

# The Struggle for Civil Rights

# Women and Minority Groups Struggle for Equal Treatment

# First Feminist Wave

- Seneca Falls Convention  
1848
  - A protest march / gathering that called for women's rights
- Women's suffrage
  - In 1918, Woodrow Wilson announced that women's suffrage was urgently needed as a "war measure".
  - The House of Representatives passed the federal woman suffrage amendment 274 to 136 but it was opposed in the Senate and was defeated in September 1918.



# Women's Suffrage



THE LAST FEW BUTTONS ARE ALWAYS THE HARDEST.

—Chapin in the St. Louis Star.

- 19<sup>th</sup> Amendment
  - Another attempt was made, this time with success.
  - On 26th August 1920 the 19<sup>th</sup> Amendment was certified by the Secretary of State, when Tennessee, the thirty-sixth and final state needed, signed for ratification.

# *The Feminine Mystique*

- Friedan is considered the “Mother” of the second-wave of feminism that emerged during the 1960’s.
- She published a book that was published in 1963, and was titled *The Feminine Mystique*.
- It depicted the roles of women in industrial societies, and in particular the full-time homemaker role, which Friedan saw as stifling.



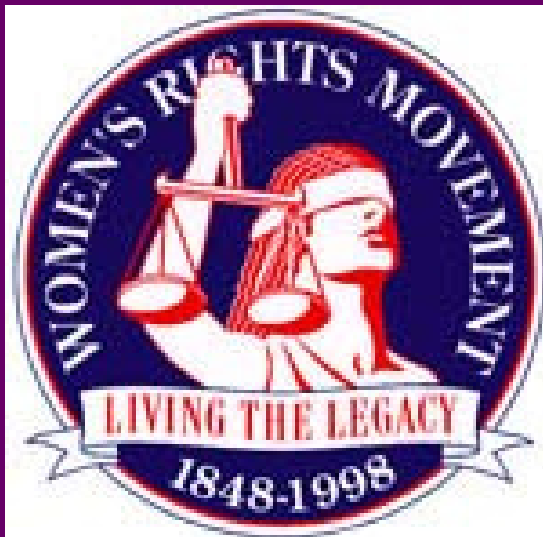
# Second Wave of Feminism

- Second Wave Feminism is generally identified with a period beginning in the early nineteen sixties and extending through the late nineteen eighties.
- First-wave feminism focused largely on **de jure** (officially mandated) inequalities, second wave feminism saw **de jure** and **de facto** (unofficial) inequalities as inextricably linked issues that had to be addressed in tandem.
- The movement encouraged women to understand aspects of their own personal lives as deeply politicized, and reflective of a sexist structure of power.
- First-wave feminism focused upon absolute rights such as suffrage, second-wave feminism was largely concerned with other issues of equality ranging from economic to reproductive issues.

# National Organization of Women



- Founded in 1966
- During the 1970s NOW promoted the ERA (19th) to the U.S. Constitution.
- The organization's membership is not limited to women, and has included many men who support its goals.



# Key Legislation

- **Equal Pay Act of 1963**
  - Requires that men and women be given equal pay for equal work in the same establishment.
  - The jobs need not be identical, but they must be substantially equal. It is job content, not job titles, that determines whether jobs are substantially equal.
- **Title VII Civil Rights Act of 1964**
  - Employers cannot discriminate on the basis of race, color, religion, or sex.



# Key Legislation

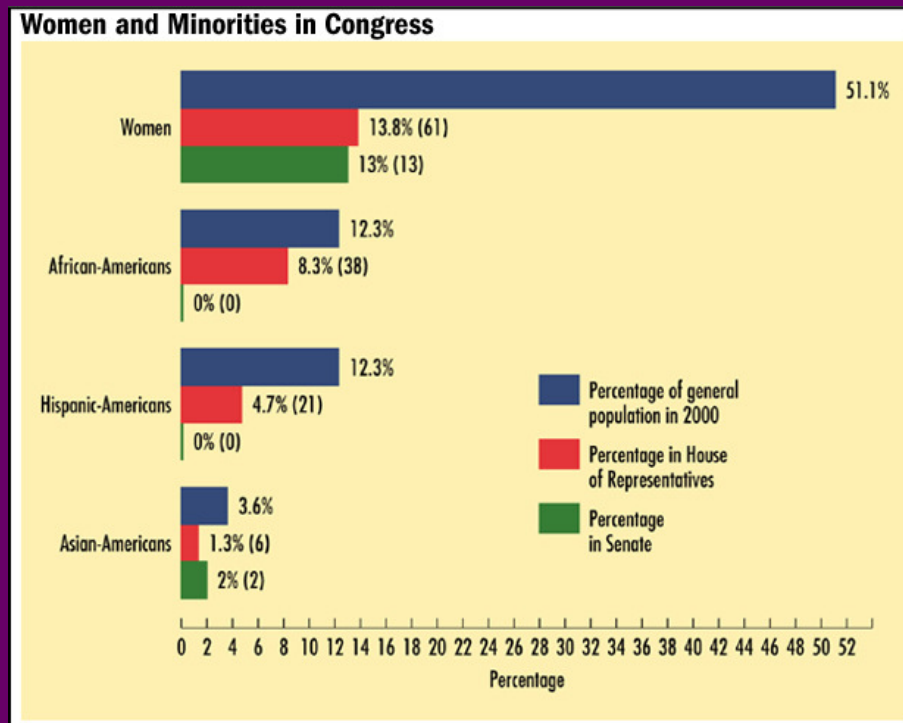
- **Title IX of Education Act of 1963**
  - Provides gender equal access to education and sports for girls.
- **Reed v. Reed (1971): Arbitrary gender-based legislation is a violation of the 14<sup>th</sup> Amendment (equal protection clause)**
  - State of Idaho ruled that only men could serve as executors of a will / estate.
  - Supreme court ruled that laws that arbitrarily impose restrictions on women are unconstitutional

