Chapter 10

Civil Rights

I. THE FOURTEENTH AMENDMENT AND CIVIL RIGHTS MOVEMENTS

A. THE FOURTEENTH AMENDMENT

1. Prior to the Civil War, in the *Dred Scott v. Sandford* decision (1857), the Supreme Court declared that slaves, former slaves, and their descendants were not citizens of the United States, and therefore not entitled to the rights of citizenship.
2. Following the Civil War, the Southern states resisted the social and economic integration of freed slaves by enacting Black Codes to preserve white supremacy. In response, three amendments were added to the Constitution:
   a. The Thirteenth Amendment abolished slavery.
   b. The Fourteenth Amendment defined citizenship to include "[a]ll persons born or naturalized in the United States," and outlined protections for individuals against state government actions.
   c. The Fifteenth Amendment guaranteed voting rights regardless of "race, color, or previous condition of servitude."
3. Section 1 of the Fourteenth Amendment reads:

   > 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.

4. The final clause of this section, the Equal Protection Clause, has formed the basis for civil rights claims for many groups, beginning with African Americans. The Equal Protection Clause has been interpreted to require the federal government to address and prevent discriminatory practices.
5. Civil rights are those rights to equal treatment that all persons are guaranteed. The government must protect people from being discriminated against based on group membership and personal characteristics, including race, national origin, religion, and sex. The government has a positive obligation (must take action) to prevent and address discrimination against members of minority groups.

B. THE FIGHT AGAINST SEGREGATION

1. Adding the Fourteenth Amendment to the Constitution did not automatically change the culture of the nation. Many states resisted equality for African Americans. The Civil Rights Movement was born out of the struggle of former slaves and their descendants for equal treatment under the law.
2. In the late decades of the nineteenth century, the former Confederate states passed laws that segregated African Americans. These Black Codes, or Jim Crow laws, required African Americans to use separate facilities, such as bathrooms and water fountains, and separated them from whites in public spaces, such as theaters and railroad cars.
3. Legal segregation (laws requiring the separation of the races) was challenged in *Plessy v. Ferguson* (1896). In that case, the Supreme Court upheld a Louisiana state law requiring that African Americans ride in separate railroad cars. The Court ruled that, as long as the accommodations provided to African Americans were substantially the same as those provided to whites, legal segregation was constitutional. This separate but equal doctrine remained law throughout the first half of the twentieth century.
4. The National Association for the Advancement of Colored People (NAACP), was founded in 1909 to advocate for social justice and equal treatment for African Americans. Led by Thurgood Marshall, who would go on to become the first African American Supreme Court justice, the NAACP Legal Defense Fund brought *Brown v. Board of Education* and other important civil rights cases to the Court.

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

   a. **Facts of the Case:** Segregation laws in Topeka forbade Linda Brown, a third grader, to enroll in the public school closest to her house. Instead, she was forced to walk several blocks and then ride a bus to the segregated Black school, which was much farther away than the local "white" public school. Linda's father and several other plaintiffs sued, arguing that African American children could not receive an equal education in segregated schools and that the Equal Protection Clause required the Court to strike down state laws requiring segregation.

   b. **Constitutional Issue(s):** Does the Equal Protection Clause of the Fourteenth Amendment prohibit segregation based on race?

   c. **Holding(s):** The Equal Protection Clause prohibits segregation based on race because separation creates inherent inequality.

   d. **Reasoning:** Of critical importance to the plaintiffs (the people bringing the case to court) and the African American community was the idea that segregation is inherently (naturally) unequal. That is, that African American students who attended separate schools by law were being denied educational opportunities and benefits that they would be given in an integrated setting, even if their school facilities and teachers were roughly equal. Furthermore, the negative message of segregation toward African American students was harmful to their education and self-worth. The Court agreed and unconditionally overturned *Plessy*, stating

      > Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The effect is greater when it has the sanction of the law, for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system.

      The Court concluded that "separate educational facilities are inherently unequal" under the Fourteenth Amendment.

6. The following year, in *Brown v. Board of Education II* (1955), the Court ordered that school systems desegregate with "all deliberate speed." Especially in the South, however, compliance was slow and frequently not implemented for many years.

