

Comparing *Plessy* and *Brown*

Fourteenth Amendment Equal Protection Clause:

“nor [shall any State] deny any person within its jurisdiction the equal protection of the laws.”

	<i>Plessy v. Ferguson</i>	<i>Brown v. Board of Education</i>
Date		
Position on segregation		
Explanation or justification for this position		
What do you think changed in America between 1896 and 1954?		

From *Plessy* to *Brown*

Plessy v. Ferguson (1896)

Background

In 1890, Louisiana passed a law called the Separate Car Act. This law said that railroad companies must provide separate but equal train cars for whites and blacks. Blacks had to sit with blacks and whites had to sit with whites. This is called **segregation**. Anyone who broke this law would have to pay \$25 or go to jail for 20 days.

Two parties wanted to challenge the constitutionality of the Separate Car Act. A group of black citizens who raised money to overturn the law worked together with the East Louisiana Railroad Company, which sought to terminate the Act largely for monetary reasons. They chose a 30-year-old shoemaker named Homer Plessy, a citizen of the United States who was one-eighth black and a resident of the state of Louisiana. On June 7, 1892, Plessy purchased a first-class passage from New Orleans to Covington, Louisiana and sat in the railroad car for "White" passengers. The railroad officials knew Plessy was coming and arrested him for violating the Separate Car Act. Well known advocate for black rights Albion Tourgee, a white lawyer, agreed to argue the case for free.

Plessy argued in court that the Separate Car Act violated the Thirteenth and Fourteenth Amendments to the Constitution. The Thirteenth Amendment banned slavery and the Fourteenth Amendment requires that the government treat people equally. John Howard Ferguson, the judge hearing the case, had stated in a previous court decision that the Separate Car Act was unconstitutional if applied to trains running outside of Louisiana. In this case, however, he declared that the law was constitutional for trains running within the state and found Plessy guilty.

Plessy appealed the case to the Louisiana State Supreme Court, which affirmed the decision that the Louisiana law was constitutional. Plessy then took his case, *Plessy v. Ferguson*, to the Supreme Court of the United States, the highest court in the country. Judge John Howard Ferguson was named in the case because he had been named in the petition to the Louisiana State Supreme Court, not because he was a party to the initial lawsuit.

Decision

In a 7-1 decision, the Supreme Court ruled in favor of Ferguson. The majority rejected Plessy's Thirteenth and **Fourteenth Amendment arguments**, instead putting its stamp of approval on the doctrine of "**separate but equal**." The dissent, written by Justice John Marshall Harlan, disagreed, arguing that segregationist laws indoctrinate society with the belief that the two races are not equal.

Justice Henry Brown wrote the majority opinion, which rejected Plessy's argument that the Louisiana law conflicted with the Thirteenth Amendment, deeming the point "too clear for argument." The justices then considered whether the law conflicted with the Fourteenth Amendment. They identified the purpose of the Fourteenth Amendment as "enforce[ing] the absolute equality of the two races before the law," but then asserted that "it could not have been intended to abolish distinctions based

upon color, or to enforce social...equality.” ***According to the Court, the Fourteenth Amendment was only concerned with legal, not social, equality.***

The justices explained that because the Louisiana law did not conflict with the purpose of the Fourteenth Amendment, the only remaining question was whether it was “reasonable, and ... enacted in good faith for the promotion for the public good.” Giving much deference to the state legislature of Louisiana, they determined that the law met this requirement because it furthered “the preservation of the public peace and good order.” ***Thus, so long as separate facilities were actually qualitatively equal, the Constitution did not prohibit segregation in the view of the majority of the Court.***

Justice John Marshall Harlan dissented from the majority opinion. In an opinion that later became pivotal in the *Brown v. Board of Education* cases (1954), he argued that segregationist legislation, like the Louisiana law in this case, was based on the assumption that “colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens.” These laws promoted and perpetuated the belief that African Americans were inferior to whites, according to Justice Harlan. They must be struck down, he argued, because the government could not “permit the seeds of race hate to be planted under the sanction of law.” Justice Harlan believed that the constitution must be “color-blind,” and that it could allow “no superior, dominant ruling class of citizens.” Because segregation had the effect of creating such classes, he judged, it was unconstitutional.

Brown v. Board of Education (1954)

Background

In the early 1950s, Linda Brown was a young African American student in the Topeka, Kansas school district. Every day she and her sister, Terry Lynn, had to walk through the Rock Island Railroad Switchyard to get to the bus stop for the ride to the all-black Monroe School. Linda Brown tried to gain admission to the Sumner School, which was closer to her house, but her application was denied by the Board of Education of Topeka because of her race. The Sumner School was for white children only.

Under the laws of the time and the *Plessy* decision, many public facilities were segregated by race. At the time of the Brown case, a Kansas statute permitted, but did not require, cities of more than 15,000 people to maintain separate school facilities for black and white students. On that basis, the Board of Education of Topeka elected to establish segregated elementary schools. Other public schools in the community were operated on a non-segregated, or unitary, basis.

The Browns felt that the decision of the Board violated the Constitution. They sued the Board of Education of Topeka, ***alleging that the segregated school system deprived Linda Brown of the equal protection of the laws required under the Fourteenth Amendment.*** Thurgood Marshall, an attorney for the National Association for the Advancement of Colored People (NAACP), argued the Brown's case. Marshall would later become a Supreme Court justice.

The three-judge federal district court found that segregation in public education had a detrimental effect upon black children, but the court denied that there was any violation of Brown's rights. The court found that the schools were substantially equal with respect to buildings, transportation, curricula, and educational qualifications of teachers. The Browns appealed their case to the Supreme Court of the United States, claiming that the segregated schools were not equal and could never be made equal. The Court combined the case with several similar cases from South Carolina, Virginia, and Delaware. The ruling in the *Brown v. Board of Education* case came in 1954.

Decision

In a unanimous decision, the Supreme Court ruled in favor of Brown. ***The Court found the practice of segregation unconstitutional*** in the field of public education. Chief Justice Earl Warren wrote the opinion for the Court.

The Court noted that public education was central to American life. Calling it “the very foundation of good citizenship,” they acknowledged that public education was not only necessary to prepare children for their future professions and to enable them to actively participate in the democratic process, but that it was also “a principal instrument in awakening the child to cultural values” present in their communities. The justices found it very unlikely that a child would be able to succeed in life without a good education. Access to such an education was thus “a right which must be made available to all on equal terms.”

