

Civil Rights

GOVT

5

LEARNING OBJECTIVES

LO 1 Explain the constitutional basis for our civil rights and for laws prohibiting discrimination.

LO 2 Discuss the reasons for the civil rights movement and the changes it caused in American politics and government.

LO 3 Describe the political and economic achievements of women in this country over time and identify some obstacles to equality that women continue to face.

LO 4 Summarize the struggles for equality that other groups in America experience.

LO 5 Explain what affirmative action is and why it has been so controversial.

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AMERICA AT ODDS

Should the Census Count Be Limited to Citizens?

The 2010 census was the most expensive ever—it cost about \$37 per person counted. The U.S. census, which is taken every ten years, is important in part because the number of persons each state sends to the House of Representatives is based on the most recent census count. In addition, the census determines which communities receive a share of the more than \$400 billion in federal funds each year for things such as hospitals; schools; job-training centers; and bridges, tunnels, and other public works projects.

Not surprisingly, who should be counted is an often-debated issue. Should census counters ignore unauthorized immigrants? This question is more than academic. In states with many unauthorized immigrants, such as California, counting them increases the state's representation in Congress. Should everyone be counted? Alternatively, should only citizens and legal permanent residents be counted?

Keep It Simple—Unauthorized Immigrants Need Not Apply

The first Census Act in 1790 provided for a counting of "inhabitants." According to a court ruling, the term *inhabitant* meant "a *bona fide* member of a State, subject to all the requisitions of its laws, and entitled to all of the privileges which they confer." Under such a definition, those who are in the country illegally shouldn't be considered inhabitants.

Naturally, leaders in some states that do not have high numbers of unauthorized immigrants and that will lose one or more seats in the House of Representatives after a census have opposed counting such immigrants. By the time you read this, Louisiana, Massachusetts, Michigan, Ohio, and other states may have already lost one or more seats in the House because of counts based on the 2010 census. Every voter is supposed to have an equal voice. If unauthorized immigrants are counted in determining the apportionment of representatives, voters in areas with large numbers of unauthorized immigrants will be overrepresented.

There is a more fundamental issue at stake, though: Who is an American? Presumably, we want to count the people of the United States in our ten-year census. The "people" should not include those who are living here illegally. This logic seems clear to many.

Follow the Constitution— Count Them All

Those who are against counting unauthorized immigrants forget that the basis of the census, Section 2 of the Fourteenth Amendment to the Constitution, states: "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State." Apportionment is by *persons*, not *citizens*. The Fourteenth Amendment refers to citizens in some clauses and persons in others. It distinguishes between the two. Unauthorized immigrants are persons, plain and simple. If California therefore picks up extra seats in the House after a census, so be it. There is nothing unconstitutional about this. Bear in mind the rule for counting slaves in the original Constitution. Three-fifths of the slaves in each state were included when apportioning House seats. This means that the founders were deliberately counting people who weren't citizens and, in the founders' opinion, never would be.

Consider also that cities and states of necessity provide services to unauthorized immigrants. If those people are not counted when dividing up federal funds, citizens in areas with many illegal immigrants won't be adequately compensated by the federal government.

WHERE DO YOU STAND?

1. Do you think states that have more unauthorized immigrants should consequently have more representatives in the House? Why or why not?
2. Why did the authors of the Fourteenth Amendment seek to ensure that persons—and not just citizens—would enjoy certain rights?

EXPLORE THIS ISSUE ONLINE

Much of the recent debate over counting unauthorized immigrants is based on a *Wall Street Journal* article written by John Baker, a Louisiana State University law professor, and Elliot Stonecipher, a pollster. The *Journal* deleted many of their legal arguments, but you can find a full version of the piece at the Volokh Conspiracy: volokh.com/posts/1250274418.shtml. (Click on a link to pull up the full draft.) You'll also find there a detailed criticism of the Baker/Stonecipher thesis by Eugene Volokh, a law professor at the University of California, Los Angeles.

Introduction

As noted in Chapter 4, people sometimes confuse civil rights with civil liberties. Generally, though, the term **civil rights** refers to the rights of all Americans to equal treatment under the law, as provided for by the Fourteenth Amendment. One of the functions of our government is to ensure—through legislation or other means—that this constitutional mandate is upheld.

Although the democratic ideal is for all people to have equal rights and equal treatment under the law, and although the Constitution guarantees those rights, this ideal has often remained just that—an ideal. It is people who put ideals into practice, and as James Madison (1751–1836) once pointed out (and as we all know), people are not angels. As you will read in this chapter, the struggle of various groups in American society to obtain equal treatment has been a long one, and it still continues. One such group is made up of immigrants—those here both legally and illegally. We discussed an issue that concerns them in this chapter's opening *America at Odds* feature.

In a sense, the history of civil rights in the United States is a history of discrimination against various groups. Discrimination against women, African Americans, and Native Americans dates back to the early years of this nation, when the framers of the Constitution did not grant these groups rights that were granted to others (that is, to white, property-

owning males). During our subsequent history, as peoples from around the globe immigrated to this country at various times and for various reasons, each of these immigrant groups faced discrimination in one form or another. More recently, other groups, including persons with disabilities and gay men and lesbians have struggled for equal treatment under the law.

Central to any discussion of civil rights is the interpretation of the equal protection clause of the Fourteenth Amendment to the Constitution. For that reason, we look first at that clause and at how the courts, particularly the United States Supreme Court, have interpreted it and applied it to civil rights issues.

All Americans
are entitled to
**EQUAL TREATMENT
UNDER THE LAW**
as provided for by the
Fourteenth Amendment.

LO 1 The Equal Protection Clause

Equal in importance to the due process clause of the Fourteenth Amendment is the **equal protection clause** in Section 1 of that amendment, which reads as follows: “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” Section 5 of the amendment provides a legal basis for federal civil rights legislation: “The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.”

The equal protection clause has been interpreted by the courts, and especially the Supreme Court, to mean that states must treat all persons in an equal manner and may not discriminate *unreasonably* against a particular group or class of individuals. The task of distinguishing between reasonable

These demonstrators are making sure that the residents of New York City remember the goals of Martin Luther King, Jr.—equality for all minorities in America.



civil rights The rights of all Americans to equal treatment under the law, as provided for by the Fourteenth Amendment to the Constitution.

equal protection clause Section 1 of the Fourteenth Amendment, which states that no state shall “deny to any person within its jurisdiction the equal protection of the laws.”

fundamental right

A basic right of all Americans, such as First Amendment rights. Any law or action that prevents some group of persons from exercising a fundamental right is subject to the "strict-scrutiny" standard, under which the law or action must be necessary to promote a compelling state interest and must be narrowly tailored to meet that interest.

suspect classification

A classification, such as race, that provides the basis for a discriminatory law. Any law based on a suspect classification is subject to strict scrutiny by the courts—meaning that the law must be justified by a compelling state interest.

rational basis test A test (also known as the "ordinary-scrutiny" standard) used by the Supreme Court to decide whether a discriminatory law violates the equal protection clause of the Constitution. Few laws evaluated under this test are found invalid.

standard, the law or action must be necessary to promote a *compelling state interest* and must be narrowly tailored to meet that interest. A law based on a **suspect classification**, such as race, is also subject to strict scrutiny by the courts, meaning that the law must be justified by a compelling state interest.

Intermediate Scrutiny

Because the Supreme Court had difficulty deciding how to judge cases in which men and women were treated differently, another test was developed—the "intermediate-scrutiny" standard. Under this standard, laws based on gender classifications are permissible if they are "substantially related to the achievement of an important governmental objective." For example, a law punishing males but not females for statutory rape is valid because of the important governmental interest in preventing teenage pregnancy in those circumstances and because almost all of the harmful and identifiable consequences of teenage pregnancies fall on young females.¹ A law prohibiting the sale of beer to males under twenty-one years of age and to females under eighteen years would not be valid, however.²

discrimination and unreasonable discrimination is difficult. Generally, in deciding this question, the Supreme Court balances the constitutional rights of individuals to equal protection against government interests in protecting the safety and welfare of citizens. Over time, the Court has developed various tests, or standards, for determining whether the equal protection clause has been violated.

Strict Scrutiny

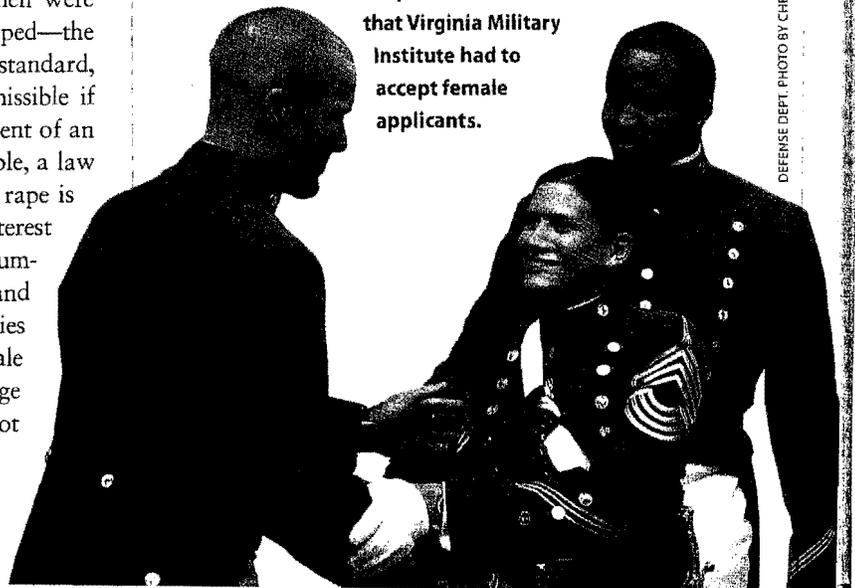
If a law or action prevents some group of persons from exercising a **fundamental right** (such as one of our First Amendment rights), the law or action will be subject to the "strict-scrutiny" standard. Under this stan-

Generally, since the 1970s, the Supreme Court has scrutinized gender classifications closely and has declared many gender-based laws unconstitutional. In 1979, the Court held that a state law allowing wives to obtain alimony judgments against husbands but preventing husbands from receiving alimony from wives violated the equal protection clause.³ In 1982, the Court declared that Mississippi's policy of excluding males from the School of Nursing at Mississippi University for Women was unconstitutional.⁴ In a controversial 1996 case, *United States v. Virginia*,⁵ the Court held that Virginia Military Institute, a state-financed institution, violated the equal protection clause by refusing to accept female applicants. The Court said that the state of Virginia had failed to provide a sufficient justification for its gender-based classification.

The Rational Basis Test (Ordinary Scrutiny)

A third test used to decide whether a discriminatory law violates the equal protection clause is the **rational basis test**. When applying this test to a law that classifies or treats people or groups differently, the justices ask whether the discrimination is rational. In other words, is it a reasonable way to achieve a legitimate government objective? Few laws tested under the rational basis test—or the "ordinary-scrutiny" standard, as it is also called—are found invalid, because few laws are truly unreasonable. A municipal ordinance that prohibits certain vendors from selling their wares in a particular area of the city, for example, will be upheld if the city can meet this rational basis test. The rational basis for the ordinance might be the city's legitimate government interest in reducing traffic congestion in that particular area.

The Supreme Court ruled that Virginia Military Institute had to accept female applicants.



