

CIVIL RIGHTS

Civil rights are policies that protect individuals against discrimination in such areas as voting, accessibility to housing, employment and job opportunities, to name a few. Throughout most of our history, civil rights have focused on the status of African Americans. Women began to demand equal treatment in the mid-nineteenth century, and that goal remains elusive to a degree. More recently, victims of discrimination based on their age, physical or mental disability, and sexual preference have begun to speak up.

From Slavery to Jim Crow

Although the Confederation Congress prohibited slavery in the Northwest Territory (Northwest Ordinance, 1787), the framers somewhat reluctantly recognized the institution in the Constitution. Slaves were counted as three-fifths a person for taxation and representation purposes. The international slave trade was permitted at least until 1808, and slaves who ran away to a free state had to be returned. Although slavery gradually ended in the North (New York became the last northern state to formally emancipate all its slaves in 1827), free blacks were routinely denied the right to vote in the North and several states barred them from settling. Meanwhile, in the southern states slavery became entrenched as the Cotton Kingdom grew. In the decades before the Civil War, the expansion of slavery into the lands in the West divided the country.

Abolitionists demanded the immediate emancipation of the slaves. The publication of *Uncle Tom's Cabin* (1852), a bestselling attack on the injustices of slavery, and the Supreme Court's decision in *Dred Scott v. Sanford* (1857) that denied citizenship to African Americans heightened tensions on both sides of the issue. The election of Abraham Lincoln in 1860 tipped the scales, and the Civil War began in the spring of 1861.

The first steps toward recognizing the civil rights of African Americans came during the immediate aftermath of the Civil War. Lincoln's Emancipation Proclamation (January 1, 1863) granted freedom to slaves still under the Confederacy, but did not apply to the border states that remained in the Union. Slavery in the United States did not end completely until the adoption of the Thirteenth Amendment in 1865. The Fourteenth Amendment (1868) granted African Americans' citizenship; it strongly suggested that black men 21 years of age or older had the right to vote, and prohibited the states from denying individuals "equal protection under the law." Under the Fifteenth Amendment (1870), Americans could not be denied the right to vote. Congress also took action.

The Civil Rights Act of 1875 sought to protect blacks against discrimination in public accommodations such as hotels and public transportation. Under the law, for example, an African American could not be denied service in a restaurant solely on the basis of his/her race, color, or previous condition of servitude. But the legislation was struck down by the Supreme Court in the *Civil Rights Cases* (1883), which found that the equal protection clause only applied to actions by the state and was not meant to regulate private conduct. If state laws denied blacks access, it might be another matter.

Following the end of Reconstruction, the southern states enacted laws that were intended to severely limit the newly won rights of African Americans. The Jim Crow Laws not only established a rigidly segregated society, but took away the vote of most blacks through such devices as the **poll tax**, the **literacy test**, and the **grandfather clause**. The poll tax was a tax imposed by local or state governments as a prerequisite for voting; the literacy test required proof of an ability to read and/or write before a person would be allowed to vote. The grandfather clause exempted individuals from the poll tax or literacy test if they or their ancestors could vote in 1867. This addressed the issue of poor, illiterate whites in the South, all of whom presumably had relatives who were eligible to vote in the past.

It was segregation that was challenged first. A test case was brought over the constitutionality of a Louisiana statute that required railroads to have separate cars for blacks and whites. In *Plessy v. Ferguson* (1896), the Court argued that the fact the races were separated did not mean one was inferior to the other. It established the “separate but equal doctrine” that effectively approved **de jure segregation**, in other words, segregation based on law.

In the first half of the twentieth century, civil rights for African Americans slowly advanced through the actions of the Supreme Court and the Executive Branch. The grandfather clause was struck down in *Guinn v. United States* (1915). The so-called **white primary**, which barred black voters from participating in a primary election, was declared unconstitutional in *Smith v. Allwright* (1944). The Democratic Party was so strong in the South in the late nineteenth and early twentieth centuries that whoever won the Democratic nomination was elected. The primary was what was important, not the general election. In *Sweatt v. Painter* (1950), the Court indicated that the “separate but equal doctrine” was not valid in law schools and other professional schools. While Congress took no action on discrimination, President Roosevelt prohibited employment discrimination based on race by defense contractors during World War II, and President Truman ordered the desegregation of the armed forces by executive order in 1948.

The Struggle for Equality

After 1950, the courts and Congress took the lead in advancing equality against the backdrop of the civil rights movement. The Supreme Court struck down the concept of “separate but equal” public schools in 1954 in *Brown v. Board of Education of Topeka, Kansas*. In the following year, the Court directed local school districts to develop desegregation plans, which federal district courts needed to review (Brown II). Although the process was expected to move ahead “with all deliberate speed,” integration proceeded slowly until the early 1970s. The Court recognized in *Swann v. Charlotte-Mecklenburg County Board of Education* (1971) that in school districts where there was a history of segregation, busing students within the respective school district was a legitimate tool to achieve a degree of racial balance. The case also raised the issue of **de facto segregation**, meaning segregation based on living patterns. It was certainly true in many states in the North that blacks and whites attended separate schools, not because the law required it, but because of where they lived. Court-ordered busing in many northern cities in the 1970s was extremely controversial.

