

Civil Rights



What are civil rights?

- Civil rights; protections granted by the government to prevent discrimination against certain groups
- Civil liberties: constitutional protections for individuals against government action



What are civil rights?

- Claims are raised when a group is denied access to facilities, opportunities, or services available to other groups



Protected Class

- People protected from discrimination include ethnic minorities, women, those over 40, and the disabled.
- What do these groups have in common?



Sources for Civil Rights

- **Civil Rights Law: actions the government must take in order to guarantee equality.**
 - Law, Amendment, Executive Order, etc.
- **Sources of Egalitarianism (equality):**
 - Declaration of Independence
 - Preamble to the U.S. Constitution
 - MLK Jr.'s Letters from a Birmingham Jail
- **Sources of Civil Rights**
 - U.S. Bill of Rights
 - 14th Amendment (primarily the “Equal Protection” clause)
 - 13th Amendment (freedom from enslavement)
 - 15th Amendment (guaranteed right to vote)
 - State Constitutions & Bill of Rights
 - Congressional action at State and Federal Level

Reasonable Government Discrimination

- **Strict Scrutiny:**

- Any government discrimination affecting the “suspect class”: race, national origin, religion
- Government sponsored discrimination is almost always unconstitutional.
- Discrimination must serve a “compelling interest” (solve a **huge** problem)
 - Example of an exception: “Affirmative Action”

- **Intermediate Scrutiny:**

- Involving “Quasi-Suspect” Groups: gender, sexual orientation, age, etc.
- Government sponsored discrimination is almost always acceptable if it solves a significant problem.
 - Ex: gender-based (women in combat roles in military), sexual orientation

- **Rational Basis**

- The discrimination is almost always rational.
 - Ex: distinguishing between criminals and non-criminals (sex-offender lists)

Separate but Equal

- NAACP strategy went through a series of stages:
- Step 1: obvious inequalities, addressed in 1938–1948 cases
- Step 2: deciding that separation creates inequality in less obvious cases
- Step 3: declaring that separation is inherently unequal - *Brown v. Board of Education*

Civil Rights Groups

- African Americans
- Women
- Native Americans
- Older Persons
- Persons with disabilities
- Hispanics
- LBGT
- Many other minority groups

Case Study: The African American Predicament

- Perceived costs of granting black rights were not widely shared.
 - Costs were concentrated in small, easily organized populations.
 - A.A.'s were at a disadvantage in interest group politics b/c they could not vote, and they lacked resources to politically organize.



The African American Predicament

- Majoritarian politics worked against blacks
 - Lynching shocked some whites, but little was done (4,715 b/w 1882-1946)
 - Lynching was a local, not federal crime
 - General white public opinion was against blacks
 - 1942 – 30% of whites thought blacks and whites should go to school together
 - 1956 – 49%



Photograph from Bettmann/Corbis

The African American Predicament

- Progress depended on....
 - Finding more white allies
 - Shifting to policy-making arenas where whites had less of an advantage



The African American Predicament

- Civil rights movement did both
 - Broadened base by publicizing the denial to blacks of essential, widely accepted liberties
 - The Crisis – NAACP magazine
 - Focus shifted to economic progress, housing, neighborhoods
 - Moved their legal and political struggle from Congress to the federal courts



Brown v. Board of Education

- This was a consolidated case.
- Some facilities were unequal.
- Other school districts, like the Topeka, Kansas, had gone out of their way to create equally funded black schools.



Brown v. Board of Education

- Unanimous Supreme Court opinion overturned *Plessy v. Ferguson*
- Segregation is detrimental, creating sense of inferiority in African American students
- The Court relied on social science, because the Fourteenth Amendment was not necessarily intended to abolish segregated schools, and the Court sought a unanimous opinion

Brown II

- Linda Brown sought an enforcement order
- The Court ruled that desegregation must proceed with “all deliberate speed.”
- This was not a forthwith order.



Desegregation v. Integration

- *Swann v. Charlotte Mecklenburg* (1971): remedies may include racial quotas, redrawn district lines, and court-ordered busing
- Inter-city busing could be authorized only if both the city and the suburbs had practiced segregation
- Busing remains controversial



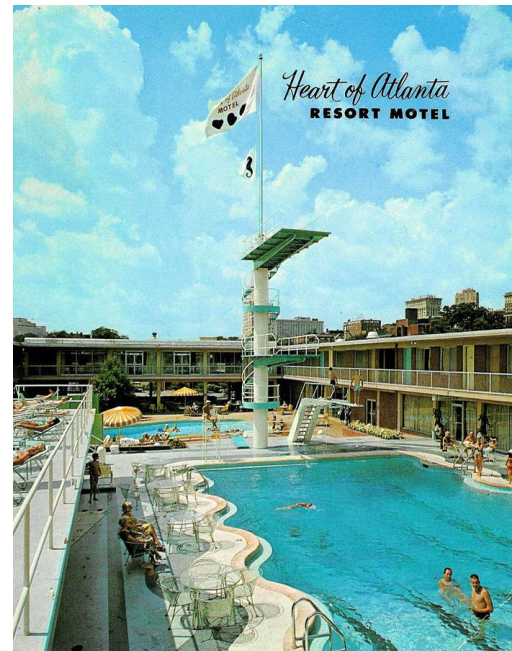
Civil Rights Act of 1964

- Prohibits discrimination in public places
- Forbids discrimination in employment
- Creates the Equal Employment Opportunity Commission
- Withholds federal grants from discriminating institutions
- Authorizes suits by the Justice Department



Heart of Atlanta Motel v. U.S. (1964)

- A hotel owner refused to rent rooms to African Americans.
- He claimed the Civil Rights Act of 1964 infringed on his rights as a private property owner.
- The Court upheld Congress's authority to pass the Civil Right Act under the Commerce Clause.



Gender-Based Discrimination

- Mid-level review
- Court chooses a blend—more than reasonable but not as much as strict scrutiny.
- Arbitrary differences are not allowed.
- Some gender-based differences, such as the all-male draft, are allowed by courts



Sexual Harassment

- Quid pro quo: sexual favors are required as a condition for holding a job or for promotion; employers are strictly liable
- Hostile environment: creating a setting in which harassment impairs a person's ability to work; employers are liable if they were negligent



Gays and the Constitution

- *Romer v. Evans* (1996): Colorado voters had adopted a state constitutional amendment making it illegal to protect persons based on gay, lesbian or bisexual orientation; the Court overturns it
- *Lawrence v. Texas* (2003): The Court overturned a Texas law banning sexual conduct between persons of the same sex



Don't Ask Don't Tell

Defense of Marriage Act
(DOMA)

Recent Activity

- Don't Ask Don't Tell
 - Became policy in 1993
 - Seen as an improvement in the ways homosexuals were treated in the armed forces
 - Previously anyone could be kicked out for being gay, commanders could interrogate and investigate
 - Now, members could not be asked nor investigated and did not have to tell. Openly gay members could still be discharged.
 - Repealed by Congress in 2010, effective 2011
- DOMA- Defense of Marriage Act 1996-2013
 - Barred same sex couples from being recognized as “spouses”
 - Not eligible for federal benefits:
 - Insurance, death benefits, visitation rights, “next of kin,” Social Security, housing, food stamps, power of attorney, end of life choices, tax or inheritance benefits, etc...
 - Declared unconstitutional in 2013 over an inheritance tax case

The Americans With Disabilities Act (1990)

- Requires employers to make reasonable accommodations for disabled employees.
- This has given rise to two issues:
 - What constitutes a disability?
 - What is meant by a “reasonable” accommodation?