The justices then assessed the equality of the facilities that the Board of Education of Topeka provided for the education of African American children against those provided for white children. Ruling that they were substantially equal in “tangible factors” that could be measured easily, (such as “buildings, curricula, and qualifications and salaries of teachers), they concluded that the Court must instead examine the more subtle, ***intangible effect*** of segregation on the system of public education.

The justices here argued that separating children solely on the basis of race created a feeling of inferiority in the “hearts and minds” of African American children. ***Segregating children in public education created and perpetuated the idea that African American children held a lower status in the community than white children, even if their separate educational facilities were substantially equal in “tangible” factors.*** This feeling of inferiority reduced the desire to learn and achieve in African American children, and had “a tendency to retard their educational and mental development and to deprive them of some of the benefits they would receive in a racially integrated school system.” Concluding that ***“separate education facilities are inherently unequal,”*** the Supreme Court ruled that segregation in public education denied African American children the equal protection of the laws.

Adapted from: <http://www.streetlaw.org/en/landmark/cases/>

Extending the Rights of Citizenship – Fourteenth Amendment

GROUPS	EQUAL PROTECTIONS SOUGHT	SIGNIFICANT FOURTEENTH AMENDMENT U.S. SUPREME COURT CASES or LEGISLATION	HOW SUCCESSFUL? EXPLAIN. RANK 1-6 (1 = Most Successful)
Asian Americans	<ul style="list-style-type: none"> • An end to Anti-Asian immigration laws • An end to laws prohibiting marriage between whites and Asians • An end to school segregation • An end to laws against Asians owning property 	<ul style="list-style-type: none"> • In <i>Yick Wo v. Hopkins</i> (1886) the U.S. Supreme Court declared that Chinese Americans were persons under the Fourteenth Amendment's Equal Protection Clause and ruled that they could not be unequally burdened by the laundry licensing law in San Francisco. • In <i>United States v. Wong Kim Ark</i> (1897) the U.S. Supreme Court ruled that under the Fourteenth Amendment the government could not deny citizenship to anyone born in the United States. • A 1965 Immigration Law abolished "national origins" as the basis for allocating immigration quotas, so now Asian countries are treated equally. • In 1974, the Court ruled in <i>Lau v. Nichols</i> that school districts with children who speak little English must provide them with bilingual education. • In 1988, President Reagan signed the Civil Liberties Act, which gave \$20,000 in reparations for Japanese who had been sent to internment camps during WWII. It also contained an apology from the federal government. 	
Disabled Americans	<ul style="list-style-type: none"> • Sought equality and inclusion • Availability and equal access to public services and accommodations • Equal access to education and jobs • Access to public transit 	<ul style="list-style-type: none"> • The Rehabilitation Act of 1973 forbids discrimination against disabled people in government programs or in any program or activity that receives federal grants. • The Education for All Handicapped Children Act of 1975 provided for students with disabilities free appropriate public education, transportation, and the opportunity to be educated with their non-handicapped peers. • The Fourteenth Amendment led to a federal law that requires federal employers and any independent contractors working for the government to follow fair hiring guidelines. • In 1990, Congress passed the Americans with Disabilities Act requiring public facilities to provide access to disabled citizens. • In <i>PGA Tour v. Martin</i> (2001) the U.S. Supreme Court held that the Americans with Disabilities Act of 1990 prohibited golfer Casey Martin from being denied equal access to its golf tours on the basis of a disability that prevents him from walking a golf course; allowing Martin to use a golf cart, even though the PGA rules required walking. 	

GROUPS	EQUAL PROTECTIONS SOUGHT	SIGNIFICANT Fourteenth AMENDMENT U.S. SUPREME COURT CASES or LEGISLATION	HOW SUCCESSFUL? EXPLAIN. RANK 1-6
Hispanic Americans	<ul style="list-style-type: none"> • An end to school segregation • Equal treatment under the law 	<ul style="list-style-type: none"> • In <i>Mendez v. Westminster</i> (1947), the U.S. Supreme Court prohibited segregating Latino schoolchildren from white children. • In <i>Hernandez v. Texas</i> (1954), the U.S. Supreme Court ruled that under the Fourteenth Amendment Equal Protection Clause Mexican-Americans were a distinct group entitled to the same constitutional protections as other minorities. • The Equal Opportunity Act of 1974 led to the implementation of more bilingual education programs in public schools. 	
Native Americans	<ul style="list-style-type: none"> • Sought return of native lands • Sought Indian autonomy and self-rule • Wanted a return of control over lands lost because of broken treaties 	<ul style="list-style-type: none"> • Since constitutional limitations do not apply to tribal governments, Congress adopted the Indian Civil Rights Act (ICRA) in 1968. It ensured that tribal governments respect basic rights of Indians and non-Indians, similar to the Bill of Rights. • The 1974 U.S. Supreme Court ruled in <i>Morton v. Mancari</i> that American Indians can be treated differently from other U.S. citizens by the federal government despite anti-discrimination laws. • In 1975 Congress passed the Indian Self-Determination and Education Assistance Act. This act allowed Indian tribes to run and manage their programs instead of having it done by the federal government. These programs included healthcare, education, and welfare. • Other acts that protected tribal rights and provided for autonomy and self-rule include the American Indian Religious Freedom Act (1978), Indian Gaming Regulatory Act (1988), the Native American Graves Protection and Repatriation Act (1990), and the Indian Self-Governance Act (1994). • In 2010, Congress passed the Claims Resolution Act, providing \$3.4 billion to compensate for Native American land including ownership, mineral and water rights. 	

GROUPS	EQUAL PROTECTIONS SOUGHT	SIGNIFICANT Fourteenth AMENDMENT U.S. SUPREME COURT CASES or LEGISLATION	HOW SUCCESSFUL? EXPLAIN. RANK 1-6 (1 = Most Successful)
Gay and Lesbian Americans	Sought equal rights in the workplace and in private life, including the right to marry.	<ul style="list-style-type: none"> • In 1983, Supreme Court refused to hear, and thus affirmed a lower court ruling, that a state law that gave the public school broad authority to fire homosexual teachers was too broad and thus unconstitutional. • Colorado state constitution prohibited laws that protected or gave preference to homosexuals (similar to what had been given to other minorities). In <i>Romer v. Evans</i> (1996), the U.S. Supreme Court ruled that the Colorado provision to lack a rational basis, and therefore violated the equal protection rights of homosexuals. • In <i>Oncale v. Sundowner Offshore Services</i> (1998), the U.S. Supreme Court ruled that federal sexual harassment laws included same-sex sexual harassment. • In <i>Lawrence v. Texas</i> (2003), the Supreme Court held that the equal protection law protects private sexual conduct of both homosexuals and heterosexuals. • Because marriages are recognized by state governments, states vary on whether they recognize gay marriage. The Defense of Marriage Act (DoMA) (1996) creates an exception to the Full Faith and Credit Clause (Art. 4, Section I of the Constitution). DoMA says that states are in charge of their own marriage laws and allows states to decide for themselves whether they will recognize a gay marriage from another state. Even where a state recognizes gay marriages/civil unions, DoMA refuses to extend federal benefits to partners. This has been challenged, with the First Circuit holding DoMA unconstitutional. This case is awaiting review by the Supreme Court. • In <i>Perry v. Brown</i> (2012), a three-judge appellate panel held that gay and lesbian couples have a right to marry under the U.S. Constitution. This decision struck down a California law that had made such marriages illegal. 	

