CHAPTER 16 Equality and Civil Rights

Learning Objectives

After reading this chapter, you should be able to

* Define the key terms at the end of the chapter.
* Distinguish between equality of opportunity and equality of outcome.
* Explain why the Civil War amendments proved ineffective in ensuring racial equality.
* Outline the NAACP’s strategy for ending school segregation.
* Distinguish between de jureand de factosegregation.
* Describe the tactics of the civil rights movement in general and for the passage of the 1964 Civil Rights Act.
* Discuss the struggle for equality of Native Americans, minorities, and the disabled.
* List the major legislative and judicial milestones in the struggle for equal rights for women.
* Explain why women’s rights advocates favored the Equal Rights Amendment (ERA) as a way to extend equal rights to women.
* Discuss how affirmative action programs have led to charges of reverse discrimination.

# Equality and Civil Rights and the Challenge of Democracy

With the separate-but-equal decision of *Plessy* v*. Ferguson* in 1876, the national government tried to sweep the conflict between equality and freedom under the rug. By the Court’s ruling in *Brown* v*. Board of Education* in 1954 that “separate is inherently unequal,” the national government faced the tension between freedom and equality and the fact that more of one usually means less of the other. The meaning of equality also creates difficulties. Many who agree on the need for equality of opportunity will not support measures they think are geared to produce equality of outcome.

The struggle for civil rights also illustrates the conflict between pluralism and majoritarianism. In accepting the demands of African American citizens, the national government acts in a way that is more pluralist than majoritarian. As Chapter 1 pointed out, majoritarian democracy does what the majority wants and thus may allow discrimination against minorities, even though the substantive outcome (inequality) seems undemocratic.

Thus, questions about what kind of public policies should be adopted to achieve equality are often highly controversial. If the nation wants to promote racial and gender equality among doctors or sheet-metal workers, for example, it may design policies to help previously disadvantaged and underrepresented groups gain jobs in these areas. This practice, however, may lead to charges of reverse discrimination.

African Americans seeking civil rights not only had to contend with being members of a minority group, but they also were largely excluded from the electoral process. Under the leadership of the National Association for the Advancement of Colored People (NAACP), they adopted the strategies of lobbying legislators and pressing claims before the judiciary, the branch of government least susceptible to majoritarian influences. Later, as the civil rights movement grew (and as majority opinion became more hospitable to their cause), they emphasized the importance of legislation as a method of achieving equality and also used the techniques of civil disobedience to challenge laws they believed to be unjust. This quest for racial equality remains incomplete. As part of a mandatory response to a new UN treaty, the U.S. State Department reported in 2000 that racial discrimination still persists in the United States. Under the same treaty, advocates of racial equality may appeal to an international authority to end racial or other forms of discrimination.

The women’s movement offers an interesting contrast to the case of African Americans. Women are not a minority group; they are a majority of the population. Yet, in the struggle to pass the Equal Rights Amendment (ERA), pluralism prevailed! Although a majority of Americans favored the amendment, it failed. The amending process, by requiring extraordinary majorities, gives enormous power to minorities bent on thwarting a particular cause.

Chapter Overview

## Two Conceptions of Equality

Throughout much of American history, civil rights—the powers and privileges supposedly guaranteed to individuals and protected from arbitrary removal at the hand of government—have often been denied to certain citizens on the basis of their race or sex. The pursuit of civil rights in the United States has been a story of the search for social and economic equality, but people differ on what equality means. Most Americans support equal opportunity, but many are less committed to equality of outcome.

## The Civil War Amendments

After the Civil War, the Thirteenth, Fourteen, and Fifteenth Amendments were passed to ensure freedom and equality for African Americans. In addition, as a response to the black codes, Congress passed civil rights acts in 1866 and 1875 to guarantee civil rights and access to public accommodations. While the legislative branch was attempting to strengthen African American civil rights, the judicial branch seemed intent on weakening them through a number of decisions that gave states room to maneuver around civil rights laws. States responded with a variety of measures limiting the rights of African Americans, including poll taxes, grandfather clauses that prevented them from voting, and Jim Crow laws that restricted their use of public facilities. These restrictions were upheld in *Plessy* v*. Ferguson*, which justified them under the separate-but-equal doctrine. By the end of the nineteenth century, segregation was firmly and legally entrenched in the South.

