Introduction

- Civil Rights
  - Definition: policies designed to protect people against arbitrary or discriminatory treatment by government officials or individuals

2 Centuries of Struggle

- Conceptions of Equality
  - Equal Opportunity: same chances
  - Equal results: same rewards
- Early American views of equality
- The Constitution and inequality
  - Equality is not in the original constitution
    - Yes: but the equality of all is assumed after the Declaration of Independence
    - Problem: the 2 opposing views of equality
  - First mention of equality in 14th amendment
    - “…equal protection of the laws”

Race, the Constitution, and Public Policy

- The Era of Slavery
  - Dred Scott v. Sandford (1857)
    - Slaves had no rights
      - Actually stated that blacks (either slave or free) do not have rights
    - Invalidated Missouri compromise
      - Unnecessary action! Missouri compromise had been repealed by Congress in the Kansas-Nebraska Act of 1854
  - The Civil War
  - The 13th Amendment
    - Ratified after the Union won the Civil War
    - Outlawed slavery
  - The 14th Amendment
    - Necessary due to Dred Scott decision. Legal precedent stated that blacks had no rights
    - Overturned Dred Scott decision
- The Era of Reconstruction and Resegregation
  - Jim Crow or segregational laws
    - State and local laws that relegated African Americans to separate facilities
o Plessy v. Ferguson (1896)
  ▪ Established the constitutionality of “separate but equal accommodations”
  ▪ As long as the facilities were equal, the separation of the races was allowed

• The Era of Civil Rights
  o Brown v. Board of Education (1954)
    ▪ Overturned Plessy
    ▪ School segregation inherently unconstitutional
    ▪ Integrate schools with “all deliberate speed”
  o Busing of students solution for 2 kinds of segregation
    ▪ De jure, “by law”
      ▪ Segregation that was established by law
    ▪ De facto, “in reality”
      ▪ Segregation that was established by human action
        ▪ Moving, neighborhoods, etc.
  o Civil Rights Act of 1964
    ▪ Made racial discrimination illegal in hotels, restaurants, and other public accommodations
    ▪ Forbade employment discrimination based on race
    ▪ Refused federal funding to schools that were segregated
    ▪ Created Equal Employment Opportunity Commission (EEOC)
    ▪ Strengthened voting right legislation

• Getting and Using the Right to Vote
  o Suffrage: the legal right to vote
  o 15th Amendment: extended suffrage to African American men in 1870
  o Poll taxes: small taxes levied on the right to vote
    ▪ Had to pay tax before one was able to cast their vote
    ▪ Outlawed poll taxes in federal elections with the 24th amendment (1962)
    ▪ Harper v. Virginia State Board of Elections (1966): no poll taxes at all
  o White Primary: only whites were allowed to vote in party primaries
    ▪ Smith v. Alwright (1944): declared the all white Democratic primary in Texas to be unconstitutional
  o Voting Rights Act of 1965: helped end formal and informal barriers to voting
    ▪ Registered 100,000s of blacks in the South
  o Swann v. Charlotte-Mecklenburg (1971)
    ▪ Forced busing of students to create racial diverse schools was constitutional

• Other Minority groups
  o Native Americans
    ▪ Became citizens in 1924 (Indian Citizenship act)
    ▪ Santa Clara Pueblo v. Martinez (1978)
Established the concept that the Federal government has no right to rule over tribal issues within a tribe

- Hispanic Americans
  - Mexican American Legal Defense and Education Fund

- Asian Americans
  - Korematsu v. U.S. (1944)
    - Supreme Court upheld the internment of Japanese Americans
    - Court ruled that citizen’s civil liberties can be curtailed and violated in times of war
      - The State’s right to defend itself supersedes citizen’s civil rights in times of war

Women, The Constitution, and Public Policy

- The Battle for the Vote
  - 19th Amendment: extended suffrage to women in 1920

- The “Doldrums”: 1920-1960
  - Laws were designed to protect women, and protect men from competition with women
  - Equal rights amendment first introduced in Congress in 1923

- The 2nd Feminist wave
  - Much more radical!
    - Betty Friedan’s *The Feminine Mystique* (1968)
      - Encouraged women to leave the home
      - Argued that motherhood and being a wife was oppressive and prevented women from reaching their freedom
    - NOW (National Organization for Women)
      - Led by Betty Friedan and other feminists
      - Political organization to bring forth greater “rights” for women
  - Reed v. Reed (1971)
    - “Arbitrary” gender discrimination violated the 14th amendment’s Equal Protection Clause
    - First time in U.S. history that a gender discrimination case was found to violate the Constitution
  - Craig v. Boren (1976)
    - “Medium scrutiny” standard established for gender discrimination
  - Equal Rights Amendment fails ratification by the states (1982)

- Women in the workplace
  - The Civil Rights act of 1964 banned gender discrimination in employment

- Wage discrimination and comparable worth
  - The Supreme Court has not ruled on this issue
  - Title IX
• Women in the military
  o Only men may be drafted or serve in ground combat
• Sexual Harassment
  o Prohibited by Title VII of Civil Rights act of 1964

New Active Groups Under the Civil Rights Umbrella

• Civil Rights and the Graying of America
  o Age classifications not suspect category, but fall under rational basis test
• Civil Rights and people with disabilities
  o Americans with Disabilities Act of 1990
    ▪ Requiring employers and public facilities to make “reasonable accommodations” for those with disabilities
    ▪ Prohibits employment discrimination against the disabled
• Gay and Lesbian Rights
  o Bowers v. Hardwick (1986)
    ▪ Upheld a Georgia law that criminalized sodomy between consenting adults
  o Lawrence v. Texas (2003)
    ▪ Overturned Bowers
    ▪ Private homosexual acts are protected by the Constitution
  o Gay Marriage
    ▪ Many state constitutions amended to prohibit the practice

Affirmative Action

• A policy designed to give special attention to or compensatory treatment of members of some previously disadvantaged group
• In education
  o Regents of the University of California v. Bakke (1978) (16 out of 100 spots for “disadvantaged groups“)
    ▪ Supreme Court decision holding that a state university could not admit less qualified individuals solely because of their race.
    ▪ Racial set asides are unconstitutional
    ▪ Race could be considered in admissions as only one factor if it would improve the learning environment by diversity
    ▪ Race could be considered a “plus” in admissions
    ▪ Rejected the idea of quotas
    ▪ That the school districts’ use of race in their voluntary integration plans violated the 14th amendment
• In employment
  o United Steelworks v. Weber (1979)
    ▪ Quotas to remedy past discrimination are constitutional
  o Adarand Constructors v. Pena
    ▪ A 1995 Supreme Court decision holding that federal programs that classify people by race even for an ostensibly benign purpose such as expanding opportunities for minorities, should be presumed to be unconstitutional.
    ▪ To be constitutional, affirmative action must be “narrowly tailored” to meet a “compelling governmental interest”
    ▪ Did not ban affirmative action but severely limited its reach

Understanding Civil Rights and Public Policy

• Civil Rights and Democracy
  o Equality favors majority rule
  o Suffrage gave many groups political power
• Civil Rights and the Scope of Government
  o Civil rights laws increase the size and power of government
  o Civil rights protect individuals against collective discrimination

Summary

• Racial minorities and women have struggled for equality since the beginning of the republic
• Constitutional amendments and civil rights legislation guarantee voting and freedom from discrimination
• Civil rights have expanded to new groups