated (see Figure 5.1).

In general, the Court has found that if schools have been legally segregated, authorities have an obligation to overcome past discrimination. They could do this by, for example, assigning students to schools in a way that would promote racial

FIGURE 5.1 PERCENTAGE OF BLACK STUDENTS ATTENDING SCHOOL WITH ANY WHITES IN SOUTHERN STATES

Despite the Supreme Court's decision in *Brown v. Board of Education* in 1954, school integration proceeded at a snail's pace in the South for a decade. Most Southern African American children entering the first grade in 1955 never attended school with white children. Things picked up considerably in the late 1960s, however, when the Supreme Court insisted that obstruction of implementation of its decision in *Brown* must come to an end. The figure is based on elementary and secondary students in 11 Southern states—Virginia, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Louisiana, Texas, Arkansas, Tennessee, and Florida.



SOURCE: Data from Lawrence Baum.

balance. Some federal judges ordered the busing of students to achieve racially balanced schools, a practice upheld (but not required) by the Supreme Court in *Swann v. Charlotte-Mecklenberg County Schools* (1971).

Not all racial segregation is what is called *de jure* ("by law") segregation. *De facto* ("in reality") segregation results, for example, when children are assigned to schools near their homes and those homes are in neighborhoods that are racially segregated for social and economic reasons. Sometimes the distinction between *de jure* and *de facto* segregation has been blurred by past official practices. Because minority groups and federal lawyers demonstrated that Northern schools, too, had purposely drawn school district lines to promote segregation, school busing came to the North as well. Denver, Boston, and other cities instituted busing for racial balance, just as Southern cities did.

Majorities of both white and Black Americans have opposed busing, which is one of the least popular remedies for discrimination. In recent years, it has become less prominent as a judicial instrument. Courts do not have the power to order busing between school districts; thus, school districts that are composed largely of minorities must rely on other means to integrate.

Despite disagreements over tactics, by the 1970s overwhelming majorities of white Americans supported racial integration.[3] Today, the principles established in *Brown* have near universal support.

The Civil Rights Movement and Public Policy

The civil rights movement organized both African Americans and whites. Using tactics such as sit-ins, marches, and civil disobedience, movement leaders sought to establish equal opportunities in the political and economic sectors and to end the policies and

practices of segregation. In 1961, young Black and white volunteers in their teens and early twenties, dubbed "freedom riders," traveled through the Deep South to desegregate restaurants, lunch counters, and hotels. Typically they were refused service, and were often threatened and sometimes attacked when they persisted in seeking service. These tactics were especially effective when they focused on large companies that feared boycotts in the North and thus began to desegregate their businesses. The movement's trail was long and sometimes bloody. Police turned their dogs on nonviolent marchers in Birmingham, Alabama. Racists murdered civil rights activists in Meridian, Mississippi, and Selma, Alabama.

WHY IT MATTERS TODAY

Brown v. Board of Education

In *Brown v. Board of Education*, the Supreme Court overturned its decision in *Plessy v. Ferguson*. The decision in *Brown* represents a major step in changing the face of America. Just imagine what the United States would be like today if we still had segregated public facilities and services like universities and restaurants.

It was the courts as much as the national conscience that put civil rights goals on the nation's policy agenda. *Brown v. Board of Education* was the beginning of a string of Supreme Court decisions holding various forms of discrimination—not only in education but in other areas—unconstitutional. *Brown* and these other cases gave the civil rights movement momentum that would grow in the years that followed.

As a result of national conscience, the courts, the civil rights movement, and the increased importance of African American voters, the 1950s and 1960s saw a marked increase in public policies seeking to foster racial equality. These innovations included policies to promote voting rights, access to public accommodations, open housing, and nondiscrimination in many other areas of social and economic life. In 1963, a massive march on Washington, DC, culminating in a brilliant speech by civil rights leader Dr. Martin Luther King Jr. kept the pressure on Congress to complete the job of ending segregation.

Civil Rights Act of 1964
The law making racial discrimination in public accommodations illegal. It forbade many forms of job discrimination. It also strengthened voting rights.

The **Civil Rights Act of 1964** was the most important civil rights law in nearly a century. It did the following:

- Made racial discrimination illegal in hotels, motels, restaurants, and other places of public accommodation
- Forbade discrimination in employment on the basis of race, color, national origin, religion, or gender[4]
- Created the Equal Employment Opportunity Commission (EEOC) to monitor and enforce protections against job discrimination
- Provided for withholding federal grants from state and local governments and other institutions that practiced racial discrimination
- Strengthened voting rights legislation
- Authorized the U.S. Justice Department to initiate lawsuits to desegregate public schools and facilities

The Voting Rights Act of 1965 (discussed next) was the most extensive federal effort to crack century-old barriers to African Americans voting in the South. The Supreme Court decided in *Jones v. Mayer* (1968) that to prevent racial discrimination Congress could regulate the sale of private property, and Congress passed the Fair Housing Act of 1968 to forbid discrimination in the sale or rental of housing. In 2015 the Supreme Court held that the Fair Housing Act prohibited not only overt discrimination, but also policies that may seem fair on the surface, yet nevertheless adversely affect minorities.[5] In 1967, in *Loving v. Virginia*, the Court struck down laws prohibiting interracial marriages.

In short, in the years following *Brown*, congressional and judicial policies attacked nearly every type of segregation established by law. A few problems persist, however. For example, it was not until 2019 that the Supreme Court held that prosecutors may not use their peremptory challenges to jurors, ones that do not require giving a reason, to exclude Black prospective jurors from a jury.[6] It was not until 2020 that Congress formally outlawed lynching (although in 2005 the Senate apologized for failing to outlaw the practice), making it a federal crime for two or more people to cause bodily harm in connection with a hate crime,

An even bigger issue is police brutality and systematic racial bias. In 2020, videos showed George Lloyd died as a police officer in Minneapolis kneeled on his neck, suffocating him. This incident, along with similar confrontations around the country, sparked weeks of protests across the nation—and the world. Policing is almost entirely a state and local government responsibility, but the evidence is clear that in the twenty-first century people of color still have not obtained equal justice under the law.

Efforts to pass civil rights legislation were successful, in part, because by the mid-1960s federal laws effectively protected the right to vote. Members of minority groups thus had some power to hold their legislators accountable.

Voting Rights

The early republic limited **suffrage**, the legal right to vote, to a handful of the population—mostly property-holding white men. The **Fifteenth Amendment**, adopted in 1870, guaranteed African Americans the right to vote—at least in principle. It said, "The right of citizens to vote shall not be abridged by the United States or by any state on account of race, color, or previous condition of servitude." The gap between these words and their implementation, however, remained wide for a full century. States seemed to outdo one another in developing ingenious methods of circumventing the Fifteenth Amendment.

suffrage
The legal right to vote, extended to African Americans by the Fifteenth Amendment, to women by the Nineteenth Amendment, and to 18- to 20-year-olds by the Twenty-sixth Amendment.

Fifteenth Amendment
The constitutional amendment adopted in 1870 to extend suffrage to African Americans.

Many states required potential voters to complete literacy tests before registering to vote. Typically the requirement was that they read, write, and show that they understood their state constitution or the U.S. Constitution. In practice, however, registrars rarely administered the literacy tests to white citizens, while the standard of literacy they required of Black citizens was so high that few passed the test. In addition, Oklahoma and other Southern states used a *grandfather clause* that exempted persons whose grandfathers were eligible to vote in 1860 from taking these tests. This exemption did not apply, of course, to the grandchildren of slaves, but it did allow illiterate whites to vote. The law was blatantly unfair; it was also unconstitutional, said the Supreme Court in the 1915 decision *Guinn v. United States*.

To exclude African Americans from registering to vote, most Southern states also relied on **poll taxes**, which were small taxes levied on the right to vote that often fell due at a time of year when poor sharecroppers had the least cash on hand. To render African American votes ineffective, most Southern states also used the **white primary**, a device that permitted political parties to exclude African Americans from voting in primary elections. Because the South was so heavily Democratic, white primaries had the effect of depriving African Americans of a voice in the most important contests and letting them vote only when it mattered least, in the general election. The Supreme Court declared white primaries unconstitutional in 1944 in *Smith v. Allwright*.

poll taxes
Small taxes levied on the right to vote. Poll taxes were used by most Southern states to exclude African Americans from voting.

white primary
Primary elections from which African Americans were excluded, an exclusion that, in the heavily Democratic South, deprived African Americans of a voice in the real contests. The Supreme Court declared white primaries unconstitutional in 1944.

The civil rights movement put suffrage high on its political agenda; one by one, the barriers to African American voting fell during the 1960s. The Twenty-fourth Amendment, which was ratified in 1964, prohibited poll taxes in federal elections. Two years later, the Supreme Court voided poll taxes in state elections in *Harper v. Virginia State Board of Elections*.

To combat the use of discriminatory voter registration tests, the **Voting Rights Act of 1965** prohibited any government from using voting procedures that denied a

Voting Rights Act of 1965
A law designed to help end formal and informal barriers to African American suffrage. Under the law, hundreds of thousands of African Americans registered to vote, and the number of African American elected officials increased dramatically.

