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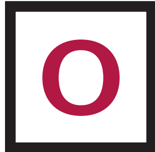
Civil Rights



On Saturday August 9, 2014, an unarmed African American student, Michael Brown, was shot to death by a white police officer in Ferguson, Missouri, just north of St. Louis. The next day, a peaceful candlelight vigil for Brown turned violent and thirty people were arrested and two officers injured.

The events of August 9 and 10 were the beginning of days of racial tension and violence and a seemingly endless debate about what really happened on the day of Brown's death. Questions emerged about police conduct, whether Brown had been a suspect in an earlier convenience store robbery, and the racial motivations behind the incident. Although the population of Ferguson is two-thirds African American, the fifty-three member police force has only three African American officers.

The civil rights implications of the Ferguson shooting struck a national chord, and silent vigils occurred across the country. In the days and weeks that followed, hundreds of citizens also surrounded the Ferguson police station seeking justice for Brown. Widespread looting and vandalism marked many of the protests in Ferguson and neighboring communities. In an attempt to bring order to the crowds, Ferguson police donned riot gear and arrested hundreds of people. They also employed tear gas, dogs, and military grade weapons.

The rapid escalation of the situation in Missouri led many national political leaders to denounce the actions of local police forces, as well as to charge that these agencies could not be trusted to carry out an unbiased investigation of the disputed events of August 9. President Barack Obama, for example, went on national television asking for calm; he also announced that the Federal Bureau of Investigation would conduct a parallel analysis of the shooting.

Despite these efforts, violence continued. Missouri Governor Jay Nixon eventually declared a state of emergency and a curfew until further notice. Still, protesters continued unabated. Evidence from a private autopsy that revealed Brown had been shot at least six times only served to escalate tensions.

In response, President Obama then announced that he was sending the U.S. Attorney General Eric Holder to monitor conditions in Ferguson and asked that the "gulf" that existed between citizens and the police be addressed. Holder took his charge very seriously noting, "I am the Attorney General of the United States, but I am also a black man."[1]

5.1 Trace the efforts from 1800 to 1890 of African Americans and women to win the vote, p. 118.

5.2 Outline developments in African Americans' and women's push for equality from 1890 to 1954, p. 124

5.3 Analyze the civil rights movement and the effects of the Civil Rights Act of 1964, p. 129.

5.4 Assess statutory and constitutional remedies for discrimination pursued and achieved by the women's rights movement, p. 135.

5.5 Describe how other groups have mobilized in pursuit of their own civil rights, p. 141

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RACIAL EQUALITY REMAINS A CONTENTIOUS ISSUE Individuals' civil rights and police officers' attempts to maintain order often come into conflict. Above, a demonstrator in 1960s Detroit throws a shoe at police. Below, a protestor in Ferguson, MO throws a tear gas container back at police in 2014.

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civil rights
The government-protected rights of individuals against arbitrary or discriminatory treatment by governments or individuals.

Holder's comments, as well as the severity of the conflict that occurred in Ferguson underscore that, even more than fifty years after the 1960s civil rights movement, and six years after electing an African American president of the United States, questions of race and civil rights continue to trouble both American citizens and governmental officials, leading some people to question whether the promise of full equality can ever be realized.

Since the Framers wrote the Constitution, concepts of **civil rights**—the government-protected rights of individuals against arbitrary or discriminatory treatment by governments or individuals based on categories such as race, sex, national origin, age, religion, or sexual orientation—have changed dramatically. The Fourteenth Amendment, one of three Civil War Amendments ratified from 1865 to 1870, introduced the notion of equality into the Constitution by specifying that a state could not deny "any person within its jurisdiction equal protection of the laws." Throughout history, the Fourteenth Amendment's equal protection guarantees have been the lynchpin of efforts to expand upon the original intent of the amendment. Today, this amendment protects a variety of groups from discrimination.

The Fourteenth Amendment has generated more litigation to determine and specify its meaning than any other provision of the Constitution. Within a few years of its ratification, women—and later African Americans and other minorities and disadvantaged groups—took to the courts, seeking expanded civil rights in all walks of life. But, these groups did not limit their struggle to the courts. The arsenal of those seeking equality has also included public protest, civil disobedience, legislative lobbying, and appeals to public opinion.

Since passage of the Civil War Amendments, the expansion of civil rights to more and more groups has followed a fairly consistent pattern. In this chapter, we will explore how notions of equality and civil rights have changed in the United States.

Roots of Suffrage: 1800–1890

5.1 Trace the efforts from 1800 to 1890 of African Americans and women to win the vote.

Today, we take for granted the voting rights—or suffrage—of women and African Americans. Since 1980, women have outvoted men in presidential elections; at present, African Americans and women are core groups of the Democratic Party. But, it wasn't always this way. The period from 1800 to 1890 was one of tremendous change and upheaval in America. Despite the Civil War and the freeing of slaves, the promise of equality guaranteed to African Americans by the Civil War Amendments failed to become a reality. Woman's rights activists also began to make claims for equality, often using the arguments enunciated for the abolition of slavery, but they, too, fell far short of their goals.

Slavery and Congress

Congress banned the slave trade in 1808, after expiration of the twenty-year period specified by the Constitution. In 1820, blacks made up 25 percent of the U.S. population and formed the majority in some southern states. By 1840, that figure had fallen to 20 percent. After introduction of the cotton gin (a machine invented in 1793 that separated seeds from cotton very quickly), the South became even more dependent on agriculture, such as cotton, tobacco, and rice, with cheap slave labor as its economic base. At the same time, technological advances were turning the northern states into an increasingly industrialized region, which deepened the cultural and political differences, as well as the animosity, between North and South.

As the nation grew westward in the early 1800s, conflicts between northern and southern states intensified over the free versus slave status of new states admitted to the

union. The first major crisis occurred in 1820, when Missouri applied for admission to the union as a slave state—that is, one in which slavery would be legal. Missouri's admission would have weighted the Senate in favor of slavery and therefore was opposed by northern senators. To resolve this conflict, Congress passed the Missouri Compromise of 1820. The Compromise prohibited slavery north of the geographical boundary at 36 degrees latitude. This act allowed the union to admit Missouri as a slave state. To maintain the balance of slave and free states, Maine was carved out of a portion of Massachusetts.

The First Civil Rights Movements: Abolition and Women's Rights

The Missouri Compromise solidified the South in its determination to keep slavery legal, but it also fueled the fervor of those opposing it. William Lloyd Garrison, a white New Englander, galvanized the abolitionist movement in the early 1830s. A newspaper editor, Garrison (along with Arthur Tappan) founded the American Anti-Slavery Society in 1833; by 1838, it had more than 250,000 members. Given the U.S. population today, the National Association for the Advancement of Colored People (NAACP) would need 3.8 million members to have the same kind of overall proportional membership. (In 2014, NAACP membership was approximately 300,000.)

Slavery was not the only practice that people began to question in the decades following the Missouri Compromise. In 1840, for example, Garrison and Frederick Douglass, a well-known black abolitionist writer, left the Anti-Slavery Society when it refused to accept their demand that women be allowed to participate equally in all its activities. Custom dictated that women not speak out in public, and most laws explicitly made women second-class citizens. In most states, for example, women could not divorce their husbands or keep their own wages and inheritances. And, of course, they could not vote.

Elizabeth Cady Stanton and Lucretia Mott, who were to found the first woman's rights movement, attended the 1840 meeting of the World Anti-Slavery Society in London with their husbands. In spite of their long journey, they were not permitted to participate in the convention because they were women. As they sat in a mandated area apart from the male delegates, they compared their status to that of the slaves they sought to free. They concluded that women were not much better off than slaves, and they resolved to address this issue. In 1848, they finally sent out a call for the first woman's rights convention. Three hundred women and men, including Frederick Douglass, attended the first meeting for woman's rights, held in Seneca Falls, New York.

The Seneca Falls Convention in 1848 attracted people from other states as well as New York. Attendees passed resolutions demanding the abolition of legal, economic, and social discrimination against women. All of the resolutions reflected the attendees' dissatisfaction with contemporary moral codes; divorce and criminal laws; and the limited opportunities for women in education, the church, medicine, law, and politics. Ironically, only the call for "woman suffrage"—a call to give women the right to vote—failed to win unanimous approval. Most who attended the Seneca Falls Convention continued to press for woman's rights along with the abolition of slavery. Similar conventions took place later across the Northeast and Midwest. At an 1851 meeting in Akron, Ohio, for example, former slave Sojourner Truth delivered her famous "Ain't I a Woman?" speech, calling on women to recognize the plight of their black sisters.

The 1850s: The Calm Before the Storm

By 1850, much had changed in America: the Gold Rush had spurred westward migration, cities grew as people were lured from their farms, railroads and the telegraph increased mobility and communication, and immigrants flooded into the United States. The woman's movement gained momentum, and slavery continued to tear the nation apart. Harriet Beecher Stowe's *Uncle Tom's Cabin,* a novel that depicted the evils of slavery, further inflamed the country. *Uncle Tom's Cabin* sold more than 300,000 copies in 1852. Equivalent sales today would top 4 million copies.

WHO WAS ELIZABETH CADY STANTON?

Elizabeth Cady Stanton was one of the founders of the woman suffrage movement. She was also a key organizer of the first woman's rights convention at Seneca Falls, New York, in 1848. Though she never lived to exercise her right to vote, the actions of Stanton and her fellow suffragists, including Lucretia Mott (seated behind her on the podium) and Susan B. Anthony, paved the way for the ratification of the Nineteenth Amendment.

The tremendous national reaction to *Uncle Tom's Cabin,* which later prompted President Abraham Lincoln to call Stowe "the little woman who started the big war," had not yet faded when a new controversy over the Missouri Compromise became the lightning rod for the first major civil rights case addressed by the U.S. Supreme Court. In *Dred Scott* v. *Sandford* (1857), the Court ruled that the Missouri Compromise, which prohibited slavery north of a set geographical boundary, was unconstitutional. Furthermore, the Court added that slaves were not U.S. citizens and, as a consequence, could not bring suits in federal court.

The Civil War and Its Aftermath: Civil Rights Laws and Constitutional Amendments

The Civil War had many causes, but slavery was clearly a key issue. During the war (1861–1865), abolitionists continued to press for an end to slavery. They were partially rewarded when President Abraham Lincoln issued the Emancipation Proclamation, which provided that all slaves in states still in active rebellion against the United States would be freed automatically on January 1, 1863. Designed as a measure to gain favor for the war in the North, the Emancipation Proclamation did not free all slaves—it freed only those who lived in the Confederacy. Complete abolition of slavery did not occur until congressional passage and ultimate ratification of the Thirteenth Amendment in 1865.

The **Thirteenth Amendment** was the first of the three Civil War Amendments. It banned all forms of "slavery [and] involuntary servitude." Although the federal government required the southern states to ratify the Thirteenth Amendment as a condition of readmission to the Union after the war, most former Confederate states passed laws designed to restrict opportunities for newly freed slaves. These **Black Codes** denied most legal rights to newly freed slaves by prohibiting African Americans from voting, sitting on juries, or even appearing in public places. Although Black Codes differed from state to state, all empowered local law enforcement officials to arrest unemployed blacks, fine them for vagrancy, and hire them out to employers to satisfy their fines. Some state codes even required African Americans to work on plantations or as domestics. The Black Codes laid the groundwork for Jim Crow laws, which later would institute segregation in all walks of life in the South.

An outraged Congress enacted the Civil Rights Act of 1866 to invalidate some state Black Codes. President Andrew Johnson vetoed the legislation, but—for the first time in history—Congress overrode a presidential veto. The Civil Rights Act formally made African Americans citizens of the United States and gave Congress and the federal courts the power to intervene when states attempted to restrict the citizenship rights of male African Americans in matters such as voting. Congress reasoned that African Americans were unlikely to succeed if they had to file discrimination complaints in state courts, where most judges were elected. Passage of a federal law allowed African Americans to challenge discriminatory state practices in federal courts, where the president appointed judges for life.

Because controversy remained over the constitutionality of the act (since the Constitution gives states the right to determine qualifications of voters), Congress proposed the **Fourteenth Amendment** simultaneously with the Civil Rights Act to guarantee, among other things, citizenship to all freed slaves. Other key provisions of the Fourteenth Amendment barred states from abridging "the privileges or immunities of citizenship" or depriving "any person of life, liberty, or property, without due process of law." Finally, the Fourteenth Amendment includes the **equal protection clause,** which prohibits states from denying "any person within its jurisdiction the equal protection of the laws."

Unlike the Thirteenth Amendment, which had near-unanimous support in the North, the Fourteenth Amendment faced opposition from many women because it failed to guarantee them suffrage. During the Civil War, woman's rights activists put aside their claims for expanded rights for women, most notably the right to vote, and threw their energies into the war effort. They were convinced that once the government freed the slaves and gave them the right to vote, women would receive this same right. They were wrong.

In early 1869, after ratification of the Fourteenth Amendment (which specifically added the word "male" to the Constitution for the first time), woman's rights activists met in Washington, D.C., to argue against passage of any new amendment that would extend suffrage to black males and not to women. The convention resolved that "a man's government is worse than a white man's government, because, in proportion as you increase the tyrants, you make the condition of the disenfranchised class more hopeless and degraded."

