

- Determine the ways in which Americans with disabilities have become the successors to the civil rights movement.
- Explain why gay and lesbian activists may face the toughest battle for equality of any of America’s minority groups.
- Describe the opposing positions of those who favor affirmative action and those who claim that these policies simply create reverse discrimination.
- Analyze how the important democratic principles of *equality* and *individual liberty* may actually conflict with each other.
- Determine how civil rights laws increase the scope and power of government.

## CHAPTER OVERVIEW

### INTRODUCTION

When the value of equality conflicts with the value of liberty—when individuals in privileged positions are challenged to give them up—citizens often look to the government to resolve the issue. This chapter examines what the Constitution says about equality and how constitutional rights to equality have been interpreted. It also reviews the development of civil rights in the United States, highlighting the important role of the court system in expanding equality over the past three decades.

### RACIAL EQUALITY: TWO CENTURIES OF STRUGGLE

The real meaning of equality is both elusive and divisive. Most Americans favor **equality** in the abstract, but the concrete struggle for equal rights has been our nation’s most bitter battle. The rallying call for groups demanding more equality has been **civil rights**, which are policies that extend basic rights to groups historically subject to discrimination. Philosophically, the struggle for equality involves defining the term; constitutionally, it involves interpreting laws; politically, it often involves power.

American society does not emphasize equal results or equal rewards. A belief in equal rights has often led to a belief in equality of opportunity. Today’s debates over inequality in America center on racial discrimination, gender discrimination, and discrimination based on factors such as age, disability, and sexual preference.

The delegates to the Constitutional Convention came up with a plan for government rather than guarantees of individual rights, and the word *equality* does not even appear in the original Constitution. The only place in which the idea of equality clearly appears in the Constitution is in the **Fourteenth Amendment**, which prohibits the states from denying “*equal protection of the laws*” to any person. It was not until the mid-twentieth century that the Fourteenth Amendment was used to assure rights for disadvantaged groups, but the equal protection clause gradually became the vehicle for more expansive constitutional interpretations.

The Court has developed three levels of *judicial scrutiny* (or *classifications*). Most classifications that are **reasonable** (that bear a rational relationship to some legitimate governmental purpose) are constitutional. Racial and ethnic classifications are **inherently suspect**—they are presumed to be invalid and are upheld only if they serve

a “*compelling public interest*” that cannot be accomplished in some other way. Classifications based on gender fall somewhere between *reasonable* and *inherently suspect*—gender classifications must bear a **substantial** relationship to an *important legislative purpose*.

## RACE, THE CONSTITUTION, AND PUBLIC POLICY

African Americans have been the most visible minority group in the United States, and the civil rights laws that African-American groups pushed for have also benefited members of other minority groups. Three eras define African Americans’ struggle for equality in America: the era of slavery, from the beginnings of colonization until the end of the Civil War; the era of reconstruction and resegregation, from the end of the Civil War until 1954; and the era of civil rights, from 1954 to the present.

The delegates to the Constitutional Convention did their best to avoid facing the divergence between slavery and the principles of the Declaration of Independence. During the slavery era, any public policy of the slave states or the federal government had to accommodate the property interests of slave owners. The Union victory in the Civil War and the ratification of the **Thirteenth Amendment** ended slavery. After the Civil War ended, Congress imposed strict conditions on the former Confederate states before they could be readmitted to the Union. Many African-American men held state and federal offices during the ten years following the war. As soon as they regained control following Reconstruction, White Southerners imposed a code of “*Jim Crow laws*” that required African Americans to use separate public facilities and school systems.

Although some limited progress was made in the first half of the twentieth century, during this period segregation was legally required in the South (*de jure*) and sanctioned in the North (*de facto*). The Supreme Court provided constitutional justification for segregation in *Plessy v. Ferguson* (1896) when it held that segregation in public facilities was not unconstitutional as long as the facilities were *substantially equal* (a principle that was commonly referred to as the “**separate but equal**” doctrine, though subsequent decisions paid more attention to the “separate” than to the “equal” part).

The Supreme Court decision in *Brown v. Board of Education* (1954) really marks the beginning of the era of civil rights. In a landmark decision, the Court held that school segregation was *inherently unconstitutional* because it violated the Fourteenth Amendment’s guarantee of *equal protection*. The modern **civil rights movement** began in 1955 when Rosa Parks refused to give up her seat in the front of a Montgomery, Alabama, bus (where only Whites were permitted to sit). The boycott that followed her arrest is often seen as the beginning of the African-American civil rights movement. Sit-ins, marches, and civil disobedience were key strategies of the civil rights movement.

Desegregation proceeded slowly in the South, and some federal judges ordered the *busing* of students to achieve *racially balanced schools*. The **Civil Rights Act of 1964** made racial discrimination illegal in hotels, motels, restaurants, and other places of public accommodation. The Act also forbade many forms of job discrimination, and Congress cut off federal aid to schools that remained segregated.

