THE CONTEXT OF CIVIL RIGHTS

Civil liberties refer to the freedoms guaranteed in the Bill of Rights, such as the freedom of speech or religion. Civil rights protect all persons from discrimination both by the government and other individuals. Initially, African Americans were the focus of civil rights protections, but the protections have expanded to cover other racial and ethnic groups, women, the elderly, the disabled, and gays and lesbians.

* **African Americans**
  + The most divisive civil rights issue with the greatest long-term impact has been slavery and its legacy. Slave labor was critical to the economy in America, particularly in the South, where slaves worked on plantations but also in many parts of the service economy (as carpenters, bakers, weavers, and so on). Slavery was so widespread that in the 1860 census, there were 2.3 million slaves in the Deep South (47 percent of the population), and 4 million slaves in America altogether.
  + The **Missouri Compromise**of 1820 was an agreement passed by Congress in an attempt to ease tensions by limiting the expansion of slavery while also maintaining the balance between slave states and [free](http://www.wwnorton.com/college/polisci/american-politics-today2/core/ch/14/outline.aspx) states. The Compromise of 1850 overturned the Missouri Compromise and allowed each new state to decide for itself whether to be a slave state or a free state. All possibility of further compromise was killed by the *Dred Scott v. Sanford*decision in 1857, in which the Supreme Court ruled that states could not be prevented from allowing slavery, and that slaves were property with no legal rights.
  + When Lincoln became president in 1860, southern states feared the criminalization of slavery, so they seceded from the Union to create the Confederacy.
  + The Civil War restored national unity and ended slavery. The Civil War amendments ensured progress for African Americans: the 13th banned slavery, the 14th guaranteed that states could not deny the newly freed slaves equal protection under the law, and the 15th gave African Americans the right to vote.
    1. Despite the passing of these amendments, African Americans, particularly those in the South, were almost completely **disenfranchised**, or denied the ability to exercise a right (in this case, to vote).
    2. The **grandfather clause** was enacted in several southern states to allow those who had been able to vote before the Civil War, and their descendents, to bypass literacy tests and other obstacles to voting, Whites were thereby exempt from taking these tests while African Americas and other people of color continued to be disenfranchised.
  + The Civil Rights Acts of 1866 and 1875 were supposed to outlaw segregation and provide equal opportunity for African Americans, but the laws included no enforcement provisions, and they were summarily ignored.
  + When Reconstruction ended in 1877, southern states enacted “black codes” or **Jim Crow laws**, state and local laws that mandated racial segregation in all public facilities in the South, many border states, and some northern communities between 1876 and 1964.
    1. The Supreme Court validated these practices in *Plessy v. Ferguson* (1896) in establishing the **“separate but equal”** doctrine, the idea that racial segregation was acceptable as long as the separate facilities were of equal quality.
  + In the several decades that followed Reconstruction, the living standards for African Americans did not improve, and the rest of the nation ignored the problem, largely because 90 percent of all African Americans continued to live in the South.
    1. Once African Americans began to migrate northward, racial politics changed.
  + Progress toward racial equality was slow, but it began in the 1940s and continued in the 1950s with *Brown v. Board of Education* (1954) which rejected the “separate but equal” provision in*Plessy v. Ferguson* and *Brown II* (1955), which ordered that public schools be desegregated.
* **Native Americans, Asians, and Latinos**
  + The availability of racial categories in the U.S. Census provides a window to the degree of racial diversity awareness and acceptance. The second racial category in the U.S. Census (behind African Americans) was Native Americans in 1860, followed by Chinese (1870), Japanese (1890), Asian and Pacific Islanders (1910) and Mexicans (1930).
  + The method for collecting information about race has changed over the years. Before 1960, the census taker identified a person’s race according to Census Bureau guidelines. Since 1980, people have identified their own race on census forms. In 2000, people were first allowed to check more than one racial category to reflect the growing reality of a multiracial United States.
  + Each racial and ethnic group in the United States has a different history of interactions with the majority white population, and in general, the trend is ugly.
    1. Native Americans were not given the right to vote until 1924. Although tribes were regarded as sovereign nations while signing treaties, the United States routinely ignored the content of later treaties as they forced Native Americans from their homelands in the East and Midwest.
    2. Beyond the internment of the Japanese during World War II, Asian Americans have been discriminated against since the days of the California gold rush and the transcontinental railroad. In particular, the Chinese have been subject to naturalization bans and immigration quotas.
    3. While many Mexican Americans have had roots in America (particularly in the southwest) for hundreds of years, most Latinos have only been in the United States for a few generations. They are still forced to battle discrimination, and their political voice is only beginning to be heard. Two important reasons for this exist:
       1. Latinos vote far less often than other minority groups, largely due to language difficulties.
       2. Latinos are also a politically diverse group: Cubans are staunch Republicans, while Mexicans tend to vote Democratic.
* **Women and Civil Rights**
  + Women were not given the right to vote until 1920, when the Nineteenth Amendment was ratified. The fact that women had very few rights was rationalized through **protectionism**, the idea that some groups, like women or African Americans, should be denied certain rights for their own safety or well-being.

