LESSON SAMPLER FOR

PATHWAY 5:

FREEDOM AND EQUALITY

American Bar Association
Commission on Civic Education in the Nation’s Schools
OVERVIEW: PATHWAY 5: FREEDOM AND EQUALITY

This Lesson Sampler can be used with any Civics and Law Academy format. For three possible models, go to pages 12-13 of the Resource Guide, “Selecting Your Academy Format.” Organized into 8 sessions, this set of 10 lessons follows the “Pathway to Understanding” on Freedom and Equality, one of six featured in the Resource Guide (pages 5 – 8). The Pathways offer different curricular frameworks for the Civics and Law Academy. In addition to Freedom and Equality (Pathway 5), the other five are 1--Law and Justice; 2--Power and Empowerment; 3--Constitutions and Constitutionalism; 4--Rights and Responsibilities; and 6--American Identity and Pluralism. The Resource Guide presents concepts, topics, and suggested court cases for each Pathway.

Concepts and Topics: civil liberties, expanding the franchise/voting rights amendments and legislation, affirmative action/equality of opportunity, equal protection under the law/Fourteenth Amendment, voting as a right and responsibility

Have these items available for each session:
Handouts required for lessons
Supplies and equipment: such as AV equipment, flip charts, markers, extra pencils/pens and notepads for participants,
Refreshments (e.g., soft drinks/water and cookies) and service supplies

Arrange the setting:
Set up room to facilitate group interaction and movement
Have tables ready for refreshments, handouts, and other Academy materials
Have refreshments available as students arrive.

Establish beginning and ending times and stick to them! Sessions that convene later than announced encourage latecomers and dishonor punctual arrivers. Participants will expect sessions to adjourn as announced and are likely to become distracted and disgruntled when sessions go over time.

Plan Ahead

Consider Off-Site Visits

Review the session topics to determine if the session might benefit from being held in some community agency or if an accompanying off-site visit might enrich your program.


Decide on Guest Speakers and Presenters

Review the sessions to determine how guest speakers and presenters would enrich the experience for participants. Identify and invite them well ahead of the date of the session.

## CONTENTS

This “Lesson Sampler” includes 10 lessons organized into 8 sessions that explore the contexts and issues of government power and citizen empowerment. Each lesson includes detailed, step-by-step instructions on how to use it as part of an overall Academy curriculum.

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SESSION I –
[Time: 1 hr and 45 min]

Concepts and Topics: expanding the franchise

Lesson
“Learning Gateways—Voting”

Handouts
Fourteenth Amendment (optional)
Student Handout
Whose Voice is Heard
How Should U.S. Elections Managed?
The Electoral College

Material
Large sheets of chart paper and marking pens

Procedure
Opening
(1) Welcome [15 minutes]
   • Introduce yourselves and participants
   • Give brief background on Civics and Law Academies
   • Review the curricular focus of this Academy (the Pathway you are following), the topics to be covered, and the schedule of sessions [Distribute handout with this information.]
   • Review session agenda

(2) Warm Up [10 minutes]
Use Procedure #2 questions as your warm up for this lesson.

Curricular Focus
Follow Procedures 3 through 8, with slight adjustments as noted.

(3) Have students mark and keep the Student Handout without any discussion.
(4) Follow instructions or provide a copy of the 14th Amendment for review.
(5) Provide some guidance for small group discussions of the article “Whose Voice is Heard?” Focus questions might include: Who originally had the right to vote? When did this start to change? What were some impediments to expanding the franchise? What were the main forces for change and expansion? Is everyone who has the right exercising that right? What may account for this? Follow the small group discussions with a brief full-group review. [30 minutes]
(6) Follow the Procedure as given [10 minutes]
(7) Begin by distributing copies of “The Electoral College,” give participants reading time, then review their understanding. [15 minutes]

Form the small groups. Distribute copies of the article “How Should U.S. Elections Be Managed” and provide each group with 2 sheets of chart paper and marking pens. On the board,
write: Voter Registration and Voting Technologies. Point out that the article discusses these two areas of concern in voting and elections. Charge participants to study these issues and decide, as a group, what reform they would advocate in each area. They should use the two chart sheets to record their two sets of recommendations and be prepared to report to the whole group what reforms they advocate and why. Bring the groups together to report, discuss, and compare their recommendations. [40 minutes]

Closing
(8) Debrief and Wrap Up [10 minutes]
Revisit their responses to the Student Handout as described here.

(9) Look Ahead
Tell participants that in the next sessions they will examine in more detail the history of expansion of voting rights under the Constitution.

(10) Adjourn – remind participants when and where they will meet next!
Learning Gateways

See Strategies Here

This teaching strategy introduces students to the history of U.S. voter representation, practices, and policies, and it gives them a profile of the citizens who are going to the polls today. Follow up with related strategies at insightsmagazine.org. And don’t miss the student materials on related topics starting on page 16.

Overview of the Lesson

Objectives
As a result of this lesson, students will:

- Understand that suffrage in the United States is not, and never has been, universal
- Learn which U.S. citizens have been granted and which have been denied the franchise
- Recognize that voter turnout in the United States is among the lowest of all democratic nations
- Develop a sense of the importance of finding a means to strengthen the voices of citizens who—for some reason—cannot be, or do not try to be, heard

Target Group: Students grades 9+

Time Needed: 2–3 hours

Materials Needed: Classroom sets of “Whose Voice Is Heard?” (pp. 17–18), “How Should U.S. Elections Be Managed?” (pp. 20–21) and student handout (p. 23)