Thirteenth Amendment
One of the three Civil War Amendments; specifically bans slavery in the United States.

Black Codes
Laws denying most legal rights to newly freed slaves; passed by southern states following the Civil War.

Fourteenth Amendment
One of the three Civil War Amendments; guarantees equal protection and due process of the law to all U.S. citizens.

equal protection clause
Section of the Fourteenth Amendment that guarantees all citizens receive "equal protection of the laws."

The Living Constitution

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. —THIRTEENTH AMENDMENT, SECTION 1

This amendment, the first of three Civil War Amendments, abolished slavery throughout the United States and its territories. It also prohibited involuntary servitude.

Based on his wartime authority, in 1863, President Abraham Lincoln issued the Emancipation Proclamation abolishing slavery in the states that were in rebellion against the United States. Abolishing slavery in the Union, however, proved more challenging. Congress could not end this practice by statute. Thus, the proposed Thirteenth Amendment was forwarded to the states on February 1, 1865. With its adoption, said one of its sponsors, it relieved Congress "of sectional strifes."

Initially, some doubted if any groups other than newly freed African slaves were protected by the provisions of the amendment. Soon, however, the Supreme Court went on to clarify this question by noting: "If Mexican peonage or the Chinese coolie labor system shall develop slavery of the Mexican or Chinese race within our territory, this amendment may safely be trusted to make it void."[a]

In the early 1900s, the Supreme Court was called on several times to interpret section 1 of the amendment, especially in regard to involuntary servitude. Thus, provisions of an Alabama law that called for criminal sanctions and jail time for defaulting sharecroppers were considered unconstitutional, and Congress enacted a law banning this kind of involuntary servitude.

More recently, the Thirteenth Amendment has been invoked to attempt to stop the estimated 100,000 to 300,000 American children and teens forced into sex trafficking each year. Like some slaves, many of the children are forced to have sex multiple times at the will and for the financial benefit of their "owners." Still, most federal and state programs target helping adults and not the young.

CRITICAL THINKING QUESTIONS

1. Is forcing prison inmates to work as part of a "chain gang" a form of involuntary servitude? Why or why not?
2. Why have the federal and state governments largely failed to stop or minimize the sex trafficking of minors?

[a] *The Slaughterhouse Cases*, 83 U.S. 36 (1873).

Fifteenth Amendment
One of the three Civil War Amendments; specifically enfranchised newly freed male slaves.

In spite of these arguments, Congress passed the **Fifteenth Amendment** in early 1869. It guaranteed the "right of citizens" to vote regardless of their "race, color or previous condition of servitude." Sex was not mentioned.

Woman's rights activists were shocked. Abolitionists' continued support of the Fifteenth Amendment prompted many woman's rights supporters to leave the abolition movement and to work solely for the cause of woman's rights. Twice burned, Susan B. Anthony (who had joined the woman's movement in 1852) and Elizabeth Cady Stanton decided to form their own group, the National Woman Suffrage Association (NWSA), to achieve that goal and other woman's rights. Another more conservative group, the American Woman Suffrage Association, was founded at the same time to pursue the sole goal of suffrage. In spite of the NWSA's opposition, however, the states ratified the Fifteenth Amendment in 1870.

Civil Rights, Congress, and the Supreme Court

Continued southern resistance to African American equality led Congress to pass the Civil Rights Act of 1875, designed to grant equal access to public accommodations such as theaters, restaurants, and transportation. The act also prohibited the exclusion of African Americans from jury service. By 1877, however, national interest in the legal condition of African Americans waned. Most white Southerners

and even some Northerners never had believed in true equality for "freedmen," as former slaves were called. Any rights that freedmen received had been contingent on federal enforcement. And, federal occupation of the South (known as Reconstruction) ended in 1877. National troops were no longer available to guard polling places and to prevent whites from excluding black voters, and southern states quickly moved to limit African Americans' access to the ballot. Other forms of discrimination also came about by judicial decisions upholding **Jim Crow laws,** which required segregation in public schools and facilities, including railroads, restaurants, and theaters. Some Jim Crow laws, specifically known as miscegenation laws, barred interracial marriage.

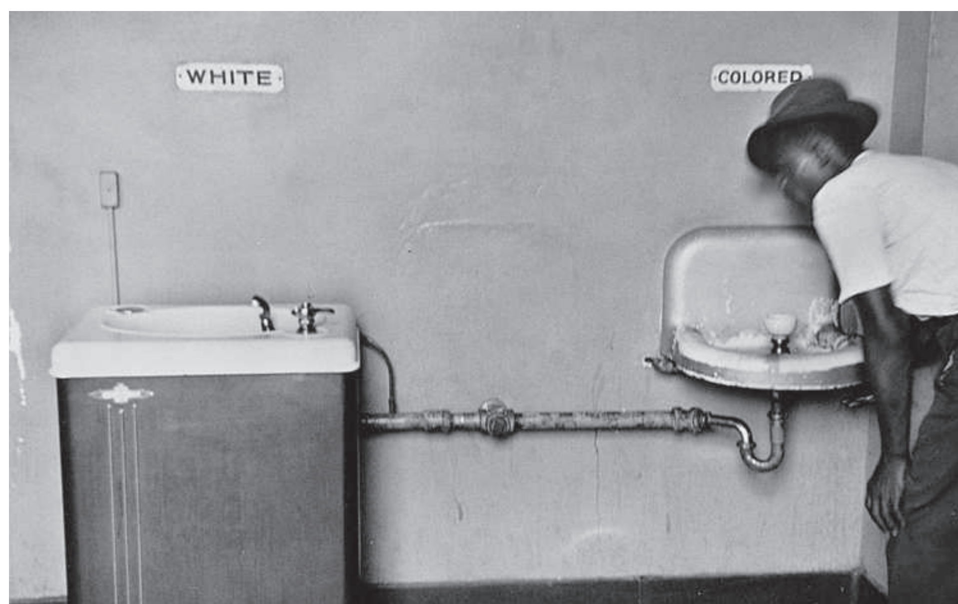
All these laws, at first glance, appeared to conflict with the Civil Rights Act of 1875. In 1883, however, a series of cases decided by the Supreme Court severely damaged the vitality of the 1875 act. The ***Civil Rights Cases* (1883)** were five separate cases involving convictions of private individuals found to have violated the Civil Rights Act by refusing to extend accommodations to African Americans in theaters, a hotel, and a railroad.[2] In deciding these cases, the Supreme Court ruled that Congress could prohibit only state or governmental action, but not private acts of discrimination. The Court thus concluded that Congress had no authority to outlaw private discrimination in public accommodations. The Court's opinion in the *Civil Rights Cases* provided a moral reinforcement for the Jim Crow system. Southern states viewed the Court's ruling as an invitation to gut the reach and intent of the Thirteenth, Fourteenth, and Fifteenth Amendments.

In devising ways to make certain that African Americans did not vote, southern states had to sidestep the intent of the Fifteenth Amendment. This amendment did not guarantee suffrage; it simply said that states could not deny anyone the right to vote on the basis of race or color. To exclude African Americans in a way that seemed racially neutral, southern states used three devices before the 1890s: (1) **poll taxes** (small taxes on the right to vote that often came due when poor African American sharecroppers had the least amount of money on hand); (2) some form of property-owning qualifications; and, (3) "literacy" or "understanding" tests, which allowed local voter registration officials to administer difficult reading-comprehension tests to potential voters whom they did not know. For example, some potential voters were asked to rewrite entire sections of the Constitution by hand as the registrar dictated its text.

Jim Crow laws
Laws enacted by southern states that required segregation in public schools, theaters, hotels, and other public accommodations.

***Civil Rights Cases* (1883)**
Name attached to five cases brought under the Civil Rights Act of 1875. In 1883, the Supreme Court decided that discrimination in a variety of public accommodations, including theaters, hotels, and railroads, could not be prohibited by the act because such discrimination was private, not state, discrimination.

poll tax
A tax levied in many southern states and localities that had to be paid before an eligible voter could cast a ballot.



WHAT DID JIM CROW LAWS DO?

Throughout the South, examples of Jim Crow laws abounded. As noted in the text, there were Jim Crow schools, restaurants, hotels, and businesses. Some buildings even had separate "white" and "colored" facilities, such as the public drinking fountains shown here. Notice the obvious difference in quality.

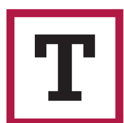
grandfather clause
Voter qualification provision in many southern states that allowed only those citizens whose grandfathers had voted before Reconstruction to vote unless they passed a wealth or literacy test.

***Plessy* v. *Ferguson* (1896)**
Supreme Court case that challenged a Louisiana statute requiring that railroads provide separate accommodations for blacks and whites. The Court found that separate-but-equal accommodations did not violate the equal protection clause of the Fourteenth Amendment.

These voting restrictions had an immediate impact. By the late 1890s, black voting fell by 62 percent from the Reconstruction period, while white voting fell by only 26 percent. To make certain these laws did not further reduce the numbers of poor or uneducated white voters, many southern states added a **grandfather clause** to their voting qualification provisions, granting voting privileges to those citizens who failed to pass a wealth or literacy test only if their grandfathers had voted before Reconstruction. Grandfather clauses effectively denied the descendents of slaves the right to vote.

The Push for Equality, 1890–1954

5.2 Outline developments in African Americans' and women's push for equality from 1890 to 1954.



The Progressive era (1890–1920) was characterized by a concerted effort to reform political, economic, and social affairs. Evils such as child labor, the concentration of economic power in the hands of a few industrialists, limited suffrage, political corruption, business monopolies, and prejudice against African Americans all were targets of progressive reform. Distress over the inferior legal status of African Americans increased with the U.S. Supreme Court's decision in ***Plessy* v. *Ferguson* (1896),** a case that some commentators point to as the Court's darkest hour.[3]

In 1892, a group of African Americans in Louisiana decided to test the constitutionality of a Louisiana law mandating racial segregation on all public trains. This meant that certain undesirable cars at the rear of the train were reserved for blacks. They convinced Homer Plessy, a man who was one-eighth black, to board a train in New Orleans and proceed to the "whites only" car.[4] He was arrested when he refused to take a seat in the car reserved for African Americans, as required by state law. Plessy challenged the law, arguing that the Fourteenth Amendment prohibited racial segregation.

The Supreme Court disagreed. After analyzing the history of African Americans in the United States, the majority concluded that the Louisiana law was constitutional. The justices based the decision on their belief that separate facilities for blacks and whites provided equal protection of the laws. After all, they reasoned, the Louisiana statute did not prevent Plessy from riding the train; it required only that the races travel separately. Justice John Marshall Harlan was the lone dissenter. He argued that "the Constitution is colorblind" and that it was senseless to hold constitutional a law "which, practically, puts the badge of servitude and degradation upon a large class of our fellow citizens."

Not surprisingly, the separate-but-equal doctrine enunciated in *Plessy* v. *Ferguson* soon came to mean only separate, as new legal avenues to discriminate against African Americans made their way into law throughout the South. The Jim Crow system soon expanded and became a way of life and a rigid social code in the American South. Journalist Juan Williams notes in *Eyes on the Prize:*

> There were Jim Crow schools, Jim Crow restaurants, Jim Crow water fountains, and Jim Crow customs—blacks were expected to tip their hats when they walked past whites, but whites did not have to remove their hats even when they entered a black family's home. Whites were to be called "sir" and "ma'am" by blacks, who in turn were called by their first names by whites. People with white skin were to be given a wide berth on the sidewalk; blacks were expected to step aside meekly.[5]

By 1900, equality for African Americans was far from the promise first offered by the Civil War Amendments. Again and again, the Supreme Court nullified the intent of the amendments and sanctioned racial segregation; southern states avidly followed its lead.[6] Yet, the Supreme Court did take a step toward progress when it ruled that peonage laws, which often affected poor blacks, amounted to debt bondage or indentured servitude and were unconstitutional.[7]

WHY WAS THE NIAGARA MOVEMENT FOUNDED?

W.E.B. Du Bois (second from left in the second row, facing right) is pictured with the other original leaders of the Niagara Movement. This 1905 photo was taken on the Canadian side of Niagara Falls because no hotel on the American side would accommodate the group's African American members. The meeting detailed a list of injustices suffered by African Americans.

The Founding of the National Association for the Advancement of Colored People

In 1909, a handful of individuals active in a variety of progressive causes, including woman suffrage and the fight for better working conditions for women and children, met to discuss the idea of a group devoted to addressing the problems of the "Negro." Major race riots had occurred in several American cities, and progressive reformers were concerned about these outbreaks of violence and the possibility of others. Oswald Garrison Villard, the influential publisher of the *New York Evening Post*—and the grandson of William Lloyd Garrison—called a conference to discuss the matter. This group soon evolved into the National Association for the Advancement of Colored People (NAACP). Along with Villard, its first leaders included W.E.B. Du Bois, a founder of the Niagara Movement, a group of African American intellectuals who took their name from their first meeting place, in Niagara Falls, Ontario, Canada.