GROUPS	EQUAL PROTECTIONS SOUGHT	SIGNIFICANT Fourteenth AMENDMENT U.S. SUPREME COURT CASES or LEGISLATION	HOW SUCCESSFUL? EXPLAIN. RANK 1-6
Women	<p>Sought the right to vote</p> <p>Sought equal rights</p> <p>Wanted to ban discrimination on the basis of sex</p>	<ul style="list-style-type: none"> • In 1920, women gained the right to vote by the passage of the 19TH Amendment. • In 1923, the First Equal Rights amendment was proposed, but not passed. • The Civil Rights Act of 1964 was passed. Title VII prohibits employment discrimination based on sex, giving women the ability to challenge the actions of employers or potential employers. • In <i>Reed v. Reed (1971)</i>, the U.S. Supreme Court struck down a state law that gave men preferential treatment in controlling the distribution of assets after a death. • Title IX of the Education Amendments of 1972 prohibited sex discrimination in educational institutions that receive federal financial assistance. It also forced colleges and universities to fund women's athletics at a level comparable to men's athletics. • In 1972, the Equal Rights Amendment was passed by both Houses of Congress and ratified by 35 states (38 states needed for passage). It has not been adopted, but has been reintroduced in every session of Congress since 1982. • The Equal Credit Opportunity Acts of 1974 and 1975 prohibited discrimination against women in the loaning of money. • The Pregnancy Discrimination Act of 1978 prohibited discrimination against employees on the basis of pregnancy and childbirth with respect to employment and benefits. • In <i>United States v. Virginia (1996)</i>, the U.S. Supreme Court found Virginia to be in violation of the Constitution by using a male-only admission policy at the Virginia Military Institute. • In 2009, the Lilly Ledbetter Fair Pay Act was passed, expanding workers' right to sue for pay discrimination. 	

Sources: <http://law2.umkc.edu/faculty/projects/ftrials/conlaw/home.html>; <http://legal-dictionary.thefreedictionary.com/Women's+R>

Extending the Rights of Citizenship – Teacher Background Notes

Introduction

The Fourteenth Amendment to the Constitution of the United States was initially proposed in 1866 and ratified in 1868. The Amendment itself, and particularly its “equal protection clause”, was championed by radical and moderate republicans as a response to the attempt by President Andrew Johnson and southern states to deny “freedmen” the rights they had been granted under the Civil Rights Act of 1866. Since its inception the “equal rights clause” has been controversial. It has been used more extensively than its architects might have imagined as a means of promoting and assuring civil rights for all Americans. In this lesson we will examine attempts by several groups to appeal to the “equal protection clause” as a vehicle to address their grievances and overcome constraints on their civil rights.

Asian Americans

Asian Americans experienced discrimination as early as 1790 with the Naturalization Act which forbade anyone except white people or free blacks from becoming citizens. In the mid 19th century there was increased Chinese and Japanese immigration partially in response to the Gold Rush. These miners were taxed more heavily than white miners. The Transcontinental Railroad employed many Chinese workers but they were denied citizenship. The Exclusion Act of 1882 banned Chinese immigration to the US for ten years. Chinese living in the US were also not allowed to become citizens. Periodically the restrictions on Chinese immigration were extended beyond the ten-year period. Chinese were also required to carry certificates confirming their legal status. These and other limitations on Chinese and Japanese regarding property ownership and marriage rights illustrate their severely restricted legal and social status in the United States.

In the late 19th century two landmark cases occurred, both of which appealed to the “equal protection clause” of the Fourteenth Amendment. The first, *Yick Wo v. Hopkins* was heard by the Supreme Court in 1886. Yick Wo, a Chinese citizen and the operator of a laundry in San Francisco, California was imprisoned for operating his business in a wooden building. A local statute made this illegal. Fully 89% of San Francisco’s laundries were owned and operated by Chinese. If a laundry operator wished to get around the restrictions on wooden buildings he had to apply for a permit to the Board of Supervisors. None of the Chinese who applied for the permit were granted it and all non-Chinese who applied with the exception of one was granted a permit. Yick Wo continued to operate his laundry, was fined for being in violation of the ordinance and when he refused to pay the fine was arrested and imprisoned. While in prison he sued for a writ of habeas corpus.

The Supreme Court heard the case in 1886. The question before the court was whether unequal enforcement of the law violated Yick Wo’s rights according to the “equal protection clause” of the Fourteenth Amendment. The Court ruled that it did. According to the Court, a biased enforcement of the law violated the Fourteenth Amendment. The ruling did not have much of an impact in the short term but in the 1950’s the Court used the principle established in the case to eliminate attempts by southern states to restrict the political rights of African-Americans.

The second significant case was *United States v. Wong Kim Ark* argued in 1897 and decided in 1898. Under the Chinese Exclusion Acts, Chinese immigrants could not become citizens. Wong was born in the U.S. and at age 21 went to China to visit his parents who had previously lived in America. Upon his return, Wong was denied entry into the country on the grounds that he was not a citizen. The question before the Court was whether the government could deny citizenship to people who were born in the United States. The Court ruled that the government could not deny citizenship to anyone born in the United States as this would violate their rights under the Fourteenth Amendment.

The struggle for Asian American rights has been a long and complex one. The creation of legal, political and economic organizations within the Asian American community has been an important driving force for reform.

Discrimination still exists but its intensity and extent are greatly diminished as compared to that experienced during the 19th and 20th centuries.

One of the most infamous examples of discrimination was the internment of Japanese Americans in 1942. Thousands of Japanese Americans were rounded up and placed in camps in various locales in the United States. It was not until 1988 that legislation was passed giving 1.6 billion dollars in reparations to the Japanese Americans whose rights and lives were so profoundly compromised by the internment.

