

CIVIL RIGHTS

I. EQUAL RIGHTS UNDER THE LAW

- a. Review the court case on discrimination on page 439; the Brose case
- b. **CIVIL RIGHTS**- the rights of all people to be free from irrational discrimination such as that based on race, religion, ethnicity or gender
- c. The Constitution protects civil rights in two ways
 - i. Ensures that government officials do not discriminate against us
 - ii. Grants national and state governments the power to protect these civil rights against interference by private individuals
- d. The framers believed that all men- at least all white adult men- were equally entitled to life, liberty and the pursuit of happiness
- e. Framers created a system of **NATURAL RIGHTS**- the rights of all people to dignity and worth; also called **HUMAN RIGHTS**
 - i. These rights do not depend on citizenship; these are the rights of **ALL** people

II. EQUALITY AND EQUAL RIGHTS

- a. Citizens of the U.S. are committed to equality
 - i. Equality of opportunity regardless of race, ethnic origin, religion and in recent years, gender and sexual orientation
 - ii. Traditionally, we have emphasized **INDIVIDUAL** achievement, but recently politicians and civil rights leaders have emphasized attention on the concept of **EQUALITY BETWEEN AND AMONG GROUPS**

1. They champion programs like
AFFIRMATIVE ACTION – remedial action
to overcome discrimination against
minorities and women
- iii. Equality can mean EQUALITY OF RESULTS;
debate on social justice and individualism

III. CITIZENSHIP RIGHTS

- a. Important legal rights come with citizenship
- b. HOW CITIZENSHIP IS ACQUIRED AND LOST
 - i. 14th Amendment in 1868 gave all U.S. citizens constitutional protection; before it was the states
 - ii. NATURALIZATION- people can acquire citizenship by naturalization, a legal action conferring citizenship on an alien
 1. Table 16-1 on page 441 describes requirements
 2. Any state or federal court, or the INS can grant citizenship
 - iii. DUAL CITIZENSHIP – two or more nations may consider a person a citizen; if a citizen renounces one's citizenship, they have exercised the RIGHT OF EXPATRIATION
- c. RIGHTS OF U.S. CITIZENS
 - i. A person becomes a citizen of one of the 50 states merely by residing in that state; residence is the place a person calls home- might be different where he is living
 - ii. Most of our important rights flow from STATE citizenship
 - iii. In times of war, the rights and liberties of citizenship are tested and have been curbed
 1. Upheld internment of Japanese Americans in “relocation camps”

2. Bush declared American citizens working for Al-Qaeda to be enemy combatants

d. RIGHTS OF ALIENS

- i. During periods of suspicion and hostility toward aliens, protections of citizenship are even more precious
- ii. Enemy Alien Act of 1798 allow the president to expel citizens of a country with which we are at war
- iii. Aliens get the rights of freedom of religion and speech; they have the right of due process under the law
- iv. Congress and the states may deny or limit welfare and many other kinds of benefits to aliens
- v. Court has upheld laws barring the employment of aliens as police officers, schoolteachers, and probation officers

IV. THE QUEST FOR EQUAL JUSTICE: Civil rights to women and minorities

a. RACIAL EQUALITY –

- i. Started to be a national focus in the Civil War
 1. As a result of the war, the 13th , 14th and 15th Amendments became part of the Constitution
- ii. SEGREGATION AND WHITE SUPREMACY
 1. After 1877 and the end of Reconstruction, much discrimination occurred against the African Americans; so much that the Supreme Court ruled narrowly on the 13th , 14th and 15th Amendments and failed to accomplish the intended protection of the rights of the African Americans

2. For a century after the Civil War, the rights of African Americans were denied and white supremacy ruled.
 3. After WWI, there was a northern migration of African Americans and with voting privileges, the vote became important in national elections; African Americans became politically involved
- iii. SLOW GOVERNMENT RESPONSE
1. Brown v. Board of Education in 1954, SC prohibited racially segregated schools
 2. Truman and Eisenhower used their executive authority to fight segregation in the armed services and federal bureaucracy
- iv. A TURNING POINT
1. December 1, 1955 in Montgomery, Alabama; Rosa Parks
 2. MLK and nonviolent resistance
 3. JFK started but LBJ enacted the Civil Rights Act of 1964 which forbids discrimination based on race, color, religion, sex or nationality; and the Voting Rights Act of 1965
- v. RIOTS AND REACTION
1. Watts riots in 1966 and the Detroit riots in 1967; with Vietnam and Watergate, much less activity in race controversy
 2. 2008 first African American president
- b. WOMEN'S RIGHTS
- i. Seneca Falls Women's Rights Convention of 1848 launched the Women's movement
 - ii. Wyoming was the first state to enact WOMEN'S SUFFRAGE;
 - iii. 19th Amendment was ratified in 1920

