Civil Rights are policies designed to protect people against arbitrary or discriminatory treatment by government officials or individuals. In this chapter, we explore the development of civil rights in the United States. We begin by considering the uneven development of civil rights in the nineteenth century, focusing in particular on the initial expansion of civil rights under the Civil War Amendments, and their gradual erosion in practice through discriminatory state laws and Supreme Court decisions. We then examine developments in the twentieth century that led to an expansion of civil rights protections afforded to a diverse array of groups in the United States. We conclude by considering the ways in which civil rights policy affects democracy and increases the scope of government. By the end of the chapter, students should have a solid understanding of the historical development and current status of civil rights as a public policy issue in the United States.
Learning Objective 5.1: Differentiate the Supreme Court’s three standards of review for classifying people under the equal protection clause. (p. 131)

Conceptions of Equality

- American society does not emphasize equal results or equal rewards.
- A belief in equal rights has led to a belief in equality of opportunity; in other words, everyone should have the same chance to succeed.

The Constitution and Inequality

- The original Constitution did not mention equality, and under most state constitutions only white males were allowed privileges such as voting rights. The Fourteenth Amendment first clarified the concept of equality by ensuring that all citizens must receive “equal protection of the laws.”
- The Supreme Court’s modern interpretation of equality has brought civil rights to the forefront of the political agenda.
- The courts have identified three standards of review for determining whether an inequality in public policy is impermissible.
- Race and ethnic classifications are inherently suspect and therefore subject to “strict scrutiny”: They are presumed unconstitutional unless they serve a compelling public interest and are the least restrictive means of accomplishing that interest.
- Gender classifications are subject to “intermediate scrutiny,” meaning that they must bear a substantial relationship to an important governmental purpose.
- In all other cases, a classification must simply bear a rational relationship to some legitimate governmental purpose (called the “reasonableness” or “rational basis” standard) and are presumed constitutional until proven otherwise.
Learning Objective 5.2: Trace the evolution of protections of the rights of African Americans and explain the application of nondiscrimination principles of issues of race. (p. 133)

African Americans’ Civil Rights

Slavery

- *Dred Scott v. Sanford* (1857) upheld the constitutionality of slavery and forbade Congress from banning it in new states.
- The Thirteenth Amendment (1865) outlawed slavery after the Civil War.

Reconstruction and Segregation

- In the 1876 election, a deadlock in the Electoral College led to a deal that allowed the Republican candidate, Rutherford B. Hayes, to be selected by a commission created by the House of Representatives, in exchange for the promise to withdraw federal troops from the southern states.
- Civil rights advances came to a halt and Jim Crow laws took effect segregating blacks from whites in the South, and preventing blacks from voting and running for public office.
- The Supreme Court officially recognized a policy of “separate but equal” facilities, thereby allowing the practice of segregation, in *Plessy v. Ferguson* (1896).

Equal Education

- *Brown v. Board of Education* (1954) overturned the *Plessy* decision—asserting that segregation is unconstitutional—and ordered the desegregation of public schools.
- Brown was the beginning of a string of Supreme Court decisions holding various forms of discrimination unconstitutional.
- Brown and these other cases gave the civil rights movement momentum that would grow in the years that followed.
- *Swann v. Charlotte-Mecklenberg County Schools* (1971): The Supreme Court allowed busing to be used as a means to balance racial percentages in schools, which became a matter of great national controversy.
The Civil Rights Movement and Public Policy

- Congress also passed the Civil Rights Act (1964) which
  - outlawed racial discrimination in public places,
  - prohibited discrimination in employment,
  - withheld government funding from any school or institution that practiced discrimination,
  - established the Equal Employment Opportunity Commission to monitor job discrimination,
  - granted the Justice Department power to enforce civil rights laws by suing institutions still practicing segregation.

