

## Civil Rights 民权

### I. 我。 THE FOURTEENTH AMENDMENT AND CIVIL RIGHTS MOVEMENTS 第十四修正案与民权运动

#### A. THE FOURTEENTH AMENDMENT

##### A. 第十四修正案

1. Prior to the Civil War, in the *Dred Scott v. Sandford* decision (1857), the Supreme Court declared that slaves, former slaves, and their descendants were not citizens of the United States, and therefore not entitled to the rights of citizenship.  
1. 在内战之前，最高法院在德雷德·斯科特诉桑福德案（1857年）的判决中宣布，奴隶、前奴隶及其后代不是美国公民，因此无权享有公民权。
2. Following the Civil War, the Southern states resisted the social and economic integration of freed slaves by enacting Black Codes to preserve white supremacy. In response, three amendments were added to the Constitution:  
2. 内战结束后，南方各州通过颁布“黑人法典”来维护白人至上主义，以此抵制获释奴隶的社会和经济融合。作为回应，宪法增加了三项修正案：
  - a. The Thirteenth Amendment abolished slavery.  
a. 第十三修正案废除了奴隶制。
  - b. The Fourteenth Amendment defined citizenship to include “[a]ll persons born or naturalized in the United States,” and outlined protections for individuals against state government actions.  
b. 第十四修正案将公民身份定义为包括“所有在美国出生或归化的人”，并概述了对个人免受州政府行为侵害的保护。
  - c. The Fifteenth Amendment guaranteed voting rights regardless of “race, color, or previous condition of servitude.”  
c. 第十五修正案保障了无论“种族、肤色或以前的奴役状况”如何，每个人都享有投票权。
3. Section 1 of the Fourteenth Amendment reads:  
3. 第十四修正案第一款规定：

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

凡在美国出生或归化，并受其管辖的人，均为美国公民，也是其居住州的公民。任何州均不得制定或执行任何剥夺美国公民特权或豁免权的法律；任何州均不得未经正当法律程序剥夺任何人的生命、自由或财产；任何州均不得拒绝在其管辖范围内的人享有法律的平等保护。

4. The final clause of this section, the Equal Protection Clause, has formed the basis for civil rights claims for many groups, beginning with African Americans. The Equal Protection Clause has been interpreted to require the federal government to address and prevent discriminatory practices.
4. 本节的最后一条，即平等保护条款，已成为许多群体（首先是非裔美国人）争取民权的基础。平等保护条款被解释为要求联邦政府解决并防止歧视性做法。
5. Civil rights are those rights to equal treatment that all persons are guaranteed. The government must protect people from being discriminated against based on group membership and personal characteristics, including race, national origin, religion, and sex. The government has a positive obligation (must take action) to prevent and address discrimination against members of minority groups.
5. 公民权利是指所有人享有的平等对待权。政府必须保护人们免受基于群体成员身份和个人特征（包括种族、国籍、宗教和性别）的歧视。政府有积极义务（必须采取行动）防止和消除对少数群体成员的歧视。

## B. THE FIGHT AGAINST SEGREGATION

### B. 反对种族隔离的斗争

1. Adding the Fourteenth Amendment to the Constitution did not automatically change the culture of the nation. Many states resisted equality for African Americans. The Civil Rights Movement was born out of the struggle of former slaves and their descendants for equal treatment under the law.
  1. 将第十四修正案加入宪法并没有自动改变美国的文化。许多州仍然抵制非裔美国人的平等权利。民权运动正是源于前奴隶及其后代争取法律面前人人平等的斗争。
  2. In the late decades of the nineteenth century, the former Confederate states passed laws that segregated African Americans. These Black Codes, or Jim Crow laws, required African Americans to use separate facilities, such as bathrooms and water fountains, and separated them from whites in public spaces, such as theaters and railroad cars.
    2. 在十九世纪后期，前南方邦联各州通过了种族隔离法，将非裔美国人隔离起来。这些“黑人法典”或“吉姆·克劳法”要求非裔美国人使用单独的设施，例如浴室和饮水机，并将他们在公共场所（例如剧院和火车车厢）与白人分开。
    3. Legal segregation (laws requiring the separation of the races) was challenged in *Plessy v. Ferguson* (1896). In that case, the Supreme Court upheld a Louisiana state law requiring that African Americans ride in separate railroad cars. The Court ruled

that, as long as the accommodations provided to African Americans were substantially the same as those provided to whites, legal segregation was constitutional. This separate but equal doctrine remained law throughout the first half of the twentieth century.

3. 种族隔离（即要求种族隔离的法律）在普莱西诉弗格森案（1896年）中受到挑战。在该案中，最高法院维持了路易斯安那州的一项法律，该法律要求非裔美国人乘坐单独的火车车厢。法院裁定，只要提供给非裔美国人的待遇与提供给白人的待遇基本相同，种族隔离就是合宪的。这一“隔离但平等”的原则在20世纪上半叶一直有效。
4. The National Association for the Advancement of Colored People (NAACP), was founded in 1909 to advocate for social justice and equal treatment for African Americans. Led by Thurgood Marshall, who would go on to become the first African American Supreme Court justice, the NAACP Legal Defense Fund brought *Brown v. Board of Education* and other important civil rights cases to the Court.
4. 全国有色人种协进会（NAACP）成立于1909年，旨在倡导社会正义和为非裔美国人争取平等待遇。在瑟古德·马歇尔（他后来成为美国最高法院首位非裔大法官）的领导下，NAACP法律辩护基金将布朗诉教育委员会案和其他重要的民权案件提交至最高法院。

