The United States was founded on the idea that "all men are created equal," and the struggle for equality has been a persistent theme in U.S. history. Slaves longed for freedom, and, later, African Americans strived for equality. Women of all races fought for equality with men, and economically disadvantaged people have struggled for economic opportunities. Homosexuals, senior citizens, and the disabled are some of the more recent groups to make their voices heard in the fight for equal treatment.

What does equality mean? It doesn't mean that we are all alike, nor does it mean that we are all entitled to equal rewards or results in life. Equality in the United States means two things. The first is that everyone is born with inalienable rights. The second meaning, which flows from those inalienable rights, is that everyone is entitled to equality of opportunity.

The Constitution does not mention equality, but it implies equality by refusing to limit the guaranteed rights to any specific group.

The Fourteenth Amendment was ratified after the Civil War to prevent the states from discriminating against former slaves. It forbids the states from denying to anyone the "equal protection of the laws." By "anyone" they meant African Americans, but the clause applies to everyone.

The judicial system has several tests to determine if a law violates the equal protection clause. Any classification must bear a rational relationship to a legitimate government purpose. That is, it must be reasonable and not arbitrary. A law that restricts voting to citizens over 18 passes constitutional muster because age is a reasonable classification for voting. A law that only allowed those with blue eyes or red hair to vote would be arbitrary and unconstitutional.

Some classifications, like those based on race and ethnicity, are considered to be inherently suspect. In such cases, the burden of proof is on the lawmaker to prove that there is a compelling public interest and that there is no other way to accomplish the legitimate purpose of the law. It is virtually impossible for a law to pass this standard. Can you imagine a legitimate law that discriminates on the basis of race or ethnicity? What sort of compelling public interest would it serve?

Laws that discriminate on the basis of gender have a lower standard to meet. They must bear only a substantial relationship to an important government purpose. The law restricting the military draft to men has been upheld as constitutional under this standard.

The Supreme Court has three standards of review for evaluating whether a classification in a law or regulation is constitutionally permissible. Most classifications must bear only a rational relationship to some legitimate governmental purpose. The burden of proof is on anyone challenging such classifications to show that they are not reasonable, but arbitrary. At the other extreme, the burden of proof is on the rule maker. Racial and ethnic classifications are inherently suspect, and courts presume that they are invalid and uphold them only if they serve a compelling public interest and there is no other way to accomplish the purpose of the law. The courts make no presumptions about classifications based on gender. They must bear a substantial relationship to an important governmental purpose, a lower threshold than serving a compelling public interest

The African American struggle for equality paved the way for civil rights movements by other minorities and women. Here, civil rights leaders, including Martin Luther King, Jr., meet with President Lyndon Johnson.

Imagine that you are a Supreme Court Justice evaluating a law that discriminates on the basis of race. Against what standard do you have to test this law?

Laws that discriminate on the basis of race or ethnicity are inherently suspect and must accomplish a compelling government purpose in the absence of any less restrictive way to reach the same goal.

Racial discrimination is rooted in the era of slavery, and persisted in a long period of segregation, especially in the South, into the middle of the twentieth century.

The civil rights movement achieved victories through civil disobedience and through Court rulings, beginning with *Brown v. Board of Education*. The Court ruled in this case that having separate schools for different races was unconstitutional.

In the 1960s, Congress prohibited discrimination in public accommodations, employment, housing, and voting. This was accomplished through legislation such as the 1964 Civil Rights Act and the 1965 Voting Rights Act. African Americans had blazed the constitutional trail for securing equal rights for all Americans.

Slave ownership was legal in America for about 250 years. During this time, the economy of the South was based on this unpaid labor. Plantation owners became wealthy and politically influential, and used their power to ensure that laws were favorable to slave owners.

In the 1857 case of *Scott v. Sandford*, the Supreme Court ruled that slaves had no legal rights; they were "chattel," that is, property like furniture or a cow. As such, a slave could not seek redress in the courts, as Dred Scott tried to do.

The Court ruled that Congress had no power to ban slavery in the western territories. This ruling invalidated the Missouri Compromise, which had allowed slavery in Missouri on the condition that northern territories would remain free.

The Thirteenth Amendment, ratified after the Union victory in the Civil War, formally ended slavery.

