**Chapter 4 Civil Liberty**

I.      The Bill of Rights

               The Bill of Rights comes from the colonists’ fear of a tyrannical government. Recognizing this fear, the Federalists agreed to amend the Constitution to include a Bill of Rights after the Constitution was ratified. The Bill of Rights places limitations on the government, thus protecting citizens’ civil liberties.

A.    Extending the Bill of Rights to State Governments. As we have seen, federalism divides power between the national government and the state governments. While the Bill of Rights protected the people from the national government, it *did not protect the people from state governments.* In 1868 the Fourteenth Amendment became a part of the Constitution. While this amendment did not mention the Bill of Rights, it would be interpreted to impose, step-by-step, most of the Constitutional protections of civil liberties upon state governments during the twentieth century.

B.    Incorporation of the Fourteenth Amendment. Beginning in 1925 the United States Supreme Court began to apply specific rights stated in the Bill of Rights to state governments. Table 4-1 in the text lists the incorporation of the specific rights.  However, not all of the rights have been applied to state governments at this time (e.g., the Second Amendment).

II.         Freedom of Religion

The First Amendment addresses the issue of religion from two different venues: (1) “Congress shall make no law respecting an establishment of religion,” and (2)  “…or prohibiting the free exercise thereof….” Congress is prohibited from passing laws that establish governmental involvement in religion, and Congress is prohibited from passing laws that deny people the right to practice their religious beliefs.

A.    The Establishment Clause— The Separation of Church and State. The establishment clause is the part of the First Amendment prohibiting the establishment of a church officially supported by the national government.

1.     Aid to Church-Related Schools. In general, such aid is ruled out by the establishment clause; however, the Supreme Court has permitted aid in limited cases.

2.     School Vouchers. One ongoing controversy regarding the establishment clause is the issue of whether school vouchers can be used for religious schools. Some states’ attempts at education reform include granting student vouchers that can be used at any public or private school, including religious schools. The Supreme Court has ruled that this is permissible. Nonetheless, some state courts have held that vouchers violate state laws.

3.     The Issue of School Prayer—*Engel v. Vitale*. The Supreme Court has ruled that officially sponsored prayer in schools violates the establishment clause.

4.     The Debate over School Prayer Continues. However, the court has allowed school districts to have a moment of silence when such an event is conducted as a secular rather than religious occasion.

5.     Prayer outside the Classroom. The Supreme Court has ruled that students in public schools cannot use a school’s public address system to pray at sporting events. In spite of this, students in some districts (especially in the South) deliberately violate the ruling, or use radio broadcasts to circumvent the Court’s decision.

6.     The Ten Commandments. A live issue is whether posting the Ten Commandments in school classrooms or other public buildings violates the establishment clause. The Supreme Court ruled in 2005 that a granite monument on the grounds of the Texas state capitol that contained the commandments was constitutional because the monument as a whole was secular in nature.

7.     Forbidding the Teaching of Evolution. The courts have interpreted the establishment clause to mean that no state can ban the teaching of evolution or require the teaching of “creationism.”

8.     Religious Speech. Public schools and colleges cannot place restrictions on religious organizations that are not also placed on nonreligious ones.

B.    The Free Exercise Clause. The free exercise clause guarantees the free exercise of religion by constraining the national government from prohibiting individuals from practicing the religion of their choice. Yet the Supreme Court has allowed for some restraint on free exercise when religious practices interfere with public policy. Examples of this include the ability of school districts to select texts for students, and the requirement of vaccinations for school enrollment.

1.     The Religious Freedom Restoration Act. Passed by Congress in 1993, the act required all levels of government to “accommodate religious conduct” unless there was a compelling reason to do otherwise. In 1997, the Supreme Court ruled the act unconstitutional.

2.     Free Exercise in the Public Schools. Under the No Child Left Behind act of 2002, schools can be denied federal funds if they ban constitutionally acceptable expressions of religion.

III.       Freedom of Expression

The First Amendment is not an absolute bar against legislation by Congress concerning speech. The First Amendment protects most speech, but some speech either falls outside the protection of the First Amendment or has only limited protection.

A.    No Prior Restraint. This is, in effect, censorship by restraining an activity before the activity actually occurred. Only on rare occasions has the government been allowed to stop the press from printing anything. If the publication violates a law, the law can be invoked only after publication.

B.    The Protection of Symbolic Speech. Signs, gestures, articles of clothing, and other nonverbal expressive conduct that convey meaning are constitutionally protected speech. Controversially, this includes the act of burning the American flag.