Procedures

2. Begin by asking students what procedures characterize their school elections. Elicit and list the school’s rules for voting. Ask students whether they feel all students have an equal voice in their school elections. Why or why not? What might suppress a student’s desire to vote?
3. Distribute the student handout and have students answer the questions. Tell them they will get a second chance to answer the questions at the end of the lesson.
4. Have a student log on to www.law.cornell.edu/constitution/constitution.table.html to access a copy of the U.S. Constitution and do a word search for the term right to vote. Note that it cannot be found. Then have the student do the word search on the Amendments. Note that it is not until the Fourteenth Amendment, ratified in 1868, that this concept appears. (If you do not have classroom access to a computer, ask students where they believe “the right to vote” is first mentioned in the Constitution.)
5. Explain to students that a number of factors have limited the voting rights of certain groups historically. Distribute the student article “Whose Voice Is Heard?” Have students read and discuss the article in small groups.
6. Ask whether students know of any requirements that kept blacks and others from voting. (Answers might include poll taxes and literacy tests.) List responses and discuss. Then ask what current restrictions on voting students know about. (U.S. citizenship and registration) Discuss whether students agree with such restrictions.
7. Explain, that just as with school elections, there are factors other than laws that suppress voter participation in this country. Suggested ways of increasing voter turnout also consider changes in the process of voting. Distribute the student article on pages 20–21. Have students read and discuss it in small groups. Poll to determine what reforms they would like to see effected.
8. Have students look again at their student handouts and see whether there are any answers they would like to change. Then discuss the correct answers.

Answers to Student Handout on page 23

1. False. The phrase wasn’t added until 1868, with the adoption of the Fourteenth Amendment.
2. All the groups were at one time denied the franchise.
3. c
4. a. True. Blacks in the mid-Atlantic states lost political rights before 1860, blacks in the South lost them after 1890.
   b. False. Critical events such as war, which interacted with underlying processes, plus actual reversals of progress in bringing about reform suggest otherwise.
   c. For example, adults may be unable to vote because they haven’t met residency and registration requirements or because they are convicted felons.
   d. True.
   e. False. By far, the more affluent persons (and organizations) are, the greater their participation—and influence—on government.
   f. True
What Do You Know About the Right to Vote?

1. Circle True or False. With the passage of the Bill of Rights in 1791, the phrase “the right to vote” first appeared in the Constitution.
   True   False

2. Circle each group that at one time was denied the right to vote in the United States:
   a. African Americans   True   False
   b. blue-collar workers
   c. Hispanics
   d. the illiterate
   e. Irish Americans
   f. Native Americans
   g. community newcomers
   h. the poor
   i. women
   j. young adults

3. Circle the letter of the correct answer: The following voting qualifications have been abolished in the United States:
   a. economic, racial, age, and residency requirements
   b. gender-based, literacy, economic, and registration requirements
   c. economic, racial, gender-based, and literacy requirements
   d. none of the above

4. Circle True or False for each statement below.
   a. Basic political rights were granted, and later denied, to African Americans in the North as well as the South.
      True   False

   b. The progress toward universal suffrage in the United States can be viewed as predictable and inevitable.
      True   False

   c. Today, all adult citizens of the United States are legally entitled to vote.
      True   False

   d. The people in the United States who are least likely to be content, and the most likely to need government help, are least likely to vote.

   e. Since the passage of the Voting Rights Act of 1965, there has been a surge in political participation among Americans in the lower income brackets.
      True   False

   f. Without a voting system that everyone knows how to use and without the electorate’s willingness to vote, the voice of the entire U.S. electorate will never be heard no matter how fair election laws might be.
      True   False
Voting is a key form of political expression. The results of elections are talked of as the people’s “voice.” Today, almost all adult U.S. citizens are legally entitled to vote. Exceptions include people who have not registered to vote, people under 18 years of age, and, in most states, prisoners and convicted felons.

Yet the right to vote has not always been so broad. Early in U.S. history, most voters were white male landowners. Nonpropertied men, women, certain racial and ethnic minorities, the poor, the illiterate, and various new arrivals to communities were all barred from voting in various ways, in various historical periods, and for varying lengths of time.

Right to vote is a term (and a concept) that actually did not exist in the Constitution until the ratification of the Fourteenth Amendment in 1868, which made former slaves citizens of the United States and of the state where they lived. The Fifteenth Amendment, ratified in 1870, guaranteed that the federal and state governments could neither deny nor abridge the right of U.S. citizens to vote on account of race, color, or previous condition of servitude. Yet the states remained free to set voter qualifications. Even as more citizens were allowed into the voting booth, politically powerful interests found ways to prevent those they viewed as less desirable, responsible, or worthy from exercising the franchise.

Grandfather clauses, poll taxes, literacy tests, and complex registration requirements all are ways U.S. citizens have been blocked or inhibited from voting. Later amendments and laws outlawed many such restrictions. The Nineteenth and Twenty-sixth Amendments gave the vote to women and to citizens aged 18–20, respectively. Still, even as late as 1950, ways were found to deny the political rights of groups such as southern blacks as well as Native Americans and Hispanics in the Southwest.

Powerful Forces Bring Change
What forces have successfully overcome such resistance to a broad franchise? Some were social movements, such as the campaigns to achieve equal rights for blacks and women. In addition, population shifts brought large numbers of African Americans and Native Americans to urban areas, making these groups more visible on the political scene.

Attitudes and values about democracy also shifted with time, and key events brought about unpredictable changes. The biggest gains in U.S. voting history came during the Revolutionary War, the Civil War, World Wars I and II, and the first decades of the Cold War. The Vietnam War brought the right to vote to 18- to 20-year-olds, the argument at the time being that if young adults were old enough to go to war, they were old enough to vote.

Yet has the progress toward broad suffrage in the United States been smooth and steady? The answer is no. In fact, over the history of the United States, suffrage has sometimes tightened, not expanded. At times groups even lost political ground, including naturalized Irish immigrants during the Know-Nothing period (1852–60), blacks in the mid-Atlantic states before 1860, southern blacks in 1890, and people on public relief in Maine in the 1930s.

