CIVIL LIBERTIES

A respect for civil liberties and civil rights is one of the most fundamental principles of the American political culture. The founders were very concerned with defining and protecting liberties and rights, and their efforts are reflected in the Declaration of Independence, the Constitution, and the Bill of Rights. Civil liberties and rights have continued to evolve through the years by means of additional amendments (particularly the Fourteenth), court decisions, and legislative actions.

THE DECLARATION OF INDEPENDENCE

"We hold these truths to be self-evident; that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

Thomas Jefferson, 1776

The Declaration clearly reflects the founders' belief that governments are responsible for protecting the "unalienable rights" of "life, liberty, and the pursuit of happiness." Since people are clearly capable of abusing the "natural rights" of others, the government must protect the rights of its citizens.

THE ORIGINAL CONSTITUTION

Most of the framers believed that the basic "natural rights" were guaranteed by the original Constitution before the Bill of Rights was added. Rights specifically mentioned in the body of the Constitution are:

- *writ of habeas corpus*
- no bills of attainder
- no *ex post facto* laws
- trial by jury in federal courts in criminal cases
- protection as citizens move from one state to another
- no titles of nobility
- limits on punishment for and use of the crime of treason
- no religious oaths for holding federal office
- guarantee of republican government for all states

THE WRIT OF *HABEAS CORPUS*

"The privilege of the *Writ of Habeas Corpus* shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."

Article One, Section Nine

Habeas Corpus literally means "produce the body." The writ is a court order requiring government officials to present a prisoner in court and to explain to the judge why the person is being held. Suspension of *habeas corpus* is a right of Congress, since the passage above appears in Article One, which defines the powers of Congress.

Originally, the writ was only a court inquiry regarding the jurisdiction of the court that ordered the individual's confinement, but today it has developed into a remedy that a prisoner can formally request. A federal judge may order the jailer to show cause why the person is being held, and the judge may order the prisoner's immediate release.

The Supreme Court under Chief Justice Rehnquist has severely limited the use of *habeas corpus* partly because prisoners on death row have used it to delay their executions, sometimes for years. Supporters of *habeas corpus* believe that judges should be allowed to use their own judgment in issuing the writs because they are protecting constitutional rights.

EX POST FACTO LAWS AND BILLS OF ATTAINDER

The Constitution forbids both national and state governments from passing ***ex post facto* laws.** An ex post facto law is a retroactive criminal law that affects the accused individual negatively. Such laws may make an action a crime that was not a crime when committed, or they may increase punishment for a crime after it was committed. On the other hand, the restriction does not apply to penal laws that work in favor of the accused.

A bill of attainder is a legislative act that punishes an individual or group without judicial trial. The Constitution forbids them because the founders believed that it is the job of the Courts, not Congress, to decide that a person is guilty of a crime and then impose punishment

THE BILL OF RIGHTS

The overwhelming majority of court decisions that define American civil liberties are based on the Bill of Rights, the first ten amendments added to the Constitution in 1791.

Even though most of the state constitutions in 1787 included separate bills of rights for their citizens, the original Constitution mentioned only the rights listed above. These rights were scattered throughout the articles, with most of the attention focused on defining the powers of the branches of government, not on preserving individual rights. Many people were widely suspicious of these omissions, and in order to gain ratification, the founders agreed to add ten amendments in 1791, the **Bill of Rights**.

- The **First Amendment** guarantees freedom of speech, press, assembly and petition. In addition, it prohibits Congress from establishing a national religion.
- The **Second Amendment** allows the right to bear arms.
- The **Third Amendment** prohibits the quartering of soldiers in any house.

- The **Fourth Amendment** restricts searches and seizures ("the right of the people to be secure in their persons, houses, papers, and effects").
- The **Fifth Amendment** provides for grand juries, restricts eminent domain (the right of the government to take private property for public use), and prohibits forced self-incrimination and double jeopardy (being tried twice for the same crime).
- **Amendment Six** outlines criminal court procedures.
- **Amendment Seven** guarantees trial of jury in civil cases that involve values as low as twenty dollars.
- **Amendment Eight** prevent excessive bail and unusual punishment
- The **Ninth Amendment** allows that Amendments 1-8 do not necessarily include all possible rights of the people.
- The **Tenth Amendment** reserves for the states any powers not delegated to the national government specifically in the Constitution.

OTHER SOURCES OF CIVIL LIBERTIES AND CIVIL RIGHTS

The Constitution and the Bill of Rights form the basis of Americans values concerning civil liberties and civil rights, but they have been supplemented through the years by other amendments, court decisions, and legislative action.

THE FOURTEENTH AMENDMENT

Civil rights are also protected by the **Fourteenth Amendment**, with protects violation of rights and liberties by the state governments.

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

Amendment Fourteen, Section One

Although the Fourteenth Amendment was originally passed in the post-Civil War era specifically to protect the rights of ex-slaves, the famous Section One protects many citizens' rights from abuse by state governments Whereas the Bill of Rights literally applies only to the national government, the Fourteenth Amendment is intended to limit the actions of state governments as well. Section One includes:

- a citizenship clause that protects "**privileges and immunities**"
- a **due process clause** that prohibits abuse of "life, liberty, or property"
- an **equal protection clause** that has been an important basis of the modern civil rights movement

One important consequence of the Fourteenth Amendment is the **incorporation** of the Bill of Rights to apply to the states. The Bill of Rights originally only limited the powers of the federal

government. For example, in 1833 in ***Barron vs. Baltimore*** the U.S. Supreme Court ruled that the Bill of Rights did not apply to state laws. It was assumed that the statesâ bills of rights would protect individuals from abuse by state laws. However, the 14th Amendment nationalized the nature of civil rights with this statement:

ãNo State shall·deprive any person of life, liberty, or property, without due process of law.ä

Incorporation happened gradually over time through individual court decisions that required states to protect most of the same liberties and rights that the Bill of Rights protects from federal abuse. These changes are reflected in numerous court decisions made between 1925 and 1969. Two examples of cases that reflect incorporation are:

〈 **Gitlow v. New York** (1925) ö Benjamin Gitlow was arrested and found guilty of breaking a New York state sedition act when he passed out pamphlets that supported socialism and overthrow of the government. Gitlow believed that his freedom of speech was violated, and the case was appealed to the Supreme Court Even though the Court did not declare the New York law unconstitutional, the majority opinion stated that ãfundamental personal rightsä were protected from infringement by states by the Due Process Clause of the Fourteenth Amendment.