C.    The Protection of Commercial Speech. Advertisements have limited First Amendment protection. Restrictions must directly meet a substantial government interest and go no further than necessary to meet the objective. Advertisers can be liable for factual inaccuracies in ways that do not apply to noncommercial speech.

D.    Permitted Restrictions on Expression.

1.     Clear and Present Danger. During the twentieth century, the Supreme Court has allowed laws that restrict speech that allegedly would cause harm to the public. The restrictions were principally imposed on advocates of revolution. The original test, established in 1919, was the *clear and present danger* test.

2.     Modifications to the Clear and Present Danger Rule. In 1925, the government received great power to restrict speech through the Court’s enunciation of the *bad tendency rule*. In 1951, however, the Court introduced *the grave and probable danger rule*, which was somewhat harder for the government to meet. The current rule, established in 1969, is the *incitement test*. This test allows restrictions on speech only when the speech is an immediate incitement to illegal action. This test, for the first time, guaranteed free speech to advocates of revolution.

E.     Unprotected Speech: Obscenity

1.     Definitional Problems. The current definition stems from 1973. Material is obscene if 1) the average person finds it violates community standards, 2) the work as a whole appeals to a prurient interest in sex, 3) the work shows patently offensive sexual conduct, and 4) the work lacks serious literary, artistic, political, or scientific merit.

2.     Protecting Children. The government can ban private possession of child pornography, that is, photographs of actual children engaging in sexual activity.

3.     Pornography on the Internet. Congress has made many attempts to shield minors from pornography on the Internet. Most of these efforts have been found unconstitutional, including bans on virtual pornography, which involves digitally rendered images of children engaging in sexual activity. The Supreme Court upheld, though, an act requiring public schools and libraries to install filtering software to prevent children from viewing “adult” content.

F.     Unprotected Speech: Slander. One type of speech that falls outside the protection of the First Amendment is slander: statements that are false and are intended to defame the character of another.

G.    Student Speech.

1.     Public High School Students

2.     Student Activity Fees. Colleges may distribute such funds among student groups even when groups espouse beliefs that some students would reject.

3.     Campus Speech and Behavior Codes. These codes are designed to prohibit hate speech, which attacks people on the basis of their ethnicity, race, or other criteria. The courts have generally found such codes to be unconstitutional, but many continue to exist.

H.   Hate Speech on the Internet. Restrictions on such speech exist in other countries, but not in the United States.

IV.       Freedom of the Press

Freedom of the press is similar to freedom of speech.

A.    Defamation in Writing. Key concept: *libel*, a written defamation of character. Public figures, public officials or other persons known to the public because of their position or activities, must meet higher standards than ordinary people to win a libel suit.

B.    A Free Press versus a Fair Trial: Gag Orders. The courts have occasionally ruled that gag orders, orders issued by a judge restricting the publication of news about a trial or pretrial hearing, may be used to protect the accused’s right to a fair trial. To this end, the courts have said that the right of a defendant to a fair trial supersedes the right of the public to “attend” the trial.

C.    Films, Radio, and TV. Although the press was limited to printed material when the First Amendment was proposed, the press is no longer limited to just the print media. Freedom of the press now includes other channels: films, radio, and television. Broadcast radio and TV are not afforded the same protection as the print media. Some language is not protected (filthy words) even though the language is not obscene.

V.         The Right to Assemble and to Petition the Government

The right to assemble and to petition the government is important to those who want to communicate their ideas to others. The Supreme Court has held that state and local governments cannot bar individuals from assembling.  State and local governments can require permits for such assembly so that order can be maintained.  However the government cannot be selective as to who receives the permit.

A.    Street Gangs. Some anti-loitering laws have passed constitutional muster; others have not. Such laws cannot be vague.

B.    Online Assembly. Certain Web sites advocate violence against physicians who practice abortion. The limits to such “online assembly” remain an open question.

VI.       More Liberties Under Scrutiny: Matters of Privacy

There is no *explicit* Constitutional right to privacy, but rather the right to privacy is an interpretation by the Supreme Court. The basis for this right comes from the First, Third, Fourth, Fifth, and Ninth Amendments. The right was established in 1965 in *Griswold v. Connecticut.*

A.    Privacy Rights in an Information Age. Individuals have the right to see most information that the government may hold on them.