The Suffrage Movement

The struggle for woman's rights was revitalized in 1890, when the National and American Woman Suffrage Associations merged. The new organization, the National American Woman Suffrage Association (NAWSA), was headed by Susan B. Anthony.

suffrage movement
The drive for voting rights for women that took place in the United States from 1890 to 1920.

Nineteenth Amendment
Amendment to the Constitution that guaranteed women the right to vote.

Unlike NWSA, which had sought a wide variety of expanded rights for women, this new association largely devoted itself to securing woman suffrage. The proliferation of woman's groups during the Progressive era greatly facilitated its task. In addition to the rapidly growing temperance movement—whose members pressed to ban the sale of alcohol, which many women blamed for a variety of social ills—woman's groups sprang up to seek goals such as maximum hour or minimum wage laws for women, improved sanitation, public morals, and education.

One of the most active groups lobbying on behalf of women during this period was the National Consumers League (NCL), which successfully lobbied the state of Oregon for legislation limiting women to ten hours of work a day. Soon after the law was enacted, Curt Muller was charged with and convicted of employing women more than ten hours a day in his small laundry. When he appealed his conviction to the U.S. Supreme Court, the NCL sought permission from the state to conduct the defense of the statute.

At the urging of NCL attorney and future U.S. Supreme Court Justice Louis Brandeis, NCL members guided by Josephine Goldmark (Brandeis's sister-in-law, whose name also appears on the legal brief submitted to the U.S. Supreme Court) amassed an impressive array of sociological and medical data that were incorporated into what became known as the Brandeis brief. This document contained only three pages of legal argument. More than a hundred pages were devoted to nonlegal, sociological data used to convince the Court that Oregon's statute was constitutional. In agreeing with the NCL in *Muller* v. *Oregon* (1908), the Court relied heavily on these data to document women's unique status and to justify their differential legal treatment. Specifically, the justices argued that long hours at work could impair a woman's reproductive capabilities.[8]

Women seeking suffrage then used reasoning reflecting the Court's opinion in *Muller*. Discarding earlier notions of full equality, NAWSA based its claim to the right to vote largely on the fact that women, as mothers, should be enfranchised. The new woman's movement—called the **suffrage movement** because of its focus on voting rights—soon took on racist and nativist overtones. Suffragists argued that if undereducated African American men and immigrants could vote, why couldn't women?

By 1917, the new woman's movement had more than 2 million members. In 1920, a coalition of woman's groups, led by NAWSA and the newer, more radical National Woman's Party, was able to secure ratification of the **Nineteenth Amendment** to the

MR. PRESIDENT, HOW LONG MUST WOMEN WAIT FOR LIBERTY?

Members of the National Woman's Party engaged in a number of radical protest tactics in order to win the right to vote. Here, they are shown protesting in front of the White House; eventually, these demonstrators were arrested, jailed, and even force-fed in an attempt to stop their resistance.

Constitution through rallies, protest marches, and the support of President Woodrow Wilson. The Nineteenth Amendment guaranteed all women the right to vote—fifty years after the Fifteenth Amendment had enfranchised African American males.

After passage of the suffrage amendment in 1920, the fragile alliance of diverse woman's groups that had come together to fight for the vote quickly disintegrated. Women returned to their home groups, such as the NCL or the Woman's Christian Temperance Union, to pursue their individualized goals. In fact, after the tumult of the suffrage movement, organized activity on behalf of women's rights did not reemerge in national politics until the 1960s. In the meantime, the NAACP continued to fight racism and racial segregation. Its activities and those of others in the civil rights movement would later give impetus to a new women's movement.

Litigating for Equality

During the 1930s, leaders of the NAACP began to sense that the time was right to launch a full-scale challenge to the constitutionality of *Plessy*'s separate-but-equal doctrine in the federal courts. Clearly, the separate-but-equal doctrine and the proliferation of Jim Crow laws barred any hope of full equality for African Americans. Traditional legislative channels were unlikely to work, given African Americans' limited or nonexistent political power. Thus, the federal courts and a litigation strategy were the NAACP's only hopes. The NAACP mapped out a long-range plan that would first target segregation in professional and graduate education.

TEST CASES The NAACP opted first to challenge the constitutionality of Jim Crow law schools. In 1935, all southern states maintained fully segregated elementary and secondary schools. Colleges and universities also were segregated, and most states did not provide for postgraduate education for African Americans. NAACP lawyers chose to target law schools because they were institutions that judges could well understand, and integration there would prove less threatening to most whites.

Lloyd Gaines, a graduate of Missouri's all-black Lincoln University, sought admission to the all-white University of Missouri Law School in 1936. The school immediately rejected him. In the separate-but-equal spirit, the state offered to build a law school at Lincoln (although no funds were allocated for the project) or, if he did not want to wait, to pay his tuition at an out-of-state law school. Gaines rejected the offer, sued, lost in the lower courts, and appealed to the U.S. Supreme Court.

The attorneys filed Gaines's case at a promising time. As our discussion of federalism illustrates, a constitutional revolution of sorts occurred in Supreme Court decision making in 1937. Prior to this, the Court was most receptive to, and interested in, the protection of economic liberties. In 1937, however, the Court began to regard the protection of individual freedoms and personal liberties as important issues. Thus, in 1938, Gaines's lawyers pleaded his appeal to a far more sympathetic Supreme Court. NAACP attorneys argued that the creation of a separate law school of a laughable lesser caliber than that of the University of Missouri would not and could not afford Gaines an equal education. The justices agreed and ruled that Missouri had failed to meet the separate-but-equal requirements of *Plessy*. The Court ordered Missouri either to admit Gaines to the school or to set up a law school for him.[9]

Recognizing the importance of the Court's ruling, the NAACP, in 1939, created a separate, tax-exempt legal defense fund to devise a strategy that would build on the Missouri case and bring about equal educational opportunities for all African American children. The first head of the NAACP Legal Defense and Educational Fund, commonly referred to as the LDF, was Thurgood Marshall, who later became the first African American to serve on the U.S. Supreme Court. Sensing that the Court would be more amenable to the NAACP's broader goals if it were first forced to address a variety of less threatening claims to educational opportunity, Marshall and the LDF brought a series of carefully crafted test cases to the Court. These cases attracted attention across the United States and helped to raise the visibility of civil rights issues.

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***Brown* v. *Board of Education* (1954)**

U.S. Supreme Court decision holding that school segregation is inherently unconstitutional because it violates the Fourteenth Amendment's guarantee of equal protection.

The first case involved H.M. Sweatt, a forty-six-year-old African American mail carrier who applied for admission to the all-white University of Texas Law School in 1946. Rejected on racial grounds, Sweatt sued. The judge gave the state six months to establish a law school or to admit Sweatt to the university. The state legislature then authorized $3 million for the creation of the Texas State University for Negroes. One hundred thousand dollars of that money was allotted for a new law school in Austin across the street from the state capitol building. It consisted of three small basement rooms, a library of 10,000 books, access to the state law library, and three part-time first-year instructors as the faculty. Sweatt declined the opportunity to attend the substandard university and instead chose to continue his legal challenge.

While working on the Texas case, the LDF also decided to pursue a case involving George McLaurin, a retired university professor who had been denied admission to the doctoral program in education at the University of Oklahoma. Marshall reasoned that McLaurin, at age sixty-eight, would be immune from the charges that African Americans wanted integration so they could intermarry with whites, an act that was illegal in most southern states. After a lower court ordered McLaurin's admission, the university reserved a dingy alcove in the cafeteria for him to eat in during off-hours, and he was given his own table in the library behind a shelf of newspapers. In what surely "was Oklahoma's most inventive contribution to legalized bigotry since the adoption of the 'grandfather clause,'" McLaurin was forced to sit outside classrooms while lectures and seminars were conducted inside.[10]

The Supreme Court handled these two cases together.[11] The eleven southern states filed an *amicus curiae* (friend of the court) brief, in which they argued that *Plessy* should govern both cases. The LDF received assistance, however, from an unexpected source—the U.S. government. In a dramatic departure from the past, President Harry S Truman directed his Department of Justice to file an *amicus* brief urging the Court to overrule *Plessy*. Earlier, Truman had issued an executive order desegregating the military.

Since the late 1870s, the U.S. government never had sided against the southern states in a civil rights matter and never had submitted an *amicus* brief supporting the rights of African American citizens. President Truman believed that because so many African Americans had fought and died for their country in World War II, this kind of executive action was not only proper but honorable as well.

Although the Court did not overrule *Plessy,* the justices found that measures taken by the states in each case failed to live up to the strictures of the separate-but-equal doctrine. The Court unanimously ruled that the remedies to each situation were inadequate to afford a sound education. In the *Sweatt* case, for example, the Court declared that the "qualities which are incapable of objective measurement but which make for greatness in a law school . . . includ[ing] the reputation of the faculty, experience of the administration, position and influence of the alumni, standing in the community, traditions and prestige" made it impossible for the state to provide an equal education in a segregated setting.[12]

In 1950, after the Court had handed down these decisions, the LDF concluded that the time had come to launch a full-scale attack on the separate-but-equal doctrine. The Court's decisions were encouraging, and the position of the U.S. government and the population in general (and especially outside the South) appeared more receptive to an outright overruling of *Plessy*.

BROWN* V. *BOARD OF EDUCATION ***Brown* v. *Board of Education* (1954)** actually was five cases brought from different areas of the South and border states involving public elementary or high school systems that mandated separate schools for blacks and whites.[13] In *Brown,* LDF lawyers, again led by Thurgood Marshall, argued that the equal protection clause of the Fourteenth Amendment made *Plessy*'s separate-but-equal doctrine unconstitutional, and that if the Court was still reluctant to overrule *Plessy,* the only way to equalize the schools was to integrate them. A major component of the LDF's strategy was to prove that the intellectual, psychological, and financial damage done to African Americans as a result of segregation prevented any court from finding that the separate-but-equal policy was consistent with the intent of the Fourteenth Amendment's equal protection clause.

In *Brown,* the LDF presented the Supreme Court with evidence of the harmful consequences of state-imposed racial discrimination. To buttress its claims, the LDF introduced the now-famous doll study, conducted by Kenneth and Mamie Clark, two prominent African American sociologists who had long studied the negative effects of segregation on African American children. Their research revealed that black children not only preferred white dolls when shown black dolls and white dolls, but that many added that the black doll looked "bad." The LDF attorneys used this information to illustrate the negative impact of racial segregation and bias on an African American child's self-image.

The LDF supported its legal arguments with important *amicus curiae* briefs submitted by the U.S. government, major civil rights groups, labor unions, and religious groups decrying racial segregation. On May 17, 1954, Chief Justice Earl Warren delivered the fourth opinion of the day, *Brown* v. *Board of Education*. Writing for the Court, Warren stated:

> To separate [some school children] from others . . . solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way very unlikely ever to be undone. We conclude, unanimously, that in the field of public education the doctrine of "separate but equal" has no place.

Brown was, without doubt, the most important civil rights case decided in the twentieth century.[14] It immediately evoked an uproar that shook the nation. Some segregationists gave the name Black Monday to the day the decision was handed down. The governor of South Carolina denounced the decision, saying, "Ending segregation would mark the beginning of the end of civilization in the South as we know it."[15] The LDF lawyers who had argued these cases, as well as the cases leading to *Brown,* however, were jubilant.

Remarkable changes had occurred in the civil rights of Americans since 1890. Women won the right to vote, and after a long and arduous trail of litigation in the federal courts, the Supreme Court finally overturned its most racist decision of the era, *Plessy* v. *Ferguson*. The Court boldly proclaimed that separate but equal (at least in education) would no longer pass constitutional muster. The question then became how *Brown* would be interpreted and implemented. Could it be used to invalidate other Jim Crow laws and practices? Would African Americans ever be truly equal under the law?

The Civil Rights Movement

5.3 Analyze the civil rights movement and the effects of the Civil Rights Act of 1964.

lthough it did not create immediate legal change, *Brown* served as a catalyst for a civil rights movement across the United States, and especially in the South. The decision emboldened activists and gave them faith that the government might one day change its segregationist policies in all areas of the law.[16]

School Desegregation After *Brown*

One year after *Brown,* in a case referred to as *Brown* v. *Board of Education II* (1955), the Court ruled that racially segregated systems must be dismantled "with all deliberate speed."[17] To facilitate implementation, the Court placed enforcement of *Brown* in the hands of appointed federal district court judges, whom it considered more immune to local political pressures than elected state court judges.

The NAACP and its LDF continued looking to the courts for implementation of *Brown,* while the South entered into a near conspiracy to avoid the mandates of *Brown II*.

WHAT ROLE DID CIVIL DISOBEDIENCE PLAY IN THE CIVIL RIGHTS MOVEMENT?

Here, Rosa Parks is fingerprinted by a Montgomery, Alabama, police officer after her arrest for violating a city law requiring segregation on public buses. Parks refused to give up her seat to accommodate a white man, starting a city-wide bus boycott. Parks is just one of many citizens who engaged in these nonviolent acts of resistance to unjust laws.

In Arkansas, for example, Governor Orval Faubus, who was facing a reelection bid, announced that he would not "be a party to any attempt to force acceptance of change to which people are overwhelmingly opposed."[18] The day before school was to begin, he declared that National Guardsmen would surround Little Rock's Central High School to prevent African American students from entering. While the federal courts in Arkansas continued to order desegregation, the governor remained adamant. Finally, President Dwight D. Eisenhower sent federal troops to Little Rock to protect the rights of the nine African American students attending Central High.

