APGoPo - Unit 2

CH. 17 – CIVIL RIGHTS

One of the most influential Constitutional clauses during the mid to late 20th century has been the equal protection clause of the Fourteenth Amendment that forbids any state to "deny to any person within its jurisdiction the equal protection of the laws." This clause has not been interpreted to mean that everyone is to be treated the same, but that certain divisions in society, such as sex, race, and ethnicity are **suspect categories**, and that laws that make distinctions that affect these groups will be subjected to especially strict scrutiny. In recent years, these suspect categories have been expanded to include discrimination based on age, disability, and sexual preference.

CIVIL RIGHTS FOR RACIAL AND ETHNIC MINORITIES

The United States has always been home to many different racial and ethnic groups that have experienced varying degrees of acceptance into American society. Today major racial and ethnic minorities include African Americans, Latinos, Asians, and Native Americans.

EQUALITY FOR AFRICAN AMERICANS

The history of African Americans includes 250 years of slavery followed by almost a century of widespread discrimination. Their efforts to secure equal rights and eliminate segregation have led the way for others. After the Civil War, civil rights were guaranteed for former slaves in the Fourteenth and Fifteenth Amendments. However, many discriminatory laws remained in states across the country, and the states of the defeated Confederacy passed **Jim Crow laws**, which segregated blacks from whites in virtually all public facilities including schools, restaurants, hotels, and bathrooms. In addition to this ***de jure*** (by law) segregation, strict ***de facto*** (in reality) segregation existed in neighborhoods in the South and the North.

The 1896 court decision ***Plessy* v. *Ferguson*** supported the segregation laws. Homer Plessy sued the state of Louisiana for arresting him for riding in a "whites only" railroad car. The Court ruled that the law did not violate the equal protection clause of the 14th Amendment, as Plessy claimed. The majority opinion stated that segregation is not unconstitutional as long as the facilities were substantially equal. This "**separate but equal"** doctrine remained the Court's policies until the 1950s.

The Modern Civil Rights Movement

In 1909 the National Association for the Advancement of Colored People (**NAACP**) was founded to promote the enforcement of civil rights guaranteed by the Fourteenth and Fifteenth Amendments. The NAACP struggled for years to convince white-dominated state and national legislatures to pass laws protecting black civil rights, but they made little progress until they turned their attentions to the courts. The NAACP decided that the courts were the best place to bring about change, and they assembled a legal team that began to slowly chip away at the "separate but equal" doctrine.

From the mid-1930s to about 1950, they focused their attention on requiring that separate black schools actually be equal to white schools. Finding little success with this approach, **Thurgood Marshall**, an NAACP lawyer for Linda Brown in ***Brown* v. *Board of Education of Topeka*** in 1954, argued that separate but equal facilities are "inherently unequal" and that separation had "a detrimental effect upon the colored children." The Court overturned the earlier *Plessy* decision and ruled that "separate but equal" facilities are unconstitutional. Following this landmark case was over a decade of massive resistance to desegregation in the South, but organized protests, demonstrations, marches, and sit-ins led to massive *de jure* desegregation by the early 1970s.

De jure desegregation was insured by the **Civil Rights Act of 1964,** the **24th Amendment,** and the **Voting Rights Act of 1965.** The 1964 act banned discrimination in public facilities and voter registration and allowed the government to withhold federal funds from states and local areas not complying with the law. The 24th Amendment banned paying a tax to vote (the poll tax) - a practice intended to keep blacks from voting. The 1965 act outlawed literacy tests and allowed federal officials to register new voters. As a result, the number of registered black voters increased dramatically, and today registration rates of African Americans are about equal to those of whites. The Johnson Administration also set up as part of the "Great Society" an **Office of**

Economic Opportunity that set guidelines for equal hiring and education practices. To comply with the new guidelines, many schools and businesses set up quotas (a minimum number of minorities) for admission or employment.

School Integration
Schools were not integrated overnight after the *Brown* decision, and active resistance continued through the early 1960s. In 1957 Arkansas Governor Orville Faubus used the state's National Guard to block the integration of Central High School in Little Rock. President Dwight Eisenhower responded by federalizing the Arkansas National Guard and sending in 500 soldiers to enforce integration. In 1962 James Meredith, an African American student, was not allowed to enroll at the University of Mississippi, prompting President John F. Kennedy to send federal marshals to protect Meredith.