#### 5. ***Brown v. Board of Education of Topeka (1954)***

##### 5. 布朗诉托皮卡教育委员会案（1954年）

- a. **Facts of the Case:** Segregation laws in Topeka forbade Linda Brown, a third grader, to enroll in the public school closest to her house. Instead, she was forced to walk several blocks and then ride a bus to the segregated black school, which was much farther away than the local “white” public school. Linda’s father and several other plaintiffs sued, arguing that African American children could not receive an equal education in segregated schools and that the Equal Protection Clause required the Court to strike down state laws requiring segregation.
- a. **案件事实：**托皮卡市的种族隔离法禁止三年级学生琳达·布朗就读离家最近的公立学校。她被迫步行几个街区，然后乘坐公交车前往种族隔离的黑人学校，这所学校比当地的“白人”公立学校远得多。琳达的父亲和其他几位原告提起诉讼，认为非裔美国儿童在种族隔离的学校无法接受平等的教育，并指出平等保护条款要求法院废除各州强制实行种族隔离的法律。
- b. **Constitutional Issue(s):** Does the Equal Protection Clause of the Fourteenth Amendment prohibit segregation based on race?
- b. **宪法问题：**第十四修正案的平等保护条款是否禁止基于种族的隔离？
- c. **Holding(s):** The Equal Protection Clause prohibits segregation based on race because separation creates inherent inequality.
- c. **判决：**平等保护条款禁止基于种族的隔离，因为隔离会造成固有的不平等。
- d. **Reasoning:** Of critical importance to the plaintiffs (the people bringing the case to court) and the African American community was the idea that segregation is inherently (naturally) unequal. That is, that African American students who attended separate schools by law were being denied educational opportunities and benefits that they would be given in an integrated setting, even if their school facilities and teachers were roughly equal. Furthermore, the negative message of segregation toward African American students was harmful to their education and self-worth.

The Court agreed and unconditionally overturned *Plessy*, stating

- d. **理由：**对原告（提起诉讼的人）和非裔美国人社区而言，至关重要的是种族隔离本质上（自然而然地）是不平等的。也就是说，根据法律规定就读于隔离学校的非裔美国学生被剥夺了在融合环境中本应获得的教育机会和福利，即便他们的学校设施和师资水平大致相同。此外，种族隔离对非裔美国学生造成的负面影响损害了他们的教育和自尊。法院认同这一观点，并无条件推翻了普莱西案的判决，指出：

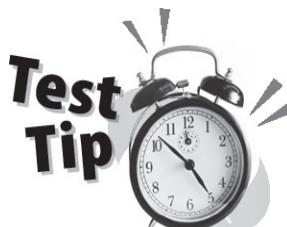
Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The effect is greater when it has the sanction of the law, for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system.

公立学校中白人儿童和有色人种儿童的隔离对有色人种儿童造成了不利影响。当这种隔离得到法律认可时，其影响更为严重，因为种族隔离政策通常被解读为黑人群体低人一等的象征。自卑感会影响儿童的学习动力。因此，在法律认可下实行的种族隔离往往会阻碍黑人儿童的教育和智力发展，并剥夺他们在种族融合的学校系统中本应获得的某些益处。

The Court concluded that “separate educational facilities are inherently unequal” under the Fourteenth Amendment.

法院认定，根据第十四修正案，“隔离的教育设施本质上是不平等的”。

6. The following year, in *Brown v. Board of Education II* (1955), the Court ordered that school systems desegregate with “all deliberate speed.” Especially in the South, however, compliance was slow and frequently not implemented for many years.
6. 次年，在布郎诉教育委员会案（1955年）中，最高法院下令学校系统“以一切必要的速度”取消种族隔离。然而，尤其是在南方各州，执行情况缓慢，而且往往多年都未能落实。



***Remember that the Supreme Court is influenced by many factors that change over time. Citizen-state interactions, which are driven by cultural changes, influence the Court's decision-making. Also, as the composition of the Court changes (via turnover in the nine justices serving at any given time), the ideological makeup of the Court changes. In Brown, these changes led the Court to overrule the precedent set by Plessy after almost 60 years.***

请记住，最高法院受到诸多因素的影响，而这些因素会随着时间推移而变化。公民与国家之间的互动，受文化变迁的驱动，会影响法院的决策。此外，随着法院组成的变化（即九名大法官的更迭），法院的意识形态构成也会发生变化。在布朗诉托皮卡教育局案中，正是这些变化导致法院推翻了普莱西案近60年来确立的先例。

## C. THE CIVIL RIGHTS MOVEMENT

### C. 民权运动

1. The mid-1950s marked a turning point in American society. African Americans, who had long been subjected to discrimination and mistreatment, including violence and murder, began to push for change with renewed energy, and the Civil Rights Movement began.
  1. 20世纪50年代中期标志着美国社会的一个转折点。长期以来遭受歧视和虐待（包括暴力和谋杀）的非裔美国人开始以新的热情推动变革，民权运动由此开始。
2. The African American community organized—that is, they took collective action to persuade state and local governments to change their policies. An important leader in the movement was Dr. Martin Luther King, Jr., who advocated nonviolent resistance to government oppression. In addition to legal challenges and lobbying for legislation, the methods they used to bring about reform included boycotts, sit-ins, marches, and freedom rides, which were bus trips through the South to protest segregated buses.
  2. 非裔美国人社区组织起来——也就是说，他们采取集体行动，说服州政府和地方政府改变政策。马丁·路德·金博士是这场运动的重要领袖，他倡导以非暴力方式抵抗政府压迫。除了法律挑战和游说立法外，他们还采取了抵制、静坐、游行和“自由乘车”等方式来推动改革。“自由乘车”是指乘坐巴士穿越南方，抗议种族隔离的公共汽车。
    - a. African Americans and others who supported the movement engaged in acts of civil disobedience, or preplanned organized actions in which individuals refuse to follow unjust laws. Notably, Rosa Parks refused to give up her seat on a Montgomery, Alabama, city bus to a white rider and was arrested.
      - a. 非裔美国人和其他支持这场运动的人参与了公民不服从行动，即预先计划并组织起来的行动，在这些行动中，个人拒绝遵守不公正的法律。值得注意的是，罗莎·帕克斯拒绝在阿拉巴马州蒙哥马利市的一辆公交车上给一位白人乘客让座，结果被捕。
      - b. Following Parks' arrest, King led a boycott of the Montgomery city buses by African Americans. The black community organized carpools and walked rather than ride buses, causing a massive loss of revenue to the city.
        - b. 帕克斯被捕后，金领导了非裔美国人抵制蒙哥马利市公交车的运动。黑人社区组织拼车，步行而不是乘坐公交车，给市政府造成了巨大的财政收入损失。
    3. King led numerous protest marches during the 1950s and 1960s. In 1963, he was arrested for leading a march in Birmingham, Alabama, and held in solitary confinement.
      3. 金在20世纪50年代和60年代领导了多次抗议游行。1963年，他因在阿拉巴马州伯明翰领导游行而被捕，并被单独监禁。
    4. While in jail in Birmingham, a supporter smuggled King a newspaper that had published an opinion piece by several white Alabama clergy members opposing the marches. King composed a response during his time in jail in which he addressed the religious leaders' statement, poignantly describing the experience of African

