CHAPTER

6

Civil Rights

★

WHO GOVERNS?

1. **Since Congress enacts our laws, why has it not made certain that all groups have the same rights?**
2. **After the Supreme Court ended racial segregation in the schools, what did the president and Congress do?**

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TO WHAT ENDS?

1. **If the law supports equality of opportunity, why has affirmative action become so important?**
2. **Under what circumstances can men and women be treated differently?**

In 1830 Congress passed a law requiring all Indians east of the Mississippi River to move to the Indian Territory west of the river, and the army set about implementing it. In the 1850s a major political fight broke out in Boston over whether the police department should be obliged to hire an Irish officer. Until 1920 women could not vote in most elections. In the 1930s the Cornell University Medical School had a strict quota limiting the number of Jewish students who could enroll. In the 1940s the army, at the direction of President Franklin D. Roosevelt, removed all Japanese Americans from their homes in California and placed them in relocation centers far from the coast.

In all such cases some group, usually defined along racial or ethnic lines, was denied access to facilities, opportunities, or services that were available to other groups. Such cases raise the issue of **civil rights.** The pertinent question regarding civil rights is not whether the government has the authority to treat different people differently; it is whether such differences in treatment are reasonable. All laws and policies make distinctions among people—for example, the tax laws require higher-income people to pay taxes at a higher rate than lower-income ones—but not all such distinctions are defensible. The courts have long held that classifying people on the basis of their income and taxing them at different rates is quite permissible because such classifications are not arbitrary or unreasonable and are related to a legitimate public need (that is, raising revenue). Increasingly, however, the courts have said that classifying people on the basis of their race or ethnicity is unreasonable. These are **suspect classifications,** and while not every law making such classifications has been ruled unconstitutional, they have all become subject to especially **strict scrutiny.**[1]

To explain the victimization of certain groups and the methods by which they have begun to overcome it, we shall consider chiefly the case of African Americans. Black-white relations have in large measure defined the problem of civil rights in this country; most of the landmark laws and court decisions have involved black claims. The strategies employed by or on behalf of African Americans have typically set the pattern for the strategies employed by other groups. At the end of this chapter we shall look at the related but somewhat different issues of women's rights and gay rights.

★ The Black Predicament

Though constituting more than 12 percent of the population, African Americans until fairly recently could not in many parts of the country vote, attend integrated schools, ride in the front seats of buses, or buy homes in white neighborhoods.

Segregated water fountains in 1939.

Although today white citizens generally do not feel threatened when a black family moves into Cicero, Illinois, a black child goes to school at Little Rock Central High School, or a black group organizes voters in Neshoba County, Mississippi, at one time most whites in Cicero, Little Rock, and Neshoba County felt deeply threatened by these things (and some whites still do). This was especially the case in those parts of the country, notably the Deep South, where blacks were often in the majority. There the politically dominant white minority felt keenly the potential competition for jobs, land, public services, and living space posed by large numbers of people of another race. But even in the North, black gains often appeared to be at the expense of lower-income whites who lived or worked near them, not at the expense of upper-status whites who lived in suburbs.

African Americans were not allowed to vote at all in many areas; they could vote only with great difficulty in others; and even in those places where voting was easy, they often lacked the material and institutional support for effective political organization. If your opponent feels deeply threatened by your demands and in addition can deny you access to the political system that will decide the fate of those demands, you are, to put it mildly, at a disadvantage. Yet from the end of Reconstruction to the 1960s—for nearly a century—many blacks in the South found themselves in just such a position.

To the dismay of those who prefer to explain political action in terms of economic motives, people often attach greater importance to the intangible costs and benefits of policies than to the tangible ones. Thus, even though the average black represented no threat to the average white, antiblack attitudes—racism—produced some appalling actions. Between 1882 and 1946, 4,715 people, about three-fourths of them African Americans, were lynched in the United States.[2] Some lynchings were carried out by small groups of vigilantes acting with much ceremony, but others were the actions of frenzied mobs. In the summer of 1911 a black man charged with murdering a white man in Livermore, Kentucky, was dragged by a mob to the local theater, where he was hanged. The audience, which had been charged admission, was invited to shoot the swaying body (those in the orchestra seats could empty their revolvers; those in the balcony were limited to a single shot).[3]

Though the public in other parts of the country was shocked by such events, little was done: lynching was a local, not a federal, crime. It obviously would not require many lynchings to convince African Americans in these localities that it would be foolhardy to try to vote or enroll in a white school. And even in those states where blacks did vote, popular attitudes were not conducive to blacks' buying homes or taking jobs on an equal basis with whites. Even among those professing to support equal rights, a substantial portion opposed African Americans' efforts to obtain them and federal action to secure them. In 1942 a national poll showed that only 30 percent of whites thought that black and white children should attend the same schools; in 1956 the proportion had risen, but only to 49 percent, still less than a majority. (In the South white support for school integration was even lower—14 percent favored it in 1956, about 31 percent in 1963.) As late as 1956 a majority of southern whites were opposed to integrated public transportation facilities. Even among whites who generally favored integration, there was in 1963 (*before* the ghetto riots) considerable opposition to the black civil rights movement: nearly half of the whites who were classified in a survey as moderate integrationists thought that demonstrations hurt the black cause; nearly two-thirds disapproved of actions taken by the civil rights movement; and over a third felt that civil rights should be left to the states.[4]

civil rights *The rights of people to be treated without unreasonable or unconstitutional differences.*

suspect classifications *Classifications of people on the basis of their race or ethnicity.*

strict scrutiny *A Supreme Court test to see if a law denies equal protection because it does not serve a compelling state interest and is not narrowly tailored to achieve that goal.*

In short, the political position in which African Americans found themselves until the 1960s made it difficult for them to advance their interests through a feasible legislative strategy; their opponents were aroused, organized, and powerful. Thus if black interests were to be championed in Congress or state legislatures, blacks would have to have white allies. Though some such allies could be found, they were too few to make a difference in a political system that gives a substantial advantage to strongly motivated opponents of any new policy. For that to change, one or both of two things would have to happen: additional allies would have to be recruited (a delicate problem, given that many white integrationists disapproved of aspects of the civil rights movement), or the struggle would have to be shifted to a policy-making arena in which the opposition enjoyed less of an advantage.

Partly by plan, partly by accident, black leaders followed both of these strategies simultaneously. By publicizing their grievances and organizing a civil rights movement that (at least in its early stages) concentrated on dramatizing the denial to blacks of essential and widely accepted liberties, African Americans were able to broaden their base of support both among political elites and among the general public and thereby to raise civil rights matters from a low to a high position on the political agenda. By waging a patient, prolonged, but carefully planned legal struggle, black leaders shifted decision-making power on key civil rights issues from Congress, where they had been stymied for generations, to the federal courts.

After this strategy had achieved some substantial successes—after blacks had become enfranchised and legal barriers to equal participation in political and economic affairs had been lowered—the politics of civil rights became more conventional. African Americans were able to assert their demands directly in the legislative and executive branches of government with reasonable (though scarcely certain) prospects of success. Civil rights became less a matter of gaining entry into the political system and more one of waging interest group politics within that system. At the same time, the goals of civil rights politics were broadened. The struggle to gain entry into the system had focused on the denial of fundamental rights (to vote, to organize, to obtain equal access to schools and public facilities); later the dominant issues were manpower development, economic progress, and the improvement of housing and neighborhoods.

★ The Campaign in the Courts

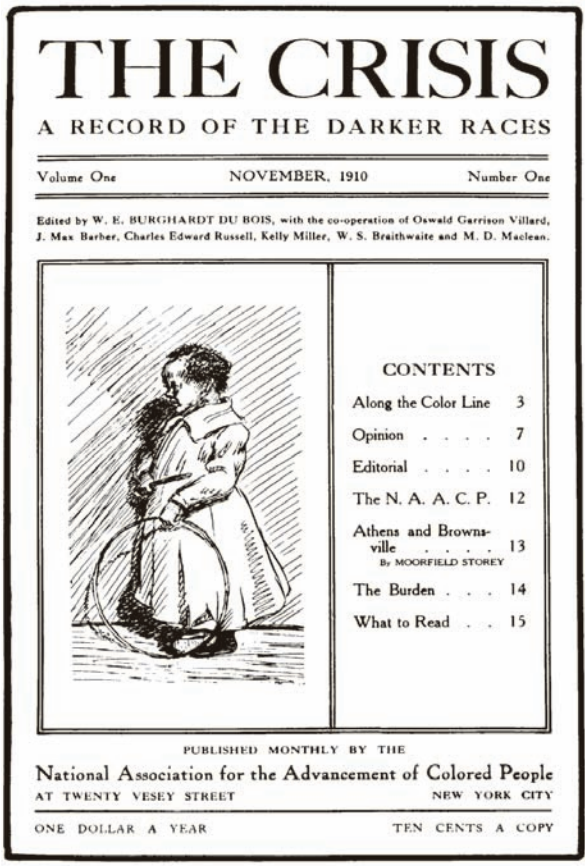
The Fourteenth Amendment was both an opportunity and a problem for black activists. Adopted in 1868, it seemed to guarantee equal rights for all: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any 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."

The key phrase was "equal protection of the laws." Read broadly, it might mean that the Constitution should be regarded as color-blind: no state law could have the effect of treating whites and blacks differently. Thus a law segregating blacks and whites into separate schools or neighborhoods would be unconstitutional. Read narrowly, "equal protection" might mean only that blacks and whites had certain fundamental legal rights in common, among them the right to sign contracts, to serve on juries, or to buy and sell property, but otherwise they could be treated differently.

Historians have long debated which view Congress held when it proposed the Fourteenth Amendment. What forms of racial segregation, if any, were still permissible? Segregated trains? Hotels? Schools? Neighborhoods?

