

# **Study Outline**

## **Chapter 19: Civil Rights**

- I. Introduction
  - A. Civil rights issue
    - 1. Group is denied access to facilities, opportunities, or services available to other groups, usually along ethnic or racial lines
    - 2. Issue is whether differences in treatment are "reasonable"
      - a. Some differences are: progressive taxes
      - b. Some are not: classification by race subject to "strict scrutiny"
- II. The black predicament
  - A. Perceived costs of granting black rights not widely shared
    - 1. Concentrated in small, easily organized populations
    - 2. Interest-group politics versus lower-income whites
    - 3. Blacks at a disadvantage in interest group politics because they were not able to vote in many areas
  - B. Majoritarian politics worked against blacks
    - 1. Lynchings shocked whites, but little was done
    - 2. General public opinion was opposed to black rights
    - 3. Those sympathetic to granting black rights opposed the means
  - C. Progress depended on
    - 1. Finding more white allies or
    - 2. Shifting policy-making arenas
  - D. Civil rights movement both
    - 1. Broadened base by publicizing grievances
    - 2. Moved legal struggle from Congress to the courts
- III. The campaign in the courts
  - A. Ambiguities in the Fourteenth Amendment
    - 1. Broad interpretation: Constitution color-blind
    - 2. Narrow interpretation: equal legal rights
    - 3. Supreme court adopted narrow view in *Plessy* case
  - B. "Separate but equal"
    - 1. NAACP campaign objectives in education through courts
      - a. Obviously unequal schools
      - b. Not so obviously unequal schools
      - c. Separate schools inherently unequal
  - C. Can separate schools be equal?
    - 1. Step 1: obvious inequalities
      - a. Lloyd Gaines
      - b. Ada Lois Sipuel
    - 2. Step 2: deciding that a separation creates inequality in less obvious cases
      - a. Heman Sweat
      - b. George McLaurin
    - 3. Step 3: making separation inherently unequal; 1950 strategy to go for integration
    - 4. *Brown v. Board of Education* (1954)
      - a. Implementation
        - 1. Class action suit
        - 2. All deliberate speed
      - b. Collapse of resistance in the 1970s
    - 5. The rationale
      - a. Detriment to pupils by creating sense of inferiority
      - b. Social science used because intent of Fourteenth Amendment unclear; needed unanimous decision
    - 6. Desegregation versus integration
      - a. Ambiguities of *Brown*
        - 1. Unrestricted choice or integrated schools?
        - 2. De jure or de facto segregation?
      - b. 1968 rejection of "freedom of choice" plan settles matter; mixing
        - c. *Charlotte-Mecklenburg*, 1971
          - 1. Proof of intent to discriminate

- 2. One-race school creates presumption of intent
  - 3. Remedies can include quotas, busing, redrawn lines
  - 4. Every school not required to reflect racial composition of school system
  - d. Some extensions to intercity busing
  - e. Busing remains controversial
    - 1. Some presidents oppose but still implement it
    - 2. Congress torn in two directions
  - f. 1992 decision allows busing to end if segregation caused by shifting housing patterns
- IV. The campaign in Congress
- A. Mobilization of opinion by dramatic event to get on agenda
    - 1. Sit-ins and freedom rides
    - 2. Martin Luther King, Jr.
    - 3. From nonviolence to long, hot summers
  - B. Mixed results
    - 1. Agenda-setting success
    - 2. Coalition-building setbacks: methods seen as law breaking
  - C. Legislative politics
    - 1. Opponents' defensive positions
      - a. Senate Judiciary Committee controlled by southern Democrats
      - b. House Rules Committee controlled by Howard Smith
      - c. Senate filibuster threat
      - d. President Kennedy reluctant
    - 2. Four developments broke deadlock
      - a. Change of public opinion
      - b. Violent white reactions of segregationists became media focus
      - c. Kennedy assassination
      - d. 1964 Democratic landslide
    - 3. Five bills pass, 1957-1968
      - a. 1957, 1960, 1965: voting rights laws
      - b. 1968: housing discrimination law
    - 4. 1964 civil rights bill: the high point--employment, public accommodations
      - a. Broad in scope, strong enforcement mechanisms
      - b. Johnson moves after Kennedy assassinated
      - c. Discharge petition, cloture invoked
    - 5. Effects since 1964
      - a. Dramatic rise in black voting
      - b. Mood of Congress shifted to pro-civil rights; 1988 overturn of Reagan veto of bill that extended federal ban on discrimination in education
  - D. Racial Profiling
    - 1. Stopping drivers for "driving while black"
    - 2. Condemned by Clinton, Bush, and Congress
    - 3. A complex issue, worthy of debate
      - a. Inherently discriminatory and always wrong?
      - b. Trends can exist and possibly provide useful clues
    - 4. Weighing costs and benefits
      - a. Does profiling increase the ability of police to catch criminals?
      - b. If so, by how much?
      - c. When is profiling justified (young, male, Middle Easterners involved in September 11 attacks)?
      - d. What impact does profiling have on innocent people?
    - 5. A major political issue, but few firm facts
- V. Women and equal rights
- A. Supreme Court's position altered after the 1970s
    - 1. Somewhere between reasonableness and strict-scrutiny standard
    - 2. Gender-based differences prohibited by courts
      - a. Age of adulthood
      - b. Drinking age
      - c. Arbitrary employee height-weight requirements
      - d. Mandatory pregnancy leaves
      - e. Little League exclusion