Americans in the South and defending the protesters' actions.

4. 在伯明翰监狱服刑期间，一位支持者偷偷给金送来了一份报纸，报纸上刊登了几位阿拉巴马州白人牧师的评论文章，反对游行示威。金在狱中撰写了一篇回应文章，回应了这些宗教领袖的声明，深刻地描述了非裔美国人在南方的遭遇，并为抗议者的行为辩护。
- a. King first responds to the assertion that he was an “outsider” who should not be stirring up trouble in Birmingham. He argues that he had been invited as head of the Southern Christian Leadership Conference (SCLC). Moreover, he argues that people have a duty to fight injustice wherever it exists, emphasizing that communities are interrelated.

首先，金回应了关于他是“外来者”不应在伯明翰煽动骚乱的说法。他辩称自己是应邀以南方基督教领袖会议(SCLC)主席的身份前往的。此外，他还强调，无论在何处，人们都有责任与不公正作斗争，并指出各个社区是相互关联的。
  - b. King goes on to point out that Birmingham, at the time, was probably the most segregated city in the country, with a brutal record of abuse and oppression of African Americans.

b. 金继续指出，当时的伯明翰可能是全国种族隔离最严重的城市，对非裔美国人有着残酷的虐待和压迫记录。
  - c. King makes the point that “direct action,” or nonviolent resistance, is sometimes necessary to drive negotiation and reach resolution when attempts at cooperation have been refused.

c. 金指出，“直接行动”或非暴力抵抗有时是推动谈判和达成解决方案所必需的，尤其是在合作尝试遭到拒绝的情况下。

You may well ask: ‘Why direct action? Why sit-ins, marches and so forth? Isn’t negotiation a better path?’ You are quite right in calling for negotiation. Indeed, this is the very purpose of direct action. Nonviolent direct action seeks to create such a crisis and foster such a tension that a community which has constantly refused to negotiate is forced to confront the issue. It seeks so to dramatize the issue that it can no longer be ignored. My citing the creation of tension as part of the work of the nonviolent resister may sound rather shocking. But I must confess that I am not afraid of the word ‘tension.’ I have earnestly opposed violent tension, but there is a type of constructive, nonviolent tension which is necessary for growth.

你或许会问：“为什么要采取直接行动？为什么要静坐、游行等等？谈判难道不是更好的途径吗？”你呼吁谈判完全正确。事实上，这正是直接行动的目的所在。非暴力直接行动旨在制造危机，激化矛盾，迫使那些一直拒绝谈判的群体直面问题。它力求将问题戏剧化，使其无法再被忽视。我把制造矛盾作为非暴力抵抗者工作的一部分，这听起来或许有些令人震惊。但我必须承认，我并不惧怕“矛盾”这个词。我一直坚决反对暴力冲突，但有一种建设性的、非暴力的矛盾对于成长至关重要。
  - d. King points out that “[h]istory is the long and tragic story of the fact that privileged groups seldom give up their privileges voluntarily.”

d. 金指出，“历史是一个漫长而悲惨的故事，它讲述了一个事实：享有特权的群体很少自愿放弃他们的特权。”
  - e. He passionately defends nonviolent direct action as a middle ground between despair and violence.

- e. 他热情地捍卫非暴力直接行动，认为这是绝望和暴力之间的中间立场。
- f. King distinguishes between just and unjust laws and argues that it is one's moral duty to uphold just laws and to disobey unjust laws.
- f. 金区分了公正的法律和不公正的法律，并认为维护公正的法律和不公正的法律是每个人的道德义务。

How does one determine whether a law is just or unjust? A just law is a man-made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law. To put it in the terms of St. Thomas Aquinas: An unjust law is a human law that is not rooted in eternal law and natural law. Any law that uplifts human personality is just. Any law that degrades human personality is unjust.

如何判断一条法律是公正的还是不公正的？公正的法律是符合道德律或上帝律的人为法典。不公正的法律则是与道德律相悖的法典。用圣托马斯·阿奎那的话来说：不公正的法律是没有根植于永恒律和自然律的人为法典。任何提升人格的法律都是公正的；任何贬低人格的法律都是不公正的。

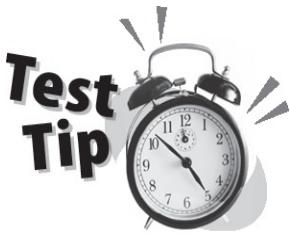
- g. King expresses disappointment in the white religious establishment for failing to stand against the injustice of racism, and in the inaction of white moderates, referring to the "appalling silence of good people."
- g. 金对白人宗教机构未能挺身反对种族主义的不公正行为表示失望，对白人温和派的不作为表示失望，并提到了“好人的可怕沉默”。
- h. He closes by pointing out that the clergy members' praise of the "nonviolent" police response to protests is misplaced. Instead, he praises the actions of the protesters, who refrained from violence in the face of attacks and humiliation.
- h. 他最后指出，神职人员对警方“非暴力”应对抗议活动的赞扬是不恰当的。相反，他赞扬的是抗议者的行为，他们在面对攻击和羞辱时克制住了暴力。