- iv. Expanded the rights of women from the 1964 Civil Rights Act to include sexual harassment
- v. Many women feel the “class ceiling” effect in business

c. HISPANICS

- i. Due to bilingual and English not being the primary language, there has been significant discrimination against Hispanics
- ii. Hispanics have not had the political success that other minorities have due to lack of voter registration or differences politically
- iii. ½ of all Hispanics live in either California or Texas

d. ASIAN AMERICANS

- i. 10MM people from many different countries and backgrounds
- ii. The Naturalization Act of 1906 forbid Asian Americans from becoming a U.S. citizen
- iii. CHINESE AMERICANS- first Asians to come to the U.S.; 1847; used on railroads- Central Pacific;
 - 1. Chinese Exclusion Act of 1882 restricted Chinese immigration; 1943 repeal of the act and allowed citizenship
 - 2. 1965 Amendments to the Immigration and Naturalization Act went further to end the nationality criteria
- iv. JAPANESE AMERICANS – by beginning of 20th century, overt hostility
 - 1. Internment camps during WWII; discrimination continued
- v. OTHER ASIAN AMERICANS
 - 1. Koreans faced discrimination over housing and jobs
 - 2. Filipinos were considered U.S. nationals, but still were discriminated against

3. Newest immigrants are Vietnamese,
Cambodians and Loasians

a. California and Louisiana

e. NATIVE AMERICANS

- i. 2MM
- ii. History of discrimination against Native Americans; stain on our human rights record
- iii. Indian Removal Act of 1830; Trail of Tears
- iv. Discrimination continued and government programs attempted to assimilate Native Americans into mainstream U.S. culture
- v. Native American rights organizations protested discrimination against Native Americans over housing, employment and health care; American Indian Movement; ACLU has joined in protest and court action
- vi. Continue to face discrimination and overall live in poverty
- vii. Ben Nighthorse Campbell became 1st Native American to be elected to Congress

V. EQUAL PROTECTION OF THE LAWS: WHAT DOES IT MEAN?

- a. EQUAL PROTECTION CLAUSE and DUE PROCESS LAWS ensure GOVERNMENTS do not deprive any individual of life, liberty or property; however that doesn't deal with an individual discriminating; that does not violate the Constitution
 - i. The Constitution forbids UNREASONABLE classifications; a law prohibiting redheads from voting; laws denying people under 18 from voting is not unreasonable
- b. CONSTITUTIONAL CLASSIFICATIONS AND TESTS

- i. How to distinguish between constitutional and unconstitutional classifications? Supreme Court uses 3 tests: rational basis test, strict scrutiny test, and the heightened scrutiny test
- ii. **THE RATIONAL BASIS TEST**- places the burden of proof on the parties attacking the law; must show that the law has no rational or legitimate governmental goals.
 - 1. Traditionally affecting economic issues
 - 2. Recently started on non-economic issues
- iii. **SUSPECT CLASSIFICATIONS AND STRICT SCRUTINY**- burden is on the government to show there is both a “compelling government interest” to justify such a classification and no less restrictive way to accomplish this compelling purpose
 - 1. Applies strict scrutiny to suspect classifications which are ones through which people have been deliberately subjected to unequal treatment
- iv. **QUASI-SUSPECT CLASSIFICATIONS AND HEIGHTENED SCRUTINY** – government must show that its classification serves “important governmental objectives.”
 - 1. 1st used in 1971
 - 2. More laws survive heightened scrutiny than strict scrutiny
- v. **POVERTY AND AGE**
 - 1. Poverty has had some heightened review such as the “rich” districts in school funding violate the state constitutions for free and equal education in Texas, Ohio and CT
 - 2. Age is not a suspect classification; 18 to vote, 21 to drink; O’Connor said states can discriminate if it is a legitimate state interest

vi. SEXUAL ORIENTATION – As discussed in previous chapters, the SC found that classifying based on sexual orientation violated the U.S. Constitution

1. However, same-sex marriages do not come under the same scrutiny; referred to the states

vii. FUNDAMENTAL RIGHTS AND STRICT SCRUTINY

1. Court also strictly scrutinizes laws impinging on FUNDAMENTAL RIGHTS- whether or not it is explicitly or implicitly guaranteed by the Constitution

a. Rights to travel or to vote

b. Education, housing or welfare benefits have NOT been deemed to be fundamental

c. 14th Amendment is not only legal basis; congressional legislation; Civil Rights Act of 1964 and Voting Rights Act of 1965

VI. VOTING RIGHTS

a. INTRO

i. Article I and II of the Constitution have specific rules to enact elections and to ensure equal voting ability under the scrutiny tests

ii. As a result, officials seeking to deny African Americans the right to vote often depended on violence and intimidation, as well as developing biased registration requirements; smallest errors on registration forms

iii. In many Southern states, LITERACY TESTS were used to discriminate against African Americans