Adopted in 1964, the Twenty-fourth Amendment to the U.S. Constitution banned poll taxes in national elections; in 1966, the Supreme Court banned them for state and local elections. The Voting Rights Act of 1965 created severe penalties for anyone who attempts to deprive others of their voting rights. With these and other voter protections, the goal of universal suffrage—and the climate necessary for it to exist—has come within closer reach.

Who’s Talking Now?
An unhappy part of the U.S. voting story is that the electoral turnout in this country is markedly lower than in most other democratic nations. Some say that nonvoting is itself a statement—an expression of satisfaction and contentment. Yet studies have shown that those who are least likely to be satisfied—and those who are most likely to need the government’s help—are also those who are

least likely to vote. The nonvoter is further largely ignored by the two major political parties, which spend most of their time and resources reaching out to those who do vote. At the same time, the more affluent citizens are, the more likely they are to participate in civic life generally and the electoral process in particular. Their voices are heard most, as are the voices of well-organized groups and well-funded lobbyists who often represent their interests.

Today, strategies to “get out the vote” of the working class and minorities are part of a continuing struggle to maneuver these groups into the camps of vying political parties. Various hindrances to voting, however, still exist. Critics of the last presidential election complained that some minority voters did not vote because they were intimidated at or on their way to the polling place. Others argued that government should have provided assistance to poor voters who needed help in registering and voting. Great concern was raised about the counting of absentee ballots, as well as the antiquated voting equipment in poorer communities that prevented some votes from being properly cast and counted.

Many gains have been made in extending the franchise to a broad base of U.S. citizens. Yet there’s still much to do, including guaranteeing fair representation; devising a system of campaign financing that allows a fair shot at winning to modestly funded candidates as well as those receiving millions of special-interest dollars; and creating a social and political climate that encourages participation of every citizen, even the disaffected. Only then can a real “people’s voice” be heard.

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debate will resurface most prominently if President George W. Bush has an opportunity to nominate a member of the U.S. Supreme Court. As a Texas Republican, whose party is actively courting the growing Hispanic population, he will face stiff pressure to name the first Hispanic to the high court.

Representativeness is a fact of political life and is destined not only to remain on the judicial appointment scene, but also perhaps to complicate matters, as groups (e.g., Hispanics and Asians) demand a place on the high court and lower federal judiciary, and as presidents attempt to meet their demands in return for electoral support. Only nine seats exist on the U.S. Supreme Court, it can accommodate only so many symbolic appointments. Moreover, as the first President Bush discovered in his nomination of Clarence Thomas, the tension between passive and active representation, when the latter does not match the views of the group being symbolically represented, can actually embitter the very constituency the president was trying to woo.

Alexis de Tocqueville correctly observed, nearly two centuries ago, that “the peace, prosperity, and very existence of the Union rest in the hands of … federal judges.” Thus, to carry out the metaphor, whether those hands are black, white, brown, yellow, male, or female is not nearly as important as whether they can craft interpretations of the law that will continue to preserve our Union.

References
How Should U.S. Elections Be Managed?

The nose-to-nose finish in the 2000 presidential contest between George W. Bush and Al Gore raised serious questions about how well the voice of the people was being heard. If the people had been able to vote for the president directly, rather than through the Electoral College, Al Gore would have won. But the re-examination of the voting process didn’t stop there: voter registration came under fire, as did other factors contributing to low voter turnout.

Voter Registration
The single largest contributing variable to low voter turnouts in the United States is that 25 percent of the eligible electorate is not registered and therefore may not vote. On top of that, the U.S. Census Bureau estimates that about 3 million registered voters were unable to vote in Election 2000 because of registration problems.

Residency requirements, early closing dates, periodic purges of individuals who have not voted recently, and inconvenient times to apply for a voter registration card all contribute to low registration levels. Furthermore, citizens who feel that they benefit little from the political system are often disinclined to spend the extra effort to register.

Only Switzerland has a lower voter turnout than the United States. The declining likelihood of citizens to vote does not uniformly affect every segment of the population. Whites participate in elections at rates higher than African Americans. Generally, the problems associated with registration and disinclination to vote all fall more harshly on minority citizens and those with low educational levels, muffling if not muting their voices.

Five Voting Technologies
Yet when measured in air-time, certainly the greatest attention in Election 2000 was devoted to our voting technologies and what might be done to improve them. The Constitution creates a federal republic that allocates certain responsibilities to the national government and certain powers to the states. The states hold primary responsibility for conducting all elections. Elections vary by state but primarily are managed by their local subdivisions—typically counties, whose resources and capabilities vary widely.

There are five categories of voting technologies that have been used in some degree during the past 25 years: paper ballots, mechanical lever machines, punch cards, optically scanned ballots, and “direct” recording electronic devices (DREs). Today there is a movement toward the increased computerization. Yet our earliest voting device—paper ballots—are still in use by about 1 to 2 percent of voters, especially in small towns and rural areas.

The mechanical lever machine accounts for about 20 percent of total votes cast. In this quick process, voters go into a curtained booth and turn individual levers to select their choices. Then they turn a master lever that records these choices on a counter.

Nearly one-third of voting is done by punch card systems (Votomatic and Datavote). Each voter is given a card that fits into a binderlike device with lists of choices on each cardboard page. Voters vote by lining up and punching out the perforated rectangles (chads) on their cards that correspond to their choices. Punch card systems have unique counting problems because more than one chad can be punched, some chads fall off that aren’t supposed to, and some stay on completely or partially that should have fallen off. A computer scores the cards by reading which holes are punched out, so that any chad irregularities throw off the counts.

Marksense systems, or optically scanned devices, resemble standardized testing systems. About 25 percent of voters use scanner systems today. A large ballot card lists the choices, and voters use a pencil to blacken the oval or rectangle next to each choice. If voters change their minds, they can erase individual marks and choose again. A scanner reads the darkest marks and tabulates the results.

The most recent innovation is an electronic version of lever machines. DREs display possible choices on what is typically an interactive touch screen that can store choices in memory or on disk. Voters touch or click on the screen to make their choices, and results are tabulated when the polls close. Less than 10 percent of voters use some form of DRE.