The early Republic limited **suffrage** primarily to property-holding White males. The **Fifteenth Amendment** (1870) guaranteed African Americans the right to vote, but full *implementation* did not occur for another century. States used various methods to circumvent the Fifteenth Amendment, including literacy tests with grandfather clauses, **White primaries**, and **poll taxes**.

The **Voting Rights Act of 1965** prohibited any government from using voting procedures that denied a person the vote on the basis of race or color. Poll taxes in federal elections were prohibited by the **Twenty-fourth Amendment** (1964), and poll taxes in state elections were invalidated by the Supreme Court two years later (*Harper v. Virginia State Board of Elections*).

The civil rights laws that African-American groups pushed for have benefited members of other minority groups such as American Indians, Asians, and Hispanics. The United States is heading toward a *minority majority* status, when minority groups will outnumber Caucasians of European descent. Hispanic Americans will soon displace African Americans as the largest minority group.

Like Native Americans, Hispanic Americans benefit from the nondiscrimination policies originally passed to protect African Americans. Hispanic Americans are the largest minority group. *Hernandez v. Texas* (1954) extended protections to Hispanics. Asian Americans are the fastest growing minority group; their representation in the American population rose from 0.5 percent to four percent from 1960 to 2000. There are more than 1.2 million persons of Arab ancestry in the United States. Since the terrorist attacks of September 11, 2001, Arab, Muslim, Sikh, and South Asian Americans, and those perceived to be members of these groups, have been the victims of increased numbers of bias-related assaults, threats, vandalism, and arson.

## WOMEN, THE CONSTITUTION, AND PUBLIC POLICY

The first women's rights activists were products of the abolitionist movement. The legal doctrine of *coverture* deprived married women of any identity separate from that of their husbands. Lucretia Mott and Elizabeth Cady Stanton organized a meeting at Seneca Falls, New York, to discuss women's rights. The *Seneca Falls Declaration of Sentiments and Resolutions* (signed on July 19, 1848) was the beginning of the movement that would culminate in the ratification of the **Nineteenth Amendment** (1920), which gave women the right to vote.

The feminist movement seemed to lose momentum after winning the vote, possibly because the vote was about the only goal on which all feminists agreed. Public policy toward women continued to be dominated by *protectionism* (which also protected male workers from female competition), and state laws tended to reflect and reinforce the traditional family roles. Alice Paul, the author of the original Equal Rights Amendment (ERA), was one activist who claimed that the real result of protectionist law was to perpetuate gender inequality.

Before the advent of the contemporary feminist movement, the Supreme Court upheld virtually all cases of sex-based discrimination. In *Reed v. Reed* (1971), the Court ruled that any “arbitrary” sex-based classification violated the equal protection clause of the Fourteenth Amendment (marking the first time the Court applied the Fourteenth Amendment to a case involving classification by sex). Five years later, *Craig v. Boren* established a “medium scrutiny” standard: Gender discrimination would be presumed to be neither valid nor invalid. The courts were to show less deference to gender classifications than to more routine classifications, but more deference than to racial classifications. The Supreme Court has now ruled on many occasions against gender discrimination in employment and business activity. Some of the litigants have been *men seeking equality with women* in their treatment under the law.

Some important progress was made through congressional legislation. The *Civil Rights Act of 1964* banned sex discrimination in employment; in 1972, the *Equal Employment Opportunity Commission (EEOC)* was given the power to sue employers suspected of illegal discrimination; and *Title IX of the Education Act of 1972* forbade sex discrimination in federally subsidized education programs, including athletics. The Court has remained silent so far on the issue of “**comparable worth**” (which refers to the fact that traditional women’s jobs often pay much less than men’s jobs that demand comparable skill).

Women now comprise 14 percent of the armed forces and compete directly with men for promotion. Statutes and regulations prohibit women from serving in combat, but the Persian Gulf War demonstrates that policy and practice are not always the same, since women piloted helicopters at the front and some were taken as prisoners of war.

Many women are now making claims for their civil rights. In the 1990s, national attention has focused on issues of **sexual harassment**. For example, the Supreme Court again spoke expansively about sexual harassment in the workplace in *Faragher v. City of Boca Raton*. The Court made it clear that employers are responsible for preventing and eliminating harassment at work. They can be held liable for even those harassing acts of supervisory employees that violate clear policies and of which top management has no knowledge.

## **NEWLY ACTIVE GROUPS UNDER THE CIVIL RIGHTS UMBRELLA**

New activist groups now realize that policies that were enacted to protect racial minorities and women can also be applied to other groups. Aging Americans, young Americans, the disabled, and homosexuals have begun to exert their own demands for civil rights.

People in their eighties comprise the fastest growing age group in this country. It is not clear what the fate of the **gray liberation movement** will be as its members approach the status of a *minority majority*.

