

Chapter Six

Civil Rights

What are civil rights?

- Protect certain groups against discrimination
- Claims are raised when a group is denied access to facilities, opportunities, or services available to other groups
- The issue is whether differences in treatment are reasonable

Separate-But-Equal

- NAACP strategy went through a series of stages:
 - Step 1: obvious inequalities, addressed in 1938–1948 cases
 - Step 2: deciding that separation creates inequality in less obvious cases
 - Step 3: declaring that separation is inherently unequal - *Brown v. Board of Education*

Brown v. Board of Education

- Unanimous Supreme Court opinion overturned *Plessy*
- Segregation is detrimental; creates sense of inferiority in African American students
- The Court relied on social science, because the Fourteenth Amendment was not necessarily intended to abolish segregated schools, and the Court sought a unanimous opinion

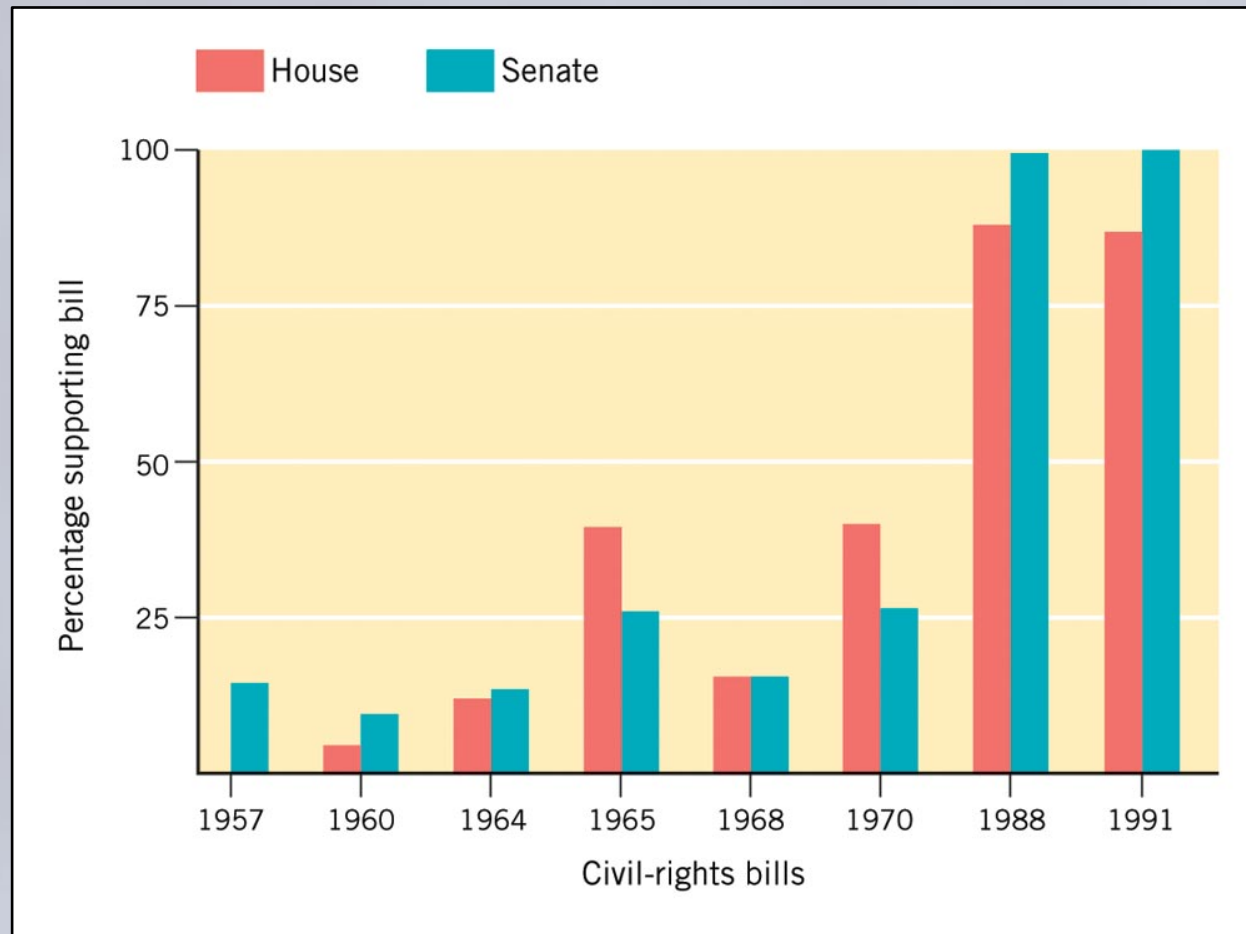
Desegregation v. Integration

- *Swann v. Charlotte Mecklenburg* (1971): remedies may include racial quotas, redrawn district lines, and court-ordered busing
- Inter-city busing could be authorized only if both the city and the suburbs had practiced segregation
- Busing remains controversial

The Campaign for Civil Rights

- Sit-ins and freedom rides, voter registration efforts
- Martin Luther King, Jr., Rosa Parks—
Montgomery bus boycott
- From nonviolent civil disobedience to the
“long, hot summers” of racial violence
(1964–1968)

Figure 6.2: Growing Support Among Southern Democrats in Congress for Civil Rights Bills



Congressional Quarterly, Congress and the Nation, vols. 1, 2, 3, 7, 8.

Table 6.1: Increase in Number of Black Elected Officials

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Office	1970	1991	2001
Congress and state legislatures	182	476	633
City and county offices	715	4,493	5,456
Judges and sheriffs	213	847	1,044
Boards of education	362	1,629	1,928
Total	1,472	7,445	9,061

Sources: Statistical Abstract of the United States, 2003, Table 417.

Gender-Based Discrimination

- Reasonableness standard versus strict scrutiny
