

***BROWN v. BOARD* & AFFIRMATIVE ACTION**



PHIL 102
Ethics, Politics, & Law
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Fall Quarter 2008

RACE IN AMERICA



- Slavery
- *Dred Scott*
- Civil War
- 1866 Civil Rights Act
- 14th Amendment
- Jim Crow
- WWII

FOURTEENTH AMENDMENT



Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

14TH AMENDMENT



- History of the 14th
- 1866 Congress
- Public schools in the District of Columbia
- Constitutional precedent
- *Plessy v. Ferguson*
- Original intention
 - Concrete intention of the 1866 Congress
 - Abstract intention of the 1866 Congress

Brown v. Board of Education



- NAACP Legal Defense Fund
- Thurgood Marshall
- The Vinson Court
- Earl Warren
- Working of the Court
- The opinion

RACE & GENDER



- **History of racism**
 - Criminal justice statistics
 - Health statistics
 - Wage differentials
- **History of sexism**
 - Wage differentials
- **Prejudice**

EQUAL OPPORTUNITY



- **Equality**
 - Social goal
 - Human right
- **Are we equal?**
- **Equality of opportunity**
- **"Color blindness"**
- **Overcoming prejudice?**

AFFIRMATIVE ACTION



- **John Kennedy**
 - Executive Order 10925 (1961)
 - projects financed with federal funds "take affirmative action" to ensure that hiring and employment practices are free of racial bias
- **Lyndon Johnson**
 - 1965 speech at Howard University

GETTING IT RIGHT



"You do not wipe away the scars of centuries by saying: 'now, you are free to go where you want, do as you desire, and choose the leaders you please.' You do not take a man who for years has been hobbled by chains, liberate him, bring him to the starting line of a race, saying, 'you are free to compete with all the others,' and still justly believe you have been completely fair . . . This is the next and more profound stage of the battle for civil rights. We seek not just freedom but opportunity—not just legal equity but human ability—not just equality as a right and a theory, but equality as a fact and as a result."

WHAT IS IT?



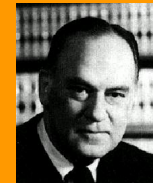
- **Discrimination**
- **Quotas**
- **Advantage to certain candidates**
- **Being qualified**
- **Being the most qualified**
- **What would you do?**

BAKKE v. REGENTS U OF CAL

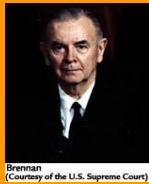


- **U C Davis medical school**
- **Davis' "set aside" program**
- **Alan Bakke**
- **Title VI Civil Rights Act of 1964**
- **Equal Protection Clause**

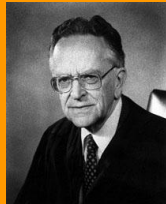
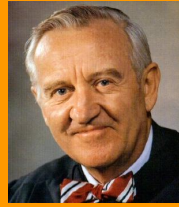
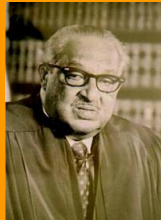
THE CONSERVATIVES IN 1978



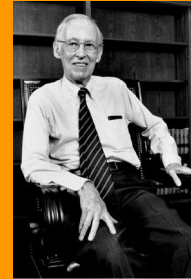
THE LIBERALS IN 1978



Brennan
(Courtesy of the U.S. Supreme Court)



THE SWING VOTE IN 1978



THE OPINION



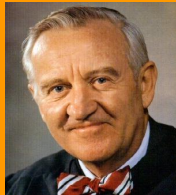
- **Odd alliances**
 - Stevens, Burger, Rehnquist, Stewart
 - Brennan, Marshall, Blackmun, White
- **Powell's opinion**
- **Not a violation of Civil Rights Act of 1964**
- **Quota system violates Equal Protection**

GRUTTER v. BOLLINGER

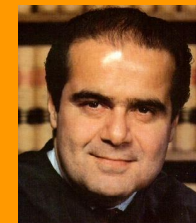


- **Post-*Bakke* controversy over affirmative action**
- **Recent cases**
- **Jennifer Gratz**
- **Barbara Grutter**
- **University of Michigan's programs**

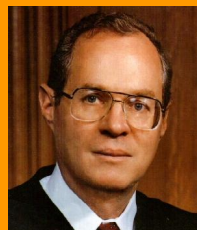
“LIBERALS”



CONSERVATIVES



“MODERATES”

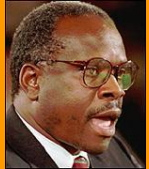
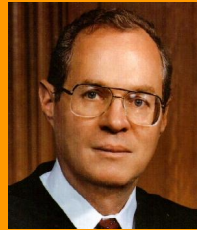
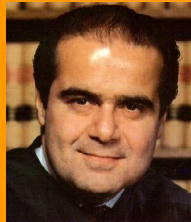


THE OPINIONS



- Justice O'Connor
- The undergraduate point system violates Equal Protection
- The Law School method does not
- Affirmative Action is still constitutional
- This surprising Supreme Court

Majority in Gratz



Majority in Grutter