Young people have also suffered from inferior treatment under the law. There are obvious difficulties in organizing a “children’s rights movement,” but there have been

instances of young people who were successful in asserting their rights (including a youth who “divorced” his parents).

Americans with disabilities have suffered from both direct and indirect discrimination. The **Americans with Disabilities Act of 1990** requires employers and public facilities to provide “*reasonable accommodations*” and prohibits employment discrimination against the disabled.

Gay activists *may face the toughest battle for equality*. Homosexual activity is illegal in some states, and homosexuals often face prejudice in hiring, education, access to public accommodations, and housing. A substantial percentage of the American public expresses opposition to the entrance of homosexuals into many common occupations. However, gay activists have won some important victories. Seven states and more than 100 communities have passed laws protecting homosexuals against some forms of discrimination.

## **AFFIRMATIVE ACTION**

The interests of women and minorities have converged on the issue of **affirmative action** (policies requiring special efforts in employment, promotion, or school admissions on behalf of disadvantaged groups). The goal of affirmative action is to *move beyond equal opportunity toward equal results*.

Some groups have claimed that affirmative action programs constitute “**reverse discrimination**.” In *Regents of the University of California v. Bakke* (1978), the Supreme Court rejected a plan at the University of California at Davis that set aside 16 out of a total of 100 places in the entering class for “disadvantaged groups.” The Court objected to the use of a quota of positions for particular groups, but the Court said that a university could use race or ethnic background as one component in the admissions procedure. The Court has also permitted a special training program that was intended to rectify years of past discrimination (*United Steelworkers of America, AFL-CIO v. Weber*, 1979). However, in 1995, in *Adarand Constructors v. Peña*, the Court held that federal programs that classify people by race, even for an ostensibly benign purpose such as expanding opportunities for minorities, should be presumed to be unconstitutional.

In 1996, California voters passed Proposition 209, which banned state affirmative action programs based on race, ethnicity, or gender in public hiring, contracting, and education admissions. Opponents immediately filed a lawsuit in federal court to block enforcement of the law, claiming that it violated the Fourteenth Amendment. Ultimately, the U.S. Supreme Court will have to resolve the issue, but there is little question that support for Proposition 209 represents a widespread skepticism about affirmative action programs. A federal court of appeals placed a similar ban on universities in Texas, Oklahoma, and Mississippi, while another court upheld racial preferences at the University of Michigan in 2002, agreeing that there was a compelling interest in promoting racial diversity on campus. In *Gratz v. Bollinger* (2003), however, the Court struck down the University of Michigan’s system of undergraduate admissions in which every applicant from an underrepresented racial or ethnic minority group was automatically awarded 20 points of the 100 needed to guarantee admission.

Surveys find that most Americans oppose affirmative action programs, even though Americans in general support nondiscrimination in employment and education. Opposition is especially strong when people view affirmative action as *reverse discrimination*, where less qualified individuals get hired or admitted to educational or training programs.

Affirmative action supporters believe that increasing the number of women and minorities in desirable jobs is such an important social goal that it should be considered when determining an individual's qualifications. They claim that what White males lose from affirmative action programs are privileges to which they were never entitled in the first place; after all, nobody has the right to be a doctor or a road dispatcher.

## UNDERSTANDING CIVIL RIGHTS AND PUBLIC POLICY

Democracy is often in conflict with itself—both *equality* and *individual liberty* are important democratic principles, but they *may conflict with each other*. For example, equality tends to favor majority rule, but equality threatens individual liberty in situations where the majority may want to deprive the minority of its rights.

Civil rights laws increase the *scope and power of government* since these laws place both restrictions and obligations on individuals and institutions. Libertarians and those conservatives who want to reduce the size of government are uneasy with civil rights laws (and sometimes hostile to them).

## CHAPTER OUTLINE

### I. TWO CENTURIES OF STRUGGLE

- A. Most Americans favor **equality** in the *abstract*, but the *concrete struggle for equal rights* has been our nation's most bitter battle.
- B. The real meaning of equality is both elusive and divisive.
  1. **Civil rights** are the policies that extend basic rights to groups historically subject to discrimination.
  2. The modern **civil rights movement** began in 1955 when Rosa Parks refused to give up her seat in the front of a Montgomery, Alabama, bus (where only Whites were permitted to sit); the boycott that followed her arrest is often seen as the beginning of the African-American civil rights movement.
- C. Today's debates over inequality in America center on racial discrimination, gender discrimination, and factors such as discrimination based on age, disability, and sexual preference.
- D. Conceptions of equality.
  1. Philosophically, the struggle for equality involves defining the term; constitutionally, it involves interpreting laws; politically, it often involves power.
  2. American society does not emphasize equal results or equal rewards—a belief in equal rights has often led to a belief in equality of *opportunity*.