B.    Privacy Rights and Abortion. A major right-to-privacy issue is abortion rights.

1.     *Roe v. Wade.* In *Roe v. Wade* (1973) the court held that governments could not totally prohibit abortions because this violates a woman’s right to privacy. Government action was limited depending on the stage of the pregnancy: 1) first trimester—states may require that only a physician perform the abortion. 2) Second trimester—to protect the health of the mother, states may specify conditions under which the abortion can be performed. 3) Third trimester—states may prohibit abortions. In later rulings, the Court allowed bans on government funds being used for abortions. It also allowed laws that require pre-abortion counseling, a 24-hour waiting period, and for women under 18, parental or judicial permission.

2.     Protests at Abortion Clinics. The Court has approved various limits on protests outside abortion clinics. A current issue is “partial birth abortion,” or “intact dilation and extraction,” a second-trimester procedure. State governments and Congress have attempted to ban the procedure, but so far, all bans have been ruled unconstitutional.

C.    Privacy Rights and the Right to Die. In *Cruzan v. Director, Missouri Department of Health*  (1997), the Supreme Court decided that a patient’s life support could be withdrawn at the request of a family member if there was “clear and convincing evidence” that the patient did not want the treatment. This has led to the popularity of “living wills.”

1.     What If There Is No Living Will? For married persons, the spouse is the relative with authority in this matter.

2.     Physician-Assisted Suicide. The Supreme Court has said that the Constitution does not include a right to commit suicide. This decision left states much leeway to legislate on this issue. Since that decision in 1997, only the state of Oregon has legalized physician-assisted suicide.

D.    Privacy Rights versus Security Issues. Privacy rights have taken on particular importance since September 11, 2001.

1.    The USA Patriot Act eased restrictions on the government’s ability to investigate and arrest suspected terrorists.

2.     Civil Liberties and the Patriot Act allowed, for the first time, the government to open a suspect’s mail and expand the government’s ability to search a suspected terrorist’s home and monitor a suspect’s Internet activities, phone conversations, and financial records. Opponents argue such rules may violate a number of constitutional amendments.

3.     Secret Surveillance and monitoring, using wire taps, without obtaining warrants were allowed.

VII.     The Great Balancing Act: The Rights of the Accused Versus the Rights of Society

A.    Rights of the Accused. In the United States when the government accuses an individual of committing a crime, the individual is presumed to be innocent until proven guilty.

                  The Bill of Rights sets forth specific rights of the accused:

1.     Fourth Amendment

a.     No unreasonable or unwarranted search or seizure.

b.     No arrest except on probable cause.

2.     Fifth Amendment

a.     No coerced confessions.

b.     No compulsory self-incrimination.

c.      No double jeopardy.

3.     Sixth Amendment

a.     Legal counsel.

b.     Informed of charges.

c.      Speedy and public jury trial.

d.     Impartial jury by one’s peers.

4.     Eighth Amendment

a.     Reasonable bail.

b.     No cruel or unusual punishment.

When the Bill of Rights was enacted, these restrictions were only applicable to the national government. The Fourteenth Amendment eventually made these rights applicable to state governments. Most of these interpretations have occurred in the last half of the twentieth century and interpretation is an ongoing process. The rights of the accused today are vastly different than the rights of the accused before 1950.

B.    Extending the Rights of the Accused. Today the conduct of police and prosecutors is limited by various cases, including the right to an attorney if the accused is incapable of affording one (*Gideon v. Wainwright* 1963).

1.     *Miranda v. Arizona.* The Miranda ruling requires the police to inform suspects of their rights (*Miranda v. Arizona* 1966).

2.     Exceptions to the Miranda Rule. These include a “public safety” exception, a rule that illegal confessions need not bar a conviction if other evidence is strong, and that suspects must claim their rights unequivocally.

3.     Video Recording of Interrogations. In the future, such a procedure might satisfy Fifth Amendment requirements.

C.    The Exclusionary Rule. A judicial policy prohibiting the admission at trial of illegally seized evidence (*Mapp v. Ohio* 1961).

VIII.   The Death Penalty

A.    Cruel and Unusual Punishment? The Eight Amendment prohibits “cruel and unusual punishment.”  Does the death punishment by the state violate the cruel and unusual punishment clause? In the 1970s most state death penalty statutes were found to be unconstitutional because of the inconsistent way states were applying the death penalty. As states began to revise capital punishment statutes, the Court held that the new laws were not a violation of the Eighth Amendment.