## D. THE CIVIL RIGHTS MOVEMENT RESULTED IN IMPORTANT LEGISLATION

### D. 民权运动促成了重要的立法

1. **Civil Rights Act of 1964:** This sweeping law was introduced under John F. Kennedy and signed into law by Lyndon Johnson. It protected civil rights in several regards, including:
  1. **1964 年《民权法案》：**这项影响深远的法律由约翰·F·肯尼迪提出，并由林登·约翰逊签署成为法律。它在多个方面保护了公民权利，包括：
    - a. Outlawing discrimination in public accommodations or any place "open to the public" such as restaurants, hotels, and theaters.
      - a. 禁止在公共场所或任何“向公众开放”的地方（如餐馆、酒店和剧院）进行歧视。
      - b. Prohibiting discrimination in employment based on race, color, religion, sex, or national origin. This section is notable for including "sex" as a basis for civil rights protection.
        - b. 禁止在就业方面基于种族、肤色、宗教、性别或国籍进行歧视。本条的显著之处在于将“性别”纳入了民权保护的范畴。

2. **The Twenty-fourth Amendment:** Ratified in 1964, this amendment outlaws the requirement of a tax in order to vote (poll tax). Because the process of creating constitutional amendments is extremely difficult, the civil rights movement focused more on achieving goals through litigation (law suits) and advocating for legislation.
2. **第二十四修正案：**该修正案于 1964 年获得批准，禁止以缴纳人头税为由要求公民投票。由于制定宪法修正案的过程极其困难，民权运动更多地侧重于通过诉讼和倡导立法来实现目标。
3. **Voting Rights Act of 1965:** This landmark law prohibits discrimination in voting procedures throughout the United States. Although the Civil Rights Act of 1964 had prohibited discriminatory voting requirements, the Voting Rights Act significantly clarified and expanded voting protections for African Americans. Significant provisions include:
  3. **1965 年《投票权法案》：**这项具有里程碑意义的法律禁止美国各地投票程序中的歧视。尽管 1964 年《民权法案》已经禁止了歧视性的投票要求，但《投票权法案》显著地澄清和扩大了对非裔美国人的投票保护。其重要条款包括：
    - a. The Voting Rights Act outlaws literacy tests and similar mechanisms for disenfranchising (disallowing voting rights) minorities.
      - a. 《投票权法》禁止识字测试和类似机制剥夺少数族裔的选举权（不允许其投票）。
      - b. The law placed special restrictions on particular jurisdictions (states or areas) with a history of voter discrimination against minorities.
        - b. 该法律对有歧视少数族裔选民历史的特定司法管辖区（州或地区）施加了特殊限制。
          - These jurisdictions were required to obtain *preclearance*, or prior approval, from the Justice Department before implementing any changes to voting procedures.
          - 这些司法管辖区在对投票程序进行任何更改之前，必须获得司法部的预先批准。
          - Whether a jurisdiction could be regulated was dependent on a coverage formula, but the formula was struck down in *Shelby County v. Holder* (2013) as being out of date and not appropriate for addressing modern conditions.
          - 一个司法管辖区是否可以受到监管取决于覆盖范围公式，但该公式在 *Shelby County v. Holder* (2013) 一案中被推翻，因为它已经过时，不适合应对现代情况。
          - The holding in *Shelby* effectively made preclearance unenforceable. As a result, numerous states and jurisdictions that had previously been subject to preclearance requirements have passed laws that place increased restrictions on voting rights.
          - 谢尔比案的判决实际上使预先审查制度无法执行。因此，许多此前受预先审查制度约束的州和司法管辖区都通过了法律，对投票权施加了更多限制。
      - c. The Voting Rights Act led to a significant increase in the election of African American legislators in Southern states.
        - c. 《投票权法案》导致南方各州非裔美国立法者的当选人数显著增加。



**The government may respond to social movements through judicial decisions, such as Brown v. Board of Education, or its response may be legislative, as when Congress passed the Civil Rights Act of 1964 or the Voting Rights Act of 1965. As you continue reading, note the various governmental responses to the civil rights demands of particular groups.**

政府可以通过司法判决来回应社会运动，例如布朗诉教育委员会案，也可以通过立法来回应，例如国会通过了1964年《民权法案》或1965年《投票权法案》。在继续阅读的过程中，请注意政府对特定群体民权诉求的各种回应。