Associated Press

The Voting Rights Act of 1965 produced a major increase in the number of African Americans registered to vote in Southern states. Voting also translated into increased political clout for African Americans.

person the vote on the basis of race or color; it also abolished the use of literacy requirements for anyone who had completed the sixth grade. The federal government sent election registrars to areas with long histories of discrimination. These same areas had to submit all proposed changes in their voting laws or practices to a federal official for approval. The Supreme Court held in 2013, however, that the most recent formula Congress had used to determine whether jurisdictions had to seek federal preclearance was unconstitutional because it was based on 1975 data.[7] In 2019, the Democratic House of Representatives passed a law updating the metrics, but the Republican Senate refused to vote on the bill, and so key provisions of the Voting Rights Act remain invalidated.

The effects of the Voting Rights Act were dramatic, as the civil rights movement turned from protest to politics.[8] In 1965, only 70 African Americans held public office in the 11 former Confederate states. Soon hundreds of thousands of African Americans registered to vote in Southern states, and by the early 1980s, more than 2,500 African Americans held elected offices in those states. By 2010 there were more than 9,400 African American elected officials in the United States.[9] Equally important, members of Congress who represent jurisdictions subject to the preclearance requirement were substantially more supportive of civil rights–related legislation than legislators who did not represent covered jurisdictions.[10]

The Voting Rights Act of 1965 not only secured the right to vote for African Americans but also attempted to ensure that their votes would not be diluted through racial gerrymandering (drawing district boundaries to advantage a specific group). For example, in many cases, the residences of minorities were clustered in one part of a city. If members of the city council were elected from districts within the city, minority candidates had a better chance to win some seats. In order to reduce the chance that a geographically concentrated minority would elect a minority council member, some cities chose to elect their council members to at-large seats, meaning that voters from any part of the city could elect council members. When Congress amended the Voting Rights Act in 1982, it insisted that minorities be able to "elect representatives of their choice" when their numbers and configuration permitted. Thus, governments at all levels had to draw district boundaries to avoid discriminatory *results* and not just discriminatory *intent*. In 1986, in *Thornburg v. Gingles*, the Supreme Court upheld this principle.

WHY IT MATTERS TODAY

The Voting Rights Act

In passing the Voting Rights Act of 1965, Congress enacted an extraordinarily strong law to protect the rights of minorities to vote. There is little question that officials pay more attention to minorities when they can vote. And many more members of minority groups are now elected to high public office.

Officials in the Justice Department, which is responsible for enforcing the Voting Rights Act, and state legislatures that drew new district lines interpreted the amendment of the Voting Rights Act and the *Thornburg* decision as a mandate to create minority-majority districts, districts in which a minority group accounted for a majority of the voters. However, in 1993 the Supreme Court in *Shaw v. Reno* decried the creation of districts based solely on racial composition, as well as the district drawers' abandonment of traditional redistricting standards such as compactness and contiguity. Redistricting based on race must meet the standard of strict scrutiny under the equal protection clause. On the other hand, bodies doing redistricting must be conscious of race to the extent that they comply with the Voting Rights Act of 1965.

In 1994 the Court ruled that a state legislative redistricting plan that does not create the greatest possible number of minority-majority districts is not in violation of the Voting Rights Act,[11] and in 1995 the Court rejected the efforts of the Justice Department to achieve the maximum possible number of minority-majority districts. It held that the use of race as a "predominant factor" in drawing district lines should be presumed to be unconstitutional.[12] The next year, the Supreme Court voided several convoluted congressional districts on the grounds that race had been the primary reason for abandoning compact district lines and that the state legislatures had crossed the line into unconstitutional racial gerrymandering.[13]

In yet another turn, in 1999 the Court declared in *Hunt v. Cromartie* that conscious consideration of race is not automatically unconstitutional if the state's primary motivation is potentially political rather than racial. (For example, in drawing district lines, a state may consider the fact that African Americans tend to be Democrats.) More recently, however, the Court has voided district boundaries that were drawn to limit the influence of African American voters.[14]

THE RIGHTS OF OTHER MINORITY GROUPS

5.3 Relate civil rights principles to progress made by other ethnic groups in the United States.

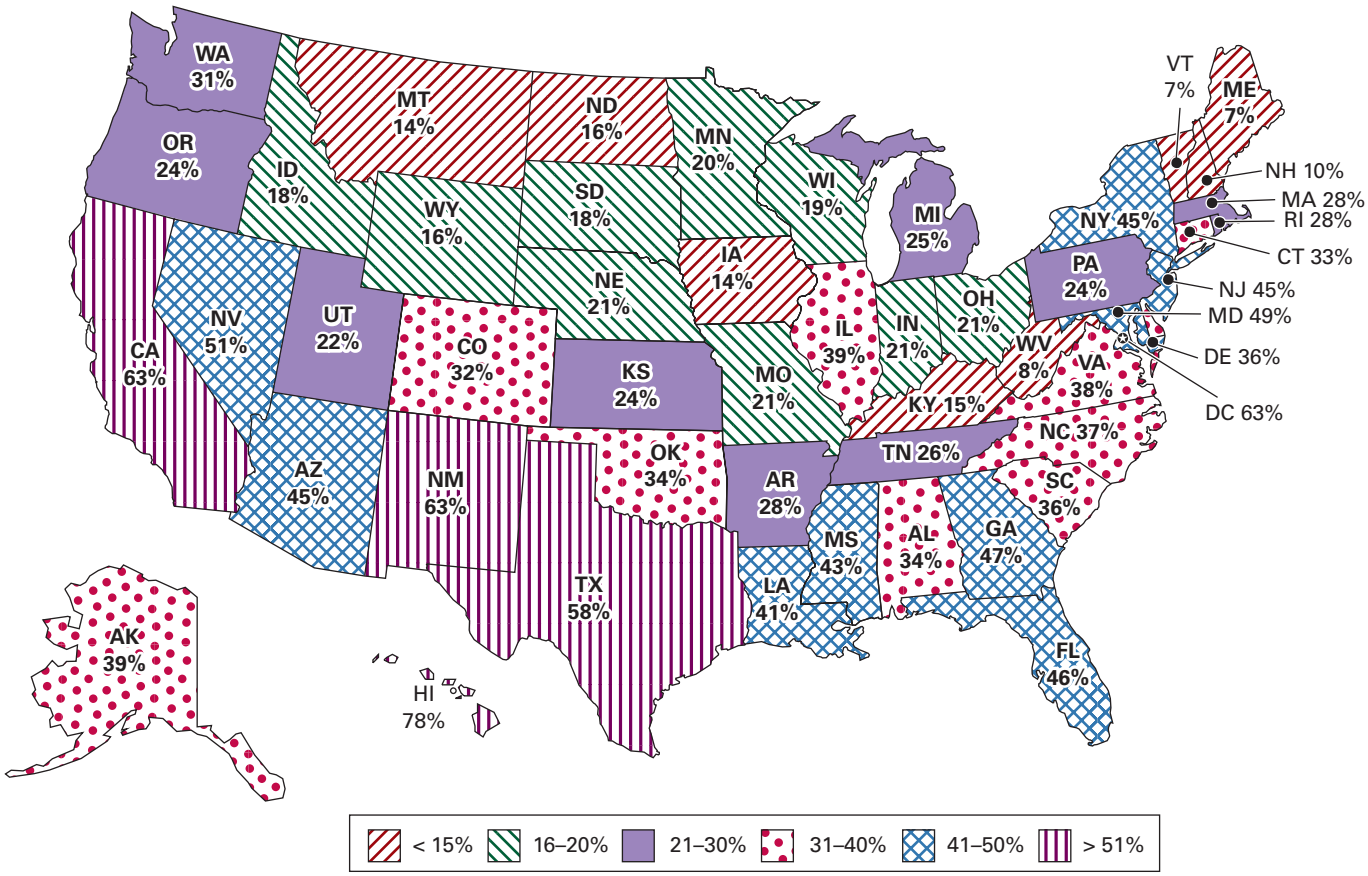
America is heading toward a *minority majority*, a situation in which Americans who are members of minority groups will outnumber Americans of European descent; a number of states already have minority majorities (see Figure 5.2). African Americans are not the only minority group that has suffered legally imposed discrimination. Even before the civil rights struggle, Native Americans, Latinos, and Asians learned how powerless they could be in a society dominated by whites. The civil rights laws for which African Americans fought have benefited members of these groups as well. In addition, social movements tend to beget new social movements; thus the African American civil rights movement of the 1960s spurred other minorities to mobilize to protect their rights.

Native Americans

The earliest inhabitants of the continent, American Indians, are, of course, the oldest minority group. About 6.6 million people identify themselves as at least part Native American or Native Alaskan, including 7 percent of Oklahomans, 9 percent of South Dakotans and New Mexicans, and 14 percent of Alaskans.[15]

FIGURE 5.2 MINORITY POPULATION BY STATE

The country's minority population has now reached over 131 million, including about 61 million Latinos and 43 million African Americans. Minorities make up approximately 40 percent of all Americans. Nearly half of all the children under 18 are from minority families. This map shows minorities as a percentage of each state's population. Hawaii has the largest minority population at 78 percent, followed by the District of Columbia (63 percent), California (63 percent), New Mexico (63 percent), and Texas (58 percent). In nine other states—Arizona, Florida, Georgia, Louisiana, Maryland, Mississippi, Nevada, New Jersey, and New York—minorities make up at least 40 percent of the population.



