Civil Rights and Public Policy

*Edwards’*

*Chapter 05*
Chapter Learning Objectives

- Understand how civil rights have been used to extend more equality to groups that historically have been subject to discrimination.
- Explain how the 14th Amendment guarantee of “equal protection under the law” has been applied to the idea of equality.
- Examine how the Supreme Court has used different levels of judicial scrutiny for racial, ethnic, and gender classifications.
- Evaluate the opposing positions of those who favor affirmative action and those who claim that these policies create reverse discrimination.
Introduction

- **Civil Rights**
  - **Definition:** Policies designed to protect people against arbitrary or discriminatory treatment by government officials or individuals.

- **Today’s civil rights struggles** focus on
  - **Racial Discrimination**
  - **Gender Discrimination**
  - Discrimination based on **age**, **disability**, **sexual orientation** and other factors
Conceptions of Equality

- A belief in equal rights has often led to a belief in equality of opportunity
  - American society does not emphasize equal results or equal rewards!

- Early American Views of equality
  - Few colonists, the Founders included, believed in true equality. Delegates to the Constitutional Convention did their best to avoid facing the issue of slavery.
The Constitution and Inequality

- The delegates to the Constitutional Convention came up with a plan for government, not guarantees of individual rights.
  - The world equality does not appear in the Constitution.
- The 14th Amendment forbids the states from denying to anyone “equal protection of the laws.”
What is Equal Protection?

- The Supreme Court has ruled that classifications that bear a *rational relationship* to some legitimate government purpose (such as age classification) are constitutional.

- Racial and ethnic classifications are inherently suspect and are valid only if they serve a compelling *national* interest.
What is Equal Protection?

- Classifications based on gender fit somewhere between these extremes and are presumed neither to be constitutional nor to be unconstitutional but must bear a substantial relationship to an important legislative purpose.
Race, The Constitution, and Public Policy
The Era of Slavery

- During the era of slavery, the Supreme Court ruled that African Americans had no rights under the government, whether they were free, or not.

  - *Dred Scott v. Sandford* (1857): a slave was chattel; Congress had no right to ban slavery in the western territories

- The 13th Amendment abolished slavery (1865)
The Era of Reconstruction and Resegregation

- This era lasts from 1865 to 1954.
- During this era, laws mandated separate facilities for African Americans and whites.
- Many states passed “Jim Crow Laws” or Black Codes.
- The Court sanctioned segregation in 1896 (Plessy v. Ferguson) declaring that segregation in public facilities was not unconstitutional as long as they were substantially equal.
The Era of Reconstruction and Resegregation

- Limited progress toward desegregation was made in the first half of the 20th Century
  - Executive orders desegregating the armed forces
  - Guinn v. United States (1915) banned the grandfather clause
  - Smith v. Allwright (1944) overturned all-white primaries
  - Sweatt v. Painter (1950) blacks are entitled to the same professional and graduate education as students of other races.
The Era of Civil Rights

- *Brown v. Board of Education* (1954) ends segregation
  - The Court held that school segregation was inherently unconstitutional because it violated the 14th Amendment’s guarantee of equal protection.
  - The Court ordered integration.
- The civil rights movement dates from 1955 when Rosa Parks refused to give up her seat on a Montgomery, Ala. bus to a white man.
Sit-ins, protests, and marches characterized the civil rights movement.

Congress reacted to the civil rights movement by passing the Civil Rights Act of 1964

- Made racial discrimination illegal in places of “public accommodation”
- Forbade many forms of job discrimination
- Congress cut off federal aid to schools that remained segregated.
Getting and Using the Right to Vote

- The struggle for suffrage, the right to vote, was one of the most crucial elements of the civil rights movement.

- The 15th Amendment gave blacks the right to vote
  - States used grandfather clauses, poll taxes, white primaries, and literacy tests to keep Blacks from voting.
Getting and Using the Right to Vote

- Twenty-fourth Amendment: Eliminated poll taxes for federal elections.
- Voting Rights Act of 1965: Helped end formal and informal barriers to voting.
Getting and Using the Right to Vote

- The 24th Amendment (1964) prohibited poll taxes.
- The Voting Rights Act (1965) further guaranteed African Americans the right to vote.
  - The Voting Rights act resulted in more voter registration and the election of many Blacks to public office.
Other Minority Groups

- All minorities have benefited from the nondiscrimination policies originally passed to protect African Americans.
- America is heading toward a minority majority where minority groups will outnumber Caucasians of European descent.
- Native Americans are the oldest and among the most exploited and impoverished minority groups.
- Hispanic Americans will soon displace African Americans as the largest minority group.
- Asian Americans are the fastest growing minority group
  - They were placed in “internment camps” during World War II
  - *Korematsu v. U.S.* (1944) upheld the internment as constitutional
Women, the Constitution, and Public Policy
The Battle for the Vote