## The Dismantling of School Segregation

The National Association for the Advancement of Colored People (NAACP) led the campaign for African American civil rights. Its activists used the mechanism of the courts to press for equal facilities for African Americans and then to challenge the constitutionality of the separate-but-equal doctrine itself. In the 1954 case, *Brown* v*. Board of Education*, a class-action suit, the Supreme Court reversed its earlier decision and overturned *Plessy* v. *Ferguson*. It ruled that “separate educational facilities are inherently unequal” and that segregated schools must be integrated “with all deliberate speed” under the direction of the federal courts. The Court thus ordered an end to school segregation that had been imposed by law (de juresegregation), but in many parts of the country segregation persisted, because African Americans and whites lived in different areas and sent their children to local schools (de factosegregation). This problem led the courts to require the unpopular remedy of bussing African American and white children as a means of integrating schools. By 1974, however, the Supreme Court began to limit bussing as ordered by the judicial branch.

## The Civil Rights Movement

The NAACP’s use of the legal system ended school segregation and achieved some other, more limited goals, but additional pressure for desegregation in all aspects of American life grew out of the civil rights movement. The first salvo in the civil rights movement came when African Americans in Montgomery, Alabama, boycotted the city’s bus system to protest Rosa Parks’s arrest and the law that prohibited African Americans from sitting in the front of buses. Under the leadership of Martin Luther King Jr., the movement grew, and civil rights activities, including nonviolent civil disobedience, spread.

In the early 1960s, President Kennedy was gradually won over to supporting the civil rights movement. In 1963, he asked Congress to outlaw segregation in public accommodations. Following Kennedy’s death, President Lyndon Johnson made passage of the Civil Rights Act of 1964 his top legislative priority, and the bill passed despite a long debate and filibuster in the Senate. More civil rights legislation followed in 1965 and 1968. This time, the legality of civil rights acts was upheld by the Supreme Court.

Having civil rights laws on the books does not mean discrimination will end once and for all, however. For one thing, the courts must interpret the laws and apply them to individual cases. In the Grove City College case, the Supreme Court offered a very narrow interpretation of a civil rights law, in effect taking the teeth out of the legislation. Congress reasserted its original, more sweeping intent in the Civil Rights Restoration Act of 1988.

Meanwhile, the Court, with a new conservative majority in the ascendancy, continued to issue decisions limiting the scope of previous civil rights rulings. Civil rights groups looked to Congress to restore rights previously recognized, but presidential vetoes scuttled such measures until 1991.

Despite Dr. King’s commitment to nonviolence, the struggle for civil rights was not always a peaceful one. White violence against civil rights workers included murders and bombings. By the late 1960s, racial violence had increased as African Americans demanded their rights, but many whites remained unwilling to recognize them. The African American nationalist movements, often militant, promoted black power and helped instill racial pride in African Americans.

## Civil Rights for Other Minorities

Civil rights legislation won through the struggles of African Americans also protects other minorities. Native Americans, Latinos, and disabled Americans were also often victims of discrimination. Native Americans were not even considered citizens until 1924. The Indian reservations established by the U.S. government were poverty stricken. In the late 1960s and early 1970s, the frustrations of Native Americans erupted into militancy. By the mid-1970s and early 1980s, they began to win important legal victories, including compensation for land taken by the U.S. government. Recently, new entrepreneurial tribal leadership of Indian tribes has capitalized on the special status of their tribes and enjoyed economic success by sponsoring casino gambling ventures.

Latinos who migrated to the United States seeking economic opportunities found poverty and discrimination instead. This problem was compounded by the language barrier and the inattention of public officials to their needs. Latinos, too, have used the courts to gain greater representation on governing bodies. Recently, they have begun to be successful in obtaining elected and appointed political offices.

Building on the model of existing civil rights laws, disabled Americans managed to gain recognition as an oppressed minority and, through the 1990 Americans with Disabilities Act, receive the protection of a right of access to employment and facilities.

Although gays and lesbians have made significant progress, they have not yet succeeded in passing a complete civil rights law protecting their rights. The 2000 Supreme Court decision in *Boy Scouts of America* v*. Dale* illustrated the continued struggles of gays and lesbians for civil rights. The court ruled that homosexuals could be excluded from leadership positions in the organization. The demand for equality has recently been extended to the institution of marriage. In 2003, the state of Massachusetts recognized same-sex marriages, and in 2008 California did the same.