Which is the most reliable voting technology? Studies have found that hand-counted paper ballots and optically scanned ballots have had the lowest rates of loss since 1988. Punch card systems consistently produce the highest rates of spoilage in presidential elections. In fact, nearly 18 percent of counties, comprising about 31 percent of the population, use the Votomatic punch card systems, which has been found to be the least reliable voting system. Researchers concluded that simply changing voting equipment, without any new technological innovations, will substantially lower the rates of votes lost because of equipment.

**The Electoral College**

The Founders were deeply concerned about whether common people had the wisdom to select their representatives directly. They feared that the people would fall prey to unscrupulous individuals who knew how to sway votes to their own advantage. So the Founders decided that both the president and senators should be elected indirectly, by representatives of the people rather than by the people themselves. Only members of the House of Representatives would be directly elected by voters.

Under the Constitution, each state legislature elected two senators to Congress. This procedure remained in effect until 1913, when the Seventeenth Amendment was ratified; it allowed for direct election of senators. The Constitution also established an Electoral College to elect the president. A candidate would have to win a majority of Electoral College votes in order to become president. State legislatures elected the electors. The Electoral College still exists. Each state plus the District of Columbia is allocated a number of electors equal to the size of its total congressional delegation (the number of representatives it sends to the House plus two for its senators).

Criticism of the Electoral College began early on, after political parties began to emerge. State legislatures began to be organized by the parties, and the selection of electors became strongly influenced by the political party system. If a party dominated a state legislature, that party dominated the state's electors.

By the twentieth century, pressures mounted for reform, leading to a more democratic process. By the second half of the century, most states followed a “winner take all” approach—a state gave all its electors to whoever won the popular vote in the state, no matter how many candidates were on the ticket or how the votes split. The result is that a presidential candidate can win the popular vote overall but lose the electoral vote. That is what happened in the presidential election of 2000.
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SESSION II & III – EXPANDING THE RIGHT TO VOTE
[Time: Session II—1 hr & 45 min, Session III—up to 2 hrs]

NOTE: This is a rich lesson that will easily consume two sessions. The first session provides participants with the background they need to participate in the presentations of the following session.

Concepts and Topics: expanding the franchise/voting rights amendments and legislation

Lessons
“The Right to Vote: Giving New Meaning to ‘We the People’”

Handouts
• Introductory narrative on the Continental Congress [pp 30-31], beginning with the Morris and Paine quotes and ending with the words “Seven of the twenty-six amendments address the issue.” [Do not distribute the list of amendments.]
• Amendments to the Constitution
• Separate copies, information on each of 5 groups denied voting rights [2. a – e]
• Separate copies, information on changing rights for each of the 5 groups [3. a – e]

Material
Selected material for use in the presentations for Session II such as:
• Chart paper/poster paper
• Colored markers

FIRST SESSION [Session II]
[Time: 1 hr & 45 min]
Procedure
Opening
(1) Welcome and Warm Up
Review the discussions of last session
Tell participants that in these next two sessions they will explore voting rights throughout the nation’s history

(2) Warm Up

Curricular Focus
(3) Use a “Readers Theatre” strategy to review the background on the Constitutional Convention. [20 min]
• Assign a narrator for each of the paragraphs up to the list of Amendments. [Have the narrator for the fifth paragraph also read the sentence introducing the states.] Tell the narrators not to read the delegates’ statements or the states’ voter qualifications—they will speak for themselves.
• Appoint one person to speak for each of the following delegates – Morris, Paine, Franklin, Sherman, and Gerry.
• Do the same with each of the states, e.g., Connecticut through Virginia.
• Proceed with the reading beginning with the Morris and Paine quotes and ending with the words “Seven of the twenty-six amendments address the issue.”

(4) Review the Amendments that changed voting rights. [10 minutes]
• Form 7 small groups. Distribute copies of the Amendments to the Constitution and assign each group one of the listed seven amendments dealing with the right to vote. [Do not distribute this list.] Charge the groups to be prepared to tell the others how their Amendment protected or extended the right to vote. Observe that some Amendments are straightforward and easy to understand, others are more complex. If a group is not sure what right their Amendment addresses, they can ask for assistance when they report out. [10 minutes]

• As each group reports, allow for questions and clarification then write the finding on the board [See the listed summary statements in the lesson]. When your list is compiled, review and observe what has been achieved over this century in extending voting rights. Challenge participants to note the ratification dates and explain what may have led to each Amendment becoming part of the Constitution. [20 minutes]

• Lead participants in reflecting on such questions as: What would the Founding Fathers think of these developments? Why do you think that, as the narrative concludes: “No other aspect of the Constitution has been changes as much as provisions protecting the right to vote. Seven of the twenty-six amendments address the issue.” [5 minutes]

(5) Prepare for the next Session. [45 minutes]
Explain that in next session they will look more closely at the five groups whose right to vote has changed over time. To do this, they will work in small groups to inform the others about their assigned group of Americans.

• Form 8 small groups and distribute the paragraphs as indicated. [Group 1 and Group 8 are assigned 2 groups of people due to the length of one or both of the paragraphs.]
  Barriers to the Right to Vote
  Group 1—2.a. Non-property Owners & 2.e. Youth
  Group 2—2.b. Black Americans
  Group 3—2.c. Women,
  Access to the Right to Vote
  Group 5—3.a. Non-property Owners
  Group 6—3.b. Black Americans
  Group 7—3.c. Women

• Give participants time to get in groups to prepare for next session. Challenge them to be creative in conveying the basic/important information. Tell them to be selective in the information they focus on and not go into all the detail provided. They can use: role plays, graphics/signs/charts, dramatic readings, etc. They will need to keep their
presentations to no more than 8 minutes for each group of people for whom they are reporting.

Closing
(6) Wrap Up and Adjourn
Check on participants’ progress and readiness for their presentations.