- ***Gideon v. Wainwright*** **(**1963) ***ö*** Clarence Gideon appealed the decision of a Florida court to send him to prison for breaking and entering a pool hall. He based his appeal on the right to counsel (guaranteed in the Sixth Amendment) ö because in the original trial he could not afford to hire a lawyer and was not provided one by the state court. The Supreme Court ruled in his favor, again applying the Due Process Clause of the Fourteenth Amendment to require states to provide counsel to anyone charged with a felony who was too poor to afford a lawyer.

COURT DECISIONS

The Supreme Court continues to shape the definition and application of civil rights and civil liberties. Although the court has always played an important role in the protection of civil rights and civil liberties, it has been particularly active in the modern era since about 1937. The Supreme Court sets precedents that influence legislation and subsequent court decisions. The Court's influence is based largely on **judicial review**, the power to judge the constitutionality of a law or government regulation.

LEGISL ATIVE ACTION

The Constitution, the Bill of Rights, and the Fourteenth Amendment protect individuals from actions of government, but court decisions and legislation protect individuals from discriminatory actions by private citizens and organizations. Legislative action is an essential component of the modern civil rights era, although the courts took the earliest initiatives.

The activist court of the 1960s set precedents that broadly construe the commerce clause, which gives Congress the power to regulate interstate and foreign commerce. As a result, through laws

like the Civil Rights Act of 1964, the legislature has played a major role in combating discrimination.

The Constitution, the Bill of Rights, the Fourteenth Amendment, Supreme Court decisions, and legislative actions all define the nature of civil rights and civil liberties in American society, but issues arise which constantly cause reinterpretations of the sources. Conflicts arise largely because issues often involve one citizen's or group's rights versus another's.

FIRST AMENDMENT LIBERTIES

"Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The First Amendment

The Constitution of the United States

The **First Amendment** protects several basic liberties: freedom of religion, speech, press, petition, and assembly. Interpretation of the amendment is far from easy, as court case after court case has tried to define the limits of these freedoms. The definitions have evolved throughout American history, and the process continues today.

FREEDOM OF RELIGION

The 1st Amendment protects freedom of religion in two separate clauses: the ã**establishmentä clause,** which prohibits the government from establishing an official church, and the **ãfree exerciseä clause** that allows people to worship as they please. Surprisingly, the First Amendment does not refer specifically to the "separation of church and state" or a **"wall of separation."** Those phrases evolved later, probably from letters written by Thomas Jefferson, but the First Amendment does prohibit the establishment of a government sponsored religion, such as the Anglican Church in England.

The Establishment Clause

The ***Everson v. Board of Education*** case in 1947 challenged a New Jersey town for reimbursing parents for the cost of transporting students to school, including local parochial schools. The plaintiffs claimed that since the parochial schools were religious, publicly financed transportation costs could not be provided for parochial students. The challenge was based on the establishment clause. The court in this case ruled against the plaintiffs, claiming that busing is a "religiously neutral" activity, and that the reimbursements were appropriate. However, the majority opinion declared that states cannot support one religion above another.

Aid to church-related schools has been a topic at issue with the establishment clause. In 1971 in ***Lemon v. Kurtzman***, the Supreme Court ruled that direct state aid could not be used to subsidize

religious instruction. The Courtâs opinion stated that government aid to religious schools had to be secular in aim, and that ãan excessive government entanglement with religionä should be avoided. However, in recent years the Court has relaxes restrictions on government aid to religious schools. For example, in 1997 the Supreme Court overturned ***Aquilar v. Felton***, a 1985 decision that ruled unconstitutional state aid for disadvantaged students who attend religious schools.

A current establishment clause issue is that of **school vouchers** that allow individuals to ãpurchaseä education at any school, public or private. School districts in several states, including Florida, Ohio, and Wisconsin, have experimented with voucher programs. In 2002 the Supreme Court held that the Cleveland voucher system was constitutional, although almost all the students used the vouchers to attend religious schools.

The most controversial issue of the separation of church and state has been school prayer. The first major case was ***Engle v. Vitale*** (1962). In this case, the Court banned the use of a prayer written by the New York State Board of Regents. It read, ãAlmighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers, and our country.ä Later decisions overturned laws requiring the saying of the Lordâs Prayer and the posting of the Ten Commandments in classrooms. In 1985, *Wallace v. Jaffree* banned Alabamaâs ã**moment of silence**ä law that provided for a one-minute period of silence for ãmeditation or voluntary prayer.ä

In recent years prayer outside the classroom has become an issue, with student initiated prayer at graduation ceremonies and sports events at its focus. In 2000 the Supreme Court affirmed a lower court ruling that school prayer at graduation did not violate the establishment clause, but that prayer over loud speakers at sports events did.

The Free Exercise Clause

The free exercise clause does not allow any laws ãprohibiting the free exercise of religion.ä The courts have interpreted the 14th Amendment to extend the freedom to protection from state governments as well. Religions sometimes require actions that violate the rights of others or forbid actions that society thinks are necessary. The Supreme Court has never allowed religious freedom to be an excuse for any type of behavior. It has consistently ruled that people have the absolute right to believe what they want, but not necessarily the right to religious practices that may harm society.

