Equality Before The Law

- In principle, civil rights are about equality—the right of individuals to be treated fairly and equitably by government officials.
- This right is derived from the 14th Amendment's guarantee that all citizens are entitled to “the equal protection of the laws.”

Treating Citizens Differently

- When government officials treat one citizen differently from another, it must be justified.
- Most government actions that discriminate are subject to the rational basis test.
  - For example, admission to college.
  - Is the action a reasonable way to promote a legitimate governmental interest?
Suspect Classifications

- Exceptions:
  - Distinctions based on gender are subject to heightened scrutiny: is the action substantially related to accomplishing an important governmental goal?
  - Distinctions based on race or ethnicity are subject to strict scrutiny: does the action accomplish a compelling governmental interest in the least discriminatory way possible?

Open Questions

- Is disproportionate impact a form of discrimination that requires remediation?
- Are laws and actions designed to help minorities like affirmative action programs subject to the same level of scrutiny as those that are designed to hurt minorities?
Civil Rights for African Americans

- Immediately after the Civil War, national politicians aggressively promoted the rights of newly freed slaves:
  - Civil War Amendments (13th, 14th, 15th).
  - Freedmen's Bureau.
  - Civil rights laws.

The End of Reconstruction

- Support soon faded as Reconstruction became unpopular in the north and former Confederates regained power in the south.
- 1876 Hayes/Tilden bargain ended Reconstruction.
- Supreme Court curtailed civil rights laws passed to enforce 14th and 15th Amendments.
The Redeemer Period: Jim Crow

- Southern states adopted Jim Crow laws to strip blacks of voting and other rights:
  - Literacy and understanding tests
  - Lengthy residency requirements
  - Poll taxes
  - Grandfather clauses

State Action & “Separate But Equal”

- The Supreme Court's rulings in the late 1800s helped this process:
  - The state action doctrine meant that “private” organizations could discriminate based on race or otherwise deny citizens' rights—enabled the white primary and gave free rein to KKK.
  - The “separate but equal” doctrine allowed state-sponsored segregation (*Plessy v. Ferguson*, 1896).
Civil Rights in the Early 20th Century

- Blacks began to migrate away from the “cotton belt” to the industrializing north; became an important voting bloc in northern cities.

- The NAACP Legal Defense Fund began to challenge anti-black laws in the courts.
  - *Smith v. Allwright* (1944) outlawed the white primary.

Civil Rights and Education

- The NAACP also challenged the “separate but equal” educational system.

- Courts gradually whittled away the legal basis for segregation in higher education.


- However, in the face of “massive resistance” federal courts were not aggressive in enforcing desegregation until the late 1960s.
Civil Rights and Voting Rights Acts

- A decade of legal and political conflict culminated in the passage of two landmark laws by Congress:
  
  - **Civil Rights Act of 1964**: banned employment discrimination; required most businesses serving the public to be integrated; cut off federal funding to states that discriminated in administering federal programs.
  
  - **Voting Rights Act of 1965**: required pre-clearance of changes in election practices, mostly in the South; empowered federal officials to register voters; abolished literacy tests and poll taxes.

Modern Conflict Over Civil Rights

- Since 1960s, conflict over civil rights has become more national in scope, leading to less political support for further efforts to promote civil rights.
  
  - Controversy around *busing*.
  
  - Debate over the merits of *affirmative action* programs and other efforts to support minorities.
  
  - Public opposition has led to new policies designed to limit affirmative action.
  
  - Increased emphasis on the difference between *de facto* and *de jure* segregation.
Recent Developments

- In *Fisher v. University of Texas* (2013), Supreme Court limited consideration of race in college admissions.

- *Preclearance* provisions of the Voting Rights Act of 1965 were suspended by the Supreme Court in 2013 in *Shelby County v. Holder*, until or unless Congress revises coverage formula.

Civil Rights for Hispanics

- Fastest-growing minority group.

- Diverse national origins.

- Efforts to secure rights for Hispanics have tended to focus more on economic and social equality:
  - Cesar Chávez, LULAC, MALDEF.

- 1972 amendments to Voting Rights Act expanded *pre-clearance* to southwestern states; included requirements for translated ballots.

- Concerns about immigration and immigrants' rights widely seen as a “Hispanic issue.”
Civil Rights for Asian Americans

- Like Hispanics, not a monolithic group, in terms of origins or politics.
- Historically subject to government discrimination:
  - Chinese Exclusion Act; Immigration Act of 1924.
  - Internment of Japanese-Americans during World War II.
- Increased political visibility in recent decades:
  - Japanese-Americans long prominent in Hawaiian politics.
  - Current governors: Bobby Jindal (La.), Nikki Haley (S.C.).

Civil Rights of Native Americans

- Complex relationship dating back to the colonial era; historically seen as separate nations.
- U.S. government regularly broke treaties with tribes; pushed “removal” to western territories.
- Members of various tribes gained U.S. citizenship over time; in 1924, all Native Americans became U.S. citizens by law.
- Economic empowerment since 1980s has rested on growth of tribal gaming.
Womens' Rights

- 19th Amendment (1920) guaranteed women the right to vote.
- Participation in the labor force during World War II changed expectations about gender roles.
- “Poison pill” amendment to Civil Rights Act of 1964 included gender discrimination.
- While the Equal Rights Amendment was not ratified, much of its intended effect has been “constitutionalized” by the courts.
- Controversies remain, including equal pay.

Rights of Gays and Lesbians

- Public support for equal rights for gays and lesbians has increased over time.
- Increasing number of openly gay and lesbian political figures.
- Gays and lesbians have been able to serve openly in the Armed Forces since the repeal of the “don't ask, don't tell” policy in September 2011.
Same-Sex Marriage

- Some states recognized same-sex marriages; some others recognized *civil unions* that are mostly equivalent.
- Other states, including Georgia, adopted state constitutional amendments against same-sex marriage.

Same-Sex Marriage

- Part of the *Defense of Marriage Act* was struck down as unconstitutional in *United States v. Windsor* (2013).
- Supreme Court ruled that same-sex marriage is a constitutional right in *Obergefell v. Hodges* (2015), striking down state laws and constitutional provisions to the contrary.
Rights of the Disabled

- Since the 1960s, federal laws and court decisions have expanded the rights of those with physical and mental disabilities.

- **Americans With Disabilities Act** of 1990 (ADA) gave broad rights to disabled Americans for “reasonable accommodations” in employment and education, at business or taxpayer expense.

- Rights for the disabled tend to be popular—but much more expensive than rights for other groups.