SOURCE: U.S. Census Bureau, 2017, 2018.

The history of poverty, discrimination, and exploitation experienced by American Indians is a long one. For generations, U.S. policy promoted westward expansion at the expense of Native Americans' lands. The government isolated Native Americans on reservations, depriving them of their lands and their rights. Then, with the Dawes Act of 1887, the federal government turned to a strategy of forced assimilation, sending children to boarding schools off the reservations, often against the will of their families, and banning tribal rituals and languages.

Finally, in 1924 Congress made American Indians citizens of the United States and gave them the right to vote, a status that African Americans had achieved a half century before. Not until 1946 did Congress establish the Indian Claims Act to settle Indians' claims against the government related to land that had been taken from them.[16]

Today, Native Americans still have high rates of poverty and ill health, and almost half live on or near a reservation. Native Americans know, perhaps better than any other group, the significance of the gap between public policy regarding discrimination and the realization of that policy.

But progress is being made. The civil rights movement of the 1960s created a more favorable climate for Native Americans to secure guaranteed access to the polls,

Despite some progress, many Native Americans, such as these grandparents and their grandchildren, continue to suffer poverty and ill health.

Alison Wright/Corbis Documentary/Getty Images

to housing, to jobs, and to reassert their treaty rights. The Indian Bill of Rights was adopted as Title II of the Civil Rights Act of 1968, applying most of the provisions of the Constitution's Bill of Rights to tribal governments. In *Santa Clara Pueblo v. Martinez* (1978), the Supreme Court strengthened the tribal power of individual tribe members and furthered self-government by Indian tribes.

Progress came in part through the activism of Indians such as Dennis Means of the American Indian Movement (AIM), Vine Deloria, and Dee Brown, who drew attention to the plight of American Indian tribes. In 1969, for example, some Native Americans seized Alcatraz Island in San Francisco Bay to protest the loss of Indian lands. In 1973 armed members of AIM seized 11 hostages at Wounded Knee, South Dakota—the site of an 1890 massacre of 200 Sioux (Lakota) by U.S. cavalry—and remained there for 71 days, until the federal government agreed to examine Indian treaty rights.

Equally important, Native Americans began to use the courts to protect their rights. The Native American Rights Fund (NARF), founded in 1970, has won important victories concerning hunting, fishing, and land rights. Native Americans are also retaining access to their sacred places and have had some success in stopping the building of roads and buildings on ancient burial grounds and other sacred spots. Several tribes have won court cases protecting them from taxation of tribal profits.

As in other areas of civil rights, the preservation of Native American culture and the exercise of Native American rights sometimes conflict with the interests of the majority. For example, some tribes have gained special rights to fish and even to hunt whales. Anglers concerned with the depletion of fishing stock and environmentalists worried about loss of the whale population have voiced protests. Similarly, Native American rights to run businesses denied to others by state law and to avoid taxation on tribal lands have made running gambling casinos a lucrative option for tribes. This has irritated both those who oppose gambling and those who are offended by the tax-free competition.

Latinos

Latinos (sometimes referred to as Hispanic Americans)—chiefly from Mexico, Puerto Rico, and Cuba but also from El Salvador, Honduras, and other countries in Central and South America—have displaced African Americans as the largest minority group. Today they number 61 million and account for 18 percent of the U.S. population. Latinos make up 49 percent of the population of New Mexico and about 39 percent of both California and Texas.[17]

In Texas and throughout much of the southwestern United States in the first half of the twentieth century, people of Mexican origin were subjected to discrimination and worse. They were forced to use segregated public restrooms and attend segregated schools. Hundreds were killed in lynchings.

Approximately 500,000 Latinos served in the U.S. armed forces in World War II, but many of these veterans faced discrimination upon their return. Dr. Hector P. Garcia founded the American GI Forum, the country's first Latino veterans' advocacy group, in 1948 after he saw the Naval Station at Corpus Christi refusing to treat sick Latino veterans. Garcia's organization received national attention when the remains of Felix Longoria, a Mexican American soldier killed while on a mission in the Pacific, were returned to his relatives in Three Rivers, Texas, for final burial. The only funeral parlor in Longoria's hometown would not allow his family to hold services for him there because of his Mexican heritage. Soon the incident became the subject of outrage across the country. With the help of the American GI Forum and the sponsorship of then Senator Lyndon B. Johnson, Longoria was buried in Arlington National Cemetery.

In the early 1950s, in Jackson County, Texas, where Mexican Americans made up 14 percent of the population, not a single person with a Spanish surname had been allowed to serve on a jury in 25 years. Some 70 Texas counties had similar records of exclusion. When an all-Anglo jury convicted Pete Hernandez, a migrant cotton picker, of murder in Jackson County, a team of Latino civil rights lawyers from the American GI Forum and the League of United Latin American Citizens (LULAC) filed suit, arguing that the jury that convicted Hernandez of murder could not be impartial because of the exclusion of Latinos from the jury. This case eventually reached the Supreme Court; for the first time Latino lawyers argued before the Court. In ***Hernandez v. Texas*** (1954), the Supreme Court unanimously ruled in Hernandez's favor, holding that in excluding Latinos from jury duty, Texas had unreasonably singled out a class of people for discriminatory treatment. The defendant had been deprived of the equal protection guaranteed by the Fourteenth Amendment, a guarantee "not directed solely against discrimination between whites and Negroes." This landmark decision, which protects Latinos and the right to fair trials, helped widen the definition of discrimination beyond race.

Hernandez v. Texas
A 1954 Supreme Court decision that extended protection against discrimination to Latinos.

Latino leaders drew from the tactics of the African American civil rights movement, using sit-ins, boycotts, marches, and related activities to draw attention to their cause. In 1968, inspired by the NAACP's Legal Defense Fund, they also created the Mexican American Legal Defense and Education Fund (MALDEF) to help argue their civil rights cases in court. In the 1970s, MALDEF established the Chicana Rights Project to challenge sex discrimination against Mexican American women. Latino groups began mobilizing in other ways to protect their interests, too. An early prominent example was the United Farm Workers, led by César Chávez, who in the 1960s publicized the plight of migrant workers, a large proportion of whom were and are Latino.

The rights of illegal immigrants have been a matter of controversy for decades. In 1975 Texas revised its education laws to withhold state funds for educating children who had not been legally admitted to the United States; it authorized local school

districts to deny enrollment to such students. In *Plyler v. Doe* (1982), the Supreme Court struck down the law as a violation of the Fourteenth Amendment, arguing that illegal immigrant children are entitled to protection from discrimination unless a substantial state interest can be shown to justify it. The Court found no substantial state interest that would be served by denying an education to students who had no control over being brought to the United States. The Court observed that denying them an education would likely contribute to "the creation and perpetuation of a subclass of illiterates within our boundaries, surely adding to the problems and costs of unemployment, welfare, and crime."

Adrees Latif/Corbis

Their growing numbers have made Latinos the largest minority group in the United States. Their political power is reflected in the two dozen Latino members of the U.S. House of Representatives, such as Loretta and Linda Sanchez of California, the first set of sisters to serve simultaneously in Congress.

A major concern of Latinos has been discrimination in employment hiring and promotion. Using the leverage of discrimination suits, MALDEF has won a number of consent decrees with employers to increase the opportunities for employment for Latinos.

Like Native Americans, Latinos benefit from the nondiscrimination policies originally established to protect African Americans. By 2012 there were more than 5,200 elected Latino officials in the United States,[18] and Latinos play a prominent role in the politics of such major cities as Houston, Miami, Los Angeles, and San Diego. In 1973 Latinos won a victory when the Supreme Court found that multimember electoral districts (in which more than one person represents a single district) in Texas discriminated against minority groups because they decreased the probability of a minority being elected.[19] Nevertheless, poverty, discrimination, and language barriers continue to depress Latino voter registration and turnout.

Asian Americans

Asian Americans are the fastest-growing minority group: about 20 million persons who are at least part Asian make up about 6 percent of the U.S. population.[20] For more than 100 years prior to the civil rights acts of the 1960s, Asian Americans suffered discrimination in education, jobs, and housing as well as restrictions on immigration and naturalization. In 1880, San Francisco passed a law requiring all laundries in wooden buildings to obtain a permit from the city. Although Chinese immigrants owned 90 percent of the city's laundries, none received a permit. The Supreme Court voided this law in *Yick Wo v. Hopkins* (1886) as a violation of the Fourteenth Amendment. The Chinese Exclusion Act of 1882 placed a ban on the immigration of Chinese laborers. It was not repealed until 1943. In the same year, Congress for the first time allowed Chinese immigrants the right to seek citizenship.

Discrimination was especially egregious during World War II when the U.S. government, beset by fears of a Japanese invasion of the Pacific Coast, rounded up more than 100,000 Americans of Japanese descent and herded them into encampments. These internment camps were, critics claimed, America's concentration camps. The Supreme Court, however, upheld the internment as constitutional in ***Korematsu v. United States*** (1944). Congress has since authorized reparation payments to the former internees and their families. In 2018 the Supreme Court overturned the decision in *Korematsu*.[21]

Korematsu v. United States
A 1944 Supreme Court decision that upheld as constitutional the internment of more than 100,000 Americans of Japanese descent in encampments during World War II. It was overturned by the Court in 2018.