Some outlawed practices have been polygamy, the use of poisonous snakes in religious rites, and prohibiting medical treatment to children based on religious beliefs. On the other hand, Courts have disallowed some government restrictions of religious exercise, such as forcing flag salutes and requiring Amish parents to send their children to school after eighth grade.

FREEDOM OF SPEECH

Citizens of modern America almost take for granted the responsibility of the government to guarantee freedom of speech. In reality, the definition of freedom of speech has changed

dramatically over the years, with an ever-increasing emphasis on protection of free speech, often at the expense of other liberties and rights. Until recently, especially during times of war and crisis when national security is at stake, the government has passed laws that control free speech.

Free Speech v. National Security

Early in United States history the government almost certainly did not put high priority on the government's responsibility to protect freedom of speech. John Adams, when faced with an international crisis that threatened war with France, saw that Congress passed the **Sedition Act of 1798**, making it a crime to write, utter, or publish anti-government statements with the "intent to defame." The Federalists, who favored strong government authority and emphasized order at the expense of liberty, believed that the First Amendment did not forbid punishing newspapers for libel. The Anti-Federalists did NOT argue that the press should be free of government controls; they protested the act on the grounds that state, not federal government should have control. Thomas Jefferson, a prominent Anti-Federalist, allowed the twenty-year limitation of the Act to run out during his presidency, and the Act died during peace time with little protest.

Presidents, such as Abraham Lincoln during the Civil War, continued to support the government's right to restrict freedom of speech during national security crises through the 19th century and into the 20th. During World War I, the U.S. Congress passed two controversial laws that restricted freedom of speech: **The Espionage Act of 1917** and the **Sedition Act of 1918.**

The Espionage Act of 1917 forbid false statements that intended to interfere with the U.S. military forces or materials to be mailed if they violated the law or advocated resistance to government The Sedition Act of 1918 forbid individuals to utter, print, write or publish language intended to incite resistance to the U.S. government. Under the mandate of the Sedition Act, thousands were arrested and convicted, and some were deported from the country.

The most famous Supreme Court case that resulted from the World War I restrictions was ***Schenck v. U.S*.** Charles Schenck, a socialist who mailed circulars to young men urging them to resist the military draft, was convicted of violating the Espionage Act. The Supreme Court upheld his conviction, with Oliver Wendell Holmes writing the precedent-setting opinion that any language that directly caused an illegal act was not protected by the First Amendment. Holmes distinguished between language that was merely critical of the government and that which was directly a "clear and present danger" to national security. **The "clear and present danger**" test became a standard by which to balance national security and freedom of speech.

Even before the U.S. entered World War II, Congress passed the **Smith Act**, intending to protect the country from the influence of Nazism and Communism. The Act contained two clauses:

- punishment for willfully advocating the overthrow of the government
- punishment for membership in a group that advocated the overthrow of government (the membership clause)

A few cases were tried for wartime behavior, but the real impact of the Smith Act came after World War II was over with the fear of Communist espionage in the Red Scare, or McCarthyism.

The U.S. experienced a dramatic reaction to the Cold War, fueled by the fear that communists were infiltrating the U.S. government and passed security secrets to the Russians. The Internal Security Act of 1950 required Communist organizations to register and to publish membership lists. Many were questioned by Congressional Committees and many were arrested.

By the late 1950s, with McCarthyism subsided and a new Supreme Court under the direction of Earl Warren, the Court leaned more and more toward freedom of speech. No laws were passed restricting speech during the Vietnam War, and the ***Brandenburg v. Ohio*** case established that speech would have to be judged as inciting "imminent" unlawful action in order to be restricted. The case involved a Ku Klux Klan leader convicted of attempting to incite mob action when he said "We'll take the (expletive deleted) street later." The conviction was overturned by the Supreme Court because Brandenburg did not call for an **"imminent" action.**

Restrictions on Free Speech

Today, the following forms of speaking and writing are not granted full constitutional protection

1) **Libel**, a written statement that attacks another person's character, is not automatically protected, although it is very hard to sue for libel. Public figures must prove that a statement is not only false but that it intended "actual malice," a condition that is very hard to define.

2) **Obscenity** is not protected, but the Court has always had a difficult time defining obscenity. The current Court leaves local governments to decide restrictions for hard-core pornography, but of they choose to restrict it, they must meet some strict constitutional tests. One common reaction has been for a local government to establish areas where pornography can and can't be sold. A new issue concerns pornography on the internet. In 1997 the Supreme Court ruled the Communications Decency Act unconstitutional because it infringed too much on free speech.

3) **Symbolic speech**, an action meant to convey a political message, is not protected because to protect it would be to allow many illegal actions, such as murder or rape, if an individual meant to send a message through the action. The Court made an exception to the action of flag-burning in ***Texas v. Johnson*** (1989), when it declared that the Texas law prohibiting flag desecration was unconstitutional. Since flag-burning has no other intent than to convey a message, the Court has ruled that it does not incite illegal actions. Symbolic speech includes advocacy of illegal actions, as well as "fighting words," or inciting others to commit illegal actions. However, in 2003 the Supreme Court ruled that a Virginia law that prohibited the burning of a cross with ãan intent to intimidateä did not violate the First Amendment. The Court reasoned that a burning cross is an instrument of racial terror so threatening that it overshadows free speech concerns.

PRIVACY RIGHTS

The phrase "**right to privacy"** does not appear anywhere in the Constitution or the Bill of Rights. The idea was first expressed in the 1965 ***Griswold v. Connecticut*** case in which a doctor

and family-planning specialist were arrested for disseminating birth control devices under a little-used Connecticut law that forbid the use of contraceptives. The Supreme Court ruled against the state, with the majority opinion identifying "penumbras" - unstated liberties implied by the stated rights - that protected a right to privacy, including a right to family planning.

