Civil Liberties and Civil Rights Are Not the Same

- Civil Rights are the legal or moral claims that citizens are entitled to make on the government.
- The equal protection clause of the Fourteenth Amendment has been the basis for the civil rights of African Americans, women, and other groups.
Civil Rights and Collective Action

• Remember that the Collective Action Principle states that collective action is difficult and the difficulty mounts as the number of individuals involved increases.
• Civil rights shapes collective action by regulating *who* can participate in the political process and *how* they can participate.
The Equal Protection Clause

• The Fourteenth Amendment reads: “No state shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws.”

• Note that the language of the Fourteenth Amendment requires equal protection for a “person” rather than a “citizen.”
Civil Rights—Who, What, and How Much?

- Civil rights can be thought of in terms of answering three questions:
  - Who has a right and who does not?
  - A right to what?
  - How much can they exercise that right?

- The answers to all of these questions have changed over time—the History Principle at work.
The Right to Vote

• The right to vote was not included in the Constitution.
• Initially, states restricted voting based on:
  – Religion
  – Property
  – Gender
  – Race
• Voting rights have expanded over time.
The Struggle for Civil Rights

• Just as the Court did not initially use the Fourteenth Amendment to impose the Bill of Rights on the states, the Court was slow to use the equal protection clause to enforce civil rights.

• The 1875 Civil Rights Act was struck down on the grounds that it applied to private businesses, while the Fourteenth Amendment refers to state action.
Plessy v. Ferguson: “Separate but Equal”

• In 1896, the Court went further by upholding a Louisiana statute that required segregation of the races on trolleys and other public carriers and, by implication, in all public facilities, including schools.

• Homer Plessy, a man defined as “one-eighth black,” had violated a law that imposed a fine for any black passenger sitting in a car reserved for whites.
**Plessy v. Ferguson: “Separate but Equal”**

- In its ruling, the Court said the Fourteenth Amendment “could not have intended to abolish distinctions based on color, or to enforce . . . a commingling of the two races upon terms unsatisfactory to either.”

- This was the origin of the “separate but equal” rule, the doctrine that held that accommodations could be segregated by race but still be equal.
Starting in the late 1930s, the Court became more active in equal protection.

- The Court required admission to a Missouri law school rather than paying out-of-state tuition for African Americans (1938).
- The Court rejected Texas’s claim that its new “law school for Negroes” was equivalent to the all-white University of Texas (1950).

But these rulings reinforced rather than struck down “separate but equal.”
Brown v. Board of Education

- Linda Brown was a third grade African American child in Topeka, Kansas, who was denied admission to the school closest to her home, which was for white students only.
- The Court ruled that “in the field of public education, the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.”
Did *Brown* End Discrimination?

- Three problems with *Brown*’s effects:
  - Delay in enforcing *Brown* by local officials
  - *Brown* only attacked de jure segregation but could do little about de facto segregation
  - *Brown* did not directly address discrimination in employment, voting, etc.

- The irony of *Brown* is that it gave great moral capital to the Court but did not change things much, at least initially.
Clicker Question

THE PERCENTAGE OF SOUTHERN BLACK SCHOOLCHILDREN ATTENDING SCHOOL WITH WHITES, 1955–73

Did Brown v. Board of Education desegregate public schools?

A. Yes
B. No
The Rise of the Civil Rights Movement

- Ending discrimination required more than the *Brown* decision.
- This required overcoming a collective-action problem.
The Civil Rights Movement

**TIME LINE**

**CAUSE AND EFFECT IN THE CIVIL RIGHTS MOVEMENT**

- **Brown v. Board of Education (1954):** Separate educational facilities are inherently unequal.
- **Montgomery, Alabama, bus boycott (1955):**
- **Federal courts order school integration and order Atherine Lucy admitted to University of Alabama (1956):**
- **Civil Rights Act creates Civil Rights Commission; President Dwight D. Eisenhower sends troops to Little Rock, Arkansas, to enforce integration of Central High School (1957):**
- **Southern Christian Leadership Conference (SCLC) formed with Martin Luther King, Jr., as president (1958):**

**Timeline:**
- 1953
- 1954
- 1955
- 1956
- 1957
- 1958
- 1959
School Desegregation

• “Massive Resistance” to desegregation was largely successful after *Brown*
• After Little Rock, states used “pupil placement” laws to delay desegregation
• The Civil Rights Act and later Court decisions, like *Swann*, finally did begin to desegregate schools
Discrimination in Employment

• Title VII of the Civil Rights Act of 1964 outlaws job discrimination by all private and public employers.

