Discrimination: Crash Course Government and Politics #31

Crash Course: U.S. Government and Politics
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=====Intro=====

Craig: Hi I'm Craig and this is Crash Course U.S. Government and Politics, and today we are going to wrap up the incredibly fun and uplifting subject of equal protection and discrimination. Because if you thought the 14th amendment only protected racial and religious minorities and maybe women to some degree then you have underestimated the power of what I call the most important amendment to the Constitution.

Clone 1: Typical lefty nonsense. You haven't even mentioned the second amendment the one that gives us the real power to protect ourselves from government overreach.

Clone 2: If you are a member a well-regulated militia you mean, right?

C: Oh, hey guys, haven't seen you in awhile. That's because you can't stay on topic!

(Intro)

=====Born in the US=====

C: Given that the Supreme Court has decided that the 14th amendment applies mainly to discrete and insular minorities, it makes sense that various ethnic groups should be protected against discrimination. After all, you can't control who your parents are or what country they come from. And if you can, you're a time traveler and you should use your time-traveling skills to do other things like end WW2 or something.

As long as you are born here, or naturalized, you are a citizen and entitled to the same treatment as other citizens and no one is supposed to discriminate against you.

That being said, historically, there are certain ethnic groups that have been targets of unfair treatment, notably Asians and Latinos. Let's start with Asians, as they have been victims of actual, federal discrimination.

In 1882, Congress created the Chinese Exclusion Act, one of the first federal laws aimed specifically at immigrants. It effectively closed the door on immigrants from China. Later, immigration quotas the the effect of discriminating against Southern and Eastern Europeans. And if you read the newspaper from that time, that was clearly their intent, but they didn't single out any particular group, like the Chinese Exclusion Act did. In fact, it was an Asian-American who helped establish that the 14th Amendment Citizenship Clause applied to people born in the US.

In WONG KIM ARK v U.S., the court ruled that American citizenship is based on being born here, not the citizenship or nationality of one's parents. This meant that Chinese people born here were entitled to the rights of anyone born in the US, although in the late 19th century when this was decided, this number was pretty small.

A closely related topic that has to do with many ethnic Americans has to do with language. Whether America should adhere to an English-only standard is controversial, and not something I want to go into here. But it is true that people who don't speak English as their first language, even if they were born and raised here, can face discrimination, especially in the political process. This is why voting guidelines appear in multiple languages in many states.

Another Supreme Court case, LAU v NICHOLS (1974) established that school districts have to provide education for students whose English is limited. They can't simply teach in English and disenfranchise those kids who could learn if they received instruction in their native language. As you can imagine, this is also controversial on a number of levels. But as in the BROWN v BOARD OF EDUCATION case, here we again see that the court didn't want to create barriers in education because this would have long-term negative consequences.

So it's pretty clear that the 14th Amendment Equal Protection Clause applies to anyone born in the US, but what about immigrants in this country? What legal protection against discrimination do they have? The answer depends if you're talking about people who emigrated here legally or illegally. Let's go to the thought bubble.

===== Immigrants =====

Okay, the terminology surrounding immigrants is complicated and highly politicized, and I'm not going to get into whether or not we should be calling people "undocumented" or "aliens," but I'm going to draw a line and say that a person, no matter how he or she got here, can't be illegal. That just doesn't make sense.

Anyway, people who emigrate to the U.S. following immigration rules and regulations generally are entitled to the same rights and privileges as citizens, except they are not allowed to vote unless they become citizens. Those who emigrated here without following the rules, and thus violated U.S. law, do not have nearly the same protection. Although they do have some.

They are usually eligible for medical and educational services, although not for other social services. At times, states have tried to limit the privileges of this subset of immigrants. For example, California's proposition 187 attempted to takeaway all social services except for emergency medical care, for those who emigrated unlawfully, although most of its provisions were struck down by the courts. And sometimes federal immigration policy can lead to more discrimination.

For example, the 1986 Immigration Restriction and Control Act tried to push the cost of immigration enforcement onto employers by making them responsible for background checks of job applicant's immigration status. Rather than risking fines, employers just discriminated against all immigrants regardless of of their legal status.

Maybe you're thinking that we should care about undocumented immigrant's rights since, almost by definition they aren't citizens and therefore might not be entitled to protections. However, when we remember that the basic principle behind equal protection is that the courts will step in to protect groups that are unable to defend themselves in the legislative process, then it makes sense that the courts would look closely at cases involving immigrants who, for the most part, can't change policies by voting. Thanks Thought Bubble.