The most important application of privacy rights came in the area of abortion as first ruled by the Court in ***Roe v. Wade*** in 1973. Jane Roe (whose real name was Norma McCorvey) challenged the Texas law allowing abortion only to save the life of a mother. Texas argued that a state has the power to regulate abortions, but the state overruled, forbidding any state control of abortions during the first three months of a pregnancy and limiting state control during the fourth through sixth months. The justices cited the right to privacy as the liberty to choose to have an abortion before the baby was viable. The *Roe v. Wade* decision sparked the controversy that surrounds abortion today.

Since the late 1980s the Supreme Court has tended to rule more conservatively on abortion rights. For example, in *Webster v. Reproductive Health Services* (1989) the Court upheld a Missouri statue that banned the use taxpayer-supported facilities for performing abortions. In 1992, the Court upheld a Pennsylvania law that required pre-abortion counseling, a waiting period of twenty-four hours, and for girls under eighteen, parental or judicial permission. In 2000 the court reviewed a Nebraska act that banned ãpartial birthä abortion, a procedure that could only take place during the second trimester of a pregnancy. The Court declared the act unconstitutional because it could be used to ban other abortion procedures. The majority opinion also noted that the law did not include protection of the health of the pregnant women. In 2003, the U.S. congress passed a national law similar to the Nebraska act, and it was immediately challenged in court.

RIGHTS OF DUE PROCESS

The **due process** clauses in the Fifth and Fourteenth Amendment forbid the national and state governments to "deny any person life, liberty, or property without due process of law." Although the Supreme Court has refused to define precisely what is meant by due process, it generally requires a procedure that gives an individual a fair hearing or formal trial. Although due process is most often associated with the rights of those accused of crimes, it is required for protecting property rights as well.

PROPERTY RIGHTS

The founders saw the government as not only the protector of property but also the potential abuser of property rights.

The Fifth Amendment allows the government the right to **eminent domain** (the power to claim private property for public use), but the owner must be fairly compensated. The Court has interpreted this clause to be a direct taking of property, not just a government action that may result in a property losing value, such as a rezoning regulation. Also, the government and the property owner sometimes interpret "just compensation" differently. In such a case, the courts are the final arbitrators.

THE FOURTH AMENDMENT AND SEARCH AND SEIZURE

Freedom from ã**unreasonable search and seizure**ä is guaranteed by the Fourth Amendment. To prevent abuse by police, the Constitution requires that searches of private property are permissible only if ãprobable causeä exists that indicates that a crime may have taken place.

An important limitation was set on police searches by ***Mapp v. Ohio,*** a 1961 case in which the police broke into the home of Dollree Mapp, a woman under suspicion for illegal gambling activities. Instead, they found obscene materials and arrested Mapp for possessing them. She appealed her case, claiming that the Fourth Amendment should be applied to state and local governments, and that the evidence had been seized illegally. The police, she claimed, had no probable cause for suspecting her for the crime she was arrested for. The court ruled in her favor, thus redefining the rights of the accused.

FIFTH AMENDMENT RIGHTS

The Fifth Amendment forbids self-incrimination, stating that no one "shall be compelled to be a witness against himself." The rights for protection against self-incrimination originated from a famous 1966 Court decision ***Miranda v. Arizona***. Ernesto Miranda was arrested as a prime suspect in the rape and kidnapping of an eighteen year old girl. During a two hour questioning by the police, he was not advised of his constitutional right against self-incrimination nor his right to counsel. His responses led to his conviction, but the Supreme Court reversed it, and set the modern **Miranda Rights**: to remain silent, to be warned that responses may be used in a court of law, and to have a lawyer present during questioning.

A very important principle related to both the 4^{th} and 5^{th} Amendments is the **exclusionary rule**, which upholds the principle that evidence gathered illegally cannot be used in a trial. Critics of the exclusionary rule, including Chief Justice William Rehnquist, express doubts that criminals should go free just because of mistakes on the part of the police. However, the Courts continue to apply the exclusionary rule.

THE EIGHTH AMENDMENT AND CRUEL AND UNUSUAL PUNISHMENT

The 8^{th} amendment prohibits ã**cruel and unusual punishments**,ä a concept rooted in English law. By far, the most controversial issue that centers on the 8^{th} Amendment is capital punishment, or the practice of issuing death sentences to those convicted of major crimes.

In general, states are allowed to pursue their own policies regarding capital punishment. The Supreme Court did not challenge the death penalty until 1972 in ***Furman v. Georgia.***

Even then, it did not judge capital punishment to be cruel and unusual punishment. It simply warned the states that the death penalty was to be carried out in a fair and consistent way.

RIGHT VS. RIGHT

Most of us think of civil rights and liberties as principles that protect freedoms for all of us all the time. However, the truth is that rights listed in the Constitution and the Bill of Rights are usually *competing* rights. Most civil liberties and rights court cases involve the plaintiffâs right vs. another right that the defendant claims has been violated. For example, in 1971, the *New York Times* published the ãPentagon Papersä that revealed some negative actions of the government during the Vietnam War. The government sued the newspaper, claiming that the reports endangered national security. *The New York Times* countered with the argument that the public had the right to know and that its freedom of the press should be upheld. So, the situation was national security v. freedom of the press. A tough call, but the Court chose to uphold the rights of *The Times.*

IMPORTANT DEFINITIONS AND IDENTIFICATIONS:

Aquilar v. Felton

Barron vs. Baltimore

Bills of attainder

Bill of rights

Brandenberg. V. Ohio

Clear and present danger test

Cruel and unusual punishment

Due process clause of the 5th and 14th Amendments

Eminent domain

Engle v. Vitale

Equal protect clause

Espionage Act of 1917

Establishment clause

Everson v. Board of Education

Ex post facto laws

Exclusionary rule

First Amendment rights

Fourteenth Amendment

Furman v. Georgia

Free exercise clause

Gideon V. Wainwright

Griswold v. Connecticut

Habeas corpus

Imminent action

Lemon v. Kurtzman

Mapp v. Ohio

Miranda v. Arizona

Miranda Rights

Moment of silence

Privileges and immunities clause

Right to counsel

Right to privacy

Roe v. Wade

Schenck v. U.S.

school vouchers

Sedition Act of 1798

Sedition Act of 1918

Smith Act

Symbolic speech

Texas v. Johnson

Unreasonable search and seizure

CIVIL RIGHTS

One of the most influential Constitutional clauses during the mid to late 20th century has been the equal protection clause of the Fourteenth Amendment that forbids any state to "deny to any person within its jurisdiction the equal protection of the laws.ä This clause has not been interpreted to mean that everyone is to be treated the same, but that certain divisions in society, such as sex, race, and ethnicity are **suspect categories**, and that laws that make distinctions that affect these groups will be subjected to especially strict scrutiny. In recent years, these suspect categories have been expanded to include discrimination based on age, disability, and sexual preference.

CIVIL RIGHTS FOR RACIAL AND ETHNIC MINORITIES

The United States has always been home to many different racial and ethnic groups that have experienced varying degrees of acceptance into American society. Today major racial and ethnic minorities include African Americans, Latinos, Asians, and Native Americans.

EQUALITY FOR AFRICAN AMERICANS

The history of African Americans includes 250 years of slavery followed by almost a century of widespread discrimination. Their efforts to secure equal rights and eliminate segregation have led the way for others.

After the Civil War, civil rights were guaranteed for former slaves in the Fourteenth and Fifteenth Amendments. However, many discriminatory laws remained in states across the country, and the states of the defeated Confederacy passed **Jim Crow laws**, which segregated blacks from whites in virtually all public facilities including schools, restaurants, hotels, and bathrooms. In addition to this ***de jure*** (by law) segregation, strict ***de facto*** (in reality) segregation existed in neighborhoods in the South and the North.

The 1896 court decision ***Plessy v. Ferguson*** supported the segregation laws. Homer Plessy sued the state of Louisiana for arresting him for riding in a “whites only” railroad car. The Court ruled that the law did not violate the equal protection clause of the 14th Amendment, as Plessy claimed. The majority opinion stated that segregation is not unconstitutional as long as the facilities were substantially equal. This ã**separate but equal**" doctrine remained the Court’s policies until the 1950s.

The Modern Civil Rights Movement

In 1909 the National Association for the Advancement of Colored People (**NAACP**) was founded to promote the enforcement of civil rights guaranteed by the Fourteenth and Fifteenth Amendments. The NAACP struggled for years to convince white-dominated state and national legislatures to pass laws protecting black civil rights, but they made little progress until they turned their attentions to the courts. The NAACP decided that the courts were the best place to bring about change, and they assembled a legal team that began to slowly chip away at the “separate but equal” doctrine.

From the mid-1930s to about 1950, they focused their attention on requiring that separate black schools actually be equal to white schools. Finding little success with this approach, **Thurgood Marshall**, an NAACP lawyer for Linda Brown in ***Brown v. Board of Education of Topeka*** in 1954, argued that separate but equal facilities are "inherently unequal" and that separation had "a detrimental effect upon the colored children." The Court overturned the earlier *Plessy* decision and ruled that "separate but equal" facilities are unconstitutional. Following this landmark case was over a decade of massive resistance to desegregation in the South, but organized protests, demonstrations, marches, and sit-ins led to massive *de jure* desegregation by the early 1970s.

De jure desegregation was insured by the **Civil Rights Act of 1964,** the **24th Amendment,** and the **Voting Rights Act of 1965.** The 1964 act banned discrimination in public facilities and voter registration and allowed the government to withhold federal funds from states and local areas not complying with the law. The 24th Amendment banned paying a tax to vote (the poll tax) ö a practice intended to keep blacks from voting. The 1965 act outlawed literacy tests and allowed federal officials to register new voters. As a result, the number of registered black voters increased dramatically, and today registration rates of African Americans are about equal to those of whites. The Johnson Administration also set up as part of the "Great Society" an **Office of Economic Opportunity** that set guidelines for equal hiring and education practices. To comply with the new guidelines, many schools and businesses set up quotas (a minimum number of minorities) for admission or employment.

School Integration

Schools were not integrated overnight after the *Brown* decision, and active resistance continued through the early 1960s. In 1957 Arkansas Governor Orville Faubus used the stateâs National Guard to block the integration of Central High School in Little Rock. President Dwight Eisenhower responded by federalizing the Arkansas National Guard and sending in 500 soldiers to enforce integration. In 1962 James Meredith, an African American student, was not allowed to enroll at the University of Mississippi, prompting President John F. Kennedy to send federal marshals to protect Meredith.

To break down *de facto* school segregation caused by residential patterns, courts ordered many school districts to use **busing** to integrate schools. Students were transported from areas where they lived to schools in other areas to achieve school diversity. The practice proved to be controversial, but the courts upheld busing plans for many years. However, by the late 1990s and early 2000s federal courts had become increasingly unwilling to uphold busing or any other policies designed to further integration. For example, in 2001 a federal court determined that the Charlotte-Mechlenburg school district in North Carolina no longer had to use race-based admission quotas because they had already achieved integration.