During the first decade after the Civil War, the federal government closely controlled the Southern states to make sure they complied with Reconstruction requirements. Some African American men even held office during this period.

In 1876, the federal government, and most whites, lost interest in helping former slaves, and the South was able to impose laws mandating strict segregation based on race.

Segregationist laws were not uncommon in the North, either, and the national government employed segregation in the armed forces. Segregation was so rigid in the South that the races were separated from birth through death, with separate African American medical professionals delivering African American babies, and separate African American cemeteries. The Ku Klux Klan terrorized anyone, black or white, who broke the rules of segregation.

In the era of segregation, Jim Crow laws, such as those requiring separate drinking fountains for African Americans and whites, governed much of life in the South.

During this era, African Americans got no help from the courts. When Homer Plessy challenged segregated railway carriages, the Court ruled, in *Plessy v. Ferguson*,that separate facilities were not unconstitutional provided they were equal.

The Court also held that the Fourteenth Amendment did not prohibit racial discrimination by the private sector. This precedent remained until the 1950s, even though accommodations were blatantly unequal, especially in education.

Education is the key to equality of opportunity, so civil rights advocates devoted their initial efforts to desegregating schools.

An African American graduate student at the University of Oklahoma achieved a major civil rights victory when he challenged the University's policy of forcing him to use separate tables and desks, including a desk just outside the classroom door. The Court ruled that colleges and universities could not enforce separate accommodations based on race. A later case made the same ruling for professional schools.

Civil rights activists sought a test case to challenge the *Plessy* doctrine of separate but equal, and they found it in Topeka, Kansas, in a district with schools that, though segregated, were nearly equal in quality.

The Supreme Court ruled that separate is inherently unequal, and ordered public schools to desegregate with "all deliberate speed." After fifteen years, most school districts, especially in the South, were still dragging their feet, and the Court ordered the remaining segregated schools to desegregate immediately.

Busing was used to achieve racial balance. This practice highlights the difference between *de jure* segregation, which is segregation by law, such as schools pre-*Brown*, and *de facto* discrimination, which is discrimination that happens in reality rather than being prescribed by law.

Many neighborhoods are racially segregated for socioeconomic reasons, leading to *de facto* segregation in local schools. Busing was designed to address this problem but it was never popular with parents of either race.

The civil rights movement attracted not only black advocates for their own rights but whites as well. These activists used nonviolent means to petition for equality.

Thye used sit-ins, marches, and various forms of civil disobedience, which were often met with violent responses from the police and other authorities.

Television was important to raising the national consciousness. Footage of peaceful protesters being met with police brutality, along with images of segregated facilities, helped garner national support for the civil rights cause.

The national government responded with the Civil Rights Act of 1964, which made discrimination by private business and state and local governments illegal.

Several Court cases in 1968 prohibited racial discrimination in the sale or rental of housing.

Despite the Fifteen Amendment's guarantee of voting rights for African Americans, southern states effectively kept African Americans out of the voting booth for the next century. They used poll taxes and literacy tests. A grandfather clause exempted anyone whose grandfather could vote in 1860, when slaves couldn't vote.

Another tactic was allowing only whites to vote in the primaries. If these tactics failed, intimidation and violence were used to keep African Americans from registering to vote in southern states.

The Twenty-fourth Amendment, ratified in 1964, prohibited poll taxes in federal elections. Two years later, in *Harper v. Virginia State Board of Elections*, the Court declared poll taxes in state elections unconstitutional.

The Voting Rights Act of 1965, enforced in southern states by federal officials, formally ended most forms of racial discrimination in voting.

The Voting Rights Act of 1965 produced a major increase in the number of African Americans registered to vote in Southern states. Voting also translated into increased political clout for African Americans.

Southern states instituted many policies to keep African American citizens from voting, including poll taxes, white primaries, literacy tests, and intimidation and violence.

Soon, America will have a minority majority. In some states, minorities already outnumber the white population. Other minorities besides African Americans have faced discrimination, and the civil rights laws for which African Americans fought have benefited them as well.

The country's minority population has now reached over 115 million, including about 53 million Hispanic Americans and 39 million African Americans. Minorities make up approximately 37 percent of all Americans. Forty-six percent of all the children under 18 are from minority families. This map shows minorities as a percentage of each state's population. Hawaii has the largest minority population at 77 percent, followed by the District of Columbia (64 percent), California (60 percent), New Mexico (60 percent), and Texas (55 percent). In eight other states—Arizona, Florida, Georgia, Maryland, Mississippi, Nevada, New Jersey, and New York—minorities make up at least 40 percent of the population.