# Key Legislation

- **Roe v. Wade** (1973)
  - Case based on whether or not the state has the authority to deny a woman the right to an abortion.
  - Court ruled that women should be given the right to choose abortion as an option but agreed that states could place other limits.
    - Minimum age limits
    - Parental notification in cases involving minors
    - Banning of “late-term” abortions



# Success in Electoral Politics



- **The Year of the Woman 1992**

- Under the Clinton administration, we saw a change in congressional appointments.
- Women played a significant role in the election

- 68 women appointed to the House
- 14 women appointed to the Senate

# Women in Politics

- Women began to play a major role in politics.
  - Politicians began to cater to the “Soccer-Moms”
- Other Areas of Influence
  - Million Mom March (gun control)
  - 1 Supreme Court Justice is female (Ruth Ginsburg)
  - Challenges to “sex-sensitive” issues (abortion, war/peace, education, pornography, etc.)



# African-American Rights and the Civil Rights Movement



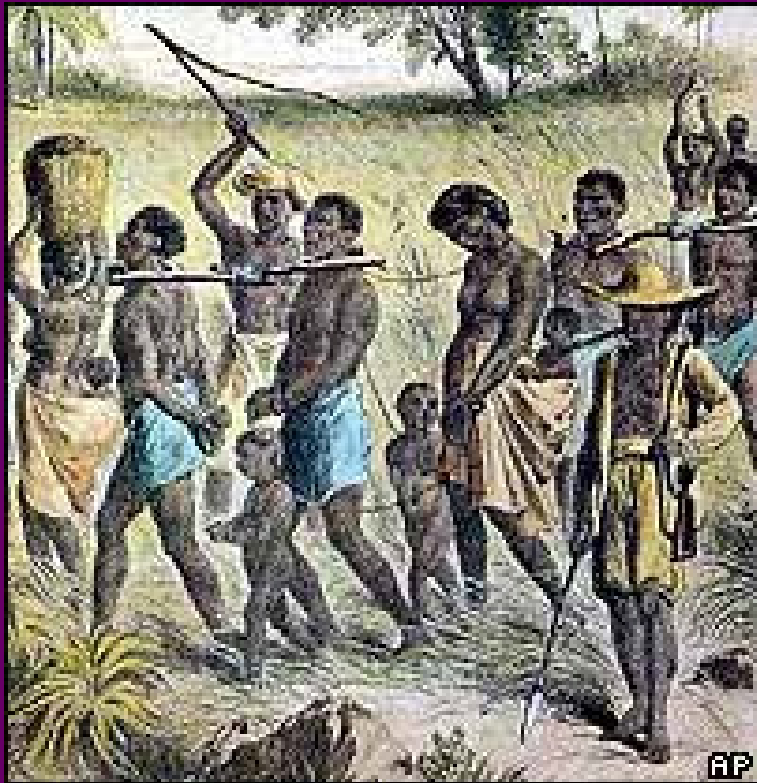
# African-American Rights

- African Americans make up approximately 12% of the US population
- Key Legislation / Court Cases
  - **Dred Scott Decision**
  - **Civil War Amendments**
  - **Brown v. Board**

# Dred Scott Decision (1857)

- Dred Scott was the name of an African-American slave. He was taken by his master, an officer in the U.S. Army, from the slave state of Missouri to the free state of Illinois and then to the free territory of Wisconsin. He lived on free soil for a long period of time.
- When the Army ordered his master to go back to Missouri, he took Scott with him back to that slave state, where his master died. In 1846, Scott was helped by Abolitionist (anti-slavery) lawyers to sue for his freedom in court, claiming he should be free since he had lived on free soil for a long time. The case went all the way to the United States Supreme Court.
- Scott lost the decision as seven out of nine Justices on the Supreme Court declared no slave or descendant of a slave could be a U.S. citizen, or ever had been a U.S. citizen. As a non-citizen, the court stated, Scott had no rights and could not sue in a Federal Court and must remain a slave.

# Civil War Amendments (13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>)



- **Amendment XIII**

- Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.