SECOND SESSION [Session III, continued]
[Approximately 2 hrs]

Opening
(1) Welcome and Warm Up [10 minutes]
  • Have participants meet with their assigned small group and make final preparations for their presentations.

Curricular Focus
(2) Voting Rights of “We the People” [1 hr & 40 min]
  • Pair the presentations as follows:
    Non-property Owners  Group 1 (barriers)  Group 5 (access)
    Black Americans     Group 2 (barriers)  Group 6 (access)
    Women              Group 3 (barriers)  Group 7 (access)
    Native Americans    Group 4 (barriers)  Group 8 (access)
    Youth              Group 1 (barriers)  Group 8 (access)
  • Allow approximately 20 minutes for each paired presentation and follow-up discussion. Celebrate the moments!

Closing
(3) Debrief and Wrap Up [5 – 10 minutes]
Use some version of the list of “Concluding Activities” (page 33)

(4) Look Ahead
In the next session participants will investigate additional rights gained throughout U.S. history.

(5) Adjourn – remind participants when and where they will meet next!
The Right to Vote: Giving New Meaning to “We the People”/Secondary

Steve Jenkins

An accurate view ... would prove that property is the main object of society. ... Men don't unite for liberty or life. ... They unite for protection of property. ... Give the votes to people who have no property, and they will sell them to the rich who will be able to buy them.

Gouverneur Morris

You require that a man shall have sixty dollars' worth of property, or he shall not vote. Very well, take an illustration. Here is a man who today owns a jackass, and the jackass is worth sixty dollars. Today the man is a voter and he goes to the polls and deposits his vote. Tomorrow the jackass dies. The next day the man comes to vote without his jackass and he cannot vote at all. Now tell me, which was the voter, the man or the jackass?

Thomas Paine

One of the great ironies of history is the fact that a formidable few, many with elitist, exclusionary, antidemocratic views, like Gouverneur Morris, would develop our United States Constitution that is so often embraced as representing and protecting the rights of the masses, of “We the People.” The views of the delegates to the Constitutional Convention more often reflected those of Morris than of Paine. Not only was Paine not invited, his name and influence are no where to be found in the records and commentaries on the Convention, except perhaps in the pro-populace sentiments of Paine's long-time friend, Benjamin Franklin. Franklin chastised the elitist views, reminding the delegates, “It is of great consequence that we should not depress the virtue and public spirit of our common people, of which they displayed a great deal during the war and which contributed principally to the favorable issue of it.” With the exception of Franklin and a handful of other delegates, most of the framers viewed democracy as dangerous, and interpreted “We the People” very narrowly.

Roger Sherman, a lawyer and delegate from Connecticut, said, “The people ... should have as little to do as may be about the Government. They lack information and are constantly liable to be misled.”

Delegate Elbridge Gerry of Massachusetts and of later “gerrymandering” fame warned, “The evils we experience flow from the excess of democracy.” Such sentiments abound in the records of the Convention. Even the final draft of the Constitution excluded all but the “whole number of free persons” to be counted for purposes of apportioning representation. The Constitution specifically excluded “Indians” and counted slaves as “three-fifths of all other persons” (see Article I, section 2).

Ask a student or a person on the street, “Does the Constitution guarantee your right to vote?,” and the response will likely be “absolutely.” If you then ask, did the framers of the Constitution intend to grant this fundamental freedom to your ancestors, the answer becomes much more complex.

As we celebrate the bicentennial of the Constitution, it is important to examine the historic struggle to expand the franchise, to insure the right of “We the People” to make our vote and voice count. When the Constitution was signed, the only people permitted to vote in most states were free (not slave or indentured servants), white, male, property owners over twenty-one years of age. A careful reading of the Constitution and the deliberative debates of the Convention may lead one to conclude that the framers intended to limit this precious right (see the article by the Hon. Thurgood Marshall elsewhere in this issue).

The right to vote is seen as a cornerstone of democracy. Yet the U.S. Constitution contained no broad guarantee of the right to vote. In the absence of any expressed declaration of voting rights, the power to establish qualifications for voting has been basically reserved for the states. Constitutional references to voting qualifications and elections are limited (see Article I, sections 2, 3, 4 and 5; Article II, section 1). The dominant message of these passages is found in Article I, section 4—"The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but Congress may at any time by Law make or alter such Regulations, except as to the Place of Chusing Senators. . . ."

Clearly each state legislature has the power to establish its own qualifications for voting. This power meant some states had fewer requirements and more eligible voters than neighboring states with more restrictions.

In addition to being free white males over twenty-one years of age, the following were the voter qualifications of states participating in the Constitutional Convention:

CONNECTICUT: Owners of 40 pounds of personal property or land bringing an annual income of 40 shillings.

DELAWARE: Owners of 50 acres of land with 12 acres cleared and improved or persons worth 40 pounds.

GEORGIA: Owners of property worth 10 pounds.

MARYLAND: Owners of 50 acres of land or persons worth 30 pounds.

MASSACHUSETTS: Owners of land worth 60 pounds or bringing in an annual income of 3 pounds.

NEW HAMPSHIRE: Property owners and taxpayers.

NEW JERSEY: Persons worth 50 pounds.

NEW YORK: Owners of land worth 20 pounds—an exception gave the vote to all freemen living in Albany and New York City before October 14, 1775.

NORTH CAROLINA: Owners of 50 acres of land to vote for the state senate; taxpayers for the lower house of the legislature.

PENNSYLVANIA: Free male taxpayers.

SOUTH CAROLINA: Owners of 50 acres or person paying the equivalent to taxes on 50 acres of land.

VIRGINIA: Owners of 25 acres of improved land or 50 acres of unimproved land and “certain artisans residing in Norfolk and Williamsburg.”