B.    The Death Penalty Today. Now 38 states and the federal government have capital punishment laws.

C.    Time Limits for Death Row Appeals. The 1996 Anti-Terrorism and Effective Death Penalty Act limit appeals from death row. Recently, DNA testing has led to the freeing of about a hundred death row inmates who were wrongly convicted, casting doubt on the death penalty.

IX.        Features

A.    What If*…Roe v. Wade*were Overturned? Can the Court declare a women’s constitutionally protected right to privacy to include the right to have an abortion?  Why does abortion remain such a contentious topic for over 30 years?

B.    Politics and the War on Terrorism. Does one of the casualties of the war on terrorism need to be the curtailment of civil liberties?

C.    Beyond our Borders. The Bill of Rights prevents the government from establishing a state religion. In other countries, such as Saudi Arabia, the bureaucracy enforces the state-sponsored religion and moral codes through the religious police.

D.    Which Side Are You On? As long as religious practices do not interfere with the rights of others, they are legally acceptable in the United States. Controversy ensues when government funding of religious accommodations violates the constitutionally mandated separation of church and state.

E.     Politics and Cybersphere. The Patriot Act became a powerful tool that gave the FBI increased authority to spy on unsuspecting terrorists. It also forced banks to disclose any unusual transactions.

F.     Politics and the Death Penalty. The Supreme Court sited guidelines for defense attorneys when trying death penalty cases and when reversing a trial court’s imposition of the death penalty. Because of the high cost of these trials, some states have set an hourly rate for the attorneys involved which has created a shortage of lawyers handling these cases.

G.    Why Should You Care About Civil Liberties? Even those who abide by the law could be the subject, at some point, of a police stop, search, or arrest.  Knowing your civil liberties in these situations is vital. The police can only search someone if they have a warrant. Citizens are within their rights to calmly refuse a search in the absence of a warrant or to ask to examine the warrant if one is provided. The American Civil Liberties Union monitors issues surrounding the rights and obligations of citizens under the law.

**Chapter 5 Civil Rights**

Civil rights refer to those things that the government must do to provide equal protection and freedom from discrimination for all citizens. Traditionally, we think of civil rights as those rights rooted in the Fourteenth Amendment to the Constitution. While the term “civil rights” goes back in history, early attempts at true protection were unsuccessful because the Supreme Court believed that it was not within its purview to stop non-governmental discrimination. Since the 1950s, the Supreme Court has held the opposite view, thus enabling the government to offer broader protections to citizens’ equality in social and economic life.

I.      African Americans and the Consequences of Slavery in the United States

A.    Ending Servitude. With the passage of the Civil War amendments, slavery and some of the problems slavery had created were abolished. 1) The Thirteenth Amendment (1865) prohibits slavery within the United States. 2) The Fourteenth Amendment (1868) established that all persons born in the United States are citizens and no state shall deprive citizens of their rights under the Constitution.  3) The Fifteenth Amendment (1870) established the right of citizens to vote.

B.    The Civil Rights Acts of 1865 to 1875. After passing the Civil War amendments, Congress enacted the Civil Rights Acts of 1865–1875, which were aimed at the southern states. These laws attempted to prevent states from passing laws that would circumvent the amendments.

C.    The Ineffectiveness of the Civil Rights Laws.

1.    The Civil Rights Cases. The United States Supreme Court invalidated much of the civil rights legislation in the *Civil Rights* cases (1883). Enforcement of the Fourteenth Amendment was limited to correcting actions by states in their official acts. This would mean that private citizens could practice discrimination without interference from the national government.

2.    *Plessy v. Ferguson*: Separate-but-Equal. The Supreme Court went further in this direction in 1892 in the case of *Plessy v. Ferguson,* where the Court held that “separate-but-equal” treatment of people of different races by state governments was not a violation of the Fourteenth Amendment.

3.    Voting Barriers. The Fifteenth Amendment attempted to establish voting rights for all citizens, except females and some American Indians. However, some state governments enacted laws that circumvented the right to vote (the white primary, the grandfather clause, poll taxes, literacy tests). The effect of these laws was to virtually prohibit African American males from voting in many southern states.

4.    Extralegal Methods of Enforcing White Supremacy. Lynching in the South, and, in the North, riots against the employment of African Americans.

D.    The End of the Separate-but-Equal Doctrine.

1.    *Brown v. Board of Education of Topeka. Plessy v. Ferguson* was eventually overturned by the Supreme Court in 1954. In the case of *Brown v. Board of Education of Topeka,* the separate but equal doctrine was reversed.

