

Chapter 18

Equal Rights under the Law

Key Chapter Questions

1. How does the struggle for civil rights relate to the four types of equality in America?
2. How has the struggle for equal rights for women been intertwined with the battle to secure equal rights for African Americans?
3. What have been the struggles for civil rights for Women, Hispanics, Asian Americans and Native Americans?
4. What historic barriers to voting, public accommodations, employment, and education existed in the past and how have these barriers been overcome?
5. Is the practice of affirmative action and preference policies constitutional?
6. What issues regarding equal rights are pertinent today?

Chapter Outline

- I. Equality and equal rights
 - A. Equal rights, natural rights, and equality
 - B. Quest for equal justice
 1. Segregation and white supremacy
 - a. By 1900 white supremacy was unchallenged in the South, where most African Americans lived
 - b. During World War I, African Americans began to migrate to northern cities to seek educational opportunities and jobs in war factories
 2. The national government responds
 - a. After World War II, civil rights litigation began to have an impact
 - b. In 1954 in *Brown v. Board of Education*, the Supreme Court reversed the *Plessy* decision and declared public school segregation unconstitutional
 3. A turning point
 - a. The forces of social discontent exploded in the summer of 1963
 - b. The Civil Rights Act of 1964
 4. Two societies?
 - a. At the close of the 1960s, deep divisions between the races continued and there was a sense of urgency about taking corrective action
 5. The Kerner Commission
 - a. In 1967, President Lyndon Johnson appointed a special Advisory Commission on Civil Disorder to investigate the origins of the riots and to recommend measures to prevent or contain such disasters in the future
 - b. Commission concluded that our nation is moving toward two societies, one black and one white, separate and unequal and only a commitment to national action on an unprecedented level could change this trend
 - C. Women's Rights
 1. Began at the Seneca Falls Women's Rights Convention in 1848
 2. A campaign for women's suffrage (the right to vote) was underway by the turn of the century
 3. The Nineteenth Amendment, that allowed women to vote, was ratified in 1920
 4. The Equal Rights Amendment occupied much of the women's movement during the last

several decades

5. Women's issues include pay, pensions, world peace, sexual harassment, abortion rights, and election to office

D. Hispanics

1. 27 million, about 10 percent of U.S. population
 - a. 14 million Mexican Americans
 - b. 2.7 million Puerto Ricans
 - c. 1 million Cubans
 - d. 5 million refugees from Central and South America
2. Handicaps
 - a. Lack ties with the white power structure
 - b. English is not their native tongue
3. Becoming increasingly active in politics

E. Asian-Americans

1. Americans of Chinese, Japanese, Vietnamese, Cambodian, Korean, or other ancestry
2. 40 percent of our immigrants are from Asia
3. A "model minority"
4. Asian-Americans face widespread prejudice, discrimination, and barriers to equal opportunity
5. 1988-\$20,000 restitution to each surviving World War II internees

F. Native Americans

1. Two million Native Americans with great diversity
2. Can regulate own internal affairs, subject to congressional supervision
3. Most live in poverty and in poor health; Congress has begun compensating them for past injustices
4. Civil rights movement led to Native Americans seeking a reassertion of treaty rights and tribal autonomy

II. Equal protection of the laws: what does it mean?

A. The equal protection clause

1. The Rational Basis test
 - a. Traditional test
 - b. Places the burden of proof on those attacking it
 - c. If facts justify a classification, the law will be sustained
2. Suspect classification and strict scrutiny
 - a. Strict scrutiny is the most stringent test
 - b. Used when a suspect class or a fundamental right is involved
 - c. Courts must be persuaded that there is both a "compelling public interest" to justify a classification and no other less restrictive way to accomplish this compelling public purpose
3. Quasi-suspect classifications and heightened scrutiny
 - a. Intermediate test
 - b. Burden is on the government to show that its classification serves "important governmental objectives" and is substantially related to these objectives
 - c. Illegitimate children and gender classifications are subject to the heightened scrutiny test
4. Poverty and age
 - a. The Supreme Court is being urged to designate the poor and the elderly as suspect or quasi-suspect classes for greater judicial protection
5. Fundamental rights and strict scrutiny
 - a. The Court strictly scrutinizes laws impinging on fundamental rights, those rights that are explicitly or implicitly guaranteed by the Constitution

B. Proving discrimination

1. *Washington v. Davis* (1976) – the Court ruled that a law is not considered unconstitutional if it has a disparate impact on persons of different race or sex unless it can be shown that they were adopted with the intent to discriminate against minorities