Americans With Disabilities

“Disabled” is a term that indicates the inability of a person for physical or mental reasons to perform some basic societal or “workplace” functions. Disabled people have always been part of American society but for most of the history of the United States they have been marginalized at best. That is to say, they have not enjoyed equal legal status with American citizens who were not disabled.

The Civil Rights Movement of the 1960s inspired several minority groups to organize and pursue justice through the legal system and by lobbying Congress. Disabled citizens and their advocates were able to stimulate Congressional action. The Rehabilitation Act of 1973 in Section 504 forbids discrimination against disabled people in government programs or in any program or activity that receives federal grants. Also, federal employers and any independent contractor working for the government were required to follow fair hiring guidelines. In other words, if a person could perform the job in question then disabled status must have no bearing on their selection. The foundation upon which the Act rests is the Fourteenth Amendment. In 1990 Congress passed the Americans with Disabilities Act of 1990. Among other things, this Act compelled public facilities to provide access to disabled citizens.

In 1999 professional golfer Casey Martin had a particularly good season and qualified for the P.G.A. or Professional Golfers Association of America Tour in 2000. Martin has a circulatory disorder that makes it very painful for him to walk long distances. Martin appealed to the P.G.A. to allow him to use a golf cart in the final round of the tournament thereby making the tournament accessible. The P.G.A. refused and Martin took the PGA to court.

The Supreme Court heard the case and reached a decision on it in 2001. The question before the court was whether or not the Disabilities Act of 1990 made it illegal for the P.G.A. to deny Martin the use of a golf cart due to his condition or if by doing that it would significantly alter the nature of the tournament. The Supreme Court ruled in favor of Martin- the 1990 Act did in fact compel public events to give access to the disabled and by allowing Martin the use of the golf cart the general character of the tournament was not changed. In short, disabled citizens and their advocates enjoyed enormous success in the last three decades of the 20th century.

Hispanic Americans

Hispanic Americans have been an American minority almost from the beginning of the nation’s independence. As the United States expanded in the 19th century, lands and populations that had been part of the Spanish Empire (and after that the Mexican Empire), came into the possession of the American government. Mostly the populations being “absorbed” were considered to be second-rate citizens at best. They were subjected to a variety of restrictions in terms of educational opportunity, accessibility to jobs and political empowerment. They did not enjoy the rights which most white citizens did.

In the 20th century Hispanic Americans began to organize on an extensive level and proceeded to challenge the constraints that beset them. A farm workers union was organized in 1903. In 1911, in Texas, Mexican Americans organized a congress to promote social justice. In 1929, the League of United Latin American Citizens was established to combat discrimination and segregation. Then, in 1946, Mexican American families challenged the segregated school system in Orange County, California, claiming that it violated their rights

under the Fourteenth Amendment. The District Court in Los Angeles ruled for the plaintiffs. Governor Earl Warren signed into law the repeal of California's segregationist educational policies. In 1947, a U.S. Court of Appeals affirmed the district court's decision. This victory was important not only for Hispanic Americans, but for other groups that remained afflicted by segregationist practices.

Another landmark case affecting the Hispanic American community began in Texas when an agricultural worker named Pete Hernandez was indicted for murder in Jackson County, Texas. Hernandez was accused of killing Joe Espinoza. The jury that indicted Hernandez was all white and county records showed that no Mexican American citizens had been part of a jury in Jackson County for the previous twenty-five years. Hernandez's defense attorneys argued that citizens of Mexican ancestry were discriminated against as a unique class in Jackson County. Hence, the all white jury was a violation of Hernandez's rights under the Fourteenth Amendment. The Texas Court of Appeals rejected the argument.

The Supreme Court heard the case in 1954. The question before the Court was whether a citizen's rights under the Fourteenth Amendment were violated if that citizen was a member of a racial or ethnic group that had been excluded by the state and that person was subject to the decisions of a jury that did not include any members of his group because of that exclusivity.

The Court ruled that Hernandez' rights under the Fourteenth Amendment had in fact been violated. The Court concluded that the Fourteenth Amendment was designed to protect any racial or ethnic group against discrimination. It was clear to the Court that in Jackson County Mexican Americans were subjected to a wide range of discrimination such as not being selected for jury duty and being unable to use the restrooms in the courthouse itself where a sign in Spanish directed Mexican Americans and African Americans to a facility separate from the one used by whites. Mexican Americans thereby were a special class entitled to equal protection under the law.

The struggle for equal rights for Hispanic Americans has been a long one and has attained notable successes in the last seventy-five years.

Native Americans

Native Americans created complex well-ordered societies long before Europeans and Africans arrived in North and South America. Despite this, they were considered by many of the new arrivals as little better than the wild creatures of the forests and increasingly exploited and marginalized by these comparatively recent immigrants.

During the early 19th century three important Supreme Court cases resulted in the establishment of tribal sovereignty or self-government. These cases- *Johnson v. McIntosh* 1832, *Cherokee Nation v. Georgia* 1831 and *Worcester v. Georgia* 1832 were decided by the Court under the direction of Chief Justice John Marshall. The general long-term result of the ruling was that Indian land was under tribal direction within certain limits and Native Americans were politically and legally in control there (again within certain limits).

Native Americans as a group did not obtain full rights as citizens until the Indian Citizenship Act (sometimes referred to as the Snyder Act) in 1924. In 1968 an Indian Civil Rights Act was passed. The Act was designed to protect tribal self-government and at the same time protect individual Native Americans living on reservations from tribal governments that had or may become corrupt.

In 1978 the case *Martinez v. Santa Clara Pueblo* was heard by the United States Supreme Court. A Pueblo woman, Julia Martinez sought full membership in the tribe for children born to female tribal members who married outside the tribe. The Tribal Council denied membership to such children but not those born to male members who married outside the tribe. Clearly there was a gender as well as a racial component to the Council's decision. The Supreme Court ruled in favor of the Tribal Council. The Court held that the Tribal Council enjoyed immunity from suit as the Indian Civil Rights Act did not grant all rights to Native People living

on Reservations. Native Americans living on Reservations also do not have all of the rights of American citizens not living on Reservations.

Native American responses to *Martinez* were mixed. Some saw the decision as a victory for Indians as the US Government did not use the opportunity to once again “meddle in their affairs”. Others saw it as an avoidance of responsibility by the government for not stopping what was obviously an unfair practice.