2.    “With All Deliberate Speed.” States were ordered to eliminate segregation policies with all deliberate speed.

E.     Reactions to School Integration. States that mandated segregation were outraged at interference in state issues by the national government. Serious riots against desegregation took place in a number of localities.

F.     An Integrationist Attempt at a Cure: Busing. Key concepts: *De facto segregation*—racial segregation that occurs because of past social and economic conditions and residential racial patterns. *De jure segregation*—racial segregation that occurs because of laws or administrative decisions by public agencies.

1.    Court-Ordered Busing. A solution to both forms of segregation, it involved busing black students to predominantly white schools and vice versa. It was very unpopular among whites and not very popular among African Americans, either. It is not common today.

2.    The End of Integration? By the 1990s the Court was willing in many cases to say that local schools had done enough to desegregate, and no further actions were necessary, despite the continued existence of *de facto* segregation. Today, school admissions policies that favor minority applicants in any way may end up being challenged on the grounds of equal protection.

3.    The Resurgence of Minority Schools. Many African Americans and members of other minority groups now seek to improve the performance of their local schools rather than make them more racially balanced.

II.    The Civil Rights Movement

The elimination of segregationist policies and racial intolerance would not have occurred without a strong civil rights movement. This movement began in the South and grew to a national scale. Although this movement included thousands and had many leaders, the most famous leader was the Reverend Dr. Martin Luther King, Jr.

A.    King’s Philosophy of Nonviolence. One of the major reasons Dr. King was so successful was his philosophy of nonviolent civil disobedience (a nonviolent, public refusal to obey allegedly unjust laws).

1.    Nonviolent Demonstrations. Peaceful civil disobedience became the hallmark of the civil rights movement.

2.    Marches and Demonstrations. This approach gained the support and respect of millions of Americans. What began as a small movement in the South quickly became a national mission.

B.    Another Approach: Black Power. Leaders such as Malcolm X advocated a more forceful approach than King. The black power movement also resisted the cultural assimilation that was implied by the integrationist philosophy.

III.  The Climax of the Civil Rights Movement.

A.    Civil Rights Legislation.

1.    The Civil Rights Act of 1964. In response to public demands for action, Congress passed the Civil Rights Act of 1964. This law prohibited discrimination in the areas of: 1) voter registration, 2) public accommodations, 3) public schools, and 4) employment. The Equal Employment Opportunity Commission (EEOC), which was established by this law, was assigned the task of ending racial discrimination in the workplace.

2.    The Voting Rights Act of 1965. The enactment of the Twenty-fourth Amendment in 1964, which eliminated any tax for the purpose of voting, was a modern beginning of the end to racial discrimination at the ballot box. The Voting Rights Act of 1965 made state laws restricting political participation by minorities illegal.

3.    Urban Riots. Even as the civil rights movement was winning victories, a series of intense civil insurrections spread through African American urban districts. The riots cost the movement considerable good will.

4.    The Civil Rights Act of 1968 and Other Housing Reform Legislation. One of the major omissions of the 1964 act was discrimination in housing. In 1968, days after the assassination of Dr. King, the Civil Rights Act of 1968 became law. Part of this legislation prohibited racial discrimination in the area of housing.

B.    Consequences of Civil Rights Legislation.

1.    Political Participation by African Americans. There are now many thousand African American elected officials.

2.    Political Participation by Other Minorities. Other groups, such as Hispanics, have also increased the number of elected officials at all levels of government.

3.    Lingering Social and Economic Disparities. Social and economic disparities between whites and blacks (and other minorities) persist. This is reflected in levels of household income and rates of home ownership, college graduation, and poverty. How to address this fact is a major unresolved issue.

IV.  Women’s Struggle for Equal Rights

A.    Early Women’s Political Movements. Activism for women’s rights began with the Seneca Falls convention in 1848.

B.    Women’s Suffrage Associations. The early struggle for equal rights for women began with a focus on suffrage, or the right to vote. This struggle would continue for more than 70 years until the ratification of the 19th Amendment to the Constitution that states “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.”

C.    The Modern Women’s Movement. The modern women’s movement started in the 1960s as a result of the awareness of rights stemming from the civil rights movement. The publication of Betty Friedan’s *The Feminine Mystique* and the formation of the National Organization for Women were significant early developments.