• In *Griggs v. Duke Power* (1971), the Court put the burden on employers to show that an employment policy whose effect is discriminatory, even if discrimination was not the intent of the policy, is a “business necessity.”
The Court ruled that a charge of discrimination must be brought within 180 days of the time the discrimination was alleged to have occurred.

Congress overturned the Court’s decision by passing the Fair Pay Act in 2009.
Gender Discrimination

- Seneca Falls Convention (1848)
- Nineteenth Amendment (1920) grants women the right to vote in federal elections.
- Civil rights for women accelerates in the 1960s.
- The Burger Court applies intermediate scrutiny to gender discrimination cases.
Discrimination Against Latinos and Asian Americans

- Latinos and Asian Americans are among the fastest-growing racial/ethnic groups.
- These groups have also organized to pursue civil rights:
  - *Mendez v. Westminster* (1947) was an important desegregation precedent prior to *Brown*.
Status of Native Americans

• The Constitution leaves the status of Native Americans unclear.
• Legislation in 1924 grants citizenship to all those born in the United States.
• The Indian Self-Determination and Education Assistance Act (1975) provides for greater autonomy.
• No state regulation of gambling (1987)
Disabilities and Age

- The Americans with Disabilities Act (1990) guarantees equal employment rights and access to businesses.
- The Age Discrimination in Employment Act (1967) prohibits discrimination by employers with more than 20 employees.
Sexual Orientation

• The gay rights movement has become one of the most important contemporary flashpoints for civil rights,
  – “Don’t Ask, Don’t Tell” (recently repealed)
  – Romer v. Evans (1996) prohibits discrimination based on sexual orientation
• Gay marriage is the biggest current fight
Affirmative Action

• A policy or program designed to redress historic injustices committed against specific groups by making special efforts to provide members of these groups with access to educational and employment opportunities

• Also meant to encourage diversity in educational and employment settings
• Allan Bakke, a white man, applied to UC Davis Medical School and was rejected.
• The school had reserved 16 of 100 seats that year for minority applicants.
• Bakke sued on the basis that his grades and test scores were better than those of some who were admitted.
Clicker Question

Was the UC Davis Medical School’s policy of reserving a certain number of spots for minority applicants a violation of the Equal Protection Clause?

A. Yes
B. No
Clicker Question

Was the UC Davis Medical School’s policy of reserving a certain number of spots for minority applicants a violation of the Equal Protection Clause?

A. Yes
B. No
The Court ruled that UC Davis’s policy was unconstitutional because it maintained a quota and had a separate admissions policy for minority students.

However, the Court said that taking race into account in admissions is constitutional if it serves a “compelling public purpose,” such as “achieving a diverse student body.”

• In various cases, the Court seemed to weaken affirmative action but not deem it unconstitutional in the 25 years since Bakke.

• In 2003, the Court heard two cases, both from the University of Michigan, that seemed to uphold both sides of Bakke.
  – Race cannot be a main criterion for admission.
  – Race can be taken into account.
Proposition 209, on the California ballot in 1996, sought to ban “preferential treatment” for minorities by state and local government agencies. It passed with 54 percent of the vote.

In a 1997 vote in Houston, however, 55 percent voted to support “affirmative action.”

What we call “affirmative action” matters.
Affirmative action is
A. unconstitutional in any form.
B. constitutional as long as race is not too big a factor.
C. required by the equal protection clause.
D. required by the due process clause.
Affirmative action is
A. unconstitutional in any form.
B. constitutional as long as race is not too big a factor.
C. required by the equal protection clause.
D. required by the due process clause.
Limiting and Regulating Collective Action

- Civil liberties and civil rights have both expanded over the past century.
- Expansion of civil rights has allowed more to take part in collective decision making and has imposed restrictions on the sorts of decisions that can be reached.
- Institutions help alleviate collective action, but they are limited and regulated by civil liberties and civil rights.
Undocumented Immigrants and Equal Protection

• The Equal Protection Clause of the Fourteenth Amendment states that “no State shall...deny to any person within its jurisdiction the equal protection of the law.”

• How far does this require states to go in providing services and equal legal protection to undocumented immigrants?