DEFENSE DEPT. PHOTO BY CHERIE CULLEN/RELEASED

LO2 African Americans

The equal protection clause was originally intended to protect the newly freed slaves after the Civil War (1861–1865). In the early years after the war, the U.S. government made an effort to protect the rights of blacks living in the former states of the Confederacy. The Thirteenth Amendment (which granted freedom to the slaves), the Fourteenth Amendment (which guaranteed equal protection under the law), and the Fifteenth Amendment (which stated that voting rights could not be abridged on account of race) were part of that effort. By the late 1880s, however, southern legislatures had begun to pass a series of segregation laws—laws that separated the white community from the black community. Such laws were commonly called “Jim Crow” laws (from a song that was popular in minstrel shows that caricatured African Americans). Some of the most common Jim Crow laws called for racial segregation in the use of public facilities, such as schools, railroads, and later, buses. These laws were also applied to housing, restaurants, hotels, and many other facilities.

Separate but Equal

In 1892, a group of Louisiana citizens decided to challenge a state law that required railroads to provide separate railway cars for African Americans. A man named

Homer Plessy, who was seven-eighths Caucasian and one-eighth African, boarded a train in New Orleans and sat in the railway car reserved for whites. When Plessy refused to move at the request of the conductor, he was arrested for breaking the law.

separate-but-equal doctrine A Supreme Court doctrine holding that the equal protection clause of the Fourteenth Amendment did not forbid racial segregation as long as the facilities for blacks were equal to those for whites. The doctrine was overturned in the *Brown v. Board of Education of Topeka* decision of 1954.

Four years later, in 1896, the Supreme Court provided a constitutional basis for segregation laws. In *Plessy v. Ferguson*,⁶ the Court held that the law did not violate the equal protection clause if *separate* facilities for blacks were *equal* to those for whites. The lone dissenter, Justice John Marshall Harlan, disagreed: “Our Constitution is colorblind, and neither knows nor tolerates classes among citizens.” The majority opinion, however, established the **separate-but-equal doctrine**, which was used to justify segregation in many areas of American life for nearly sixty years. Separate facilities for African Americans, when they were provided at all, were in practice almost never truly equal.

In the late 1930s and the 1940s, the United States Supreme Court gradually moved away from this doctrine. The major breakthrough, however, did not come until 1954, in a case involving an African American girl who lived in Topeka, Kansas.

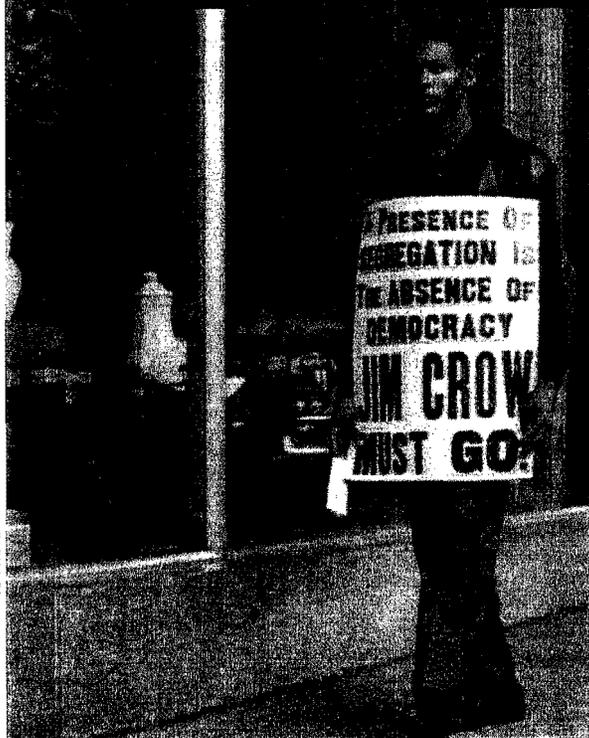
The *Brown* Decisions and School Integration

In the 1950s, Topeka’s schools, like those in many cities, were segregated. Mr. and Mrs. Oliver Brown wanted their daughter, Linda Carol Brown, to attend a white school a few blocks from their home instead of an all-black school that was twenty-one blocks away. With the help of lawyers from the National Association for the Advancement of Colored People (NAACP), Linda’s parents sued the board of education to allow their daughter to attend the nearby school.

In *Brown v. Board of Education of Topeka*,⁷ the Supreme Court reversed *Plessy v. Ferguson*. The Court unanimously held that segregation by race in public education was unconstitutional. Chief Justice Earl Warren wrote as follows:

Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other “tangible” factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does. . . . [Segregation generates

This man is picketing in front of a variety store in downtown Atlanta in the fall of 1960. What did he mean when he referred to eliminating Jim Crow?



AP PHOTO

in children] a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. . . . We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal.

In 1955, in *Brown v. Board of Education*⁸ (sometimes called *Brown II*), the Supreme Court ordered desegregation to begin "with all deliberate speed," an ambiguous phrase that could be (and was) interpreted in a variety of ways.

REACTIONS TO SCHOOL INTEGRATION The Supreme Court ruling did not go unchallenged. Bureaucratic loopholes were used to delay desegregation. Another reaction was "white flight." As white parents sent their children to newly established private schools, some formerly white-only public schools became 100 percent black. In Arkansas, Governor Orval Faubus used the state's National Guard to block the integration of Central High School in Little Rock in 1957, which led to increasing violence in the area. A federal court demanded that the troops be withdrawn. Only after President Dwight D. Eisenhower federalized the Arkansas National Guard and sent in troops to help quell the violence did Central High finally become integrated.

By 1970, **de jure segregation**—segregation that is established by law—had been abolished by school systems. But that meant only that no public school could legally identify itself as being reserved for all whites or all blacks. It did not mean the end of **de facto segregation** (segregation that is not imposed by law but is produced by circumstances, such as the existence of neighborhoods or communities populated primarily by African Americans). Attempts to overcome *de facto* segregation included redrawing school district lines, reassigning pupils, and busing.

de jure segregation

Racial segregation that occurs because of laws or decisions by government agencies.

de facto segregation

Racial segregation that occurs not as a result of deliberate intentions but because of past social and economic conditions and residential patterns.

busing The transportation of public school students by bus to schools physically outside their neighborhoods to eliminate school segregation based on residential patterns.

BUSING Busing is the transporting of students by bus to schools physically outside their neighborhoods in an effort to achieve racially desegregated schools. The Supreme Court first endorsed busing in 1971 in a case involving the school system in Charlotte, North Carolina.⁹ Following this decision, the Court upheld busing in several northern cities.¹⁰ Proponents believed that

busing improved the educational and career opportunities of minority children and also enhanced the ability of children from different ethnic groups to get along with one another.

Nevertheless, busing was unpopular with many groups from its inception. By the mid-1970s, the courts had begun to retreat from their former support for busing. In 1974, the Supreme Court rejected the idea of busing children across school district lines.¹¹ In 1986, the Court refused to review a lower court decision that ended a desegregation plan in Norfolk, Virginia.¹² Today, busing orders to end *de facto* segregation are not upheld by the courts. Indeed, *de facto* segregation in America's schools is still widespread.

The Civil Rights Movement

In 1955, one year after the first *Brown* decision, an African American woman named Rosa Parks, a long-time activist in the NAACP, boarded a public bus in Montgomery, Alabama. When it became crowded, she refused to move to the "colored section" at the rear of the bus. She was arrested and fined for violating local segregation laws. Her arrest spurred the local African American community to organize a year-long boycott of the entire Montgomery bus system. The protest was led by a twenty-seven-year-old Baptist minister, the Reverend Dr. Martin Luther King, Jr. During the protest period,

Martin Luther King Jr. acknowledges the crowd at the Lincoln Memorial for his "I Have a Dream" speech during the March on Washington, D.C., on Aug. 28, 1963.

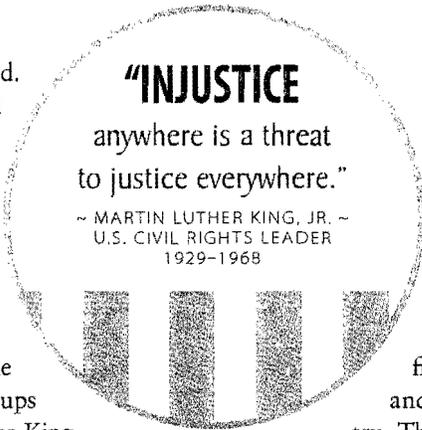


AP PHOTO

he was jailed and his house was bombed. Despite the hostility and what appeared to be overwhelming odds against them, the protesters were triumphant.

In 1956, a federal court prohibited the segregation of buses in Montgomery, and the era of the **civil rights movement**—the movement by minorities and concerned whites to end racial segregation—had begun. The movement was led by a number of groups and individuals, including Martin Luther King and his Southern Christian Leadership Conference (SCLC). Other groups, such as the Congress of Racial Equality (CORE), the NAACP, and the Student Nonviolent Coordinating Committee (SNCC), also sought to secure equal rights for African Americans.

NONVIOLENCE AS A TACTIC Civil rights protesters in the 1960s began to apply the tactic of nonviolent **civil disobedience**—the deliberate and public refusal to obey laws considered unjust—in civil rights actions throughout the South. For example, in 1960, in Greensboro, North Carolina, four African American students sat at the “whites only” lunch counter at Woolworth’s and ordered food. The waitress refused to serve them, and the store closed early, but more students returned the next day to sit at the counter, with supporters picketing outside. **Sit-ins** spread to other lunch counters across the South. In some instances, students were heckled or even dragged from the store by angry whites. But the protesters never reacted with violence. They simply returned to their seats at the counter, day after day. Within months of the first sit-in, lunch counters began to reverse their policies of segregation.



Civil rights activists were trained in the tools of nonviolence—how to use nonthreatening body language, how to go limp when dragged or assaulted, and how to protect themselves from clubs or police dogs. As the civil rights movement gained momentum, the media images of nonviolent protesters being attacked by police, sprayed with fire hoses, and attacked by dogs shocked and angered Americans across the country. This public backlash led to nationwide demands for reform. The March on Washington for Jobs and Freedom, led by Martin Luther King in 1963, aimed in part to demonstrate the widespread public support for legislation to ban discrimination in all aspects of public life.

CIVIL RIGHTS LEGISLATION IN THE 1960s As the civil rights movement demonstrated its strength, Congress began to pass civil rights laws. While the Fourteenth Amendment prevented the *government* from discriminating against individuals or groups, the private sector—businesses, restaurants, and so on—could still freely refuse to employ and serve nonwhites. Therefore, Congress sought to address this issue.

The Civil Rights Act of 1964 was the first and most comprehensive civil rights law. It forbade discrimination on the basis of race, color, religion, gender, and national origin. The major provisions of the act were as follows:

- It outlawed discrimination in public places of accommodation, such as hotels, restaurants, snack bars, movie theaters, and public transportation.
- It provided that federal funds could be withheld from any federal or state government project or facility that practiced any form of discrimination.

These Arkansas African American college students participate in a sit-in at a diner's counter. Why did they feel the need to demonstrate in this fashion? Why don't we see such pictures in the news today?



MP/GETTY IMAGES

civil rights movement The movement in the 1950s and 1960s, by minorities and concerned whites, to end racial segregation.

civil disobedience The deliberate and public act of refusing to obey laws thought to be unjust.

sit-in A tactic of nonviolent civil disobedience. Demonstrators enter a business, college building, or other public place and remain seated until they are forcibly removed or until their demands are met. The tactic was used successfully in the civil rights movement and in other protest movements in the United States.