A COLOR-BLIND SOCIETY?

Civil rights issues remain important today because: (1) the effects of slavery and the Jim Crow laws are still quite evident, and (2) active discrimination is still evident in our society today.

Those who take the position that we must “move beyond race” argue that we already have achieved a level playing field on which people of different races have equal opportunities to succeed. They argue that efforts to make up for past discrimination only perpetuate racial discrimination by classifying people based on race.

Others see race as central in everyday life for racial minorities. Discrimination is far too common in the United States and clearly indicates that we have not reached the color-blind (or gender- and sexual orientation–neutral) society desired by advocates of civil rights.

THE RACIAL DIVIDE TODAY

The political, social, and economic condition of racial minorities is not as good as it is for whites.

* The political divide is mostly evident in lower levels of voter turnout among racial minorities relative to whites.
  + While different ranges of voter turnout can by accounted for by education and income, there are many examples of practices and institutions designed to depress minority turnout.
* The racial divide is also evident in social and economic terms. Nearly three times as many black families are below the poverty line as white families.
  + The average white household has nearly six times the assets of a typical nonwhite family.
* Poverty is not distributed equally throughout the United States but rather is concentrated in areas where the minority population is the highest.
  + The rate of black, adult male unemployment has been about twice as high as that of white adult males for the past forty-five years.
  + On every measure of health—life expectancy, infectious diseases, infant mortality, cancer rates, heart disease, and strokes—the gaps between whites and blacks are large, and in many cases, they are growing.
* The greatest disparity between racial minorities and whites may be in the criminal justice system.
  + Blacks are not only more likely than whites to be convicted for the same crimes, but blacks also serve longer sentences than whites for committing the same crime.
  + African Americans and minorities are also subjected to hate crimes much more frequently than whites.

THE POLICY-MAKING PROCESS AND CIVIL RIGHTS

Our system of separated and shared powers almost ensures that each of the three branches has some say in making policy. The policy-making process in the area of civil rights provides insight into the importance of federalism. While the national government was instrumental in winning equality for blacks, state and local governments have taken the lead role in fighting for gay rights.

* **Social Movements**

Activists have been instrumental in pressuring the political system to change its civil rights policies. The civil rights movement of the 1950s and 1960s, aimed at ending segregation and gaining equal political and social rights for blacks, is the most famous example of a successful social movement.

* + Nonviolent protest
    1. During the civil rights movement of the 1950s and 60s, the Student Nonviolent Coordinating Committee (SNCC) was created to coordinate protests. Sit-ins marked an important shift in the tactics of the civil rights movement away from the court-based approach and toward the nonviolent civil disobedience that had been successful in earlier times.
  + The Letter from the Birmingham Jail
    1. King wrote his famous “Letter from the Birmingham Jail,” an eloquent statement of the principles of nonviolent civil disobedience. King presented the justification for civil disobedience, writing that everyone had an obligation to follow just laws, but an equal obligation to break unjust laws.
* **The Judicial Arena**

In the early years of the civil rights movement in the 1930s and 40s, the Supreme Court provided most of the successes, especially in voting rights and desegregation.

