Civil Rights in the New World

Inquire: How Has the Struggle for Civil Rights Changed in the New Millennium?

Overview

Civil rights are policies designed to protect people against arbitrary or discriminatory treatment by government officials or individuals, and often deal with physical attributes such as skin color, gender, age, physical disabilities, race, nationality, and other differences. We do not want people treated differently, for example, simply on the basis of their skin color. From these issues come protected classes of individuals, or people who share the same attribute(s).

In this lesson, we will look at how many minority groups in America have struggled for civil rights and equal treatment, and look at civil rights protection for the disabled and other non race-related groups.

We will also ask some hard questions. For example, what defines a protected class? How do we determine if someone’s differences are truly something that need protection, or just a choice they are making? How is the class defined, and how do we determine the reality of the need?

Big Question: What has been the history of minority groups in the U.S.?

Watch: Japanese Internment and Korematsu

Executive Order 9066 — issued by Franklin D. Roosevelt on February 19, 1942 — authorized the internment of “any or all persons” deemed to be a threat with regards to “…espionage and against sabotage to national-defense material, national-defense premises, and national-defense utilities…” after the attack on Pearl Harbor by the Japanese on December 7, 1941. EO 9066 was aimed at one racial group: Japanese, Japanese-Americans, and Americans of Japanese descent living on, or near, the West Coast of the U.S. These people were rounded up, transported away from their homes, and locked in internment camps.

Many of these people were American citizens, and many were several generations removed from living in Japan. What was their crime? Their Japanese ethnicity or heritage. What made them a threat? Their Japanese ethnicity or heritage. What led to them being treated differently than other Americans? Their Japanese ethnicity or heritage. These people were accused, tried, and convicted by a decision in the Roosevelt administration that resulted in a simple Presidential Executive Order.

Fred Korematsu was a Japanese-American citizen. He intentionally refused to comply with the government’s orders that he voluntarily relocate to his assigned government internment camp. Instead, he
sued, claiming that EO 1099 was unconstitutional and violated his 14th Amendment rights of due process and equal protection.

Mr. Korematsu was correct — as set forth in the opinion of Justice Robert H. Jackson of the United States Supreme Court, where Justice Jackson states, in part:

“...(Korematsu) has been convicted of an act not commonly a crime... (this law) is an attempt to make an otherwise innocent act a crime merely because this prisoner is the son of parents as to whom he had no choice, and belongs to a race from which there is no way to resign.”(Korematsu v. United States; 323 US 214 (1944))

Clearly, as Justice Jackson points out, this law — this internment — is unconstitutional, at least as it pertains to Fred Korematsu. The only problem is, Justice Jackson’s opinion is a dissenting opinion, and the majority opinion upheld the internment based on race, with the majority opinion arguing that that law, though constitutionally suspect, is justified during circumstances of "emergency and peril."

*Korematsu* has never been overturned, though surely we would never discriminate against people of one race or ethnicity like this again… right?

The fight for equal protection and equal treatment has been long and arduous. There have been successes and failures, but the most important issue is vigilance. Vigilance by the American people as we continue to try to do better and work to keep fear from clouding our sense of fairness.

**Read: Civil Rights for Hispanics and Other Groups**

**Hispanic and Latino Civil Rights**

Hispanics and Latinos in the United States have faced many of the same problems as African Americans and Native Americans. However, the issues have one very important and fundamental difference: immigration.

The terms Hispanic and Latino are often used interchangeably, although they are not the same. There are groups who distinguish "**Hispanic**" as referring to native speakers of Spanish and "**Latino**" as referring to people who come from, or whose ancestors came from, Latin America. However, the U.S. Census Bureau defines the ethnonym Hispanic or Latino to refer to "a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race," and states that Hispanics or Latinos can be of any race, any ancestry, and any ethnicity. In this lesson, we will use the term Hispanic for clarity and simplicity.

The continual influx of Hispanic immigrants is what sets this group apart from African Americans, and the number of Hispanic immigrants — especially the large number of undocumented immigrants crossing the borders between Mexico and the U.S. — is what sets this group apart from any other minority or immigrant group in the U.S.

In 1929, Latino civil rights activists formed the League of United Latin American Citizens (LULAC) to protest against discrimination and to fight for greater rights for Hispanics. However, just as in the case of African Americans, true civil rights advancement for Hispanics did not take place until the end of World War II. Hispanic and Latino activists targeted the same racist practices as African Americans did, and used many of the same tactics to end them. In 1946, Mexican American parents in California, with the assistance of the NAACP, sued several California school districts that forced Mexican and Mexican
American children to attend segregated schools. In the case of Mendez v. Westminster (1947), the Court of Appeals for the Ninth Circuit Court held that the segregation of Mexican and Mexican American students into separate schools was unconstitutional.

Hispanic segregation was less uniform, though often just as demeaning and hurtful, and the efforts to bring equal treatment to this group often paralleled the struggles and the successes of the African American movement. Additionally, there had been widespread discrimination with regards to migrant farmers and agricultural laborers, specifically in California. Throughout the 1960s, Cesar Chavez and Dolores Huerta fought for the rights of Mexican American agricultural laborers through their organization, the United Farm Workers (UFW), a union for migrant workers they founded in 1962. Chavez found success by consciously adopting the tactics of the African American civil rights movement.