- It banned discrimination in employment.
- It outlawed arbitrary discrimination in voter registration.
- It authorized the federal government to sue to desegregate public schools and facilities.

Other significant laws passed by Congress during the 1960s included the Voting Rights Act of 1965, which made it illegal to interfere with anyone's right to vote in any election held in this country (see Chapter 8 for a discussion of the historical restrictions on voting that African Americans faced), and the Civil Rights Act of 1968, which prohibited discrimination in housing.

THE BLACK POWER MOVEMENT Not all African Americans embraced nonviolence. Several outspoken leaders in the mid-1960s were outraged at the slow pace of change in the social and economic status of blacks. Malcolm X, a speaker and organizer for the Nation of Islam (also called the Black Muslims), rejected the goals of integration and racial equality espoused by the civil rights movement. He called instead for black separatism and black pride. Although he later moderated some of his views, his rhetorical style and powerful message influenced many African American young people.

By the late 1960s, with the assassinations of Malcolm X in 1965 and Martin Luther King in 1968, the era of mass acts of civil disobedience in the name of civil rights had come to an end.

Political Participation

As you will read in Chapter 8, in many jurisdictions African Americans were prevented from voting for years after the Civil War, despite the Fifteenth Amendment (1870). These discriminatory practices persisted in the twentieth century. In the early 1960s, only 22 percent of African Americans of voting age in the South were registered to vote, compared with 63 percent of voting-age whites. In Mississippi, the most extreme example, only 6 percent of voting-age African Americans were registered to vote. Such disparities led to the enactment of the Voting Rights Act of 1965, which ended discriminatory voter-registration tests and gave federal voter registrars the power to prevent racial discrimination in voting.

Today, the percentages of voting-age blacks and whites registered to vote are nearly equal. As a result of

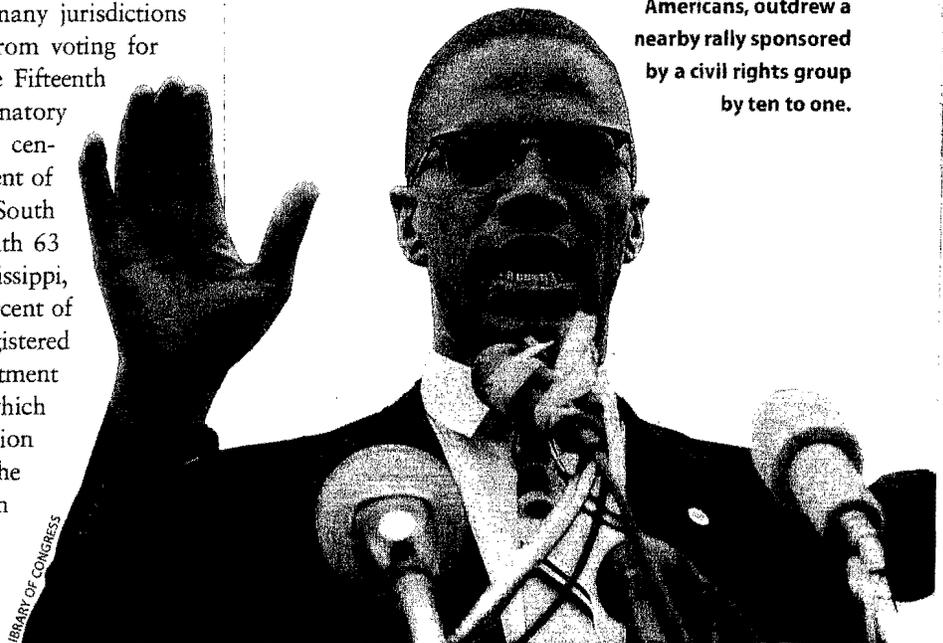
this dramatic change, political participation by African Americans has increased, as has the number of African American elected officials.

Today, more than nine thousand African Americans serve in elective office in the United States. At least one congressional seat in each southern state is held by an African American, as are more than 15 percent of the state legislative seats in the South. A number of African Americans have achieved high government office, including Colin Powell, who served as President George W. Bush's first secretary of state, and Condoleezza Rice, his second secretary of state. Of course, in 2008 Barack Obama, a U.S. senator from Illinois, became the first African American president of the United States. Obama's election reflects a significant change in public opinion. Fifty years ago, only 38 percent of Americans said that they would be willing to vote for an African American as president. Today, this number has risen to more than 90 percent. Nonetheless, only two African Americans have been elected to a state governorship, and only a handful of African Americans have been elected to the U.S. Senate since 1900.

Continuing Challenges

Although African Americans no longer face *de jure* segregation, they continue to struggle for income and educational parity with whites. Recent census data show

Black Muslim leader Malcolm X speaks to an audience at a Harlem rally in 1963. His talk, in which he restated the Black Muslim theme of complete separation of whites and African Americans, outdrew a nearby rally sponsored by a civil rights group by ten to one.



that incomes in white households are two-thirds higher than those in black households. The poverty rate for blacks is roughly three times that for whites.

The education gap between blacks and whites also persists despite continuing efforts by educators—and by government, through programs such as the federal No Child Left Behind Act—to reduce it. Recent studies show that on average, African American students in high school can read and do math at only the average level of whites in junior high school. While black adults have narrowed the gap with white adults in earning high school diplomas, the disparity has widened for college degrees.

These problems tend to feed on one another. Schools in poorer neighborhoods generally have fewer educational resources available, resulting in lower achievement levels for their students. Thus, some educational experts suggest that it all comes down to money. In fact, many parents of minority students in struggling school districts are less concerned about integration than they are about funds for their children's schools. A number of these parents have initiated lawsuits against their state governments, demanding that the states give poor districts more resources.

Researchers have known for decades that when students enrolled at a particular school come almost entirely from impoverished families, regardless of race, the performance of the students at that school is seriously depressed. When low-income students attend schools where the majority of the students are middle class, again regardless of race, their performance improves dramatically—without dragging down the performance of the middle-class students. Because of this research and recent U.S. Supreme Court rulings that have struck down some racial integration plans, several school systems have adopted policies that integrate students on the basis of socioeconomic class, not race.¹³

LO3 Women

In 1848, Lucretia Mott and Elizabeth Cady Stanton organized the first “woman’s rights” convention in Seneca Falls, New York. The three hundred people who attended approved a Declaration of Sentiments: “We hold these truths to be self-evident: that all men *and women* are created equal.” In the following years, other women’s groups held conventions in various cities in the Midwest and the East. With the outbreak of the Civil War, though, women’s rights advocates devoted their energies to the war effort.



AP PHOTO/ALEX BRANDON

President Obama often accepts public speaking engagements. While he has stumped for health-care reform, increased regulation of business and of banks, and other causes, he has rarely talked about race relations. Why not?

The Struggle for Voting Rights

The movement for political rights gained momentum again in 1869, when Susan B. Anthony and Elizabeth Cady Stanton formed the National Woman Suffrage Association. **Suffrage**—the right to vote—became their goal. Members of this association, however, saw suffrage as only one step on the road toward greater social and political rights for women. Lucy Stone and other women, who founded the American Woman Suffrage Association, thought that the right to vote should be the only goal. By 1890, the two organizations had joined forces, and the resulting National American Woman Suffrage Association had indeed only one goal—the enfranchisement of women. When little progress was made, small, radical splinter groups took to the streets. Parades, hunger strikes, arrests, and jailings soon followed.

World War I (1914–1918) marked a turning point in the battle for women’s rights. The war offered many opportunities for women. Thousands of women served as volunteers, and about a million women joined the workforce, holding jobs vacated by men who entered military service. After the war, President Woodrow Wilson wrote to Carrie Chapman Catt, one of the leaders of the women’s movement: “It is high time that [that] part of our debt should be

suffrage The right to vote; the franchise.

acknowledged.” Two years later, in 1920, seventy-two years after the Seneca Falls convention, the Nineteenth Amendment to the Constitution was ratified: “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.”

“THE RIGHT OF CITIZENS OF THE UNITED STATES TO VOTE shall not be denied or abridged . . . on account of sex.”

The Feminist Movement

After winning the right to vote, women engaged in little independent political activity for many years. In the 1960s, however, a new women’s movement arose—the feminist movement. Women who faced discrimination in employment and other circumstances were inspired in part by the civil rights movement and the campaign against the war in Vietnam. The National Organization for Women (NOW), founded in 1966, was the most important new women’s organization. But the feminist movement also consisted of thousands of small, independent “women’s liberation” and “consciousness-raising” groups established on campuses and in neighborhoods throughout the nation. **Feminism**, the goal of the movement, meant full political, economic, and social equality for women.

During the 1970s, NOW and other organizations sought to win passage of the Equal Rights Amendment (ERA) to the Constitution, which would have written equality into the heart of the nation’s laws. The amendment did not win support from enough state legislatures, however, and it failed. Campaigns to change state and national laws affecting women were much more successful. Congress and the various state legislatures enacted a range of measures to provide equal rights for women. The women’s movement also enjoyed considerable success in legal action. Courts at all levels accepted the argument that *gender discrimination* violated the Fourteenth Amendment’s equal protection clause.

Women in American Politics Today

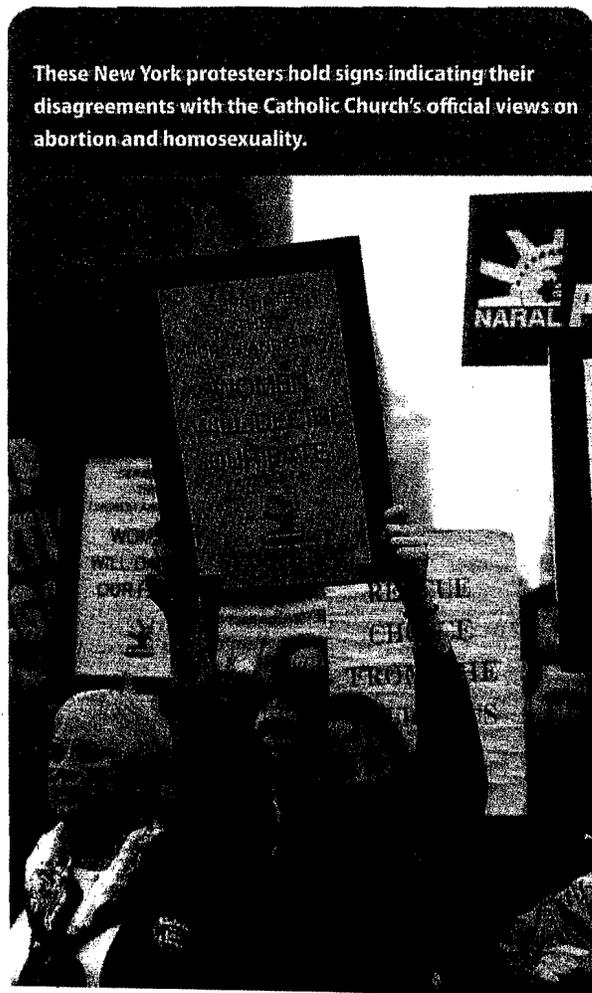
More than ten thousand members have served in the U.S. House of Representatives. Only 1 percent of them have been women, and women continue to face a “men’s club” atmosphere in Congress. In 2002, however, a woman, Nancy Pelosi (D., Calif.), was elected minority leader of the House of Representatives. She was

feminism The belief in full political, economic, and social equality for women.

the first woman to hold this post. Pelosi again made history when, after the Democratic victories in the 2006 elections, she was elected Speaker of the House of Representatives, the first woman ever to lead the House.