The Supreme Court took the narrow view. Though in 1880 it declared unconstitutional a West Virginia law requiring juries to be composed only of white males,[5] it decided in 1883 that it was unconstitutional for Congress to prohibit racial discrimination in public accommodations such as hotels.[6] The difference between the two cases seemed, in the eyes of the Court, to be this: serving on a jury was an essential right of citizenship that the state could not deny to any person on racial grounds without violating the Fourteenth Amendment, but registering at a hotel was a convenience controlled by a private person (the hotel owner), who could treat blacks and whites differently if he or she wished.

The major decision that was to determine the legal status of the Fourteenth Amendment for over half a century was *Plessy v. Ferguson*. Louisiana had passed a law requiring blacks and whites to occupy separate cars on railroad trains operating in that state. When Adolph Plessy, who was seven-eighths white and one-



THE CRISIS

A RECORD OF THE DARKER RACES

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Edited by W. E. BURGHARDT DU BOIS, with the co-operation of Oswald Garrison Villard, J. Max Barber, Charles Edward Russell, Kelly Miller, W. S. Braithwaite and M. D. Maclean.

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National Association for the Advancement of Colored People

AT TWENTY VESEY STREET NEW YORK CITY

ONE DOLLAR A YEAR TEN CENTS A COPY

The cover of the first issue of *The Crisis*, the magazine started by the NAACP in 1910 to raise African American consciousness and publicize racist acts.

eighth black, refused to obey the law, he was arrested. He appealed his conviction to the Supreme Court, claiming that the law violated the Fourteenth Amendment. In 1896 the Court rejected his claim, holding that the law treated both races equally even though it required them to be separate. The equal-protection clause guaranteed political and legal but not social equality. "Separate-but-equal" facilities were constitutional because if "one race be inferior to the other socially, the Constitution of the United States cannot put them on the same plane."[7]

"Separate but Equal"

Thus began the **separate-but-equal doctrine.** Three years later the Court applied it to schools as well, declaring in *Cumming v. Richmond County Board of Education* that a decision in a Georgia community to close the black high school while keeping open the white high school was not a violation of the Fourteenth Amendment because blacks could always go to private schools. Here the Court seemed to be saying that not only could schools be separate, they could even be unequal.[8]

What the Court has made, the Court can unmake. But to get it to change its mind requires a long, costly, and uncertain legal battle. The National Association for the Advancement of Colored People (NAACP) was the main organization that waged that battle. Formed in 1909 by a group of whites and blacks in the aftermath of a race riot, the NAACP did many things—lobbying in Washington and publicizing black grievances, especially in the pages of *The Crisis,* a magazine edited by W.E.B. Du Bois—but its most influential role was played in the courtroom.

It was a rational strategy. Fighting legal battles does not require forming broad political alliances or changing public opinion, tasks that would have been very difficult for a small and unpopular organization. A court-based approach also enabled the organization to remain nonpartisan.

But it was a slow and difficult strategy. The Court had adopted a narrow interpretation of the Fourteenth Amendment. To get the Court to change its mind would require the NAACP to bring before it cases involving the strongest possible claims that a black had been unfairly treated—and under circumstances sufficiently different from those of earlier cases that the Court could find some grounds for changing its mind.

separate-but-equal doctrine *The doctrine established in* Plessy v. Ferguson *(1896) that African Americans could constitutionally be kept in separate but equal facilities.*

The steps in that strategy were these: First, persuade the Court to declare unconstitutional laws creating schools that were separate but obviously unequal. Second, persuade it to declare unconstitutional laws supporting schools that were separate but unequal in not-so-obvious ways. Third, persuade it to rule that racially separate schools were inherently unequal and hence unconstitutional.

Can Separate Schools Be Equal?

The first step was accomplished in a series of court cases stretching from 1938 to 1948. In 1938 the Court

held that Lloyd Gaines had to be admitted to an all-white law school in Missouri because no black law school of equal quality existed in that state.[9] In 1948 the Court ordered the all-white University of Oklahoma Law School to admit Ada Lois Sipuel, a black, even though the state planned to build a black law school later. For education to be equal, it had to be equally available.[10] It still could be separate, however: the university admitted Ms. Sipuel but required her to attend classes in a section of the state capitol, roped off from other students, where she could meet with her law professors.

The second step was taken in two cases decided in 1950. Heman Sweatt, an African American, was treated by the University of Texas Law School much as Ada Sipuel had been treated in Oklahoma: "admitted" to the all-white school but relegated to a separate building. Another African American, George McLaurin, was allowed to study for his Ph.D. in a "colored section" of the all-white University of Oklahoma. The Supreme Court unanimously decided that these arrangements were unconstitutional because, by imposing racially based barriers on the black students' access to professors, libraries, and other students, they created unequal educational opportunities.[11]

The third step, the climax of the entire drama, began in Topeka, Kansas, where Linda Brown wanted to enroll in her neighborhood school but could not because she was black and the school was by law reserved exclusively for whites. When the NAACP took her case to the federal district court in Kansas, the judge decided that the black school that Linda could attend was substantially equal in quality to the white school that she could not attend. Therefore denying her access to the white school was constitutional. To change that the lawyers would have to persuade the Supreme Court to overrule the district judge on the grounds that racially separate schools were unconstitutional even if they were equal. In other words, the separate-but-equal doctrine would have to be overturned by the Court.

It was a risky and controversial step to take. Many states, Kansas among them, were trying to make their all-black schools equal to those of whites by

A black student being turned away from an all-white high school under the orders of Arkansas Governor Orval Faubus in 1957.

WHAT WOULD YOU DO?

MEMORANDUM

To: *Justice Robert Gilbert*
From: *Ella Fitzgerald, law clerk*

Until school segregation ended, southern blacks could attend only all-black colleges. Now they are free to apply to previously all-white colleges, and these schools are integrated. But the traditional black colleges still exist, and very few whites apply to them. In 1992 the Supreme Court held that the state could not solve the problem by requiring a race-neutral admissions policy.* Now the Court must decide whether a predominantly black college can receive state support.

Court to Rule on Black Colleges

January 19 WASHINGTON, D.C.

The Supreme Court has announced that it will decide whether all-black colleges in the South can receive state support if there are too few whites attending them. The case began in Mississippi, where . . .

Arguments for all-black colleges:

1. These schools have a long tradition that ought to be preserved.
2. Many black students will learn better in an all-black environment.
3. African American organizations, in particular the United Negro College Fund, raise money for these schools.

Arguments against all-black colleges:

1. If the state once required single-race schools, it now has an obligation to dismantle them.
2. Race is a suspect classification, and no state program that chiefly serves one race can be allowed.

Your decision:

Allow all-black colleges _____ Ban all-black colleges _____

**United States v. Fordice,* 505 U.S. 717 (1992).

launching expensive building programs. If the NAACP succeeded in getting separate schools declared unconstitutional, the Court might well put a stop to the building of these new schools. Blacks could win a moral and legal victory but suffer a practical defeat—the loss of these new facilities. Despite these risks, the NAACP decided to go ahead with the appeal.

Brown v. Board of Education

On May 17, 1954, a unanimous Supreme Court, speaking through an opinion written and delivered by Chief Justice Earl Warren, found that "in the field of public education the doctrine of 'separate but equal' has no place" because "separate educational facilities are inherently unequal."[12] *Plessy v. Ferguson* was overruled, and "separate but equal" was dead.

The ruling was a landmark decision, but the reasons for it and the means chosen to implement it were as important and as controversial as the decision itself. There were at least three issues. First, how would the decision be implemented? Second, on what grounds were racially separate schools unconstitutional? Third, what test would a school system have to meet in order to be in conformity with the Constitution?

Implementation The *Brown* case involved a class-action suit; that is, it applied not only to Linda Brown but to all others similarly situated. This meant that black children everywhere now had the right to attend formerly all-white schools. This change would be one of the most far-reaching and conflict-provoking events in modern American history. It could not be effected overnight or by the stroke of a pen. In 1955 the Supreme Court decided that it would let local federal district courts oversee the end of segregation by giving them the power to approve or disapprove local desegregation plans. This was to be done "with all deliberate speed."[13]

In the South "all deliberate speed" turned out to be a snail's pace. Massive resistance to desegregation broke out in many states. Some communities simply defied the Court; some sought to evade its edict by closing their public schools. In 1956 over one hundred southern members of Congress signed a "Southern Manifesto" that condemned the *Brown* decision as an "abuse of judicial power" and pledged to "use all lawful means to bring about a reversal of the decision."

In the late 1950s and early 1960s the National Guard and regular army paratroopers were used to escort black students into formerly all-white schools and universities. It was not until the 1970s that resistance collapsed and most southern schools were integrated. The use of armed force convinced people that resistance was futile; the disruption of the politics and economy of the South convinced leaders that it was imprudent; and the voting power of blacks convinced politicians that it was suicidal. In addition, federal laws began providing financial aid to integrated schools and withholding it from segregated ones. By 1970 only 14 percent of southern black schoolchildren still attended all-black schools.[14]

The Rationale As the struggle to implement the *Brown* decision continued, the importance of the rationale for that decision became apparent. The case was decided in a way that surprised many legal scholars. The Court could have said that the equal-protection clause of the Fourteenth Amendment makes the Constitution, and thus state laws, color-blind. Or it could have said that the authors of the Fourteenth Amendment meant to ban segregated schools. It did neither. Instead it said that segregated education is bad because it "has a detrimental effect upon the colored children" by generating "a feeling of inferiority as to

In 1963 Governor George Wallace of Alabama stood in the doorway of the University of Alabama to block the entry of black students. Facing him is U.S. Deputy Attorney General Nicholas Katzenbach.

their status in the community" that may "affect their hearts and minds in a way unlikely ever to be undone."[15] This conclusion was supported by a footnote reference to social science studies of the apparent impact of segregation on black children.

