

CHAPTER 16

Equality and Civil Rights

PARALLEL LECTURE 16.1

- I. Americans want equality, but they differ on the extent to which government should provide it.
 - A. Most Americans support **equality of opportunity**, which gives individuals the same opportunities to get ahead.
 - B. Americans are less committed to **equality of outcome**, which entails greater uniformity of social, economic, and political power for people.
 - C. The civil rights movement in the U.S. has been based on the idea that social and economic equality should be attainable for all people. This means that **invidious discrimination** (making harmful distinctions among people) should not be sanctioned by government policies.
- II. The Civil War amendments were adopted to provide black Americans with freedom and equality, civil and political rights.
 - A. The Supreme Court seemed intent on weakening federal attempts to ensure the civil rights of black Americans.
 1. The Court ruled in 1873 that state citizenship and national citizenship remained distinct, despite the rights guaranteed in the Fourteenth Amendment.
 2. In 1883, The Court struck down the section of the Civil Rights Act of 1875 dealing with equality of public accommodations, on the grounds that the federal government could not prohibit discrimination by private citizens. The Court refused to see racial discrimination as an act that the national government could prohibit. The justices supported racism.
 3. The voting rights of blacks were weakened through several discriminatory mechanisms, such as the **poll tax**, laws requiring proof of property ownership, and education requirements.
 - B. With the nullification of the Civil Rights Act of 1875, state laws that formally protected **racial segregation** proliferated.
 1. “The laws required that housing and all other public facilities for blacks and whites be separated.
 2. In *Plessy v. Ferguson* (1896), the Supreme Court upheld state-imposed racial segregation based on the concept of **separate-but-equal** facilities for black Americans.
 3. Three years later, the Supreme Court extended the separate-but-equal doctrine to the schools.
- III. Denied access to the political system, black Americans began to seek access to the courts in order to challenge racial segregation in education.
 - A. The National Association for the Advancement of Colored People (NAACP) helped black Americans challenge state laws denying them access to white-only universities.
 - B. In 1954, the Supreme Court rejected the separate-but-equal doctrine in its decision in *Brown v. Board of Education of Topeka*.

1. President Truman's order for the desegregation of the armed forces paved the way for the *Brown* decision.
 2. Several states resisted the Court's demand (in *Brown v. Board of Education II*) that school desegregation be implemented "with all deliberate speed."
 3. The Court approved several remedies to achieve integration, including busing, racial quotas, and pairing of noncontiguous school zones. These remedies applied to **de jure segregation**, not to **de facto segregation**
 4. Public opinion has been highly divided on the issue of busing and other desegregation remedies.
 5. Since 1974, the Court has limited busing to school districts that practiced discrimination in the past.
- IV. The advancement of racial equality has required the political mobilization of the people through the **civil rights movement**.
- A. Under the leadership of Martin Luther King, Jr., black Americans used several forms of **civil disobedience** to protest discriminatory laws.
 1. In 1955, black Americans **boycotted** Montgomery's segregated bus system.
 2. Nonviolent sit-in demonstrations became a common form of protest throughout the South.
 - B. In part because of the increased momentum of the civil rights movement, Congress passed the Civil Rights Act of 1964.
 1. The Civil Rights Act of 1964 is the most comprehensive legislation to date designed to eliminate racial discrimination in all areas.
 2. The Civil Rights Act of 1964 was upheld by the Supreme Court, which affirmed Congress's power to regulate discrimination in all areas.
 3. Other civil rights legislation was implemented through President Johnson's Great Society programs.
 - a) The 24th Amendment banned poll taxes in primary and general elections.
 - b) The Economic Opportunity Act of 1964 provided education and training to combat poverty
 - c) The Voting Rights Act of 1965 empowered the attorney general to send voter registration supervisors to areas in which fewer than half the eligible minority voters had been registered. The act has been credited with doubling black voter registration in the South in only five years.
 - d) The Fair Housing Act of 1968 banned discrimination in the rental and sale of most housing.
 - C. Recent Supreme Court decisions have demonstrated a tendency toward upholding freedom over equality.
 1. The decision in *Grove City College v. Bell* (1984) frustrated enforcement of laws barring sex discrimination.
 2. Although Congress acted to restore civil rights enforcement in 1988, the Court demonstrated its continued interest in dismantling such enforcement when, in several other decisions in 1989, it voted to limit the reach of several long-standing civil rights decisions.
 3. The Civil Rights Act of 1991 reversed or altered twelve Court decisions that had narrowed civil rights protections.
 - D. The lack of progress toward equality for northern blacks was an important factor in the rise of the black nationalist movement in the 1960s.
 1. During the 1960s, the level of violence related to desegregation increased.
 2. This violence took the form of rioting in many of the inner cities of the North.