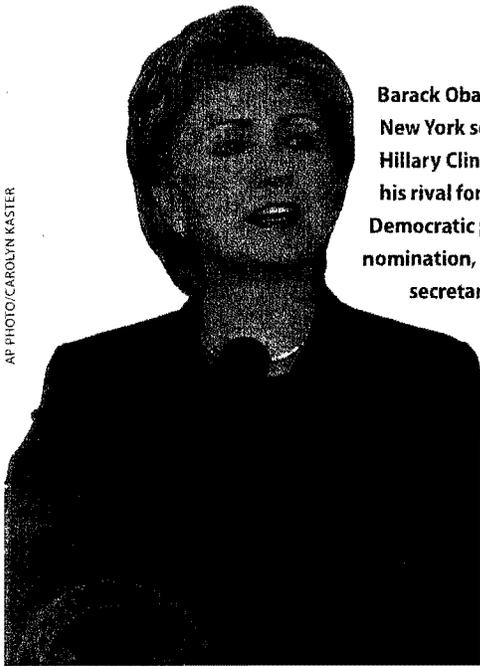
FEDERAL OFFICES Women have been underrepresented when receiving presidential appointments to federal offices. Franklin D. Roosevelt (1933–1945) appointed the first woman to a cabinet post—Frances Perkins, who was secretary of labor from 1933 to 1945. Several women have held cabinet posts in more recent administrations, however. All of the last three presidents have appointed women to the most senior cabinet post—secretary of state. Bill Clinton (1993–2001) appointed Madeleine Albright to this position, George W. Bush (2001–2009) picked Condoleezza Rice for the post in his second term, and most recently, Barack Obama chose New York senator Hillary Clinton to be secretary of state.

These New York protesters hold signs indicating their disagreements with the Catholic Church’s official views on abortion and homosexuality.



EVAN AGOSTINI/LAISON/GETTY IMAGES

AP PHOTO/CAROLYN KASTER



Barack Obama named New York senator Hillary Clinton, his rival for the Democratic presidential nomination, to be secretary of state.

In addition, Ronald Reagan (1981–1989) appointed the first woman to sit on the Supreme Court, Sandra Day O'Connor. Bill Clinton appointed Ruth Bader Ginsburg to the Supreme Court. Barack Obama selected Sonia Sotomayor for the Court in 2009, and Elena Kagan in 2010.

STATE POLITICS Women have made greater progress at the state level, and the percentage of women in state legislatures has been rising steadily. Women now constitute nearly one-fourth of state legislators. Notably, in 1998, women won races for each of the top five offices

in Arizona, the first such occurrence in U.S. history. Generally, women have been more successful politically in the western states than elsewhere. In Washington State, more than one-third of the state's legislative seats are now held by women. At the other end of the spectrum are states such as Alabama. In that state, fewer than 10 percent of the lawmakers are women.

Women in the Workplace

An ongoing challenge for American women is to obtain equal pay and equal opportunity in the workplace. In spite of federal legislation and programs to promote equal treatment of women in the workplace, women continue to face various forms of discrimination.

WAGE DISCRIMINATION In 1963, Congress passed the Equal Pay Act. The act requires employers to pay an equal wage for substantially equal work—males cannot be paid more than females who perform essentially the same job. The following year, Congress passed the Civil Rights Act of 1964, Title VII of which prohibits employment discrimination on the basis of race, color, national origin, gender, and religion. Women, however, continue to face wage discrimination.

It is estimated that for every dollar earned by men, women earn about 80 cents. Although the wage gap has narrowed significantly since 1963, when the Equal Pay Act was enacted (at that time, women earned 58 cents for every dollar earned by men), it still remains. This is particularly true for women in management positions and older women. Female managers now earn, on average, only 70 percent of what male managers earn. And women between the ages of forty-five and fifty-four make, on average, only 73 percent of what men in that age group earn. Notably, when a large number of women are in a particular occupation, the wages that are paid in that occupation tend to be relatively low. On the positive side, women are less likely than men to lose their jobs during a recession. We examine that phenomenon in this chapter's feature *Our Government Faces a Troubled Economy: Unemployment among Men* on the following page.

Even though an increasing number of women now hold business and professional jobs once held only by men, relatively few of these women are able to rise to the top of the career ladder in their firms due to the lingering bias against women in the

Elena Kagan appears just after being sworn in as the 112th justice of the Supreme Court. She is the fourth female named to the Court.



AFP PHOTO/PAUL J. RICHARDS/NEWS.COM

EVAN AGOSTINI/GRANUN/GETTY IMAGES



OUR GOVERNMENT FACES A TROUBLED ECONOMY

Unemployment among Men

One of the most far-reaching and painful aspects of any recession is unemployment. Those who are unemployed lose not only their income but also some of their dignity. Continued unemployment was the number-one issue for most voters throughout the Great Recession.

During this period, many people noticed that more men than women were losing their jobs. From December 2007 to October 2009, net employment fell by 5.8 million for men but only 2.5 million for women. As a result, some called the Great Recession a "mancession." At the height of the unemployment crisis, a full one-fifth of the male population of prime working age was, for one or another reason, not working. The only other time in American history when the share of men not working was this large or larger was during the Great Depression of the 1930s.

The Hardest-Hit Industries Were Dominated by Men

The Great Recession started with the collapse of the housing sector. Construction came to an abrupt halt in most of the United States. Men have always dominated the construction industry—up to 88 percent of the jobs in construction are filled by men. Consequently, many more men than women were put out of work in this sector. Manufacturing was hit harder than any sector other than construction, and more than 71 percent of manufacturing jobs are held by men. In contrast, the industries that suffered least were dominated by women. Employment in education and health services actually edged up through the crisis, and more than 77 percent of the workers in those two fields are women.

These differentials go a long way toward explaining why the Great Recession was a mancession. Some economists have pointed out, however, that men have lost many more jobs than women in every recession since World War II. In that sense, all recessions have been mancessions.

In the Long Run

Although the employment picture for men was especially bleak during the recession, male employment has declined over the last forty years in good times and bad. Before 1970, 92 to 95 percent of the men in the prime employment years—ages 25 to 54—were working. On the eve of the Great Recession, the percentage was about 88. Fewer than half of women aged 25 to 54 were working in 1970. In 2000, female employment peaked at about 75 percent.

Women have pulled ahead of men when it comes to education, and that cannot help men get jobs. Consider how many people aged 25 to 29 have college degrees: In 1964, 17 percent of men in this age group had a degree, compared with 9 percent of women. In 2009, 27 percent of men in this age group had a degree—and 35 percent of women had one. Men in their twenties are actually *less* likely to have a college degree today than in 1975.

The Government Reacts

High unemployment rates are very bad news for politicians. They anger voters and can cost officeholders their jobs. In 2009 and 2010, the Democrats attempted to combat the recession and unemployment through stimulus programs and extending unemployment compensation. Subsidies to the states for education and health care may have preserved some jobs in sectors dominated by women. Saving Chrysler and General Motors helped men (auto employment is 80 percent male). At best, though, such measures blunted the effects of the recession. They did not end it.

You Be the Judge Women continue to receive lower wages than men, on average. What effect might this have on the ability of women to get jobs?

glass ceiling An invisible but real discriminatory barrier that prevents women and minorities from rising to top positions of power or responsibility.

workplace. This bias has been described as the **glass ceiling**—an invisible but real discriminatory barrier

that prevents women (or minorities) from rising to top positions of power or responsibility. Today, less than one-sixth of the top executive positions in the largest American corporations are held by women.

SEXUAL HARASSMENT Title VII's prohibition of gender discrimination has also been extended to prohibit sexual harassment. **Sexual harassment** occurs when job opportunities, promotions, salary increases, or even the ability to retain a job depends on whether an employee complies with demands for sexual favors. A special form of sexual harassment, called hostile-environment harassment, occurs when an employee is subjected to sexual conduct or comments in the workplace that interfere with the employee's job performance or that create an intimidating, hostile, or offensive environment.

The Supreme Court has upheld the right of persons to be free from sexual harassment on the job on a number of occasions. In 1998, the Court made it clear that sexual harassment includes harassment by members of the same sex.¹⁴ In the same year, the Court held that employers are liable for the harassment of employees by supervisors unless the employers can show that (1) they exercised reasonable care in preventing such problems (by implementing antiharassment policies and procedures, for example) and (2) the employees failed to take advantage of any corrective opportunities provided by the employers.¹⁵ The Civil Rights Act of 1991 greatly expanded the remedies available for victims of sexual harassment. Under the act, victims can seek damages as well as back pay, job reinstatement, and other compensation.

LO 4 Securing Rights for Other Groups

In addition to African Americans and women, a number of other groups in U.S. society have faced discriminatory treatment. To discuss all of these groups would require volumes.

Here, we look first at three significant ethnic groups that have had to struggle for equal treatment—Hispanics, Asian Americans, and Native Americans. Then we examine the struggles of several other groups of Americans—persons with disabilities and gay men and lesbians.

Hispanics

Hispanics, or Latinos, constitute the largest ethnic minority in the United States. Whereas African Americans represent about 13 percent of the U.S. population, Hispanics now constitute more than 15 percent. Each year, the Hispanic population grows by nearly 1 million people, one-third of whom are newly

arrived legal immigrants. By 2050, Hispanics are expected to constitute about one-fourth of the U.S. population.

Hispanics can be of any race, and to classify them as a single minority group is misleading.

Spanish-speaking individuals tend to identify themselves by their country of origin, rather than as Hispanics. As you can see in Figure 5-1 below, the largest Hispanic group consists of Mexican Americans, who constitute about 66 percent of the Hispanic population living in the United States. About 9 percent of Hispanics are Puerto Ricans, and 3.5 percent are Cuban Americans. Most of the remaining Hispanics are from Central and South American countries.

Economically, Hispanic households are often members of this country's working poor. About 20 percent of Hispanic families live below the poverty line, compared with 8 percent of non-Hispanic white families. Hispanic leaders tend to attribute the low income levels to language problems, lack of job training, and continuing immigration. Immigration disguises statistical progress because language problems and lack of job training are usually more notable among new immigrants than among those who have lived in the United States for many years.

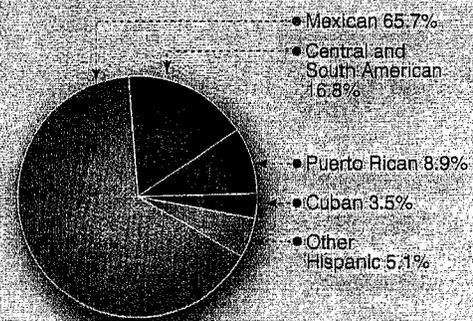
sexual harassment

Unwanted physical contact, verbal conduct, or abuse of a sexual nature that interferes with a recipient's job performance, creates a hostile environment, or carries with it an implicit or explicit threat of adverse employment consequences.

Figure 5-1

Hispanics Living in the United States by Place of Origin

As you can see in this chart, most Hispanics (just under two-thirds) are from Mexico.



Source: Pew Hispanic Center tabulations of 2008 American Community Survey.