Voting Rights

- The Fifteenth Amendment (1870) formally granted African Americans suffrage—the right to vote—but had little effect in practice.
- Southern states circumvented the law by instituting literacy tests that most former slaves could not pass.
- Poll taxes were implemented and most former slaves could not afford to pay.
- Grandfather clauses were implemented to exempt from literacy tests illiterate whites whose grandfathers had been allowed to vote before 1860.
- White primaries were implemented that restricted voting in Democratic Party elections (the only ones that mattered given Democratic dominance in the South) to whites.
- Most of these policies were struck down in the early 20th century.
- Grandfather clauses were found unconstitutional in Guinn v. United States (1915).
- The Supreme Court outlawed the use of white primaries to exclude African Americans from the election process in Smith v. Allwright (1944).
- The Twenty-Fourth Amendment (1964) outlawed the use of poll taxes.
- Congress passed the Voting Rights Act in 1965 to prevent states from using any methods to disenfranchise voters.
- The law provided for enforcement by allowing federal registrars to oversee elections and voter registration; therefore only with the Voting Rights Act did the Fifteenth
Amendment's guarantee of suffrage without regard to race become meaningful in practice.

5.3 Learning Objective 5.3: Relate civil rights principles to progress made by other ethnic groups in the United States. (p. 140)

The Rights of Other Minority Groups

- Other minority groups, including Native Americans, Hispanic Americans, and Asian Americans, have all suffered discrimination and benefited from advances made in the civil rights movement. The Civil Rights Act applies to all races and has encouraged many minority groups to speak out for their rights.

- Native Americans were isolated on "reservations" until the Dawes Act of 1887 and they were given the right to vote only in 1924.
  - Beginning in 1970, they have used courts to pursue equal rights, largely through the Native Americans Rights Fund (NARF).

- Hispanic Americans (or "Latinos" as some prefer to be called) are now the largest minority group, with heritage from many Caribbean, Central American, and South American nations. Hernandez v. Texas extended protection against discrimination to Hispanics.
  - They have pursued equal rights in court through the Mexican American Legal Defense Fund (MALDEF), as well as through labor organizations such as the United Farm Workers, led by César Chavez from the 1960s through the 1980s.

- Asian Americans are the most rapidly growing group, and while often hailed as the most successful, they have suffered significant discrimination, most notably the internment of Japanese Americans in isolated camps during World War II, which the Supreme Court upheld in Korematsu v. U.S (1944).
  - Though smaller in numbers than most minority groups, the Arab and Islamic population has faced significant challenges since the 9/11 attacks.
Learning Objective 5.4: Trace the evolution of women’s rights and explain how civil rights principles apply to gender issues.
(p. 145)

The Rights of Women

- Women were also excluded from the rights of equality implied in the Constitution.
- The women’s rights movement grew out of abolitionism in the 1840s, when female activists encountered discrimination among male activists.
- The efforts of the first generation of feminists culminated in the Nineteenth Amendment (1920), which granted women the right to vote.
- Progress bogged down after the Nineteenth Amendment was ratified and the Equal Rights Amendment (ERA, 1923) was intended to enforce full equality for women, who still were discriminated against in such areas as employment.
- It was passed by Congress in 1972 but was never ratified by the necessary three-fourths of state legislatures.
- The Second Wave of feminists relied heavily on the courts for progress. In Reed v. Reed (1971), the Supreme Court for the first time found a law unconstitutional based on arbitrary gender bias, and in 1976, Craig v. Boren established an “intermediate scrutiny” standard for determining gender discrimination.
- Since then, it has struck down laws that discriminate against both women and men.
- Recent efforts to promote gender equality have focused on the workplace.
- Civil rights legislation barring discrimination in the workplace applies to women as well as to other minority groups, and it includes employment opportunities, equal pay, and pregnancy leave.
- In 1986, the Supreme Court established a woman’s right to sue employers for sexual harassment under the Civil Rights Act.
- The Supreme Court has not yet ruled on the issue of comparable worth, which insists that women be paid the same as men for jobs that require the same skills.
- Title IX of the Education Act of 1972 has helped to end employment discrimination because it forbids gender discrimination in federally subsidized education programs (which include almost all colleges and universities), including athletics.
The Supreme Court extended this to prohibiting all-male schools in 1996 in a case involving the Virginia Military Academy.

