

## CHAPTER 6

# Civil Rights

### REVIEWING THE CHAPTER

#### CHAPTER FOCUS

This chapter focuses on the two most intense and protracted struggles for civil rights in recent times: that of blacks and that of women. After reading and reviewing the material in this chapter, you should be able to do each of the following:

1. Contrast the experience of economic interest groups with that of black groups in obtaining satisfaction of their interests from the government. Indicate why in most circumstances the black movement involved interest groups rather than client politics. Describe the strategies used by black leaders to overcome their political weaknesses, and explain why the civil rights movement has become more conventional in its strategy in recent years.
2. Summarize the legal struggles of blacks to secure rights under the Fourteenth Amendment, and state how the Court construed that amendment in the civil rights cases and in *Plessy v. Ferguson*. Discuss the NAACP strategy of litigation, and indicate why it was suited to the political circumstances. Summarize the rulings in *Brown v. Board of Education* and compare them with those in *Plessy v. Ferguson*.
3. Discuss the rationale used by the Supreme Court in ordering busing to achieve desegregation. Explain the apparent inconsistency between *Brown* and *Charlotte-Mecklenburg*. State why these decisions are not really inconsistent, and explain why the courts chose busing as an equitable remedy to deal with *de jure* segregation.
4. Trace the campaign launched by blacks for a set of civil rights laws. Explain why they used nonviolent techniques. Discuss the conflict between the agenda-setting and the coalition-building aspects of the movement. Demonstrate how civil rights advocates could overcome sources of resistance in Congress.
5. Describe the differences between the black civil rights movement and the women's movement. List the various standards used by the courts in interpreting the Fourteenth Amendment, and explain how these standards differ depending on whether blacks or women are involved.
6. Summarize the debate over "compensatory action" versus "preferential treatment" and targets versus quotas in affirmative action.

#### STUDY OUTLINE

- 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. Historical context
    - 1. Stark experience of discrimination was long standing
    - 2. Tension in both the North and the South
    - 3. Lynchings shocked whites, but little was done
    - 4. Little public support for racial equality, integration, civil rights movement
  - B. Progress depended on
    - 1. Finding more white allies or
    - 2. Shifting policy-making arenas
  - C. Civil rights movement followed both strategies
    - 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. Profiling refers to increased likelihood of being suspect because of race or ethnicity
  - 2. May be reasonable if members of certain race are, in fact, more likely to commit crime
    - a) A profiling of young Middle Eastern men might very well have prevented 9/11 attacks
    - b) But such profiling would inconvenience innocent citizens and attract charges of “racism”

V. Women and equal rights

- A. Critical difference from movement to expand the rights of African Americans
  - 1. Laws claimed to protect women (Oregon workday limit)
  - 2. Seneca Falls Convention (1848) and the right to vote
  - 3. Congressional actions
    - a) Equal pay for equal work
    - b) Gender discrimination in employment
    - c) Gender discrimination and schools and universities receiving federal funds
    - d) Discrimination against pregnant women

- B. 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
- C. 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
- D. 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
- E. Privacy and sex
  - 1. Police power traditionally extended to laws designated to promote public order and secure the safety and morals of the citizens
  - 2. The Supreme Court and the right to privacy
    - a) 1965 case involving contraceptives and asserting "zones of privacy"
    - b) *Roe v. Wade* announced a "right to privacy" encompassing a woman's decision whether or not to terminate a pregnancy
      - (1) Subsequent controversies over when human life begins
      - (2) "Right to life" and "pro-life" v. "right to choose" and "pro-choice"
    - c) Congressional attempts to restrict and the Hyde Amendment
    - d) Reaffirmation of *Roe* and extension, until the late 1980s
      - (1) *Casey* decision (1992) and mandatory twenty-four hour waiting periods, parental consent and provision of information concerning alternatives to abortion
      - (2) Decisions which struck down laws requiring married women to obtain consent of husband and forbidding so-called partial birth abortions
      - (3) 1997 decision allowed buffer zones around abortion clinics
- 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. The *Adarand* decision
    - a) A low bidder lost a contract because of a government policy favoring racial and ethnic minorities
    - b) Court ruled any discrimination based on race must be subject to strict scrutiny
      - (1) Must serve a compelling governmental interest
      - (2) Must be narrowly tailored to serve that interest
  - 6. Affirmative action revisited
    - a) 1996 California initiative and program at the University of Texas Law School
    - b) University of Michigan cases (2003)
      - (1) Some applicants given 20 bonus points (of 100 needed) for admission
      - (2) Court ruled the policy was not narrowly tailored
      - (3) On the other hand, the use of race as a plus factor served a compelling state interest

## VII. Gays and the Constitution

- A. Originally, state laws could ban homosexual activities
  - 1. Challenged in *Bowers v. Hardwick*
  - 2. Court ruled the right to privacy protected family, marriage or procreation
- B. Court struck down amendment to Colorado state constitution prohibiting laws to protect persons based on their homosexual, lesbian or bisexual orientation
- C. *Lawrence v. Texas* (2003)
  - 1. 5-4 decision which overturned Texas law banning sexual conduct between persons of the same sex
  - 2. Reversed the previous decision in *Bowers*