Minority Group Members and Women

The 2010 election saw a large number of minority and female candidates for the Senate, for the House, for governor, and for seats in state legislatures. The total number of minority candidates for the House and Senate was 123. A record number of African-American Republican congressional candidates sought office and two were successful. The number of Latino members of the House and Senate is now a near-record twenty-seven. Five of them are Republican. The number of Asian-American members of the House and Senate will remain at thirteen,

PARTY IDENTIFICATION AND ELECTORAL SIGNIFICANCE In their party identification, Hispanics tend to follow some fairly well-established patterns. Traditionally, Mexican Americans and Puerto Ricans identify with the Democratic Party, which has favored more government assistance and support programs for disadvantaged groups. Cubans, in contrast, tend to identify with the Republican Party. This is largely because of a different history. Cuban émigrés fled from Cuba during and after the Communist revolution led by Fidel Castro. The strong anti-Communist sentiments of the Cubans propelled them toward the more conservative party—the Republicans. Today, relations with Communist Cuba continue to be a key political issue for Cuban Americans.

Immigration reform was the subject of heated debate in the months leading up to the 2006 midterm elections, and this debate had a significant impact on Hispanic voters, especially in California. Before the 2006 elections, to appeal to the party base, Republican ads attacked proposed legislation that would have made it possible for unauthorized immigrants to obtain legal status. According to some observers, many Hispanics perceived the ads as attacking all Hispanics and were motivated to vote against Republicans in the 2006 elections. Exit polls conducted during the elections showed that for 69 percent of Hispanic voters, immigration was the number-one priority.

By 2008, immigration had receded as a national issue—it did not come up at all in the

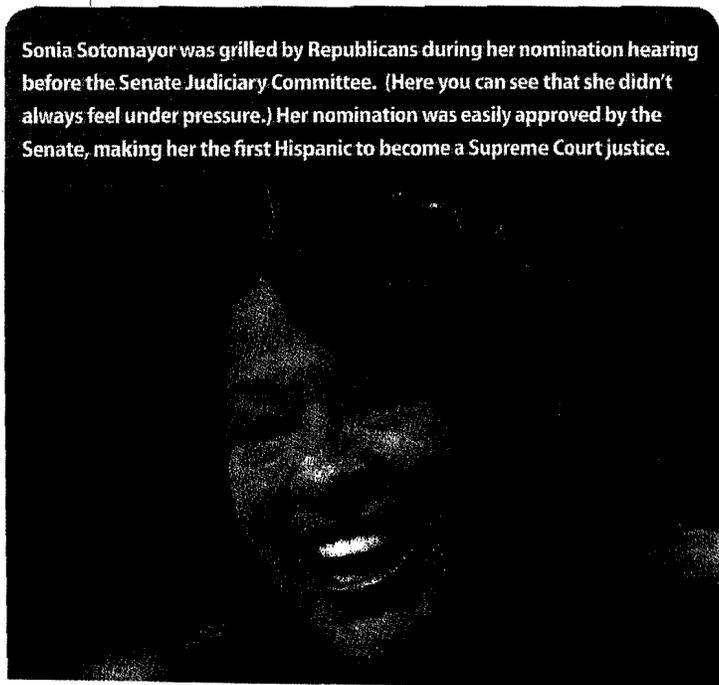
while the number of African-Americans will be forty-one, one less than in the previous Congress.

A total of 154 female candidates sought office in the House and Senate. Campaign spending hit new records, and one of them was set by a woman. Republican Meg Whitman spent \$140 million of her own money to defeat Democratic rival Jerry Brown for the governorship of California. (She lost nonetheless.) An estimated seventy-two House seats are now held by women, down one from the previous Congress. The number of female senators remained the same at seventeen. At the state level, for the first time ever, two female minority group members won governorships—in New Mexico and South Carolina—bringing the total number of female governors to seven.

presidential debates. For Hispanics, along with everyone else, economic troubles were the number-one issue. In the fall elections, only 31 percent of Hispanic voters chose Republican John McCain, even though he had been a major proponent of immigration reform. This was down sharply from the almost 40 percent of the Hispanic vote won by George W. Bush in 2004.

POLITICAL PARTICIPATION Generally, Hispanics in the United States have a comparatively low level of political participation. This is understandable, given that one-third of Hispanics are below voting age and another one-fourth are not citizens and thus cannot vote. Although voter turnout among Hispanics is

Sonia Sotomayor was grilled by Republicans during her nomination hearing before the Senate Judiciary Committee. (Here you can see that she didn't always feel under pressure.) Her nomination was easily approved by the Senate, making her the first Hispanic to become a Supreme Court justice.



AP PHOTO/1. SCOTT APPLEWHITE

generally low compared with the population at large, the Hispanic voting rate is rising as more immigrants become citizens and as more Hispanics reach voting age. Indeed, when comparing citizens of equal incomes and educational backgrounds, Hispanic citizens' participation rate is higher than average.

Increasingly, Hispanics hold political office, particularly in those states with large Hispanic populations. Today, more than 5 percent of the state legislators in Arizona, California, Colorado, Florida, New Mexico, and Texas are of Hispanic ancestry. Cuban Americans have been notably successful in gaining local political power, particularly in Dade County, Florida.

President George W. Bush appointed a number of Hispanics to federal offices, including cabinet positions. For example, he named Alberto Gonzales to head the Justice Department and Carlos Gutierrez as secretary of commerce. Barack Obama appointed Senator Ken Salazar (D., Colo.) to head the Interior Department and Representative Hilda Solis (D., Calif.) as secretary of labor. Hispanics are also increasing their presence in Congress, albeit slowly.

Asian Americans

Asian Americans have also suffered, at times severely, from discriminatory treatment. The Chinese Exclusion Act of 1882 prevented persons from China and Japan from coming to the United States to prospect for gold or to work on the railroads or in factories in the West. After 1900, immigration continued to be restricted—only limited numbers of individuals from China and Japan were allowed to enter the United States. Those who were allowed into the country faced racial prejudice from Americans who had little respect for their customs and culture. In 1906, after the San Francisco earthquake, Japanese American students were segregated into special schools so that white children could use their buildings.

The Japanese bombing of Pearl Harbor in 1941, which launched the entry of the United States into World War II (1939–1945), intensified Americans' fear of the Japanese. Actions taken under an executive order issued by President Franklin D. Roosevelt in 1942 subjected many Japanese Americans to curfews, excluded them from certain “military areas,” and evacuated most of the West Coast Japanese American population to internment camps (also called “relocation centers”).¹⁶



Asian American students routinely score higher on their college-entrance SATs than do other groups. Also, Asian Americans graduate at a higher rate than do other groups. Because they are in a minority, should they nonetheless benefit from affirmative action programs in college admissions and job hiring?

In 1988, Congress provided funds to compensate former camp inhabitants—\$1.25 billion for approximately 60,000 people.

Today, Japanese Americans and Chinese Americans lead other ethnic groups in median income and median education. Indeed, Asians who have immigrated to the United States since 1965 (including immigrants from India) represent the most highly skilled immigrant groups in American history. Nearly 40 percent of Asian Americans over the age of twenty-five have college degrees. The image of Asian Americans as a “model minority” has created certain problems for its members, however. Some argue that leading colleges and universities have discriminated against Asian Americans in admissions because so many of them apply. We discuss that issue in this chapter's *Join the Debate* feature on the following page.

More than a million Indochinese war refugees, most from Vietnam, have immigrated to the United States since the 1970s. Many came with relatives and were sponsored by American families or organizations. Thus, they had support systems to help them get started. Some immigrants from other parts of Indochina, however, have experienced difficulties because they come from cultures that have had very little contact with the practices of developed industrial societies.

Native Americans

When we consider population figures since 1492, we see that the Native Americans experienced one catastrophe after another. We cannot know exactly how many people lived in America when Columbus arrived.



JOIN THE DEBATE

Are Admissions at Top Schools Unfair to Asian Americans?

There are 14 million Asian Americans, about 4.5 percent of the U.S. population. They are a diverse group. Outside of the United States, people from China, India, Japan, and Korea have little in common. Only in America are they lumped together—and in this country, people from East and South Asia do have a few things in common. Their average family income is higher than that of whites. They are also well educated. By one estimate, Asian Americans make up as many as 30 percent of the top college candidates as determined by SAT scores, National Merit and AP Scholar awards, and grades. In the Ivy League, however, Asian admissions have consistently run below 20 percent. In other words, many excellent Asian American students are being turned away.

Colleges Admission Isn't Just about Grades and Test Scores

While it may appear to high-scoring Asian Americans who don't get into their college of choice that they have suffered from discrimination, it is not necessarily true. Universities routinely manage admissions to obtain the freshman classes they wish to have. They try to include the right number of football and basketball players, dancers, minorities, and men (the latter are favored in some universities because otherwise campuses might become "too female"). Only if you believe that high test scores should be the sole basis for admission can you argue that university admission preferences constitute discrimination.

The goal of a diverse freshman class is to expose all students to a mix of races, ethnicities, and viewpoints. Vincent Pan, head of Chinese for Affirmative Action

argues that universities "have a public responsibility to prepare future leaders, and we need to prepare a generation of leaders that will look like America. A freshman class that is, say, 40 percent Asian American does not look like America, just as a class that is 80 percent women does not look like America."

Discrimination Is Discrimination—Period

Lately, Ivy League-level universities have established techniques to limit the number of Asian American students admitted to their institutions. These same techniques were used before World War II—and sometimes even after—to limit the number of Jewish students. The basic scheme, then and now, is to award lots of extra points for being "well-rounded" and then to define well-rounded as everything that young Asian Americans aren't (or that the young Jews weren't). A more labor-intensive method of accomplishing the same goal is through a "holistic" review process for all candidates. Schools using this process rely on admissions officers' subjective views of students, which yields an assessment that supposedly evaluates the "whole person."

There is no need to set Asian Americans in competition with other minorities in admissions. More than 20 percent of the spaces at top private universities are currently set aside for legacy students, children of the rich and famous, and athletes. Legacy students are the children of alumni or alumnae. If the number of these unjustified preferences were merely cut in half, there would be enough room for qualified Asian youths.

 **For Critical Analysis: Why do some universities reserve spots for the children of their graduates?**

Current research estimates the population of what is now the continental United States to have been anywhere from 3 million to 8 million, out of a total New World population of 40 million to 100 million. The Europeans brought with them diseases to which these Native Americans had no immunity. As a result, after a series of terrifying epidemics, the population of the continental United States was reduced to perhaps eight hundred thousand people by 1600. Death rates elsewhere in the New World were comparable. When the Pilgrims arrived at Plymouth, the Massachusetts coast was lined with abandoned village sites.¹⁷

In subsequent centuries, the American Indian population continued to decline, bottoming out at about half a million in 1925. These were centuries in which the European American—and African American—populations experienced explosive growth. By 2000, the Native American population had recovered to about 2 million, or about 3.5 million if we count individuals who are only part Indian.

In 1789, Congress designated the Native American tribes as foreign nations so that the government could sign land and boundary treaties with them. As members of foreign nations, Native Americans had no civil rights

under U.S. laws. This situation continued until 1924, when the citizenship rights spelled out in the Fourteenth Amendment to the Constitution were finally extended to American Indians.

EARLY POLICIES TOWARD NATIVE AMERICANS The Northwest Ordinance, passed by the Congress of the Confederation in 1787, stated that “the utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress.” Over the next hundred years, these principles were violated more often than they were observed.