In reaction to the governor's illegal conduct, the Court broke with tradition and issued a unanimous decision in *Cooper* v. *Aaron* (1958), which was filed by the Little Rock School Board and asked the federal district court for a delay of two and one-half years in implementing desegregation plans. Each justice signed the opinion individually, underscoring his own support for the notion that "no state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it."[19] The state's actions thus were ruled unconstitutional and its "evasive schemes" illegal.

A New Movement for African American Rights

In 1955, soon after *Brown II,* the civil rights movement took another step forward—this time in Montgomery, Alabama. Rosa Parks, the local NAACP's Youth Council adviser, decided to challenge the constitutionality of the segregated bus system. First, Parks and other NAACP officials began to raise money for litigation and made speeches around town to garner public support. Then, on December 1, 1955, Rosa Parks made history when she refused to leave her seat in the front of the colored section of the bus to make room for a white male passenger without a seat. Police arrested her for violating an Alabama law banning integration of public facilities, including buses. After being freed on bond, Parks and the NAACP decided to enlist city clergy to help her cause. At the same time, they distributed 35,000 handbills calling for African Americans to boycott the Montgomery bus system on the day of Parks's trial. Black ministers used Sunday services to urge their members to support the boycott. On

Monday morning, African Americans walked, carpooled, or used black-owned taxicabs. That night, local ministers decided the boycott should continue. A new, twenty-six-year-old minister, the Reverend Martin Luther King Jr., was selected to lead the newly formed Montgomery Improvement Association.

As the boycott dragged on, Montgomery officials and local business owners (who were suffering negative economic consequences) began to harass the city's African American citizens. The black residents held out, despite suffering personal hardship for their actions, ranging from harassment to job loss to bankruptcy. In 1956, a federal court ruled that the segregated bus system violated the equal protection clause of the Fourteenth Amendment. After a year-long boycott, African American Montgomery residents ended their protest when city officials ordered the public transit system to integrate. The first effort at nonviolent protest had been successful. Organized boycotts and other forms of nonviolent protest, including sit-ins at segregated restaurants and bus stations, were to follow.

Formation of New Groups

The recognition and respect earned by the Reverend Martin Luther King Jr. within the African American community helped him launch the Southern Christian Leadership Conference (SCLC) in 1957, soon after the end of the Montgomery Bus Boycott. Unlike the NAACP, which had northern origins and had come to rely largely on litigation as a means of achieving expanded equality, the SCLC had a southern base and was rooted more closely in black religious culture. The SCLC's philosophy reflected King's growing belief in the importance of nonviolent protest and civil disobedience.

On February 1, 1960, a few students from the all-black North Carolina Agricultural and Technical College in Greensboro participated in the first sit-in for civil rights. The students went to a local lunch counter, sat down, and ordered cups of coffee. They were not served, but stayed until closing. After the national wire services picked up the story, over the next several days, the students were joined by hundreds of others from the Greensboro area. When the students refused to leave, the police arrested and jailed them, rather than their white tormentors. Soon thereafter, African American college students around the South did the same. The national media extensively covered their actions.

Over spring break 1960, with the assistance of an $800 grant from the SCLC, 200 student delegates—black and white—met at Shaw University in Raleigh, North Carolina, to consider recent sit-in actions and to plan for the future. Later that year, the Student Nonviolent Coordinating Committee (SNCC) was formed.

Whereas the SCLC generally worked with church leaders in a community, SNCC was much more of a grassroots organization. Always perceived as more radical than the SCLC, SNCC tended to focus its organizing activities on the young, both black and white.

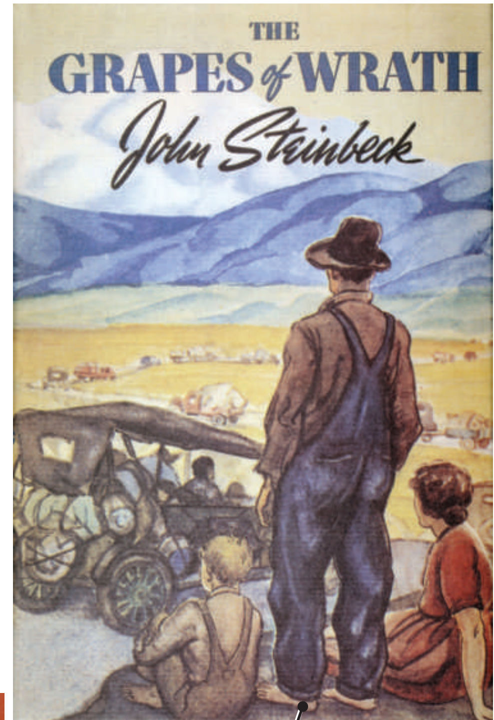
In addition to joining the sit-in bandwagon, SNCC also came to lead what were called freedom rides, designed to shine the spotlight on segregated public accommodations. Bands of college students and other civil rights activists traveled by bus throughout the South in an effort to force bus stations to desegregate. Often these protesters faced angry mobs of segregationists and brutal violence, as local police chose not to defend the protesters' basic constitutional rights to free speech and peaceful assembly. African Americans were not the only ones to participate in freedom rides; increasingly, white college students from the North began to play an important role in SNCC.

While SNCC continued to sponsor sit-ins and freedom rides, in 1963 King launched a series of massive nonviolent demonstrations in Birmingham, Alabama, long considered a major stronghold of segregation. Thousands of blacks and whites marched to Birmingham in a show of solidarity. Peaceful marchers were met there by the Birmingham police commissioner, who ordered his officers to use dogs, clubs, and fire hoses on the marchers. Americans across the nation were horrified as they witnessed on television the brutality and abuse heaped on the protesters. As the marchers had hoped, the shocking scenes helped convince President John F. Kennedy to propose important civil rights legislation.

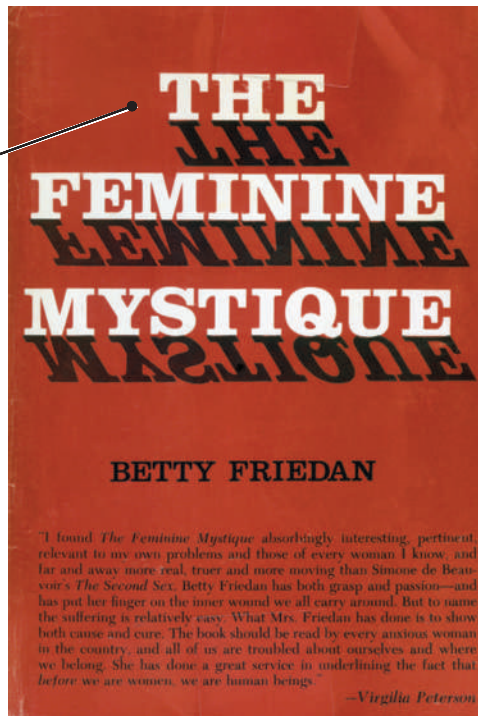
Take a Closer Look

Throughout history, literature has played a significant role in raising the public's awareness of important civil rights issues. Movements for greater rights for African Americans, women, Hispanics, and American Indians, among others, have all been aided by the power of prose. Although some of these texts were works of fiction, and others nonfiction, all helped to energize and mobilize a growing social movement.

Uncle Tom's Cabin, written by Harriet Beecher Stowe in 1852, is one of the most widely circulated texts of all time. It depicted the realities of slavery, helped to inspire the abolition movement, and was a catalyst for the Civil War.



The Grapes of Wrath, written by John Steinbeck in 1939, did not focus on a Hispanic family. However, its story of California tenant farmers struggling to survive resonated with many Hispanic rights activists and helped to motivate movements for farm workers' rights.



Betty Friedan's *The Feminine Mystique* was first published in 1963. It played an important role in helping housewives and other women realize that they were not alone in their feelings of discontent. As a result, it served as one of the inspirations for the 1960's women's movement.

CRITICAL THINKING QUESTIONS

1. How do the visuals of these texts depict the plight and despair faced by minority groups?
2. What other texts have been significant in mobilizing social and political change for disadvantaged groups? How are they similar to and different from the books shown here?
3. Why do you think literature has been so effective in mobilizing citizens for social change? What does writing add that everyday life cannot? How will the Internet change this?

HOW DID CIVIL RIGHTS LAWS CHANGE IN THE UNITED STATES?

Dramatic changes occurred to national civil rights laws in the 1960s. Many of these changes were the result of grassroots political activism led by organizations such as the National Association for the Advancement of Colored People (NAACP) and the Southern Christian Leadership Council (SCLC). Leaders of these organizations – including the Reverend Martin Luther King Jr., center – are shown in this photo meeting with President Lyndon B. Johnson, a Southerner and former Senate Majority Leader, who played an important role in getting civil rights legislation passed by Congress.

The Civil Rights Act of 1964

Both the SCLC and SNCC sought full implementation of U.S. Supreme Court decisions dealing with race and an end to racial segregation and discrimination. The cumulative effect of collective actions including sit-ins, boycotts, marches, and freedom rides—as well as the tragic bombings, lynchings, and other deaths inflicted in retaliation—led Congress to pass the first major piece of civil rights legislation since the post–Civil War era, the Civil Rights Act of 1964, followed the next year by the Voting Rights Act of 1965. Several events led to consideration of the two pieces of legislation.

In 1963, President John F. Kennedy requested that Congress pass a law banning discrimination in public accommodations. Seizing the moment, the Reverend Martin Luther King Jr. called for a monumental march on Washington, D.C., to demonstrate widespread support for far-ranging anti-discrimination legislation. It was clear that national legislation outlawing discrimination was the only answer: southern legislators would never vote to repeal Jim Crow laws. The March on Washington for Jobs and Freedom was held in August 1963, only a few months after the Birmingham demonstrations. More than 250,000 people heard King deliver his famous "I Have a Dream" speech from the Lincoln Memorial. Before Congress had the opportunity to vote on any legislation, however, President Kennedy was assassinated on November 22, 1963, in Dallas, Texas.

When Vice President Lyndon B. Johnson, a southern-born, former Senate majority leader, succeeded Kennedy as president, he put civil rights reform at the top of his legislative priority list, and civil rights activists gained a critical ally. Thus, through the 1960s, the movement subtly changed its focus from peaceful protest and litigation to legislative lobbying. Its scope broadened from integration of school and public facilities and voting rights to preventing housing and job discrimination and alleviating poverty.

Changes in public opinion helped the push for civil rights legislation in the halls of Congress. Between 1959 and 1965, southern attitudes toward integrated schools changed enormously. The proportion of Southerners who responded that they would not mind their child's attendance at a racially balanced school doubled.

Civil Rights Act of 1964
Wide-ranging legislation passed by Congress to outlaw segregation in public facilities and discrimination in employment, education, and voting; created the Equal Employment Opportunity Commission.

***de jure* discrimination**
Racial segregation that is a direct result of law or official policy.

***de facto* discrimination**
Racial discrimination that results from practice (such as housing patterns or other social or institutional, nongovernmental factors) rather than the law.

In spite of strong presidential support and the sway of public opinion, the Civil Rights Act of 1964 did not sail through Congress. Southern senators, led by South Carolina's Strom Thurmond, a Democrat who later switched to the Republican Party, conducted the longest filibuster in the history of the Senate. For eight weeks, Thurmond led the effort to hold up voting on the civil rights bill. Once passed, the **Civil Rights Act of 1964:**

- Outlawed arbitrary discrimination in voter registration and expedited voting rights lawsuits.
- Barred discrimination in public accommodations engaged in interstate commerce.
- Authorized the Department of Justice to initiate lawsuits to desegregate public facilities and schools.
- Provided for the withholding of federal funds from discriminatory state and local programs.
- Prohibited discrimination in employment on grounds of race, creed, color, religion, national origin, or sex.
- Created the Equal Employment Opportunity Commission (EEOC) to monitor and enforce the bans on employment discrimination.

As practices thought to be in violation of the law continued, other changes continued to sweep the United States. African Americans in the North, who believed that their brothers and sisters in the South were making progress against discrimination, found themselves frustrated. Northern blacks, too, were experiencing high unemployment, poverty, and discrimination, and had little political clout. Some, including African American Muslim leader Malcolm X, even argued that, to survive, African Americans must separate themselves from white culture in every way. These increased tensions resulted in violent race riots in many major cities from 1964 to 1968, when many African Americans in the North took to the streets, burning and looting to vent their rage. The assassination of the Reverend Martin Luther King Jr. in 1968 triggered a new epidemic of race riots.

Statutory Remedies for Race Discrimination

Many Southerners adamantly believed that the Civil Rights Act of 1964 was unconstitutional because it went beyond the scope of Congress's authority to legislate under the Constitution, and they quickly brought lawsuits to challenge its scope. In 1964, on expedited review, the Supreme Court upheld its constitutionality, finding that Congress had operated within the legitimate scope of its commerce power as outlined in Article I.[20]

EDUCATION One of the key provisions of the Civil Rights Act of 1964 authorized the Department of Justice to bring actions against school districts that failed to comply with *Brown* v. *Board of Education*. By 1964, a full decade after *Brown,* fewer than 1 percent of African American children in the South attended integrated schools.