Today *de facto* school segregation still exists, especially in cities, where most African American and Hispanic students go to schools with almost no non-Hispanic whites. So by the early years of the 21st century, the goal of integration expressed in *Brown v. Topeka* in 1954 has not been realized.

RIGHTS FOR NATIVE AMERICANS

Of all the minorities in the United States, Native Americans are one of the most diverse. Almost half of the nearly 2 million people live on **reservations**, or land given to them as tribes by treaties with the U.S. government. 308 different tribes are formally registered with the government, and among them, almost 200 languages are spoken. Enrolled members of tribes are entitled to certain benefits (such as preferred employment or acceptance to college) administered by the Bureau of Indian Affairs of the Department of the Interior. The benefits are upheld by the Supreme Court as grants not to a "discrete racial group, but rather, as members of quasi-sovereign tribal entities."

Poor living conditions and job opportunities on reservations have been the source of growing Native American militancy. Tribes have demanded more autonomy and fewer government regulations on reservations. Some recent cases have involved the right of tribes on reservations to run and benefit from gambling operations that the government has regulated. Some tribes are demanding better health care facilities, educational opportunities, decent housing, and jobs.

Under Article I, Section 8, Congress has full power under the commerce clause to regulate Indian tribes. Congress abolished making treaties with the tribes in 1871, but until recent times tribal governments were weak, many reservations were dissolved, and many tribes severed their relationship with the U.S. government. During the past twenty years, both the tribes and the government have shown revived interest in interpreting earlier treaties in a way to protect the independence and authority of the tribes. With the backing of the **Native American Rights Fund** (funded in part by the Ford Foundation), more Indian law cases have been brought in the last two decades than at any time in our history. Colorado elected the first Native American (Ben Nighthorse Campbell) to Congress in 1992.

LATINO RIGHTS

Latinos compose the fastest growing minority group in the United States today. The approximately 35 million Latinos (an increase of about 60 percent since 1980) may be divided into several large subgroups:

- **Mexican Americans -** About 15 million are Mexican Americans who live primarily in the Southwestern United States: Texas, New Mexico, Arizona, and California. Traditionally, Mexican Americans are strong supporters of the Democratic Party

- **Puerto Ricans -** The second largest group consists of 2.7 million Puerto Ricans, living primarily in northern cities, such as New York and Chicago. Since Puerto Rico is a commonwealth of the United States, many Puerto Ricans move back and forth between island and homeland.

- **Cubans -** A third group has come since the early 1960s from Cuba, many fleeing to Florida from Castro's regime. The immigration has continued over the years. In many areas of southern Florida, Cuban Americans have now become the majority group. In contrast to Mexican Americans, Cubans tend to be politically conservative and support the Republican Party.

- **Central and South American countries -** A rapidly growing number are emigrating from political upheaval in Central American countries, such as Nicaragua and Guatemala. As political unrest in these areas continues, people are coming to live near relatives already in the United States.

A major issue for Latinos centers on English as a Second Language education in U.S. public schools. Latino children often find language a barrier to success in school, and schools have struggled to find the best ways to educate them. Supporters of ESL education believe that Spanish instruction should be provided and encouraged, whereas critics claim that such education hampers the learning of English, a necessary skill for success in the United States. In recent years, bilingual programs established in the 1960s have come under increasing attack. In 1998, California residents passed a ballot initiative that called for the end of bilingual education

in the state. After the courts backed the initiative, the states of Arizona and Massachusetts also banned bilingual education.

Latinos, like blacks, have become increasingly involved in politics, and by the 1998 election 19 Latinos were members of the House of Representatives. Two Latinos were elected to the Senate in 2004.

THE RIGHTS OF ASIAN-PACIFIC ISLANDERS

About 8 million Americans are of Asian origin, a number that is rapidly increasing. Asian Americans come from many different countries with different languages and customs. About 40 per cent of our immigrants now are from Asia, mostly from the Philippines, China, Taiwan, Korea, Vietnam, Cambodia, Pakistan, and India. The Chinese were the first major group of Asians to come to the United States, attracted by expansion in California and the opportunities to work in mines.

Until recently, Asians were severely limited by U.S. immigration policies. Discriminatory immigration and naturalization restrictions were placed on the Chinese in 1882, and remained in place until after World War II. In 1906 The San Francisco Board of Education excluded al Chinese, Japanese, and Korean children from neighborhood schools. During World War II, Japanese Americans on the West Coast were placed in internment camps because of the fear that they would conspire with a Japanese attack from the Pacific Ocean. A major influx of Asians began in response to new U.S. immigration laws passed in the 1960s, which based immigration quotas more on occupation and education than on region of origin. Immigration policies now favor many Asians, especially those with high educational and professional qualifications enforced by current immigration laws.

A number of groups have come at least partly as a result of Cold War politics since World War II. Koreans are a growing group, concentrated in southern California, Hawaii, Colorado, and New York City. Korean businesses have been the object of violent attacks, such as in the 1992 Los Angeles riots and separate, more recent incidents in New York City. The most recent arrivals are refugees from the political upheavals in Vietnam, Laos, and Cambodia.

Some estimates suggest that by 2050 as many as 10 percent of all Americans will be of Asian-Pacific Islands origins.

WOMEN AND EQUAL RIGHTS

Before the 1970s the Court interpreted the equal protection clause of the Fourteenth Amendment very differently for women than it did for blacks. Whereas the legal tradition clearly intended to keep blacks in a subservient position, the legal system claimed to be protecting women by treating them differently.

In the late eighteenth century, not only were women denied the right to vote, but they had few legal rights, little education, and almost no choices regarding work. The legal doctrine known as **coverture** deprived married women of any identity separate from that of their husbands. Circumstances began to change in the mid-nineteenth century.