The policy changes we associate with the civil rights movement have led to changes in status and in political strength for Asian Americans. Today, Americans of Chinese, Japanese, Indian, Korean, Vietnamese, and other Asian descent have assumed prominent positions in U.S. society.

One of the low points in the protection of civil rights in the United States occurred during World War II when more than 100,000 Americans of Japanese descent were moved to internment camps.

Credit to come

Arab Americans and Muslims

There are between 2 and 4 million persons of Arab ancestry in the United States, and about 3.5 million Muslims of various ethnicities.[22] Since the terrorist attacks of September 11, 2001, Arabs, Muslims, Sikhs, South Asian Americans, and those perceived to be members of these groups have been the victims of increased numbers of bias-related assaults, threats, vandalism, and arson. The incidents have consisted of telephone, Internet, mail, and face-to-face threats; minor assaults as well as assaults with dangerous weapons and assaults resulting in serious injury and death; and vandalism, shootings, arson, and bombings directed at homes, businesses, and places of worship. Members of these groups have also experienced discrimination in employment, housing, education, and access to public accommodations and facilities.

In the wake of the September 11, 2001, terrorist attacks, the FBI detained more than 1,200 persons as possible threats to national security. About two-thirds of these persons—mostly Arabs and Muslims—were undocumented immigrants, and many of them languished in jail for months until they were cleared by the FBI. Their detention seemed to violate the Sixth Amendment right of detainees to be informed of accusations against them, as well as the constitutional protection against the suspension of the writ of habeas corpus. As we have seen, in 2004 the Supreme Court declared that detainees in the United States had the right to challenge their detention before a judge or other neutral decision maker.

THE RIGHTS OF WOMEN

5.4 Trace the evolution of women's rights and explain how civil rights principles apply to gender issues.

The first women's rights activists were products of the abolitionist movement, in which they had often encountered sexist attitudes. Noting that the status of women

shared much in common with that of slaves, some leaders resolved to fight for women's rights. Two of these women, Lucretia Mott and Elizabeth Cady Stanton, organized a meeting at Seneca Falls in upstate New York. They had much to discuss. Not only were women denied the vote, but they were also subjected to patriarchal (male-dominated) family law and denied educational and career opportunities. The legal doctrine known as *coverture* deprived married women of any legal identity separate from that of their husbands; wives could not sign contracts or own or dispose of property. Divorce law was heavily biased in favor of husbands. Even abused women found it almost impossible to end their marriages; men had the legal advantage in securing custody of the children.

Credit to come

The association of terrorism with Arabs and Muslims puts peace-loving Arab and Muslim Americans at risk of discrimination, threats, and even bodily harm.

The Battle for the Vote

On July 19, 1848, 100 men and women signed the Seneca Falls Declaration of Sentiments and Resolutions. Patterned after the Declaration of Independence, it proclaimed, "The history of mankind is a history of repeated injuries and usurpations on the part of man toward woman, having in direct object the establishment of an absolute tyranny over her." Thus began the movement for women's rights, an effort that continues to this day. Leaders like Elizabeth Cady Stanton and Susan B. Anthony were prominent in the cause, which emphasized the vote but also addressed women's other grievances.

Advocates of women's suffrage had hoped that the Fifteenth Amendment would extend the vote to women as well as to newly freed slaves, but they were disappointed. As it turned out, the battle for women's suffrage was fought mostly in the late nineteenth and early twentieth centuries. The suffragists had considerable success in the states, especially in the West. Several states allowed women to vote before the constitutional amendment passed. The feminists lobbied, marched, protested, and even engaged in civil disobedience.[23] The battle for suffrage culminated in the ratification of the **Nineteenth Amendment**, giving women the vote. Charlotte Woodward, 19 years old in 1848, was the only signer of the Seneca Falls Declaration who lived to vote for the president in 1920.

Nineteenth Amendment
The constitutional amendment adopted in 1920 that guarantees women the right to vote.

The "Doldrums": 1920–1960

Winning the right to vote did not automatically win equal status for women. In fact, the feminist movement seemed to lose rather than gain momentum after women won the vote, perhaps because in the early twentieth century the vote was about the only goal on which all feminists agreed. There was considerable division within the movement on other priorities.

Many suffragists accepted the traditional model of the family. Fathers were breadwinners, mothers were bread bakers. Although most suffragists thought that women should have the opportunity to pursue any occupation they chose, many also believed that women's primary obligations revolved around the roles of wife and mother. Many suffragists had defended the vote as basically an extension of the maternal role into public life, arguing that a new era of public morality would emerge when women could vote. These *social feminists* were in tune with prevailing attitudes.

Public policy toward women continued to be dominated by protectionism rather than by the principle of equality. Laws protected working women from the burdens of overtime work, long hours on the job, and heavy lifting. The fact that these laws also protected male workers from female competition received little attention. State laws

tended to reflect—and reinforce—traditional family roles. These laws concentrated on limiting women's work opportunities outside the home so they could concentrate on their duties within it. The laws in most states required husbands to support their families (even after a divorce) and to pay child support, though divorced fathers did not always pay. When a marriage ended, mothers almost always got custody of the children, although husbands had the legal advantage in custody battles. Public policy was designed to preserve traditional motherhood and hence, supporters claimed, to protect the family and the country's moral fabric.[24]

Equal Rights Amendment
A constitutional amendment passed by Congress in 1972, stating that "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 amendment failed to acquire the necessary support from three-fourths of the state legislatures.

Only a minority of feminists challenged the traditional views that shaped public policy. Alice Paul, the author of the original **Equal Rights Amendment** (ERA), was one activist who claimed that the real result of protectionist law was to perpetuate gender inequality. Simply worded, the ERA reads, "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex." Most people saw the ERA as a threat to the family when it was introduced in Congress in 1923. It gained little support. In fact, women were less likely to support the amendment than men were.

The Second Feminist Wave

The civil rights movement of the 1950s and 1960s attracted many female activists, some of whom also joined student and antiwar movements. These women often met with the same prejudices as had women abolitionists. Betty Friedan's book *The Feminine Mystique*, published in 1963, encouraged women to question traditional assumptions and to assert their own rights. Groups such as the National Organization for Women (NOW) and the National Women's Political Caucus were organized in the 1960s and 1970s.

Before the advent of the contemporary feminist movement, the Supreme Court upheld virtually every instance of gender-based discrimination. The state and federal governments could discriminate against women—and, indeed, men—as they chose. In the 1970s the Court began to take a closer look at gender discrimination. In ***Reed v. Reed*** (1971), the Court ruled that any "arbitrary" gender-based classification violated the equal protection clause of the Fourteenth Amendment. This was the first time the Court declared any law unconstitutional on the basis of gender discrimination.

Reed v. Reed
The landmark case in 1971 in which the Supreme Court for the first time upheld a claim of gender discrimination.

Five years later, the Court heard a case regarding an Oklahoma law that prohibited the sale of 3.2 percent beer to males under the age of 21 but allowed females over the age of 18 to purchase it. In ***Craig v. Boren*** (1976), the Court voided the statute and established an "intermediate scrutiny" standard (see Table 5.1): the Court would not presume gender discrimination to be either valid or invalid. The courts were to show less deference to gender classifications than to more routine classifications but more deference than to racial classifications. Nevertheless, the Court has repeatedly said that there must be an "exceedingly persuasive justification" for any government to classify people by gender.

Craig v. Boren
The 1976 ruling in which the Supreme Court established the "intermediate scrutiny" standard for determining gender discrimination.

The Supreme Court has struck down many laws and rules for discriminating on the basis of gender. For example, the Court voided laws giving husbands exclusive control over family property.[25] The Court also voided employers' rules that denied women equal monthly retirement benefits because they live longer than men.[26]

Despite *Craig v. Boren*, men have been less successful than women in challenging gender classifications. The Court upheld a statutory rape law applying only to men[27] and the male-only draft, which we will discuss shortly. The Court also allowed a Florida law giving property tax exemptions only to widows, not to widowers.[28]

Contemporary feminists have suffered defeats as well as victories. The ERA was revived when Congress passed it in 1972 and extended the deadline for ratification until 1982. Nevertheless, the ERA was three states short of ratification when time ran out. Paradoxically, whereas the 1920 suffrage victory weakened feminism, losing the ERA battle stimulated the movement. In 2017 Nevada ratified the ERA, followed by Illinois in 2018, and Virginia—the 38th state to ratify—in 2020. The question remains as to whether the courts will accept these ratifications after the congressional deadline.

Women in the Workplace

One reason why feminist activism persists has nothing to do with ideology or other social movements. The family pattern that traditionalists sought to preserve—father at work, mother at home—is becoming a thing of the past. In December 2019, there were 75 million women age 20 and over in the civilian labor force (compared to 84 million men), representing 59 percent of adult women. They made up half of the nonfarm payroll positions. Less than half of these women are married and living with their spouse. There are also 69 million female-headed households (more than 10 million of which include children), and 65 percent of American mothers who have children below school age are in the labor force.[29] As conditions have changed, public opinion and public policy demands have changed, too.

WAGE DISCRIMINATION AND COMPARABLE WORTH Traditionally female jobs often pay much less than traditionally male jobs that demand comparable skill; for example, a secretary may earn far less than an accounts clerk with comparable qualifications. Median weekly earnings for women working full time are only 81 percent of those for men working full time.[30] In other words, although the wage gap has narrowed, women still earn only $0.81 for every $1.00 men make. There are many explanations for this disparity, but wage discrimination is one of them.