## Gender and Equal Rights: The Women’s Movement

Civil rights have long been denied to women, partly as a result of policies designed to protect women from ill treatment. Only after a long struggle did women win the right to vote under the Nineteenth Amendment, passed in 1920. Yet gaining the right to vote did not bring the equality that women hoped for. Discrimination continued in the workplace and elsewhere. It took legislation such as the 1963 Equal Pay Act, the 1964 Civil Rights Act, and Title IX of the Education Amendments Act of 1972 to prohibit these other forms of discrimination against women. In the early 1970s, the Court began to strike down gender-based discriminations that could not be justified as serving an important government purpose. In 1996, the Court applied a new standard of skeptical scrutiny to acts denying rights on the basis of sex. This new standard makes distinctions based on sex almost as suspect as those based on race.

For many years, the Court proved reluctant to use the Fourteenth Amendment as the basis for guaranteeing women’s rights. As a result, proponents of equal rights for women sought an amendment to ensure that women’s rights stood on a clear constitutional footing. Although the ERA was ratified by thirty-five states, it fell three states short of the minimum number required for adoption and did not become the law of the land, although many states eventually adopted their own ERAs. Some scholars argue that, in practice, the Supreme Court has since implemented the equivalent of the ERA through its decisions.

## Affirmative Action: Equal Opportunity or Equal Outcome?

The Johnson administration started a number of programs to overcome the effects of past discrimination by extending opportunities to groups previously denied rights. These affirmative action programs involved positive or active steps taken to assist members of groups formerly denied equality of opportunity.

These programs soon led to charges of reverse discrimination. The Court, however, has found some role for affirmative action programs. In the *Bakke* decision, a split court held that race could be one of several constitutionally permissible admissions criteria. In other cases, the Court has allowed the use of quotas to correct past discriminatory practices. In the *Adarand* case, however, the Court decided that programs that award benefits on the basis of race must themselves be held up to a strict scrutiny standard—a test few could pass. On the basis of the *Adarand* case, a federal court in 1996 rejected the use of race or ethnicity as a condition for admission to the University of Texas law school. The Supreme Court sent a mixed message in its review of University of Michigan affirmative action policies in 2003. The court ruled that an undergraduate affirmative action formula was unconstitutional, but that a law school admissions standard that included a racial preference was acceptable.

Key Terms and Cases

## Terms

equality of opportunity

equality of outcome

invidious discrimination

civil rights

black codes

racism

poll tax

racial segregation

separate-but-equal doctrine

desegregation

de juresegregation

de factosegregation

civil rights movement

boycott

civil disobedience

set-asides

protectionism

Nineteenth Amendment

sexism

Equal Rights Amendment (ERA)

## Major Civil Rights Cases

*Plessy* v*. Ferguson*

*Brown* v. *Board of Education*

*Brown* v*. Board of Education II*

*Boy Scouts of America* v*. Dale*

*United States* v*. Virginia*

*Regents of the University of California* v*. Bakke*

*Johnson* v*. Transportation Agency, Santa Clara County*

*Adarand Constructors* v*. Peña*

# Research and Resources

Chapter 14 of this study guide explained how to find a Supreme Court opinion. Once you have located an opinion, however, you might still have some difficulty figuring out how to read it. Cases are reported beginning with a heading that gives the parties to the case, the docket number, the dates on which the argument was heard, and the date on which the decision was handed down. Next, in rather small print, comes the syllabus. This includes a summary of the facts of the case and the legal questions it raised, as well as a summary of what the Court decided, or held, in the case. Next comes a paragraph, also part of the syllabus, explaining how the justices divided on the opinion. This paragraph identifies (1) the author of the Court’s opinion, (2) the justices who joined in that opinion, (3) those who concurred with it, and (4) those who dissented.

Justices *concur* when they vote with the majority on the decision but do not fully agree with the reasoning behind the majority’s decision. Justices in this position often write separate opinions detailing their differences with the opinion of the Court and outlining the grounds on which they based their vote. Justices who are in the minority may choose to write *dissenting* opinions explaining the reasons for their disagreement with the majority. Writers of concurring and dissenting opinions all try to set out alternative views of the case, hoping that their views will influence and persuade Court members in future decisions.

After the syllabus comes the full text of the opinion of the Court. The opinion of the Court ends with the judgment—affirmed or denied. This is followed by the full text of any concurring opinions and then by any dissenting opinions.