THE SUFFRAGE MOVEMENT

A meeting in Seneca Falls, New York in 1848 is often seen as the beginning of the womenâs **suffrage** (right to vote) **movement**. The meeting produced a ***Document of Sentiments*** modeled after the Declaration of Independence signed by 100 men and women that endorsed the movement.

It took 72 years till the goal of voting rights was reached. With the passage of the **Nineteenth Amendment** in 1920, the suffrage movement that had begun in the early 1800s came to a successful end. The Amendment was brief and to the point: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex."

However, other legal rights were not achieved until the late 20th century, partly because the Courts sought to protect women from injustice. In 1908 the Court upheld an Oregon law that limited female (but not male) laundry workers to a ten-hour workday. The Court claimed that "The two sexes differ in structure of body, in the functions to be performed by each, in the amount of physical strength, in the capacity for long-continued, labor, particularly when done standing...." So biological differences justified differences in legal status, an attitude reflecting protective paternalism.

THE MODERN WOMEN'S RIGHTS MOVEMENT

Other legal rights were not addressed until the 1970s, when the women's movement questioned the Court's justification for different treatment of the sexes under the law. A unanimous Court responded by setting down a new test, **the reasonableness standard**: a law that endorses different treatment "must be reasonable, not arbitrary, and must rest on some ground of difference having a fair and substantial relation to the object of the legislation so that all persons similarly circumstances shall be treated alike."

The "reasonableness" standard was much looser than the "**suspect" standard** used to judge racial classifications: some distinctions based on sex are permitted and some are not. For example, a state cannot set different ages at which men and women are allowed to buy beer, nor can girls be barred from Little League baseball teams, and public taverns may not cater to men only. However, a law that punishes males but not females for statutory rape is permissible, and states can give widows a property-tax exemption not given to widowers. Other practices generally endorsed by the court but now being challenged are the acceptability of all-boy and all-girl public schools and the different rates of military officer promotions (men generally have been promoted earlier than women).

Women and the Military Draft

One of the most controversial issues defining women's rights is the implication of equal rights for the military draft. Should women be treated differently than men regarding military service? The Supreme Court decided in ***Rostker v. Goldberg*** (1981) that Congress may require men but not women to register for the draft without violating the due-process clause of the Fifth Amendment. However, other laws passed by Congress regarding differential treatment in the military have recently been challenged. For

many years Congress barred women from combat roles, but in 1993, the secretary of defense opened air and sea combat positions to all persons regardless of sex. Only ground-troop combat positions are still reserved for men.

The Equal Rights Amendment

The controversial issues surrounding the military draft contributed to the ultimate failure of **the Equal Rights Amendment**, which read "Equality of rights under the law shall not be denied or abridged by the United States or any State on account of sex." Congress passed this amendment in 1972, but it ran into trouble in the ratification process. By 1978, thirty-five states had ratified, three short of the necessary three-fourths. Many legislators and voters worried that the ERA would require women to be drafted for combat duty. Meanwhile, the time limit for ratification ran out, the Republican Party withdrew its endorsement, and Congress has not produced the two-thirds majority needed to resubmit it to the states.

Abortion Rights

Roe v. Wade (1973) broke the tradition of allowing states to decide the availability of abortions within state boundaries. In this case the Court struck down a Texas law that banned abortion except in cases when the mother's life was threatened. The Court argued that the due-process clause of the Fourteenth Amendment implies a "right to privacy" that protects a woman's freedom to "choose" abortion or not during the first three months (trimester) of pregnancy. States were allowed freedoms to regulate during the second and third trimesters.

The decision almost immediately became controversial, with those supporting the decision calling themselves "**pro-choice**" and those opposing "**pro life**." Although the Roe decision still holds, its critics still fight for its reversal. The Court has declared unconstitutional laws that require a woman to have the consent of her husband, but it has allowed states to require underage girls to have the consent of her parents. In the 1989 *Webster v. Reproductive Health Services* case, the Court upheld some state restrictions on abortions (such as a twenty-four hour waiting period between request for and the performance of an abortion), but the Court has since refused to overturn Roe.

Discrimination in the Workplace

Since the 1960s laws have been passed that protect women against discrimination in the workplace. **Title VII** of the Civil Rights Act of 1964 prohibits gender discrimination in employment, and has been used to strike down many previous work policies. In 1978, Congress amended Title VII to expand the definition of gender discrimination to include discrimination based on pregnancy. The Supreme Court later extended Title VII to include **sexual harassment**, which occurs when job opportunities, promotions, and salary increases are given in return for sexual favors.

One of the most important recent issues regarding womenâs rights is ã**equal pay for equal work.ä** In 1983, the state Supreme Court of Washington ruled that its government had discriminated for years against women by not giving them equal pay for jobs of ãcomparable worthä to those that men held. This doctrine of **comparable worth** requires that a worker be paid by the ãworthä of his or her work, not by what employers are willing to pay. Although the system is difficult to implement, many large companies have adopted sophisticated job evaluation systems to determine pay scales for jobs within their structures.

OTHER CIVIL RIGHTS MOVEMENTS

The gains made by racial groups, ethnic groups, and women have motivated others to organize efforts to work for equal rights. Three of the most active are older Americans, the disabled, and homosexuals. All three groups have organized powerful interest groups, and all have made some progress toward ensuring their rights.

RIGHTS FOR OLDER AMERICANS

The baby boomers born after World War II are now swelling the ranks of Americans over 50, and with their numbers, discrimination against older Americans has gained the spotlight. A major concern is discrimination in the workplace.

Congress has passed several age discrimination laws, including one is 1975 that denied federal funds to any institution discriminating against people over 40. The Age Discrimination in Employment Act raised the general compulsory retirement age to 70. Since then, retirement has become more flexible, and in some areas compulsory retirement has been phased out entirely.