- a) Black Muslims, particularly Malcolm X before his assassination in 1965, called for a separation from whites and the use of violence in response to white violence.
 - b) The Black Panther Party called for increased “black power” in the struggle for civil rights.
 3. One of the consequences of the black nationalist movement was to instill pride in black history and culture and to bring black elected officials to office in America’s major cities.
- V. Civil rights have been extended more slowly to other minorities.
- A. In 1987, the Supreme Court ruled that the Civil Rights Act of 1866 (known as Section 1981) offers broad protection against discrimination to all minorities.
 1. Members of any ethnic group can recover monetary damages if they can prove they have been the victim of a form of discrimination prohibited by law.
 2. Litigants are also allowed to seek punitive damages.
 - B. Government policy toward Native Americans has been characterized by appropriation of their lands, neglect, and social and political isolation.
 1. At the turn of the twentieth century, the national government began to promote assimilation instead of separation. In 1924, Native Americans were granted citizenship.
 2. Poverty and unemployment have led Native Americans to resort to militant or violent action in order to bring attention to their grievances.
 3. Since the 1970s, some Native Americans have been able to extract compensation for the loss of their lands.
 - C. Spanish-speaking Americans have also experienced substantial poverty and discrimination in cities and rural areas.
 1. Hispanic Americans—particularly Mexicans—have been exploited in the Southwest as farm laborers. In 1965, Cesar Chavez led a strike against farmers in California. The strike eventually resulted in better pay, working conditions, and housing.
 2. The Hispanic population continued to grow in the 1970s and 1980s, and was no longer limited to Puerto Ricans and Mexican Americans. Unfortunately, Hispanics continued to be among the poorest and least-educated groups.
 3. The difficulties faced by Hispanics were similar to those faced by other non-whites, but were complicated by the language barrier. Language issues have made rates of voter registration and voter turnout particularly low.
 4. The creation of nine majority Hispanic congressional districts has facilitated some representation, but these districts are now in jeopardy.
 5. There are now several Hispanic House members, and the National Hispanic Caucus of State Legislators has been formed to better represent the issues of the Hispanic communities.
 - D. In 1990, the Americans with Disabilities Act extended the protections embodied in the Civil Rights Act of 1964 to people with physical or mental disabilities.
 1. The roots of the disabled rights movement began in the period after World War II, when disabled veterans found that society was insensitive to their needs.
 2. The law covers those with physical or mental disabilities, including people with AIDS, recovering alcoholics, and drug abusers.
 3. The deliberately vague way that *disability* is defined in the statute has forced the courts to make the law more specifically defined.
 - E. An often-overlooked aspect of the civil rights struggle is the gay liberation movement.
 1. The gay rights struggle began in 1969 with the Stonewall Riots.