1.    The Equal Rights Amendment. A major initial goal of the modern women’s movement was the ratification of the Equal Rights Amendment, which states, “Equality of rights under law shall not be denied or abridged by the United States or by any state on account of sex.” The ERA was sent to the state legislatures for ratification on March 22, 1972. It failed to win the necessary 38 states’ approvals in the traditional seven-year limit. The Congress extended the time limit, but the states again failed to support the ratification of the ERA. Part of the opposition to the ERA came from an anti-feminist backlash. This conservative reaction asserted that the passage of the ERA would significantly alter social relations in the United States, and that men and women would be the “same” under law (rather than equal).

2.    Additional Women’s Issues. Issues advanced by the women’s movement included domestic violence, abortion rights, and pornography (this last issue tending to divide the movement rather than unite it).

3.    Challenging Gender Discrimination in the Courts. With the failure of the ERA, the women’s movement changed focus to challenge gender discrimination in the courts and through legislation. These efforts met with considerable success.

4.    Expanding Women’s Political Activities. Organizations have been formed to promote greater representation of women in government.

D.    Women in Politics Today.

1.    Women in Congress. There are a substantially larger number of women in Congress than ever before. Women in Congress after the 2006 Elections. Nancy Pelosi (D-California) is now the first female Speaker of the House.

2.    Women in the Executive and Judicial Branches. Although no woman has yet been nominated for president by a major political party, Hillary Rodham Clinton began her campaign for the presidency hoping to become the 2008 Democratic nominee. Generally, though, it is now normal for the president’s cabinet and the Supreme Court to contain a number of women.

3.    Continuing Disproportionate Leadership. Men continue to be overrepresented in positions of power, however.

V.    Gender-Based Discrimination in the Workplace

A.    Title VII of the Civil Rights Act of 1964. This title prohibits gender discrimination in employment and has been used to protect women from workplace discrimination. In 1978, Title VII was amended to include the condition of pregnancy.

B.    Sexual Harassment. The Supreme Court also has held that Title VII includes prohibitions against sexual harassment.  Some problems with addressing sexual harassment complaints are how to define a “hostile environment.” The Court has attempted to clarify the issue.

C.    Wage Discrimination. In the year 2010, women will comprise a majority of the U.S. workforce. Yet women, in spite of Title VII and legislation such as the Equal Pay Act, continue, on average, to earn less than men.

1.    The Equal Pay Act of 1963. Employers cannot establish separate pay scales for men and women performing the same work. Despite this act, by 2007 women were earning on average 75 cents to every dollar earned by men.

2.    The Glass Ceiling. This term refers to hard-to-identify but very real barriers to the promotion of women into positions of authority. Women now hold 17 percent of the top corporate officer positions in Fortune 500 companies, up from nine percent a decade ago.

VI.  Immigration, Latinos, and Civil Rights

A.    Hispanic v. Latinos: Hispanic is not a popular term among Hispanic Americans.

B.    The Changing Face of America: The percentage of Latino and Asian Americas is growing rapidly. Fertility rates in the United States and among Hispanic Americans are changing.

C.    The Civil Rights of Immigrants: People who enter the country outside of the sanctioned channels generally enter the U.S. to fill the demand for labor. A major crux of the issue of illegal immigrants is whether the government should provide costly services, like health care and schooling, to laborers and their children.

1.     The constitutional rights of noncitizens. How do the Bill of Rights and the Fourteenth Amendment affect noncitizens and illegal immigrants?

2.     Border Crime. Federal legislation authorizes a fence between the U.S. and Mexico and directs the Department of Homeland Security to prevent all legal entries into the U.S., but the lack of funding led many critics to believe the effort was merely a political gesture. Smuggling immigrants across the border is a crime, but smugglers sometimes perpetrate further crimes against the people they are assisting. Drug trafficking is also a problem along the U.S.-Mexico border.

3.     Limits to the Rights of Deportees: Due process- How does the Supreme Court view the Fourteenth Amendment and deportation?

4.     Limits to the Rights of Deportees: Ex post facto laws- How the 1996 immigration and antiterrorism laws affect illegal immigrants.

D.    Bilingual Education. About half of the states have passed “English only” laws to make English their official language.

1.     Accommodating Diversity with Bilingual Education. Congress passed the Bilingual Education Act in 1968, which was intended to help Hispanic children learn English. The Supreme Court ruling in *Lau v. Nichols* (1974) bolstered the case that children have a right to bilingual education.

2.     Controversy over Bilingual Education. Bilingual programs have come under attack; in 1998, California passed a ballot initiative that effectively ended efforts at bilingual education in the state.