To break down *de facto* school segregation caused by residential patterns, courts ordered many school districts to use **busing** to integrate schools. Students were transported from areas where they lived to schools in other areas to achieve school diversity. The practice proved to be controversial, but the courts upheld busing plans for many years. However, by the late 1990s and early 2000s federal courts had become increasingly unwilling to uphold busing or any other policies designed to further integration. For example, in 2001 a federal court determined that the Charlotte-Mechlenburg school district in North Carolina no longer had to use race-based admission quotas because they had already achieved integration.

Today *de facto* school segregation still exists, especially in cities, where most African American and Hispanic students go to schools with almost no non-Hispanic whites. So by the early years of the 21st century, the goal of integration expressed in *Brown v. Topeka* in 1954 has not been realized.

RIGHTS FOR NATIVE AMERICANS
Of all the minorities in the United States, Native Americans are one of the most diverse. Almost half of the nearly 2 million people live on **reservations**, or land given to them as tribes by treaties with the U.S. government. 308 different tribes are formally registered with the government, and among them, almost 200 languages are spoken. Enrolled members of tribes are entitled to certain benefits (such as preferred employment or acceptance to college) administered by the Bureau of Indian Affairs of the Department of the Interior. The benefits are upheld by the Supreme Court as grants not to a "discrete racial group, but rather, as members of quasi-sovereign tribal entities."

Poor living conditions and job opportunities on reservations have been the source of growing Native American militancy. Tribes have demanded more autonomy and fewer government regulations on reservations. Some recent cases have involved the right of tribes on reservations to run and benefit from gambling operations that the government has regulated. Some tribes are demanding better health care facilities, educational opportunities, decent housing, and jobs.

Under Article I, Section 8, Congress has full power under the commerce clause to regulate Indian tribes. Congress abolished making treaties with the tribes in 1871, but until recent times tribal governments were weak, many reservations were dissolved, and many tribes severed their relationship with the U.S. government. During the past twenty years, both the tribes and the government have shown revived interest in interpreting earlier treaties in a way to protect the independence and authority of the tribes. With the backing of the **Native American Rights Fund** (funded in part by the Ford Foundation), more Indian law cases have been brought in the last two decades than at any time in our history. Colorado elected the first Native American (Ben Nighthorse Campbell) to Congress in 1992.

LATINO RIGHTS
Latinos compose the fastest growing minority group in the United States today. The approximately 35 million Latinos (an increase of about 60 percent since 1980) may be divided into several large subgroups:

- **Mexican Americans -** About 15 million are Mexican Americans who live primarily in the Southwestern United States: Texas, New Mexico, Arizona, and California. Traditionally, Mexican Americans are strong supporters of the Democratic Party

- **Puerto Ricans -** The second largest group consists of 2.7 million Puerto Ricans, living primarily in northern cities, such as New York and Chicago. Since Puerto Rico is a commonwealth of the United States, many Puerto Ricans move back and forth between island and homeland.
- **Cubans -** A third group has come since the early 1960s from Cuba, many fleeing to Florida from Castro's regime. The immigration has continued over the years. In many areas of southern Florida, Cuban Americans have now become the majority group. In contrast to Mexican Americans, Cubans tend to be politically conservative and support the Republican Party.
- **Central and South American countries -** A rapidly growing number are emigrating from political upheaval in Central American countries, such as Nicaragua and Guatemala. As political unrest in these areas continues, people are coming to live near relatives already in the United States.

A major issue for Latinos centers on English as a Second Language education in U.S. public schools. Latino children often find language a barrier to success in school, and schools have struggled to find the best ways to educate them. Supporters of ESL education believe that Spanish instruction should be provided and encouraged, whereas critics claim that such education hampers the learning of English, a necessary skill for success in the United States. In recent years, bilingual programs established in the 1960s have come under increasing attack. In 1998, California residents passed a ballot initiative that called for the end of bilingual education in the state. After the courts backed the initiative, the states of Arizona and Massachusetts also banned bilingual education.

Latinos, like blacks, have become increasingly involved in politics, and by the 1998 election 19 Latinos were members of the House of Representatives. Two Latinos were elected to the Senate in 2004.

