Race versus Gender: 1950
- Situation of women
  - Small percent in workforce
  - Small percent of professionals (medicine, law)
  - Explicit discrimination in workplace
- Situation of African-Americans
  - De jure segregation in the South
  - Explicit discrimination in most aspects of social and economic life
  - Restrictive covenants

Race versus Gender in 2000
- Neither women nor African-Americans have achieved full equality with white males
- Huge changes for both groups over the last 50 years
  - End of de jure segregation of African-Americans
  - Substantial integration of women into political and economic life
What Is the Role of Law?
- Law has played a role in change for both women and African-Americans
- Direct role of law has been central for changes for African-Americans
  - End of *de jure* discrimination
  - Anti-discrimination law
- Direct role of law has been less central in changes for women
  - Control of reproduction
  - Availability of abortion

Link Between Law & Race in the United States
- Traveling in the South in the 1950s
- Life in the South in the 1950s
- Role of law in creating the system
  - *Plessy v Ferguson* (1896)
  - *Berea College v Kentucky* (1908)
  - *Gong Lum v Rice* (1927)
- Use of law to enforce system
  - Lynching & Jury nullification
  - White primaries
  - Restrictive covenants

Legal Challenges to Dual System
- White primaries
  - *Smith v. Allwright* (1944)
- Restrictive covenants
  - *Shelley v. Kramer* (1948)
- Enforcing “equal” in “separate but equal”
  - *Missouri ex rel Gaines v. Canada* (1938)
  - *Sweatt v Painter* (1950)
  - *McLaurin v OK State Regents* (1950)
Brown v. Board of Education

- Direct challenge to separate but equal
- Actually five cases
  - Brown v Board of Ed of Topeka (KS)
  - Briggs v Elliot (SC)
  - Davis v School Board of Prince Edward County (VA)
  - Gebhart v Belton (Delaware)
  - Bolling v Sharpe (DC)
    - Technically a separate case

Two Decisions

- Brown I (1954)
  - "We conclude that, in the field of public education, the doctrine of "separate but equal" has no place."
  - "Separate educational facilities are inherently unequal."
- Brown II (1955)
  - Implementation
  - "All deliberate speed"

Reaction

- “Massive resistance” in deep South
  - "Interposition and Nullification"
- Closing public schools
  - Prince Edward County, Virginia
- Disqualification of potential litigants
- Segregation on other grounds
  - Illegitimacy
  - Aptitude
- "Freedom of Choice"
Civil Rights Movement
- Montgomery bus boycott
- Freedom rides
- Lunch counter sit-ins
- Boycotts of companies that discriminated

Desegregation of Schools

% of Black Children in School with Whites

Civil Rights Legislation
- Only symbolic legislation before 1964
- Civil Rights Act of 1964
  - Public Education (Title IV)
  - Employment (Title VII)
  - Public Facilities (Title III)
  - Public Accommodations (Title II)
- Elementary and Secondary Education Act 1964
Voting Rights: Black Registration in the South

Voter Registration Rates (1965 vs. 1988)

<table>
<thead>
<tr>
<th></th>
<th>March 1965</th>
<th>November 1988</th>
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<tbody>
<tr>
<td>Black</td>
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<tr>
<td>Virginia</td>
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Number of Black Southern Legislators 1868-1900 and 1960-1992
Law and the Civil Rights Revolution
- Important role played by
  - Courts
  - Legislation
  - Administrative regulation

Other Consequences of the Civil Rights Revolution
- Continued social segregation
  - White flight to the suburbs
  - Development of white private schools in the South
- The political realignment of the South
  - 1964 election as turning point
  - 2000 as the final solidification
- Racialization of politics in the North

Power Shift to the Sunbelt
- Economic development stalled by segregation
  - Northern companies reluctant to relocate to South
  - Reliance on old industries such as textile, regional steel, ship building plus agriculture and military
- Ending of segregation brought in new industry
  - Foreign automakers
The Uncertainty of Social Change

- Has desegregation improved the educational experience of African-American children?
- Have civil rights laws and supporting court decisions created increased opportunities for African-Americans?
- Has law produced social and economic equality?

Law Is Not a Magic Bullet

- Law can facilitate and reinforce change
- Unintended consequences can be both positive and negative
  - "No Child Left Behind Act"
- Other policy vehicles may be more effective in producing change
  - Is the best way to improve education to mandate testing OR to give parents incentives to help their children succeed?