In *Swann* v. *Charlotte-Mecklenburg School District* (1971), the Supreme Court ruled that all vestiges of state-imposed segregation, called ***de jure* discrimination,** or discrimination by law, must be eliminated at once. The Court also ruled that lower federal courts had the authority to fashion a wide variety of remedies, including busing, racial quotas, and the pairing of schools, to end dual, segregated school systems.[21]

In *Swann,* the Court was careful to distinguish *de jure* from ***de facto* discrimination,** which is discrimination that results from practice, such as housing patterns or private acts, rather than the law. The Court noted that its approval of busing was a remedy for intentional, government-imposed or -sanctioned discrimination only.

Over the years, forced, judicially imposed busing found less and less favor with the Supreme Court, even in situations where *de jure* discrimination had existed. In 2007, in a contentious 5–4 opinion, the Supreme Court abolished the use of voluntary school desegregation plans based on race.[22]

EMPLOYMENT Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against employees for a variety of reasons, including race, sex, age, and national origin. (In 1978, the act was amended to bar discrimination based on pregnancy.) In 1971, in one of the first major cases decided under the act, the Supreme Court ruled that employers could be found liable for discrimination if their employment practices had the effect of excluding African Americans from certain positions.[23] The Court allowed African American employees to use statistical evidence showing the Duke Power Company had excluded them from all but one department, because it required employees to have a high school education or pass a special test to be eligible for promotion.

The Supreme Court ruled that although the tests did not appear to discriminate against African Americans, their effects—that no African American employees were in any other departments—were sufficient to shift to the employer the burden of proving that no discrimination occurred. Thus, the Duke Power Company would have to prove that the tests were a business necessity that had a "demonstrable relationship to successful performance" of a particular job.

The notion of "business necessity," as set out in the Civil Rights Act of 1964 and interpreted by the federal courts, had special importance for women. They had long been kept out of many occupations on the strength of the belief that customers preferred to deal with male personnel. Conversely, because airlines believed that passengers preferred being served by young, attractive women, they barred males from flight-attendant positions. Similarly, many large factories, manufacturing establishments, and police and fire departments avoided hiring women by subjecting them to arbitrary height and weight requirements. Like the tests declared illegal by the Court, a relation between these requirements and job performance often could not be shown, and the federal courts eventually ruled them illegal.

The Women's Rights Movement

5.4 Assess statutory and constitutional remedies for discrimination pursued and achieved by the women's rights movement.

As in the abolition movement of the 1800s, women from all walks of life participated in the civil rights movement. Women were important members of new groups such as SNCC and the SCLC, as well as more traditional groups such as the NAACP, yet they often found themselves treated as second-class citizens. At one point during an SNCC national meeting, its male chair proclaimed: "The only position for women in SNCC is prone."[24] Statements and attitudes such as these led some women to found early women's liberation groups that generally were quite radical but small in membership. Others established more traditional groups, such as the National Organization for Women (NOW).

Three key events helped to forge a new movement for women's rights in the early 1960s. In 1961, soon after his election, President John F. Kennedy created the President's Commission on the Status of Women, headed by former First Lady Eleanor Roosevelt. The commission's report, *American Women,* released in 1963, documented pervasive discrimination against women in all areas of life. In addition, the civil rights movement and the publication of Betty Friedan's *The Feminine Mystique* (1963), which led some women to question their lives and status in society, enhanced many women's dawning recognition that something was wrong.[25] Soon after, the Civil Rights Act of 1964 prohibited discrimination based not only on race but also on sex. Ironically, southern Democrats had added that provision to Title VII of the act. These senators saw a prohibition against sex discrimination in employment as a joke, and viewed its addition as a means to discredit the entire act and ensure its defeat. Thus, it was added at the last minute, and female members of Congress seized the opportunity to garner additional support for the measure.

Equal Rights Amendment
Proposed amendment to the Constitution that states "Equality of rights under the law shall not be denied or abridged by the United States or any state on account of sex."

In 1966, after the Equal Employment Opportunity Commission failed to enforce the law as it applied to sex discrimination, female activists formed the National Organization for Women. NOW was modeled closely after the NAACP. Its founders sought to work within the political system to prevent discrimination. Initially, they directed most of this activity toward two goals: achievement of equality either by passage of an equal rights amendment to the Constitution or by judicial decisions intended to broaden the scope of the equal protection clause of the Fourteenth Amendment.

The Equal Rights Amendment

Not all women agreed with the concept of full equality for women. Members of the National Consumers League, for example, feared that an equal rights amendment would invalidate protective legislation of the kind specifically ruled constitutional in *Muller* v. *Oregon* (1908). Nevertheless, from 1923 to 1972, a proposal for an equal rights amendment was made in every session of every Congress. Every president between Harry S Truman and Richard M. Nixon backed it, and by 1972 public opinion favored its ratification.

Finally, in 1972, in response to pressure from NOW, the National Women's Political Caucus, and a wide variety of other feminist groups, Congress voted in favor of the **Equal Rights Amendment** (ERA) by overwhelming majorities (84–8 in the Senate; 354–24 in the House). The amendment provided that:

> Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.
>
> The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Within a year, twenty-two states ratified the amendment, most by overwhelming margins, but the tide soon turned. In *Roe* v. *Wade* (1973), the Supreme Court decided that women had a constitutionally protected right to privacy that included the right to terminate a pregnancy. Almost overnight, *Roe* provided the ERA's opponents with political fuel. Although privacy rights and the ERA have nothing to do with each other, opponents effectively persuaded many people in states that had yet to ratify the amendment that the two were linked. They also claimed that the ERA and feminists were anti-family and that the ERA would force women out of their homes and into the workforce because husbands would no longer be responsible for supporting their wives financially.

These arguments and the amendment's potential to make women eligible for the unpopular military draft brought the ratification effort to a near standstill. In 1974 and 1975, the amendment only squeaked through the Montana and North Dakota legislatures, and two states—Nebraska and Tennessee—voted to rescind their earlier ratifications. By 1978, one year before the expiration deadline for ratification, thirty-five states had voted for the amendment—three short of the three-fourths necessary for ratification. Efforts in key states such as Illinois and Florida failed as opposition to the ERA intensified. Faced with the prospect of defeat, ERA supporters heavily lobbied Congress to extend the deadline for ratification. Congress extended the ratification period by three years, but to no avail. No additional states ratified the amendment, and three more rescinded their votes.

What began as a simple correction to the Constitution turned into a highly controversial proposed change. Even though large percentages of the public favored the ERA, opponents needed to stall ratification in only thirteen states, while supporters had to convince legislators in thirty-eight. Ironically, the success of women's rights activists in the courts was hurting the effort. When women first sought the ERA in the late 1960s, the Supreme Court had yet to rule that women were protected from any kind of discrimination by the Fourteenth Amendment's equal protection clause, thus highlighting the need for an amendment. But, as the Court widened its interpretation of the Constitution to protect women from some sorts of discrimination, many felt the

Explore Your World

Good fences make good neighbors, or so the adage goes. Throughout history, many countries have adopted this perspective. Beginning in the seventh century B.C., for example, China fortified its borders by constructing the Great Wall. And, following World War II, Germans built the Berlin Wall to divide the city of Berlin into East (communist) and West (democratic). Today, many politicians call for the construction of a "fence" or a "wall" between the United States and Mexico to stem illegal immigration and drug trafficking. Building a fence, however, poses a dilemma; although it may increase domestic security, it may also strain relations with allies around the world.

This photo of the Berlin Wall, taken after the reunification of Germany, illustrates the lasting effects of the division of the German capital. Note the contrast between the vibrancy of the West and the desertion of the East.

Construction on the Great Wall of China began as early as 700 B.C. It extends for more than 13,000 miles along the border of China and Mongolia.

This photo illustrates a small section of the fence between the United States and Mexico in the American Southwest. The fence remains an ongoing debate; hundreds of miles of fence have been constructed in California, Arizona, and New Mexico. Work continues in these states, as well as Texas.

CRITICAL THINKING QUESTIONS

1. What similarities do you see between the walls or fences depicted here? What important differences do you observe?
2. Does each of these walls have the same implications for domestic and foreign policy? Why or why not?
3. Is a border fence constitutional? What combination of physical boundaries and legal constraints should the United States use to protect its borders from illegal immigrants? What about the civil rights of immigrants?

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suspect classification
Category or class, such as race, that triggers the highest standard of scrutiny from the Supreme Court.

strict scrutiny
A heightened standard of review used by the Supreme Court to determine the constitutional validity of a challenged practice.

WHO CONTINUES TO FIGHT FOR THE ERA?

Members of Congress led by Representative Carolyn Maloney (D–NY) have reintroduced the Equal Rights Amendment in all recent sessions of Congress. Here, Representative Maloney (at the podium), her bipartisan co-sponsors, and women's group leaders, hold a press conference announcing the reintroduction of the ERA in a recent Congress.

need for a new amendment was less urgent. The proposed amendment died without ratification on June 30, 1982. Since 1982, the amendment has been reintroduced in every session of Congress.

The Equal Protection Clause and Constitutional Standards of Review

While several women's groups worked toward passage of the ERA, NOW and other groups, including the American Civil Liberties Union (ACLU), formed litigating arms to pressure the courts. But, women faced an immediate roadblock in the Supreme Court's interpretation of the equal protection clause of the Fourteenth Amendment.

The Fourteenth Amendment protects all U.S. citizens from state action that violates equal protection of the laws. Most laws, though, are subject to what is called the rational basis or minimum rationality test. This lowest level of scrutiny means that governments must show a rational foundation for any distinctions they make. As early as 1937, however, the Supreme Court recognized that certain freedoms were so fundamental that a very heavy burden would fall on any government seeking to restrict those rights. When fundamental freedoms such as those guaranteed by the First Amendment or **suspect classifications** such as race are involved, the Court uses a heightened standard of review called **strict scrutiny** to determine the constitutional validity of the challenged practices, as detailed in Table 5.1.

Beginning with *Korematsu* v. *U.S.* (1944), which involved a constitutional challenge to the internment of Japanese Americans as security risks during World War II, Justice Hugo Black noted that "all legal restrictions which curtail the civic rights of a single racial group are immediately suspect," and should be given "the most rigid scrutiny."[26] In *Brown* v. *Board of Education* (1954), the Supreme Court again used the strict scrutiny standard to evaluate the constitutionality of race-based distinctions. In legal terms, this means that if a statute or governmental practice makes a classification based on race, the statute is presumed to be unconstitutional unless the state can provide "compelling affirmative justifications"—that is, unless the state can prove that the law in question is necessary to accomplish a permissible goal and that it is the least restrictive means of accomplishing that goal. (In *Korematsu*,

TABLE 5.1 WHAT ARE THE STANDARDS OF REVIEW FASHIONED BY THE COURT UNDER THE EQUAL PROTECTION CLAUSE?

Type of Classification: *What kind of statutory classification is at issue?*	**Standard of Review:** *What standard of review will be used?*	**Test:** *What does the Court ask?*	**Example:** *How does the Court apply the test?*
Fundamental freedoms (including religion, speech, assembly, press), suspect classifications (including race, alienage, and national origin)	Strict scrutiny or heightened standard	Is the classification necessary to the accomplishment of a permissible state goal? Is it the least restrictive way to reach that goal?	*Brown* v. *Board of Education* (1954): Racial segregation not necessary to accomplish the state's goal of educating its students.
Gender	Intermediate standard	Does the classification serve an important governmental objective, and is it substantially related to those ends?	*Craig* v. *Boren* (1976): Keeping drunk drivers off the roads may be an important governmental objective, but allowing eighteen- to twenty-one-year-old women to drink alcoholic beverages while prohibiting men of the same age from drinking is not substantially related to that goal.
Others (including age, wealth, mental capacity, and sexual orientation)	Minimum rationality standard	Is there any rational foundation for the discrimination?	*Romer* v. *Evans* (1996): Colorado state constitutional amendment denying equal rights to homosexuals is unconstitutional.

the Court concluded that the national risks posed by Japanese Americans, Italian Americans, and German Americans were sufficient to justify their internment.)

During the 1960s and into the 1970s, the Court routinely struck down as unconstitutional practices and statutes that discriminated on the basis of race. The Court ruled that "whites-only" public parks and recreational facilities, tax-exempt status for private schools that discriminated, and statutes prohibiting interracial marriage were unconstitutional. In contrast, the Court refused to consider whether the equal protection clause might apply to discrimination against women. Finally, in a case argued in 1971 by Ruth Bader Ginsburg (later an associate justice of the Supreme Court) as director of the Women's Rights Project of the ACLU, the Supreme Court ruled that an Idaho law granting a male parent automatic preference over a female parent as the administrator of their deceased child's estate violated the equal protection clause of the Fourteenth Amendment. *Reed* v. *Reed* (1971), the Idaho case, turned the tide in terms of constitutional litigation. Although the Court did not rule that sex was a suspect classification, it concluded that the equal protection clause of the Fourteenth Amendment prohibited unreasonable classifications based on sex.[27]

In 1976, the Court ruled that sex discrimination complaints would be judged according to a new, judicially created intermediate standard of review a step below strict scrutiny.[28] In *Craig* v. *Boren* (1976), the Court carved out a new test for examining claims of sex discrimination alleged to violate the U.S. Constitution: "to withstand constitutional challenge, . . . classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives." According to the Court, it created an intermediate standard of review within what previously was a two-tier distinction—strict scrutiny and rational basis.