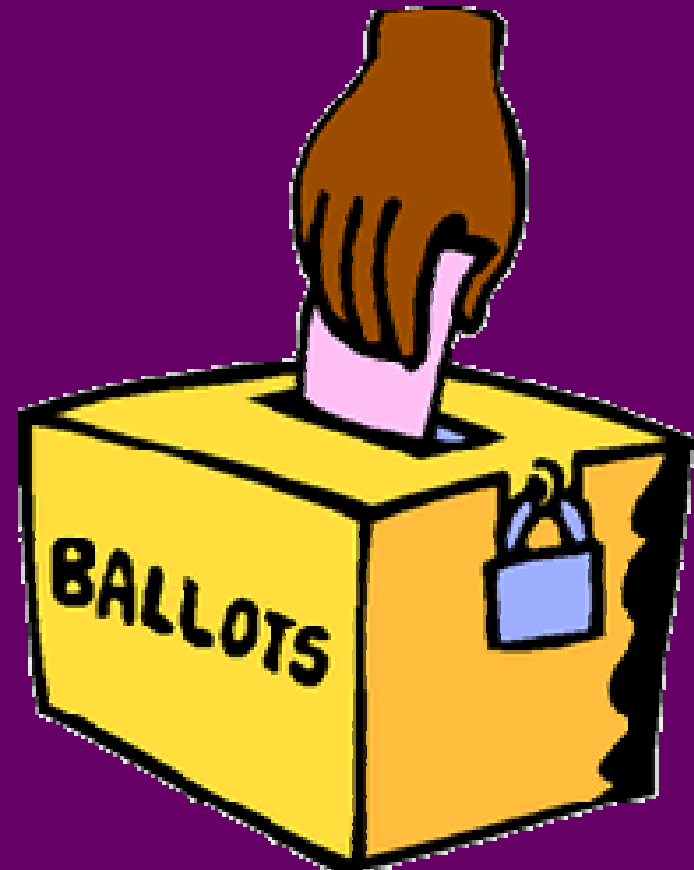
# Civil War Amendments (13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>)

- **Amendment XIV**

- Section 1. 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.

# Civil War Amendments (13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>)

- **Amendment XV**
  - Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.



# Rise of Jim Crow Laws



- Laws created in the South that called for segregation in all public facilities.
- The most important laws required that public schools and most public places (including trains and buses) have separate facilities for whites and blacks.
- Laws supported by the Supreme Court Case:
  - Plessy v. Ferguson

# Plessy v. Ferguson

- On June 7, 1892, a 30-year-old colored shoemaker named Homer Plessy was jailed for sitting in the "White" car of the East Louisiana Railroad. Plessy was only one-eighths black and seven-eighths white, but under Louisiana law, he was considered black and therefore required to sit in the "Colored" car. The Louisiana state court found Plessy guilty.
- His case was sent to the Supreme Court for review and the decision was upheld by a 7-1 vote.
  - "That [the Separate Car Act] does not conflict with the Thirteenth Amendment, which abolished slavery...is too clear for argument...A statute which implies merely a legal distinction between the white and colored races -- a distinction which is founded in the color of the two races, and which must always exist so long as white men are distinguished from the other race by color -- has no tendency to destroy the legal equality of the two races
  - The object of the [Fourteenth Amendment] was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either."

# Plessy v. Ferguson

- The lone voice of dissent:
  - "Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law...In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the *Dred Scott* case...The present decision, it may well be apprehended, will not only stimulate aggressions, more or less brutal and irritating, upon the admitted rights of colored citizens, but will encourage the belief that it is possible, by means of state enactments, to defeat the beneficent purposes which the people of the United States had in view when they adopted the recent amendments of the Constitution." - Justice John Harlan

# Legacy of Plessy v. Ferguson

- Created the ***Separate-but-Equal Doctrine***
- The *Plessy* decision set the precedent that "separate" facilities for blacks and whites were constitutional as long as they were "equal." The "separate but equal" doctrine was quickly extended to cover many areas of public life, such as restaurants, theaters, restrooms, and public schools.
- Not until 1954, in the equally important ***Brown v. Board of Education*** decision, would the "separate but equal" doctrine be struck down.

# ***Brown v. Board of Education***

- Case brought to bear in an effort to combat ***de jure segregation*** (the use of laws / gov to segregate)
- The Cases:
  - Several court cases, from 4 states, challenged the Separate-but-Equal Doctrine, citing that African-American schools were inferior to White schools.



# ***Brown v. Board of Education***

- Topeka Kansas was the most famous of the cases
  - In 1951, a class action suit was filed against the Board of Education of the City of Topeka, Kansas in the U.S. District Court for the District of Kansas.
  - The plaintiffs were thirteen Topeka parents on behalf of their twenty children.
  - The suit called for the school district to reverse its policy of racial segregation.
  - Separate elementary schools were operated by the Topeka Board of Education under an 1879 Kansas law which permitted (but did not require) districts to maintain separate elementary school facilities for black and white students in twelve communities with populations over 15,000.



# ***Brown v. Board of Education***

- The Topeka Kansas case was sponsored by the NAACP.
- The case made the challenge based on the facilities and teaching materials.
  - The Decision
    - On 17 May 1954 the Warren Court handed down a 9-0 decision which stated, in no uncertain terms, that "separate educational facilities are inherently unequal."
    - Later, the court would order states to desegregate their schools.

# ***Brown v. Board of Education***

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

- Chief Justice Earl Warren

# The Civil Rights Movement



- Nonviolent civil disobedience
  - Civil Rights leaders called for nonviolence during the 50's and early 60's.
  - Late 60's sees the movement taking a more violent turn with Racial riots.