- III. Voting rights
 - A. Protecting Voting Rights
 - 1. After federal troops withdrew from the South in 1877, southern Democrats used social pressure, violence, and terrorist activities to keep African-Americans from voting
 - 2. Other devices used to keep African Americans from voting
 - a. White primary
 - b. Racial gerrymandering
 - c. Poll tax
 - d. Registration requirements
 - e. Literacy tests
 - B. The Voting Rights Act of 1965
 - 1. Section 2 prohibits any voting qualifications or standards that result in a denial of the right of any citizen to vote on account of race and color
 - 2. Section 5 requires that states that had a history of denying African-Americans the right to vote must clear any changes in any voting practice or laws that might result in dilution of voting power with the Department of Justice
 - 3. The Supreme Court, in a series of cases beginning with *Shaw v. Reno*, announced that although states may take race into account, they may not make race the sole reason for drawing district lines

- IV. Education rights
 - A. Segregation, discrimination, and *Plessy v. Ferguson*
 - 1. *Plessy v. Ferguson* (1896) – the Court endorsed the separate-but-equal doctrine
 - 2. Separate but equal always resulted in discrimination against African-Americans, leading to lawsuits challenging the doctrine
 - B. The end of separate-but-equal: *Brown v Board of Education* (1954) – the Court reversed its *Plessy* decision; segregation is itself discrimination
 - 2. Title VI of the Civil Rights Act of 1964 stipulates that federal dollars under any grant or project be withdrawn from a school that discriminates
 - C. From segregation to desegregation but not to integration
 - 1. *Missouri v. Jenkins* (1995) – Court ruled that racial isolation is not a harm state enforced segregation
 - 2. Supreme Court sustained the right of judges to order busing to overcome *de jure* segregation
 - 3. The Court has refused to permit judges to order busing to overcome the effects of *de facto* segregation
 - 4. The Supreme Court started to limit mandates to those violating the Constitution
 - 5. Political support behind efforts to integrate schools by busing is fading

- V. Rights to public accommodations, jobs, and homes
 - A. Association
 - 1. 5th and 14th applied only to government action
 - 2. *Boy Scouts of America v. Dale* (2000)
 - B. The Civil Rights Act of 1964
 - 1. Title II: Places of public accommodation
 - a. Makes it a federal offense to discriminate against any customer or patron in a place of public accommodation because of race, color, religion, or national origin
 - 2. Title VII: Employment
 - a. Makes it illegal for any employer or trade union in any industry affecting interstate commerce and employing 15 or more people to discriminate in employment practices against any person because of race, color, national origin, religion, or sex
 - b. Forbids discrimination with respect to compensation, terms, conditions, or privileges of employment
 - c. In 1991, Congress amended Title VII to make it easier to challenge employment practices that have a disparate impact on women and minorities
 - d. Special features of Title VII
 - 1. Aggrieved persons can file a class action suit
 - 2. Equal Employment Opportunity Commission (EEOC) enforces its provisions
 - e. Affirmative action programs – 1965 presidential executive order requires all contractors of the federal government, including universities, to adopt and implement affirmative action programs to correct for "underutilization" of women and minorities
 - C. Housing: the Fair Housing Act and Amendments, 1968 and 1988
 - 1. The Fair Housing Act of 1968, amended in 1988, forbids (with some exclusions) owners to refuse to sell or rent to any person because of race, color, religion, national origin, sex (since 1978), handicap, or because a person has children (since 1988)
 - 2. Housing segregation persists
- VI. Affirmative action: is it constitutional?
 - A. In *Brown v. Board of Education*, the Court made race a suspect class
 - B. Affirmative action programs versus reverse discrimination (People Debate)
 - C. Constitutionality of affirmative action programs
 - 1. *University of California Regents v. Bakke* (1978)
 - 2. *Richmond v. Croson* (1989)
 - 3. *Hopwood v. Texas* (1996)
 - 4. Proposition 209 and Washington's Initiative 200 – adopted by California voters – amends their State Constitutions to forbid state agencies from discriminating against or giving any preference based on race or gender for employment, admissions, contracting, or purchasing
 - 5. Public support for affirmative action varies by race, social class, education and life experience
- VII. Equal rights today
 - A. Many prosperous middle-class African-Americans moved out of the inner city
 - B. Life conditions for inner-city African Americans is worse than before
 - C. Acceptance of segregation
 - D. Most Americans perceive conditions for minorities as improving
 - E. The issue of race is still a dominant domestic issue