1. Local officials were able to keep black voters from participating through the use of WHITE PRIMARY; one-party South of early 20th Century

b. PROTECTING VOTING RIGHTS

- i. Smith v. Allwright (1944) declared the white primary unconstitutional
- ii. 1960 Court held that RACIAL GERRYMANDERING- redrawing districts to ensure African Americans would be minorities in districts –was contrary to the 15th Amendment
- iii. 1964, 24th Amendment ended the poll tax; a tax required to vote; ruled unconstitutional for all elections in Harper v. Board of Elections (1966)

c. THE VOTING RIGHTS ACT OF 1965

- i. Renewed in 1982 and in 2006 extended for another 25 years
- ii. Prohibits voting qualifications or standards that result in a denial of the right to vote based on race or color; bars the form of threats or intimidation at preventing citizens from voting
- iii. MAJORITY-MINORITY DISTRICT- a congressional district created to include a majority of minority voters; ruled constitutional as long as race is not the main factor in redistricting

VII. RIGHTS TO EQUAL ACCESS: ACCOMODATIONS, JOBS AND HOMES

a. ACCOMODATIONS

- i. 1883, SC declared unconstitutional an act of Congress that made any public conveyance, hotel or theatre to deny accommodations to any person of race or color on the grounds of the 14th Amendment

- ii. Supreme Court struck down JIM CROW LAWS that made it illegal for blacks and whites to use same bathroom, water dispenser, etc.
- iii. SC reinforced segregation under 14th Amendment in 1896 with Plessy v. Ferguson in determining as long as the segregated accommodations were “equal”
- iv. Beginning in the 1960s, Congress began to act to prevent such segregation under the COMMERCE CLAUSE of the Constitution which was broadly interpreted to regulate interstate commerce and thus the accommodations
- v. CIVIL RIGHTS ACT OF 1964 AND PLACES OF PUBLIC ACCOMODATION – established rights of equal access; authorized massive use of federal authority to combat privately imposed racial discrimination. Title II prohibited segregation of any kind in any establishment; SC sustained constitutionality within a few months of enactment
- vi. CIVIL RIGHTS ACT OF 1964 AND EMPLOYMENT – also barred discrimination of employment under Title VII; 15 or more people
 - 1. Exceptions- religious institutions may use religious standards; may take into account age, sex if job is dependent on that- construction; women in women’s locker rooms
 - 2. EEOC was created under Title VII; allows for CLASS ACTION SUITS if people’s rights were violated
- vii. FAIR HOUSING ACT AND AMENDMENTS – last frontier of civil rights crusade
 - 1. Housing patterns continue to be segregated

2. In 1948, SC made racial or religious RESTRICTIVE COVENANTS legally unenforceable
3. 1968 Fair Housing Act forbids discrimination in housing
4. Also covers mortgage loans to minorities
5. Still discriminating against Hispanics and African Americans

VIII. EDUCATION RIGHTS

a. THE END OF “SEPARATE BUT EQUAL”: BROWN

V. BOARD OF EDUCATION

- i. Segregation itself was determined to be unequal and discriminatory
- ii. Title VI of the Civil Rights Act of 1964 would withdraw federal funds from schools on the grounds of discrimination of race, color or national origin

b. FROM SEGREGATION TO DESEGREGATION- BUT NOT YET INTEGRATION

- i. Segregated schools had to develop plans to integrate; some courts mandated busing across neighborhoods; very unpopular
- ii. SC sustained that busing only for DE JURE SEGREGATION, officially sanctioned segregation, not DE FACTO SEGREGATION, arising out of social and economic conditions
- iii. 1990s, SC restricted the role of federal judges in segregation cases and referred back to state and local

IX. THE AFFIRMATIVE ACTION CONTROVERSY

- a. In the ‘60s a new debate emerged; many people asserted that government neutrality is not enough

- b. Discrimination so debilitated people that neutrality wasn't enough; had to help them out
- c. Called for AFFIRMATIVE ACTION or even REVERSE DISCRIMINATION
- d. In Univ. of California Regents v. Bakke (1978) SC ruled unconstitutional due to a QUOTA – set of numbers of admissions that excluded whites solely due to race
- e. Affirmative Action programs are not all necessarily unconstitutional
- f. REAFFIRMING THE IMPORTANCE OF DIVERSITY
 - i. Gratz v. Bollinger (2003, U of Michigan) SC struck down the policy as too mechanical; reaffirmed Bakke decision
 - ii. Court determined that minority status can be part of a holistic review of a candidate's standing, just can't be quantifiable
- g. CALIFORNIA'S PROPOSITION 209 AND OTHER PLANS
 - i. Going further from Bakke, proposition 209 amended the state constitution to not allow any discrimination based on race, sex, color, ethnicity or national origin in public employment, public education, or public contracting; eliminating reverse discrimination

X. EQUAL RIGHTS TODAY

- a. As middle class African Americans have moved to the suburbs, the underclass blacks have even more poverty and despair; wider gap
- b. Same situation with Hispanics
- c. Some contend that rather than concentrating on race, we should concentrate on class differences due to

factors such as poor urban education and lack of skills related to the job market

- d. One of the most important lessons of the civil rights movement is that individuals can make a difference:
Rosa Parks and MLK