VII.     Affirmative Action

Affirmative action describes those policies that give special preferences in educational admissions and employment decisions to groups that have been discriminated against in the past. As originally intended, affirmative action policies were an attempt by the federal government to “level the playing field” for women and African Americans in particular. The policy of affirmative action goes beyond a strict interpretation of the equal protection clause. Affirmative action remains a controversial issue for several reasons. Some people argue that racial and gender-based discrimination in employment and school admissions decisions is now so infrequent that affirmative action is no longer warranted. Others argue that the “backlash” created hurts race relations. Some women and African Americans argue that the presence of affirmative action discredits their achievements. On the other side of the argument are the economic realities. There is no doubt that women and African Americans lack economic parity in the U.S. Affirmative action represents one attempt to remedy this. Popular support of affirmative action programs seems to be based somewhat on racial identity, with majorities of African Americans and Hispanics supportive of affirmative action, and whites widely divided on the issue.

A.    The *Bakke* Case. In *Regents of the University of California v. Bakke* (1978) the Supreme Court ruled that quota systems that only considered the race of an applicant were unconstitutional. The court’s decision applied only to situations where race was the sole factor being used.

B.    Further Limits on Affirmative Action. In another decision, *Adarand Constructors, Inc. v. Peña,* the U.S. Supreme Court ruled that when a government uses affirmative action programs, it must do so under the “strict scrutiny” rule. This means that governments typically cannot use quota systems, and once a program has been deemed successful, it must be eliminated. In two University of Michigan cases in 2003, the Court indicated that “diversity” was a legitimate goal in college admissions, but could not be achieved by automatically assigning “points” to minority applicants.

C.    The End of Affirmative Action? Although the Supreme Court upheld the admissions plan used by the University of Michigan Law School, a number of states, including Michigan, have banned all state-sponsored affirmative action programs. The fate of affirmative action at the national level may be decided soon by the Supreme Court. Because two new conservative judges have been appointed since the University of Michigan case, many believe that affirmative action policies adopted by schools may not be upheld.

VIII.   Special Protection for Older Americans

The number of people over the age of 65 is growing dramatically.

A.    Age Discrimination in Employment. Anyone could be a victim of this type of discrimination.

B.    The Age Discrimination in Employment Act of 1967. The Age Discrimination in Employment Act of 1967 prohibits discrimination by age in all but a limited number of occupations where age is considered relevant to the job. Also, many individuals do not desire retirement when they reach the age set as the retirement age by a company or government, and mandatory retirement has progressively been made illegal by laws passed in 1978 and 1986.

IX.  Securing Rights for Persons with Disabilities

A.    The Americans with Disabilities Act of 1990. The most significant development for the disabled to date was the passage of the Americans with Disabilities Act (ADA) of 1990. This legislation prohibits job discrimination against individuals with physical or mental disabilities. Furthermore, it requires physical access to public buildings and public services. In 1998, the Supreme Court ruled that persons infected with HIV are protected by the ADA. This means that such employees must also be accommodated.

B.    Limiting the Scope and Applicability of the ADA. The Supreme Court has limited the scope of the ADA. In 1999, the Court held that the ADA did not protect persons who wear eyeglasses. In 2002, the Supreme Court ruled that carpal tunnel syndrome, a repetitive stress injury, does not constitute a disability under the ADA. In most cases, state citizens cannot sue their state under the ADA.

X.    The Rights and Status of Gay Males and Lesbians

A.    Growth in the Gay Male and Lesbian Rights Movement. The modern movement is conventionally held to have begun following the Stonewall incident, where gay men (and others) rioted against a police raid on a bar frequented by gays.

B.    State and Local Laws Targeting Gay Males and Lesbians. In the 1960s, every state except Illinois had laws that banned *sodomy*—that is, various proscribed sexual practices including homosexual practices. During the 1970s and early 1980s many states repealed such laws. The repealing of such laws halted in 1986 with the case *Bowers v. Hardwick,* when the Supreme Court upheld a Georgia law that banned homosexual conduct between adults. In *Lawrence v. Texas* (2003), however, the Court reversed itself and effectively struck down all remaining sodomy laws across the country. In the 1996 case *Romer v. Evans*, the Supreme Court ruled that a Colorado constitutional amendment that invalidated state and local laws that protected gay males and lesbians from discrimination violated the equal protection clause of the U.S. Constitution. Since *Romer,* many states and cities have passed measures that afford protection to gay men and lesbians in housing, employment, public accommodation, and credit.