* + Challenging “separate but equal” in education
    1. The National Association for the Advancement of Colored People (NAACP) decided to fight segregation by pointing out the various ways in which states kept blacks out of all-white law schools. In 1950, Texas created a separate law school for blacks, which was not equal to the schools for whites. Even though both types of schools had the same number of faculty, books, and so on, the court ruled that *this was not good enough*. Intangible aspects of the quality of law existed that made the school for blacks inferior. The Court stopped just short of striking down “separate but equal.”
    2. In a landmark decision, the application of the 14th Amendment was expanded in *Brown v. Board of Education*(1954), which required all public schools in the United States to desegregate.
  + The push to desegregate schools
    1. In 1955, *Brown v. Board of Education II* addressed the implementation of desegregation and required the states to “desegregate with all deliberate speed.”
    2. Eight years after *Brown I*, little had changed in the Deep South. In 1971, the Court shifted its focus from **de jure**segregation—segregation mandated by law—to **de facto**segregation—segregation that existed because of housing patterns—and approved school busing as a tool to integrate schools.
    3. In 2007, the Court invalidated voluntary desegregation plans implemented by public school districts. Endorsing the color-blind approach, the majority opinion said, “The way to stop discrimination on the basis of race is to stop discriminating on the basis of race.” In this case, the discrimination was against whites who wanted to be in school with few minorities rather than blacks who wanted to be in integrated schools.
  + Expanding civil rights
    1. Other central cases during the civil rights era ruled Congress had the power to eliminate segregation in public places, such as restaurants and hotels, under the commerce clause of the Constitution.
    2. In 1971, the Court ruled that employment tests not related to job performance and tests that discriminate against blacks violate the 1964 Civil Rights Act.
    3. Many cases upheld the **disparate impact standard**, the idea that discrimination exists if a practice has a negative effect on a specific group, whether or not this effect was intentional.
  + The color-blind Court and judicial activism
    1. The Roberts and Rehnquist Courts of the past two decades have been gradually imposing a “color-blind jurisprudence” over a broad range of issues. For example, in 1992, districts were specifically drawn to help elect African Americans and Latinos. But, under Roberts and Rehnquist, the legislative redistricting process had to avoid discriminatory *results*rather than being concerned only with discriminatory *intent*. Thus, if race is the predominant factor in drawing district lines, the districts are unconstitutional because they violate the equal protection clause of the 14th Amendment.
    2. The Supreme Court is increasingly activist in civil rights. The Court is unwilling to defer to any other part of government if that branch disagrees with its view of discrimination and equal protection.
  + Women’s rights
    1. At one time discrimination between men and women was identified using the**reasonable basis test**, the use of evidence to suggest that differences in the behavior of two groups can rationalize unequal treatment of these groups.
    2. In 1976 the Court established a new **intermediate scrutiny test**, the middle level of scrutiny the courts use when determining whether unequal treatment is justified by the effect of a law; this is the standard used for gender-based discrimination cases and for many cases based on sexual orientation.
    3. The **strict scrutiny test** is the highest level of scrutiny the courts use when determining whether unequal treatment is justified by the effects of a law. It is applied in all cases involving race. Laws rarely pass the strict scrutiny standard; a law that discriminates based on race must be shown to serve some “compelling state interest” in order to be upheld.
    4. Two other areas where the Supreme Court helped advance women’s rights were affirmative action and protection against sexual harassment.
  + Gay rights
    1. In the first endorsement of civil rights for gays, the Supreme Court struck down an amendment to the Colorado state constitution that would have prevented gays from suing for discrimination in employment or housing.
    2. The Supreme Court also ruled that the liberty guaranteed by the 14th Amendment’s due process clause allows homosexuals to have sexual relations. The reasoning is rooted in the**substantive due process doctrine**, one interpretation of the due process clause of the 14th Amendment under which the Supreme Court has the power to overturn laws that infringe on individual liberties.

In general, the courts have a limited independent impact on policy. It must rely on other braches of government to carry out its policy decisions.

* **The Legislative Arena**

The bedrock of equal protection that exists today stems from landmark legislation passed by Congress in the 1960s.