While many of the framers may have intended to limit the right to vote or to reserve that decision to state
governments, the Constitution provided the means for extending the right to vote to the disenfranchised classes. We the people can amend the Constitution, persuade Congress to pass voting rights laws, seek relief through the courts, or change state laws or constitutions. All of these means have been used to make “We the People” more universal. No other aspect of the Constitution has been changed as much as provisions protecting the right to vote. Seven of the twenty-six amendments address the issue:

Fourteenth Amendment  
(ratified, 1868)  

Fifteenth Amendment  
(ratified, 1970)  

Seventeenth Amendment  
(ratified, 1913)  

Nineteenth Amendment  
(ratified, 1920)  

Twenty-Third Amendment  
(ratified, 1961)  

Twenty-Fourth Amendment  
(ratified, 1964)  

Twenty-Sixth Amendment  
(ratified, 1971)  

Punished states that denied newly freed slaves the right to vote.  
Extends the right to vote to black males.  
Permits voters to directly elect U.S. Senators.  
Extends the right to vote to women.  
Extends the right to vote to qualified persons living in the District of Columbia.  
Protects the right to vote of persons who cannot afford to pay a poll tax.  
Extends the right to vote to persons eighteen or older.

Classroom Strategy

Review the information above and answer the following questions:
1. Identify the groups of persons (e.g., Native American-Indians) denied the right to vote at the time of the adoption of the U.S. Constitution.  
2. Why do you believe this group was denied the right to vote?  
3. What changes in society may have led to the extension of the right to vote to each group?

Answers to Classroom Strategy

The answers below present a more comprehensive analysis than students are likely to offer. As an enrichment activity, the teacher may wish to assign students to do research on specific disenfranchised groups regarding the group’s struggle and achievement of the right to vote, and to report the findings to the class.

To assist students in answering Question 2, the teacher may wish to ask them to answer the following: Why would some government leaders want to deny this group the right to vote?

In response to Question 3, some students may simply answer “times change.” More appropriate answers should reflect some analysis of these changes. One means of assisting students in answering this question is to ask them to review their responses to Questions 2, and then describe some things that might be necessary in order to change the reasons why the vote was denied to each group.

1. a. Non-property Owners  
   b. Black Americans  
   c. Women  
   d. Native Americans  
   e. Youth (Persons under 21)  

2. a. Non-property Owners  

Many political leaders of the newly formed United States feared “mob rule,” or rule by “democracy.” As John Adams warned, “If you give more than a share in the sovereignty to the mob, then you give them command of the legislature, and they will vote all property out of the hands of you aristocrats.” Or as John Jay so sharply stated, “Those who own the government ought to rule the government.” Many leaders feared what James Madison described in Federalist Paper No. 10, that if those without property became majority rulers, then they would “abolish debts, they would call for an equal division of property, or for any other improper or wicked project.” Other political leaders feared that wealthy, sophisticated people could buy the votes of propertyless, illiterate people. These leaders believed that voting should be limited to those who had the greater investment in the community, state, and nation; in their view, this meant men of property. Many state constitutions of the era reflected these sentiments.

b. Black Americans

Most Black Americans were denied the right to vote because they were not recognized as citizens in most jurisdictions. As a matter of historical record, most black Americans living in slavery were considered property. This was affirmed in the famous Supreme Court decision, Dred Scott v. Sanford, 60 U.S. 393. Many historians believed that this case catapulted the nation into the Civil War and passage of the post Civil War Amendments (13, 14 and 15) to reversing this decision. As a result, the status of black Americans changed briefly following the Civil War, during Reconstruction. But with the withdrawal of federal troops from the South in 1877, anti-Reconstruction political forces began to regain power. As these forces became legislative majorities in various states, they began to pass legislation to disenfranchise black voters. In some areas mobs threatened black voters to keep them away from the polls. A congressional committee reported in 1892 that in some southern states, white mobs made blacks swear to vote for the mobs’ candidates “upon pain of being put back into slavery, and their wives made to work on the road.” As more anti-Reconstruction representatives gained power in Congress, the support for and enforcement of the Reconstruction policies and Civil Rights Acts diminished. In 1894, Congress repealed 42 of the 49 sections of the Reconstruction Enforcement Acts. A series of U.S. Supreme Court decisions between 1876 and 1906 effectively stripped black Americans of equal opportunities, including the right to vote. See, for example, United States v. Harris, 106 U.S. 629 (1883), The Civil Rights Cases, 109 U.S. 3 (1883); James v. Bowman, 190 U.S. 127 (1903); and Hodges v. United States, 203 U.S. 1 (1906). This loss is clearly demonstrated in the following example: In Louisiana in 1896, there were 130,334 blacks registered to vote. In 1900, there were only 5,320. The actions of Congress, the Supreme Court, and the lack of executive support were a reflection of attitudes of many people at the time. A cursory examination of the publications of sociologists and psychologists of the time exemplify these prejudices with phrases such as, “Negroes are incapable of governing themselves” and “They need
watching and close supervision.” Discussions of intellectual inferiority based on race were common.

c. Women

Like blacks, women were traditionally viewed as property, without a separate legal existence, and incapable of independent thinking. And, as with other examples of unequal treatment in respect to the vote, these attitudes found their way into all branches of government. In 1874, the U.S. Supreme Court held that the denial of voting rights to women was constitutional. Virginia Minor had challenged a Missouri law that permitted only males to vote. Minor claimed that the Missouri law denied her the “privileges or immunities of citizens” as guaranteed by the newly adopted Fourteenth Amendment. Following is an excerpt from the majority opinion in this case.

There is no doubt that women may be citizens. They are persons, and by the Fourteenth Amendment “all persons born or naturalized in the United States and subject to the jurisdiction thereof” are expressly declared to be “citizens of the United States and of the State wherein they reside.” . . .

If the right of suffrage is one of the necessary privileges of a citizen of the United States, then the constitution and laws of Missouri confining it to men are in violation of the Constitution of the United States, as amended, and consequently void. The direct question is, therefore, presented whether all citizens are necessarily voters.