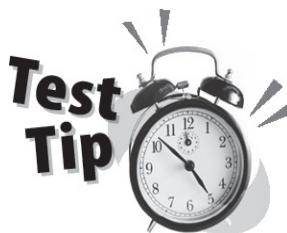
## E. OTHER ISSUES IN SEGREGATION

### E. 隔离中的其他问题

1. One problem the courts have grappled with is how to deal with situations in which segregation is not the result of laws requiring it (*de jure* segregation, Latin for “by law”), but a consequence of individual choices (*de facto* segregation, Latin for “in fact”).
  1. 法院面临的一个问题是，如何处理种族隔离并非法律要求的结果（法律上的种族隔离，拉丁语意为“依法”），而是个人选择的结果（事实上的种族隔离，拉丁语意为“实际上”）。
    - a. Schools may be segregated due to citizens’ choices and preferences as to where they live. This is *de facto* segregation—segregation in fact, rather than by law.
      - a. 由于公民对居住地的选择和偏好，学校可能出现种族隔离。这属于事实上的种族隔离——即实际存在的隔离，而非法律规定的规定的隔离。
      - b. In *Swann v. Charlotte-Mecklenburg Board of Education* (1971), the Court held that busing students to integrate schools was constitutionally acceptable, even though students might need to be transported to schools farther away than their local schools.
        - b. 在*Swann 诉 Charlotte-Mecklenburg 教育委员会案*（1971年）中，法院裁定，即使学生可能需要被运送到比当地学校更远的学校，用校车将学生送到学校进行种族融合也是合宪的。
        - c. Generally, the Court has held that the government is not required to act to desegregate in situations of *de facto* segregation.
          - c. 一般而言，法院认为，在事实上的种族隔离情况下，政府没有义务采取行动来消除种族隔离。
2. An area of significant controversy has been the use of affirmative action policies in hiring and education, particularly in the college admissions process.
  2. 在招聘和教育领域，尤其是在大学招生过程中，平权行动政策的使用一直是一个备受争议的领域。
    - a. Affirmative action refers to policies intended to prevent discrimination and to correct the lasting effects of historical discrimination by ensuring that minority

groups are appropriately represented in employment and higher education environments. This is typically achieved by allocating a minimum percentage of places to minorities.

- a. 平权行动是指旨在防止歧视并纠正历史歧视遗留影响的政策，其目的是确保少数群体在就业和高等教育领域获得适当的代表权。这通常是通过为少数群体分配最低比例的名额来实现的。
- b. In *Regents of University of California v. Bakke* (1978), Bakke, a white student who was denied admission to medical school while less qualified minority students were admitted, claimed that the university's admissions policy resulted in illegal discrimination against white applicants (sometimes referred to as reverse discrimination). The Court held that race-based quotas (concrete percentages or numbers of seats) were a violation of the Equal Protection Clause, but that race could be considered as a factor in admissions decisions.
- b. 在加州大学董事会诉巴克案（1978年）中，巴克是一名白人学生，他申请医学院时被拒之门外，而一些资质不如他的少数民族裔学生却被录取。巴克声称，该大学的招生政策导致了对白人申请者的非法歧视（有时被称为反向歧视）。法院裁定，基于种族的配额（具体的百分比或席位数量）违反了平等保护条款，但种族可以作为招生决定的一个考虑因素。
- c. Recently, the Court has struck down admission systems that seem to make race too significant a factor in college admissions, but has continued to hold that race may be taken into consideration.
- c. 近期，法院否决了一些似乎将种族作为大学录取中过重要因素的录取制度，但仍然认为可以考虑种族因素。



**Remember that the courts use the standard of strict scrutiny to evaluate both civil rights and civil liberties claims. Regarding civil rights, government actions that impact a minority group must be**

**请记住，法院在评估公民权利和公民自由主张时，均采用严格审查标准。就公民权利而言，影响少数民族的政府行为必须符合以下标准：**

- (1) based on a compelling government interest;**  
**(1) 基于令人信服的政府利益；**
- (2) narrowly tailored to address that interest; and**  
**(2) 专门针对该利益而制定；以及**
- (3) the least restrictive way to do so.**  
**(3) 限制性最小的方式。**

- 3. Following changes to the Voting Rights Act in 1982, some states redrew congressional districts to allow African Americans the opportunity to elect representatives to Congress. The districts were the result of an effort to draw the boundaries to create majority-minority districts, in which a racial minority (African Americans) made up the

majority of the voters in a district. These districts were essentially racial gerrymanders, but the gerrymandering was done to create an advantage, rather than a disadvantage, for the minority group. In *Shaw v. Reno* (1993), the Court struck down this type of plan as a violation of the Equal Protection Clause of the Fourteenth Amendment, holding that racial gerrymandering is unconstitutional regardless of its intent.

3. 1982 年《投票权法案》修订后，一些州重新划分了国会选区，以使非裔美国人有机会选举国会代表。这些选区的划分旨在创建少数族裔占多数的选区，即少数族裔（非裔美国人）在选区内占选民的大多数。这些选区本质上是种族选区划分，但这种划分是为了给少数族裔群体创造优势而非劣势。在 1993 年的“肖诉雷诺案”（*Shaw v. Reno*）中，最高法院裁定此类方案违反了第十四修正案的平等保护条款，并认为无论其意图如何，种族选区划分都是违宪的。

## II. 二、 THE WOMEN' S MOVEMENT 妇女运动

### A. THE STRUGGLE FOR WOMEN' S EQUALITY

#### A. 争取女性平等的斗争

1. Ratified in 1920, the Nineteenth Amendment culminated the first wave of the women' s rights movement, which had mainly focused on acquiring the right to vote.  
1. 1920 年批准的第十九修正案标志着妇女权利运动第一波浪潮的结束，该运动主要集中在争取投票权上。
2. In the 1960s, the second wave of the women' s movement focused on equality. It grew out of increasing awareness of the inequities faced by women in American society.  
2. 20 世纪 60 年代，第二波妇女运动的重点是平等。它源于人们对美国社会中女性所面临的不平等现象日益增强的认识。
3. In 1963, *The Feminine Mystique* by Betty Friedan was published. The book critiqued popular ideas surrounding women' s place in society and argued that women were entitled to self-fulfillment including educational and professional opportunities.  
3. 1963 年，贝蒂·弗里丹的《女性的奥秘》出版。这本书批判了当时流行的关于女性社会地位的观念，并论证了女性有权实现自我价值，包括获得教育和职业机会。
4. The National Organization for Women (NOW) was co-founded in 1966 by Betty Friedan “to bring women into full participation in the mainstream of American society now, exercising all the privileges and responsibilities thereof in truly equal partnership with men.” NOW advocates for many feminist policy goals, including:  
4. 全国妇女组织（NOW）由贝蒂·弗里丹于 1966 年联合创立，“旨在使女性充分参与美国社会主流，与男性真正平等地享有所有权利和承担所有责任。” NOW 倡导多项女权主义政策目标，包括：
  - a. equal rights under the law  
a. 法律面前人人平等
  - b. reproductive choice  
b. 生殖选择