Native Americans and Native Alaskans inhabited the continent before European colonists arrived. Today, about 6.3 million Americans claim to have at least some Native American or Native Alaskan ancestry.

At first, Native Americans were pushed onto reservations, but later the government decided to try to make them blend into American society. In 1887 the Dawes Act outlawed Native American religions and forced Native American children to go to boarding school.

In 1924, Native Americans were granted U.S. citizenship and the right to vote. During the civil rights movement, Native American activists protested against the many forms of discrimination they still endured.

Despite some progress, many Native Americans, such as these grandparents and their grandchildren, continue to suffer poverty and ill health.

 Hispanics are the largest minority group. There are currently more than 51 million Hispanics in the U.S., concentrated in the southwestern states.

For the first half of the twentieth century, Hispanics endured the same sort of segregation as African Americans. The tide began to turn in the 1950s. In 1954, the Court ruled that Texas could not keep Hispanics from serving on juries. Hispanic civil rights activists employed the same tactics as African American groups to secure constitutional rights during the 1960s and 1970s.

Their growing numbers have made Hispanic Americans the largest minority group in the United States. Their political power is reflected in the two dozen Hispanic members of the U.S. House of Representatives, such as Loretta and Linda Sanchez of California, the first set of sisters to serve simultaneously in Congress.

The problem of illegal immigration is focused on Hispanics because they make up the majority of illegal immigrants today. The Court has ruled that the children of illegal immigrants cannot be excluded from public schools, but Congress can't agree on national policies to deal with the 10 million or so Hispanics who are in the country illegally. States have begun enacting their own policies to combat illegal immigration, at times in violation of federal law.

Asian Americans are the fastest-growing minority group, although they currently make up only 6% of the population. They have faced the same discrimination in education, jobs, and housing as other minorities, and also unique difficulties with naturalization.

During World War II, the federal government rounded up more than 100,000 Japanese Americans and forced them into internment camps in the name of national security. In the case of *Korematsu v. United States*, the Court upheld the camps as constitutional. In the 1990s, the federal government formally apologized and compensated some living victims for their lost property.

One of the low points in the protection of civil rights in the United States occurred during World War II, when more than 100,000 Americans of Japanese descent were moved to internment camps.

About 3.5 million Americans of Arab ancestry and about 6 million Muslims live in the U.S. Not all Arabs are Muslim and not all Muslims are Arabs. Since the terrorist attacks of 9/11, these groups have been the victims of bias-related crimes, from vandalism to murder, and they have faced increasing discrimination in employment and housing.

About 900 Arab and Muslim illegal aliens were among those detained in the wake of the 9/11 terrorist attacks. Many languished in jail for months, in violation of their constitutional rights to be informed of the charges against them and to appear before a judge to challenge their detention.

At 16% of the population, with more than 51 million people, Hispanics are by far the largest minority in the United States.

The first women's rights activists were former abolitionists. Women could not vote, attend most educational institutions, or enter most professions. Married women had it even worse, since coverture laws denied them the right to sign contracts or to sell property. They were considered the property of their husbands and had no separate legal identity.

The first women's rights convention, held in Seneca Falls, New York, in 1848, culminated in a document that resembled the Declaration of Independence. The Seneca Falls Declaration was a list of grievances against the tyranny of men. It took another 72 years of activism by suffragists before the Nineteenth Amendment was passed, giving women the constitutional right to vote. Only one of the signers of the Seneca Falls Declaration lived long enough to vote.

Although the Nineteenth Amendment secured women's right to vote in all federal, state, and local elections, several western states had already given women suffrage. Can you think why this was? Why were western states ahead of others when it came to voting rights for women?

Getting the right to vote was only the first step on a long road to equality for women. Women are still far from achieving full equality and an end to both *de jure* and *de facto* discrimination. One of the reasons women have yet to achieve full equality is that the women's movement suffers from considerable internal disagreement on goals.

Social feminists believed women should vote to introduce more morals in public life, but were not as concerned about women's equality in the workplace and related goals.