Remember that the Supreme Court is influenced by many factors that change over time. Citizen-state interactions, which are driven by cultural changes, influence the Court's decision-making. Also, as the composition of the Court changes (via turnover in the nine justices serving at any given time), the ideological makeup of the Court changes. In* Brown, *these changes led the Court to overrule the precedent set by* Plessy *after almost 60 years.

C. THE CIVIL RIGHTS MOVEMENT

1. The mid-1950s marked a turning point in American society. African Americans, who had long been subjected to discrimination and mistreatment, including violence and murder, began to push for change with renewed energy, and the Civil Rights Movement began.
2. The African American community organized—that is, they took collective action to persuade state and local governments to change their policies. An important leader in the movement was Dr. Martin Luther King, Jr., who advocated nonviolent resistance to government oppression. In addition to legal challenges and lobbying for legislation, the methods they used to bring about reform included boycotts, sit-ins, marches, and freedom rides, which were bus trips through the South to protest segregated buses.
   a. African Americans and others who supported the movement engaged in acts of civil disobedience, or preplanned organized actions in which individuals refuse to follow unjust laws. Notably, Rosa Parks refused to give up her seat on a Montgomery, Alabama, city bus to a white rider and was arrested.
   b. Following Parks' arrest, King led a boycott of the Montgomery city buses by African Americans. The Black community organized carpools and walked rather than ride buses, causing a massive loss of revenue to the city.

3. King led numerous protest marches during the 1950s and 1960s. In 1963, he was arrested for leading a march in Birmingham, Alabama, and held in solitary confinement.

4. While in jail in Birmingham, a supporter smuggled King a newspaper that had published an opinion piece by several white Alabama clergy members opposing the marches. King composed a response during his time in jail in which he addressed the religious leaders' statement, poignantly describing the experience of African Americans in the South and defending the protesters' actions.

   a. King first responds to the assertion that he was an "outsider" who should not be stirring up trouble in Birmingham. He argues that he had been invited as head of the Southern Christian Leadership Conference (SCLC). Moreover, he argues that people have a duty to fight injustice wherever it exists, emphasizing that communities are interrelated.

   b. King goes on to point out that Birmingham, at the time, was probably the most segregated city in the country, with a brutal record of abuse and oppression of African Americans.

   c. King makes the point that "direct action," or nonviolent resistance, is sometimes necessary to drive negotiation and reach resolution when attempts at cooperation have been refused.

      > You may well ask: 'Why direct action? Why sit-ins, marches and so forth? Isn't negotiation a better path?' You are quite right in calling for negotiation. Indeed, this is the very purpose of direct action. Nonviolent direct action seeks to create such a crisis and foster such a tension that a community which has constantly refused to negotiate is forced to confront the issue. It seeks so to dramatize the issue that it can no longer be ignored. My citing the creation of tension as part of the work of the nonviolent resister may sound rather shocking. But I must confess that I am not afraid of the word 'tension.' I have earnestly opposed violent tension, but there is a type of constructive, nonviolent tension which is necessary for growth.

   d. King points out that "[h]istory is the long and tragic story of the fact that privileged groups seldom give up their privileges voluntarily."

e. He passionately defends nonviolent direct action as a middle ground between despair and violence.

f. King distinguishes between just and unjust laws and argues that it is one's moral duty to uphold just laws and to disobey unjust laws.

> How does one determine whether a law is just or unjust? A just law is a man-made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law. To put it in the terms of St. Thomas Aquinas: An unjust law is a human law that is not rooted in eternal law and natural law. Any law that uplifts human personality is just. Any law that degrades human personality is unjust.

g. King expresses disappointment in the white religious establishment for failing to stand against the injustice of racism, and in the inaction of white moderates, referring to the "appalling silence of good people."

h. He closes by pointing out that the clergy members' praise of the "nonviolent" police response to protests is misplaced. Instead, he praises the actions of the protesters, who refrained from violence in the face of attacks and humiliation.

D. THE CIVIL RIGHTS MOVEMENT RESULTED IN IMPORTANT LEGISLATION

1. **Civil Rights Act of 1964:** This sweeping law was introduced under John F. Kennedy and signed into law by Lyndon Johnson. It protected civil rights in several regards, including:

   a. Outlawing discrimination in public accommodations or any place "open to the public" such as restaurants, hotels, and theaters.

   b. Prohibiting discrimination in employment based on race, color, religion, sex, or national origin. This section is notable for including "sex" as a basis for civil rights protection.