One of the most influential interest groups in Washington is the American Association of Retired Persons (**AARP**). With more than 30 million members, the organization successfully lobbies Congress to consider the rights of older Americans in policy areas such as health, housing, taxes, and transportation.

RIGHTS FOR DISABLED AMERICANS

Disabled Americans make up about 17 percent of the population, and they have organized to fight discrimination in education, employment, rehabilitation services, and equal public access.

The first rehabilitation laws were passed in the late 1920s, but the most important changes came when the Rehabilitation Act of 1973 added disabled people to the list of groups protected from discrimination.

Two important anti-discrimination laws are:

- **The Education for All Handicapped Children Act of 1975 -** This law gave all children the right to a free public education.

- **The Americans with Disabilities Act (ADA) ö** This law, passed in 1990, extended many of the protections established for racial minorities and women to disabled people. However, beginning in 1999, the Supreme Court has issued a series of decisions that effectively limit the scope of ADA, excluding conditions such as nearsightedness and carpal tunnel syndrome as disabilities.

These laws have been widely criticized because they require expensive programs and alterations to public buildings. Activists for the movement criticize the owners of public buildings and the government for not enforcing the laws consistently.

HOMOSEXUAL RIGHTS

In the last two decades, homosexuals have become much more active in their attempt to gain equal rights in employment, education, housing, and acceptance by the general public. In recent years several well-organized, active interest groups have worked to promote the rights of homosexuals and lobby for issues such as AIDS research funding. Many cities have banned discrimination, and many colleges and universities have gay rights organizations on campus.

Despite, these changes, civil rights for homosexuals is still a controversial issue, as reflected in 1993 by the resistance to the Clinton administrationâs proposals to protect gay rights in the military. The resulting ãdonât ask, donât tellä policy has not resolved the ambiguous status of gays in the military, and the Supreme Court has not yet ruled on its constitutionality.

The Supreme Court first addressed homosexual rights in 1986 when it ruled in ***Hardwick v. Georgia*** that Georgiaâs law forbidding homosexual relations was constitutional. The Court based its decision on **original intent** (the intent of the founders), noting that all 13 colonies had laws against homosexual relations, as did all 50 states until 1961. Most recently, in *Romer v. Evans* (1996) the Court provided some support to homosexuals when it struck down a Colorado amendment to the state constitution that banned laws protecting homosexuals. In the majority opinion, Justice Anthony Kennedy wrote that ãa bare desire to harm a politically unpopular group cannot constitute a legitimate governmental interest.ä The Court reversed *Hardwick v. Georgia* in 2003 with ***Lawrence v. Texas***, when it held that laws against sodomy violate the due process clause of the 14th amendment. In the word of the Court,

> The liberty protected by the Constitution allows homosexual persons the
>
> right to choose to enter upon relationships in the confines of their homes
>
> and their own private lives and still retain their dignity as free persons.

Currently, a controversial topic is state recognition of homosexual marriages and "civil unions." After courts in Massachusetts upheld the right in that state in 2004, a number of homosexual marriages were conducted in other areas of the country, including San Francisco and New York City. In reaction, several states passed initiatives in the election of 2004 that banned recognition of homosexual marriages.

REVERSE DISCRIMINATION

By the 1970s the focus of concern turned to racial balance as opposed to mere nondiscrimination, or **equality of opportunity vs. equality of result**. Do civil rights required merely the absence of discrimination, or do they required that steps be taken to insure that blacks and whites enroll in the same schools, work in the same jobs, and live in the same housing?

The Courts helped define the issue in the 1978 ***Bakke v. California*** case that questioned the quota practices of the University of California medical school at Davis. Bakke, a white student denied admission to the school, sued the state, claiming **reverse discrimination**, since minorities with lesser qualifications were admitted to the medical school. In a divided decision, the court ruled in Bakke's favor, declaring quotas unconstitutional although allowing race as one criterion for admission to a public institution.

Many cases followed that further defined reverse discrimination. Two examples are:

- ***United Steelworkers v. Weber*** *(*1979) - Kaiser Aluminum was sued for reverse discrimination in its hiring practices. This time the courts ruled that a private company could set its own policies, and the government could not forbid quotas in the case

- ***Richmond v. Croson*** (1989) - The court struck down the city of Richmond's plan to subcontract 30% of its business to minority companies, but the decision was bitterly opposed by three members of the Court.

In 2003 in two cases involving policies at the University of Michigan, the Supreme Courtâs ruling supported the constitutionality of affirmative action programs and the goals of diversity. The Court struck down the universityâs plan for undergraduate admission, saying that it amounted to a quota system. However, they upheld the plan used by the law school, which took race into consideration as part of a broad consideration of applicantsâ backgrounds.

As the United States continues to become a more and more diverse country, the nature of civil rights issues for minority groups certainly will change. Despite the changes, the pursuit of equality undoubtedly will remain a constant in the American political culture.

IMPORTANT DEFINITIONS AND IDENTIFICATIONS:

AARP

Bakke v. California

Brown v. Board of Education of Topeka

Civil Rights Act of 1964

Comparable worth

coverture

De facto segregation

De jure segregation

Declaration of Sentiments

Equal Rights Amendment

Equality of opportunity

Equality of result

Hardwick v. Georgia

Jim Crow laws

Lawrence v. Texas

NAACP

Native American Rights Fund

Nineteenth Amendment

Office of Economic Opportunity

Original intent

Plessy v. Ferguson

Pro-choice v. pro-life

Reasonableness standard

Reservations

Reverse discrimination

Richmond v. Croson

Roe v. Wade

Roster v. Goldberg

Separate but equal doctrine

Sexual harassment

Suffrage movement

Suspect categories

Thurgood Marshall

Title VII

United Steelworkers v. Weber

Voting Rights Act of 1965

24th Amendment