Gay and Lesbian Americans

Gay and Lesbian Americans have long been engaged in a struggle for equal rights although due to the severe discrimination to which they were subjected it was mainly a covert and silent one. At one time the act of same sex contact could result in either time spent in jail or mandatory psychological treatment. The origin of the contemporary gay rights movement began in 1969 with the so-called “Stonewall” riots, a series of violent confrontations between gay men and the police in New York City. In response to these riots the gay community began to organize and by 1974 had achieved a notable success by getting the American Psychiatric Association to remove homosexuality from its list of mental disorders.

In 1996 the Supreme Court reached a landmark decision in the case *Romer v. Evans*, which originated in the State of Colorado. In response to a voter referendum Amendment Two was added to the state's constitution. This amendment basically stated that no state governmental authority could pass any legislation that recognized gays and lesbians as a “protected class” due to the discrimination they experienced because of their sexual orientation. In other words, gays and lesbians could be discriminated against. The case was heard by the Supreme Court. The question before the court was whether or not Amendment Two violated protection guaranteed by the Fourteenth Amendment to a class of citizens who were discriminated against due to their sexual orientation. The court ruled that Amendment Two did in fact violate the rights of gay and lesbian citizens.

Currently, the most important issue for many gay and lesbian citizens is the right to marriage. In the United States this is a very controversial issue. Many citizens believe that same sex contact is sinful and the legalization of gay marriage would undermine the entire institution of matrimony. Other citizens support the idea of gay and lesbian marriage at the very least as a civil union. The Supreme Court has recognized that certain kinds of discrimination against gays and lesbians (those which violate the Fourteenth Amendment) are illegal. However, the Court has also asserted that the states need not treat all classes of people equally. For example, underage people do not enjoy all of the options that those who are of age do. Therefore, it seems that this component of the “cultural wars” may well be fought out primarily within state boundaries.

Clearly there have been major advances over the last half-century for gay and lesbian citizens. Organizers within that community continue to work for what they consider complete legal equality. In a companion cases, DOMA was declared unconstitutional by the First Circuit and is awaiting review by the Supreme Court (*Massachusetts v. U.S. Department of Health and Human Services* and *Hara v. Office of Personnel Management* at http://www.glad.org/uploads/docs/cases/gill-v-office-of-personnel-management/2012-may-31-gill-v-opm-first-circuit-ruling.pdf?p1=News_links).

Women

The issue of women's rights in the United States goes well back before the nation gained its independence. A primary example of this was in the 17th century when Anne Hutchinson was persecuted and banished for some of her ideas. The Revolutionary War generation witnessed the efforts of Abigail Adams, wife of John Adams. She and other women hoped to extend the rights being proposed for men to women as well. In the mid-19th century women's rights advocates stepped up their efforts at the Seneca Falls meeting and beyond. The main goal became winning the right to vote. It wasn't until 1920, however, that the Nineteenth Amendment to the Constitution was ratified finally giving women the right to vote.

There have been numerous attempts by feminist leaders in the quest for women's rights to apply the Fourteenth Amendment in support of their cause. All were unsuccessful, however, until 1971 in the State of Idaho. The case began when both Sally Reed and her husband (they were separated at the time) wanted to become the administrator of their deceased son's estate. Sally Reed took the case to a state court. The husband was named administrator by the Idaho court, which ruled "males must be preferred to females" in such matters. In response, Sally Reed appealed to the Supreme Court, which agreed to hear the case.

The question before the court in the case *Reed v. Reed* was whether or not the Idaho legal code about gender based administrators of estates was a violation of the Equal Protection Clause of the Fourteenth Amendment. The Court, in a unanimous decision, ruled in Sally Reed's favor claiming that the state code was arbitrary and was exactly the kind of legislative decision the Equal Protection Clause was designed to prevent. This was the first case since the ratification of the Fourteenth Amendment where the Equal Protection Clause was applied to the rights of women.

Two years later in a decision that remains extremely controversial the Court ruled in the landmark case *Roe v. Wade* that some anti-abortion laws violate the rights of women under the Fourteenth Amendment. Despite these notable successes, the struggle for equality under the law for women continues. Attempts at an Equal Rights Amendment have thus far failed and women are still on average paid less than men for performing the same tasks.

Quote by Thurgood Marshall



“The men who gathered in Philadelphia in 1787 could not have envisioned these changes. They could not have imagined, nor would they have accepted, that the document they were drafting would one day be construed by a Supreme Court to which had been appointed a woman and the descendent of an African slave. ‘We the People’ no longer enslave, but the credit does not belong to the Framers. It belongs to those who refused to acquiesce in outdated notions of ‘liberty,’ ‘justice,’ and ‘equality,’ and who strived to better them.”

Source: http://www.thurgoodmarshall.com/speeches/constitutional_speech.htm.

Admit University ("Admit U") Applicant Selection Criteria



Our top five (5) criteria for admissions (listed in order of importance):

Criteria (Be Specific)

Justification for Criteria

1.

1.

2.

2.

3.

3.

4.

4.

5.

5.

Regents of the University of California v. Bakke (1978) **Case Summary**



Facts of the Case:

Allan Bakke, a thirty-five-year-old white man, had twice applied for admission to the University of California Medical School at Davis. He was rejected both times. The school reserved sixteen places in each entering class of one hundred for "qualified" minorities, as part of the university's affirmative action program, in an effort to redress longstanding, unfair minority exclusions from the medical profession. Bakke's qualifications (college GPA and test scores) exceeded those of any of the minority students admitted in the two years Bakke's applications were rejected. Bakke contended, first in the California courts, then in the Supreme Court, that he was excluded from admission solely on the basis of race.

Question:

Did the University of California violate the Fourteenth Amendment's Equal Protection Clause, and the Civil Rights Act of 1964, by practicing an affirmative action policy that resulted in the repeated rejection of Bakke's application for admission to its medical school?

Conclusion:

No and yes. There was no single majority opinion. Four of the justices contended that any racial quota system supported by government violated the Civil Rights Act of 1964. Justice Lewis F. Powell, Jr., agreed, casting the deciding vote ordering the medical school to admit Bakke. However, in his opinion, Powell argued that the rigid use of racial quotas as employed at the school violated the Equal Protection Clause of the Fourteenth Amendment. The remaining four justices held that the use of race as a criterion in admissions decisions in higher education was constitutionally permissible. Powell joined that opinion as well, contending that the use of race was permissible as one of several admission criteria. So, the Court managed to minimize white opposition to the goal of equality (by finding for Bakke) while extending gains for racial minorities through affirmative action.

Decision: 5 votes for Bakke, 4 vote(s) against

Source: The Oyez Project, *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978) available at: (http://www.oyez.org/cases/1970-1979/1977/1977_76_811) (last visited Thursday, August 25, 2011).