In the early 1830s, boundaries were established between lands occupied by Native Americans and those occupied by white settlers. In 1830, Congress instructed the Bureau of Indian Affairs (BIA), which Congress had established in 1824 as part of the War Department, to remove all tribes to lands (reservations) west of the Mississippi River in order to free land east of the Mississippi for white settlement.

In the late 1880s, the U.S. government changed its policy. The goal became the “assimilation” of Native Americans into American society. Each family was given a parcel of land within the reservation to farm. The remaining acreage was sold to whites, thus reducing the number of acres in reservation status from 140 million to about 47 million. Tribes that would not cooperate with this plan lost their reservations altogether. The BIA

also set up Native American boarding schools for children to remove them from their parents’ influence. In these schools, American Indian children were taught to speak English, to practice Christianity, and to dress like white Americans.

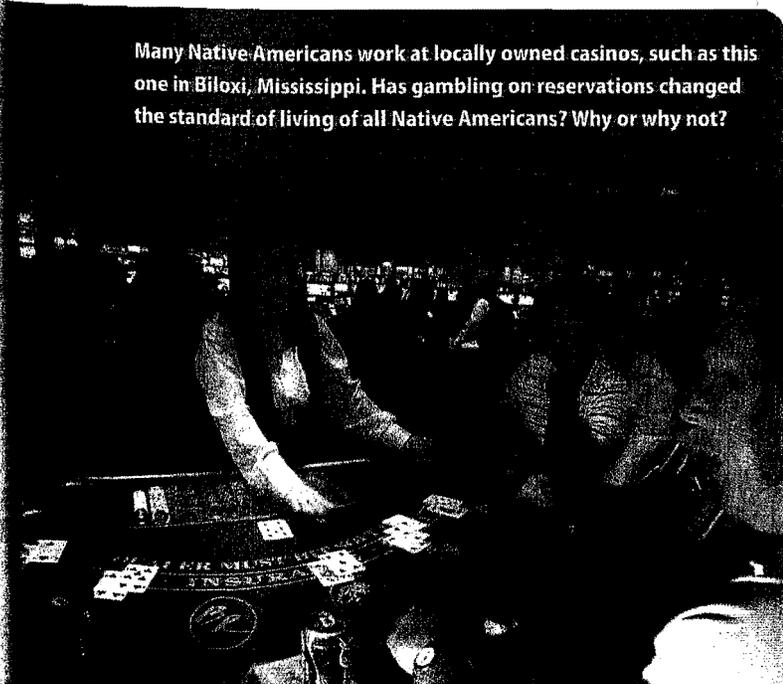
NATIVE AMERICANS TODAY Native Americans have always found it difficult to obtain political power. In part, this is because the tribes are small and scattered, making organized political movements difficult. Today, American Indians remain fragmented politically because large numbers of their population live off the reservations. Nonetheless, in the 1960s, some Native Americans formed organizations to strike back at the U.S. government and to reclaim their heritage, including their lands.

In the late 1960s, a small group of Indians occupied Alcatraz Island, claiming that the island was part of their ancestral lands. Other militant actions followed. For example, in 1973, supporters of the American Indian Movement took over Wounded Knee, South Dakota, where about 150 Sioux Indians had been killed by the U.S. Army in 1890.¹⁸ The occupation was undertaken to protest the government’s policy toward Native Americans and to call attention to the injustices they had suffered.

COMPENSATION FOR INJUSTICES OF THE PAST As more Americans became aware of the sufferings of Native Americans, Congress began to compensate them for past injustices. In 1990, Congress passed the Native American Languages Act, which declared that Native American languages are unique and serve an important role in maintaining Indian culture and continuity. Courts, too, have shown a greater willingness to recognize Native American treaty rights. For example, in 1985, the Supreme Court ruled that three tribes of Oneida Indians could claim damages for the use of tribal land that had been unlawfully transferred in 1795.¹⁹

The Indian Gaming Regulatory Act of 1988 allows Native Americans to have gambling operations on their reservations. Although the profits from casinos have helped to improve the economic and social status of many Native Americans, some Indians feel that this industry has seriously injured their traditional culture. Poverty and unemployment remain widespread on the reservations.

Many Native Americans work at locally owned casinos, such as this one in Biloxi, Mississippi. Has gambling on reservations changed the standard of living of all Native Americans? Why or why not?



JUSTIN SULLIVAN/GETTY IMAGES

Obtaining Rights for Persons with Disabilities

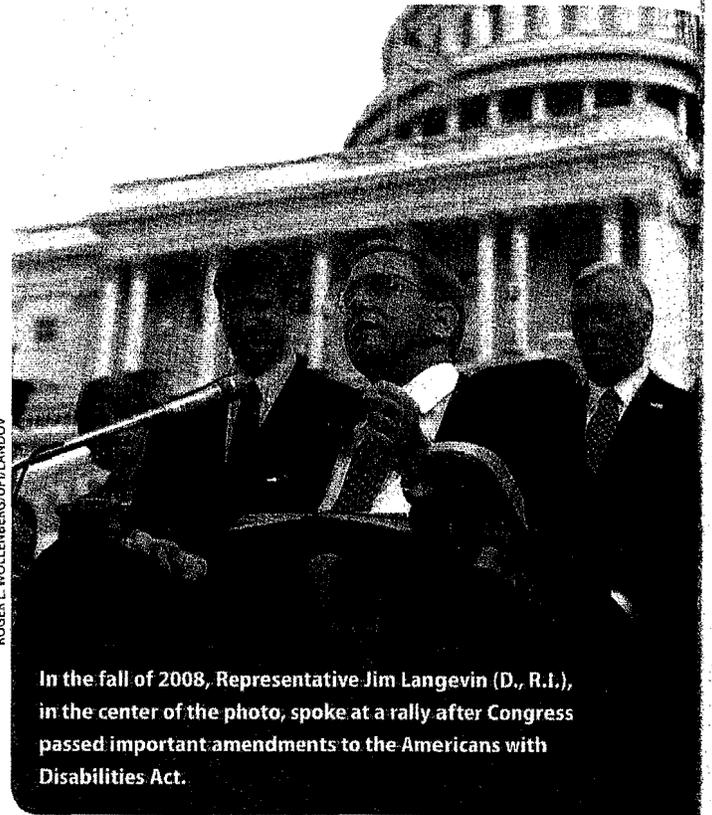
Discrimination based on disability crosses the boundaries of race, ethnicity, gender, and religion. Persons with disabilities, especially those with physical deformities or severe mental impairments, have to face social bias. Although attitudes toward persons with disabilities have changed considerably in the last several decades, such persons continue to suffer from discrimination in all its forms.

Persons with disabilities first became a political force in the 1970s, and in 1973, Congress passed the first legislation protecting this group of persons—the Rehabilitation Act. This act prohibited discrimination against persons with disabilities in programs receiving federal aid. The Individuals with Disabilities Education Act (formerly called the Education for All Handicapped Children Act of 1975) requires public schools to provide children with disabilities with free, appropriate, and individualized education in the least restrictive environment appropriate to their needs. Further legislation in 1978 led to regulations for ramps, elevators, and the like in all federal buildings. The Americans with Disabilities Act (ADA) of 1990, however, is by far the most significant legislation protecting the rights of this group of Americans.

THE AMERICANS WITH DISABILITIES ACT The ADA requires that all public buildings and public services be accessible to persons with disabilities. The act also mandates that employers “reasonably accommodate” the needs of workers or job applicants with disabilities who are otherwise qualified for particular jobs unless to do so would cause the employer to suffer an “undue hardship.”

The ADA defines persons with disabilities as persons who have physical or mental impairments that “substantially limit” their everyday activities. Health conditions that have been considered disabilities under federal law include blindness, a history of alcoholism, heart disease, cancer, muscular dystrophy, cerebral palsy, paraplegia, diabetes, and acquired immune deficiency syndrome (AIDS). The ADA, however, does not require employers to hire or retain workers who, because of their disabilities, pose a “direct threat to the health or safety” of their co-workers.

LIMITING THE SCOPE OF THE ADA From 1999 to 2002, the Supreme Court handed down a series of rulings that substantially limited the scope of the ADA. The Court found that any limitation that could be remedied by medication or by corrective devices such as eyeglasses did not qualify as a protected disability. According to the Court, even carpal tunnel syndrome was not a



In the fall of 2008, Representative Jim Langevin (D., R.I.), in the center of the photo, spoke at a rally after Congress passed important amendments to the Americans with Disabilities Act.

disability.²⁰ In 2008, however, the ADA Amendments Act overturned most of these limits. Carpal tunnel syndrome and other ailments may again qualify as disabilities. (Eyeglasses were not covered by the new law.)

In 2001, the Supreme Court reviewed a case raising the question of whether suits under the ADA could be brought against state employers. The Court concluded that states are immune from lawsuits brought to enforce rights under this federal law.²¹

Gay Men and Lesbians

Until the late 1960s and early 1970s, gay men and lesbians tended to keep quiet about their sexual preferences because exposure usually meant facing harsh consequences. This attitude began to change after a 1969 incident in New York City, however. When the police raided the Stonewall Inn—a bar popular with gay men and lesbians—on June 27 of that year, the bar’s patrons responded by throwing beer cans and bottles at the police. The riot continued for two days. The Stonewall Inn uprising launched the gay power movement. By the end of the year, gay men and lesbians had formed fifty organizations, including the Gay Activist Alliance and the Gay Liberation Front.

A CHANGING LEGAL LANDSCAPE The number of gay and lesbian organizations has grown from fifty in 1969 to several thousand today. These groups have

exerted significant political pressure on legislatures, the media, schools, and churches. In the decades following Stonewall, more than half of the forty-nine states that had sodomy laws—laws prohibiting homosexual conduct and certain other forms of sexual activity—repealed them. In seven other states, the courts invalidated such laws. Then, in 2003, the United States Supreme Court issued a ruling that effectively invalidated all remaining sodomy laws in the country.

In *Lawrence v. Texas*,²² the Court ruled that sodomy laws violated the Fourteenth Amendment's due process clause. According to the Court, "The liberty protected by the Constitution allows homosexual persons the right to choose to enter upon relationships in the confines of their homes and their own private lives and still retain their dignity as free persons."

Today, twenty-five states and more than 180 cities and counties in the United States have laws prohibiting discrimination against homosexuals in at least some contexts. The laws may prohibit discrimination

"The liberty protected by the Constitution allows homosexual persons the right to choose to enter upon relationships in the confines of their homes and their own private lives and still retain their dignity as free persons."

in housing, education, banking, employment, or public accommodations. In a landmark case in 1996, *Romer v. Evans*,²³ the Supreme Court held that a Colorado constitutional amendment that would have invalidated all state and local laws protecting homosexuals from discrimination violated the equal protection

clause of the U.S. Constitution. The Court stated that the amendment would have denied to homosexuals in Colorado—but to no other Colorado residents—"the right to seek specific protection from the law."

CHANGING ATTITUDES Laws and court decisions protecting the rights of gay men and lesbians reflect social attitudes that are much changed from the 1960s. Liberal political leaders have been supporting gay rights for at least two decades. In 1984, presidential candidate Walter Mondale openly sought the gay vote, as did Jesse Jackson in his 1988 presidential campaign. As president, Bill Clinton strongly supported gay rights.