The Equal Pay Act of 1963 makes it illegal to pay different wages to men and women if they perform equal work in the same workplace. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The first significant legislation that Barack Obama signed as president was the Lilly Ledbetter Fair Pay Act, a 2009 bill outlawing "discrimination in compensation," which is broadly defined to include wages and employee benefits. The law also makes it easier for workers to win lawsuits claiming pay discrimination based on gender, race, religion, national origin, age, or disability.

EMPLOYMENT Congress has made some important progress on women's rights, especially in the area of employment. The Civil Rights Act of 1964 banned gender discrimination in employment. The protection this law offers have been expanded several times. For example, in 1972 Congress gave the EEOC the power to sue employers suspected of illegal discrimination. The Pregnancy Discrimination Act of 1978 made it illegal for employers to exclude pregnancy and childbirth from their sick leave and health benefits plans. The Civil Rights and Women's Equity in Employment Act of 1991 shifted the burden of proof in justifying hiring and promotion practices to employers, who must show that a gender requirement is necessary for a particular job.

The Supreme Court has also weighed in against gender discrimination in employment and business activity. In 1977 it voided laws and rules barring women from jobs through arbitrary height and weight requirements (*Dothard v. Rawlinson*). Any such prerequisites must be directly related to the duties required in a particular position.

NASA

In recent years, women have entered many traditionally male-dominated occupations. Here astronauts Peggy Wilson and Pam Melroy meet in the International Space Station.

Women have also been protected from being required to take mandatory pregnancy leaves from their jobs[31] and from being denied a job because of an employer's concern for harming a developing fetus.[32] Many commercial contacts are made in private business and service clubs, which often have excluded women from membership. The Court has upheld state and city laws that prohibit such discrimination.[33]

WHY IT MATTERS TODAY

Changes in the Workplace

Laws and Supreme Court decisions striking down barriers to employment for women are not just words. They have had important consequences for employment opportunities for many millions of women and have helped women make substantial gains in entering careers formerly occupied almost entirely by men.

EDUCATION Education is closely related to employment. Title IX of the Education Act of 1972 forbids gender discrimination in federally subsidized education programs (which include almost all colleges and universities), including athletics. But what about single-gender schooling? In 1996 the Supreme Court declared that Virginia's categorical exclusion of women from education opportunities at the state-funded Virginia Military Institute (VMI) violated women's rights to equal protection of the law.[34] A few days later, the Citadel, the nation's only other state-supported all-male college, announced that it would also admit women.

MILITARY SERVICE Military service has raised controversial questions about gender equality. Women have served in every branch of the armed services since World War II. Originally, they served in separate units such as the WACS (Women's Army Corps), the WAVES (Women Accepted for Volunteer Emergency Service in the navy), and the Nurse Corps. Until the 1970s, the military had a 2 percent quota for women (which was never filled). Now women are part of the regular armed services. They make up nearly one-fifth of the active duty forces[35] and compete directly with men for promotions. Congress opened all the service academies to women in 1975. Women have done well, sometimes graduating at the top of their class.

Scott Olson/Getty Images

Women, such as these soldiers, are playing increasingly important roles in the military.

In 2015 the secretary of defense lifted the ban on women in combat. Women are now permitted to serve in the most intense and physically hazardous combat positions in the military, including the Navy SEALs and the Army Rangers. Even before the change in policy, women were flying jets, piloting helicopters at the front, operating antimissile systems, patrolling streets with machine guns, disposing of explosives, and providing unit and convoy security. They were also serving as combat pilots in the navy and air force and stationed on navy warships, including submarines. Some women have been taken as prisoners of war, and more than 100 have been killed in combat in Iraq and Afghanistan. Nevertheless, the Supreme Court held in 1981 that it is permissible to require only men to register for the military draft when they turn 18.[36] (See "You Are the Judge: Is Male-Only Draft Registration Gender Discrimination?")

You Are the Judge

IS MALE-ONLY DRAFT REGISTRATION GENDER DISCRIMINATION?

Since 1973 the United States has had a volunteer force, and in 1975, registration for the military draft was suspended. However, in 1979, after the Soviet Union invaded Afghanistan, President Jimmy Carter asked Congress to require both men and women to register for the draft. Registration was designed to facilitate any eventual conscription. Congress reinstated registration in 1980, but, as before, for men only. In response, several young men filed a suit. They contended that the registration requirement was gender-based discrimination that violated the due process clause of the Fifth Amendment.

You Be the Judge

Does requiring only men to register for the draft unconstitutionally discriminate against men?

Decision

The Supreme Court displayed its typical deference to the elected branches in the area of national security when it ruled in 1981 in *Rostker v. Goldberg* that male-only registration did not violate the Fifth Amendment. The Court found that male-only registration bore a substantial relationship to Congress's goal of ensuring combat readiness and that Congress acted well within its constitutional authority to raise and regulate armies and navies when it authorized the registration of men and not women. Congress, the Court said, was allowed to focus on the question of military need rather than "equity."

Sexual Harassment

Whether in schools,[37] in the military, on the assembly line, or in the office, women for years have voiced concern about sexual harassment, which, of course, does not affect only women. The U.S. Equal Employment Opportunity Commission defines sexual harassment as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature . . . when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment."[38]

In 1986 the Supreme Court articulated this broad principle: sexual harassment that is so pervasive as to create a hostile or abusive work environment is a form of gender discrimination, which is forbidden by the 1964 Civil Rights Act. In 1993, in *Harris v. Forklift Systems*, the Court reinforced its decision. No single factor, the Court said, is required to win a sexual harassment case under Title VII of the 1964 Civil Rights Act. The law is violated when the workplace environment "would reasonably be perceived, and is perceived, as hostile or abusive." Thus workers are not required to prove that the workplace environment is so hostile as to cause them "severe psychological injury" or that they are unable to perform their jobs. The protection of federal law comes into play before the harassing conduct leads to psychological difficulty.[39]

The Court has also made it clear that employers are responsible for preventing and eliminating harassment at work,[40] and employees may sue employers even if they did not use internal procedures to report sexual harassment.[41] Moreover, employers cannot retaliate against someone filing a complaint about sexual harassment,[42] although plaintiffs must prove that retaliation was the determinative factor in a negative action.[43] The Court has also ruled that school districts can be held liable for sexual harassment in cases of student-on-student harassment.[44]

Sexual harassment may be especially prevalent in male-dominated occupations such as the military. A 1991 convention of the Tailhook Association, an organization of naval aviators, made the news after reports surfaced of drunken sailors sexually assaulting female guests, including naval officers, as they stepped off the elevator. After the much-criticized initial failure of the navy to identify the officers responsible for the assault, heads rolled, including those of several admirals and the secretary of the navy. In 1996 and 1997, a number of army officers and noncommissioned officers were discharged—and some went to prison—for sexual harassment of female soldiers in training situations. Behavior that was once viewed as simply male hijinks is now recognized as intolerable. The Pentagon removed top officials at the Air Force Academy in 2003 following charges that many female cadets had been sexually assaulted by male cadets. With more women serving in the military, the issue of protecting female military personnel from sexual harassment becomes ever more pressing.

OTHER GROUPS ACTIVE UNDER THE CIVIL RIGHTS UMBRELLA

5.5 Summarize the struggles for civil rights of older Americans, persons with disabilities, and LGBTQ+ Americans.

Policies enacted to protect one or two groups can be applied to other groups as well. Three recent entrants into the civil rights arena are aging Americans, people with disabilities, and lesbian, gay, bisexual, or transgender (LGBT) Americans. All of these groups claim equal rights, as racial and ethnic minorities and women do, but they each face and pose different challenges.

Civil Rights and the Graying of America

America is aging rapidly. About 51 million people are 65 or older, accounting for 16 percent of the total population. About 7 million people are 85 or older.[45] People in their eighties are the fastest-growing age group in the country.

When the Social Security program began in the 1930s, 65 was chosen as the retirement age for the purpose of benefits. The choice was apparently arbitrary, but 65 soon became the usual age for mandatory retirement. Although many workers prefer to retire while they are still healthy and active enough to enjoy leisure, not everyone wants or can afford to do so. Social Security does not—and was never meant to—provide an income adequate to meeting all of a person's expenses, but not all workers have good pension plans or retirement savings plans with which to supplement Social Security. Nevertheless, employers routinely have refused to hire people over a certain age. In the past, age discrimination was not limited to older workers. Graduate and professional schools often rejected applicants in their thirties on the grounds that their professions would get fewer years—and thus less return—out of them. In the 1950s and 1960s, age-related policies had a severe impact on homemakers and veterans who wanted to return to school.

As early as 1967, in the Age Discrimination in Employment Act, Congress banned some kinds of age discrimination. In 1975 Congress passed a law denying federal funds to any institution that discriminates against people over the age of 40 because of their age. Today, for most workers there can be no compulsory retirement. In 1976 the Supreme Court, however, declared that it would not place age in the inherently suspect classification category, when it upheld a state law requiring police officers to retire at the age of 50. Age classifications still fall under the reasonableness standard of review,[46] and employers need only show that age is related to the ability to do a job to require workers to retire.