***Grutter v. Bollinger* (2003)**

Case Summary



Facts of the Case:

In 1997, Barbara Grutter, a white resident of Michigan, applied for admission to the University of Michigan Law School. Grutter applied with a 3.8 undergraduate GPA and an LSAT score of 161. She was denied admission. The Law School admits that it uses race as a factor in making admissions decisions because it serves a "compelling interest in achieving diversity among its student body." The District Court concluded that the Law School's stated interest in achieving diversity in the student body was not a compelling one and enjoined its use of race in the admissions process. In reversing, the Court of Appeals held that Justice Powell's opinion in *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978), constituted a binding precedent establishing diversity as a compelling governmental interest sufficient under strict scrutiny review to justify the use of racial preferences in admissions. The appellate court also rejected the district court's finding that the Law School's "critical mass" was the functional equivalent of a quota.

Question:

Does the University of Michigan Law School's use of racial preferences in student admissions violate the Equal Protection Clause of the Fourteenth Amendment or Title VI of the Civil Rights Act of 1964?

Conclusion:

No. In a 5-4 opinion delivered by Justice Sandra Day O'Connor, the Court held that the Equal Protection Clause does not prohibit the Law School's narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body. The Court reasoned that, because the Law School conducts highly individualized review of each applicant, no acceptance or rejection is based automatically on a variable such as race and that this process ensures that all factors that may contribute to diversity are meaningfully considered alongside race. Justice O'Connor wrote, "in the context of its individualized inquiry into the possible diversity contributions of all applicants, the Law School's race-conscious admissions program does not unduly harm nonminority applicants."

Decision: 5 votes for Bollinger, 4 vote(s) against

Source: The Oyez Project, *Grutter v. Bollinger*, 539 U.S. 306 (2003) available at: (http://oyez.org/cases/2000-2009/2002/2002_02_241) (last visited Thursday, August 25, 2011).

***Gratz v. Bollinger* (2003)**

Case Summary



Facts of the Case:

In 1995, Jennifer Gratz applied to the University of Michigan's College of Literature, Science and the Arts with an adjusted GPA of 3.8 and ACT score of 25. In 1997, Patrick Hamacher applied to the University with an adjusted GPA of 3.0, and an ACT score of 28. Both were denied admission and attended other schools. The University admits that it uses race as a factor in making admissions decisions because it serves a "compelling interest in achieving diversity among its student body." In addition, the University has a policy to admit virtually all qualified applicants who are members of one of three select racial minority groups - African Americans, Hispanics, and Native Americans - that are considered to be "underrepresented" on the campus. Concluding that diversity was a compelling interest, the District Court held that the admissions policies for years 1995-1998 were not narrowly tailored, but that the policies in effect in 1999 and 2000 were narrowly tailored. After the decision in *Grutter*, Gratz petitioned the U.S. Supreme Court for a writ of certiorari which was granted.

Question:

Does the University of Michigan's use of racial preferences in undergraduate admissions violate the Equal Protection Clause of the Fourteenth Amendment or Title VI of the Civil Rights Act of 1964?

Conclusion:

Yes. In a 6-3 opinion delivered by Chief Justice William H. Rehnquist, the Court held that the University of Michigan's use of racial preferences in undergraduate admissions violates both the Equal Protection Clause and Title VI. While rejecting the argument that diversity cannot constitute a compelling state interest, the Court reasoned that the automatic distribution of 20 points, or one-fifth of the points needed to guarantee admission, to every single "underrepresented minority" applicant solely because of race was not narrowly tailored and did not provide the individualized consideration Justice Powell contemplated in *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978). Chief Justice Rehnquist wrote, "because the University's use of race in its current freshman admissions policy is not narrowly tailored to achieve respondents' asserted compelling interest in diversity, the admissions policy violates the Equal Protection Clause."

Decision: 6 votes for Gratz, 3 vote(s) against

Source: The Oyez Project, *Gratz v. Bollinger*, 539 U.S. 244 (2003) available at: (http://oyez.org/cases/2000-2009/2002/2002_02_516) (last visited Thursday, August 25, 2011).

Identifying Arguments

For Affirmative Action	Against Affirmative Action

Affirmative Action Arguments – Teacher Reference Sheet

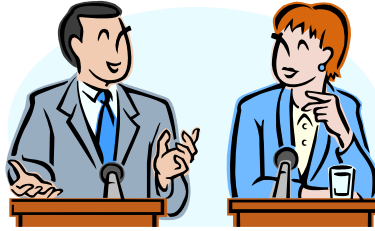
Arguments FOR Affirmative Action in College Admissions

- It helps to create a more diverse student body.
- It makes up for past historical discrimination and wrongs, such as slavery and oppression.
- It takes into account the fact that not everyone enters college from the same starting point.
- High schools that are predominantly black tend to offer fewer AP class opportunities, making it harder for academically exceptional black students to compete with academically exceptional white students.
- Affirmative action attracts minority students toward higher education.
- Some stereotypes relating to race may never be broken without affirmative action.
- Affirmative action is fair compensation for prolonged racial oppression and slavery and whites should be willing to allow it for the common good.
- In our society, providing an opportunity for higher education in a top school is more important than a student's ability to perform well at that higher institution.
- If we wait for society to treat minorities fairly, true equality may never happen.
- It levels the playing field.

Arguments AGAINST Affirmative Action in College Admissions

- Reverse discrimination is not the solution to past discrimination and leads to inequalities.
- Merit, not race or gender, should determine admission.
- Racial or ethnic diversity does not automatically lead to diversity of opinion.
- Affirmative action leads others to believe that successful minorities only achieved their success because of affirmative action, not of their own accord, ability or talents.
- It increases racial tensions.
- Affirmative action is not limited to minorities and women from lower classes and often unfairly helps those who are privileged.
- The fact that a minority can become President of the United States is proof that it is time to do away with preferences.
- Applying different standards to different people just because of their race is not fair.
- Once an affirmative action policy is in place, it is hard to remove.
- Affirmative action gives preference simply because of the color of one's skin.
- Students who get into institutions of higher education due to their race are less likely to be able to do well in school.
- Affirmative action devalues the efforts of minorities who do not need affirmative action to get into college. It therefore harms the perceptions of the abilities of minorities.
- Affirmative action wrongly takes from one group and gives to another. It is discrimination by another name.
- No group should be punished for the wrongs of their ancestors.