C.    The Gay Community and Politics. Gay activists now play a role in both major parties. Eleven openly gay men or lesbians sit in the House.

D.    Gay Men and Lesbians in the Military. The “don’t ask, don’t tell” policy, a compromise instituted under President Bill Clinton, purports to provide some protection against dismissal to gays in the military, but in fact has been relatively ineffective. Plans to increase the size of the armed forces, though, will likely lead to further public debate over the policy and possible changes to it.

E.     Same-Sex Marriages. In 1993, the Hawaii state Supreme Court raised the issue of whether the state constitution protected the rights of same-sex individuals who sought a marriage license. Congress responded with the Defense of Marriage Act of 1996, which allowed states to refuse to recognize same-sex marriages performed in other states. In Vermont, the state Supreme Court ruled that gay men and lesbians are entitled to the same benefits of marriage that opposite-sex couples enjoy, which led the legislature to pass a law permitting “civil unions” between same-sex couples. Similarly, the New Jersey Supreme Court ruled the state had to either amend the marriage statutes to include same-sex couples or create a structure that would give same-sex couples all the privileges and obligations married couples have.

F.     Child Custody and Adoption. While a majority of states no longer ban adoption, visitation rights, or child custody based on sexual orientation, these practices continue in some jurisdictions. Today, nearly half the states allow same-sex couples to adopt children, and all the states but one allows single-parent adoptions by gay men or lesbians.

XI.  The Rights and Status of Juveniles

Children do have rights, but these rights are quite limited compared to adult rights. The presumption is that children are protected by parents, who should have extensive leeway in how they perform this function. Depending on the jurisdiction and the issue, children may be defined as those under ages that vary from sixteen to twenty-one.

A.    Voting Rights and the Young. The Twenty-sixth Amendment lowered the voting age to eighteen. This was done at a time when eighteen-year-olds could be drafted into the military and sent to fight in Vietnam. The argument was “old enough to die, old enough to vote.”

B.    The Rights of Children in Civil and Criminal Proceedings. These rights are significantly different from the rights of adults.

1.    Civil Rights of Juveniles. If a person is a minor, that person is not usually held responsible for contracts he or she may have entered into. Because of this it is difficult for minors to enter into a contract without an adult who is willing to co-sign. The age of majority, the age at which a person is entitled by law to manage his or her own affairs and to the full enjoyment of civil rights, varies from eighteen to twenty-one, depending on the state. Child custody has been an issue because the wishes of the minor are given little weight.

2.    Criminal Rights of Juveniles. Below a certain age, children are presumed to be unable to form criminal intent. In the case of older children, minors do not always have the right to trial by jury or to bail, but the Fourteenth Amendment does provide certain rights for minors including the right to counsel.

3.    Approaches to Dealing with Crime by Juveniles. Increasingly, minors who commit acts such as murder have been tried as adults. Another approach is to hold parents responsible for the crimes of their children.

XII.Features

A.    What If . . . Unauthorized Immigrants Were Granted Citizenship?  There are approximately twelve million unauthorized immigrants living in the United States and many want to become citizens. Granting citizenship to every illegal immigrant now living in the United States would have significant repercussions and could create a huge influx of new immigrants. As the Hispanic community grows, it will have more political influence; stresses on the IRS to obtain taxes on money earned and shifts in wages would occur. The U.S. represents opportunity and almost guaranteed work in the minds of most immigrants. Unauthorized immigrants are in direct violation of the U.S. law.

B.   Politics and Diversity. The term *biracial* once signified a community of white and black people but today it can refer to African Americans and Latinos. Rarely do these groups join to support and elect the same political candidates. In fact, there is often tension and competition between African Americans and Latinos.

C.   Which Side Are You On? Is inequality necessarily a bad thing? The gap between rich and poor has dramatically increased over the past twenty years. One reason for this inequality is the increasing number of companies using performance-pay systems.

D.  Elections 2008. Political Leadership by Women.

E.   Beyond our Borders. Over the years, the courts have struck down outright quota systems but allowed race to be considered as a factor when hiring or considering admittance to colleges. In other countries, such as India, the traditional caste system creates quotas and restrictions on certain classes of people.

F.   Why Should You Care About Civil Rights? Almost everyone at some time can be affected by discrimination or reverse-discrimination. Steps can be taken through employers if you feel you have been discriminated against. You can also contact the local state employment agency. The federal agencies responsible are the American Civil Liberties Union and the Equal Employment Opportunity Commission.