Job bias is often hidden, and proving it depends on inference and circumstantial evidence. The Supreme Court made it easier to win cases of job bias in 2000 when it held in *Reeves v. Sanderson* that a plaintiff's evidence of an employer's bias, combined with sufficient evidence to find that the employer's asserted justification is false, may permit juries and judges to conclude that an employer unlawfully discriminated. Five years later, the Court found that employers can be held liable for discrimination even if they never intended any harm. Older employees need only show that an employer's policies disproportionately harmed them—and that there was no reasonable basis for the employer's policy.[47] Thus employees can win lawsuits without direct evidence of an employer's illegal intent. In 2008 the Supreme Court ruled that it is up to the employer to show that action against a worker stems from reasonable factors other than age (*Meacham v. Knolls Atomic Power Laboratory*). The impact of these decisions is likely to extend beyond questions of age discrimination to the litigation of race and gender discrimination cases brought under Title VII of the Civil Rights Act of 1964 as well as cases brought under the Americans with Disabilities Act.

Civil Rights and People with Disabilities

Americans with disabilities have suffered from both direct and indirect discrimination. Governments and employers have often denied them rehabilitation services, education, and jobs. And even when there has been no overt discrimination, many people with disabilities have been excluded from the workforce and isolated. Throughout most of American history, public and private buildings have been hostile to the blind, deaf, and mobility impaired. Stairs, buses, telephones, and other necessities of modern life have been designed in ways that keep the disabled out of offices, stores, and restaurants. As one slogan said, "Once, Blacks had to ride at the back of the bus. We can't even get on the bus."

The first rehabilitation laws were passed in the late 1920s, mostly to help veterans of World War I. Accessibility laws had to wait another 50 years. The Rehabilitation Act of 1973 added people with disabilities to the list of Americans protected from discrimination. Because the law defines an inaccessible environment as a form of discrimination, wheelchair ramps, grab bars on toilets, and Braille signs have become common features of American life. The Education of All Handicapped Children Act of 1975 entitled all children to a free public education appropriate to their needs. The **Americans with Disabilities Act of 1990** (ADA) strengthened these protections, requiring employers and administrators of public facilities to make "reasonable accommodations" and prohibiting employment discrimination against people with disabilities. The Supreme Court has ruled that the law also affirms the right of individuals with disabilities if at all possible to live in their communities rather than be institutionalized.[48]

Americans with Disabilities Act of 1990
A law passed in 1990 that requires employers and public facilities to make "reasonable accommodations" for people with disabilities and prohibits discrimination against these individuals in employment.

Determining who is "disabled" has generated some controversy. Are people with AIDS entitled to protections? In 1998 the Supreme Court answered "yes." It ruled that the ADA offered protection against discrimination to people with AIDS.[49] In 2008 Congress expanded the definition of disability, making it easier for workers to prove discrimination. Accordingly, in deciding whether a person is disabled, courts are not to consider the effects of "mitigating measures" like prescription drugs, hearing aids, and artificial limbs. Moreover, "an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active." Otherwise, the more successful a person is at coping with a disability, the more likely it is that a court would find that he or she is no longer disabled and therefore no longer covered under the ADA.

Nobody wants to oppose policies beneficial to people with disabilities. Nevertheless, laws designed to protect the rights of these individuals have met with opposition and, once passed, have only been sluggishly enforced. The source of the resistance is concern about the cost of accommodations. Such concern is often shortsighted, however. Changes allowing people with disabilities to become wage earners, spenders, and taxpayers are a gain rather than a drain on the economy.

LGBTQ+ Rights

Even by conservative estimates, several million Americans are gay, lesbian, bisexual, and transgender, representing every social stratum and ethnic group. Collectively, they are often referred to as LGBT or LGBTQ+, with the Q representing those who identify as queer or are questioning their sexual identity and the + representing yet others. Members of the LGBTQ+ community have often faced discrimination in hiring, education, access to public accommodations, and housing; they may face the toughest battle for equality.

Homophobia—fear and hatred of gays, lesbians, and others in the LGBTQ+ community—has many causes. Some of these causes are deep-rooted, relating, for example, to the fact that certain religious groups condemn same-gender relationships. Homophobia has even led to killings, including the brutal 1998 killing of Matthew Shepard, a 21-year-old political science freshman at the University of Wyoming. Shepard was found tied to a fence, having been hit in the head with a pistol 18 times and repeatedly kicked in the groin.

The growth of the gay rights movement was stimulated by a notorious incident in a New York City bar in 1969. Police raided the Stonewall Inn, a bar frequented by gay men, transgender people, and others from the LGBTQ+ community. Such raids were then common. This time, customers at the bar, including transgender activists Marsha P. Johnson and Sylvia Rivera, resisted the police. Unwarranted violence, arrests, and injury to persons and property resulted. In the aftermath of Stonewall, the LGBTQ+ community organized in an effort to protect their civil

Associated Press

In recent decades, public policy has focused on integrating people with disabilities, such as this college student being fitted with an all-terrain wheelchair, to participate more fully in society.

rights, in the process developing political skills and forming effective interest groups. Significantly, most colleges and universities now have LGBTQ+ rights organizations on campus.

The record on LGBTQ+ rights is mixed. In an early defeat, the Supreme Court in 1986 ruled in *Bowers v. Hardwick* that states could ban "homosexual" relations. More recently, in 2000 the Court held that the Boy Scouts could bar a gay man from serving as an assistant scoutmaster on the grounds that "homosexual conduct" was "inconsistent" with the organization's values.[50] (The Boy Scouts later changed their values and their policies; the organization now welcomes gay and transgender adults, as well as gay and transgender young people.) In 1996, in *Romer v. Evans*, the Supreme Court voided a state constitutional amendment approved by the voters of Colorado that denied gay men and lesbians protection against discrimination, finding that the Colorado amendment violated the U.S. Constitution's guarantee of equal protection of the law. In 2003, in *Lawrence v. Texas*, the Supreme Court overturned *Bowers v. Hardwick* when it voided a Texas anti-sodomy law on the grounds that such laws are unconstitutional intrusions on the right to privacy. LGBTQ+ activists have won other important victories. Many states and communities have passed laws protecting gay, lesbian, bisexual, and transgender people against some forms of discrimination.[51]

Few Americans oppose equal employment opportunities for gays and lesbians; majorities treat gay or lesbian relationships as perfectly acceptable and support their being legal.[52] In a reflection of Americans' changed attitudes toward the LGBTQ+ community, in 2011, with the support of Congress and the president, the Pentagon ended the "don't ask, don't tell" policy in the military and allowed gays to serve openly.

In 2020 in *Bostock v. Clayton County, Georgia*, the Supreme Court held that the 1964 Civil Rights Act's prohibition of discrimination "because of sex" includes LGBTQ+ employees.

In recent years, one of the most prominent issues concerning LGBTQ+ rights has been same-sex, or same-gender, marriage. Most states had laws banning such marriages—and the recognition of same-sex marriages that occurred in other states. In 1996 Congress passed the Defense of Marriage Act (DOMA), which permitted states to disregard same-sex marriages even if they were legal elsewhere in the United States. In 2013, however, the Supreme Court struck down Section 3 of DOMA as unconstitutional because it discriminated against those in same-sex marriages and had no legitimate purpose.[53]

In the meantime, public opinion on same-sex marriage changed rapidly, and a clear majority began to support legalizing it.[54] In 2015 the Supreme Court resolved the issue when it held in *Obergefell v. Hodges* that the Fourteenth Amendment requires states to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out of state. In 2017 the Court found that states may not treat married same-sex couples differently from others in issuing birth certificates.[55] When a bakery refused to make a wedding cake for a same-gender marriage, the couple sued. The Supreme Court in 2018 did not make a definitive decision—it sent the case back for reconsideration—but it did reaffirm that businesses cannot deny goods and services to protected persons under neutral public accommodations laws.[56]

Transgender rights are the newest frontier in the LGBTQ+ arena. To this point, conflict has focused on the appropriate bathrooms for transgender students and the Trump administration's view that transgender people are not protected from employment discrimination by the 1964 Civil Rights Act and also cannot serve in the U.S. military if they require or have undergone gender transition surgery. It is likely that we will see more litigation on transgender rights in the near future.

AFFIRMATIVE ACTION

5.6 Trace the evolution of affirmative action policy and assess the arguments for and against it.

Some people argue that groups that have suffered invidious discrimination require special efforts to provide them with access to education and jobs. In 1965 President Lyndon Johnson signed an executive order prohibiting federal contractors and federally assisted construction contractors and subcontractors from discriminating in employment decisions on the basis of race, color, religion, sex, or national origin. The order also required contractors to take "affirmative action" against employment discrimination in hiring by devising and implementing plans to increase the participation of minorities and women in the workplace.

affirmative action
A policy designed to give special attention to or compensatory treatment for members of some previously disadvantaged group.

Affirmative action involves efforts to bring about increased employment, promotion, or admission for members of groups who have suffered from discrimination. The goal is to move beyond *equal opportunity* (in which everyone has the same chance of obtaining good jobs, for example) toward *equal results* (in which different groups have the same percentage of success in obtaining those jobs). This goal may be accomplished through special rules in the public and private sectors that recruit or otherwise give preferential treatment to previously disadvantaged groups. Numerical quotas that ensure that a certain portion of government contracts, law school admissions, or police department promotions go to minorities and women are the strongest and most controversial form of affirmative action. At present, the constitutional status of affirmative action is in doubt.