2. **The Twenty-fourth Amendment:** Ratified in 1964, this amendment outlaws the requirement of a tax in order to vote (poll tax). Because the process of creating constitutional amendments is extremely difficult, the civil rights movement focused more on achieving goals through litigation (law suits) and advocating for legislation.

3. **Voting Rights Act of 1965**: This landmark law prohibits discrimination in voting procedures throughout the United States. Although the Civil Rights Act of 1964 had prohibited discriminatory voting requirements, the Voting Rights Act significantly clarified and expanded voting protections for African Americans. Significant provisions include:

   a. The Voting Rights Act outlaws literacy tests and similar mechanisms for disenfranchising (disallowing voting rights) minorities.

   b. The law placed special restrictions on particular jurisdictions (states or areas) with a history of voter discrimination against minorities.

      - These jurisdictions were required to obtain *preclearance*, or prior approval, from the Justice Department before implementing any changes to voting procedures.
      - Whether a jurisdiction could be regulated was dependent on a coverage formula, but the formula was struck down in *Shelby County v. Holder* (2013) as being out of date and not appropriate for addressing modern conditions.
      - The holding in *Shelby* effectively made preclearance unenforceable. As a result, numerous states and jurisdictions that had previously been subject to preclearance requirements have passed laws that place increased restrictions on voting rights.

   c. The Voting Rights Act led to a significant increase in the election of African American legislators in Southern states.

The government may respond to social movements through judicial decisions, such as* Brown v. Board of Education*, or its response may be legislative, as when Congress passed the Civil Rights Act of 1964 or the Voting Rights Act of 1965. As you continue reading, note the various governmental responses to the civil rights demands of particular groups.

E. OTHER ISSUES IN SEGREGATION

1. One problem the courts have grappled with is how to deal with situations in which segregation is not the result of laws requiring

it (de jure segregation, Latin for "by law"), but a consequence of individual choices (de facto segregation, Latin for "in fact").

   a. Schools may be segregated due to citizens' choices and preferences as to where they live. This is de facto segregation—segregation in fact, rather than by law.

   b. In *Swann v. Charlotte-Mecklenburg Board of Education* (1971), the Court held that busing students to integrate schools was constitutionally acceptable, even though students might need to be transported to schools farther away than their local schools.

   c. Generally, the Court has held that the government is not required to act to desegregate in situations of de facto segregation.

2. An area of significant controversy has been the use of affirmative action policies in hiring and education, particularly in the college admissions process.

   a. Affirmative action refers to policies intended to prevent discrimination and to correct the lasting effects of historical discrimination by ensuring that minority groups are appropriately represented in employment and higher education environments. This is typically achieved by allocating a minimum percentage of places to minorities.

   b. In *Regents of University of California v. Bakke* (1978), Bakke, a white student who was denied admission to medical school while less qualified minority students were admitted, claimed that the university's admissions policy resulted in illegal discrimination against white applicants (sometimes referred to as reverse discrimination). The Court held that race-based quotas (concrete percentages or numbers of seats) were a violation of the Equal Protection Clause, but that race could be considered as a factor in admissions decisions.

   c. Recently, the Court has struck down admission systems that seem to make race too significant a factor in college admissions, but has continued to hold that race may be taken into consideration.

Remember that the courts use the standard of strict scrutiny to evaluate both civil rights and civil liberties claims. Regarding civil rights, government actions that impact a minority group must be

(1) based on a compelling government interest;

(2) narrowly tailored to address that interest; and

(3) the least restrictive way to do so.

3. Following changes to the Voting Rights Act in 1982, some states redrew congressional districts to allow African Americans the opportunity to elect representatives to Congress. The districts were the result of an effort to draw the boundaries to create majority-minority districts, in which a racial minority (African Americans) made up the majority of the voters in a district. These districts were essentially racial gerrymanders, but the gerrymandering was done to create an advantage, rather than a disadvantage, for the minority group. In *Shaw v. Reno* (1993), the Court struck down this type of plan as a violation of the Equal Protection Clause of the Fourteenth Amendment, holding that racial gerrymandering is unconstitutional regardless of its intent.