THE RIGHTS OF ASIAN-PACIFIC ISLANDERS

About 8 million Americans are of Asian origin, a number that is rapidly increasing. Asian Americans come from many different countries with different languages and customs. About 40 per cent of our immigrants now are from Asia, mostly from the Philippines, China, Taiwan, Korea, Vietnam, Cambodia, Pakistan, and India. The Chinese were the first major group of Asians to come to the United States, attracted by expansion in California and the opportunities to work in mines.

Until recently, Asians were severely limited by U.S. immigration policies. Discriminatory immigration and naturalization restrictions were placed on the Chinese in 1882, and remained in place until after World War II. In 1906 The San Francisco Board of Education excluded al Chinese, Japanese, and Korean children from neighborhood schools. During World War II, Japanese Americans on the West Coast were placed in internment camps because of the fear that they would conspire with a Japanese attack from the Pacific Ocean. A major influx of Asians began in response to new U.S. immigration laws passed in the 1960s, which based immigration quotas more on occupation and education than on region of origin. Immigration policies now favor many Asians, especially those with high educational and professional qualifications enforced by current immigration laws.

A number of groups have come at least partly as a result of Cold War politics since World War II. Koreans are a growing group, concentrated in southern California, Hawaii, Colorado, and New York City. Korean businesses have been the object of violent attacks, such as in the 1992 Los Angeles riots and separate, more recent incidents in New York City. The most recent arrivals are refugees from the political upheavals in Vietnam, Laos, and Cambodia.

Some estimates suggest that by 2050 as many as 10 percent of all Americans will be of Asian-Pacific Islands origins.

WOMEN AND EQUAL RIGHTS

Before the 1970s the Court interpreted the equal protection clause of the Fourteenth Amendment very differently for women than it did for blacks. Whereas the legal tradition clearly intended to keep blacks in a subservient position, the legal system claimed to be protecting women by treating them differently.

In the late eighteenth century, not only were women denied the right to vote, but they had few legal rights, little education, and almost no choices regarding work. The legal doctrine known as **coverture** deprived married women of any identity separate from that of their husbands. Circumstances began to change in the mid-nineteenth century.

THE SUFFRAGE MOVEMENT
A meeting in Seneca Falls, New York in 1848 is often seen as the beginning of the women's **suffrage** (right to vote) **movement**. The meeting produced a ***Document of Sentiments*** modeled after the Declaration of Independence signed by 100 men and women that endorsed the movement.

It took 72 years till the goal of voting rights was reached. With the passage of the **Nineteenth Amendment** in 1920, the suffrage movement that had begun in the early 1800s came to a successful end. The Amendment was brief and to the point: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex."

However, other legal rights were not achieved until the late 20th century, partly because the Courts sought to protect women from injustice. In 1908 the Court upheld an Oregon law that limited female (but not male) laundry workers to a ten-hour workday. The Court claimed that "The two sexes differ in structure of body, in the functions to be performed by each, in the amount of physical strength, in the capacity for long-continued, labor, particularly when done standing...." So biological differences justified differences in legal status, an attitude reflecting protective paternalism.

THE MODERN WOMEN'S RIGHTS MOVEMENT
Other legal rights were not addressed until the 1970s, when the women's movement questioned the Court's justification for different treatment of the sexes under the law. A unanimous Court responded by setting down a new test, **the reasonableness standard**: a law that endorses different treatment "must be reasonable, not arbitrary, and must rest on some ground of difference having a fair and substantial relation to the object of the legislation so that all persons similarly circumstances shall be treated alike."

The "reasonableness" standard was much looser than the "**suspect" standard** used to judge racial classifications: some distinctions based on sex are permitted and some are not. For example, a state cannot set different ages at which men and women are allowed to buy beer, nor can girls be barred from Little League baseball teams, and public taverns may not cater to men only. However, a law that punishes males but not females for statutory rape is permissible, and states can give widows a property-tax exemption not given to widowers. Other practices generally endorsed by the court but now being challenged are the acceptability of all-boy and all-girl public schools and the different rates of military officer promotions (men generally have been promoted earlier than women).