Point to Ponder

Tom Cheney/The New Yorker Collection/The Cartoon Bank

While supporters see affirmative action as a policy designed to provide greater opportunities for minorities to excel, opponents see it as a violation of the merit principle.

WHAT DO YOU THINK?

Is it possible to design a policy that addresses both our concern for equality and the principle of merit as the basis of advancement?

At one point, the federal government mandated that all state and local governments, as well as each institution receiving aid from or contracting with the federal government, adopt an affirmative action program. The University of California at Davis (UC–Davis) introduced one such program. Eager to produce more minority physicians in California, the medical school set aside 16 of 100 places in the entering class for "disadvantaged groups." One white applicant who did not make the freshman class was Allan Bakke. After receiving a rejection letter from Davis two years in a row, Bakke learned that the mean scores on the Medical College Admissions Test of students admitted under the university's affirmative action program were in the 46th percentile on verbal tests and the 35th on science tests. Bakke's scores on the same tests were in the 96th and 97th percentiles, respectively. He sued UC–Davis, claiming that it had denied him equal protection of the laws by discriminating against him because of his race.

The result was an important Supreme Court decision in Bakke's favor, ***Regents of the University of California v. Bakke*** (1978).[57] The Court ordered Bakke admitted, holding that the UC–Davis Special Admissions Program did discriminate against him because of his race. Yet the Court refused to order UC–Davis never to use race as a criterion for admission. A university could, said the Court, adopt an "admissions program in which race or ethnic background is simply one element—to be weighed fairly against other elements—in the selection process." It could *not*, as the UC–Davis Special Admissions Program did, set aside a quota of spots for particular groups.

Regents of the University of California v. Bakke
A 1978 Supreme Court decision holding that a state university may weigh race or ethnic background as one element in admissions but may not set aside places for members of particular racial groups.

Over the next 18 years, the Supreme Court upheld voluntary union- and management-sponsored quotas in a training program,[58] as well as preferential treatment of minorities in promotions,[59] and it ordered quotas for minority union memberships.[60] It also approved

a federal rule setting aside 10 percent of all federal construction contracts for minority-owned firms[61] and a requirement for preferential treatment for minorities to increase their ownership of broadcast licenses.[62] It did, however, find a Richmond, Virginia, plan that reserved 30 percent of city subcontracts for minority firms to be unconstitutional.[63]

Adarand Constructors v. Pena
A 1995 Supreme Court decision holding that federal programs that classify people by race, even for an ostensibly benign purpose such as expanding opportunities for minorities, should be presumed to be unconstitutional.

Things changed in 1995, however. In ***Adarand Constructors v. Pena***, the Court overturned the decision regarding broadcast licenses and cast grave doubt on its holding regarding contracts set aside for minority-owned firms. It held that federal programs that classify people by race, even for an ostensibly benign purpose such as expanding opportunities for members of minorities, should be presumed to be unconstitutional. Such programs must be subject to the most searching judicial inquiry and can survive only if they are "narrowly tailored" to accomplish a "compelling governmental interest." In other words, the Court applied criteria for evaluating affirmative action programs similar to those it applies to other racial classifications, the suspect standard we discussed earlier in the chapter. Although *Adarand* did not void federal affirmative action programs in general, it certainly limited their potential impact.

In addition, in 1984 the Court ruled that affirmative action does not exempt recently hired minorities from traditional work rules specifying the "last hired, first fired" order of layoffs.[64] And in 1986, it found unconstitutional an effort to give preference to African American public school teachers in layoffs because this policy punished innocent white teachers and the African American teachers in question had not been actual victims of past discrimination.[65] We examine a more recent case of a public employer using affirmative action promotions to counter underrepresentation of minorities in the workplace in "You Are the Judge: The Case of the New Haven Firefighters," which follows below. Imagine yourself as the judge in the case and compare your assessment of it with the actual decision reached by the Court.

Opposition to affirmative action comes also from the general public. Such opposition is especially strong when affirmative action is seen as *reverse discrimination*—in which, as in the case of Allan Bakke, individuals are discriminated against when people who are less qualified are hired or admitted to programs because of their minority status. Several states have banned state affirmative action programs based on race, ethnicity, or gender in public hiring, contracting, and educational admissions.

You Are the Judge

THE CASE OF THE NEW HAVEN FIREFIGHTERS

New Haven, Connecticut, used objective examinations to identify those firefighters best qualified for promotion. When the results of such an exam to fill vacant lieutenant and captain positions showed that white candidates had outperformed minority candidates, the city threw out the results based on the statistical racial disparity. White and Latino firefighters who passed the exams but were denied a chance at promotions by the city's refusal to certify the test results sued the city, alleging that discarding the test results discriminated against them based on their race in violation of Title VII of the Civil Rights Act of 1964. The city responded that if they had certified the test results, they could have faced Title VII liability for adopting a practice having a disparate impact on minority firefighters.

You Be the Judge

Did New Haven discriminate against white and Latino firefighters?

Decision

In *Ricci v. DeStefano* (2009), the Court held that if an employer uses a hiring or promotion test, it generally has to accept the test results unless the employer has strong evidence that the test was flawed and improperly favored a particular group. New Haven could not reject the test results simply because the higher-scoring candidates were white.

In 2003, the Supreme Court made two important decisions on affirmative action in university admissions. In the first, the Court agreed that there was a compelling interest in promoting racial diversity on campus. In *Grutter v. Bollinger* (2003), the Court upheld the University of Michigan law school's use of race as one of many factors in admission. The Court found that the law school's use of race as a plus in the admissions process was narrowly tailored and that the school made individualistic, holistic reviews of applicants in a nonmechanical fashion.

However, in its second decision, *Gratz v. Bollinger* (2003), the Court struck down the University of Michigan's system of undergraduate admissions in which every applicant from an underrepresented racial or ethnic minority group was automatically awarded 20 points of the 100 needed to guarantee admission. The Court said that the system was tantamount to using a quota, which it outlawed in *Bakke*, because it made the factor of race decisive for virtually every minimally qualified, underrepresented minority applicant. The 20 points awarded to minorities were more than the school awarded for some measures of academic excellence, writing ability, or leadership skills.

The University of Texas at Austin offers undergraduate admission to any students who graduate from a Texas high school in the top 10 percent of their class. It then fills the remainder of its incoming freshman class by combining an applicant's academic performance with the applicant's "Personal Achievement Index," a holistic review containing numerous factors, including race. In 2016 the Supreme Court upheld this system in *Fisher v. University of Texas at Austin*.

In 2007 the Supreme Court addressed the use of racial classification to promote racial balance in public schools in Seattle, Washington, and Jefferson County, Kentucky. Some parents had filed lawsuits contending that using race as a tiebreaker to decide which students would be admitted to popular schools violated the Fourteenth Amendment's equal protection guarantee. In *Parents Involved in Community Schools v. Seattle School District No. 1* (2007), the Court agreed that the school districts' use of race in their voluntary integration plans, even for the purpose of preventing resegregation, violated the equal protection guarantee and therefore was unconstitutional. Using the inherently suspect standard related to racial classifications, the Court found that the school districts lacked the compelling interest of remedying the effects of past intentional discrimination and concluded that racial balancing by itself was not a compelling state interest. The Court did indicate that school authorities might use a "race conscious" means to achieve diversity but that the school districts must be sensitive to other aspects of diversity besides race and narrowly tailor their programs to achieve diversity.

Whatever the Court may rule in the future with regard to affirmative action, the issue is clearly a complex and difficult one. Opponents of affirmative action argue that merit is the only fair basis for distributing benefits and that any race or gender discrimination is wrong, even when its purpose is to rectify past injustices rather than to reinforce them. Proponents of affirmative action argue in response that what constitutes merit is highly subjective and can embody prejudices of which the decision maker may be quite unaware. For example, experts suggest, a man might "look more like" a road dispatcher than a woman and thus get a higher rating from interviewers. Many affirmative action advocates also believe that increasing the number of women and minorities in desirable jobs is such an important social goal that it should be considered when looking at individuals' qualifications. They claim that what white men lose from affirmative action programs are privileges to which they were never entitled in the first place; after all, nobody has the right to be a doctor or a road dispatcher. Moreover, research suggests that affirmative action offers significant benefits to women and minorities and involves relatively small costs for white men.[66]

UNDERSTANDING CIVIL RIGHTS AND PUBLIC POLICY

5.7 Establish how civil rights policy advances democracy and increases the scope of government.

The Constitution is silent on the issue of equality, except in the Fourteenth Amendment, which forbids the states to deny "equal protection of the laws." Those five words have been the basis for major civil rights statutes and scores of judicial rulings protecting the rights of minorities and women. These laws and decisions granting people new rights have empowered minority groups to seek and gain still more victories. The implications of their success for democracy and the scope of government are substantial.

Civil Rights and Democracy

Equality is a basic principle of democracy. Every citizen has one vote because democratic government presumes that each person's needs, interests, and preferences are neither any more nor any less important than the needs, interests, and preferences of every other person. Individual liberty is an equally important democratic principle, one that can conflict with equality.