II. THE WOMEN'S MOVEMENT

A. THE STRUGGLE FOR WOMEN'S EQUALITY

1. Ratified in 1920, the Nineteenth Amendment culminated the first wave of the women's rights movement, which had mainly focused on acquiring the right to vote.
2. In the 1960s, the second wave of the women's movement focused on equality. It grew out of increasing awareness of the inequities faced by women in American society.
3. In 1963, *The Feminine Mystique* by Betty Friedan was published. The book critiqued popular ideas surrounding women's place in society and argued that women were entitled to self-fulfillment including educational and professional opportunities.
4. The National Organization for Women (NOW) was co-founded in 1966 by Betty Friedan "to bring women into full participation in the mainstream of American society now, exercising all the privileges and responsibilities thereof in truly equal partnership

with men." NOW advocates for many feminist policy goals, including:

a. equal rights under the law

b. reproductive choice

c. workplace equality

d. ending sexual harassment and violence against women

e. global feminist issues

B. KEY OUTCOMES OF THE WOMEN'S MOVEMENT

1. The Equal Pay Act of 1963 required equal compensation for substantially equivalent work regardless of gender, race, religion, or national origin.
2. Title VII of the Civil Rights Act of 1964 included "sex" as a prohibited basis for discrimination, forming the basis for legal action to enforce equal treatment for women in the workplace.
   a. Women are protected against discrimination in hiring and employment conditions, generally, and may not be treated differently from men if the difference is unreasonable.
   b. Women also have a right to be free from sexual harassment in the workplace.
      - ➤ *Quid pro quo* sexual harassment describes situations in which demands for sex are made on an employee in exchange for continued employment or advancement.
      - ➤ Hostile environment sexual harassment is behavior that creates a workplace that is intimidating or abusive such that a reasonable person would find it difficult or impossible to do his or her job.
3. Title IX of the Education Amendments Act of 1972 (amending the Higher Education Act of 1965) prohibits discrimination on the basis of sex in federally funded educational activities.
   a. Although the law prohibits discrimination in all educational activities, it is best known for increasing women's access to athletic activities.
   b. Title IX also prohibits sexual harassment in educational environments.
4. An Equal Rights Amendment, guaranteeing equal rights for women, was proposed by two-thirds of each chamber of Congress

in 1972. Ratification failed, however, with only 35 of the necessary 38 states passing the amendment in the 10-year ratification period.

It is sometimes confusing to think of women as a legally protected minority group, since there are actually more women than men in the United States. Although not a numerical minority, women are a legal minority, or a group that is designated as having legal protection against discrimination. Most legal minorities are also numerical minorities. However, women are a legal minority with a (slight) numerical majority.

III. OTHER SOCIAL MOVEMENTS

A. PERSONS WITH DISABILITIES

1. Because individuals with disabilities have unique physical needs concerning access, they have historically faced systemic discrimination. The disability rights movement began in the 1960s.
2. Under the Rehabilitation Act of 1973, Section 504:
   a. Employers must provide reasonable accommodations to disabled applicants and employees, so long as they can otherwise perform the essential functions of their jobs.
   b. Schools must evaluate the needs of students with disabilities and create an educational plan accommodating his or her educational requirements (a 504 plan for a student).
3. The Americans with Disabilities Act (ADA) was passed in 1990. The ADA frames the need for accommodations of disabled persons as a civil rights issue, rather than as a medical issue. The ADA clarifies and builds on the previous law by
   a. broadly defining the term *disability* to include both physical and mental conditions.
   b. prohibiting discrimination by all employers with more than 15 employees. The ADA applies not only to entities receiving federal funds, but to private businesses as well.
   c. requiring places open to the public to ensure physical access to facilities, including wheelchair access.

d. requiring access to public accommodations. Like Title VII of the Civil Rights Act of 1964, the ADA requires private businesses to take steps to ensure accessibility if the cost is not prohibitive.

e. guaranteeing access for service animals, with limited exceptions.

Keep in mind that most civil rights laws, including the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Americans with Disabilities Act (ADA) are* unfunded mandates*—laws passed by the federal government that do not provide federal funding to cover the costs of implementation. These laws are frequently criticized for requiring states to pay for their implementation. The ADA, because it legally required government entities and private businesses to physically modify buildings and public places to allow access to the disabled, created a particularly steep financial burden and faced considerable opposition.

B. LGBTQ RIGHTS

1. Members of the LGBTQ community have a long history of experiencing discrimination and are a more recent group to seek legal protections in the areas of marriage, military service, and personal freedoms. Until 1973, homosexuality (a term then used by the medical community) was considered a mental disorder by the American Psychiatric Association.