## More Civil Rights Websites

Learn more about the NAACP, its role in the civil rights movement, and its current agenda by visiting its website at <[http://www.naacp.org](http://www.naacp.org/)>. Take a virtual tour of the National Civil Rights Museum through its website <[http://www.civilrightsmuseum.org](http://www.civilrightsmuseum.org/)>. The site features material on topics including *Brown* v*. Board of Education of Topeka*, the Montgomery Bus Boycott, and the March on Washington. Numerous people contributed to the civil rights movement, and this website examines current trends and how leaders like Martin Luther King and Malcolm X influence people today. Get more information about these trends and people at <http://www.voicesofcivilrights.org>.

The Human Rights Campaign lobbies for gay and lesbian rights; it can be visited at <[http://www.hrc.org](http://www.hrcusa.org/)>. The Feminist Majority Foundation’s website has a wealth of information on women’s rights in the United States and worldwide; their URL is <[http://www.feminist.org](http://www.feminist.org/)>. For rights of the disabled, see the Disability Rights Education and Defense Fund online at <[http://www.dredf.org](http://www.dredf.org/)>.

# Using Your Knowledge

1. Select three of the cases discussed in this chapter of the text. Look them up in *U.S. Reports,* or find them online. (See Chapter 14 of this study guide.) For each case, note the vote tally, who authored the opinion of the Court, which justices joined in that opinion, which ones wrote concurring opinions, and which ones wrote dissents. Did any justices join in the concurring or dissenting opinions?

2. Visit the websites of at least two civil rights groups. You may want to start with some of those listed above. Compare the key issues facing each group and the strategies they are using to deal with those issues.

# Getting Involved

Students interested in civil rights work have internship opportunities available. The NOW Legal Defense and Educational Fund has internships in New York and Washington for undergraduates interested in policy projects on women’s rights. Contact Ms. Jackie Butler, Administrative Assistant, NOW Legal Defense and Educational Fund, 99 Hudson Street, New York, NY 10013. Check out NOW’s home page at <[http://www.now.org](http://www.now.org/now)>.

Sample Exam Questions

Multiple-Choice Questions

1. The history of civil rights has primarily been a search for

a. equal opportunity and equal rights.

b. political and legal equality.

c. employment and gender equality.

d. social and economic equality.

e. legal and monetary equality.

2. What does the term *equality of outcome* mean?

a. It aligns American values of charity with Christian values of charity.

b. It means greater uniformity in social, economic, and political power.

c. Many believe it means more opportunity for everyone to succeed.

d. It refers to a socialistic redistribution of money or goods.

e. It is a majoritarian belief that citizens should sacrifice for the greater good.

3. What Court decision upheld separate-but-equal facilities for African Americans and whites?

a. *Plessy* v*. Ferguson*

b. *Brown* v*. Board of Education*

c. *Sweatt* v*. Painter*

d. *McLaurin* case

e. *Dred Scott* case

4. Which of the following was *not* a result of the civil rights movement?

a. increasing number of African Americans in public office

b. more African American voters

c. an immediate end to de factoand de juresegregation of schools

d. an increase in African American nationalism

e. legislation to reduce discrimination in employment

5. Which of the following is one of the more common methods of discrimination that includes forcing poor blacks to pay $1 or $2 in order to vote?

a. affirmative action

b. de jure segregation

c. de jure discrimination

d. black codes

e. poll tax

6. One of the main founders of the NAACP was

a. Rosa Parks.

b. W. E. B. Du Bois.

c. Martin Luther King Jr.

d. Thurgood Marshall.

e. Sammy Davis Jr.

7. The first test of the *Brown* v*. Board of Education* decision occurred in

a. Alaska.

b. Alabama.

c. Georgia.

d. Arkansas.

e. Missouri.

8. *United States* v*. Virginia* introduced what standard to cases of gender discrimination?

a. strict scrutiny

b. skeptical scrutiny

c. stare decisis

d. gender gap

e. sexism

9. How is de facto segregation different from de jure segregation?

a. De facto segregation is voluntary, and de jure is government enforced.

b. De facto segregation applies to those who can pay, and de jure applies to those who can’t.

c. De facto segregation is political, and de jure is economic.

d. De facto segregation is government enforced and de jure is voluntary.

e. De facto segregation is secular, and de jure is religious.

10. What did the Voting Rights Act of 1965 accomplish?

a. Nothing; it was declared unconstitutional.

b. It had little effect on African American registration, because of de factosegregation.

c. It didn’t do much of anything in all regions of the country.

d. It improved voter registration among minority groups.

e. Over time, it resulted in a lower turnout of African Americans voters.