For nearly ninety years the people have acted upon the idea that the Constitution, when it conferred citizenship, did not necessarily confer the right of suffrage.

Being unanimously of the opinion that the Constitution of the United States does not confer the right of suffrage upon any one, and that the constitutions and laws of the several States which commit that important trust to men alone are not necessarily void, we affirm the judgment of the court below.


d. Native Americans

Many people believed Native American were “uncivilized” because they kept their tribal ways and did not assume a “civilized” way of life. People also felt that Native Americans should not have the right to vote in local or state elections because many of them did not vote in their social organizations, and were not subject to state or local jurisdiction. A Minnesota case exemplifies this reasoning. In Opsahl v. Johnson, 138 Minn. 42, 163 N.W. 988 (1917), the court ruled, “The tribal Indian contributes nothing to the state. His property is not subject to taxation, or to the process of its courts. He bears none of the burdens of civilization, and performs none of the duties of its citizens.” This argument includes the assumption that until Native Americans adopt the “habits and customs of civilization,” they should not reap the privileges of civilized people, which includes the right to vote. Some states and local communities feared what might happen if large numbers of Native Americans were permitted to vote; in some communities, the majority of the voting age population was Native American. Those in power wished to maintain control of government and did not want to contend with a potentially powerful voting bloc of Native Americans. This argument was expressed as recently as 1956 in Allen v. Merrell, 6 Utah 2d 32, 305 P. 2d 490: “It is thus plain to be seen that in a country where the Indian population would amount to a substantial proportion of the citizenry, or may even out number the other inhabitants, allowing them to vote might place substantial control of the county government . . . in Indian hands.”

e. Youth

Persons under twenty-one were considered too young, too immature, and not responsible enough to vote. People believed that many young people were not well informed about politics, candidates, and the community, and therefore could not cast intelligent votes. Almost all of the government leaders were much older than twenty-one and probably were not very interested in lowering the voting age below twenty-one. Persons under twenty-one were not well organized as a political force and therefore were not very effective lobbyists for lowering the voting age.

3. a. Non-property Owners

Not all early political leaders desired to limit voting to men of property. Gradually states changed their property requirements, and in some instances eliminated them altogether. This was particularly true of new states being admitted into the Union, and was evidenced in the presidential elections of Andrew Jackson. But many of these changes only came about after bitter struggles, and in some cases almost open rebellion. The Dorr Rebellion in Rhode Island was of particular importance in that the Dorr forces, led by one of its adherents, Martin Luther, took their case to the U.S. Supreme Court. In Luther v. Borden, 48 U.S. 1, 7 Howard 1, 12 L.Ed. 581 (1849), the majority of the Court ruled that the Court could not guarantee a republican form of a state’s government in accordance with Article IV, section 4, of the Constitution. The Court said this was a “purely political question” that must be left in the hands of the political branches (president or Congress) of the government to decide.

Gradually the strict ownership of property qualification lost favor as new forms of wealth and social responsibility emerged. Thus, some jurisdictions changed the law to permit merchants and “mechanics” to vote along with freeholders. Although property qualifications for voting declined in the 1880s, it was not until a series of U.S. Supreme Court decisions in the late 1960s and 1970s that some additional property qualifications were removed (see Kramer v. Union Free School District, 395 U.S. 621 (1969), and Hill v. Stone, 421 U.S. 289 (1975)). However, if an electoral district (e.g., a special water storage district) exists to advance a narrowly limited purpose and if the district’s decisions have a greater impact on property owners, then the special district may restrict the vote to affected property owners (see Salier Land Co. v. Tulare Water District, 410 U.S. 719 (1973)).

b. Black Americans

In addition to the post-Civil War amendments, and particularly the Fourteenth and Fifteenth Amendments, the increased participation of black Americans in all phases of society began to change attitudes and influence public policy. For example, black Americans fought in two world wars. News of their service and, in some cases, distinguished heroism were reported. Many people thought it was unfair that these Americans did not have equal opportunities, including the right to vote. Black Americans began to become more politically organized, as exemplified by the founding of the National Association for the Advancement of Colored People in 1909. In the 1920s and 1930s, many black Americans moved out of southern states into northern states where they had the right to vote. Black Americans formed political coalitions
to help elect government leaders who promised to work for laws supporting equal treatment. Mass communications (e.g., television and radio) also presented news that often reported stories of injustices and discrimination against black Americans. These reports repulsed many people. Many people pointed out the inconsistency of black and white Americans fighting against Nazi Germany’s racist policies while racist policies were being practiced against black Americans. Sociologists and psychologists also influenced public attitudes, publishing studies demonstrating that the poor conditions and slow progress of black Americans was the result of unequal treatment, of being denied economic and educational opportunities, of a lack of food and medical assistance. As a result of increased public awareness, changing attitudes, and the increased political power of blacks, the decisions of government leaders began to reflect these changes. Congress passed a number of civil rights and voting rights acts. Some presidents lobbied for passage of this legislation, and they used their power to enforce the federal legislation. The U.S. Supreme Court handed down decisions striking down unconstitutional segregation. The changes continued. In 1984, Congress passed another voting rights act to further strengthen the voting rights of nonwhite minority citizens throughout the nation.

c. Women
As early as the Continental Congress in 1776, women began to militate for economic and political rights, including the right to vote (see, for example, Women of the Republic: Intellect and Ideology in Revolutionary America by Linda Kerber). Most political leaders did not eagerly endorse these ideas. With westward expansion, the frontier states used suffrage as an inducement for female settlers to move to their communities. The Wyoming territory granted women the right to vote in 1869, and Utah, Colorado, and Idaho soon followed. Wyoming, which extended full suffrage rights to women while a territory, insisted on retaining equal suffrage notwithstanding the possible opposition of Congress to its statehood. The Wyoming legislature announced, “We will remain out of the Union one hundred years rather than come in without suffrage.” Some women organized and worked with other groups, such as the abolitionists, to pursue equal treatment for women and black Americans. Throughout the latter half of the nineteenth century, organizations like the American Women’s Suffrage Association and the National Women’s Suffrage Association worked vigorously for the right to vote. These two organizations became more powerful when they joined in 1890 to form the National American Women’s Suffrage Association. After women’s entry into all aspects of work during World War I, the suffragettes became more militant in their efforts to secure suffrage for women. Finally, in 1919 Congress adopted the Nineteenth Amendment, which was ratified by the requisite number of states within one year.