2. There is no federal law protecting individuals based on sexual orientation or gender identity. However, many states have passed laws prohibiting this type of discrimination in various situations.

3. The right to marry had long been a priority of LGBTQ activists. Legal marriage, generally taken for granted by heterosexual couples, grants spouses a series of rights that LGBTQ couples were denied, including rights to inheritance, insurance benefits, and medical decision-making.

   a. Same-sex marriage was illegal in all 50 states until 2003, when the Massachusetts Supreme Court struck down the state's same-sex marriage prohibition, making Massachusetts the first state to allow same-sex marriage.

b. Vermont became the first state to legalize same-sex marriage by legislative action in 2009.

c. The Defense of Marriage Act (DOMA), passed by Congress in 1996, limited marriage to heterosexual couples for federal purposes, including access to insurance benefits for federal employees, social security survivorship (the right to collect a spouse's social security benefits after his or her death).

d. In *United States v. Windsor* (2013), the Court struck down DOMA, ruling that the federal government's differential treatment of same-sex couples served no legitimate purpose and violated the Due Process Clause of the Fifth Amendment. (The Due Process Clause of the Fifth Amendment applied here because DOMA was a federal law. The Fifth Amendment applies to the federal government, while the Fourteenth Amendment applies to state actions.)

e. By 2015, 37 states had fully legalized same-sex marriage. In that year, the Supreme Court heard the case of *Obergefell v. Hodges* (2015), which challenged state laws restricting marriage licenses to heterosexual couples. The Court struck down such laws under both the Due Process and Equal Protection Clauses of the Fourteenth Amendment, and ruled that all states must grant marriage licenses to same-sex couples and must recognize same-sex marriages made in other states.

Students are sometimes confused by the term* marriage, *because it has both religious and legal meanings. Civil rights court cases relate only to marriage as a legal status, a group of rights based on a license issued by the government. Religious organizations are not required by the government to perform or recognize same-sex marriage.

4. Members of the LGBTQ community have served in the military since the Revolutionary War, but have only recently gained some level of legal protection.

   a. LGBTQ service members have been allowed to serve openly since 2011.

   b. The right of transgender individuals to serve in the military was established in 2016. However, the Trump administration reversed the policy in 2018 to prohibit most transgender

persons from serving in the military. The new policy was the subject of several appellate cases and was reversed by President Biden shortly after taking office. The new policy allows transgender people to serve openly and prohibits discrimination.

C. OTHER ETHNIC AND RACIAL MINORITIES

1. Hispanic and Latino Americans, Native Americans, Asian Americans and other ethnic minority groups have organized and waged civil rights campaigns in the United States.
2. The Civil Rights Act of 1964 prohibits discrimination based on race, color, religion, and national origin. (It prohibits employment discrimination based on sex, as well.) The Act, therefore, offers protection for all of these minority groups.

D. THE PRO-LIFE MOVEMENT

1. The pro-life movement has sometimes framed the abortion issue as a question of civil rights for the unborn fetus.
2. Several Human Life Amendments have been proposed in Congress since *Roe v. Wade* was decided in 1973. None of these have passed Congress and been sent to the states for ratification.

Important Civil Rights Amendments and Laws

Name of Law	Important Provisions
The Civil War Amendments	– Thirteenth Amendment: outlaws slavery – Fourteenth Amendment: defines citizenship, guarantees due process and equal protection – Fifteenth Amendment: guarantees the right to vote regardless of race, color, or previous condition of servitude.
Nineteenth Amendment	– guarantees the right to vote regardless of sex
Civil Rights Act of 1964	– prohibits discrimination in public accommodations, government services, programs receiving federal funds, education and employment based on race, color, religion, and national origin – prohibits discrimination in employment based on sex
Twenty-fourth Amendment	– outlaws poll taxes

Name of Law	Important Provisions
Voting Rights Act of 1965	– prohibits discrimination in voting rights, including literacy tests – requires preclearance for changing voting procedures in jurisdictions with a history of discrimination (currently unenforceable as a result of a Supreme Court decision)
Title IX of the Education Amendments Act of 1972	– prohibits discrimination in educational programs and activities on the basis of sex
Americans with Disabilities Act (1990)	– prohibits discrimination in employment, public accommodations, and government programs – requires reasonable accommodations for individuals with disabilities