2. Several interest groups have had some success in securing the rights of gay men and lesbians, including the National Gay and Lesbian Task Force, which lobbied the Civil Service Commission to insure the rights of gay people to work in public sector positions.
 3. The gay community now maintains a significant presence in national politics.
 4. The gay and lesbian communities are still denied protection under laws that protect other minority groups.
 - a) Gay men and lesbians are still unable to serve openly in the U.S. military.
 - b) Same-sex partners are not able to take advantage of estate planning laws.
 - c) Most gay couples cannot sign on to their partner's health-care plans.
 5. *Boy Scouts of America v. Dale* highlights the modern conflict between freedom and equality for gay citizens.
 - a) The Boy Scouts sought to revoke the membership of longtime scout (and assistant scoutmaster) James Dale when they learned that he had become active in his university's gay/lesbian student group.
 - b) The Supreme Court narrowly (5-4) sided with the Scouts, arguing that the state's public accommodations law violated the Boy Scouts' freedom of association, which outweighed Dale's claim for equal treatment.
- VI. The movement toward equal rights for women has had to confront the traditional view of the relationship between men and women.
- A. **Protectionism**—the belief that women should be spared from life's cruelties—served as the basis for many laws that discriminated against women.
 1. In 1873, the Supreme Court upheld an Illinois statute prohibiting women from practicing law.
 2. In 1908, the Supreme Court upheld Oregon work laws limiting the number of hours that women could work.
 3. In 1991, the Supreme Court struck down a company's fetal protection policy in strong terms, stating that women should not be forced to choose between having a child and having a job.
 - B. In most states, women were denied the right to vote until the movement for women's suffrage culminated in the adoption of the **Nineteenth Amendment** in 1920.
 - C. The prohibition of sex-based discrimination has advanced through legislation.
 1. The Equal Pay Act of 1963 required equal pay for men and women doing similar work, but it did not account for stratification of work by gender.
 2. Title VII of the Civil Rights Act of 1964 eventually covered employment discrimination on the basis of sex.
 3. Congress extended the jurisdiction of the EEOC to cover cases of invidious sex discrimination, or sexism.
 4. Congress passed additional legislation prohibiting discrimination in federally aided educational programs; particularly notable was Title IX of the Education Amendments of 1972, which prohibited sex discrimination in education (and fostered many sports programs for girls).
 - D. Since 1970, the Supreme Court has consistently struck down laws that discriminate on the basis of sex.
 1. The Court determined in 1976 that gender distinctions could be justified only if they served some important government purpose.
 2. The intention of gender-related Court decisions is to end sexual stereotyping while acknowledging relevant differences between men and women. The idea of comparable worth is the most controversial idea. Without new legislation courts are ineffective in ending wage discrimination.

3. In 1994 the Supreme Court extended the Constitutional equal protection guarantee by forbidding the exclusion of potential jurors on the basis of their sex. This decision completed a constitutional revolution in jury selection.
 4. In *United States v. Virginia* (1996), the Court ruled that qualified women must be allowed admission to the Virginia Military Institute (a state-supported military college in Virginia); it developed a test called “skeptical scrutiny” that requires parties who seek to defend gender-based action to demonstrate an ‘exceedingly persuasive justification’ for that action.
- E. The **Equal Rights Amendment (ERA)** was designed to ensure that no one could be denied equal rights under the law on account of sex.
1. After the ERA passed the proposal stage in 1972, its proponents failed to obtain ratification by the 1982 deadline.
 2. The ERA met with staunch opposition from some states and from women who wanted to maintain their traditional role.
 3. Some have argued that the ERA was unnecessary. Indeed, many of the goals of the ERA have already been realized by various actions of the Supreme Court.
 4. Others have argued, however, that because the Court could reverse those decisions, an ERA is still necessary.
- VII. **Affirmative action** programs were designed to eliminate the effects of past discrimination against women and members of other minority groups.
- A. Such programs include recruitment, preferential treatment, and quotas for women, minorities, and people with disabilities in education, employment, and the awarding of government contracts.
1. The point of the programs is to move beyond equality of opportunity to equality of outcome.
 2. Affirmative action opponents maintain that quotas for designated groups create invidious discrimination (reverse discrimination) against individuals who are themselves blameless.
- B. Government–mandated preferential policies began in 1965 with the creation of the Office of Federal Contract Compliance.
- C. In **reverse discrimination** cases, plaintiffs have argued that affirmative action programs designed to protect minorities discriminate against white Americans.
1. In *Regents of the University of California v. Bakke* (1978), the Supreme Court agreed that Allan Bakke had been discriminated against, but it reaffirmed the use of affirmative action programs.
 2. The Supreme Court struck down government-mandated set-aside programs in the US Department of Transportation.
 3. In *Gratz v. Bollinger*, the Court considered the University of Michigan’s undergraduates admissions policy, which conferred 20 points automatically to members of favored groups. The decision was that such a policy violated the equal protection clause, and failed to provide for individualized consideration of each candidate.
 - a) The Supreme Court held that equal protection policy was not violated and race remains only one among many factors that enters into admission decision.
- D. The politics of affirmative action
1. A majority of white Americans have consistently rejected race and gender preferences for the awarding of contracts, employment, and college admissions. Black Americans tend to favor these types of policies.
 2. Given widespread disapproval, why do these policies survive?
 - a) They encourage unprotected groups to strive for inclusion.

- b) The list of protected groups has expanded over the years; the votes of the members of these groups matter to elected officials.
- 3. The future of these policies will depend on whether and to what extent Americans will continue to harbor deep-seated invidious prejudices.