Why did the Court rely on social science as much as or more than the Constitution in supporting its decision? Apparently for two reasons. One was the justices' realization that the authors of the Fourteenth Amendment may *not* have intended to outlaw segregated schools. The schools in Washington, D.C., were segregated when the amendment was proposed, and when this fact was mentioned during the debate, it seems to have been made clear that the amendment was not designed to abolish this segregation. When Congress debated a civil rights act a few years later, it voted down provisions that would have ended segregation in schools.[16] The Court could not easily base its decision on a constitutional provision that had, at best, an uncertain application to schools. The other reason grew out of the first. On so important a matter the chief justice wanted to speak for a unanimous court. Some justices did not agree that the Fourteenth Amendment made the Constitution color-blind. In the interests of harmony the Court found an ambiguous rationale for its decision.

Desegregation Versus Integration That ambiguity led to the third issue. If separate schools were inherently unequal, what would "unseparate" schools look like? Since the Court had not said that race was irrelevant, an "unseparate" school could be either one that blacks and whites were free to attend if they chose or one that blacks and whites in fact attended whether they wanted to or not. The first might be called a desegregated school, the latter an integrated school. Think of the Topeka case. Was it enough that there was now no barrier to Linda Brown's attending the white school in her neighborhood? Or was it necessary that there be black children (if not Linda, then some others) actually going to that school together with white children?

As long as the main impact of the *Brown* decision lay in the South, where laws had prevented blacks from attending white schools, this question did not seem important. Segregation by law (***de jure* segregation**) was now clearly unconstitutional. But in the North laws had not kept blacks and whites apart; instead all-black and all-white schools were the result of residential segregation, preferred living patterns, informal social forces, and administrative practices (such as drawing school district lines so as to produce single-race schools). This was often called segregation in fact (***de facto* segregation**).

In 1968 the Supreme Court settled the matter. In New Kent County, Virginia, the school board had created a "freedom-of-choice" plan under which every pupil would be allowed without legal restriction to attend the school of his or her choice. As it turned out, all the white children chose to remain in the all-white school, and 85 percent of the black children remained in the all-black school. The Court rejected this plan as unconstitutional because it did not produce the "ultimate end," which was a "unitary, nonracial system of education."[17] In the opinion written by Justice William Brennan, the Court seemed to be saying that the Constitution required actual racial mixing in the schools, not just the repeal of laws requiring racial separation.

This impression was confirmed three years later when the Court considered a plan in North Carolina under which pupils in Mecklenburg County (which includes Charlotte) were assigned to the nearest neighborhood school without regard to race. As a result about half the black children now attended formerly all-white schools, with the other half attending all-black schools. The federal district court held that this was inadequate and ordered some children to be bused into more distant schools in order to achieve a greater degree of integration. The Supreme Court, now led by Chief Justice Warren Burger, upheld the district judge on the grounds that the court plan was necessary to achieve a "unitary school system."[18]

***de jure* segregation**
Racial segregation that is required by law.

***de facto* segregation**
Racial segregation that occurs in schools, not as a result of the law, but as a result of patterns of residential settlement.

This case—*Swann v. Charlotte-Mecklenburg Board of Education*—pretty much set the guidelines for all subsequent cases involving school segregation. The essential features of those guidelines are as follows:

- To violate the Constitution, a school system, by law, practice, or regulation, must have engaged in discrimination. Put another way, a plaintiff must show an intent to discriminate on the part of the public schools.
- The existence of all-white or all-black schools in a district with a history of segregation creates a presumption of intent to discriminate.

Antibusing protesters buried a school bus (unoccupied) to dramatize their cause.

- The remedy for past discrimination will not be limited to freedom of choice, or what the Court called "the walk-in school." Remedies may include racial quotas in the assignment of teachers and pupils, redrawn district lines, and court-ordered busing.
- Not every school must reflect the social composition of the school system as a whole.

Relying on *Swann,* district courts have supervised redistricting and busing plans in localities all over the nation, often in the face of bitter opposition from the community. In Boston the control of the city schools by a federal judge, W. Arthur Garrity, lasted for more than a decade and involved him in every aspect of school administration.

One major issue not settled by *Swann* was whether busing and other remedies should cut across city and county lines. In some places the central-city schools had become virtually all black. Racial integration could be achieved only by bringing black pupils to white suburban schools or moving white pupils into central-city schools. In a series of split-vote decisions the Court ruled that court-ordered intercity busing could be authorized only if it could be demonstrated that the suburban areas as well as the central city had in fact practiced school segregation. Where that could not be shown, such intercity busing would not be required. The Court was not persuaded that intent had been proved in Atlanta, Detroit, Denver, Indianapolis, and Richmond, but it was persuaded that it had been proved in Louisville and Wilmington.[19]

The importance that the Court attaches to intent means that if a school system that was once integrated becomes all black as a result of whites' moving to the suburbs, the Court will not require that district lines constantly be redrawn or new busing plans adopted to adjust to the changing distribution of the population.[20] This in turn means that as long as blacks and whites live in different neighborhoods for whatever reason, there is a good chance that some schools in both areas will be heavily of one race. If mandatory busing or other integration measures cause whites to move out of a city at a faster rate than they otherwise would (a process often called "white flight"), then efforts to integrate the schools may in time create more single-race schools. Ultimately integrated schools will exist only in integrated neighborhoods or where the quality of education is so high that both blacks and whites want to enroll in the school even at some cost in terms of travel and inconvenience.

Mandatory busing to achieve racial integration has been a deeply controversial program and has generated considerable public opposition. Surveys show that a majority of people oppose it.[21] As recently as 1992 a poll showed that 48 percent of whites in the Northeast and 53 percent of southern whites felt that it was "not the business" of the federal government to ensure "that black and white children go to the same schools."[22] Presidents Nixon, Ford, and Reagan opposed busing; all three supported legislation to prevent or reduce it, and Reagan petitioned the courts to reconsider busing plans. The courts refused to reconsider, and Congress has passed only minor restrictions on busing.

The reason why Congress has not followed public opinion on this matter is complex. It has been torn

between the desire to support civil rights and uphold the courts and the desire to represent the views of its constituents. Because it faces a dilemma, Congress has taken both sides of the issue simultaneously. By the late 1980s busing was a dying issue in Congress, in part because no meaningful legislation seemed possible and in part because popular passion over busing had somewhat abated.

Then, in 1992, the Supreme Court made it easier for local school systems to reclaim control over their schools from the courts. In DeKalb County, Georgia (a suburb of Atlanta), the schools had been operating under court-ordered desegregation plans for many years. Despite this effort full integration had not been achieved, largely because the county's neighborhoods had increasingly become either all black or all white. The Court held that the local schools could not be held responsible for segregation caused solely by segregated living patterns and so the courts would have to relinquish their control over the schools. In 2007 the Court said that race could not be the decisive factor in assigning students to schools that had either never been segregated (as in Seattle) or where legal segregation had long since ended (as in Jerfferson County, Kentucky).[23]

★ The Campaign in Congress

The campaign in the courts for desegregated schools, though slow and costly, was a carefully managed effort to alter the interpretation of a constitutional

Landmark Cases

Civil Rights

- ***Dred Scott Case* (*Scott v. Sanford,* 1857):** Congress had no authority to ban slavery in a territory. A slave was considered a piece of property.
- ***Plessy v. Ferguson* (1896):** Upheld separate-but-equal facilities for white and black people on railroad cars.
- ***Brown v. Board of Education* (1954):** Said that separate public schools are inherently unequal, thus starting racial desegregation.
- ***Green v. County School Board of New Kent County* (1968):** Banned a freedom-of-choice plan for integrating schools, suggesting that blacks and whites must actually attend racially mixed schools.
- ***Swann v. Charlotte-Mecklenburg Board of Education* (1971):** Approved busing and redrawing district lines as ways of integrating public schools.

To explore these landmark cases further, visit the *American Government* web site at college.hmco.com/pic/wilsonAGlle.

In 1960 black students from North Carolina Agricultural and Technical College staged the first "sit-in" when they were refused service at a lunch counter in Greensboro (left). Twenty years later graduates of the college returned to the same lunch counter (right). Though prices had risen, the service had improved.

provision. But to get new civil rights laws out of Congress required a far more difficult and decentralized strategy, one that was aimed at mobilizing public opinion and overcoming the many congressional barriers to action.

The first problem was to get civil rights on the political agenda by convincing people that something had to be done. This could be achieved by dramatizing the problem in ways that tugged at the conscience of whites who were not racist but were ordinarily indifferent to black problems. Brutal lynchings of blacks had shocked these whites, but lynchings were becoming less frequent in the 1950s, and obviously black leaders had no desire to provoke more lynchings just to get sympathy for their cause.

Those leaders could, however, arrange for dramatic confrontations between blacks claiming some obvious right and the whites who denied it to them. Beginning in the late 1950s these confrontations began to occur in the form of sit-ins at segregated lunch counters and "freedom rides" on segregated bus lines. At about the same time, efforts were made to get blacks registered to vote in counties where whites had used intimidation and harassment to prevent it.

The best-known campaign occurred in 1955–1956 in Montgomery, Alabama, where blacks, led by a young minister named Martin Luther King, Jr., boycotted the local bus system after it had a black woman, Rosa Parks, arrested because she refused to surrender her seat on a bus to a white man.

These early demonstrations were based on the philosophy of **civil disobedience**—that is, peacefully violating a law, such as one requiring blacks to ride in a segregated section of a bus, and allowing oneself to be arrested as a result.