Laws limited women's work hours and restricted their work activities, supposedly for their protection but really to enforce the prevailing social view that women should be devoting their energies to the home and family, and to prevent women from competing with men for jobs.

Women could get custody of their children in divorce settlements, but this was in keeping with the idea that women should be at home, caring for children.

When the Equal Rights Amendment was introduced in 1923, it was viewed by both men and women as a threat to the family and received little support.

A new women's movement grew out of the civil rights movement of the 1950s and 1960s. Many took up the cause of civil rights for minorities and saw parallels to discrimination that they faced as women.

New women's organizations, such as the National Organization for Women, rose during this volatile era and court cases began to successfully challenge gender-based discrimination.

In 1972, in the case of *Reed v. Reed*, the Supreme Court declared arbitrary discrimination on the basis of gender to be a violation of the equal protection clause of the Fourteenth Amendment. It took only 103 years after the Amendment was ratified for the Court to reach this conclusion. Five years later, in the case of *Craig v. Boren*, the Court developed the intermediate scrutiny standard of which we spoke earlier.

But there were plenty of defeats for women as well as victories. When Congress passed the Equal Rights Amendment in 1972, it ended up three states short of ratification.

The traditional family structure of male breadwinner and female homemaker has been disappearing. Most married women, and indeed most mothers, work outside the home. There are an increasing number of single mothers. These new living and working arrangements have led to demand for new public policies to acknowledge and accommodate them.

In recent years, women have entered many traditionally male-dominated occupations. Here astronauts Peggy Wilson and Pam Melroy meet in the International Space Station.

One of the most persistent aspects of gender inequality in the United States is wage discrimination. Women are paid far less than men for the same job, earning about 81 cents for each dollar men earn. The Equal Pay Act of 1963 makes it illegal to pay different wages to men and women if they perform equal work in the same workplace.

The Civil Rights Act of 1964 banned some gender discrimination in employment.

Employers cannot exclude pregnancy and childbirth from their benefits plans, thanks to the Pregnancy Discrimination Act of 1978. Women are also protected from being required to take mandatory pregnancy leave and from being denied jobs because of pregnancy.

Title IX of the Education Act of 1972 prohibits gender discrimination in federally-funded education programs, including athletics.

Women have served in all branches of the U.S. armed forces since World War II. Now, women comprise 15% of the active duty military and compete for promotions with men, having been allowed into all service academies since 1975.

But significant gender differences persist in the military. Only men are required to register for the draft, a policy that the Court has upheld as constitutional, and women are forbidden from serving in ground combat.

Due to changing warfare practices, the segregation of combat from non-combat troops on the ground in war zones has become next to impossible, so even without an official policy change this is becoming a gray area in practice.

Women, such as this soldier patrolling the streets in Afghanistan, are playing increasingly important roles in the military. However, they still face hurdles regarding some combat assignments.

Sexual harassment in schools and workplaces is forbidden by the Civil Rights Act of 1964. It is considered a form of gender discrimination. Defining sexual harassment has been challenging, but the Court has said that the law is violated when a reasonable person would perceive the workplace environment to be hostile or abusive.

As you've seen with regard to civil rights for African Americans and other minorities, policies that protect rights for one group can be applied to other groups. In this section, we consider some other groups that have appealed to the Fourteenth Amendment's equal protection clause to end discrimination that they face in education, employment, housing, medical care, and other areas.

**Activity**: The question of civil rights for gays and lesbians remains highly politicized. While some progress has been made, for example, in addressing hate crimes directed at gays and lesbians, other issues remain hotly debated. Ask your students to consider how gays and lesbians might mobilize to fight discrimination. What lessons might they draw from the success of other civil rights movements?

The U.S. population is aging. Today, 13% of the population is over 65, and people over 85 are the fastest-growing age group.

When Social Security was introduced during the Great Depression, 65 was chosen as the age people could begin to receive benefits. Social Security was always meant to supplement pensions and retirement savings. It was never meant to be adequate on its own, although workers today are finding it more difficult to make ends meet and save for retirement.

The law provides only limited protection against age discrimination in education and employment. Age discrimination can be hard to prove. The Supreme Court has not made age an inherently suspect classification; employers need only show that age is reasonably related to the ability to do a job to impose age cut-offs for hiring or mandatory retirement ages.