Equality tends to favor majority rule. Because under simple majority rule everyone's wishes rank equally, the policy outcome that most people prefer seems to be the fairest choice in cases of conflict. What happens, however, if the majority wants to deprive the minority of certain rights? In situations like these, the principle of equality can invite the denial of minority rights, whereas the principle of liberty condemns such action.[67] In general, Americans today strongly believe in protecting minority rights against majority restrictions, as you can see in Figure 5.3.

FIGURE 5.3 RESPECT FOR MINORITY RIGHTS

Americans rate the importance of protection of minority rights relatively highly compared to other democracies.

Survey Question: There are different opinions about people's rights in a democracy. On a scale of 1 to 7, where 1 is not at all important and 7 is very important, how important is it that government authorities respect and protect rights of minorities?

Why do you think that Americans tend to strongly believe in protection of minority rights?

SOURCE: Authors' analysis of 2014 International Social Survey Program data.

Majority rule is not the only threat to liberty. Politically and socially powerful minorities have suppressed majorities as well as other minorities. Women have long outnumbered men in America, about 51 percent to 49 percent. In the era of segregation, African Americans outnumbered whites in many Southern states. Inequality persisted, however, because of entrenched customs and because inequality served the interests of the dominant groups. When slavery and segregation existed in an agrarian economy, whites could get cheap agricultural labor. When men were breadwinners and women were homemakers, married men had a source of cheap domestic labor.

Both African Americans and women made many gains even when they lacked one essential component of democratic power: the vote. They used other rights—such as their First Amendment freedoms—to fight for equality. When in the 1960s Congress protected the right of African Americans to vote, the nature of Southern politics changed dramatically. The democratic process is a powerful vehicle for disadvantaged groups to press their claims.

Civil Rights and the Scope of Government

The Founders might be greatly perturbed if they knew about all the civil rights laws the government has enacted; these laws do not conform to the eighteenth-century idea of limited government. But the Founders would expect the national government to do whatever is necessary to hold the nation together. The Civil War showed that the Constitution of 1787 did not adequately deal with issues like slavery that could destroy the society the Framers had struggled to secure.

Civil rights laws increase the scope and power of government. These laws regulate the behavior of individuals and institutions. Restaurant owners must serve all patrons, regardless of race. Professional schools must admit women. Employers must accommodate people with disabilities and make an effort to find minority workers, whether they want to or not.

However, civil rights, like civil liberties, is an area in which increased government activity in protecting basic rights also represents limits on government and the protection of individualism. Remember that much of segregation was *de jure*, established by governments. Moreover, basic to the notion of civil rights is that individuals are not to be judged according to characteristics they share with a group. Thus civil rights protect the individual against collective discrimination.

The question of where to draw the line in the government's efforts to protect civil rights has received different answers at different points in American history, but few Americans want to turn back the clock to the days of *Plessy v. Ferguson* and Jim Crow laws or to once again exclude women from the workplace.

REVIEW THE CHAPTER

THE STRUGGLE FOR EQUALITY

5.1 Differentiate the Supreme Court's three standards of review for classifying people under the equal protection clause.

Americans have emphasized equal rights and opportunities rather than equal results. In the Constitution, only the Fourteenth Amendment mentions equality. To determine whether classifications in laws and regulations are in keeping with the amendment's equal protection clause, the Supreme Court developed three standards of review: most classifications need only be reasonable, racial or ethnic classifications are inherently suspect, and classifications based on gender receive intermediate scrutiny.

AFRICAN AMERICANS' CIVIL RIGHTS

5.2 Trace the evolution of protections of the rights of African Americans and explain the application of nondiscrimination principles to issues of race.

Racial discrimination is rooted in the era of slavery, which lasted about 250 years and persisted in an era of segregation, especially in the South, into the 1950s. The civil rights movement achieved victories through civil disobedience and through Supreme Court rulings, beginning with *Brown v. Board of Education,* voiding discrimination in education, transportation, and other areas of life. In the 1960s, Congress prohibited discrimination in public accommodations, employment, housing, and voting through legislation such as the 1964 Civil Rights Act and the 1965 Voting Rights Act. Through their struggle for civil rights, African Americans blazed the constitutional trail for securing equal rights for all Americans.

THE RIGHTS OF OTHER MINORITY GROUPS

5.3 Relate civil rights principles to progress made by other ethnic groups in the United States.

Native Americans, Latinos, Asian Americans, and Arab Americans and Muslims have suffered discriminatory treatment. Yet each group has benefited from the application of Court decisions and legislation of the civil rights era. These groups have also engaged in political action to defend their rights.

THE RIGHTS OF WOMEN

5.4 Trace the evolution of women's rights and explain how civil rights principles apply to gender issues.

After a long battle, women won the vote with the passage of the Nineteenth Amendment in 1920. Beginning in the 1960s, a second feminist wave successfully challenged gender-based classifications regarding employment, property, and other economic issues. Despite increased equality, issues remain, including lack of parity in wages, participation in the military, and combating sexual harassment.

OTHER GROUPS ACTIVE UNDER THE CIVIL RIGHTS UMBRELLA

5.5 Summarize the struggles for civil rights of older Americans, persons with disabilities, and LGBTQ+ Americans.

Seniors and people with disabilities have successfully fought bias in employment, and the latter have gained greater access to education and public facilities. Gays and lesbians have faced more obstacles to overcoming discrimination and have been successful in areas such as employment, privacy, and the right to marry.

AFFIRMATIVE ACTION

5.6 Trace the evolution of affirmative action policy and assess the arguments for and against it.

Affirmative action policies, which began in the 1960s, are designed to bring about increased employment, promotion, or admission for members of groups that have suffered from discrimination. In recent years, the Supreme Court has applied the inherently suspect standard to affirmative action policies and prohibited quotas and other means of achieving more equal results.

UNDERSTANDING CIVIL RIGHTS AND PUBLIC POLICY

5.7 Establish how civil rights policy advances democracy and increases the scope of government.

Civil rights policies advance democracy because equality is a basic principle of democratic government. When majority rule threatens civil rights, the latter must prevail. Civil rights policies limit government discrimination but also require an active government effort to protect the rights of minorities.

LEARN THE TERMS

civil rights, p. 132
Fourteenth Amendment, p. 132
equal protection of the laws, p. 132
Thirteenth Amendment, p. 134
Civil Rights Act of 1964, p. 138
suffrage, p. 139
Fifteenth Amendment, p. 139
poll taxes, p. 139
white primary, p. 139
Voting Rights Act of 1965, p. 139
Nineteenth Amendment, p. 147
Equal Rights Amendment, p. 147
Americans with Disabilities Act of 1990, p. 154
affirmative action, p. 156

KEY CASES

Dred Scott v. Sandford (1857), p. 134
Plessy v. Ferguson (1896), p. 135
Brown v. Board of Education (1954), p. 136
Hernandez v. Texas (1954), p. 144
Korematsu v. United States (1944), p. 145
Reed v. Reed (1971), p. 148
Craig v. Boren (1976), p. 148
Regents of the University of California v. Bakke (1978), p. 157
Adarand Constructors v. Pena (1995), p. 158

EXPLORE FURTHER

WEB SITES

www.justice.gov/crt
Home page of the Civil Rights Division of the U.S. Department of Justice, containing background information and discussion of current events.

www.ada.gov
Home page of the Americans with Disabilities Act of the U.S. Department of Justice, containing background information and discussion of current events.

www.naacp.org
Home page of the NAACP, containing background information and discussion of current events.

www.lulac.org
League of United Latin American Citizens home page, with information on Latino rights and policy goals.

www.civilrightsproject.ucla.edu
Home page of the Civil Rights Project at UCLA, with background information and other resources on civil rights.

www.now.org
Home page of the National Organization of Women, containing material on issues dealing with women's rights.

www.hrc.org
Human Rights Campaign home page, with information on LGBTQ+ rights.

www.usccr.gov
U.S. Commission on Civil Rights home page, with news of civil rights issues around the country.

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ENDNOTES

1. For opposing interpretations of the Fourteenth Amendment, see Judith A. Baer, *Equality Under the Constitution: Reclaiming the Fourteenth Amendment* (Ithaca, NY: Cornell University Press, 1983), and Raoul Berger, *Government by Judiciary: The Transformation of the Fourteenth Amendment* (Cambridge, MA: Harvard University Press, 1977).
2. Desmond King, *Separate but Unequal: Black Americans and the US Federal Government* (Oxford: Oxford University Press, 1995); Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (New York: Liveright Publishing, 2017).
3. D. Garth Taylor, Paul B. Sheatsley, and Andrew M. Greeley, "Attitudes Toward Racial Integration," *Scientific American* 238 (June 1978): 42–49; Richard G. Niemi, John Mueller, and John W. Smith, *Trends in Public Opinion* (Westport, CT: Greenwood Press, 1989), 180.
4. There are a few exceptions. Religious institutions such as schools may use religious standards in employment. Gender, age, and disabilities may be considered in the few cases in which such occupational qualifications are absolutely essential to the normal operations of a business or enterprise, as in the case of a men's restroom attendant.
5. *Texas Department of Housing and Community Affairs v. Inclusive Communities Project* (2015).
6. *Flowers v. Mississippi* (2019). See also *Batson v. Kentucky* (1986).
7. *Shelby County, Alabama v. Holder, Attorney General, et al.* (2013).
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