But the momentum of protest, once unleashed, could not be centrally directed or confined to nonviolent action. A rising tide of anger, especially among younger blacks, resulted in the formation of more militant organizations and the spontaneous eruption of violent demonstrations and riots in dozens of cities across the country. From 1964 to 1968 there were in the North as well as the South four "long, hot summers" of racial violence.

civil disobedience *Opposing a law one considers unjust by peacefully disobeying it and accepting the resultant punishment.*

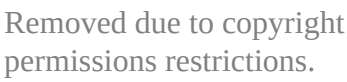
The demonstrations and rioting succeeded in getting civil rights on the national political agenda, but at a cost: many whites, opposed to the demonstrations or appalled by the riots, dug in their heels and fought against making any concessions to "lawbreakers," "troublemakers," and "rioters." In 1964 and again in 1968 over two-thirds of the whites interviewed in opinion polls said that the civil rights movement was pushing too fast, had hurt the black cause, and was too violent.[24]

In short, there was a conflict between the agenda-setting and coalition-building aspects of the civil rights movement. This was especially a problem since conservative southern legislators still controlled many key congressional committees that had for years been the graveyard of civil rights legislation. The Senate Judiciary Committee was dominated by a coalition of southern Democrats and conservative Republicans, and the House Rules Committee was under the control of a chairman hostile to civil rights bills, Howard Smith of Virginia. Any bill that passed the House faced an almost certain filibuster in the Senate. Finally, President John F. Kennedy was reluctant to submit strong civil rights bills to Congress.

Four developments made it possible to break the deadlock. First, public opinion was changing. As Figure 6.1 shows, the proportion of whites who said that they were willing to have their children attend a school that was half black increased sharply (though the proportion of whites willing to have their children attend a school that was predominantly black increased by much less). About the same change could be found in attitudes toward allowing blacks equal access to hotels and buses.[25] Of course support in principle for these civil rights measures was not necessarily the same as support in practice; nonetheless, there clearly was occurring a major shift in popular approval of at least the principles of civil rights. At the leading edge of this change were young, college-educated people.[26]

Second, certain violent reactions by white segregationists to black demonstrators were vividly portrayed by the media, especially television, in ways that gave to the civil rights cause a powerful moral force. In May 1963 the head of the Birmingham police, Eugene "Bull" Connor, ordered his men to use attack dogs and high-pressure fire hoses to repulse a peaceful march by African Americans demanding desegregated public facilities and increased job opportunities. The pictures of that confrontation (such as the one on page 134) created a national sensation and contributed greatly to the massive participation, by whites and blacks alike, in the "March on Washington" that summer. About a

Figure 6.1 Changing White Attitudes Toward Differing Levels of School Integration



quarter of a million people gathered in front of the Lincoln Memorial to hear Martin Luther King, Jr., deliver a stirring and widely hailed address, often called the "I Have a Dream" speech. The following summer in Neshoba County, Mississippi, three young civil rights workers (two white and one black) were brutally murdered by Klansmen aided by the local sheriff. When the FBI identified the murderers, the effect on national public opinion was galvanic; no white southern leader could any longer offer persuasive opposition to federal laws protecting voting rights when white law enforcement officers had killed students working to protect those rights. And the next year a white woman, Viola Liuzzo, was shot and killed while driving a car used to transport civil rights workers. Her death was the subject of a presidential address.

Third, President John F. Kennedy was assassinated in Dallas, Texas, in November 1963. Many people originally (and wrongly) thought that he had been killed by a right-wing conspiracy. Even after the assassin had been caught and shown to have left-wing associations, the shock of the president's murder—in a southern city—helped build support for efforts by the new president, Lyndon B. Johnson (himself a Texan), to obtain passage of a strong civil rights bill as a memorial to the slain president.

Fourth, the 1964 elections not only returned Johnson to office with a landslide victory but also sent a huge Democratic majority to the House and retained the large Democratic margin in the Senate. This made it possible for northern Democrats to outvote or outmaneuver southerners in the House.

The cumulative effect of these forces led to the enactment of five civil rights laws between 1957 and 1968. Three (1957, 1960, and 1965) were chiefly directed at protecting the right to vote; one (1968) was aimed at preventing discrimination in housing; and one (1964), the most far-reaching of all, dealt with voting, employment, schooling, and public accommodations.

The passage of the 1964 act was the high point of the legislative struggle. Liberals in the House had drafted a bipartisan bill, but it was now in the House Rules Committee, where such matters had often disappeared without a trace. In the wake of Kennedy's murder a discharge petition was filed, with President Johnson's support, to take the bill out of committee and bring it to the floor of the House. But the Rules Committee, without waiting for a vote on the peti-

This picture of a police dog lunging at a black man during a racial demonstration in Birmingham, Alabama, in May 1963 was one of the most influential photographs ever published. It was widely reprinted throughout the world and was frequently referred to in congressional debates on the civil rights bill of 1964.

tion (which it probably realized it would lose), sent the bill to the floor, where it passed overwhelmingly. In the Senate an agreement between Republican minority leader Everett Dirksen and President Johnson smoothed the way for passage in several important respects. The House bill was sent directly to the Senate floor, thereby bypassing the southern-dominated Judiciary Committee. Nineteen southern senators began an eight-week filibuster against the bill. On June 10, 1964, by a vote of seventy-one to twenty-nine, cloture was invoked and the filibuster ended—the first time in history that a filibuster aimed at blocking civil rights legislation had been broken.

Since the 1960s congressional support for civil rights legislation has grown—so much so, indeed, that labeling a bill a civil rights measure, once the kiss of death, now almost guarantees its passage. For example, in 1984 the Supreme Court decided that the federal ban on discrimination in education applied only to the "program or activity" receiving federal aid and not to the entire school or university.[27] In 1988 Congress passed a bill to overturn this decision by making it clear that antidiscrimination rules applied to the entire educational institution and not just to that part (say, the physics lab) receiving federal money. When President Reagan vetoed the bill (because, in his view, it would diminish the freedom of church-affiliated schools), Congress overrode the veto. In the override vote every southern Democrat in the Senate and almost 90 percent of those in the House voted for the bill. This was a dramatic change from 1964, when over 80 percent of the southern Democrats in Congress voted against the Civil Rights Act (see Figure 6.2).

This change partly reflected the growing political strength of southern blacks. In 1960 less than one-third of voting-age blacks in the South were registered to vote; by 1971 more than half were, and by 1984 two-thirds were. In 2001 over nine thousand blacks held elective office (see Table 6.1). But this was only half of the story. Attitudes among white political elites and members of Congress had also changed. This was evident as early as 1968, when Congress passed a law barring discrimination in housing even though polls

President Lyndon Johnson congratulates Rev. Martin Luther King, Jr., after signing the Civil Rights Act of 1964.

Key Provisions of Major Civil Rights Laws

1957 **Voting** Made it a federal crime to try to prevent a person from voting in a federal election. Created the Civil Rights Commission.

1960 **Voting** Authorized the attorney general to appoint federal referees to gather evidence and make findings about allegations that African Americans were being deprived of their right to vote. Made it a federal crime to use interstate commerce to threaten or carry out a bombing.

1964 **Voting** Made it more difficult to use devices such as literacy tests to bar African Americans from voting.

Public accommodations Barred discrimination on grounds of race, color, religion, or national origin in restaurants, hotels, lunch counters, gasoline stations, movie theaters, stadiums, arenas, and lodging houses with more than five rooms.

Schools Authorized the attorney general to bring suit to force the desegregation of public schools on behalf of citizens.

Employment Outlawed discrimination in hiring, firing, or paying employees on grounds of race, color, religion, national origin, or sex.

Federal funds Barred discrimination in any activity receiving federal assistance.

1965 **Voter registration** Authorized appointment by the Civil Service Commission of voting examiners who would require registration of all eligible voters in federal, state, and local elections, general or primary, in areas where discrimination was found to be practiced or where less than 50 percent of voting-age residents were registered to vote in the 1964 election. The law was to have expired in 1970, but Congress extended it; it will expire in 2007.

Literacy tests Suspended use of literacy tests or other devices to prevent African Americans from voting.

1968 **Housing** Banned, by stages, discrimination in sale or rental of most housing (excluding private owners who sell or rent their homes without the services of a real-estate broker).

Riots Made it a federal crime to use interstate commerce to organize or incite a riot.

1972 **Education** Prohibited sex discrimination in education programs receiving federal aid.

1988 **Discrimination** If any part of an organization receives federal aid, no part of that organization may discriminate on the basis of race, sex, age, or physical handicap.

1991 **Discrimination** Made it easier to sue over job discrimination and collect damages; overturned certain Supreme Court decisions. Made it illegal for the government to adjust, or "norm," test scores by race.

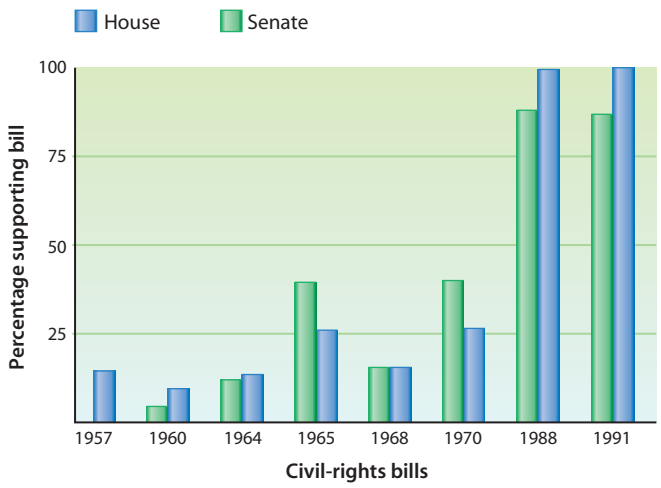
showed that only 35 percent of the public supported the measure.

Civil rights is not an issue easily confined to schools, housing, and jobs. Sometimes it is extended to crime. When crack cocaine became a popular drug, it was cheap and easily sold on street corners. When the public demanded that the police get tough on crack dealers, arrests followed. Since the great majority of arrested dealers were black, there was a sharp increase in black drug dealers going to prison. Some blacks claimed that they were being singled out by the police because of their race. The Supreme Court disagreed, holding that no evidence had been presented to show that drug dealers of other races had not been prosecuted.[28]

Racial Profiling

If law enforcement authorities are more likely to stop and question people because of their race or ethnicity, racial profiling occurs. At first glance this would seem to be a bad idea. For example, African Americans often complain that they are stopped by the police for "driving while black." This complaint became a na-

Figure 6.2 Growing Support Among Southern Democrats in Congress for Civil Rights Bills



Sources: Congressional Quarterly, *Congress and the Nation,* vols. 1, 2, 3, 7, 8.