"Once, blacks had to ride at the back of the bus. We can't even get on the bus." So reads a slogan for disabled activists. Although the disabled have faced overt discrimination throughout U.S. history, much of the discrimination they endure has been through lack of access to public and private facilities.

Laws mandating accessibility began to appear only recently, with the Rehabilitation Act of 1973 adding disability to the list of groups protected from discrimination. Since then, wheelchair ramps, Braille signs, and other efforts to ensure equal access have become commonplace. In 1975, Congress declared that all children are entitled to a free public education appropriate to their needs.

The Americans with Disabilities Act of 1990 was a giant step forward in equal access to public facilities and employment for the disabled. It required employers to make reasonable accommodations for disabled access to their facilities and prohibited employment discrimination against the disabled.

In recent decades, public policy has focused on integrating the disabled, such as this college student being fitted with an all-terrain wheelchair, to participate more fully in society.

Gays and lesbians represent every racial and ethnic group and social class, and they number in the millions, yet they face one of the toughest struggles for equality.

Gays and lesbians not only face legal barriers to equality, but they are also the targets of homophobic violence and bullying. Most homophobia has its origins in religious condemnation of homosexuality.

The birth of the gay rights movement can be traced to a police raid on a gay bar in New York City in 1969. Although such raids were common, patrons of the Stonewall resisted. In the aftermath of the raid, gays organized into interest groups and developed political skills.

In the 1986 case of *Bowers v. Hardwick*, the Supreme Court ruled that states could legally forbid gay sex. The Court has also upheld the legal right of the Boy Scouts to exclude gay scout leaders.

Recently, there has been some progress in gay rights. In 2011, the Pentagon ended the "don't ask, don't tell" policy and allowed gays to serve openly in the military. In 2003, the Court overturned *Bowers* with its ruling in *Lawrence v. Texas* that laws regarding private sexual conduct violate the right to privacy and are unconstitutional.

Several sates have legalized same-sex marriage, and others recognize "civil unions." But progress for gay couples in gaining the legal right to marry, as well as the benefits associated with marriage, has been slow because of backlash from social conservatives

Affirmative action involves giving precedence to applicants who are members of groups that were previously discriminated against, such as women and minorities, for jobs, promotions, and admission to educational programs.

Affirmative action can take the form of quotas for different groups, rules that lower standards for certain groups of applicants, or requiring applicants from certain groups to be chosen over equally qualified applicants of other groups.

Some call affirmative action reverse discrimination. Opponents argue that merit is the only fair criterion, while proponents argue that white males have enjoyed a privileged position that they did not deserve and that employers have unconscious prejudices. The Court's position on the constitutionality of various affirmative action practices has been inconsistent and the constitutionality of affirmative action in general is unclear.

When a white applicant was denied admission to a medical school that allowed minorities with lower test scores to be admitted over more qualified white applicants to fill minority quotas, the white applicant sued on Fourteenth Amendment grounds. He claimed discrimination based on race. The applicant won a partial victory. In *Regents of the University of California v. Bakke*, the Court ruled that racial quotas are unconstitutional, although it stopped short of saying that the university could not use race as a criterion for admission.

In the case of *Adarand Constructors v. Pena*, the Court held federal affirmative action programs giving preference for contracts to minority-owned firms to the inherently suspect standard for racial classifications, which limited their potential impact.

Public opposition to affirmative action continues to grow and several states have banned state affirmative actions programs, including California, with Proposition 209, and Michigan.

Equality is a basic principle of democracy. Everyone gets one vote because we are all equal. Equality can sometimes conflict with another important democratic principle, such as individual liberty. If everyone has an equal vote in a democracy, the majority can vote to strip minorities of rights.

Minorities with power can also threaten the liberty of majorities. This is seen in discrimination against women, who outnumber men in the population, and against African Americans, who outnumbered whites in some southern states during segregation. Segregation benefited the white minority because it gave them a source of cheap labor.

It's worth noting that African Americans and women made great strides in gaining civil rights when they were denied the vote, yet the vote later became a powerful tool for them to continue their fight for equality.

The Founders envisioned a government much more limited than the one we have today, yet the policies that uphold civil rights are necessary to hold the nation together and to deal with issues that the Founders could not have imagined. They made the Constitution flexible for precisely this reason.

And bear in mind that protecting rights does limit what government can do. Segregation and other forms of discrimination were written into law.