Just as the Court was moving to dismantle segregation in public schools, African Americans directly challenged discrimination in other areas. The Montgomery (Alabama) bus boycott and

the sit-in demonstrations at lunch counters across the South showed the power of non-violent protest as well as the economic clout of the black community. The civil rights demonstrations in Birmingham (Alabama) and the police violence they provoked — as well as the August 1963 March on Washington for jobs and freedom — brought blacks' struggle for equality to the nation's attention. The Civil Rights Movement did not involve just African-Americans, however. Whites from around the country participated as well. It was in the context of these developments that Congress took action.

President Kennedy submitted a comprehensive civil rights bill to Congress in 1963, but made little headway with it. Three factors ultimately led to the passage of the Civil Rights Act of 1964 — growing public support for equal treatment for African Americans, Kennedy's assassination, and the political skill of his successor Lyndon Johnson. The wide-ranging new law included the following provisions:

- Prohibited discrimination in hotels, restaurants, and similar places of public accommodation, based on the power to regulate interstate commerce.
- Prohibited discrimination in employment based on race, color, religion, natural origins, and sex (gender).
- Authorized the Justice Department to take legal action to desegregate public schools.
- Withheld federal funds from state and local programs that discriminated on the basis of race.

While far reaching in its scope, the law was just a first step. Congress passed the landmark Voting Rights Act in the following year, which effectively ended the use of literacy tests and similar means to deny African Americans access to the polls. It also required the federal government to approve any changes in voter qualifications and/or procedures, and promoted voter registration in areas with historically low turnout. The Civil Rights Act of 1968 prohibited discrimination in housing based on race, religion, ethnicity, or sex.

The Twenty-fourth Amendment (1964) outlawed the poll tax in federal elections. The combined result was a significant increase in African American participation in politics in the South by the 1970s and in the number of black elected officials. Other racial/ethnic minorities — Mexican Americans, Native Americans, Asian Americans — also benefited from the gains the civil rights movement made in both Congress and the courts. These groups pushed their own political agendas through such organizations as the Mexican American Legal Defense and Education Fund (MALDEF) and the American Indian Movement (AIM).

Women's Rights

The women's movement began in July 1848 when a group of reform-minded men and women drafted the **Seneca Falls Declaration of Rights and Sentiments**. Modeled after the Declaration of Independence, it was in many ways a very contemporary document. Besides demanding women's right to vote, the Declaration called for equal access to employment and education, and a greater role for women in organized religion. The first demand was realized comparatively early.

Fourteen states granted women full suffrage and twelve others allowed them to vote for presidential electors before the Nineteenth Amendment was ratified in 1920. The role women played during World War I, serving in the military for the first time and taking nontraditional roles in factories, convinced many that they deserved the vote. President Wilson supported the Nineteenth Amendment. Although an **Equal Rights Amendment (ERA)** was introduced in 1923, no considerable progress was made on gender equality issues until the 1960s. The National Organization for Women was founded in 1966, and Congress formally proposed a new ERA in 1972. The amendment faced well-organized opposition, and was not approved by three-quarters of the state legislatures even though the deadline for ratification was extended. There have been no serious attempts in recent years to revive the ERA; court decisions and legislation have filled the gap to a degree.

The battle for women's rights was fought out in the courts, at first with little success. Judges either maintained that the equal protection clause of the Fourteenth Amendment applied only to African Americans or found discrimination against women, for instance not allowing women to practice law, "reasonable." This is known as the minimum rationality test, which means that discrimination against women was constitutional if there was some "rational" basis for it. That rational basis was often found in stereotypes about women's roles, such as "her place was in the home." Things began to change in the 1970s. In *Reed v. Reed* (1971), the Supreme Court struck down a state law that gave preference to men over women as administrators of an estate, arguing that the distinction was arbitrary. A key change came in 1976 when the Court abandoned the rationality test in favor of **heightened scrutiny** (*Craig v. Boren*, 1976), where classifying individuals based on gender must be related to an important government objective. Under the new standard, the Court found that both men and women were entitled to alimony, but that women may be excluded from the draft.

As noted earlier in this chapter, the 1964 Civil Rights Act prohibited gender-based discrimination in employment. The courts have also recognized that sexual harassment in the workplace is a form of discrimination. Under Title IX of the Education Amendments of 1972, educational programs receiving federal funds cannot discriminate on account of sex. The Title IX legislation is responsible for bringing a degree of equality to men's and women's sports at the high school and collegiate level. Businesses cannot refuse to hire or promote pregnant women, and a company's sick leave/health benefits package must cover pregnancy and childbirth (**Pregnancy Discrimination Act of 1978**). The **Civil Rights and Women's Equity and Employment Act (1991)**, which effectively overturned several Supreme Court decisions in the area of employment discrimination, allows significant damage awards in instances of intentional discrimination, and shifts the burden of proof from the employee to the employer in certain types of cases.