Affirmative Action Debate Preparation Guide



When preparing for the debate, consider how you would answer the following questions:

1. How do you decide which groups should receive affirmative action? Explain.
2. What is the historical purpose for affirmative action?
3. Does affirmative action lead to equality? Explain your reasoning.
4. Is affirmative action really a form of reverse discrimination? Explain.
5. Is it fair to give someone affirmative action just on account of their race without taking into consideration other factors (i.e. their talent, economic background, etc.)? Explain your thinking.
6. Barbara Grutter applied to law school at the University of Michigan and was rejected, even though her grades were higher than some of the minority candidates who were admitted. In her case, the U.S. Supreme Court decided that the University of Michigan had acted lawfully. However, in Gratz, the affirmative action policy for undergraduates at the University of Michigan was found unconstitutional. Why did the outcome in each case differ? Do you agree with the decisions? Why or why not? Were the decisions of the U.S. Supreme Court just or unjust in each case? Explain your reasoning.
7. In the United States, African Americans have historically been disadvantaged because of slavery and racial segregation. Is affirmative action in college admissions an acceptable form of compensation for historical disadvantage? Explain.
8. Is it fair for someone who never discriminated to pay for the discrimination done by their predecessors? Explain.
9. Does affirmative action help society? Explain.
10. Can affirmative action lead to negative consequences for the person who receives it? Explain.
11. Would your opinion about affirmative action be different if you were another race? Explain.
12. Is it important for an educational institution to be diverse? If so, are there ways other than affirmative action to meet this goal? Explain your reasoning.

Discussion Rubric

Exemplary	Effective	Adequate
The students have accurately expressed considerable knowledge pertinent to the discussion question/issue. In addition, students have used a variety of skills, both behavioral and knowledge-based, to advance the discussion. The students were always civil, listened intently, showed no sign of negative behaviors and participated frequently given the time allowed	The students have accurately expressed knowledge pertinent to the discussion question/issue. The students used a variety of skills, both behavioral and knowledge-based to advance the discussion. The number and variety of skills employed shows room for improvement given the time allowed. The students were always civil, and listened intently, though may have showed some signs of less serious negative behaviors such as interrupting. The frequency of participation may need improvement.	The students have accurately expressed some knowledge pertinent to the discussion question/issue. The students used some skills to advance the discussion, but the skills may have been predominantly knowledge-based OR behavioral. The number and variety of skills employed shows considerable room for improvement given the time allowed. The students were always civil, though may have showed some signs of less serious negative behaviors such as interrupting. The students may have also shown signs of not listening. The frequency of participation shows considerable room for improvement.
Minimal	Unsatisfactory	
The students have accurately expressed some knowledge pertinent to the discussion question/issue. However, there may have been a large number of inaccurate statements made that show a lack of preparation for the discussion. The students showed minimal signs of skills to advance the discussion. There is considerable room to improve the frequency and quality of participation. The students may have shown signs of uncivil behavior that disrupted the discussion, such as very disruptive interrupting, or criticizing people instead of ideas. The students may have shown signs of not listening intently.	The students have failed to express any relevant knowledge on the discussion question/issue. The students have also demonstrated few if any skills to further the discussion.	

Street Law, Inc., and the Supreme Court Historical Society. 2010. www.landmarkcases.org. 18 June 2012
<http://www.streetlaw.org/en/landmark/teaching_strategies/scored_discussion>.

Historical Background for Teachers: Civil Rights and Equal Protection

An American belief in fairness is basic to present-day U.S. society. Consequently, the use of personal traits such as race, gender (sex of the person), or nationality to legally set apart one group of people from others raises serious concerns over human equality. However, this notion of equality in the United States at the beginning of the twenty-first century is not the same as when America was very young. Although the 1776 Declaration of Independence proclaimed that "all Men are created equal" with certain basic rights including "Life, Liberty, and the Pursuit of Happiness," the goal of liberty from England was stronger than striving for equality among the colonists. As a result, some classes of people enjoyed more rights than others. For example, in the first years of the nation only white male adult citizens who owned property could vote. Excluded were women, people of color, and the poor who held no property to speak of. Slavery was recognized as an important part of the nation's economy. In fact, nowhere did the term equality appear in the U.S. Constitution adopted in 1789 or the Bill of Rights of 1791.

Following the American Civil War (1861–65), Congress passed three new amendments to the Constitution, the Thirteenth, Fourteenth, and Fifteenth amendments. Collectively known as the Civil Rights Amendments, their main purpose was to abolish slavery, provide citizenship to the newly-freed slaves, and to guarantee their civil rights. Civil rights refers to the idea of participating free from discrimination (giving privileges to one group but not another) in public activities such as voting, staying in an inn, attending a theater performance, or seeking employment. The idea of equality under the law first appeared in the Constitution with the passage of the Fourteenth Amendment ratified (approval) in 1868. The amendment contained wording that people refer to as the Equal Protection Clause. The Equal Protection Clause declares that state governments can not "deprive any person of life, liberty, or property, without due process of the law (all legal proceedings must be fair); nor deny to any person within its jurisdiction (geographical area over which authority extends) the equal protection of the laws." Equal protection of the laws means no person or persons will be denied the same protection of the laws that is enjoyed by other persons or groups.

The Long Struggle Toward Equality

Equal treatment of America's diverse population, however, did not immediately follow. When cases involving equality issues were first brought before the federal courts including the U.S. Supreme Court, the courts consistently interpreted the Fourteenth Amendment narrowly (very limited in meaning). The first major interpretation came in the *Slaughterhouse Cases* (1873). The Supreme Court held that basic civil rights of individuals were primarily protected by state law. Federal government protection was limited to a narrow set of rights such as protection on the high seas and the right to travel to and from the nation's capital. A second example of narrow interpretation came in 1883 in the [*Civil Rights Cases*](#) involving the Civil Rights Act of 1875 passed by Congress to enforce the Civil War Amendments. This act sought to assure equal access to public transportation and public places such as inns and theaters. The Supreme Court ruled that the Fourteenth Amendment only applied to discrimination by state governments, not to discrimination by private persons such as owners of railroads, theaters or inns. The Court ruling largely overturned (negated) the 1875 act leaving the federal government virtually powerless to control discrimination against blacks by private persons. Taking advantage of this powerlessness, the governments of many Southern states created segregation (separation of groups by race) laws in the 1880s known as Jim Crow laws. Black supporters of racial justice, such as Frederick

Douglass and Ida B. Wells-Barnett (see sidebar), crusaded against the often violent treatment of African Americans.