- c. workplace equality
- c. 工作场所平等
- d. ending sexual harassment and violence against women
- d. 终止对妇女的性骚扰和暴力行为
- e. global feminist issues
- e. 全球女权主义问题

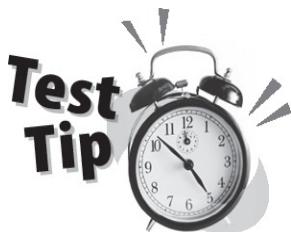
## B. KEY OUTCOMES OF THE WOMEN' S MOVEMENT

### B. 妇女运动的主要成果

1. The Equal Pay Act of 1963 required equal compensation for substantially equivalent work regardless of gender, race, religion, or national origin.  
1. 1963 年《同工同酬法》规定，对于实质上相同的工作，无论性别、种族、宗教或国籍，都必须获得同等报酬。
2. Title VII of the Civil Rights Act of 1964 included “sex” as a prohibited basis for discrimination, forming the basis for legal action to enforce equal treatment for women in the workplace.  
2. 1964 年《民权法案》第七章将“性别”列为禁止歧视的理由，为强制女性在工作场所获得平等待遇提供了法律依据。
  - a. Women are protected against discrimination in hiring and employment conditions, generally, and may not be treated differently from men if the difference is unreasonable.  
a. 一般而言，女性在招聘和就业条件方面受到保护，免受歧视，如果差别不合理，则不得区别对待女性和男性。
  - b. Women also have a right to be free from sexual harassment in the workplace.  
b. 女性也有权在工作场所免受性骚扰。
    - *Quid pro quo* sexual harassment describes situations in which demands for sex are made on an employee in exchange for continued employment or advancement.  
► 交换式性骚扰是指以性换取继续受雇或晋升的情况。
    - Hostile environment sexual harassment is behavior that creates a workplace that is intimidating or abusive such that a reasonable person would find it difficult or impossible to do his or her job.  
► 故意环境性骚扰是指营造一种恐吓或虐待性的工作场所的行为，以至于一个理性的人会发现难以或不可能完成自己的工作。
3. Title IX of the Education Amendments Act of 1972 (amending the Higher Education Act of 1965) prohibits discrimination on the basis of sex in federally funded

educational activities.

3. 1972 年教育修正案第九条（修正 1965 年高等教育法）禁止在联邦资助的教育活动中基于性别进行歧视。
  - a. Although the law prohibits discrimination in all educational activities, it is best known for increasing women's access to athletic activities.
    - a. 虽然该法律禁止在所有教育活动中进行歧视，但它最出名的是增加了女性参与体育活动的机会。
    - b. Title IX also prohibits sexual harassment in educational environments.
      - b. 第九条还禁止在教育环境中进行性骚扰。
4. An Equal Rights Amendment, guaranteeing equal rights for women, was proposed by two-thirds of each chamber of Congress in 1972. Ratification failed, however, with only 35 of the necessary 38 states passing the amendment in the 10-year ratification period.
4. 1972 年，国会两院各三分之二的议员提出了一项保障妇女平等权利的《平等权利修正案》。然而，该修正案在 10 年的批准期内未能获得批准，因为只有 35 个州（38 个州中需要 38 个州）通过了该修正案。



*It is sometimes confusing to think of women as a legally protected minority group, since there are actually more women than men in the United States. Although not a numerical minority, women are a legal minority, or a group that is designated as having legal protection against discrimination. Most legal minorities are also numerical minorities. However, women are a legal minority with a (slight) numerical majority.*

人们有时会对将女性视为受法律保护的少数群体感到困惑，因为美国女性的实际人口数量实际上多于男性。虽然女性在人口数量上并非少数群体，但在法律上她们属于少数群体，即被指定享有法律保护免受歧视的群体。大多数法律上的少数群体在人口数量上也属于少数群体。然而，女性虽然是法律上的少数群体，但在人口数量上却略占多数。

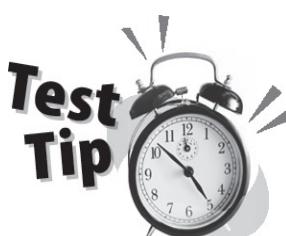
### III. 三、 OTHER SOCIAL MOVEMENTS 其他社会运动

#### A. PERSONS WITH DISABILITIES

##### A. 残疾人士

1. Because individuals with disabilities have unique physical needs concerning access, they have historically faced systemic discrimination. The disability rights movement began in the 1960s.
  1. 由于残疾人士在无障碍设施方面有独特的生理需求，他们历来面临系统性的歧视。残疾人权利运动始于 20 世纪 60 年代。

2. Under the Rehabilitation Act of 1973, Section 504:
    2. 根据 1973 年《康复法案》第 504 条：
      - a. Employers must provide reasonable accommodations to disabled applicants and employees, so long as they can otherwise perform the essential functions of their jobs.
        - a. 只要残疾申请人和雇员能够履行其工作的基本职能，雇主就必须向他们提供合理的便利。
        - b. Schools must evaluate the needs of students with disabilities and create an educational plan accommodating his or her educational requirements (a 504 plan for a student).
          - b. 学校必须评估残疾学生的需求，并制定教育计划以满足其教育要求（学生的 504 计划）。
3. The Americans with Disabilities Act (ADA) was passed in 1990. The ADA frames the need for accommodations of disabled persons as a civil rights issue, rather than as a medical issue. The ADA clarifies and builds on the previous law by
    3. 《美国残疾人法案》(ADA)于 1990 年通过。该法案将残疾人的便利需求定义为一项民权问题，而非医疗问题。ADA 在之前的法律基础上进行了澄清和扩展。
      - a. broadly defining the term *disability* to include both physical and mental conditions.
        - a. 将残疾一词广义地定义为包括身体和精神状况。
        - b. prohibiting discrimination by all employers with more than 15 employees. The ADA applies not only to entities receiving federal funds, but to private businesses as well.
          - b. 禁止所有拥有超过 15 名员工的雇主进行歧视。ADA 不仅适用于接受联邦资金的实体，也适用于私营企业。
          - c. requiring places open to the public to ensure physical access to facilities, including wheelchair access.
            - c. 要求向公众开放的场所确保设施的物理无障碍通行，包括轮椅通道。
          - d. requiring access to public accommodations. Like Title VII of the Civil Rights Act of 1964, the ADA requires private businesses to take steps to ensure accessibility if the cost is not prohibitive.
            - d. 要求提供公共场所无障碍设施。与 1964 年《民权法案》第七章类似，《美国残疾人法案》要求私营企业采取措施确保无障碍通行，前提是成本并非过高。
            - e. guaranteeing access for service animals, with limited exceptions.
              - e. 保障服务性动物的通行，但有少数例外情况。