Table 6.1 Increase in Number of Black Elected Officials

Office	1970	1991	2001
Congress and state legislatures	182	476	633
City and county offices	715	4,493	5,456
Judges and sheriffs	213	847	1,044
Boards of education	362	1,629	1,928
Total	1,472	7,445	9,061

Sources: Statistical Abstract of the United States, 2003, table 417.

tional issue in 1998 when the governor of New Jersey fired the head of the state police for saying that blacks were stopped more frequently than whites because they broke the law more frequently. Soon President Clinton and later President Bush made statements condemning racial profiling.

But there is another side to this issue. Perhaps people of a certain race are more likely to break the speed limit or smuggle drugs in their cars; if that is the case, then stopping them more frequently, even if it means stopping more innocent people, may make sense. A study of police stops in Oakland, California, by the RAND Corporation showed that, at least in that city, officers stopped cars without knowing the race of the occupants because the share of blacks stopped at night, when the drivers could not been seen, was the same as the share stopped during the day when they could be seen.[29]

The terrorist attacks of 9/11 added a new dimension to the issue. If young Middle Eastern men are more likely to smuggle weapons onto airplanes, searching them more carefully than one searches an elderly white Caucasian woman may make sense. But federal officials are leery of doing anything that might get them labeled as "racial profilers."

★ Women and Equal Rights

The political and legal efforts to secure civil rights for African Americans were accompanied by efforts to expand the rights of women. There was an important difference between the two movements, however: whereas African Americans were arguing against a legal tradition that explicitly aimed to keep them in a subservient status, women had to argue against a tradition that claimed to be protecting them. For example, in 1908 the Supreme Court upheld an Oregon law that limited female laundry workers to a ten-hour workday against the claim that it violated the Fourteenth Amendment. The Court justified its decision with this language:

> The two sexes differ in structure of body, in the functions to be performed by each, in the amount of physical strength, in the capacity for long-continued labor, particularly when done standing. . . . the self-reliance which enables one to assert full rights, and in the capacity to maintain the struggle for subsistence. This difference justifies a difference in legislation and upholds that which is designed to compensate for some of the burdens which rest upon her.[30]

The origin of the movement to give more rights to women was probably the Seneca Falls Convention held in 1848. Its leaders began to demand the right to vote for women. Though this was slowly granted by several states, especially in the West, it was not until 1920 that the Nineteenth Amendment made it clear that no state may deny the right to vote on the basis of sex. The great change in the status of women, however, took place during World War II when the demand for workers in our defense plants led to the employment of millions of women, such as "Rosie the Riveter," in jobs they had rarely held before. After

American female soldier guards an area in Baghdad where terrorists had exploded bombs.

the war, the feminist movement took flight with the publication in 1963 of *The Feminine Mystique* by Betty Friedan.

Congress responded by passing laws that required equal pay for equal work, prohibited discrimination on the basis of sex in employment and among students in any school or university receiving federal funds, and banned discrimination against pregnant women on the job.[31]

At the same time, the Supreme Court was altering the way it interpreted the Constitution. The key passage was the Fourteenth Amendment, which prohibits any state from denying to "any person" the "equal protection of the laws." For a long time the traditional standard, as we saw in the 1908 case, was a kind of protective paternalism. By the early 1970s, however, the Court had changed its mind. In deciding whether the Constitution bars all, some, or no sexual discrimination, the Court had a choice between two standards. The first is the *reasonableness* standard. This says that when the government treats some classes of people differently from others—for example, applying statutory rape laws to men but not to women—the different treatment must be reasonable and not arbitrary. The second is the strict scrutiny standard. This says that some instances of drawing distinctions between different groups of people—for example, by treating whites and blacks differently—are inherently suspect; thus the Court will subject them to strict scrutiny to ensure that they are clearly necessary to attain a legitimate state goal.

When women complained that some laws treated them unfairly, the Court adopted a standard somewhere between the reasonableness and strict scrutiny tests. Thus a law that treats men and women differently must be more than merely reasonable, but the allowable differences need not meet the strict scrutiny test.

And so in 1971 the Court held that an Idaho statute was unconstitutional because it required that males be preferred over females when choosing people to administer the estates of deceased children. To satisfy the Constitution, a law treating men and women differently "must be reasonable, not arbitrary, and must rest on some ground of difference having a fair and substantial relation to the object of legislation so that all persons similarly circumstanced shall be treated alike."[32] In later decisions some members of the Court wanted to make classifications based on sex inherently suspect and subject to the strict scrutiny test, but no majority has yet embraced this position.[33]

But sexual classifications can also be judged by a different standard. The Civil Rights Act of 1964 prohibits sex discrimination in the hiring, firing, and compensation of employees. The 1972 Civil Rights Act bans sex discrimination in local education programs receiving federal aid. These laws apply to *private* and not just government action.

Over the years the Court has decided many cases involving sexual classification. The following lists provide several examples of illegal sexual discrimination (violating either the Constitution or a civil rights act) and legal sexual distinctions (violating neither).

Illegal Discrimination

- A state cannot set different ages at which men and women legally become adults.[34]
- A state cannot set different ages at which men and women are allowed to buy beer.[35]
- Women cannot be barred from jobs by arbitrary height and weight requirements.[36]
- Employers cannot require women to take mandatory pregnancy leaves.[37]

Landmark Cases

Women's Rights

- ***Reed v. Reed* (1971):** Gender discrimination violates the equal protection clause of the Constitution.
- ***Craig v. Boren* (1976):** Gender discrimination can only be justified if it serves "important governmental objectives" and be "substantially related to those objectives."
- ***Rostker v. Goldberg* (1981):** Congress can draft men without drafting women.
- ***United States v. Virginia* (1996):** State may not finance an all-male military school.

To explore these landmark cases further, visit the *American Government* web site at college.hmco.com/pic/wilsonAGlle.

- Girls cannot be barred from Little League baseball teams.[38]
- Business and service clubs, such as the Junior Chamber of Commerce and Rotary Club, cannot exclude women from membership.[39]
- Though women as a group live longer than men, an employer must pay them monthly retirement benefits equal to those received by men.[40]
- High schools must pay the coaches of girls' sports the same as they pay the coaches of boys' sports.[41]

Decisions Allowing Differences Based on Sex

- A law that punishes males but not females for statutory rape is permissible; men and women are not "similarly situated" with respect to sexual relations.[42]
- All-boy and all-girl public schools are permitted if enrollment is voluntary and quality is equal.[43]
- States can give widows a property-tax exemption not given to widowers.[44]
- The navy may allow women to remain officers longer than men without being promoted.[45]

The lower federal courts have been especially busy in the area of sexual distinctions. They have said that public taverns may not cater to men only and that girls may not be prevented from competing against boys in noncontact high school sports; on the other hand, hospitals may bar fathers from the delivery room. Women may continue to use their maiden names after marriage.[46]

In 1996 the Supreme Court ruled that women must be admitted to the Virginia Military Institute, until then an all-male state-supported college that had for many decades supplied what it called an "adversative method" of training to instill physical and mental discipline in cadets. In practical terms this meant being very tough on students. The Court said that for a state to justify spending tax money on a single-sex school, it must supply an "exceedingly persuasive justification" for excluding the other gender. Virginia countered by offering to support an all-female training course at another college, but this was not enough.[47] This decision came close to imposing the strict scrutiny test, and so it has raised important questions about what could happen to all-female or traditionally black colleges that accept state money.

Perhaps the most far-reaching cases defining the rights of women have involved the draft and abortion. In 1981 the Court held in *Rostker v. Goldberg* that Congress may require men but not women to register for the draft without violating the due-process clause of the Fifth Amendment.[48] In the area of national defense the Court will give great deference to congressional policy (Congress had already decided to bar women from combat roles). For many years women could be pilots and sailors but not on combat aircraft or combat ships. In 1993 the secretary of defense opened air and sea combat positions to all persons regardless of gender; only ground-troop combat positions are still reserved for men. The issue played a role in preventing the ratification of the Equal Rights Amendment to the Constitution, because of fears that it would reverse *Rostker v. Goldberg*.

Sexual Harassment

When Paula Corbin Jones accused President Clinton of sexual harassment, the judge threw the case out of court because she had not submitted enough evidence such that, if the jury believed her story, she would have made a legally adequate argument that she had been sexually harassed.

What, then, is sexual harassment? Drawing on rulings by the Equal Employment Opportunities Commission, the Supreme Court has held that ha-

rassment can take one of two forms. First, it is illegal for someone to request sexual favors as a condition of employment or promotion. This is the "quid pro quo" rule. If a person does this, the employer is "strictly liable." Strict liability means that the employer can be found at fault even if he or she did not know that a subordinate was requesting sex in exchange for hiring or promotion.

Second, it is illegal for an employee to experience a work environment that has been made hostile or intimidating by a steady pattern of offensive sexual teasing, jokes, or obscenity. But employers are not strictly liable in this case; they can be found at fault only if they were "negligent"—that is, they knew about the hostile environment but did nothing about it.

In 1998 the Supreme Court decided three cases that made these rules either better or worse, depending on your point of view. In one it determined that a school system was not liable for the conduct of a teacher who seduced a female student because the student never reported the actions. In a second it held that a city was liable for a sexually hostile work environment confronting a female lifeguard even though she did not report this to her superiors. In the third it decided that a female employee who was not promoted after having rejected the sexual advances of her boss could recover financial damages from the firm. But, it added, the firm could have avoided paying this bill if it had put in place an "affirmative defense" against sexual exploitation, although the Court never said what such a policy might be.[49]

Sexual harassment is a serious matter, but because there are almost no federal laws governing it, we are left with somewhat vague and often inconsistent court and bureaucratic rules to guide us.