Women and the Military Draft
One of the most controversial issues defining women's rights is the implication of equal rights for the military draft. Should women be treated differently than men regarding military service? The Supreme Court decided in ***Rostker* v. *Goldberg*** (1981) that Congress may require men but not women to register for the draft without violating the due-process clause of the Fifth Amendment. However, other laws passed by Congress regarding differential treatment in the military have recently been challenged. For many years Congress barred women from combat roles, but in 1993, the secretary of defense opened air and sea combat positions to all persons regardless of sex. Only ground-troop combat positions are still reserved for men.

The Equal Rights Amendment
The controversial issues surrounding the military draft contributed to the ultimate failure of **the Equal Rights Amendment**, which read "Equality of rights under the law shall not be denied or abridged by the United States or any State on account of sex." Congress passed this amendment in 1972, but it ran into trouble in the ratification process. By 1978, thirty-five states had ratified, three short of the necessary three-fourths. Many legislators and voters worried that the ERA would require women to be drafted for combat duty. Meanwhile, the time limit for ratification ran out, the Republican Party withdrew its endorsement, and Congress has not produced the two-thirds majority needed to resubmit it to the states.

Abortion Rights
Roe* v. *Wade (1973) broke the tradition of allowing states to decide the availability of abortions within state boundaries. In this case the Court struck down a Texas law that banned abortion except in cases when the mother's life was threatened. The Court argued that the due-process clause of the Fourteenth Amendment implies a "right to privacy" that protects a woman's freedom to "choose" abortion or not during the first three months (trimester) of pregnancy. States were allowed freedoms to regulate during the second and third trimesters.

The decision almost immediately became controversial, with those supporting the decision calling themselves "**pro-choice**" and those opposing "**pro life**." Although the Roe decision still holds, its critics still fight for its reversal. The Court has declared unconstitutional laws that require a woman to have the consent of her husband, but it has allowed states to require underage girls to have the consent of her parents. In the 1989 *Webster* v. *Reproductive Health Services* case, the Court upheld some state restrictions on abortions (such as a twenty-four hour waiting period between request for and the performance of an abortion), but the Court has since refused to overturn Roe.

Discrimination in the Workplace
Since the 1960s laws have been passed that protect women against discrimination in the workplace. **Title VII** of the Civil Rights Act of 1964 prohibits gender discrimination in employment, and has been used to strike down many previous work policies. In 1978, Congress amended Title VII to expand the definition of gender discrimination to include discrimination based on pregnancy. The Supreme Court later extended Title VII to include **sexual harassment**, which occurs when job opportunities, promotions, and salary increases are given in return for sexual favors.

One of the most important recent issues regarding women's rights is "**equal pay for equal work.**" In 1983, the state Supreme Court of Washington ruled that its government had discriminated for years against women by not giving them equal pay for jobs of "comparable worth" to those that men held. This doctrine of **comparable worth** requires that a worker be paid by the "worth" of his or her work, not by what employers are willing to pay. Although the system is difficult to implement, many large companies have adopted sophisticated job evaluation systems to determine pay scales for jobs within their structures.

OTHER CIVIL RIGHTS MOVEMENTS

The gains made by racial groups, ethnic groups, and women have motivated others to organize efforts to work for equal rights. Three of the most active are older Americans, the disabled, and homosexuals. All three groups have organized powerful interest groups, and all have made some progress toward ensuring their rights.

RIGHTS FOR OLDER AMERICANS
The baby boomers born after World War II are now swelling the ranks of Americans over 50, and with their numbers, discrimination against older Americans has gained the spotlight. A major concern is discrimination in the workplace.

Congress has passed several age discrimination laws, including one is 1975 that denied federal funds to any institution discriminating against people over 40. The Age Discrimination in Employment Act raised the general compulsory retirement age to 70. Since then, retirement has become more flexible, and in some areas compulsory retirement has been phased out entirely.

One of the most influential interest groups in Washington is the American Association of Retired Persons (**AARP**). With more than 30 million members, the organization successfully lobbies Congress to consider the rights of older Americans in policy areas such as health, housing, taxes, and transportation.

RIGHTS FOR DISABLED AMERICANS
Disabled Americans make up about 17 percent of the population, and they have organized to fight discrimination in education, employment, rehabilitation services, and equal public access.

The first rehabilitation laws were passed in the late 1920s, but the most important changes came when the Rehabilitation Act of 1973 added disabled people to the list of groups protected from discrimination.