***Keep in mind that most civil rights laws, including the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Americans with Disabilities Act (ADA) are unfunded mandates***

*—laws passed by the federal government that do not provide federal funding to cover the costs of implementation. These laws are frequently criticized for requiring states to pay for their implementation. The ADA, because it legally required government entities and private businesses to physically modify buildings and public places to allow access to the disabled, created a particularly steep financial burden and faced considerable opposition.*

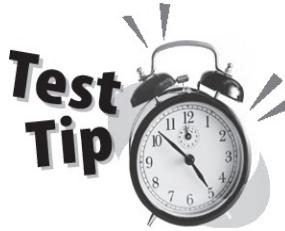
需要注意的是，大多数民权法，包括 1964 年《民权法案》、1965 年《投票权法案》和《美国残疾人法案》(ADA)，都是无资金支持的强制性法律——即联邦政府通过的法律，但并未提供联邦资金来支付实施成本。这些法律经常因要求各州承担实施费用而受到批评。《美国残疾人法案》尤其如此，因为它依法要求政府机构和私营企业对建筑物和公共场所进行物理改造，以方便残疾人通行，这造成了沉重的财政负担，并遭到了相当大的反对。

## B. LGBTQ RIGHTS

### B. LGBTQ 权利

1. Members of the LGBTQ community have a long history of experiencing discrimination and are a more recent group to seek legal protections in the areas of marriage, military service, and personal freedoms. Until 1973, homosexuality (a term then used by the medical community) was considered a mental disorder by the American Psychiatric Association.  
1. LGBTQ 群体成员长期以来遭受歧视，近年来才开始寻求在婚姻、兵役和人身自由等领域的法律保护。直到 1973 年，同性恋（当时医学界使用的术语）一直被美国精神病学会视为一种精神疾病。
2. There is no federal law protecting individuals based on sexual orientation or gender identity. However, many states have passed laws prohibiting this type of discrimination in various situations.  
2. 目前没有联邦法律保护基于性取向或性别认同的个人。但是，许多州已经通过法律，禁止在各种情况下进行此类歧视。
3. The right to marry had long been a priority of LGBTQ activists. Legal marriage, generally taken for granted by heterosexual couples, grants spouses a series of rights that LGBTQ couples were denied, including rights to inheritance, insurance benefits, and medical decision-making.  
3. 婚姻权一直是 LGBTQ 维权人士的首要目标。合法婚姻通常被异性恋伴侣视为理所当然，它赋予配偶一系列 LGBTQ 伴侣被剥夺的权利，包括继承权、保险福利和医疗决策权。
  - a. Same-sex marriage was illegal in all 50 states until 2003, when the Massachusetts Supreme Court struck down the state's same-sex marriage prohibition, making Massachusetts the first state to allow same-sex marriage.  
a. 在 2003 年之前，同性婚姻在美国所有 50 个州都是非法的。当时，马萨诸塞州最高法院推翻了该州禁止同性婚姻的法律，使马萨诸塞州成为第一个允许同性婚姻的州。
  - b. Vermont became the first state to legalize same-sex marriage by legislative action in 2009.  
b. 佛蒙特州于 2009 年成为第一个通过立法行动将同性婚姻合法化的州。
  - c. The Defense of Marriage Act (DOMA), passed by Congress in 1996, limited marriage to heterosexual couples for federal purposes, including access to insurance benefits for federal employees, social security survivorship (the right to

- collect a spouse' s social security benefits after his or her death).
- c. 1996 年国会通过的《婚姻保护法》(DOMA) 将婚姻限制在异性恋伴侣之间，用于联邦目的，包括联邦雇员获得保险福利、社会保障遗属抚恤金（配偶去世后领取其社会保障福利的权利）。
  - d. In *United States v. Windsor* (2013), the Court struck down DOMA, ruling that the federal government' s differential treatment of same-sex couples served no legitimate purpose and violated the Due Process Clause of the Fifth Amendment. (The Due Process Clause of the Fifth Amendment applied here because DOMA was a federal law. The Fifth Amendment applies to the federal government, while the Fourteenth Amendment applies to state actions.)
  - d. 在“美国诉温莎案”（2013年）中，最高法院推翻了《婚姻保护法案》(DOMA)，裁定联邦政府对同性伴侣的差别对待没有任何正当目的，并且违反了第五修正案的正当程序条款。（由于《婚姻保护法案》是一项联邦法律，因此第五修正案的正当程序条款在此适用。第五修正案适用于联邦政府，而第十四修正案适用于州政府的行为。）
  - e. By 2015, 37 states had fully legalized same-sex marriage. In that year, the Supreme Court heard the case of *Obergefell v. Hodges* (2015), which challenged state laws restricting marriage licenses to heterosexual couples. The Court struck down such laws under both the Due Process and Equal Protection Clauses of the Fourteenth Amendment, and ruled that all states must grant marriage licenses to same-sex couples and must recognize same-sex marriages made in other states.
  - e. 到 2015 年，已有 37 个州完全实现了同性婚姻合法化。同年，最高法院审理了奥贝格费尔诉霍奇斯案 (*Obergefell v. Hodges* , 2015 )，该案挑战了各州限制结婚证仅颁发给异性伴侣的法律。最高法院依据第十四修正案的正当程序条款和平等保护条款，推翻了这些法律，并裁定所有州都必须向同性伴侣颁发结婚证，并承认其他州缔结的同性婚姻。