Privacy and Sex

Regulating sexual matters has traditionally been left up to the states, which do so by exercising their **police powers.** These powers include more than the authority to create police departments; they include all laws designed to promote public order and secure the safety and morals of the citizens. Some have argued that the Tenth Amendment to the Constitution, by reserving to the states all powers not delegated to the federal government, meant that states could do anything not explicitly prohibited by the Constitution. But that changed when the Supreme Court began expanding the power of Congress over business and when it started to view sexual matters under the newly discovered right to privacy.

Until that point, it had been left up to the states to decide whether and under what circumstances a woman could obtain an abortion. For example, New York allowed abortions during the first twenty-four weeks of pregnancy, while Texas banned it except when the mother's life was threatened.

That began to change in 1965 when the Supreme Court held that the states could not prevent the sale of contraceptives because by so doing it would invade a "zone of privacy." Privacy is nowhere mentioned in the Constitution, but the Court argued that it could be inferred from "penumbras" (literally, shadows) cast off by various provisions of the Bill of Rights.[50]

police powers *State power to effect laws promoting health, safety, and morals.*

Eight years later the Court, in its famous *Roe v. Wade* decision, held that a "right to privacy" is "broad enough to encompass a woman's decision whether or

Landmark Cases

Privacy and Abortion

- ***Griswold v. Connecticut* (1965):** Found a "right to privacy" in the Constitution that would ban any state law against selling contraceptives.
- ***Roe v. Wade* (1973):** State laws against abortion were unconstitutional.
- ***Webster v. Reproductive Health Services* (1989):** Allowed states to ban abortions from public hospitals and permitted doctors to test to see if fetuses were viable.
- ***Planned Parenthood v. Casey* (1992):** Reaffirmed *Roe v. Wade* but upheld certain limits on its use.
- ***Gonzales v. Carhart* (2007):** Federal law may ban certain forms of partial birth abortion.

To explore these landmark cases further, visit the *American Government* web site at college.hmco.com/pic/wilsonAGlle.

not to terminate a pregnancy."[51] The case, which began in Texas, produced this view: during the first three months (or trimester) of pregnancy, a woman has an unfettered right to an abortion. During the second trimester, states may regulate abortions but only to protect the mother's health. In the third trimester, states might ban abortions.

In reaching this decision, the Court denied that it was trying to decide when human life began—at the moment of conception, at the moment of birth, or somewhere in between. But that is not how critics of the decision saw things. To them life begins at conception, and so the human fetus is a "person" entitled to the equal protection of the laws guaranteed by the Fourteenth Amendment. People feeling this way began to use the slogans "right to life" and "pro-life." Supporters of the Court's action saw matters differently. In their view, no one can say for certain when human life begins; what one *can* say, however, is that a woman is entitled to choose whether or not to have a baby. These people took the slogans "right to choose" and "pro-choice."

Almost immediately the congressional allies of pro-life groups introduced constitutional amendments to overturn *Roe v. Wade,* but none passed Congress. Nevertheless, abortion foes did persuade Congress, beginning in 1976, to bar the use of federal funds to pay for abortions except when the life of the mother is at stake. This provision is known as the Hyde Amendment, after its sponsor, Representative Henry Hyde. The chief effect of the amendment has been to deny the use of Medicaid funds to pay for abortions for low-income women.

Despite pro-life opposition, the Supreme Court for sixteen years steadfastly reaffirmed and even broadened its decision in *Roe v. Wade*. It struck down laws requiring, before an abortion could be performed, a woman to have the consent of her husband, an "emancipated" but underage girl to have the consent of her parents, or a woman to be advised by her doctor as to the facts about abortion.[52]

equality of result
Making certain that people achieve the same result.

But in 1989, under the influence of justices appointed by President Reagan, it began in the *Webster* case to uphold some state restrictions on abortions. When that happened, many people predicted that in time *Roe v. Wade* would be overturned, especially if President George H. W. Bush was able to appoint more justices. He appointed two (Souter and Thomas), but *Roe* survived. The key votes were cast by Justices O'Connor, Souter, and Kennedy. In 1992, in its *Casey* decision, the Court by a vote of five to four explicitly refused to overturn *Roe,* declaring that there was a right to abortion. At the same time, however, it upheld a variety of restrictions imposed by the state of Pennsylvania on women seeking abortions. These included a mandatory twenty-four-hour waiting period between the request for an abortion and the performance of it, the requirement that teenagers obtain the consent of one parent (or, in special circumstances, of a judge), and a requirement that women contemplating an abortion be given pamphlets about alternatives to it. Similar restrictions had been enacted in many other states, all of which looked to the Pennsylvania case for guidance as to whether they could be enforced. In allowing these restrictions, the Court overruled some of its own earlier decisions.[53] On the other hand, the Court did strike down a state law that would have required married women to obtain the consent of their husbands before having an abortion.

After a long political and legal struggle, the Court in 2007 upheld a federal law that bans certain kinds of partial birth abortions. The law does not allow an abortion in which the fetus, still alive, is withdrawn until its head is outside the mother and then it is killed. The law does not ban a late-term abortion if it is necessary to protect the physical health of the mother or if it is performed on an already dead fetus, even if the doctor has already killed it.[54]

There is one irony in all of this: "Roe," the pseudonym for the woman who started the suit that became *Roe v. Wade,* never had an abortion and many years later, using her real name, Norma McCorvey, became an evangelical Christian who published a book and started a ministry to denounce abortions.

★ Affirmative Action

A common thread running through the politics of civil rights is the argument between **equality of results** and equality of opportunity.

Equality of Results

One view, expressed by most civil rights and feminist organizations, is that the burdens of racism and sexism can be overcome only by taking race or sex into

How Things Work

Becoming a Citizen

For persons born in the United States, the rights of U.S. citizenship have been ensured, in constitutional theory if not in everyday practice, since the passage of the Fourteenth Amendment in 1868 and the civil rights laws of the 1960s. The Fourteenth Amendment conferred citizenship upon "all persons born in the United States . . . and subject to the jurisdiction thereof." Subsequent laws also gave citizenship to children born outside the United States to parents who are American citizens.

But immigrants, by definition, are not born with the rights of U.S. citizenship. Instead those seeking to become U.S. citizens must, in effect, assume certain responsibilities in order to become citizens. The statutory requirements for naturalization, as they have been broadly construed by the courts, are as follows:

- Five years' residency, or three years if married to a citizen.
- Continuous residency since filing of the naturalization petition.
- Good moral character, which is loosely interpreted to mean no evidence of criminal activity.
- Attachment to constitutional principles. This means that potential citizens have to answer basic factual questions about American government (e.g., "Who was the first president of the United States?") and publicly denounce any and all allegiance to their native country and its leaders (e.g., Italy and the king of Italy), but devotion to constitutional principles is now regarded as being implicit in the act of applying for naturalization.
- Being favorably disposed to "the good order and happiness of the United States."*

Today about 97 percent of aliens who seek citizenship are successful in meeting these requirements and becoming naturalized citizens of the United States.

*8 U.S.C. 1423, 1427 (1970); *Girouard v. United States,* 328 U.S. 61 (1946).

Source: New York Times (July 25, 1993), 33. Copyright © 1993 by the *New York Times.* Reprinted by permission.

account in designing remedies. It is not enough to give rights to people; they must be given benefits. If life is a race, everybody must be brought up to the same starting line (or possibly even to the same finish line). This means that the Constitution is not and should not be color-blind or sex-neutral. In education this implies that the races must actually be mixed in the schools, by busing if necessary. In hiring it means that **affirmative action**—preferential hiring practices—must be used to find and hire women, African Americans, and other minorities. Women should not simply be free to enter the labor force; they should be given the material necessities (for example, free daycare) that will help them enter it. On payday workers' checks should reflect not just the results of people's competing in the marketplace but the results of plans designed to ensure that people earn comparable amounts for comparable jobs. Of late, affirmative action has been defended in the name of diversity or multiculturalism—the view that every institution (firm, school, or agency) and every college curriculum should reflect the cultural (that is, ethnic) diversity of the nation.

affirmative action *Programs designed to increase minority participation in some institution (businesses, schools, labor unions, or government agencies) by taking positive steps to appoint more minority-group members.*

Equality of Opportunity

The second view holds that if it is wrong to discriminate *against* African Americans and women, it is equally wrong to give them preferential treatment over other groups. To do so constitutes **reverse discrimination.** The Constitution and laws

How Things Work

The Rights of Aliens

America is a nation of immigrants. Some have arrived legally, others illegally. An illegal, or undocumented, alien is subject to being deported. With the passage in 1986 of the Immigration Reform and Control Act, illegal aliens who have resided in this country continuously since before January 1, 1982, are entitled to amnesty—that is, they can become legal residents. However, the same legislation stipulated that employers (who once could hire undocumented aliens without fear of penalty) must now verify the legal status of all newly hired employees; if they knowingly hire an illegal alien, they face civil and criminal penalties.

Aliens—people residing in this country who are not citizens—cannot vote or run for office. Nevertheless, they must pay taxes just as if they were citizens. And they are entitled to many constitutional rights, even if they are in this country illegally. This is because most of the rights mentioned in the Constitution refer to "people" or "persons," not to "citizens." For example, the Fourteenth Amendment bars a state from depriving "*any person* of life, liberty, or property, without due process of law" or from denying "to *any person* within its jurisdiction the equal protection of the laws" [italics added]. As a result, the courts have held that:

- The children of illegal aliens cannot be excluded from the public school system.[1]
- Legally admitted aliens are entitled to welfare benefits.[2]
- Illegal aliens cannot be the object of reprisals if they attempt to form a labor union where they work.[3]
- The First Amendment rights of free speech, religion, press, and assembly and the Fourth Amendment protections against arbitrary arrest and prosecution extend to aliens as well as to citizens.[4]
- Aliens are entitled to own property.

