

## Chapter 5 Summary

### The Constitution and Equality

Whereas civil liberties are in some sense protections against government, civil rights require actions taken by government to preserve or create equality. The belief in the United States in equal rights has led to a belief in equality of opportunity. The first and only place in which the idea of equality appears in the Constitution is in the Fourteenth Amendment. Ratified in 1868 after the Civil War, the Fourteenth Amendment forbids the *states* from denying to anyone “equal protection of the law.” The “equal protection” clause became the tool for waging struggles for equality. The Fourteenth Amendment, therefore, plays a central role in both preserving and creating civil rights, and protecting civil liberties (incorporation of Bill of Rights). While the Fourteenth Amendment contains the only mention of equality, the *Declaration of Independence* and its language about equality informs the political culture of the United States, which influences how individuals view government.

### Roots of Equality and Suffrage

Congress banned the slave trade in 1808, after expiration of the 20 year period specified by the Constitution. In 1820, blacks made up 25% of the U.S. population and formed the majority in some southern states. In the 1830s and 1840s, the South became more dependent on agriculture, while the North became increasingly industrialized. Conflicts between northern and southern states intensified over the free versus slave status of new states. In the 1830s, William Lloyd Garrison founded the American Anti-Slavery Society and led the abolitionist movement. Slavery was not the only injustice that people began to question. Many laws explicitly made women second-class citizens, as well. Elizabeth Cady Stanton and Lucretia Mott founded the women’s rights movement and the Seneca Falls Convention was held in 1848. Often, those involved in abolitionism were also involved in the women’s rights movement, the view being that both blacks and women were discriminated against in similar ways.

The first major civil rights case decided by the Supreme Court was *Dred Scott v. Sandford* (1857). The court ruled that the Missouri Compromise, an act of Congress that prohibited slavery north of a specific geographical boundary, was unconstitutional. Furthermore, the Court ruled that slaves were not U.S. citizens. The Civil War began a few years later, and the Emancipation Proclamation freed those slaves living within the Confederacy. Complete abolition of slavery occurred in 1865 with the ratification of the Thirteenth Amendment. The former Confederate states responded by passing laws restricting the voting rights of freed slaves. Congress then passed the Civil Rights Act of 1866, which invalidated the Black Codes, but President Johnson vetoed the legislation. *For the first time in history*, Congress overrode a presidential veto. At the same time that the battle over the Civil Rights Act was taking place, Congress proposed the Fourteenth Amendment, which would guarantee citizenship rights and equal protection to freed slaves. Many women opposed the Fourteenth Amendment because it failed to include women’s rights, as well. Congress passed the Fifteenth Amendment in 1869, which specifically enfranchised freed male slaves, but failed to grant women’s suffrage. The women’s rights movement was even more mobilized as a result and founded the National Women’s Suffrage Association led by Susan B. Anthony.

The former Confederate states continued to resist racial equality, and Congress passed the Civil Rights Act of 1875 to grant equal access to public facilities. The Supreme Court ruled the legislation unconstitutional for regulating the ability of private businesses to discriminate. Federal occupation of the South, which guaranteed what little racial equality that did exist, ended in 1877 when northern Republicans made a deal with southern Democrats to elect Rutherford Hayes, a Republican, president. The South then passed Jim Crow laws restricting the rights of blacks, and in 1883 the Court upheld the laws as private acts of discrimination that Congress could not prohibit. The South began figuring out how to circumvent the Fifteenth Amendment and came up with three devices to effectively limit black voting: 1) poll taxes, 2) literacy tests, and 3) the grandfather clause, which effectively denied the descendants of slaves the right to vote. By the late 1890s, black voting fell by 62% from the Reconstruction period. In 1896, the Supreme Court ruled in *Plessy v. Ferguson* that separate-but-equal accommodations did not violate the “equal protection” clause of the Fourteenth Amendment. Critics viewed the Court as undermining the intent of the Civil War Amendments by effectively sanctioning racial segregation. Reformers involved in the Progressive Movement, who were also fighting for women’s suffrage and better working conditions, founded the National Association for the Advancement of Colored People (NAACP). The women’s rights movement, which had been divided between those wanting to secure voting rights and those desiring more comprehensive gender equality, founded a new organization called the National American Women Suffrage Association (NAWSA) that fought specifically for women’s suffrage. In 1920, a coalition of women’s rights groups led by NAWSA was able to secure ratification of the Nineteenth Amendment, which guaranteed women the right to vote. The NAACP continued to fight racism and racial segregation until the 1950s when the Civil Rights Movement began to pick up pace.

### **The Court and Racial Equality**

The NAACP fought for equality through the judicial system since traditional legislative channels were unlikely to work, given African Americans’ limited or nonexistent political power. In the 1930s, the Supreme Court began to regard the protection of individual freedoms and personal liberties as important issues, no longer focusing solely on the protection of economic liberties. The NAACP Legal Defense Fund, led by Thurgood Marshall, who later became the first African American to serve on the Supreme Court, began using a series of test cases to challenge Jim Crow laws. These test cases attracted attention across the United States and helped to raise the visibility of civil rights issues. After World War II, the LDF received support from the Truman Administration, which directed the Department of Justice to file an *amicus* brief urging the Court to overrule *Plessy*. Separate-but-equal was not overturned, but it became clear that the Court was beginning to have doubts about the doctrine as a whole. The court, in *Brown v. Board of Education* (1954), unanimously decided that “in the field of public education the doctrine of separate but equal has no place” and the doctrine was found inconsistent with the Fourteenth Amendment’s “equal protection” clause. The *Brown* ruling served as a catalyst for a much broader civil rights movement across the United States, and especially in the South.