Two important anti-discrimination laws are:

- **The Education for All Handicapped Children Act of 1975 -** This law gave all children the right to a free public education.
- **The Americans with Disabilities Act (ADA) -** This law, passed in 1990, extended many of the protections established for racial minorities and women to disabled people. However, beginning in 1999, the Supreme Court has issued a series of decisions that effectively limit the scope of ADA, excluding conditions such as nearsightedness and carpal tunnel syndrome as disabilities.

These laws have been widely criticized because they require expensive programs and alterations to public buildings. Activists for the movement criticize the owners of public buildings and the government for not enforcing the laws consistently.

HOMOSEXUAL RIGHTS

In the last two decades, homosexuals have become much more active in their attempt to gain equal rights in employment, education, housing, and acceptance by the general public. In recent years several well-organized, active interest groups have worked to promote the rights of homosexuals and lobby for issues such as AIDS research funding. Many cities have banned discrimination, and many colleges and universities have gay rights organizations on campus.

Despite, these changes, civil rights for homosexuals is still a controversial issue, as reflected in 1993 by the resistance to the Clinton administration's proposals to protect gay rights in the military. The resulting "don't ask, don't tell" policy has not resolved the ambiguous status of gays in the military, and the Supreme Court has not yet ruled on its constitutionality.

The Supreme Court first addressed homosexual rights in 1986 when it ruled in ***Hardwick* v. *Georgia*** that Georgia's law forbidding homosexual relations was constitutional. The Court based its decision on **original intent** (the intent of the founders), noting that all 13 colonies had laws against homosexual relations, as did all 50 states until 1961. Most recently, in *Romer v. Evans* (1996) the Court provided some support to homosexuals when it struck down a Colorado amendment to the state constitution that banned laws protecting homosexuals. In the majority opinion, Justice Anthony Kennedy wrote that "a bare desire to harm a politically unpopular group cannot constitute a legitimate governmental interest." The Court reversed *Hardwick v. Georgia* in 2003 with ***Lawrence* v. *Texas***, when it held that laws against sodomy violate the due process clause of the 14th amendment. In the word of the Court,

> "The liberty protected by the Constitution allows homosexual persons the right to choose to enter upon relationships in the confines of their homes and their own private lives and still retain their dignity as free persons."

Currently, a controversial topic is state recognition of homosexual marriages and civil unions. After courts in Massachusetts upheld the right in that state in 2004, a number of homosexual marriages were conducted in other areas of the country, including San Francisco and New York City. In reaction, several states passed initiatives in the election of 2004 that banned recognition of homosexual marriages.

REVERSE DISCRIMINATION

By the 1970s the focus of concern turned to racial balance as opposed to mere nondiscrimination, or **equality of opportunity vs. equality of result**. Do civil rights required merely the absence of discrimination, or do they required that steps be taken to insure that blacks and whites enroll in the same schools, work in the same jobs, and live in the same housing?

The Courts helped define the issue in the 1978 ***Bakke* v. *California*** case that questioned the quota practices of the University of California medical school at Davis. Bakke, a white student denied admission to the school, sued the state, claiming **reverse discrimination**, since minorities with lesser qualifications were admitted to

the medical school. In a divided decision, the court ruled in Bakke's favor, declaring quotas unconstitutional although allowing race as one criterion for admission to a public institution.

Many cases followed that further defined reverse discrimination. Two examples are:

- ***United Steelworkers* v. *Weber*** (1979) - Kaiser Aluminum was sued for reverse discrimination in its hiring practices. This time the courts ruled that a private company could set its own policies, and the government could not forbid quotas in the case
- ***Richmond* v. *Croson*** (1989) - The court struck down the city of Richmond's plan to subcontract 30% of its business to minority companies, but the decision was bitterly opposed by three members of the Court.

In 2003 in two cases involving policies at the University of Michigan, the Supreme Court's ruling supported the constitutionality of affirmative action programs and the goals of diversity. The Court struck down the university's plan for undergraduate admission, saying that it amounted to a quota system. However, they upheld the plan used by the law school, which took race into consideration as part of a broad consideration of applicants' backgrounds.

As the United States continues to become a more and more diverse country, the nature of civil rights issues for minority groups certainly will change. Despite the changes, the pursuit of equality undoubtedly will remain a constant in the American political culture.