- Nineteenth Amendment: Extended suffrage to women in 1920.
- The “Doldrums”: 1920-1960
  - Laws were designed to protect women, and protect men from competition with women.
- The Second Feminist Wave
  - *Reed v. Reed* (1971): any arbitrary sex-based classification violated the equal protection clause of the 14th Amendment.
  - *Craig v. Boren* (1976) established the *medium scrutiny* standard under which sex discrimination would be presumed to be neither valid nor invalid.
Women in the Workplace

- Society’s perceptions of a woman’s role has changed.
  - The traditional stay-at-home mother is becoming a thing of the past.
  - The percentage of women in the workplace has increased dramatically.
- Congress has made important progress in the area of gender discrimination in the workplace.
Wage Discrimination and Comparable Worth

- Comparable worth is the concept that women should be paid the same as men for jobs that require comparable skill.
- The Supreme Court has never ruled on the idea of comparable worth.
- Median annual earnings for full-time women workers are only about two-thirds those of men.
Women in the Military

- Women have served in every branch of the military since World War II.
- The differences in treatment of men and women in the military service are that
  - women are not required to register for the draft when they turn 18 yrs. old
  - and women are not permitted to serve in combat.
- Women have served as combat pilots.
Sexual Harassment

- Sexual harassment violates federal policies against sexual discrimination in the workplace.
- The Supreme Court ruled in *Harris v. Forklift Systems* (1993) that no single factor is required to prove to win a sexual harassment case and the law is violated when the workplace environment "would reasonably be perceived, and is perceived, as hostile or abusive."
  - Sexual harassment has most recently been a problem in the military.
Newly Active Groups under the Civil Rights Umbrella
Civil Rights and the Graying of America

- The elderly is the **fastest growing** segment of the American population.
- Since 1971, Congress has passed several laws that ban various types of **age** discrimination, especially in the area of employment.
Other Disadvantaged Groups

- Are the **Young** a Disadvantaged Group, Too?
  - The young have suffered from inferior treatment under the law. (Walter Polovchak’s return to the Soviet Union?; can a child “divorce” his parents?)

- Civil Rights and People With **Disabilities**
  - Disabled persons have suffered both **direct**, and **indirect** discrimination.
  - The Americans with Disabilities Act (1990) required **reasonable** accommodations for the disabled.
Other Disadvantaged Groups

- **Gay and Lesbian Rights**
  - Gays and lesbians have faced discrimination in hiring, education, access to public accommodations, and housing.
  - Important victories have been won for gay rights.
  - The place for gays in the military has been particularly controversial.
    - The Pentagon’s policy of “don’t ask, don’t tell” reaffirmed the Defense Department’s strict prohibition against homosexual activity.
Affirmative Action
Affirmative Action

Definition:

- A policy designed to give special attention to or compensatory treatment of members of some previously disadvantaged group.
- The goal is to move beyond equal opportunity toward equal results.
- The constitutional status of affirmative action has not been very clear.
Affirmative Action

- The federal government has mandated that all state and local governments must adopt an affirmative action program.
- Some groups have claimed “reverse discrimination.”
  - the Court, in *Regents of the University of California v. Bakke* (1978) held that a state university could not admit less qualified individuals solely because of their race, but ruled that race could be used as a criterion for admission.
Affirmative Action: Flip Flops?

- In *United Steelworkers of America, AFL-CIO v. Weber* (1979), the Court held that a voluntary union-and-management-sponsored program, which employed a quota-system for minorities, was not discriminatory because Kaiser Aluminum’s special training program was intended to rectify past years of discrimination by the company.
Affirmative Action: Flip Flops?

- The Court in 1990 upheld a specific affirmative action program that was not devised to remedy past discrimination.
  - Congress may require preferential treatment to increase minority ownership (broadcast licenses)
  - Overturned the 1990 decision saying that federal programs that classify people by race are unconstitutional, even if done for benign purposes.
There is little support from the general public for affirmative action programs.

Many are viewed as reverse discrimination and believe merit is the only fair basis for distributing benefits.

Proponents argue that merit is highly subjective and can embody subconscious prejudices.

- They believe affirmative action accomplishes important social goals.
Understanding Civil Rights and Public policy
Civil Rights and Democracy

- Both equality and individual liberty are important democratic principles but they may conflict with themselves.
  - Equality tends to favor majority rule, but equality threatens individual liberty in situations where the majority wants to deprive the minority of its rights.
  - Minorities have made significant gains even when they lacked the vote.
Civil Rights and the Scope of Government

- Civil rights laws increase the scope of government by telling individuals and institutions that there are things that they must do and things that they cannot do.

- Civil rights is an area in which increased government activity in protecting basic rights can lead to greater checks on the government by those who benefit from such protections.