The next major setback to those seeking true equality in access to public facilities (places) was the [*Plessy v. Ferguson*](#) (1896) decision in which the Court established the "separate but equal" rule. The rule meant that violation of the Equal Protection Clause would not occur as long as African Americans had access to the same kind of facilities as whites, even if they were separate from those used by whites. This ruling led to African Americans and whites having separate water fountains, separate public restrooms, and separate schools. The ruling basically promoted racial segregation, and rarely were the separate facilities of equal quality.

Ironically, aliens (citizens from foreign countries) initially received more favorable treatment from the courts concerning equality than African Americans. In [*Yick Wo v. Hopkins*](#) (1886) the Supreme Court ruled in favor of a Chinese laundry owner. The owner claimed a San Francisco city ordinance (law) concerning business licenses, although containing no discriminatory wording, was intended to shut down Chinese laundry businesses in the city. *Yick Wo* was the only successful equal protection challenge among the first cases brought to the Supreme Court in the decades following the ratification of the Fourteenth Amendment. In fact, the Fourteenth Amendment's guarantee of equal protection seemed useless for seventy years after it became a part of the Constitution. During those decades the Court tended to view equality in terms of protection of property rights or business interests, not individual civil rights.

A Shift to Individual Civil Rights

The historically important shift in applying equal protection to individual civil rights began to occur in the late 1930s through efforts of the National Association for the Advancement of Colored People (NAACP) and other groups. The courts responded with favorable decisions for racial minorities suffering injustices. For example, in *Missouri ex rel. Gaines v. Canada* (1938) the Supreme Court ruled in favor of an individual denied entrance into a state law school. The Court found that a requirement based solely on race violated the Equal Protection Clause.

The Modern Civil Rights Era

Two major 1954 Court decisions introduced the modern civil rights era. In the epic case of *Brown v. Board of Education*, the Supreme Court struck down the "separate but equal" rule by finding that public school segregation was unconstitutional (not following the intent of the U.S. Constitution). A civil rights revolution was begun. That same year in *Bolling v. Sharpe* the Court held that the Due Process Clause in the Fifth Amendment prohibited racial discrimination by the federal government just as the Equal Protection Clause of the Fourteenth Amendment prohibits discrimination by state governments. The door was opened to much broader protection of individuals' civil rights.

Still, progress in society recognizing individual civil rights following decades of discrimination was slow. Numerous protests followed often involving highly publicized acts of civil disobedience (peacefully disobeying laws considered unjust) under the leadership of Dr. Martin Luther King, Jr. and others. Eventually widespread violence erupted in the nation's cities.

The Federal government began responding to the growing social unrest in the mid-1960s with a series of laws designed to further recognize civil rights and equality under the law. The 1963 Equal Pay Act required that men

and women receive similar pay for performing similar work. The landmark 1964 Civil Rights Act prohibited discrimination based on race, color, national origin, or religion at most privately-owned businesses that serve the public. The 1964 act also established equal opportunity in employment on the basis of race, religion, and sex. An important Court decision occurred in 1964 as well. In [*Reynolds v. Sims*](#) the Court extended equal protection to voters rights. The "one person, one vote" rule resulting from the decision was put into law by Congress the following year in the 1965 Voting Rights Act. Prohibited were state residency requirements, poll taxes (pay a tax before voting), and candidate filing fees that traditionally were used to discriminate against poorer minority voters. In 1967 the Court in [*Loving v. Virginia*](#) ruled that state law could not prohibit interracial marriages thus recognizing the right of individuals to select their own marriage partners. A fourth important law followed in 1968 with the Fair Housing Act prohibiting discrimination in housing.

The successes of the civil rights movement of the 1950s and 1960s, focused primarily on racial discrimination, began to influence concerns over other forms of inequality. In 1971, the Court in [*Reed v. Reed*](#) overturned a state law arbitrarily discriminating against women. This decision extended the Equal Protection Clause to apply to gender discrimination. Courts also found some laws discriminatory against illegitimate children (parents not married) and unwed fathers. In *Weber v. Aetna Casualty & Surety Co.* (1972) the Court ruled that illegitimate children should have the same rights as other children. They should not be penalized through life for their parents' actions over which they had no control. Through the 1980s and 1990s equal protection issues tackled new topics such as sexual harassment, gay rights, affirmative (vigorous encouragement of increased representation of women and minorities) action, and assisted suicide (right to choose when to die).

Standards of Scrutiny

The Equal Protection Clause does not require that all people be treated equally at all times. Discrimination is sometimes legally permitted, such as not allowing people under eighteen years of age to vote in elections. The key decision often before the courts is to determine when discrimination is justified.

Through the nineteenth and twentieth centuries the Supreme Court increasingly recognized that throughout America's history some groups tended to be inappropriately discriminated against more than other groups. For example, people of color and women are two groups who have been traditionally discriminated against more than white men. Over the last 150 years of Supreme Court debates and decisions, the Court determined that to properly defend these groups' civil rights, the cases involving them would have to be looked at very closely. At the beginning of the twenty-first century the Court used three different standards or levels of examination or inquiry, called scrutiny, to test a case for equal protection violations. A case receives the highest level of scrutiny or "strict scrutiny" if it involves racial issues, aliens, or issues of nationality. At the intermediate level of scrutiny are cases involving women or "illegitimate persons" (individuals whose parents were not married). All other cases involving equal protection considerations fall into what is called "rational basis" scrutiny.

Changing Government Roles

The role of government regarding civil rights and equal protection changed dramatically through the twentieth century. Originally, the government primarily sought to resolve conflicts between individuals or other parties and to protect a private individual's behavior from government restrictions unless the behavior was extreme or endangering others. By the end of the century, the government had become more of a promoter of community general welfare. It became acceptable to limit the behavior or actions of some people in order to protect the

rights of others. An example is a requirement that owners of restaurants, whether they want to or not, must serve all members of the public unless questions of safety or health arise. Many saw this change as a shift from emphasis on political liberty from government rules during the eighteenth century colonial period to ensuring equality for all in the later years of the twentieth century. The Equal Protection Clause has become the primary constitutional shield for protecting the civil rights of the many groups of people in the United States.

Suggestions for Further Reading

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Duster, Alfreda M. *Crusade for Justice: The Autobiography of Ida B. Wells*. Chicago: University of Chicago Press, 1970.

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Source: "Civil Rights and Equal Protection." Supreme Court Drama. Ed. Elizabeth M. Shaw. UXL-Thomson Gale, 2001. eNotes.com. 2006. 21 Aug, 2011 <<http://www.enotes.com/supreme-court-drama/civil-rights-and-equal-protection>>