# Race Riots in the late 1960's

- The Black Power movement resulted in the founding of numerous organizations, such as the Black Panther Party, which developed into the militant wing of the Civil Rights movement. They were instrumental in the uprisings in the cities of Detroit, Newark, and Los Angeles during the late 1960s.



# The Detroit Riot 1967





# Kerner Report 1968

- The Kerner Commission was the popular name given to the National Advisory Commission on Civil Disorders.
- It was also known as riot commission. The 11-member commission was created by President Lyndon B. Johnson to investigate the causes of the 1967 race riots in the United States.
- The commission issued a report, called the "Kerner Report"
- Its finding was that the riots resulted from black frustration at lack of economic opportunity.
- Its best-known quote is: **"Our nation is moving toward two societies, one black, one white—separate and unequal."**



# Moving in the Right Direction

- Success in electoral policies
  - Increase in A.A. members of local gov positions.
  - Strong increase of #'s of A.A. in Congress and other levels of gov.
  - Politicians are beginning to focus on garnering the A.A. vote.



# Affirmative Action

- Definition:
  - “Affirmative action” means positive steps taken to increase the representation of women and minorities in areas of employment, education, and business from which they have been historically excluded.
  - When those steps involve *preferential selection* - selection on the basis of race, gender, or ethnicity—affirmative action generates intense controversy.



# Backlash to Affirmative Action

- Many people began to see affirmative action as a case of reverse discrimination.
- **UC Regents v. Bakke (1978)**
  - Allan Bakke, a white male, had been rejected two years in a row by a medical school that had accepted less qualified minority applicants—the school had a separate admissions policy for minorities and reserved 16 out of 100 places for minority students.
  - The Supreme Court outlawed inflexible quota systems in affirmative action programs, which in this case had unfairly discriminated against a white applicant. In the same ruling, however, the Court upheld the legality of affirmative action

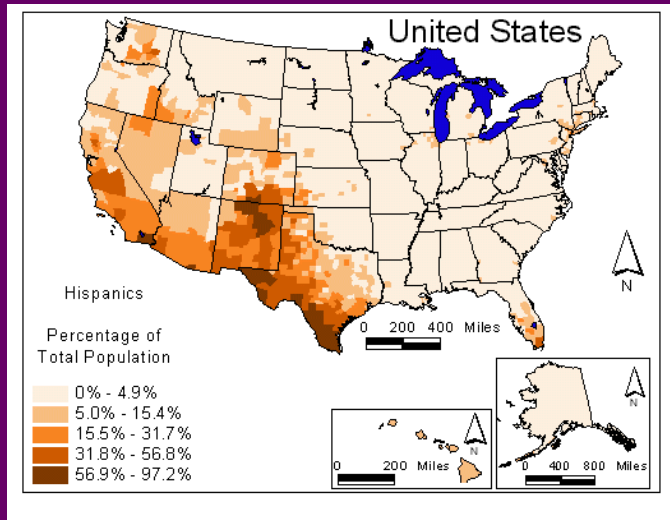
# Backlash to Affirmative Action

- California Proposition 209 (1996)
  - PROHIBITION AGAINST DISCRIMINATION OR PREFERENTIAL TREATMENT BY STATE AND OTHER PUBLIC ENTITIES.
    - Prohibits the state, local governments, districts, public universities, colleges, and schools, and other government instrumentalities from discriminating against or giving preferential treatment to any individual or group in public employment, public education, or public contracting on the basis of race, sex, color, ethnicity, or national origin.
  - The law was passed by voters but has seen many battles in court. It is currently in effect but many universities choose to ignore the law, particularly private universities.

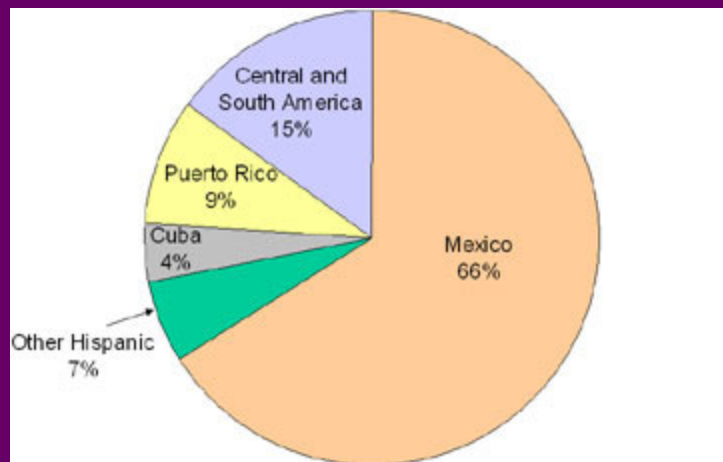
# Hispanic Rights



# Hispanics



- 13% of the population
- Key Cases / Legislation
  - **Lau v. Nichols**
    - Case requires schools to offer English instruction to English learners.
    - **States must provide ballots in multiple languages.**
    - “When children arrive in school with little or no English-speaking ability, “sink or swim” instruction is a violation of their civil rights.”  
-- U.S. Supreme Court