* + The Civil Rights Act barred discrimination in employment based on race, sex, religion, or national origin; banned segregation in public places; and set up the Equal Employment Opportunity Commission as the enforcement agency for the legislation.
  + The Voting Rights Act of 1965 (VRA) eliminated direct obstacles to minority voting in the South, such as discriminatory literacy tests and other voter registration tests, and also provided means to enforce the law. Several amendments proved very important to civil rights progress:
    1. 1975: Coverage was extended to language minorities.
    2. 1982: Certain provisions of the law were extended for twenty-five years and it was made easier to bring a lawsuit under the act.
    3. 1991: A new Civil Rights Act was passed which increased the cost to employers for intentional, illegal discrimination. Furthermore, if an employee sues for discrimination, the burden of proof is on the employer to show that the practice is “job related for the position in question and consistent with business necessity.”
    4. 2006: The VRA was extended for another twenty-five years.
  + The Fair Housing Act of 1968 barred discrimination in the rental or sale of a house.
  + Title VII of the Civil Rights Act, which barred discrimination based on gender, began to be enforced in 1970.
  + In 1972, Title IX of the Higher Education Act prohibited sex discrimination in institutions that receive federal funds. In 1994, the Violence Against Women Act allowed women who were the victims of physical abuse and violence to sue in federal court.
  + The 1990 Americans with Disabilities Act provided strong federal protections for the 45 million disabled Americans.
  + Congress’s track record in protecting gay rights is not quite as strong.
    1. It passed the Defense of Marriage Act in 1996, which says that if gay marriages are allowed in one state, they are exempt from the “full faith and credit clause” of the Constitution, and they do not need to be recognized in all other states.
    2. In 2009, Congress moved in favor of gay rights by expanding hate crime laws to include attacks based on sexual orientation or gender identity, and made all attacks in this manner a federal hate crime.
* **The Executive Arena**
  + The office of the President has often been a strong proponent for the expansion of civil rights, particularly through unilateral action.
    1. President Truman integrated the armed forces in 1948 by executive order.
    2. President Eisenhower used the National Guard to enforce a court order to integrate Central High School in Little Rock, Arkansas, in 1957.
    3. Executive orders by Kennedy and Johnson in 1961 and 1965, respectively, established affirmative action.
    4. Clinton attempted to end the ban on gays in the military, but because of strong resistance, compromised with “don’t ask, don’t tell.”
  + Now, it is less likely that significant and dramatic change will come from unilateral action by the president. Instead, attention to civil rights concerns in the executive branch has primarily been in two areas in the past fifteen years: racial diversity in presidential appointments and use of the bully pulpit to promote racial concerns and interests.
    1. Clinton promised, and delivered, a government that “looks like America.” Bush was not as successful in that regard, but his administration was more diverse than that of other Republican presidents. Obama’s cabinet also demonstrates strong racial and gender diversity.
    2. Some argue that Obama’s presidency may signal the beginning of a new “post-racial politics” with less emphasis on race and more attention to broad issues, such as the economy, education, and health care. Nonetheless, Obama himself has rejected this view.

CONTINUING AND FUTURE CIVIL RIGHTS ISSUES

There are three main perspectives regarding the future direction of the civil rights movement: (1) Our nation must move beyond race. The Supreme Court endorses this perspective with “color-blind” jurisprudence. (2) The civil rights movement must continue to fight for the equality of opportunity by enforcing existing laws and pushing for equality of outcomes by protecting and expanding racially targeted affirmative action programs and other policies that address racial inequality. (3) Integration is not a realistic goal. African Americans can never gain equality within what they see as the repressive, white-dominated economic and political system.

* **Affirmative Action**
  + The Civil Rights Act of 1964 ensured that, at least on paper, all Americans would be equal. Even after the act was passed, however, blacks still lagged behind whites in socioeconomic status; there was still a gap in the equality of opportunity and the equality of outcomes.
  + Beginning in 1965, President Johnson tried to address these inequalities with a policy of affirmative action. All federal agencies and government contractors were required to submit written proposals to provide an equal opportunity for employment of blacks, women, Asian Americans, and Native Americans. Special opportunities were given to minorities and women, either to make up for past patterns of discrimination or to pursue the general goals of diversity.
    1. Affirmative action takes different forms. The most passive form is extra effort to recruit women and minorities. A more active form is to include race or gender as a “plus factor” in the admissions or hiring decision. The strongest form is the use of strict quotas to admit or hire a specific number of applicants from underrepresented groups.
    2. Affirmative action has been a controversial policy. Many whites view this as “preferential treatment” and “reverse discrimination.”
  + The Supreme Court helped define the boundaries of this policy debate. In early cases, preferential treatment and even rigid quotas were upheld when the policies were needed to make up for past discrimination. As the Court moved toward a color-blind approach, however, “generalized assertions” of past discrimination were not enough to justify rigid quotas.
    1. In the landmark decision of *University of California Regents v. Bakke* (1978), the Court ruled that rigid racial quotas were unconstitutional, but allowed race to be a “plus factor” used in admissions decisions.
    2. More recently, the Supreme Court overturned a New Haven, Connecticut, attempt to disregard the results from a test given to firefighters because no African Americans qualified for a promotion, while others (18 whites and a Latino) did.
* **Multicultural Issues**
  + White people in the United States will no longer constitute a majority of the population by the middle of the twenty-first century.
  + In *Alexander v. Sandoval* (2001), the Court ruled that individuals may not sue federally funded state agencies over policies that have a discriminatory effect on minorities under Title VI.
  + After the September 11 terrorist attacks, the government made it clear that it would not engage in racial profiling of Arab Americans, but many commentators argued that such profiling would be justified.
  + In 1994, voters in California adopted Proposition 187, which denied most public benefits to illegal immigrants but was viewed by critics as discriminatory to Mexican Americans. Republicans favored the proposition, while Democrats opposed it. Democrats won the 1998 gubernatorial race in California with the strong support of Hispanics. Subsequently, Republicans softened their position on immigration, with President George W. Bush leading the party’s movement in this direction.