Men, too, can use the Fourteenth Amendment to fight gender-based discrimination. Since 1976, the Court has applied the intermediate standard of constitutional review to most claims involving gender that it has heard. Thus, the Court has found the following practices in violation of the Fourteenth Amendment:

- Single-sex public nursing schools.[29]
- Laws that consider males adults at twenty-one years but females adults at eighteen years.[30]
- Laws that allow women, but not men, to receive alimony.[31]
- State prosecutors' use of peremptory challenges to reject male or female potential jurors to create more sympathetic juries.[32]
- Virginia's maintenance of an all-male military college, the Virginia Military Institute.[33]

Equal Pay Act of 1963
Legislation that requires employers to pay men and women equal pay for equal work.

In contrast, the Court has upheld the following governmental practices and laws:

- Draft registration provisions for males only.[34]
- State statutory rape laws that apply only to female victims.[35]
- Different requirements for a child's acquisition of citizenship based on whether the citizen parent is a mother or a father.[36]

The level of review used by the Court is crucial. Clearly, a statute excluding African Americans from draft registration would be unconstitutional. But, because gender is not subject to the same higher standard of review used in racial discrimination cases, the Court ruled the exclusion of women from requirements of the Military Selective Service Act permissible because it considered the government policy to serve "important governmental objectives."[37]

This history perhaps clarifies why women's rights activists continue to argue that until the passage of the Equal Rights Amendment, women will never enjoy the same rights as men. An amendment would raise the level of scrutiny applied by the Court to gender-based claims, although indications are clear that the Supreme Court of late favors requiring states to meet a tougher test than *Craig* and show "exceedingly persuasive justifications" for their actions.[38]

Statutory Remedies for Sex Discrimination

In part because of the limits of the intermediate standard of review and the fact that the equal protection clause applies only to governmental discrimination, women's rights activists began to look for statutory solutions to discrimination. The **Equal Pay Act of 1963,** the first such piece of legislation, requires employers to pay women and men equal pay for equal work. Women have won important victories under the act, but a large wage gap between women and men continues to exist, even beginning with the first paycheck issued to men and women with equal jobs, education, and experience. Women's earnings in 2014 equaled about 75 to 80 percent of men's earnings, depending on location and occupation.

Clay Bennett. Christian Science Monitor

WHAT ARE THE PRACTICAL CONSEQUENCES OF PAY EQUITY?

This cartoon pokes fun at a serious issue in gender equality: pay equity. In 2014, women earned between 75 and 80 cents for every $1.00 earned by their similarly situated male counterparts.

In 2007, the U.S. Supreme Court tested the boundaries of the Equal Pay Act. The justices heard the case of Lilly Ledbetter, the lone female supervisor at a Goodyear tire factory in Alabama. Ledbetter charged that sex discrimination throughout her career had led her to earn substantially less than her male counterparts. In a 5–4 decision, the Court ruled that Ledbetter and other women could not seek redress of grievances under the provisions of the Equal Pay Act for discrimination that had occurred over a period of years. Justice Ruth Bader Ginsburg, the only woman on the Court at the time, took the uncommon action of reading her dissent from the bench. Speaking for herself and Justices David Souter, John Paul Stevens, and Stephen Breyer, she angrily noted, "In our view, the court does not comprehend, or is indifferent to, the insidious way in which women can be victims of pay discrimination."[39] In 2009, the first official act of President Barack Obama was to sign the Lilly Ledbetter Fair Pay Act, which overruled the Court's decision bearing her name.

Another important piece of legislation is Title VII of the Civil Rights Act of 1964, which prohibits gender discrimination by private (and, after 1972, public) employers. Much litigation has focused on this act, too. Key victories under Title VII include:

- Consideration of sexual harassment as sex discrimination.[40]
- Inclusion of law firms, which many argued were private partnerships, in the coverage of the act.[41]
- A broad definition of what can be considered sexual harassment, including same-sex harassment.[42]
- Allowance of voluntary programs to redress historical discrimination against women.[43]

Finally, **Title IX** of the Education Amendments of 1972 bars educational institutions that receive federal funds from discriminating against female students in any aspect of their education. Title IX greatly expanded the opportunities for women in elementary, secondary, and postsecondary institutions. Most of today's college students do not go through school being excluded from home economics or technology education classes because of their sex. Nor, probably do many attend schools that have no team sports for females, as was commonly the case in the United States prior to 1972.[44] Nevertheless, sport facilities, access to premium playing times, and quality equipment remain unequal, and the treatment of sexual harassment and assault on college campuses often adversely affects women. Major rulings by the U.S. Supreme Court that uphold the provisions of Title IX include:

- Holding school boards or districts responsible for both student-on-student harassment and harassment of students by teachers.[45]
- Allowing retaliatory lawsuits by coaches on behalf of their sports teams denied equal treatment by school boards.[46]

Title IX
Provision of the Education Amendments of 1972 that bars educational institutions that receive federal funds from discriminating against female students.

Other Groups Mobilize for Rights

5.5 Describe how other groups have mobilized in pursuit of their own civil rights.

African Americans and women are not the only groups that have suffered unequal treatment under the law. Denial of civil rights has led other disadvantaged groups to mobilize. Their efforts parallel in many ways the efforts made by African Americans and women. Many groups recognized that litigation and the use of test-case strategies would be key to further civil rights gains. Others have opted for more direct, traditional forms of activism.

Hispanic Americans

Hispanics are the largest minority group in the United States. But, Hispanic population growth in the United States is not a new phenomenon. In 1910, the Mexican Revolution forced Mexicans seeking safety and employment into the United States. And, in 1916, New Mexico entered the union officially as a bilingual state—the only one in the United States.

Early Hispanic immigrants, many of whom were from families who had owned land when parts of the Southwest were still under Mexico's control, formed the League of United Latin American Citizens (LULAC) in 1929. LULAC continues to be the largest Hispanic organization in the United States, with local councils in every state and Puerto Rico. Hispanics returning home from fighting in World War II also formed the American G.I. Forum in Texas to fight discrimination and improve their legal status.

As large numbers of immigrants from Mexico and Puerto Rico entered the United States, they quickly became a source of cheap labor, with Mexicans initially tending to settle in the Southwest, where they most frequently found employment as migratory farm workers, and Puerto Ricans mainly moving to New York City. Both groups gravitated to their own neighborhoods, where life revolved around the Roman Catholic Church and the customs of their homeland, and both groups largely lived in poverty. Still, in 1954, the same year as *Brown,* Hispanics won a major victory when, in *Hernandez* v. *Texas,* the Supreme Court struck down discrimination based on race and ethnicity.[47] In *Hernandez,* the Court ruled unanimously that Mexican Americans had the right to a jury that included other Mexican Americans.

A push for greater Hispanic rights began in the mid-1960s, just as a wave of Cuban immigrants started to establish homes in Florida, dramatically altering the political and social climate of Miami and neighboring towns and cities in South Florida. This new movement, marked by the establishment of the National Council of La Raza in 1968, incorporated many tactics drawn from the African American civil rights movement, including sit-ins, boycotts, marches, and other activities designed to heighten publicity for their cause. In one earlier example, in 1965, Cesar Chavez and Dolores Huerta organized migrant workers into the United Farm Workers Union, which would become the largest such union in the nation, and led them in a strike against produce growers in California. Organizers eventually coupled this strike with a national boycott of various farm products, including lettuce and grapes. After several years, declining sales led producers to give in to some of the workers' demands.

Hispanics also have relied heavily on litigation to secure legal change. Key groups are the Mexican American Legal Defense and Educational Fund (MALDEF) and the Puerto Rican Legal Defense and Education Fund (renamed LatinoJustice PRLDEF). MALDEF began its life in 1968 after members of LULAC met with NAACP LDF leaders and, with their assistance, secured a $2.2-million start-up grant from the Ford Foundation. The founders of MALDEF originally created it to bring test cases before the Supreme Court with the intent to force school districts to allocate more funds to schools with predominantly low-income minority populations, to implement bilingual education programs, to require employers to hire Hispanics, and to challenge election rules and apportionment plans that undercount or dilute Hispanic voting power.

MALDEF has been successful in expanding voting rights and electoral opportunities to Hispanic Americans under the Voting Rights Act of 1965 (renewed in 2006 for ten years) and the U.S. Constitution's equal protection clause. In 1973, for example, it won a major victory when the Supreme Court ruled that multimember electoral districts (in which more than one person represents a single district) in Texas discriminated against African Americans and Hispanics.[48] In multimember systems, legislatures generally add members to larger districts instead of drawing smaller districts in which a minority candidate could garner a majority of the votes necessary to win.

The organization's success in educational equity cases came more slowly. In 1973, for example, in *San Antonio Independent School District* v. *Rodriguez,* the Supreme Court refused to find that a Texas law under which the state appropriated a set dollar amount

WHO REPRESENTS HISPANIC AMERICANS IN CONGRESS?

Interest groups such as MALDEF have worked to assure greater Hispanic representation in Congress and other political institutions. However, the efforts of these groups have not been entirely successful; even drawing majority-Hispanic congressional districts does not guarantee that a Hispanic will be elected. Such is the case in Texas, where white Representative Lloyd Doggett (D), has defeated several Hispanic candidates in the state's 35th district.

to each school district per pupil, while allowing wealthier districts to enrich educational programs from other funds, violated the equal protection clause of the Fourteenth Amendment.[49] In 1989, however, MALDEF won a case in which a state district judge elected by the voters of only a single county declared the state's entire method of financing public schools to be unconstitutional under the state constitution.[50] And, in 2004, it entered into a settlement with the state of California in a case brought four years earlier to address, in MALDEF's words, "the shocking inequities facing public school children across the state."[51]

MALDEF continues to litigate and lobby in a wide range of areas of concern to Hispanics. High on its agenda today are equal access to education, affirmative action, health care for undocumented immigrants, workers' rights, and challenging restrictive drivers' license and voter ID laws. To ensure that Hispanics are adequately represented, it also litigates to challenge many state redistricting plans. MALDEF and other Hispanic rights groups, for example, have played a major role in challenging redistricting plans in the state of Texas. As a result of these legal challenges, the U.S. Supreme Court has repeatedly found unconstitutional redistricting plans that divide geographically compact Hispanic populations into many congressional districts, thus diluting Hispanic representation.[52]

MALDEF also stands at the fore of legislative lobbying for expanded rights. Since 2002, it has worked to oppose restrictions concerning driver's license requirements for undocumented immigrants, to gain greater rights for Hispanic workers, and to ensure that redistricting plans do not silence Hispanic voters. MALDEF also focuses on the rights of Hispanic immigrants and workers.

American Indians

American Indians are the first true Americans, and their status under U.S. law is unique. The U.S. Constitution considers Indian tribes distinct governments, a situation that has affected the treatment of these Americans by Congress and the Supreme Court.

For years, Congress and the courts manipulated the law to promote westward expansion of the United States. The Northwest Ordinance of 1787, passed by the Continental Congress, specified that "good faith should always be observed toward the Indians; their lands and property shall never be taken from them without their consent, and their property rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress." The federal government did not follow this pledge. During the eighteenth and nineteenth centuries, it isolated American Indians on reservations as it confiscated their lands and denied them basic political rights. The U.S. government administered Indian reservations, and American Indians often lived in squalid conditions.

With passage of the Dawes Act in 1887, however, the government switched policies, promoting assimilation over separation. This act gave each American Indian family land within the reservation; the rest was sold to whites, thus reducing Indian lands from about 140 million acres to about 47 million. Moreover, to encourage American Indians to assimilate, the act mandated sending their children to boarding schools off the reservation. It also banned native languages and rituals. American Indians did not become U.S. citizens, nor were they given the right to vote, until 1924.

At least in part because tribes were small and scattered (and the number of members declining), American Indians did not begin to mobilize until the 1960s. During this time, American Indian activists, many trained by the American Indian Law Center at the University of New Mexico, began to file hundreds of test cases in the federal courts involving tribal fishing rights, tribal land claims, and taxation of tribal profits. The Native American Rights Fund (NARF), founded in 1970, became the NAACP LDF of the American Indian rights movement.

American Indians have won some very important victories concerning hunting, fishing, and land rights. Tribes all over the country have sued to reclaim lands they maintain the United States stole from them, often more than 200 years ago. These land rights allow American Indians to host gambling casinos across the country, frequently on tribal lands abutting cities and states where gambling is illegal. This phenomenon has resulted in billions of dollars of revenue for Indian tribes. These improvements in American Indians' economic affairs have helped to increase their political clout. Tribes are donating to political campaigns of candidates predisposed to policies favorable to tribes. The Agua Caliente Band of Cahuilla Indians, for example, donated $21 million to political campaigns in just one year alone. These large

HOW WERE AMERICAN INDIANS TREATED BY THE U.S. GOVERNMENT?