- f. Jaycees exclusion
  - g. Unequal retirement benefits
- 3. Gender-based differences allowed by courts
  - a. All-boy/all-girl schools
  - b. Widows' property tax exemption
  - c. Delayed promotions in Navy
  - d. Statutory rape
- 4. Women must be admitted to all-male, state-supported military colleges
- B. The military
  - 1. *Rostker v. Goldberg* (1981): Congress may draft men only
  - 2. Secretary of Defense in 1993 allows women in air and sea combat
- C. Sexual harassment
  - 1. Requesting sexual favors as condition for employment
    - a. "quid pro quo" rule
    - b. Employer "strictly liable"
  - 2. Hostile or intimidating work environment
    - a. Employer not strictly liable
    - b. Employer can be at fault if "negligent"
  - 3. Almost no federal laws governing it
  - 4. Vague and inconsistent court and bureaucratic rules tell us what it is
- D. Abortion
  - 1. Until 1973 regulated by states
  - 2. 1973: *Roe v. Wade*
    - a. Struck down Texas ban on abortion
    - b. Woman's freedom to choose protected by Fourteenth Amendment ("right to privacy")
      - 1. First trimester: no regulations
      - 2. Second trimester: no ban but regulations to protect health
      - 3. Third trimester: abortion ban
    - c. Critics claim life begins at conception
      - 1. Fetus entitled to equal protection
      - 2. Supporters say no one can say when life begins
      - 3. Pro-life versus pro-choice
    - d. Hyde Amendment (1976): no federal funds for abortion
    - e. Gag order on abortion referrals imposed under Bush, removed under Clinton
  - 3. 1973-1989: Supreme Court withheld attacks on *Roe v. Wade*
  - 4. 1989: Court upheld Missouri law restricting abortion
  - 5. Casey decision lets *Roe* stand but permits more restrictions: twenty-four-hour wait, parental consent, pamphlets
  - 6. Supreme Court and anti-abortion activists
- VI. Affirmative action
  - A. Equality of results
    - 1. Racism and sexism overcome only by taking them into account in designing remedies
    - 2. Equal rights not enough; people need benefits
    - 3. Affirmative action should be used in hiring
  - B. Equality of opportunities
    - 1. Reverse discrimination to use race or sex as preferential treatment
    - 2. Laws should be color-blind and sex neutral
    - 3. Government should only eliminate barriers
  - C. Targets or quotas?
    - 1. Issue fought out in courts
      - a. No clear direction in Supreme Court decisions
      - b. Court is deeply divided; affected by conservative Reagan appointees
      - c. Law is complex and confusing
        - 1. *Bakke*: numerical minority quotas not permissible
        - 2. But Court ruled otherwise in later cases
    - 2. Emerging standards for quotas and preference systems
      - a. Must be "compelling" justification
      - b. Must correct pattern of discrimination
      - c. Must involve practices that discriminate

- d. Federal quotas are to be given deference
    - e. Voluntary preference systems are easier to justify
    - f. Not likely to apply to who gets laid off
  - 3. Congressional efforts to defend affirmative action not yet successful
  - 4. "Compensatory action" (helping minorities catch up) versus "preferential treatment" (giving minorities preference, applying quotas)
    - a. Public supports former but not latter
    - b. In line with American political culture
      - 1. Support for individualism
      - 2. Support for needy
  - 5. Courts divided
    - a. Court of Appeals for Fifth Circuit ruled race to be used in admissions decisions for law school
    - b. Supreme Court ruled that racial classifications subject to strict scrutiny
- VII. Gays and the Supreme Court
- A. State laws could ban homosexual activities
  - B. Court struck down amendment to state constitution prohibiting cities from adopting an ordinance banning discrimination against gays