- Court chooses a blend—more than reasonable but not as much as strict scrutiny
- Some gender-based differences are allowed by courts

Sexual Harassment

- **Quid pro quo:** sexual favors are required as a condition for holding a job or for promotion; employers are strictly liable
- **Hostile environment:** creating a setting in which harassment impairs a person's ability to work; employers are liable if they were negligent

Privacy and Sex

- Regulating sexual matters is traditionally a state function, under the exercise of the police powers
- In 1965, Supreme Court held that states could not prevent the sale of contraceptives, because that violated the *zone of privacy*

Abortion

- *Roe v. Wade*: struck down a Texas ban on abortion (and all similar state laws)
- Woman's freedom to choose is protected by the Fourteenth Amendment
- *Webster* (1989): The Court upheld some restrictions on abortions
- *Casey* decision (1992) does not overturn *Roe* but permits more restrictions: 24-hour wait, parental consent, pamphlets about alternatives

Affirmative Action

- **Affirmative action:** preferential hiring and admission practices to remedy discrimination
- *Bakke* (1978): numerical minority quotas are not permissible, but race can be considered

Affirmative Action

- *Adarand Constructors v. Peña* (1995)—any racial classification is subject to strict scrutiny
- *Gratz v. Bollinger* (2003) – overturned a University of Michigan admissions policy that gave “bonus points” to Black, Hispanic and Native American applicants to the undergraduate program
- *Grutter v. Bollinger* (2003) upheld a University of Michigan Law School admissions policy that used race as a “plus factor” but not as part of a numerical quota

Gays and the Constitution

- *Bowers v. Hardwick* (1986): Georgia was allowed to ban homosexual sexual activity
- *Romer v. Evans* (1996): Colorado voters had adopted state constitutional amendment making it illegal to protect persons based on gay, lesbian or bisexual orientation; the Court overturns it
- *Lawrence v. Texas* (2003): The Court overturned a Texas law banning sexual conduct between persons of the same sex