Indian children were forcibly removed from their homes beginning in the late 1800s and sent to boarding schools where they were pressured to give up their cultural traditions and tribal languages. Here, girls from the Yakima Nation in Washington State are pictured in front of such a school in 1913.

expenditures, American Indians claim, are legal, because as sovereign nations they are immune from federal and state campaign finance disclosure laws. The political involvement of Indian tribes will most likely continue to grow as their casinos—and the profits of those ventures—proliferate.

Despite these successes, Indian tribes still found themselves locked in a controversy with the Department of the Interior over its handling of Indian trust funds, which are to be paid to Indians for the use of their lands. In 1996, several Indian tribes filed suit to force the federal government to account for the billions of dollars it has collected over the years for its leasing of American Indian lands, which it took from the Indians and has held in trust since the late nineteenth century.[53] As the result of years of mismanagement, the trust, administered by the Department of the Interior, has no records of monies taken in or how they were disbursed. The original class action lawsuit included 50,000 American Indians, who claimed the government owed them more than $10 billion. The trial judge found massive mismanagement of the funds, which generated up to $500 million a year. After years of litigation that at one time threatened to hold the secretary of the interior in contempt, the case was finally settled. In 2009, the tribes accepted a $3.4 billion settlement. The settlement establishes a $2 billion trust for anyone willing to sell tribal lands. The Department of the Interior also agreed to set aside 5 percent of the land's value for scholarships for American Indian children.

American Indians have also not fared particularly well in other policy areas, such as religious freedom. The Supreme Court used the rational basis test to rule that a state could infringe on religious exercise (use of peyote as a sacrament in religious ceremonies) as long as it served a compelling state interest.[54] Congress attempted to restore some of those rights through passage of the Religious Freedom Restoration Act in 1993. The Supreme Court, however, disagreed, declaring parts of the law unconstitutional.[55]

Like the civil rights and women's rights movements, the movement for American Indian rights has had a radical as well as a more traditional branch. In 1973, for example, national attention centered on the plight of Indians when members of the radical American Indian Movement took over Wounded Knee, South Dakota, the site of the U.S. Army's massacre of 150 Indians in 1890. Just two years before the protest, the treatment of Indians had been highlighted in Dee Brown's best-selling *Bury My Heart at Wounded Knee,* which in many ways served to mobilize public opinion against the oppression of American Indians in the same way *Uncle Tom's Cabin* had against slavery.[56]

Asian and Pacific Island Americans

One of the most significant difficulties for Asian and Pacific Island Americans has been finding a Pan-Asian identity. Originally, Asian and Pacific Island Americans were far more likely to identify with their individual Japanese, Chinese, Korean, or Filipino heritage.[57] Not until 1977 did the U.S. government decide to use "Asian and Pacific Island" for all of these origins. Some subgroups have even challenged this identity; in the 1990s, native Hawaiians unsuccessfully requested to be categorized with American Indians, with whom they felt greater affinity.

Discrimination against Asian and Pacific Island immigrants developed over time in the United States. In 1868, Congress passed a law allowing free migration from China, because workers were needed to complete building an intercontinental railroad. But in 1882, Congress passed the Chinese Exclusion Act, which was the first act to restrict the immigration of any identifiable nationality. This legislation implicitly invited more discriminatory laws against the Chinese, which closely paralleled the Jim Crow laws affecting African Americans.

Several Supreme Court cases also slowed the progress of Asian and Pacific Island Americans. This began to change in 1886, when the Court decided the landmark case of *Yick Wo* v. *Hopkins,* using the rational basis test highlighted in Table 5.1. A number of events precipitated this decision. Discriminatory provisions in the California Constitution prevented Chinese people from practicing many professions. However,

HOW WERE JAPANESE AMERICANS TREATED DURING WORLD WAR II?

The internment of Japanese Americans during World War II was a low point in American history. In *Korematsu* v. *U.S.* (1944), the U.S. Supreme Court upheld the constitutionality of this action.

the Chinese in California were allowed to open laundries. And, many immigrants did. In response to this growing trend, the city of San Francisco passed a ban on laundries operating in wooden buildings, two-thirds of which were owned by persons of Chinese ancestry. The Court in *Yick Wo* found that the law violated the Fourteenth Amendment in its application since one ethnic group was being targeted.[58]

In 1922, the Court took a step backward, ruling that Asian and Pacific Island Americans were not white and therefore not entitled to full citizenship rights.[59] Conditions became even worse, especially for those of Japanese descent, after the Japanese attack on Pearl Harbor in 1941. In response to the attack, President Franklin D. Roosevelt issued Executive Order 9066, which led to the internment of over 130,000 Japanese Americans, Italian Americans, and German Americans, some of whom were Jewish refugees. More than two-thirds of those confined to internment camps were U.S. citizens. The Supreme Court upheld the constitutionality of these camps in *Korematsu* v. *U.S.* (1944). The justices applied the strict scrutiny standard of review and ruled that these internments served a compelling governmental objective and were not discriminatory on their face. According to Justice Hugo Black:

> Korematsu was not excluded from the Military Area because of hostility to him or his race. He was excluded because we are at war with the Japanese Empire, because the properly constituted military authorities feared an invasion of our West Coast and felt constrained to take proper security measures, because they decided that the military urgency of the situation demanded that all citizens of Japanese ancestry be segregated from the West Coast temporarily, and, finally, because Congress, reposing its confidence in this time of war in our military leaders—as inevitably it must—determined that they should have the power to do just this.[60]

In sharp contrast, as a goodwill gesture to an ally, the U.S. government offered Chinese immigrants the opportunity to apply for U.S. citizenship. At the end of the war, President Harry S Truman extended the same privilege to Filipino immigrants, many of whom had aided in the war effort.

During the 1960s and 1970s, Asian and Pacific Island Americans, like many other groups discussed in this chapter, began to organize for equal rights. Filipino farm workers, for example, joined with Mexicans to form the United Farm Workers Union. In 1973, the Movement for a Free Philippines emerged to oppose the government of Ferdinand Marcos, the president of the Philippines. Soon, it joined forces with the Friends of Filipino People, also founded in 1973. These groups worked with the Free Legal Assistance Group (FLAG) to openly oppose the Vietnam War and, with the aid of the Roman Catholic Church, established relief organizations for Filipinos in the United States and around the world.

In the 1970s and 1980s, Japanese Americans also mobilized, lobbying the courts and Congress for reparations for their treatment during World War II. In 1988, Congress passed the Civil Liberties Act, which apologized to the interned and their descendents and offered reparations to them and their families.

Today, myriad Asian and Pacific Island Americans are the fastest-growing minority group. They target diverse political venues. In California, in particular, they have enjoyed success in seeing more men and women elected at the local and state levels.

Gays and Lesbians

Until very recently, gays and lesbians have experienced many challenges in achieving anything approximating equal rights.[61] However, gays and lesbians have, on average, far higher household incomes and educational levels than other minority groups, and they are beginning to convert these advantages into political clout at the ballot box. They have also recently benefited from changes in public opinion. Like African Americans and women, gays and lesbians have worked through the courts to achieve incremental legal change. In the late 1970s, gay and lesbian activists dedicated to ending legal restrictions on the civil rights of homosexuals founded Lambda Legal, the National Center for Lesbian Rights, and Gay and Lesbian Advocates and Defenders (GLAD).[62] These groups have won important legal victories concerning HIV/AIDS discrimination, insurance policy survivor benefits, and even some employment issues. However, progress in other areas has relied on changing voters' and policymakers' hearts and minds.[63]

In 1993, for example, President Bill Clinton tried to ban discrimination against homosexuals in the armed services. Eventually, Clinton compromised with congressional and military leaders on what was called the "Don't Ask, Don't Tell" (DADT) policy. The military would no longer ask gays and lesbians if they were homosexual, but it barred them from revealing their sexual orientation under threat of discharge. Despite the compromise, the armed services discharged thousands on the basis of their sexual orientation. Government officials called the policy into question as the wars in Iraq and Afghanistan increased America's need for active-duty military personnel.

In 2010, a federal district court judge ruled the "Don't Ask" policy unconstitutional. She also issued an injunction directing the Department of Defense to refrain from enforcing the policy. As a result of these rulings and increasing public pressure, in late 2010, Congress passed and President Barack Obama signed into law a formal repeal of DADT. In September 2011, the policy officially ended, paving the way for many military members to openly acknowledge their homosexuality.

Changes in public opinion have also opened the door for greater legal and constitutional protection for gay and lesbian rights.[64] In 1996, for example, the U.S. Supreme Court ruled that an amendment to the Colorado Constitution that denied homosexuals the right to seek protection from discrimination was unconstitutional under the equal protection clause of the Fourteenth Amendment.

Less than ten years later, these sentiments were reflected in the Court's decision in *Lawrence* v. *Texas* (2003). In this case, the Court reversed an earlier ruling, finding a Texas statute banning sodomy to be unconstitutional. Writing for the majority, Justice Anthony Kennedy stated, "[homosexuals'] right to liberty under the due process clause gives them the full right to engage in their conduct without intervention of the government."[65]

Following the Court's ruling in *Lawrence,* many Americans were quick to call for additional rights for homosexuals. A good number of corporations responded to this amplified call. For example, Walmart announced it would ban job discrimination based on sexual orientation. In addition, editorial pages across the country praised the Court's ruling, arguing that the national view toward homosexuality had changed.[66] In November 2003, the Massachusetts Supreme Court further agreed when it ruled that denying homosexuals the right to civil marriage was unconstitutional under the commonwealth's constitution. The U.S. Supreme Court later refused to hear an appeal of this case, paving the way for legality of same-sex marriage.

While voters, legislators, and courts in more liberal states took action to legalize these unions, the Religious Right mobilized against them. In 2004, many conservative groups and Republican politicians made same-sex marriage a key issue. Initiatives or referenda prohibiting same-sex marriage were placed on eleven state ballots, and voters overwhelmingly passed all of them. The 2006 mid-term elections also saw same-sex marriage bans on several state ballots, but the issue seemed to lack the emotional punch of the 2004 effort in the context of plummeting presidential approval and the ongoing war in Iraq.

In 2008, courts in California and Connecticut joined Massachusetts in legalizing same-sex marriages. Proponents of gay and lesbian rights were encouraged by these rulings, but many other citizens found them morally reprehensible. Voters in California, which allows citizens to bring reforms to the ballot through a process known as the initiative, quickly passed a proposal, Proposition 8, which amended the state constitution and made same-sex marriages illegal again.

Proposition 8 was the subject of a protracted political battle. But, in 2013, the U.S. Supreme Court reached a decision that cleared the way for Proposition 8 to be declared unconstitutional under the due process and equal protection clauses of the Fourteenth Amendment. In June of that year, same-sex marriages resumed in California.[67]

WHY IS SAME-SEX MARRIAGE CONTROVERSIAL?

The legalization of same-sex marriage in California in 2008 allowed gay couples committed to one another for decades to tie the knot. Here, lesbian activists Del Martin (age 87) and Phyllis Lyon (age 83)—partners for more than 50 years—are married by San Francisco Mayor Gavin Newsom. Unions such as this face opposition by many religious conservatives, who believe homosexuality is a sin and support only the rights of heterosexual couples to marry. Martin died in August 2008, only a few months after her wedding.

In more recent years, a growing number of states have legalized either gay marriage or civil unions for same-sex couples. This process has also been aided by the Supreme Court's 2013 decision declaring unconstitutional the 1996 Defense of Marriage Act (DOMA), a federal law defining marriage as between one man and one woman. And in 2014, the Supreme Court's refusal to hear appeals from several lower courts questioning the constitutionality of state bans on same-sex marriages effectively allowed same-sex marriages to occur in seven additional states.

Americans with Disabilities

Americans with disabilities also have lobbied hard for anti-discrimination legislation as well as equal protection under the Constitution. In the aftermath of World War II, many veterans returned to a nation unequipped to handle their disabilities. The Korean and Vietnam Wars made the problems of disabled veterans all the more clear. These veterans saw the successes of African Americans, women, and other minorities, and they, too, began to lobby for greater protection against discrimination.[68] In 1990, in coalition with other disabled people, veterans finally convinced Congress to pass the Americans with Disabilities Act (ADA). The statute defines a disabled person as someone with a physical or mental impairment that limits one or more "life activities," or who has a record of such impairment. It thus extends the protections of the Civil Rights Act of 1964 to all citizens with physical or mental disabilities. It guarantees access to public facilities, employment, and communication services. Furthermore, it

WHOM DOES THE AMERICANS WITH DISABILITIES ACT PROTECT?

George Lane was the appellant in *Tennessee* v. *Lane* (2004), concerning the scope of the Americans with Disabilities Act, which guarantees the disabled access to public buildings, among other protections. Lane was forced to crawl up two flights of stairs to attend a state court hearing on a misdemeanor charge. Had he not, he could have been jailed.

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affirmative action
Policies designed to give special attention or compensatory treatment to members of a previously disadvantaged group.

requires employers to acquire or modify work equipment, adjust work schedules, and make existing facilities accessible to those with disabilities. For example, people in wheelchairs must have ready access to buildings, and deaf employees must have telecommunication devices made available to them.