Women are allowed to serve in all branches of the military but cannot serve in ground combat units of the Army and Marine Corps.

Despite increased equality, issues remain in combating sexual harassment.

Learning Objective 5.5: Show how civil rights principles have been applied to seniors, people with disabilities, and gays and lesbians. (p. 151)

Other Groups Active under the Civil Rights Umbrella

- Discrimination laws prevent employers and universities from rejecting applicants because of their age.
- Congress also revoked the policy of mandatory retirement, unless a compelling reason can be provided based on age.
- The Americans with Disabilities Act of 1990 protects disabled Americans against job discrimination and requires employers to provide "reasonable accommodations," but controversy has arisen over who is considered disabled.
- LGBT rights are protected by some laws but are frequently challenged by courts, legislatures, and voters.
- The "don't ask, don't tell" military policy introduced by President Clinton in 1993 bypasses restrictions on homosexuality by preventing labeling; even this restriction was struck down by a federal court in 2010 as the President and the Secretary of Defense asked Congress to repeal the law barring service by homosexuals.
- The right to privacy also factors into debates over gay rights; Lawrence v. Texas (2003) overturned state antisodomy laws as well as the Court's own decision in Bowers v. Hardwick (1986).
- Massachusetts, Hawaii, and Vermont have each legalized some form of civil union between same-sex couples, but the Defense of Marriage Act (1996) allowed other states to disregard these unions.
- In 2015 the Supreme Court resolved the marriage issue when it held in Obergefell v. Hodges that the Fourteenth Amendment requires states to license a marriage between
two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state.

**Learning Objective 5.6:** Trace the evolution of affirmative action policy and assess the arguments for and against it. (p. 154)

**Affirmative Action**

- **Affirmative action** is a policy that attempts to go beyond preventing discrimination by providing members of groups who have suffered discrimination some compensatory treatment.
- While originally tolerant of affirmative action programs, courts have become less so in the past decade.
- The Supreme Court ruled against set-aside government contracts for minority-owned businesses in *Adarand Constructors v. Pena* (1995), stating that even if the intent is to advance the opportunities of minorities, it still classifies people by race and is therefore unconstitutional unless it meets the strict scrutiny test: it must be narrowly tailored to achieve a compelling state interest.
- Courts have permitted affirmative action in education, but with tight restrictions.
- In *Regents of the University of California v. Bakke* (1978), the Court ruled that race could be used as one factor in choosing between applicants, but that enrollment quotas were unconstitutional.
- In *Grutter v. Bollinger* (2003), the court ruled that there was a compelling state interest in promoting diversity on campuses, and allowed a narrowly tailored program to continue.
- In *Gratz v. Bollinger* (2006), however, the court ruled that a blanket bonus system was, in effect, a quota and was therefore unconstitutional.
- In *Parents Involved in Community Schools v. Seattle School District No. 1* (2007), the court ruled that racial balancing (rather than remedying past discrimination) was not in itself a compelling state interest.
Learning Objective 5.7: Establish how civil rights policy advances democracy and increases the scope of government. (p. 158)

Understanding Civil Rights and Public Policy

Civil Rights and Democracy

- Civil rights policies advance democracy because equality is a basic principle of democratic government. When majority rule and minority rights are in conflict, minority rights must prevail.

Civil Rights and the Scope of Government

- Civil rights policies limit government discrimination but also require an active government effort to protect the rights of minorities.

For Additional Review

Use the following system to take notes on your reading:

1. Use a notetaking column to record the information from the sections of the chapter.
2. Read your notes and create a column and formulate questions on the specific topics. This sets up a perfect stage for exam-studying later.
3. Cover the notetaking column with a sheet of paper and look at the questions you have written and recite your answers.
4. Reflect on the material: What is the significance of these facts? What principles are the facts based on?
5. Review the material in preparation of the unit test.

Debate continues over the policy of affirmative action. Make a chart listing arguments on each side of the issue and use this chart when reviewing and studying for the unit test.