===== Native Americans =====

There's one more ethnic group in the U.S. that gets special treatment in the Constitution, and for good reason--Native Americans. Since they were here long before Framers of the Constitution, they're the only group mentioned by name in the document. Unfortunately, the Constitution itself doesn't actually clarify how they are to be treated and their legal status has changed a lot over the last 250 years or so. Originally Native Americans were not considered citizens of the U.S. but rather of their own sovereign

nations, their territory of which the U.S. kept purchasing, well, often stealing, from them.

Since 1924, Native Americans has been granted citizen's rights, so they also get full protection under the 14th Amendment, but tribes also get special consideration in the territory where they are sovereign, which is why Indians can operate casinos in states that don't allow casino gambling.

Numerically, Native Americans constituted a discrete and insular minority, so it makes sense that the 14th Amendment Equal Protection clause would apply to them. In many cases, they are also a linguistic minority, so the Lau decision applies to them too. The laws concerning Native Americans are really, really complicated and tied up in a pretty shameful history. We don't have time to go into detail about them here, but it's important for you to know that they are one of the groups that are discriminated against and can receive special consideration in court decisions.

So far, we've looked at how the 14th Amendment protects groups that are almost always numerical minorities, except women, of course, and usually consist of people who share immutable characteristics. Although the courts also include religious groups here, too. But there are other groups that are discriminated against, and Congress has stepped in to help them as well.

===== People with disabilities =====

One such group is people with disabilities. Even trying to describe this group can be tricky, because some disabilities, like missing a limb, are pretty much permanent, at least for now, while others are not. Many people are born with an attribute that much of society considers a disability, while others develop them as the result of accident or disease or from some other factor.

Many people who study disability point out that most of us will become less and less able to function in some way over time. It may become harder to walk or to see or to hear, and so it is better to think of ourselves as temporarily abled. I thought of the eagle as temporarily tabled.

And even calling someone who is blind disabled applies a societal value judgement that the person in question, or others like them, might not share. So disability itself is really, really complicated, which makes the law about it equally so.

Leaving aside arguments about what constitutes disabled, about 10% of the American population has some kind of disability. And just looking at the numbers, it appears that employers do discriminated against them. About 35% of people with disabilities are employed, while 72% of people without disabilities are. This has a lot to do with why Congress in 1990 passed the Americans With Disabilities Act, which did for people with disabilities what the Civil Right Act of 1964 did for other minority groups.

===== LGBT people =====

LGBT people have recently been extended some civil rights protections. Now, there are no Federal Civil Right's laws aims specifically at them, but many local ordinances accord them protection against discrimination. This is especially important because states has attempted to prohibit local governments from passing ordinances that prevent discrimination against LGBT people.

Think about that for a second. Local voters wanted to pass laws saying that their community couldn't discriminate, and the state legislature passed another law prohibiting these anti-discrimination statutes. What!?!

And since LGBT people are not usually in the majority and certainly don't make up a majority population in a state, they couldn't do much to protect themselves. That is until the Supreme Court stepped in and ruled in Romer v. Evans that states couldn't do this anymore. More recently in Lawrence v. Texas ruled that state morality laws that were applied against LGBT people and not against straight people were a violation of Equal Protection. What this means in practice is that everyone has the same right to privacy in their sexual relations.

Very recently, the Supreme Court decided in the landmark case O"Fell v. Hodges that state bans on same sex marriages were unconstitutional. This has the effect of making same sex marriage legal in all fifty states. Whoo!

Much like the Brown v. Education, some states are making attempts to resist the ruling and in many states, discrimination against LGBT people is still legal, but it seems that the arc of Civil Right's history is pointing towards justice.

===== Wrap-up =====

So as we can see, Civil Right's protections coming out of the 14th Amendment have been extended to many groups. These groups, which include people with disabilities, LGBT people, ethnic groups, and women, have two things in common.

The first is that they have historically been discriminated against, and in many cases the discrimination continues. The second is that they are numerical minorities -except for women- and this means that they will have a hard time defending themselves in the political arena.

Luckily they have the 14th Amendment and all the Federal and state anti-discrimination legislation on their side and the courts to back them up. Thanks for watching. See you next time.

You were supposed to be temporarily tabled!

===== Credits =====

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