# Immigration and Politics

- Fear of offending
  - Neither party wants to offend immigration groups during an era of close elections
- 2006 Immigration Rallies
  - Day Without Immigrants
    - General boycott organized by Latino groups (May 1, 2006).
- Politician try to tap into the Latino vote (strong supporters of Bush in years past)



# Asian-Americans



# Asian-Americans

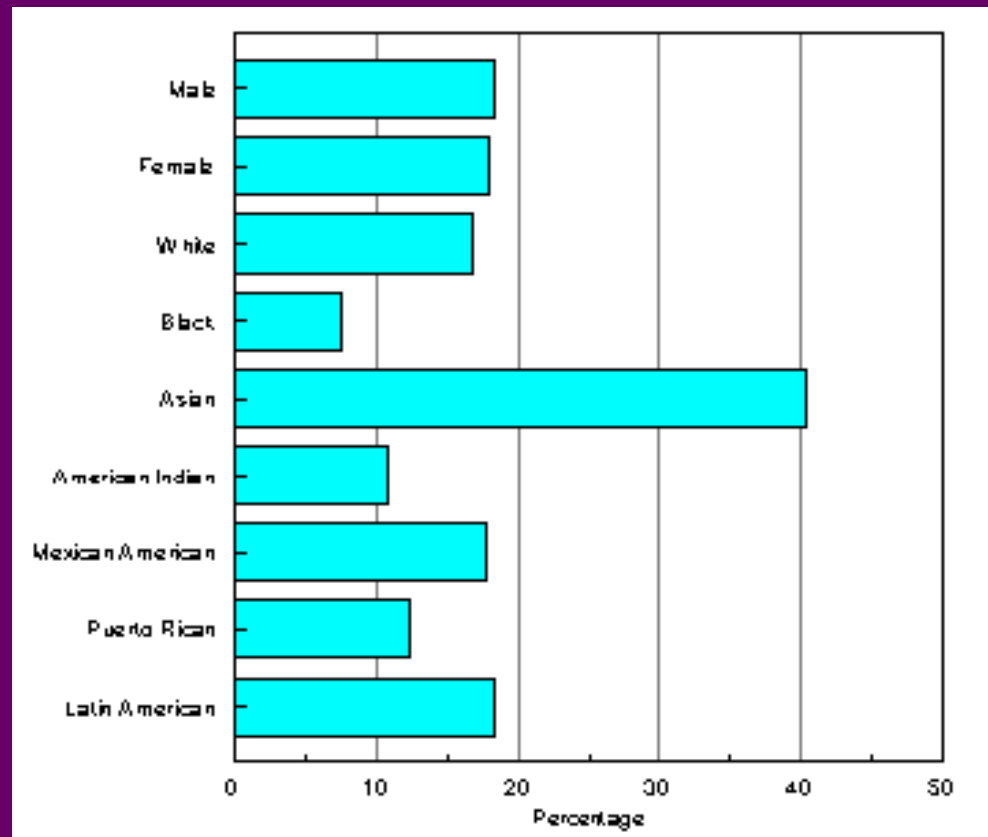


- Approximately 4% of population
- Key Issues
  - Immigration restrictions until the 1930's.
  - Internment during WWII.



# Reverse discrimination

- College admissions
- “Model Minority”





# Equal Protection Under the Law

# Discrimination

- Definition: classifying or treating groups differently
- Some forms can't be avoided
- 14<sup>th</sup> Amendment bans unreasonable discrimination
- Court uses special test to determine reasonableness of discrimination

# Rational Basis Test

- Does the government have the power to control the action?
- Plaintiff must prove unfair treatment
- Examples: polygamy, age restrictions on marriage, barring felons from earning teaching credential
- Test cannot be used if the case involves a suspect class, an almost-suspect class, or a fundamental right (see later tests)

# Suspect Classifications Test (Strict Scrutiny)

- Suspect Class: test is applied if case involves a group that has a history of being discriminated against.
- Burden of proof on defendant.
- Strict Scrutiny Rule applies
  - Involves a fundamental right / freedom
  - Must be a justifiable reason to discriminate / deny right
- Affirmative Action falls under this category (see key court cases in class notes)
- Racial Gerrymandering (banned by *Shaw v. Reno*)

## Quasi-Suspect Classification Test (Heightened Scrutiny)

- Involves cases of discrimination based on gender
- Different rules apply for men and women
  - Viewed as acceptable due to biological differences between genders
- Discrimination must be based on governmental objectives
  - Cannot be based on chauvinistic attitudes towards women
- Male only draft registration has been allowed

# Fundamental Rights Test

- Laws that deny fundamental rights are subject to strict scrutiny
- Fundamental rights are explicitly defined in the Constitution.
  - 1<sup>st</sup> Amendment and Voting
- Also includes those rights implicitly in the Constitution.
  - Political association, travel, **Privacy** (see **Griswold v. Connecticut 1965**)
- Voting
  - *Bush v. Gore (2000)* Used 14<sup>th</sup> Amendment's equal protection clause to make ruling on controversial votes [hanging chads]
- Controversial areas that need to be decided by the Supreme Court as to whether or not they are fundamental rights.
  - Right to die
  - Right to procreate
  - Right to marry / Gay marriage (Review key cases in notes)
- Gay Rights (*Lawrence v. Texas, 2003*)

