

Study Outline

Chapter 19: Civil Rights

- I. Introduction
 - A. Civil rights issue
 1. Group is denied access to facilities, opportunities, or services available to other groups, usually along ethnic or racial lines
 2. Issue is whether differences in treatment are "reasonable"
 - a. Some differences are: progressive taxes
 - b. Some are not: classification by race subject to "strict scrutiny"
- II. The black predicament
 - A. Perceived costs of granting black rights not widely shared
 1. Concentrated in small, easily organized populations
 2. Interest-group politics versus lower-income whites
 3. Blacks at a disadvantage in interest group politics because they were not able to vote in many areas
 - B. Majoritarian politics worked against blacks
 1. Lynchings shocked whites, but little was done
 2. General public opinion was opposed to black rights
 3. Those sympathetic to granting black rights opposed the means
 - C. Progress depended on
 1. Finding more white allies or
 2. Shifting policy-making arenas
 - D. Civil rights movement both
 1. Broadened base by publicizing grievances
 2. Moved legal struggle from Congress to the courts
- III. The campaign in the courts
 - A. Ambiguities in the Fourteenth Amendment
 1. Broad interpretation: Constitution color-blind
 2. Narrow interpretation: equal legal rights
 3. Supreme court adopted narrow view in *Plessy* case
 - B. "Separate but equal"
 1. NAACP campaign objectives in education through courts
 - a. Obviously unequal schools
 - b. Not so obviously unequal schools
 - c. Separate schools inherently unequal
 - C. Can separate schools be equal?
 1. Step 1: obvious inequalities
 - a. Lloyd Gaines
 - b. Ada Lois Sipuel
 2. Step 2: deciding that a separation creates inequality in less obvious cases
 - a. Heman Sweatt
 - b. George McLaurin
 3. Step 3: making separation inherently unequal; 1950 strategy to go for integration
 4. *Brown v. Board of Education* (1954)
 - a. Implementation
 1. Class action suit
 2. All deliberate speed
 - b. Collapse of resistance in the 1970s
 5. The rationale
 - a. Detriment to pupils by creating sense of inferiority
 - b. Social science used because intent of Fourteenth Amendment unclear; needed unanimous decision
 6. Desegregation versus integration
 - a. Ambiguities of *Brown*
 1. Unrestricted choice or integrated schools?
 2. De jure or de facto segregation?
 - b. 1968 rejection of "freedom of choice" plan settles matter; mixing
 - c. *Charlotte-Mecklenburg*, 1971
 1. Proof of intent to discriminate

2. One-race school creates presumption of intent
 3. Remedies can include quotas, busing, redrawn lines
 4. Every school not required to reflect racial composition of school system
 - d. Some extensions to intercity busing
 - e. Busing remains controversial
 1. Some presidents oppose but still implement it
 2. Congress torn in two directions
 - f. 1992 decision allows busing to end if segregation caused by shifting housing patterns
- IV. The campaign in Congress
- A. Mobilization of opinion by dramatic event to get on agenda
 1. Sit-ins and freedom rides
 2. Martin Luther King, Jr.
 3. From nonviolence to long, hot summers
 - B. Mixed results
 1. Agenda-setting success
 2. Coalition-building setbacks: methods seen as law breaking
 - C. Legislative politics
 1. Opponents' defensive positions
 - a. Senate Judiciary Committee controlled by southern Democrats
 - b. House Rules Committee controlled by Howard Smith
 - c. Senate filibuster threat
 - d. President Kennedy reluctant
 2. Four developments broke deadlock
 - a. Change of public opinion
 - b. Violent white reactions of segregationists became media focus
 - c. Kennedy assassination
 - d. 1964 Democratic landslide
 3. Five bills pass, 1957-1968
 - a. 1957, 1960, 1965: voting rights laws
 - b. 1968: housing discrimination law
 4. 1964 civil rights bill: the high point--employment, public accommodations
 - a. Broad in scope, strong enforcement mechanisms
 - b. Johnson moves after Kennedy assassinated
 - c. Discharge petition, cloture invoked
 5. Effects since 1964
 - a. Dramatic rise in black voting
 - b. Mood of Congress shifted to pro-civil rights; 1988 overturn of Reagan veto of bill that extended federal ban on discrimination in education
 - D. Racial Profiling
 1. Stopping drivers for "driving while black"
 2. Condemned by Clinton, Bush, and Congress
 3. A complex issue, worthy of debate
 - a. Inherently discriminatory and always wrong?
 - b. Trends can exist and possibly provide useful clues
 4. Weighing costs and benefits
 - a. Does profiling increase the ability of police to catch criminals?
 - b. If so, by how much?
 - c. When is profiling justified (young, male, Middle Easterners involved in September 11 attacks)?
 - d. What impact does profiling have on innocent people?
 5. A major political issue, but few firm facts
- V. Women and equal rights
- A. Supreme Court's position altered after the 1970s
 1. Somewhere between reasonableness and strict-scrutiny standard
 2. Gender-based differences prohibited by courts
 - a. Age of adulthood
 - b. Drinking age
 - c. Arbitrary employee height-weight requirements
 - d. Mandatory pregnancy leaves
 - e. Little League exclusion