An effort at nonviolent protest, the Montgomery Bus Boycott, was a success after a federal court ruled in 1956 that the segregated bus system violated the “equal protection” clause of the Fourteenth Amendment. In 1957, Reverend Martin Luther King Jr. formed the Southern Christian Leadership Conference. The SCLC’s philosophy reflected King’s belief in nonviolent

protest and civil disobedience. In 1960, sit-ins began in North Carolina to secure equality in restaurants and the Student Nonviolent Coordinating Committee (SNCC) was formed. White college students from the North began joining SNCC to participate in the Civil Rights Movement, as well. The brutality of the response by local police to various acts of nonviolent protest was nationally televised and dramatically altered public opinions about segregation and racial equality. Congress passed the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

### **Women's Rights Movement**

While women from all walks of life participated in the Civil Rights Movement, some began to focus solely on women's rights by founding new groups such as the National Organization for Women. NOW was modeled closely after the NAACP. In 1963, the Kennedy Administration's Commission on the Status of Women, led by former First Lady Eleanor Roosevelt, issued a report titled *American Women* that documented pervasive discrimination against women in all areas of life. The publication of Betty Friedan's *The Feminine Mystique* in 1963 also led some women to question their status in society. The Civil Rights Act of 1964 prohibited discrimination based not only on race but also on sex, and women seized the moment to push for more reforms. The Women's Rights Movement had two goals: 1) to achieve equality by the passage of an equal rights amendment to the Constitution, and 2) secure judicial decisions to broaden the scope of the "equal protection" clause of the Fourteenth Amendment. In 1971, the Court ruled in *Reed v. Reed* that any "arbitrary" gender-based classification violated the "equal protection" clause. From 1923 to 1972, a proposal for an equal rights amendment was made in every session of Congress. In 1972, Congress voted in favor of the Equal Rights Amendment (ERA) by overwhelming majorities. Within a year, 22 states ratified the amendment. However, the *Roe v. Wade* (1973) decision resulted in a turning of the tide against the ERA as opponents of the Women's Rights Movement linked abortion rights to the campaign to pass the ERA. What began as a simple correction to the Constitution ultimately turned into a highly controversial proposed change. Ironically, it seemed that the success of the Women's Rights Movement was now hurting its efforts. The ERA was never ratified by enough states and the amendment expired in 1982, and since that year the amendment has been reintroduced in every session of Congress. Title IX of the Education Amendments of 1972 bars educational institutions that receive federal funds from discriminating against female students. Title IX greatly expanded the opportunities for women in elementary, secondary, and postsecondary education. The Pregnancy Discrimination Act of 1978 made it illegal for employers to exclude pregnancy and childbirth from their sick leave and health insurance plans.

### **Broad Mobilization for Civil Rights**

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. Hispanics are the largest minority group in the United States, and many Hispanics in the Southwest trace their family history back to when the region was part of Mexico. In 1916, New Mexico entered the union officially as a bilingual state. The League of United Latin American Citizens (LULAC) was formed in 1929 and remains the largest Hispanic organization in the country. Texas was the site of numerous civil rights efforts by Hispanics, and in 1954 the Supreme Court ruled in *Hernandez v. Texas* that Hispanics could not be excluded from jury duty. The case protected Hispanics and

the right to a fair trial. After the Cuban Revolution a wave Cuban immigrants altered the political and social climate of Florida, and further demands for civil rights followed. The National Council of La Raza was established in 1968, which participated in sit-ins, boycotts, and marches. In 1965, Cesar Chavez and Dolores Huerta organized migrant workers into the United Farm Workers Union, which became the largest union in the nation and led strikes against produce growers in California. The Mexican American Legal Defense and Education Fund (MALDEF) has been successful in expanding voting rights and electoral opportunities to Hispanics under the Voting Rights Act of 1965. Recently, MALDEF has played a major role in challenging redistricting proposals in Texas that aimed to minimize Hispanic representation.

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, and American Indians did not become U.S. citizens, nor were they given the right to vote, until 1924. Not until the 1960s did American Indians mobilize in the manner that blacks and women had. American Indians have won some very important legal victories concerning hunting, fishing, and land rights. The establishment of casinos has resulted in billions of dollars of revenue for some Indian tribes, which has enabled them to exercise more influence within the political process. Asian Americans, Arab Americans, elderly Americans, Americans with disabilities, and the LGBT community have all organized to secure and expand their civil rights through the courts and Congress.

### **Affirmative Action**

Many civil rights and women's rights organizations argue that taking race and gender into account in fashioning remedies for discrimination is the best way to overcome the lingering burdens of racism and sexism. They argue that the Constitution is not, and should not be, blind to race or sex. Affirmative action, policies designed to give special compensatory treatment to members of a previously disadvantaged group, is a controversial issue. Critics argue 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. Critics of affirmative action argue that laws should be neutral, or color-blind. The Court ruled on affirmative action in 1978 in *Regents of the University of California v. Bakke*. A California medical school denied admission to a white student whose grades and test scores were higher than the black students admitted under the university's quota system. The Court ruled that Bakke's rejection was illegal and that strict quotas were inappropriate, but the justices upheld the ability to "take race into account" within the admissions process. The Court ruled on affirmative action again in 1979, agreeing with a union's right to voluntarily adopt a quota system in selecting workers for new training programs. The ruling outraged blue-collar workers, who traditionally voted for the Democratic Party. In 1980, many blue-collar workers abandoned the Democrats and voted for Ronald Reagan, an outspoken opponent of affirmative action policies. The Court has continued to rule on affirmative action in a case-by-case manner, not willing to prohibit preferential treatment entirely.