In 1963, Congress passed the Equal Pay Act that required men and women receive the same compensation for the same work. Women's groups recognized, however, that the wages for traditional women's jobs, secretary, for example, remained significantly lower than jobs held by men that required comparable skill. This discrepancy led to the concept of **comparable worth** or pay equity, in other words, compensation is based on the worth of a job not the job title/classification. Determining comparable worth is a complicated process, and although adopted by several states and municipalities, it has found little support in Congress or the federal courts.

Age, Disability, and Sexual Orientation

Racial minorities and women are not the only groups that have successfully demanded recognition of their rights. Congress and the courts have addressed discrimination based on age and physical/mental disability in the last few years. Federal authorities, however, are not willing to treat sexual orientation in the same way as race or gender. The Supreme Court found that a constitutionally protected right of privacy did not extend to consensual homosexual activity (*Bowers v. Hardwick*, 1986). State and local governments have recognized gay and lesbian rights in such areas as employment and housing. In *Romer v. Evans* (1996), the Court rejected a constitutional amendment in Colorado that would have barred such protections. The decision was a green light to other local jurisdictions to enact ordinances that recognized sexual orientation as a civil rights classification.

The “graying of America” refers to the fact that the population of the United States is getting older. We are less than a decade away from the point where the post-World War II “baby boom” generation will reach retirement age. Because older Americans vote in large numbers and have effective lobbying organizations, it is not surprising that issues such as social security, Medicare, and age discrimination are important. The **Age Discrimination in Employment Act** (1978) protects all workers over the age of 40, and prohibits a company from denying benefits to older employees. Discrimination on account of age in any program receiving federal funds was prohibited in 1975. A mandatory retirement age, unless justified by the nature of the work, no longer exists for most jobs.

At first, the most pressing issue for disabled Americans was access to public places, addressed through the **Rehabilitation Act of 1973**. Congress passed more extensive legislation in 1990. The **Americans with Disabilities Act (ADA)** bans discrimination in employment and promotion provided a disabled person can perform a particular job with “reasonable accommodations.” Public transportation and public accommodations must be made or designed so they are accessible, and devices for the hearing and/or speech-impaired must be made available. The Supreme Court, however, has narrowed the scope of the ADA through a series of recent rulings. In their latest decision for instance, *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams* (2002), the Court held that the law only covers impairments that affect a person’s daily life, not whether a worker can perform a particular job. This ruling narrows the number of people who can make effective claims under the ADA.

Affirmative Action

One of the most controversial civil rights issues is **affirmative action**. This policy, which the Johnson Administration introduced in the mid-1960s, refers to the broad range of programs intended to correct the past effects of discrimination. Over the years, those programs included preferential recruitment and treatment, numerical quotas, numerical goals, and set-asides in such areas as employment, contracting, and university and professional school admissions. While there is no doubt that affirmative action brought sweeping changes to the workplace and public institutions, it also generated numerous lawsuits.

The Supreme Court's landmark decision on affirmative action was *Regents of the University of California v. Bakke* (1978). The case involved **reverse discrimination**. A white applicant who was twice denied admission to the medical school at the University of California, Davis, claimed that his rights were violated because sixteen slots in the entering class were reserved for minority students. The Court agreed, and ordered Bakke admitted. It also found the rigid quota unconstitutional, but recognized that race could be taken into account as a factor in admissions, as a diverse student body is a legitimate educational goal. The ruling in *Bakke* did not settle the matter at all; indeed, the Court will soon hear new cases challenging the premise that race is a valid criterion for university admission.

Sample Multiple-Choice Questions

1. Under the *Regents of the University of California v. Bakke*, colleges can consider race a factor in admissions because
 - A. reverse discrimination is constitutional
 - B. it is a remedy for contemporary discrimination
 - C. a diverse student body is a legitimate educational goal
 - D. such students are economically disadvantaged as well
 - E. numerical quotas acceptable in certain circumstances
2. The abolition of the poll tax in federal elections was accomplished through the
 - A. Voting Rights Act of 1965
 - B. 1964 executive order issued by President Johnson
 - C. Supreme Court decision in *Smith v. Allwright*
 - D. Civil Rights Act of 1964
 - E. Twenty-fourth Amendment
3. Until the 1970s, claims of gender discrimination were routinely rejected by the Supreme Court because
 - A. women were not citizens within the meaning of the Constitution
 - B. the Court had no female members
 - C. limitations on women's rights were usually considered "reasonable"
 - D. the women's movement was not well-organized
 - E. the justices did not believe that the Fourteenth Amendment applied to women