The issue of immigration remains a hotly contested topic, both in the states and in the United States Congress, and often overshadows the civil rights issues facing the Hispanic community. However, the United States Census Bureau projects that by 2044, the United States will be a “majority of minorities” with no racial or ethnic group comprising more than 50% of the population, and Hispanics will be over 25% of that population. As such, in the near future, Hispanic influence on governmental policies will be enormous and the policy impact has yet to be determined.*

Asian American Civil Rights

While Asian Americans found themselves embroiled in civil rights litigation in the 1960s and 1970s, especially due to backlash from the Vietnam War, the Asian American movement is no longer as active as other civil rights movements are. Although discrimination persists, Americans of Asian ancestry are generally more successful than members of other ethnic groups. They have higher rates of high school and college graduation and a higher average income than other groups. Although educational achievement and economic success do not protect them from discrimination, they do place them in a much better position to defend their rights.

Non-Ethnic/Racial Groups Civil Rights

Civil rights for people with disabilities, people of different religious faiths, people of different sexual orientations, and people of different gender identities is the forefront struggle in the early 21st century.

The Education for all Handicapped Children Act of 1975 required public schools to educate children with disabilities. The act required that schools consult with parents to create a plan tailored for each child’s needs that would provide an educational experience as close as possible to that received by other children. Further, the 1990 Americans with Disabilities Act (ADA) greatly expanded opportunities and protections for people of all ages with disabilities. It also significantly expanded the categories and definition of disability.

Religious beliefs have been the basis of lawsuits and actions to be free of unlawful taking, due process, and equal protection under the 14th. These groups have protested government regulation policies which required them to make decisions contrary to their beliefs. For example, in the Burwell v. Hobby Lobby Stores, Inc. case, Hobby Lobby Stores, Inc. sued claiming the provisions of the 2009 Universal Healthcare Act, which required the employers to offer birth control to the company’s female employees, violated the religious beliefs of the small family group which owned Hobby Lobby. The Supreme Court ruled in the owners’ favor, stating that in a small, closely held corporation like Hobby Lobby, the U.S. government could not force them to choose between breaking the law or violating their beliefs.
Religious belief cases tie into the group of cases which are the most problematic. Race, gender, ethnicity, color, and even disability cases deal with issues that are based on physical attributes and/or genetic issues of the classes involved. “Religious belief” opens a door to someone who might just want to avoid the cost of offering birth control. But, religious freedom and limiting the government’s ability to control religious beliefs — or even pry into religious beliefs — is so ingrained in American political history and thought that this is a difficult area to set guidelines and standards.

The same issues arise in the arena of sexual orientation and gender identity. The LGBT (lesbian, gay, bisexual, and transgender) movement has been focused on the equal and fair treatment of those whose sexual orientation and/or gender identity place them in these groups. Like religious beliefs, this is gray area with regards to identifying and actively protecting these groups.

The Obergefell v. Hodges case on same sex marriage is the leading Supreme Court case in this area. However, this is an area that is not even close to being defined or resolved, and which raises questions that are new and must be answered.


Reflect: Civil Rights: Genetics or Beliefs?

Poll

Race, sex, color, physical disability, and even ethnicity and disabilities due to identifiable mental disorders, tend to be classes that can be identified and determined by some sort of test that is not reliant on the beliefs of the person or persons involved. Religious groups (Muslims, Christians, Jews, etc. — not race or ethnicity) and other belief systems that connect groups are about beliefs and the choice to believe. Since this cannot be quantified or verified, and is something the individual is choosing, should these groups be afforded the same protection as an African American or a blind person who has no choice in their inclusion in the group?

What do you think? Should civil rights protection be extended to create “protected groups” or classes that exist only because of the choices made by the individuals in the group?

- Yes
- No

Expand: Obergefell - Necessary Decision or Open Door to Abuse?

Discover

“...the right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. The Court now holds that same-sex couples may exercise the fundamental right to marry." Obergefell (Justice Kennedy, for the majority.)

“The fundamental right to marry does not include a right to make a State change its definition of marriage... In short, our Constitution does not enact any one theory of marriage. The people of a State
are free to expand marriage to include same-sex couples, or to retain the historic definition.”
Obergefell, (Chief Justice Roberts, in dissent.)

Obergefell is easily one of the most controversial Supreme Court decisions in the last 50 years. The Court could have left the “same-sex” marriage issue to the states. “Marriage” is not mentioned in the Constitution, which would seem to indicate this issue is reserved to the states. Using the “full faith and credit” clause in the Constitution, the Court could order states to recognize the same-sex marriage from another state. This would have allowed the people in each state to make a determination about marriage, but given same-sex couples a valid marriage, regardless of where they reside.

However, the five-to-four majority did not make that decision. Instead, they defined marriage as a “fundamental right” and required that states not only recognize same-sex marriages performed in other states, but also authorize marriages for same-sex couples.