# Voting Rights

# Barriers to Voting

- 15<sup>th</sup> Amendment: banned voting discrimination for race
- Southern attempts to circumvent 15<sup>th</sup> Amendment
  - White primary
    - Black voters were not allowed to vote in Presidential / political party primaries
  - Poll Tax
    - A fee was charged prior to voting to “cut the costs of operating the polls)
  - **Literacy Test (banned by Voting Rights Act of 1965)**
  - Grandfather Clause (enabled poor whites to vote while barring poor Blacks)



# Griswold v. Connecticut (1965)

- Summary of Case:
  - Griswold was the Executive Director of the Planned Parenthood League of Connecticut. Both she and the Medical Director for the League gave information, instruction, and other medical advice to married couples concerning birth control. Griswold and her colleague were convicted under a Connecticut law which criminalized the provision of counseling, and other medical treatment, to married persons for purposes of preventing conception.
- Ruling:
  - Though the Constitution does not explicitly protect a general right to privacy, the various guarantees within the Bill of Rights create penumbras, or zones, that establish a right to privacy. Together, the First, Third, Fourth, and Ninth Amendments, create a new constitutional right, the right to privacy in marital relations. The Connecticut statute conflicts with the exercise of this right and is therefore null and void.

# Voting Rights Act 1965

- Key Provisions

- States with a history of discriminatory voting practices must be granted approval from Justice Department before altering voting practices (voting practices fall under enumerated powers of states)
- Literacy tests are banned as a means of determining eligibility for voting
- Granted Fed. Government the power to register voters (previously handled by the states)
- Granted Fed the power to ensure voters are granted access to polling places
- Feds have the power to count ballots
- Requires that ballots be made available in languages other than English

- Effects of Law

Private Discrimination

And the Federal Response

# Protecting Rights / Liberties

- 5<sup>th</sup> and 14<sup>th</sup> Amendments prohibit discrimination by the government not from an individual
- Protection from the individual
  - 13<sup>th</sup> Amendment (broadly interpreted)
  - Commerce Clauses (protect from exploitation, price fixing, etc.)
  - Power to Tax and Spend (by attaching “strings” to Fed monies)

# Protection from the Individual

## Key Legislation

- Civil Rights Act of 1866
- **Civil Rights Act of 1964:** Outlawed discrimination based on race, color, religion, sex, or national origin.
  - **Title II:** Outlawed discrimination in hotels, motels, restaurants, theaters, and all other public accommodations engaged in interstate commerce. **Based on governments ability to regulate interstate commerce**
  - Title VII: outlaws discrimination in employment in any business on the basis of race, color, religion, sex or national origin (see notes)

## Key Legislation

- Civil Rights Act of 1968 (the Fair Housing Act)
  - Banned housing discrimination
- Age Discrimination Employment Act of 1967
  - Bans age discrimination in employment unless age is related to job performance
- Americans with Disabilities Act of 1990
  - Bans job / access to facilities discrimination
  - Based on premise that “reasonable accommodations” can be made
  - Employers / schools must provide equal access for students with disabilities (must accommodate special needs)

# Citizenship



# Methods of Acquiring Citizenship

- Birth

- *Jus Soli*: “right of soil”

- All children born in the US are citizens by virtue of 14<sup>th</sup> Amendment
    - Children of illegal immigrants qualify for citizenship but the issue is complicated

- *Jus Sanquinis*: “right of blood”

- Anyone born to US citizens living overseas is automatically considered a US citizen.
    - It is possible to be granted dual citizenship.



# Methods of Acquiring Citizenship

- Naturalization: Legal process by which an alien (immigrant) acquires citizenship.
  - Individual: Done through the Immigration and Naturalization Service (INS) when an individual meets various requirements.
  - Collective: Done by Congress when it makes a group of people citizens. (e.g.. Hawaiians and Puerto Ricans)

# Methods of Losing Citizenship

- Expatriation:
  - Voluntarily giving up / renouncing citizenship such as by becoming a citizen of another country.
- Denaturalization:
  - Having citizenship removed when citizenship was granted through fraud or deception.

# Aliens

- Definition: Citizens of another nation who are living in the US
  - Resident Aliens:
    - Permanent residents
  - Nonresident:
    - Temporary aliens (plan to return to country of origin)
  - Illegal:
    - Entered country through illegal means
  - Refugee:
    - Fled their country of origin because of political persecution

# Alien Rights

- Aliens living in the US share some of the same basic rights as citizens with a few exceptions
  - Suffrage:
    - Aliens are not allowed to participate in the election process.
  - Jury Duty:
    - Aliens cannot serve on juries.
  - Employment Opportunities:
    - Aliens may be denied employment in certain jobs where they pose a security risk (military bases, government buildings, etc.)
  - Risk of Deportation:
    - Aliens are not guaranteed the right to stay in the US.

# Entry into United States

- US allows the entry of 675,000 immigrants each year utilizing a complex preference system based on;
  - Having relatives living in the US
  - Possessing need or specialized job skills
  - “Diversity exceptions”: Europeans receive a special compensation.
- Political refugees do not count as part of the limit
  - Up to 100,000 political refugees are allowed to enter the US each year.