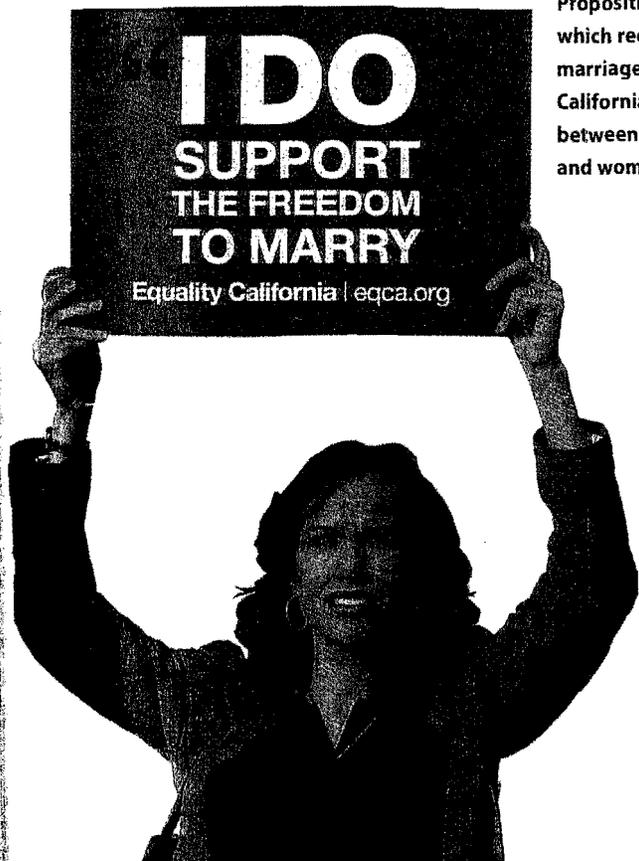
Even some conservative politicians have softened their stance on the issue. For example, during his 2000 presidential campaign, George W. Bush met with representatives of gay groups to discuss issues important to them. Although Bush stated that he was opposed to gay marriage, he promised that he would not disqualify anyone from serving in his administration on the basis of sexual orientation.

According to a Gallup poll taken in 2009, public support for gay and lesbian rights has continued to rise. The survey showed that 56 percent of respondents believed that gay or lesbian relations between consenting adults should be legal, up from 43 percent in 1978. Support for employment and domestic partnership rights ran even higher. Among those interviewed, 69 percent believed that openly gay or lesbian individuals should be able to serve in the military, and the same number believed that such persons should be allowed to teach children. Giving domestic partners access to health insurance and other employee benefits was endorsed by 67 percent of Americans, and inheritance rights by 73 percent. Only 40 percent of those interviewed endorsed same-sex marriage, but that was up substantially from 27 percent in 1996.

SAME-SEX MARRIAGE Today, same-sex marriage is legal in five states—Connecticut, Iowa, New Hampshire, Massachusetts, and Vermont—and in the District of

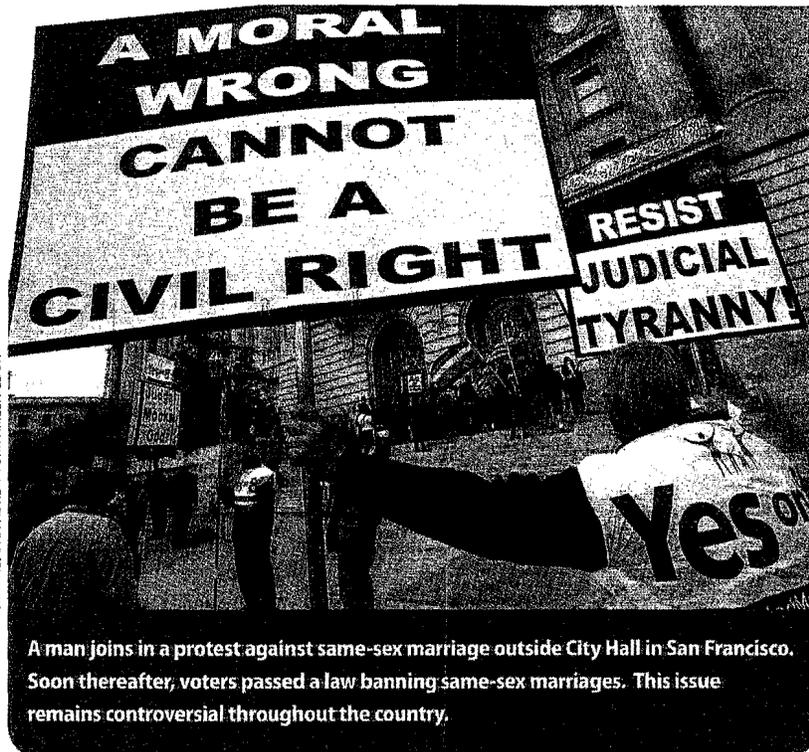
A woman holds up a protest placard during a gay rights rally in Hollywood, California, after the state supreme court upheld

Proposition 8, which redefined marriage in California as between men and women only.



MARK RALSTON/AFP/GETTY IMAGES

JIM WILSON/THE NEW YORK TIMES/REDUX



A man joins in a protest against same-sex marriage outside City Hall in San Francisco. Soon thereafter, voters passed a law banning same-sex marriages. This issue remains controversial throughout the country.

Columbia. It was temporarily legal in California during part of 2008, between a state supreme court ruling in May that legalized the practice and a constitutional amendment passed by the voters in November that banned it again. California continues to recognize those same-sex couples who married between May and November 2008 as lawfully wedded. New York State and Maryland do not perform same-sex marriages but recognize those performed elsewhere.

A number of states have civil union or domestic partnership laws that grant most of the benefits of marriage to registered same-sex couples. These include California, Nevada, New Jersey, Oregon, and Washington. More limited benefits are provided in Colorado, Hawaii, Maryland, and Wisconsin. Either through a constitutional amendment or through legislation, same-sex marriage is explicitly banned in most states without domestic partnership laws—and even in some of the states just mentioned.

GAYS AND LESBIANS IN THE MILITARY For gay men and lesbians who wish to join the military, one of the battlefields they face is the “Don’t ask, don’t tell” policy. This policy, which bans openly gay men and lesbians from the military, was implemented in 1993 by President Bill Clinton when it became clear that

affirmative action A policy calling for the establishment of programs that give special consideration, in jobs and college admissions, to members of groups that have been discriminated against in the past.

more liberal alternatives would not be accepted. During his presidential campaign, Barack Obama pledged to abolish the policy. Later, however, gay and lesbian rights activists accused him of “putting the issue on a back burner.”

Generally, attitudes toward gay men and lesbians in the military divide along party lines, with the Democrats approving and the Republicans in opposition. What do soldiers themselves think about serving alongside gay men and lesbians? In a recent survey, three-quarters of the troops polled said that they would have no problem serving with such people. In October 2010, a federal judge ruled that “don’t ask, don’t tell” was unenforceable. The government will appeal.

LOS Beyond Equal Protection—Affirmative Action

One provision of the Civil Rights Act of 1964 called for prohibiting discrimination in employment. Soon after the act was passed, the federal government began to legislate programs promoting *equal employment opportunity*. Such programs require that employers’ hiring and promotion practices guarantee the same opportunities to all individuals. Experience soon showed that minorities often had fewer opportunities to obtain education and relevant work experience than did whites. Because of this, minorities were still excluded from many jobs. Even though discriminatory practices were made illegal, the change in the law did not make up for the results of years of discrimination. Consequently, under President Lyndon B. Johnson (1963–1969), a new policy was developed.

Called **affirmative action**, this policy requires employers to take positive steps to remedy *past* discrimination. Affirmative action programs involve giving special consideration, in jobs and college admissions, to members of groups that have been discriminated against in the past. Until recently, all public and private employers who received federal funds were required to adopt and implement these programs. Thus, the policy of affirmative action has been applied to all agencies

of the federal, state, and local governments and to all private employers who sell goods to or perform services for any agency of the federal government. In short, it has covered nearly all of the nation's major employers and many of its smaller ones.

Affirmative Action Tested

The Supreme Court first addressed the issue of affirmative action in 1978 in *Regents of the University of California v. Bakke*.²⁴ Allan Bakke, a white male, had been denied admission to the University of California's medical school at Davis. The school had set aside sixteen of the one hundred seats in each year's entering class for applicants who wished to be considered as members of designated minority groups. Many of the students admitted through this special program had lower test scores than Bakke. Bakke sued the university, claiming that he was a victim of **reverse discrimination**—discrimination against whites. Bakke argued that the use of a **quota system**, in which a specific number of seats were reserved for minority applicants only, violated the equal protection clause.

The Supreme Court was strongly divided on the issue. Some justices believed that Bakke had been denied equal protection and should be admitted. A majority on the Court concluded that although both the Constitution and the Civil Rights Act of 1964 allow race to be used as a factor in making admissions decisions, race cannot be the *sole* factor. Because the university's quota system was based solely on race, it was unconstitutional. For more

on affirmative action problems elsewhere in the world, see *The Rest of the World* feature on the following page.

Strict Scrutiny Applied

In 1995, the Supreme Court issued a landmark decision in *Adarand Constructors, Inc. v. Peña*.²⁵ The Court held that any federal, state, or local affirmative action program that uses racial classifications as the basis for making decisions is subject to "strict scrutiny" by the courts. As discussed earlier in this chapter, this means that, to be constitutional, a discriminatory law or action must be narrowly tailored to meet a *compelling* government interest. In effect, the *Adarand* decision narrowed the application of affirmative action programs. An affirmative action program can no longer make use of quotas or preferences and cannot be maintained simply to remedy past discrimination by society in general. It must be narrowly tailored to remedy actual discrimination that has occurred, and once the program has succeeded, it must be changed or dropped.

The Diversity Issue

Following the *Adarand* decision, several lower courts faced cases raising the question of whether affirmative action programs designed to achieve diversity on college campuses were constitutional. For example, in a 1996 case, *Hopwood v. State of Texas*,²⁶ two white law school applicants sued the University of Texas School of Law in Austin, claiming that they had been denied admission because of the school's affirmative action program. The program allowed admissions officials to take racial and other factors into consideration when determining which students would be admitted.

A federal appellate court held that the program violated the equal protection clause because it discriminated in favor of minority applicants. In its decision, the court directly challenged the *Bakke* decision by stating that the use of race even as a means of achieving diversity on college campuses "undercuts the Fourteenth Amendment." In other words, race could never be a factor, even if it was not the sole factor, in such decisions.

In 2003, the United States Supreme Court reviewed two cases involving issues similar to that in the *Hopwood* case. Both cases involved admissions programs at the University of Michigan. In *Gratz v. Bollinger*,²⁷ two white

reverse discrimination
Discrimination against those who have no minority status.

quota system A policy under which a specific number of jobs, promotions, or other types of placements, such as university admissions, must be given to members of selected groups.

Any type of affirmative action brings protests from one side or the other. Here, demonstrators oppose a change to current laws that mandate racial integration.