In 1999, the U.S. Supreme Court issued a series of four decisions redefining and limiting the scope of the ADA. The cumulative impact of these decisions dramatically limited the number of people who can claim coverage under the act. Moreover, these cases "could profoundly affect individuals with a range of impairments—from diabetes and hypertension to severe nearsightedness and hearing loss—who are able to function in society with the help of medicines or aids but whose impairments may still make employers consider them ineligible for certain jobs."[69] Thus, pilots who need glasses to correct their vision cannot claim discrimination when employers fail to hire them, even though their vision is correctable.[70] In the 2004 case of *Tennessee* v. *Lane,* however, the Court ruled 5–4 that disabled persons could sue states that failed to make reasonable accommodations to ensure that courthouses are handicapped accessible.[71]

The largest national nonprofit organization lobbying for expanded civil rights for the disabled is the American Association of People with Disabilities (AAPD). Acting on behalf of over 56 million Americans who suffer from some form of disability, it works in coalition with other disability organizations to make certain that the ADA is implemented fully. The activists who founded AAPD lobbied for the ADA and recognized that "beyond national unity for ADA and our civil rights, people with disabilities did not have a venue or vehicle for working together for common goals."[72]

Toward Reform: Civil Rights and Affirmative Action

5.6 Evaluate the ongoing debate concerning civil rights and affirmative action.

Many civil rights debates center on the question of equality of opportunity versus equality of results. Most civil rights and women's rights organizations argue that taking race and gender into account in fashioning remedies for discrimination is the only way to overcome the lingering and pervasive burdens of racism and sexism, respectively. They argue that the Constitution is not, and should not be, blind to color or sex.

Other groups believe that if the use of labels to discriminate against a group was once wrong, the use of those same labels to help a group should likewise be wrong. They argue that laws should be neutral, or color-blind. According to this view, quotas and other forms of **affirmative action,** policies designed to give special attention or compensatory treatment to members of a previously disadvantaged group, are unconstitutional.

The debate over affirmative action and equality of opportunity became particularly intense during the presidential administration of Ronald Reagan. Shortly before his election, the Court generally decided in favor of affirmative action in two cases. In 1978, the Supreme Court for the first time fully addressed the issue of affirmative action. Alan Bakke, a thirty-one-year-old paramedic, sought admission to several medical schools, which rejected him because of his age. The next year, he applied to the University of California at Davis and was placed on its waiting list. The Davis Medical School maintained two separate admission committees—one for white students and another for minority students. The school did not admit Bakke, although his grades and standardized test scores were higher than those of all African American students admitted to the school. In *Regents of the University of California* v. *Bakke* (1978), a sharply divided Court concluded that Bakke's rejection had been illegal because the use of strict quotas was inappropriate.[73] The medical school, however, was free to "take race into account," said the Court.

Bakke was followed by a 1979 case in which the Court ruled that a factory and a union could voluntarily adopt a quota system in selecting black workers over more senior white workers for a training program.[74] These kinds of programs outraged blue-collar Americans, who traditionally had voted for the Democratic Party. In 1980, they abandoned the party in droves to support Ronald Reagan, an ardent foe of affirmative action.

For a time, despite the addition of Reagan-appointed Justice Sandra Day O'Connor to the Court, the justices continued to uphold affirmative action plans, especially when clear-cut evidence of prior discrimination was present. In 1987, for example, the Court ruled for the first time that a public employer could use a voluntary plan to promote women even if no judicial finding of prior discrimination existed.[75]

In all these affirmative action cases, the Reagan administration strongly urged the Court to invalidate the plans in question, but to no avail. Changes on the Court, however, including the 1986 elevation of William H. Rehnquist, a strong opponent of affirmative action, to chief justice, signaled an end to advances in civil rights law. In a three-month period in 1989, the Supreme Court handed down five civil rights decisions limiting affirmative action programs and making it harder to prove employment discrimination.

In February 1990, congressional and civil rights leaders unveiled legislation designed to overrule the Court's decisions, which, according to the bill's sponsor, "were an abrupt and unfortunate departure from its historic vigilance in protecting the rights of minorities."[76] The bill passed both houses of Congress but was vetoed by President Reagan's successor, George Bush, and Congress failed to override the veto. In late 1991, however, Congress and the White House reached a compromise on a weaker version of the civil rights bill, which passed by overwhelming majorities in both houses of Congress. The Civil Rights Act of 1991 overruled all five Supreme Court rulings.

The Supreme Court, however, has not remained silent on the issue. In 1995, the Court ruled that Congress, like the states, must show that affirmative action programs meet the strict scrutiny test.[77] In 1996, the Court of Appeals for the Fifth Circuit also declared as unconstitutional the University of Texas Law School's affirmative action admissions program, throwing the college and university admissions programs in Texas, Oklahoma, and Mississippi into turmoil. Later that year, the U.S. Supreme Court refused to hear the case, thereby allowing the decision by the Court of Appeals to stand.[78]

By 2002, the U.S. Supreme Court once again found the affirmative action issue ripe for review. In *Grutter* v. *Bollinger* (2003), the Court voted to uphold the constitutionality of the University of Michigan's Law School admissions policy, which gave preference to minority applicants.[79] However, in *Gratz* v. *Bollinger* (2003), the Court struck down Michigan's undergraduate point system, which gave minority applicants twenty automatic points simply because they were minorities.[80] Michigan voters responded to this ruling by passing Proposal 2, a measure placed on the ballot and approved by voters in 2006. Also known as the Michigan Civil Rights Initiative, the proposal prohibited state colleges and universities from granting preferential treatment to applicants on the basis of race.

In 2014, the U.S. Supreme Court was asked to consider the constitutionality of this measure, and ruled that voters could use ballot initiatives to put an end to state-sponsored affirmative action policies in the area of higher education—and, presumably, in hiring state employees and awarding government contracts. Justice Anthony Kennedy wrote that the decision in this case was "not about how the debate about racial preferences should be resolved. It [was] about who may resolve it. . . . [T]he courts may not disempower the voters from choosing which path to follow."[81]

Thus, affirmative action programs remain a volatile point of conflict in modern American politics. They illustrate perfectly the challenges of creating public policy on civil rights issues. Proponents continue to argue that affirmative action and other similar programs are necessary to bring about greater equality for all races, genders, colors, and creeds, but opponents charge that inequality in access and preference can never translate to greater equality in society.[82]

Review the Chapter

Roots of Suffrage: 1800–1890

5.1 Trace the efforts from 1800 to 1890 of African Americans and women to win the vote, p. 118.

When the Framers tried to compromise on the issue of slavery, they only postponed dealing with a volatile question that eventually would rip the nation apart. Ultimately, the Civil War brought an end to slavery. Among its results were the triumph of the abolitionist position and the adoption of the Thirteenth, Fourteenth, and Fifteenth Amendments. During this period, women also sought expanded rights, especially the right to vote, to no avail.

The Push for Equality, 1890–1954

5.2 Outline developments in African Americans' and women's push for equality from 1890 to 1954, p. 124.

Although the Civil War Amendments became part of the Constitution, the Supreme Court limited their application. As legislatures throughout the South passed Jim Crow laws, the NAACP was founded in the early 1900s to press for equal rights for African Americans. Woman's groups also were active during this period, successfully lobbying for passage of the Nineteenth Amendment, which ensured them the right to vote. Groups such as the National Consumers League (NCL) began to view litigation as a means to an end and went to court to argue for the constitutionality of legislation protecting women workers.

The Civil Rights Movement

5.3 Analyze the civil rights movement and the effects of the Civil Rights Act of 1964, p. 129.

In 1954, the U.S. Supreme Court ruled in *Brown* v. *Board of Education* that racially segregated state school systems were unconstitutional. This victory empowered African Americans as they sought an end to other forms of pervasive discrimination. Bus boycotts, sit-ins, freedom rides, pressure for voting rights enforcement, and massive nonviolent demonstrations became common tactics. These efforts culminated in passage of the Civil Rights Act of 1964, which gave African Americans another weapon in their legal arsenal.

The Women's Rights Movement

5.4 Assess statutory and constitutional remedies for discrimination pursued and achieved by the women's rights movement, p. 135.

After passage of the Equal Pay Act of 1963 and the Civil Rights Act of 1964, a new women's rights movement arose. Several women's rights groups were created. Some sought a constitutional amendment (the Equal Rights Amendment) as a remedy for discrimination; it would elevate the standard of review for sex-based claims. In general, strict scrutiny, the most stringent standard, is applied to race-based claims and cases involving fundamental freedoms. The Court developed an intermediate standard of review to assess the constitutionality of sex discrimination claims. All other claims are subject to the rational basis test.

Other Groups Mobilize for Rights

5.5 Describe how other groups have mobilized in pursuit of their own civil rights, p. 141.

Building on the successes of African Americans and women, other groups, including Hispanics, American Indians, Asian and Pacific Island Americans, gays and lesbians, and those with disabilities, organized to litigate for expanded civil rights and to lobby for anti-discrimination laws.

Toward Reform: Civil Rights and Affirmative Action

5.6 Evaluate the ongoing debate concerning civil rights and affirmative action, p. 150.

All of the groups discussed in this chapter have yet to reach full equality. Affirmative action, a policy designed to remedy education and employment discrimination, continues to generate controversy.

Learn the Terms

Study and **Review** the **Flashcards**

affirmative action, p. 150
Black Codes, p. 121
Brown v. *Board of Education* (1954), p. 128
civil rights, p. 118
Civil Rights Act of 1964, p. 134
Civil Rights Cases (1883), p. 123
de facto discrimination, p. 134
de jure discrimination, p. 134
Equal Pay Act of 1963, p. 140
equal protection clause, p. 121
Equal Rights Amendment, p. 136
Fifteenth Amendment, p. 122
Fourteenth Amendment, p. 121
grandfather clause, p. 124
Jim Crow laws, p. 123
Nineteenth Amendment, p. 126
Plessy v. *Ferguson* (1896), p. 124
poll tax, p. 123
strict scrutiny, p. 138
suffrage movement, p. 126
suspect classification, p. 138
Thirteenth Amendment, p. 121
Title IX, p. 141

Test Yourself

Study and **Review** the **Practice Tests**

1. The Fourteenth Amendment, which provided legal protection for the rights of citizens, did NOT include

a. African Americans.
b. those with a "previous condition of servitude."
c. women.
d. those over twenty-one years old.
e. immigrants.

2. Why did Elizabeth Cady Stanton and Lucretia Mott found the first woman's rights movement in the nineteenth century?

a. They escaped from slavery and joined forces with William Lloyd Garrison.
b. After attending an abolitionist meeting, they concluded that women were not much better off than slaves.
c. They were jailed for attempting to hold a woman's rights convention in Seneca Falls in 1848.
d. Frederick Douglass encouraged them to leave the abolition movement to pursue their own causes.
e. Their husbands and sons made comments implying women were undeserving of suffrage rights.

3. Which law(s), passed after the Civil War Amendments, reverted many African Americans back to conditions similar to those of slavery?

a. Equal protection clause
b. Civil Rights Act of 1875
c. Fifteenth Amendment
d. Civil Rights Act of 1866
e. Black Codes

4. Women's rights advocates won the right to vote with the ratification of the

a. Eighteenth Amendment.
b. Nineteenth Amendment.
c. Twentieth Amendment.
d. Seventeenth Amendment.
e. Sixteenth Amendment.

5. *Brown* v. *Board of Education* (1954) ruled that segregation in schools is unconstitutional because:

a. there were not enough law schools for African Americans.
b. all schools should be integrated.
c. it violates the Fourteenth Amendment's guarantee of equal protection.
d. postgraduate programs were not offered to African Americans.
e. African Americans had fought in World War II and should therefore be afforded adequate schooling.

6. The Civil Rights Act of 1964 did all of the following EXCEPT:

a. create a commission to monitor workplace discrimination.
b. prohibit discrimination in employment based on race, creed, color, religion, national origin, or sex.
c. allow discrimination in voter registration.
d. allow the withholding of federal funds from discriminatory programs.
e. establish Department of Justice monitoring of southern elections.

7. Which standard of review does the U.S. Supreme Court apply to practices involving alleged gender discrimination?

a. Strict scrutiny
b. Heightened standard
c. Intermediate standard
d. Minimum rationality
e. Suspect class scrutiny

8. Which of these issues has NOT been a subject of litigation and lobbying on behalf of Hispanic rights groups?

a. Education
b. Immigration
c. Workers' rights
d. Driver's licensing
e. Protection of native lands

9. Which group did President Franklin D. Roosevelt's executive order NOT force into internment camps after the attack on Pearl Harbor?

a. German Americans
b. Irish Americans
c. Italian Americans
d. Jewish refugees
e. Japanese Americans

10. Which of the following statements is true about affirmative action programs in the United States?

a. Affirmative action programs are widespread with virtually no limitations.
b. Affirmative action programs have been deemed unconstitutional.
c. Affirmative action programs can be used, but they must pass the strict scrutiny test.
d. Numerical quotas are the only means by which affirmative action can be applied.
e. Racial and ethnic parity has made affirmative action programs obsolete.