The government can make rules that apply to aliens only, but they must justify the reasonableness of the rules. For example:

- The Immigration and Naturalization Service has broader powers to arrest and search illegal aliens than police departments have to arrest and search citizens.[5]
- States can limit certain jobs, such as police officer and schoolteacher, to citizens.[6]
- The president or Congress can bar the employment of aliens by the federal government.[7]
- States can bar aliens from serving on a jury.[8]
- Illegal aliens are not entitled to obtain a Social Security card.

[1] *Plyler v. Doe,* 457 U.S. 202 (1982).

[2] *Graham v. Richardson,* 403 U.S. 365 (1971).

[3] *Sure-Tan v. National Labor Relations Board,* 467 U.S. 883 (1984).

[4] *Chew v. Colding,* 344 U.S. 590 (1953).

[5] *U.S. v. Brignoni-Ponce,* 422 U.S. 873 (1975); *INS v. Delgado,* 466 U.S. 210 (1984); *INS v. Lopez-Mendoza,* 486 U.S. 1032 (1984).

[6] *Cabell v. Chavez-Salido,* 454 U.S. 432 (1982); *Foley v. Connelie,* 435 U.S. 291 (1978); *Amblach v. Norwick,* 441 U.S. 68 (1979).

[7] *Hampton v. Mow Sun Wong,* 436 U.S. 67 (1976).

[8] *Schneider v. New Jersey,* 308 U.S. 147 (1939).

reverse discrimination
Using race or sex to give preferential treatment to some people.

should be color-blind and sex-neutral.[55] In this view allowing children to attend the school of their choice is sufficient; busing them to attain a certain racial mixture is wrong. Eliminating barriers to job opportunities is right; using numerical "targets" and "goals" to place minorities and women in specific jobs is wrong. If people wish to compete in the market, they should be satisfied with the market verdict concerning the worth of their work.

These two views are intertwined with other deep philosophical differences. Supporters of **equality of opportunity** tend to have orthodox beliefs; they favor

How Things Work

The Rights of the Disabled

In 1990 the federal government passed the Americans with Disabilities Act (ADA), a sweeping law that extended many of the protections enjoyed by women and racial minorities to disabled persons.

Who Is a Disabled Person?

Anyone who *has* a physical or mental impairment that substantially limits one or more major life activities (for example, holding a job), anyone who has a *record* of such impairment, or anyone who is *regarded* as having such an impairment is considered disabled.

What Rights Do Disabled Persons Have?

Employment Disabled persons may not be denied employment or promotion if, with "reasonable accommodation," they can perform the duties of that job. (Excluded from this protection are people who currently use illegal drugs, gamble compulsively, or are homosexual or bisexual.) Reasonable accommodation need not be made if this would cause "undue hardship" on the employer.

Government Programs and Transportation Disabled persons may not be denied access to government programs or benefits. New buses, taxis, and trains must be accessible to disabled persons, including those in wheelchairs.

Public Accommodations Disabled persons must enjoy "full and equal" access to hotels, restaurants, stores, schools, parks, museums, auditoriums, and the like. To achieve equal access, owners of existing facilities must alter them "to the maximum extent feasible"; builders of new facilities must ensure that they are readily accessible to disabled persons, unless this is structurally impossible.

Telephones The ADA directs the Federal Communications Commission to issue regulations to ensure that telecommunications devices for hearing- and speech-impaired people are available "to the extent possible and in the most efficient manner."

Congress The rights under this law apply to employees of Congress.

Rights Compared The ADA does not enforce the rights of disabled persons in the same way as the Civil Rights Act enforces the rights of African Americans and women. Racial or gender discrimination must end *regardless of cost*; denial of access to disabled persons must end unless "undue hardship" or excessive costs would result.

letting private groups behave the way that they want (and so may defend the right of a men's club to exclude women). Supporters of the opposite view are likely to be progressive in their beliefs and insist that private clubs meet the same standards as schools or business firms. Adherents to the equality-of-opportunity view often attach great importance to traditional models of the family and so are skeptical of daycare and federally funded abortions. Adherents to the equality-of-results view prefer greater freedom of choice in lifestyle questions and so take the opposite position on daycare and abortion.

Of course the debate is more complex than this simple contrast suggests. Take, for example, the question of affirmative action. Both the advocates of equality of opportunity and those of equality of results might agree that there is something odd about a factory or university that hires no African Americans or women, and both might press it to prove that its hiring policy is fair. Affirmative action in this case can mean *either* looking hard for qualified women and minorities and giving them a fair shot at jobs *or* setting a numerical goal for the number of women and minorities that should be hired and insisting that that goal be met. Persons who defend the second course of action call these goals "targets"; persons who criticize that course call them "quotas."

equality of opportunity *Giving people an equal chance to succeed.*

Immigrants march in Los Angeles in 2006 to show their importance to the economy.

The issue has largely been fought out in the courts. Between 1978 and 1990 about a dozen major cases involving affirmative action were decided by the Supreme Court; in about half it was upheld, and in the other half it was overturned. The different outcomes reflect two things—the differences in the facts of the cases and the arrival on the Court of three justices (Kennedy, O'Connor, and Scalia) appointed by a president, Ronald Reagan, who was opposed to at least the broader interpretation of affirmative action. As a result of these decisions, the law governing affirmative action is now complex and confusing.

Consider one issue: should the government be allowed to use a quota system to select workers, enroll students, award contracts, or grant licenses? In the *Bakke* decision in 1978, the Court said that the medical school of the University of California at Davis could not use an explicit numerical quota in admitting minority students but could "take race into account."[56] So no numerical quotas, right? Wrong. Two years later the Court upheld a federal rule that set aside 10 percent of all federal construction contracts for minority-owned firms.[57] All right, maybe quotas can't be used in medical schools, but they can be used in the construction industry. Not exactly. In 1989 the Court overturned a Richmond, Virginia, law that set aside 30 percent of its construction contracts for minority-owned firms.[58] Well, maybe the Court just changed its mind between 1980 and 1989. No. One year later it upheld a federal rule that gave preference to minority-owned firms in the awarding of broadcast licenses.[59] Then in 1993 it upheld the right of white contractors to challenge minority set-aside laws in Jacksonville, Florida.[60]

It is too early to try to make sense of these twists and turns, especially since a deeply divided Court is still wrestling with these issues and Congress (as with the Civil Rights Act of 1991) is modifying or superseding some earlier Court decisions. But a few general standards seem to be emerging. In simplified form, they are as follows:

- The courts will subject any quota system created by state or local governments to "strict scrutiny" and will look for a "compelling" justification for it.
- Quotas or preference systems cannot be used by state or local governments without first showing that such rules are needed to correct an actual past or present pattern of discrimination.[61]
- In proving that there has been discrimination, it is not enough to show that African Americans (or other minorities) are statistically underrepresented among employees, contractors, or union members; you must identify the actual practices that have had this discriminatory impact.[62]
- Quotas or preference systems that are created by *federal* law will be given greater deference, in part because Section 5 of the Fourteenth Amendment gives to Congress powers not given to the states to correct the effects of racial discrimination.[63]
- It may be easier to justify in court a voluntary preference system (for example, one agreed to in a labor-management contract) than one that is required by law.[64]
- Even when you can justify special preferences in *hiring* workers, the Supreme Court is not likely to allow racial preferences to govern who gets *laid off*. A worker laid off to make room for a minority worker loses more than does a worker not hired in preference to a minority applicant.[65]

Complex as they are, these rulings still generate a great deal of passion. Supporters of the decisions barring certain affirmative action plans hail these decisions as steps back from an emerging pattern of reverse discrimination. In contrast, civil rights organizations have denounced those decisions that have overturned affirmative action programs. In 1990 their congressional allies introduced legislation that would reverse several decisions. In particular this legislation

would put the burden of proof on the employer, not the employee, to show that the underrepresentation of minorities in the firm's work force was the result of legitimate and necessary business decisions and not the result of discrimination. If the employer could not prove this, the aggrieved employee would be able to collect large damage awards. (In the past, he or she could collect only back pay.) In 1991 the bill was passed and was signed by President Bush.

In thinking about these matters, most Americans distinguish between compensatory action and preferential treatment. They define *compensatory action* as "helping disadvantaged people catch up, usually by giving them extra education, training, or services." A majority of the public supports this. They define preferential treatment as "giving minorities preference in hiring, promotions, college admissions, and contracts." Large majorities oppose this.[66] These views reflect an enduring element in American political culture—a strong commitment to individualism ("nobody should get something without deserving it") coupled with support for help for the disadvantaged ("somebody who is suffering through no fault of his or her own deserves a helping hand").

Where does affirmative action fit into this culture? Polls suggest that if affirmative action is defined as "helping," people will support it, but if it is defined as "using quotas," they will oppose it. On this matter blacks and whites see things differently. Blacks think that they should receive preferences in employment to create a more diverse work force and to make up for past discrimination; whites oppose using goals to create diversity or to remedy past ills. In sum the controversy over affirmative action depends on what you mean by it and on what your racial identity is.[67]

A small construction company named Adarand tried to get a contract to build guardrails along a highway in Colorado. Though it was the low bidder, it lost the contract because of a government policy that favors small businesses owned by "socially and economically disadvantaged individuals"—that is, by racial and ethnic minorities. In a five-to-four decision the Court agreed with Adarand and sent the case back to Colorado for a new trial.

The essence of its decision was that *any* discrimination based on race must be subject to strict scrutiny, even if its purpose is to help, not hurt, a racial minority. Strict scrutiny means two things:

- Any racial preference must serve a "compelling government interest."
- The preference must be "narrowly tailored" to serve that interest.[68]

To serve a compelling governmental interest, it is likely that any racial preference will have to remedy a clear pattern of past discrimination. No such pattern had been shown in Colorado.