# Simpson-Mazzoli Bill of 1986

- Designed as a means of coping with the problem of illegal immigration.
- Provisions of Bill
  - Amnesty for illegal's who arrived prior to 1982 if they applied for it.
  - Steep fines for employers who knowingly employ illegal workers.
  - Allows a limited number of farm workers to enter the country each year on a temporary basis.

# Simpson-Mazzoli Bill of 1986

- Concerns about the bill
  - Bill allows people who broke the law to do so without penalty.
  - The threat of fines might make employers less likely to hire Hispanic workers.
  - There are fears that the temporary workers will be exploited.
- President GW Bush has met with the President of Mexico to discuss immigration
- Concerns over Terrorism has raised the issue of immigration in the minds of the public.
- Both political parties are reluctant to deal with the issue out of fear of alienating the Hispanic voters.

# Sources of Immigration

- Prior to 1880
  - Primarily Northern & Western Europe
- 1880-1920
  - Southern and Eastern Europe
    - Fears are raised about the spread of Communism
- 1924: National Origins Act
  - Set-up a quota system for allowing immigration.
    - Favored N&W Europeans over S&E Europe and Asia.
- 1965: Repeal of National Origins Act
  - Replaced with a preference system (see previous notes)
    - Most immigrants from Latin America and Asia
    - 1980's saw second largest influx of immigrants in US History



Life, Liberty, Property

And the Due Process of Law

# Property Rights v. Public Welfare

- Property rights
  - closely connected with liberty & freedom
- Contract Clause
  - Forbids states from passing laws that allow people to forfeit their financial obligations without penalty
- States MAY impose limits on property rights.
  - States may exercise police powers to protect public welfare
  - States have the right of Eminent Domain
    - *Kelo v. New London, 2005*: Allows gov to seize land as part of city redevelopment -5<sup>th</sup> Amendment
  - Controversy over taking land when governmental rules make property less valuable
- Changing attitude of Supreme Court regarding property rights

# Due Process of Law

- 5<sup>th</sup> & 14<sup>th</sup> Amendments prohibit gov from denial of life, liberty, & property without due process of law
- Types of Due Process
  - **Procedural**
    - **When gov denies life, liberty, and property, it must use fair procedures.**
      - **Observe the Bill of Rights**
      - Provide reasonable notice
      - Provide a chance to be heard
    - Violations of procedural due process
      - Illegal searches
      - Unfair court practices

# Due Process of Law

- Types of Due Process
  - Substantive
    - The laws that deny life, liberty, & property must be substantively fair.
    - Violation of substantive due process
      - Ban on abortions within a state
      - County ordinance banning firearms
- Distinctions Between Procedural & Substantive Due Process
  - See notes handout for examples of both.

# Arrests, Questioning, and Imprisonment



# Arrests & Searches

- Arrests
  - May be conducted if:
    - Warrant is issued upon probable cause (4<sup>th</sup>)
    - Without a warrant in emergencies, cases of hot pursuit, or when probable cause exists.
- Searches
  - With a warrant issued upon probable cause
    - Warrant must be specific / location to be searched
    - Restrictions result of previous abuses by England

# Searches (continued)

- Searches are allowed without a warrant if;
  - If probable cause exists with motor vehicle
  - Terry Exception: allowed if police believe suspect is “armed & dangerous”
  - As part of a lawful arrest
  - At border crossings
  - If evidence is sitting in plain view
  - Exigent circumstances / protection of life & property
  - Schools may conduct random drug tests on athletes
    - *Board of Pottawatomie v. Earls, 2002*

# Miscellaneous Rules

- Wiretapping
  - Legal only if a warrant has been issued
  - Foreign Intelligence Surveillance Act (1978)
    - Established a special court to allow the issuance of warrants authorizing wiretapping for foreign intelligence purposes (spying / national security)
    - FISA court issued authorization for Pres. Bush to order the investigation into phone records and internet of suspected terrorists



# Rules of Evidence

- **Exclusionary Rule**

- **Illegally obtained evidence may not be used in court.**
- Established in *Mapp v. Ohio*, 1961 (states) & *Weeks v. US*, (Fed)
- Designed to discourage police misconduct
- **Critics argue that rule allows criminals off the hook on technicalities**
- Not used if;
  - There would be inevitable discovery of evidence
  - Police operate in “good faith” / assumed that warrant (search) was valid.

# Effects of Patriot Act of 2002

- Designed to combat terrorism
  - Gives FBI & CIA greater powers to
    - Wiretap phones
    - Monitor e-mail
    - Review financial and student records
    - Conduct searches without prior notification
  - Give Fed Gov the power to deport / detain non-citizens without judicial appeal
  - Act has strengthened Fed powers and weakened the protections of 14<sup>th</sup> Amendment.
  - In 2006 NSA revealed that it was investigating domestic telephone records.

# Protection Against Self-Incrimination

- 5<sup>th</sup> Amendment guarantee
  - Based on belief that all men are innocent until proven guilty
  - Protection against testifying against oneself in court proceedings
  - Can be invoked only if a crime is involved.
  - Cannot be invoked when the prosecutors grant immunity

# Police Questioning

- Constitutional guarantees
  - The use of force during questioning is prohibited
  - Must read Miranda Warnings (Rights) prior to being questioned.
    - *Miranda v. Arizona, 1965*
      - A rights of the accused / right to remain silent case in which a mentally disturbed suspect, Ernesto Miranda, had been arrested, questioned for 2 hours, and confessed to the crime of kidnapping and rape. His conviction was reversed by the Court on the basis of the 5<sup>th</sup> & 6<sup>th</sup> Amendments. Now people are read their rights, including the right to remain silent.