- f. Jaycees exclusion
 - g. Unequal retirement benefits
 - 3. Gender-based differences allowed by courts
 - a. All-boy/all-girl schools
 - b. Widows' property tax exemption
 - c. Delayed promotions in Navy
 - d. Statutory rape
 - 4. Women must be admitted to all-male, state-supported military colleges
 - B. The military
 - 1. *Rostker v. Goldberg* (1981): Congress may draft men only
 - 2. Secretary of Defense in 1993 allows women in air and sea combat
 - C. Sexual harassment
 - 1. Requesting sexual favors as condition for employment
 - a. "quid pro quo" rule
 - b. Employer "strictly liable"
 - 2. Hostile or intimidating work environment
 - a. Employer not strictly liable
 - b. Employer can be at fault if "negligent"
 - 3. Almost no federal laws governing it
 - 4. Vague and inconsistent court and bureaucratic rules tell us what it is
 - D. Abortion
 - 1. Until 1973 regulated by states
 - 2. 1973: *Roe v. Wade*
 - a. Struck down Texas ban on abortion
 - b. Woman's freedom to choose protected by Fourteenth Amendment ("right to privacy")
 - 1. First trimester: no regulations
 - 2. Second trimester: no ban but regulations to protect health
 - 3. Third trimester: abortion ban
 - c. Critics claim life begins at conception
 - 1. Fetus entitled to equal protection
 - 2. Supporters say no one can say when life begins
 - 3. Pro-life versus pro-choice
 - d. Hyde Amendment (1976): no federal funds for abortion
 - e. Gag order on abortion referrals imposed under Bush, removed under Clinton
 - 3. 1973-1989: Supreme Court withstood attacks on *Roe v. Wade*
 - 4. 1989: Court upheld Missouri law restricting abortion
 - 5. Casey decision lets *Roe* stand but permits more restrictions: twenty-four-hour wait, parental consent, pamphlets
 - 6. Supreme Court and anti-abortion activists
- VI. Affirmative action
 - A. Equality of results
 - 1. Racism and sexism overcome only by taking them into account in designing remedies
 - 2. Equal rights not enough; people need benefits
 - 3. Affirmative action should be used in hiring
 - B. Equality of opportunities
 - 1. Reverse discrimination to use race or sex as preferential treatment
 - 2. Laws should be color-blind and sex neutral
 - 3. Government should only eliminate barriers
 - C. Targets or quotas?
 - 1. Issue fought out in courts
 - a. No clear direction in Supreme Court decisions
 - b. Court is deeply divided; affected by conservative Reagan appointees
 - c. Law is complex and confusing
 - 1. *Bakke*: numerical minority quotas not permissible
 - 2. But Court ruled otherwise in later cases
 - 2. Emerging standards for quotas and preference systems
 - a. Must be "compelling" justification
 - b. Must correct pattern of discrimination
 - c. Must involve practices that discriminate

- d. Federal quotas are to be given deference
 - e. Voluntary preference systems are easier to justify
 - f. Not likely to apply to who gets laid off
 - 3. Congressional efforts to defend affirmative action not yet successful
 - 4. "Compensatory action" (helping minorities catch up) versus "preferential treatment" (giving minorities preference, applying quotas)
 - a. Public supports former but not latter
 - b. In line with American political culture
 - 1. Support for individualism
 - 2. Support for needy
 - 5. Courts divided
 - a. Court of Appeals for Fifth Circuit ruled race to be used in admissions decisions for law school
 - b. Supreme Court ruled that racial classifications subject to strict scrutiny
- VII. Gays and the Supreme Court
 - A. State laws could ban homosexual activities
 - B. Court struck down amendment to state constitution prohibiting cities from adopting an ordinance banning discrimination against gays