This decision prompted a good deal of political debate about affirmative action. In California an initiative was put on the 1996 ballot to prevent state authorities from using "race, sex, color, ethnicity, or national origin as a criterion for either discriminat-

Landmark Cases

Affirmative Action

- ***Regents of the University of California v. Bakke* (1978):** In a confused set of rival opinions, the decisive vote was cast by Justice Powell, who said that a quota-like ban on Bakke's admission was unconstitutional but that "diversity" was a legitimate goal that could be pursued by taking race into account.
- ***United Steelworkers v. Weber* (1979):** Despite the ban on racial classifications in the 1964 Civil Rights Act, this case upheld the use of race in an employment agreement between the steelworkers union and steel plant.
- ***Richmond v. Croson* (1989):** Affirmative action plans must be judged by the strict scrutiny standard that requires any race-conscious plan to be narrowly tailored to serve a compelling interest.
- ***Grutter v. Bollinger* and *Gratz v. Bollinger* (2003):** Numerical benefits cannot be used to admit minorities into college, but race can be a "plus factor" in making those decisions.

To explore these landmark cases further, visit the *American Government* web site at college.hmco.com/pic/wilsonAGIle.

Landmark Cases

Gay Rights

- ***Lawrence v. Texas* (2003):** State law may not ban sexual relations between same-sex partners.
- ***Boy Scouts of America v. Dale* (2000):** A private organization may ban gays from its membership.

To explore these landmark cases further, visit the *American Government* web site at college.hmco.com/pic/wilsonAGlle.

ing against, or granting preferential treatment to, any individual or group" in public employment, public education, or public contracting. When the votes were counted, it passed. Washington has also adopted a similar measure, and other states are debating it.

But the *Adarand* case and the passage of the California initiative did not mean that affirmative action was dead. Though the federal Court of Appeals for the Fifth Circuit had rejected the affirmative action program of the University of Texas Law School,[69] the Supreme Court did not take up that case. It waited for several more years to rule on a similar matter arising from the University of Michigan. In 2003 the Supreme Court overturned the admissions policy of the University of Michigan that had given to every African American, Hispanic, and Native American applicant a bonus of 20 points out of the 100 needed to guarantee admission to the University's undergraduate program.[70] This policy was not "narrowly tailored." In rejecting the bonus system, the Court reaffirmed its decision in the *Bakke* case made in 1978 in which it had rejected a university using a "fixed quota" or an exact numerical advantage to the exclusion of "individual" considerations.

But that same day, the Court upheld the policy of the University of Michigan Law School that used race as a "plus factor" but not as a numerical quota.[71] It did so even though using race as a plus factor increased by threefold the proportion of minority applicants who were admitted. In short, admitting more minorities serves a "compelling state interest" and doing so by using race as a plus factor is "narrowly tailored" to achieve that goal.

★ Gays and the Constitution

At first, the Supreme Court was willing to let states decide how many rights homosexuals should have. Georgia, for example, passed a law banning sodomy (that is, any sexual contact involving the sex organs of one person and the mouth or anus of another). Though the law applied to all persons, homosexuals sued to overturn it. In *Bowers v. Hardwick,* the Supreme Court decided, by a five-to-four majority, that there was no reason in the Constitution to prevent a state from having such a law. There was a right to privacy, but it was designed simply to protect "family, marriage, or procreation."[72]

But ten years later the Court seemed to take a different position. The voters in Colorado had adopted a state constitutional amendment that made it illegal to pass any law to protect persons based on their "homosexual, lesbian, or bisexual orientation." The law did not penalize gays and lesbians; instead it said that they could not become the object of specific legal protection of the sort that had traditionally been given to racial or ethnic minorities. (Ordinances to give specific protection to homosexuals had been adopted in some Colorado cities.) The Supreme Court struck down the Colorado constitutional amendment because it violated the equal protection clause of the federal Constitution.[73]

Now we faced a puzzle: a state can pass a law banning homosexual sex, as Georgia had, but a state cannot adopt a rule preventing cities from protecting homosexuals, as Colorado had. The matter was finally put to rest in 2003. In *Lawrence v. Texas,* the Court, again by a five-to-four vote, overturned a Texas law that banned sexual contact between persons of the same sex. The Court repeated the language it had used earlier in cases involving contraception and abortion. If "the right to privacy means anything, it is the right of the individual, married or single, to be free from unwanted governmental intrusion" into sexual matters. The right of privacy means the "right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life." It specifically overruled *Bowers v. Hardwick.*[74]

The *Lawrence* decision had a benefit and a cost. The benefit was to strike down a law that was rarely enforced and if introduced today probably could not

be passed. The cost was to create the possibility that the Court, and not Congress or state legislatures, might decide whether same-sex marriages were legal.

That same year, the Massachusetts Supreme Judicial Court decided, by a four-to-three vote, that gays and lesbians must be allowed to be married in the state.[75] The Massachusetts legislature responded by passing a bill that, if it becomes a state constitutional amendment, will reverse the state court's decision. But for that to happen, the legislature would have to vote again on this matter, but in 2007 it refused to do so.

The mayor of San Francisco, Gavin Newsom, in apparent defiance of state law, began issuing marriage licenses to gay and lesbian couples. In August 2004 the California Supreme Court struck down his actions as inconsistent with existing law.

Public opinion polls suggest that many voters are opposed to same-sex marriages but would allow "civil unions" among same-sex couples of the sort now approved in Vermont. Many states have passed laws banning same-sex marriages, and in 1996 Congress enacted a bill, signed by President Clinton, called the Defense of Marriage Act. Under it, no state would have to give legal status to a same-sex marriage performed in another state, and it would define marriage as a lawful union of husband and wife. But state and federal laws on this matter could be overturned if the Supreme Court should decide in favor of same-sex marriage, using language that appears in the *Lawrence* case. That could be prevented by an amendment to the Constitution, but Congress is not willing to propose one and, if proposed, it is not clear the states would ratify it.

Proponents and opponents of gay marriage confront one another in front of the Massachusetts Statehouse.

Private groups, however, can exclude homosexuals from their membership. In another five-to-four decision, the Supreme Court decided that the Boy Scouts of America could exclude gay men and boys because that group had a right to determine its own membership.[76]

★ SUMMARY ★

The civil rights movement in the courts and in Congress profoundly changed the nature of African American participation in politics by bringing southern blacks into the political system so that they could become an effective interest group. The decisive move was to enlist northern opinion in this cause, a job made easier by the northern perception that civil rights involved simply an unfair contest between two minorities—southern whites and southern blacks. That perception changed when it became evident that the court rulings and legislative decisions would apply to the North as well as the South, leading to the emergence of northern opposition to court-ordered busing and affirmative action programs.

By the time this reaction developed, the legal and political system had been changed sufficiently to make it difficult if not impossible to limit the application of civil rights laws to the special circumstances of the South or to alter by legislative means the decisions of federal courts. Though the courts can accomplish little when they have no political allies (as revealed by the massive resistance to early school-desegregation

decisions), they can accomplish a great deal, even in the face of adverse public opinion, when they have some organized allies (as revealed by their ability to withstand antibusing moves).

The feminist movement has paralleled in organization and tactics many aspects of the black civil rights movement, but with important differences. Women sought to repeal or reverse laws and court rulings that in many cases were ostensibly designed to protect rather than subjugate them. The conflict between protection and liberation was sufficiently intense to defeat the effort to ratify the Equal Rights Amendment.

The most divisive civil rights issues in American politics are abortion and affirmative action. From 1973 to 1989 the Supreme Court seemed committed to giving constitutional protection to all abortions within the first trimester; since 1989 it has approved various state restrictions on the circumstances under which abortions can be obtained.

There has been a similar shift in the Court's view of affirmative action. Though it will still approve some quota plans, it now insists that they pass strict scrutiny to ensure that they are used only to correct a proven history of discrimination, that they place the burden of proof on the party alleging discrimination, and that they be limited to hiring and not extended to layoffs. Congress has modified some of these rulings with new civil rights legislation.

RECONSIDERING WHO GOVERNS?

1. ***Since Congress enacts our laws, why has it not made certain that all groups have the same rights?***
   Congress responds to public demands. During much of our history, people have expected women, African Americans, Native Americans, and many other groups to be treated differently than are others. The Bill of Rights is a check on congressional and state authority; to be effective, it must be enforced by independent courts.

2. ***After the Supreme Court ended racial segregation in the schools, what did the president and Congress do?***
   For a while, not much. But in time these institutions began spending federal money and using federal troops and law enforcement officials in ways that greatly increased the rate of integration.

RECONSIDERING TO WHAT ENDS?

1. ***If the law supports equality of opportunity, why has affirmative action become so important?***
   There are several reasons. If there has been active discrimination in the past, affirmative action can be a way to help disadvantaged groups catch up. But the Supreme Court has also held, though by narrow majorities, that even when there has not been a legacy of discrimination, pursuing "diversity" is a "compelling" interest. The real issue is what diversity means and how best to achieve it.

2. ***Under what circumstances can men and women be treated differently?***
   A difference in treatment can be justified constitutionally if the difference is fair, reasonable, and not arbitrary. Sex differences need not meet the "strict scrutiny" test. It is permissible to punish men for statutory rape and to bar them from hospital delivery rooms; men are different from women in these respects. Congress may draft men without drafting women.

WORLD WIDE WEB RESOURCES

Court cases: **www.law.cornell.edu**
Department of Justice: **www.usdoj.gov**
Civil rights organizations:
National Association for the Advancement of Colored People: **www.naacp.org**
National Organization for Women: **www.now.org**
National Gay and Lesbian Task Force: **www.thetaskforce.org**
National Council of La Raza: **www.nclr.org**
American Arab Anti-Discrimination Committee: **www.adc.org**
Anti-Defamation League: **www.adl.org**

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