# Other Constitutional Guarantees

- ***Habeas Corpus***
  - Latin for “Present the body”
  - It is a court order that requires that all prisoners be brought before a judge to make sure that they are being held legally
    - Prevents unfair / arbitrary imprisonment
  - May be suspended by Congress in cases of rebellion or invasion (think about Guantanamo Bay, Cuba)



# Other Constitutional Guarantees

- *Ex Post Facto*
  - Latin for “after the fact”
  - A law that attempts to punish a person for something that was not a crime at the time that it was committed (punishment after the fact / retroactive)
  - Constitutionally illegal / may not be passed by Congress / Protected by 6<sup>th</sup> Amendment

# Other Constitutional Guarantees

- Bill of Attainder
  - An act or law that punishes a person without a trial
  - May not be passed by Congress / right is protected by the 6<sup>th</sup> Amendment

# The Rights of the Accused

- **The Right to Counsel**

- *Gideon v. Wainright*, 1963

- States must provide legal council for those who cannot afford it

- *Johnson v. Zerbst*

- Same rule applies in Federal cases

- **Protection Against Excessive Bail and Fines**

- 8<sup>th</sup> Amendment prohibits excessive bail

- Amount of bail must be related to;

- Gravity of the offense

- Likelihood of suspect will “jump bail”

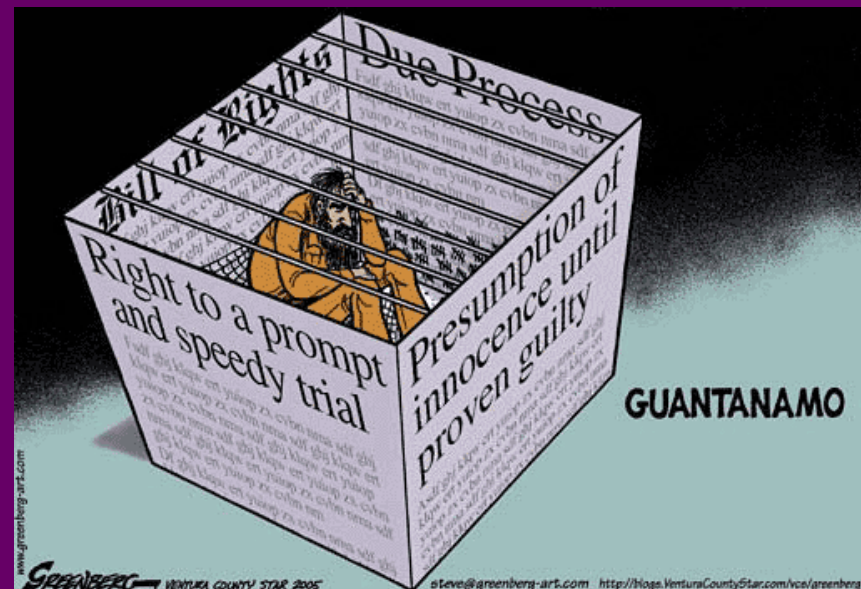
- Denial of bail does not constitute excessive bail

- The amount of the fine must be proportionate to the offense



# The Rights of the Accused

- **Right to a Speedy and Public Trial**
  - 6<sup>th</sup> Amendment
  - First provision provides protections against unreasonable delays
  - Second provision outlaws trials conducted in secret (think about Guantanamo Bay, Cuba)



# The Rights of the Accused

- Grand Jury Indictment
  - Grand Jury charges a person with a crime
    - This doesn't mean that the person is guilty, the Jury simply determines if there is enough evidence to ask for a trial
    - Designed to protect the accused from being charged wrongfully
  - Grand Jury is required only in Federal cases
  - Some fear that the Grand Jury fails to properly protect the public / a tool of prosecutors

# The Rights of the Accused

- Trial by Jury
  - Guaranteed in criminal cases (**Most cases never go to trial, they are more often settled by plea bargain**)
  - Guaranteed in civil cases worth more than \$20 (7<sup>th</sup> Amendment)
- Witnesses
  - A suspect has the right to bring witnesses on their behalf
  - A suspect has the right to cross-examine witnesses

# The Rights of the Accused

- Protection Against Cruel and Unusual Punishment
  - 8<sup>th</sup> Amendment
  - Punishment must meet the crime
  - Death penalty not considered “cruel and unusual”
  - Supreme Court struck down the death penalty for those who are mentally retarded (*Atkins v. Virginia*, 2002)
  - Three Strikes Law:
    - *Ewing v. California*, 2003 determines that 3-strikes does not constitute C&U

# The Rights of the Accused

- Protection from *Double Jeopardy*
  - A person may not be tried for the same crime twice
  - Exceptions:
    - Crime violates both state and federal laws
    - When there is a mistrial (jury could not come to a unanimous decision)