11. Which of the following were *not* a result President Johnson’s efforts to end discrimination?

a. Education Act of 1967

b. Civil Rights Act of 1964

c. Voting Rights Act of 1965

d. Fair Housing Act of 1968

e. Economic Opportunity Act of 1964

12. Which law prohibited sex discrimination in federally aided education programs?

a. Elementary and Secondary Education Act of 1965

b. Civil Rights Act of 1964

c. Education Amendments Act of 1972

d. Equal Rights Amendment

e. Civil Rights Act of 1866

13. Which of the following is true about the Court’s ruling in *Grove City College* v*. Bell*?

a. It broadly interpreted Title IX of the Education Amendments Act of 1972.

b. It was the target of the Civil Rights Restoration Act of 1988.

c. It was accepted by Congress as a faithful interpretation of legislative intent.

d. It applied the law to entire institutions whenever any part of them discriminated against women or minorities.

e. It was a major victory for proponents of gender equality.

14. Which of the following was *not* a success of the black nationalist movement?

a. created black studies programs in U.S. colleges and universities

b. encouraged blacks to vote in record numbers

c. brought back pride in black history and culture

d. nominated more blacks for elected office

e. created more affirmative action programs

15. Which Supreme Court case overturned the separate-but-equal doctrine?

a. *Milliken* v*. Bradley*

b. *Brown* v*. Board of Education*

c. *Boy Scouts of America* v*. Dale*

d. *United States* v*. Virginia*

e. *Regents of the University of California* v*. Bakke*

16. Numerous frustrated Native Americans acted out against the U.S. government and took matters into their own hands after decades of inaction. Which of the following was the result of Native American frustration and anger toward the U.S. government?

a. bus boycott in Birmingham, Alabama

b. 164 riots after the death of Martin Luther King Jr.

c. record high voter registration drives

d. seizure of Alcatraz Island

e. none of the above

17. *Johnson* v*. Santa Clara County* reinforced the idea that what factor could be used in promotion decisions?

a. gender

b. race

c. age

d. sexual orientation

e. religious practice

18. According to Homeland Security, there were 37.5 million foreign-born people living in the United States in 2007. Approximately what percentage of those people were here illegally?

a. 8 percent

b. 17 percent

c. 24 percent

d. 31 percent

e. 35 percent or more

19. The Supreme Court appealed to what element of the Constitution to support the Civil Rights Act of 1964?

a. elastic clause

b. commerce clause

c. Fifteenth Amendment

d. First Amendment

e. Nineteenth Amendment

20. Which of the following did *not* advance the equality of women?

a. Nineteenth Amendment

b. Civil Rights Restoration Act

c. Equal Pay Act of 1963

d. Civil Rights Act of 1964

e. protective legislation

21. A method used to keep African Americans from voting was

a. protectionism.

b. literacy tests.

c. set-asides.

d. separate-but-equal elections.

e. segregated education.

22. The Equal Rights Amendment

a. was never ratified.

b. guarantees equal pay for equal work.

c. prohibits gender discrimination in education.

d. was proposed in 1923, but not ratified until 1979.

e. provides a constitutional basis for affirmative action.

23. The strike led by Cesar Chavez against California growers in 1965

a. won better working conditions for immigrant workers.

b. won better pay for immigrant workers.

c. instituted a national boycott.

d. won better housing for immigrant workers.

e. all of the above.

24. What term describes the notion that women must be sheltered from life’s harsh realities and was used as the basis of the traditional laws, which defined women as second-class citizens?

a. set-asides

b. gender equity

c. protectionism

d. matrilineal

e. genealogical classification

25. The 1990 Americans with Disabilities Act does *not* guarantee access to

a. housing.

b. employment.

c. transportation.

d. communication services.

e. public accommodations.

Essay Questions

1. Explain the difference between criticism of public officials and defamation of character. Give examples of how free speech can be interpreted so many different ways.

2. What major methods of political participation did the NAACP use in its effort to integrate schools and the civil rights movement use in its effort to secure passage of civil rights legislation?

3. How did federal legislation discriminate against Native Americans in the past?

4. Have recent Supreme Court decisions expanded or contracted the scope of affirmative action? Reference specific cases and explain the broader effects of the particular decision.

5. Distinguish between equality of opportunity and equality of outcome. Which is more controversial? Why?

Answers to Multiple-Choice Questions

1. d

2. b

3. a

4. c

5. e

6. b

7. d

8. b

9. a

10. d

11. a

12. c

13. b

14. e

15. b

16. d

17. a

18. d

19. b

20. e

21. b

22. a

23. e

24. c

25. a