***Students are sometimes confused by the term marriage, because it has both religious and legal meanings. Civil rights court cases relate only to marriage as a legal status, a group of rights based on a license issued by the government. Religious organizations are not required by the government to perform or recognize same-sex marriage.***

学生有时会对“婚姻”一词感到困惑，因为它既有宗教含义，也有法律含义。民权法庭的案件仅涉及作为一种法律身份的婚姻，即基于政府颁发的许可证而享有的一系列权利。政府没有义务要求宗教组织主持或承认同性婚姻。

- 4. Members of the LGBTQ community have served in the military since the Revolutionary War, but have only recently gained some level of legal protection.
- 4. 自美国独立战争以来，LGBTQ 群体成员就一直在军队服役，但直到最近才获得一定程度的法律保护。
  - a. LGBTQ service members have been allowed to serve openly since 2011.
  - a. 自 2011 年以来，LGBTQ 军人已被允许公开服役。

- b. The right of transgender individuals to serve in the military was established in 2016. However, the Trump administration reversed the policy in 2018 to preclude most transgendered persons from serving in the military. The new policy has been the subject of several appellate cases.
- b. 2016 年，美国确立了跨性别者在军队服役的权利。然而，特朗普政府在 2018 年推翻了这项政策，禁止大多数跨性别者在军队服役。这项新政策已成为多起上诉案件的焦点。

## C. OTHER ETHNIC AND RACIAL MINORITIES

### C. 其他族裔和种族少数群体

- 1. Hispanic and Latino Americans, Native Americans, Asian Americans and other ethnic minority groups have organized and waged civil rights campaigns in the United States.
- 1. 西班牙裔和拉丁裔美国人、美洲原住民、亚裔美国人和其他少数族裔群体在美国组织和开展了民权运动。
- 2. The Civil Rights Act of 1964 prohibits discrimination based on race, color, religion, and national origin. (It prohibits employment discrimination based on sex, as well.) The Act, therefore, offers protection for all of these minority groups.
- 2. 1964 年《民权法案》禁止基于种族、肤色、宗教和国籍的歧视。（该法案也禁止基于性别的就业歧视。）因此，该法案为所有这些少数群体提供了保护。

## D. THE PRO-LIFE MOVEMENT

### D. 维护生命运动

- 1. The pro-life movement has sometimes framed the abortion issue as a question of civil rights for the unborn fetus.
- 1. 反堕胎运动有时将堕胎问题视为未出生胎儿的公民权利问题。
- 2. Several Human Life Amendments have been proposed in Congress since *Roe v. Wade* was decided in 1973. None of these have passed Congress and been sent to the states for ratification.
- 2. 自 1973 年罗诉韦德案判决以来，国会已提出多项关于人类生命的修正案。但这些修正案均未获得国会通过并送交各州批准。

## Important Civil Rights Amendments and Laws

### 重要的民权修正案和法律

Name of Law 法律名称	Important Provisions 重要条款
The Civil War Amendments 内战修正案	<ul style="list-style-type: none"><li>– Thirteenth Amendment: outlaws slavery 第十三修正案：废除奴隶制</li><li>– Fourteenth Amendment: defines citizenship, guarantees due process and equal protection 第十四修正案：界定公民身份，保障正当程序和平等保护</li><li>– Fifteenth Amendment: guarantees the right to vote regardless of race, color, or previous condition of servitude. 第十五修正案：保障公民无论种族、肤色或以前是否为奴役状态，均享有投票权。</li></ul>
Nineteenth Amendment 第十九修正案	<ul style="list-style-type: none"><li>– guarantees the right to vote regardless of sex 保障所有女性的投票权</li></ul>
Civil Rights Act of 1964 1964年民权法案	<ul style="list-style-type: none"><li>– prohibits discrimination in public accommodations, government services, programs receiving federal funds, education and employment based on race, color, religion, and national origin 禁止在公共场所、政府服务、接受联邦资金的项目、教育和就业方面基于种族、肤色、宗教和国籍进行歧视</li><li>– prohibits discrimination in employment based on sex 禁止基于性别的就业歧视</li></ul>
Twenty-fourth Amendment 第二十四修正案	<ul style="list-style-type: none"><li>– outlaws poll taxes ——禁止人头税</li></ul>
Voting Rights Act of 1965 1965年投票权法案	<ul style="list-style-type: none"><li>– prohibits discrimination in voting rights, including literacy tests 禁止在投票权方面存在歧视，包括识字测试</li><li>– requires preclearance for changing voting procedures in jurisdictions with a history of discrimination (currently unenforceable as a result of a Supreme Court decision) – 在有歧视历史的司法管辖区，更改投票程序需要事先获得批准（目前由于最高法院的裁决而无法执行）</li></ul>
Title IX of the Education Amendments Act of 1972 1972年教育修正案第九条	<ul style="list-style-type: none"><li>– prohibits discrimination in educational programs and activities on the basis of sex 禁止在教育项目和活动中基于性别进行歧视</li></ul>
Americans with Disabilities Act (1990) 美国残疾人法案 (1990 年)	<ul style="list-style-type: none"><li>– prohibits discrimination in employment, public accommodations, and government programs 禁止在就业、公共场所和政府项目中进行歧视</li><li>– requires reasonable accommodations for individuals with disabilities 需要为残疾人士提供合理的便利措施</li></ul>