The decision obviously raises a discussion of judicial activism (should the courts be making laws?) and even issues of fundamental rights. As Chief Justice Roberts asks in his dissent, if same-sex marriage is a fundamental right, why not polygamy? To go further, in our “social contract” of a government, all people are born with all rights, but they agree as a society to give up some rights to the government to avoid chaos. To expand on the position expressed by Justice Scalia in his dissent, if five lawyers can simply decide to ignore the choices of the majority of the people in forming the “social contract” on the issue of same-sex marriage, why not ignore the will of the people in making the social contract with regards to other rights that were originally surrendered? “The people” have set 18 as the age of adult and consent; could the Court decide we are depriving 16 year-olds of their fundamental rights?

Obviously, this was not the majority’s intent, and they would quickly and forcibly deny the assertions of the dissenting opinion and the concerns raised above. Regardless, the opinion does raise questions.

In 2012, Colorado legalized the recreational use of marijuana. The problem is, there is still no reliable, accepted scientific or medical test to determine if someone is high from using marijuana and driving under the influence (DUI). For alcohol, there are reliable and accepted breathalyzer tests, blood tests, etc. But, there is no way to test for the sobriety, or impairment, of a person using marijuana.

The issues with civil rights in the 21st century seem to raise similar problems — race, sex, physical (and even most mental) disabilities are discernible through reliable, scientific means. Even ethnicity is something that can be explored through facts. However, religious beliefs are choices people make — how do you test the sincerity of faith? Further, there is no scientific evidence that sexual orientation is produced by any physical factor or factors. As such, like religious beliefs, there is no scientific litmus test to determine who is and/or who is not in need of protection due to sexual orientation.

Civil rights are “policies designed to protect people against arbitrary or discriminatory treatment by government officials or individuals… (f)rom these issues come protected classes of individuals, people who share the same attribute(s).”

Religious beliefs, sexual orientation, and new and different attributes in the future, are qualities that may lead people who share the same attribute(s) to ask for protection as a “protected class.” These groups may very well need, and deserve, designation as a protected class. However, answering that question, as well as the conundrum of class membership (How do we know who belongs in the group?) will shape the civil rights questions of the 21st century.
Lesson Toolbox

Additional Resources and Readings

Discrimination: Crash Course Government and Politics #31
- A Crash Course video covering discrimination and minorities in the U.S.
  - https://youtu.be/P-yviKu8Odo

Civil Rights and Hispanics in Texas
- A Texas Historical commission video discussing the Hispanic struggle for Civil Rights in Texas
  - https://youtu.be/dzfdINufpSE

Civil Rights & Liberties: Crash Course Government #23
- A Crash Course video covering civil rights and liberties in the U.S.
  - https://youtu.be/kbwsF-A2sTg

Due Process of Law: Crash Course Government and Politics #28
- A Crash Course Government video covering due process of law
  - https://youtu.be/UyHWRXAAgmQ

Equal Protection: Crash Course Government and Politics #29
- A Crash Course Government video covering equal protection under the law
  - https://youtu.be/qKK5KVI9_Q8

Japanese-American Internment During WWII | History
- A History Channel video discussing the Japanese internment camps in World War II and Asian civil rights issues
  - https://youtu.be/cZTioTkHcB0

Lesson Glossary

civil rights: policies designed to protect people against arbitrary or discriminatory treatment by government officials or individuals, and often deal with physical attributes such as skin color, gender, age, physical disabilities, race, nationality, and other differences

internment camps: putting a person in prison or other kind of detention, generally in wartime; During World War II, the American government put Japanese Americans in internment camps, fearing they might be loyal to Japan

Fred Korematsu: an American civil rights activist who objected to the internment of Japanese Americans during World War II

Hispanic: referring to native speakers of Spanish

Latino: referring to people who come from, or whose ancestors came from, Latin America

immigration: the action of coming to live permanently in a foreign country

fundamental right: a basic or foundational right, derived from natural law; a right deemed by the Supreme Court to receive the highest level of Constitutional protection against government interference

protected class: federal protected classes now include race, color, national origin, religion, sex (or gender), age (over 40), and disability
**LGBT**: LGBT or GLBT is an initialism that stands for lesbian, gay, bisexual, and transgender; refers to anyone who is non-heterosexual or non-cisgender, instead of exclusively to people who are lesbian, gay, bisexual, or transgender.

**Check Your Knowledge**

1. The issue of immigration remains a hotly contested topic, both in the states and in the United States Congress, and often overshadows the civil rights issues facing the Hispanic community.
   - A. True
   - B. False

2. Educational achievement and economic success protects Asian Americans from all discrimination and helps them defend their rights.
   - A. True
   - B. False

3. _________ is a foundational right, derived from natural law.
   - A. A civil right
   - B. A fundamental right
   - C. A basic right
   - D. A legal right

**Answer Key:**

**Citations**

**Lesson Content:**
Authored and curated by Jay Reynolds, J.D. for The TEL Library. CC BY NC SA 4.0

**Adapted Content:**
Title: American Government: Rice University, OpenStax CNX. License: CC BY 4.0
http://cnx.org/contents/5bcc0e59-7345-421d-8507-a1e4608685e8@15.8