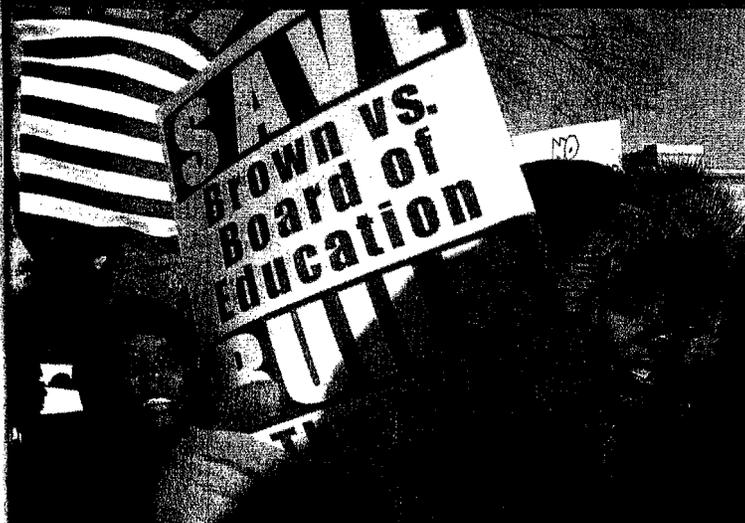


PHOTO BY ALEX WONG/GETTY IMAGES



India Faces an Affirmative Action Nightmare

Affirmative action in the United States has involved a relatively small number of groups, even if some of them have many members—women, for example, make up more than half the population. In India, however, affirmative action is much more complicated due to the caste tradition. Under this millennia-old system, Indians are grouped into thousands of castes and subcastes. Formerly, some groups were considered outside the caste system altogether—these were the “untouchables,” or Dalits. In 1950, after India became independent from Britain, the new constitution abolished the practice of untouchability, or discrimination against Dalits, and established a program of rights and quotas for the former untouchables, now officially called the Scheduled Castes. Discrimination remains widespread in rural India, however.

Quotas for Scheduled Castes

Together with the Scheduled Tribes (generally located in the far east of the country), the Scheduled Castes make up about 25 percent of India’s population. Quotas were established to bring members of these groups into universities and government jobs in a program that is now about sixty years old. Several

years ago, the government expanded the quota program to include the Other Backward Castes, groups that have suffered impoverishment or discrimination, but not to the degree of the Scheduled Castes and Scheduled Tribes. With the addition of the Other Backward Castes, the favored groups swelled to constitute half of India’s population. A nationwide furor resulted.

A Caste of Shepherds Demands to Be Downgraded

In 2007, tens of thousands of members of the Gujjar caste, who traditionally worked as shepherds, blocked the roads in an Indian farming region. The Gujjars were one of the Other Backward Castes, and they were demanding reclassification as one of the Scheduled Castes, or untouchables. Why? The Gujjars realized that if they were classified as Dalits, they would benefit from more generous quotas in schooling and employment, and they would be eligible for more government welfare. This shepherd caste made their demand even though a

lower status might result in increased discrimination, such as not being allowed to use the same water pumps as their neighbors.

 For Critical Analysis: An Indian sociologist, Dipankar Gupta, commented, “If you play the caste game, you will end up with caste war.” What might he have meant?

These members of India’s Gujjar caste are demonstrating in the Indian state of Rajasthan. They wanted their status to be downgraded from “Other Backward Caste” to “untouchable” so that they could benefit from more generous quotas and receive increased welfare benefits.



AP PHOTO/AMAN SHARMA

applicants who were denied undergraduate admission to the university alleged reverse discrimination. The school’s policy gave each applicant a score based on a number of factors, including grade point average, standardized test scores, and personal achievements. The system *automatically* awarded every “underrepresented” minority (African American, Hispanic, and Native American) applicant twenty points—one-fifth of the points needed to guarantee admission. The Court held that this policy violated the equal protection clause.

In contrast, in *Grutter v. Bollinger*,²⁸ the Court held that the University of Michigan Law School’s

admissions policy was constitutional. In that case, the Court concluded that “[u]niversities can, however, consider race or ethnicity more flexibly as a ‘plus’ factor in the context of individualized consideration of each and every applicant.” The significant difference between the two admissions policies, in the Court’s view, was that the law school’s approach did not apply a mechanical formula giving “diversity bonuses” based on race or ethnicity. In short, the Court concluded that diversity on college campuses was a legitimate goal and that limited affirmative action programs could be used to attain this goal.

The Supreme Court Revisits the Issue

The Michigan cases were decided in 2003. By 2007, when another case involving affirmative action came before the Court, the Court had a new chief justice, John G. Roberts, Jr., and a new associate justice, Samuel Alito, Jr. Both men were appointed by President George W. Bush, and the conservative views of both justices have moved the Court significantly to the right. Justice Alito replaced Sandra Day O'Connor, who had often been the "swing" vote on the Court, sometimes voting with the more liberal justices and sometimes joining the conservative bloc. Hers was the deciding vote in the five-to-four decision upholding the University of Michigan Law School's affirmative action program.

Some claim that the more conservative composition of today's Court strongly influenced the outcome in a case that came before the Court in 2007: *Parents Involved in Community Schools v. Seattle School District No. 1*.²⁹ The case concerned the policies of two school districts, one in Louisville, Kentucky, and one in Seattle, Washington. Both schools were trying to achieve a more diversified student body by giving preference to minority students if space in the schools was limited and a choice among applicants had to be made. Parents of white children who were turned away from schools in these districts because of these policies sued the school districts, claiming that the policies violated the equal protection clause. Ultimately, the case reached the Supreme Court, and the Court, in

a five-to-four vote, held in favor of the parents, ruling that the policies violated the equal protection clause. The Court's decision did not overrule the 2003 case involving the University of Michigan Law School, however, for the Court did not say that race could *not* be used as a factor in university admissions policies. Nonetheless, some claim that the decision represents a significant change on the Court with respect to affirmative action policies.

State Actions

Beginning in the mid-1990s, some states have taken actions to ban affirmative action programs or replace them with alternative policies. For example, in 1996, by a ballot initiative, California amended its state constitution to prohibit any "preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting."

FURTHER ACTIONS Two years later, voters in the state of Washington approved a ballot measure ending all state-sponsored affirmative action. Florida has also ended affirmative action. In 2006, a ballot initiative in Michigan—just three years after the Supreme Court decisions discussed above—banned affirmative action in that state. In the 2008 elections, Nebraska also banned affirmative action, but voters in Colorado rejected such a measure. The 2008 initiatives were spearheaded by Ward



SUZANNE DECHILLO/THE NEW YORK TIMES/REDUX

These high school students are attending a college fair in Queens, New York. Depending on where they are applying, some may benefit from affirmative action admissions policies. There has been a backlash in some states because majority students have argued that affirmative action is equivalent to reverse discrimination.

Connerly, an African American libertarian businessman. In 2010, Arizona also banned affirmative action.

"RACE-BLIND" ADMISSIONS In the meantime, many public universities are trying to find "race-blind" ways to attract more minority students to their campuses. For example, Texas has established a program under which the top students at every high school in the state are guaranteed admission to the University of Texas, Austin. Originally, the guarantee applied to students who were in the top 10 percent of their graduating class. In 2009, the guarantee was limited to students in the top 8 percent of their class.

This policy ensures that the top students at minority-dominated inner-city schools can attend the state's leading public university. It also guarantees admission to the best white students from rural, often poor, communities. Previously, these students could not have hoped to attend the University of Texas. The losers are students from upscale metropolitan neighborhoods or suburbs who have high test scores but are not the top students at their schools. One result is that more students with high test scores enroll in less famous schools, such as Texas Tech University and the University of Texas, Dallas—to the benefit of these schools' reputations.

AMERICA AT ODDS *Civil Rights*

During the first part of the twentieth century, discrimination against African Americans and members of other minority groups was a social norm in the United States. Indeed, much of the nation's white population believed that the ability to discriminate was a constitutionally protected right. Today, the "right to discriminate" has very few defenders. America's laws—and its culture—now hold that discrimination on the basis of race, gender, religion, national origin, and many other characteristics is flatly unacceptable.

Even if civil rights are now broadly supported and protected by law, however, questions remain as to how far these protections should extend. Americans are at odds over a number of civil rights issues, including the following:

- If unauthorized immigrants have certain rights as *persons* under the Fourteenth Amendment to the

Constitution, should these rights be construed broadly—or as narrowly as possible?

- Should same-sex marriages by lesbians and gay men be recognized—or prohibited?
- Should we allow lesbians and gay men to serve openly in the nation's armed forces—or should the "Don't ask, don't tell" policy be retained?
- Is affirmative action still a necessary policy—or should it be abandoned?
- When colleges and universities consider admissions, is it legitimate to promote racial, ethnic, gender, or socioeconomic diversity—or are such considerations just new forms of discrimination?

Take Action

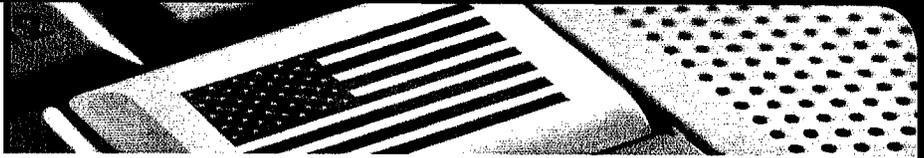
Despite the progress that has been made toward attaining equal treatment for all groups of Americans, much remains to be done. Countless activist groups continue to pursue the goal of equality for all Americans. If you wish to contribute your time and effort toward this goal, there are hundreds of ways to go about it. You can easily find activist opportunities just by going to the Web sites of the groups listed in this chapter's *Politics on the Web* section on the following page. There, you will find links to groups that seek to protect and enhance the rights of African Americans, Latinos, women, persons with disabilities, and more.

Other groups you can contact if you would like to get involved include the Leadership Conference on Civil and Human Rights, which encourages people to contact Congress on matters of

interest. Its Web site is www.civilrights.org. If you are interested in the rights of immigrants, a good place to start is the Justice for Immigrants Web site at www.justiceforimmigrants.org, where you can sign up to receive e-mails from the Immigrant Justice Action Network. If there are gatherings or events planned for your neighborhood, such as a demonstration for immigrants' rights, you can participate in them—or volunteer to help organize them. Justice for Immigrants was organized by twenty major Roman Catholic organizations. An additional source of information on Latino issues is the National Council of La Raza at www.nclr.org.

Finally, you can search the Web for blogs on a civil rights issue that particularly interests you, read about what others on that site are saying, and "tell the world" your opinion on the issue.

POLITICS ON THE WEB



- Stanford University's Web site contains primary documents written by Martin Luther King, Jr., as well as secondary documents written about King. The URL for the Martin Luther King, Jr., Research and Education Institute is mlk-kpp01.stanford.edu
- If you are interested in learning more about the Equal Employment Opportunity Commission (EEOC), the laws it enforces, and how to file a charge with the EEOC, go to www.eeoc.gov
- The home page for the National Association for the Advancement of Colored People (NAACP), which contains extensive information about African American civil rights issues, is www.naacp.org
- For information on Hispanics in the United States, the League of United Latin American Citizens is a good source. You can find it at www.lulac.org
- The home page of the National Organization for Women (NOW) has links to numerous resources containing information on the rights and status of women both in the United States and around the world. You can find NOW's home page at www.now.org
- You can access the Web site of the Feminist Majority Foundation, which focuses on equality for women, at www.feminist.org
- For information on the Americans with Disabilities Act, including the text of the act, go to www.jan.wvu.edu/links/adalinks.htm
- The Gay and Lesbian Alliance against Defamation has an online news bureau. To find this organization's home page, go to www.glaad.org



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