d. Native Americans (Indians)
The recognition of the voting rights of Native Americans closely parallels the movement supporting civil rights of other minorities. As people became more sensitive to and aware of the plight of the Native Americans, many felt that, as the first Americans, Native Americans should have the same rights as other Americans. And even though they were the first Americans, living here for thousands of years, it was not until Congress passed the Indian Citizenship Act of 1924 that Indians were made citizens and provided an opportunity to vote in most states. Arizona still prohibited Indians from voting by interpreting their status as “persons under disability,” but finally, in 1948, the Arizona Supreme Court struck down this practice, and Native Americans were granted the right to vote, (see Harrison v. Laveen, 67 Ariz. 337 (1948)).

e. Youth
At the time of the debate regarding ratification of the Twenty-Sixth Amendment, the nation was witnessing a boom in college attendance by those under twenty-one, and many of the students appeared well informed and took active roles in confronting issues and community problems. Also during the 1960s, eighteen-year-old males had to register for the draft, and many were drafted. Some were sent to combat in Vietnam. Some said it was not fair that a person could be drafted, sent into combat, and maybe even be killed, yet was denied the right to vote. Many of the young people became active in a number of causes (e.g., to end the draft, against United States intervention in Vietnam, for civil rights, etc.). As activists, many learned how to organize and lobby government leaders. They formed coalitions with other groups and older political leaders to assist them in lowering the voting age. There was also historical precedent for reducing the voting age. In 1943, Georgia lowered the voting age to eighteen. In 1955, Kentucky lowered the voting age to eighteen. And the two new states, Alaska and Hawaii, lowered their voting age in 1959 (to nineteen in Alaska and to twenty in Hawaii). Congress also lowered the minimum voting age in state, local, and federal elections from 21 to 18 in the Voting Rights Act Amendment of 1970, although this provision was overturned in Oregon v. Mitchell, 400 U.S. 112 (1970).

Concluding Activities
1. Review the class answers to questions 2 and 3 above, and then think about how history might be different 200 years ago. . .

What if non-property owners had been granted the right to vote?
What if Black Americans had been granted the right to vote?
What if Native Americans (Indians) had been granted the right to vote?
What if women had been granted the right to vote?
What if eighteen-year-olds had been granted the right to vote?

2. Review the Twenty-Sixth Amendment. Do states have the power to lower the voting age below eighteen? At what age should persons be eligible to vote, and why? Ask students to research the voting behavior of young people? Why don’t more of them vote?

Steve Jenkins is law-related education director of the Bar Association of Metropolitan St. Louis. He was assisted by Nancy Eschmann of the bar association in preparing these activities for publication.
### PATHWAY 5: FREEDOM AND EQUALITY

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SESSION IV – EQUALITY EARNED
[Time: 1hr & 45 min]

Concepts and Topics: civil liberties, equal protection of the law/Fourteenth Amendment, relationship of political to social [and economic] equality

Lesson
“The Struggle for Equality”

Handouts
Student Handout 1
Student Handout 2
Student Handout 3

Material/Resources
Prepare projected copy of the bar graph, Handout 3, page 21]

Resource Persons
Consider inviting a civil rights attorney and/or a political scientist to engage participants in further exploration of civil rights and cases.

Procedure
NOTE: The accompanying lesson provides all the direction needed to conduct a powerful and engaging lesson.

Opening
(1) Welcome [5 minutes]
   • Briefly refer to the exploration of voting rights in the first three sessions. Note that in this session participants will explore the evolution of other civil rights.
   • Review today’s agenda

(2) Warm Up [10 minutes]
Use the directions under Procedure #2 for your warm up.

Curricular Focus
(3) Follow Procedures #3 and #4 [15 minutes]

(4) Procedure #5.
Form small groups to work together using the three Student Handouts. [45 minutes]

Small groups report and work together to generate the consensus master bar graph. [20]
Closing
(5) Debrief and Wrap Up [10 minutes]
Use the debriefing questions under Procedure #6 for your debrief and wrap up.

(6) Look Ahead
Tell participants that the next session they will learn about the efforts of one woman who fought for civil rights in the 1960’s.

(7) Adjourn – remind participants when and where they will meet next!
Equal Protection

The Struggle for Equality/Secondary

Mary Louise Williams

Rationale

Americans have had three opportunities to deliberately create their own constitutional order based on what they perceived to be a just society. The first was the American Revolution and the subsequent ratification of the Constitution. The second was Reconstruction with the ratification of the Fourteenth Amendment. The third was the Second Reconstruction or the Civil Rights Movement of the mid-twentieth century testing the meaning of the Fourteenth Amendment. This lesson traces the legal evolution toward a just society from 1865 to 1965 through congressional acts and Supreme Court decisions from this period. Students, using bar graphs to quantitatively define their perceptions, will assess the advances toward (and retreats from) economic, political/legal, and social equality for black Americans.

Objectives

1. To understand the content of the Fourteenth Amendment
2. To interpret how congressional acts and Supreme Court decisions have either advanced or regressed equal rights for black Americans.
3. To assess causes for the retreat from and advances toward equality.
4. To evaluate the role of the Fourteenth Amendment in the struggle for equality.

Procedure

1. Prior to Class: Duplicate handouts. Prepare butcher paper or transparency as a master copy of the bar graph (Handout 3, page 21).
2. Introduction to the Lesson: Stimulate interest by asking the following questions:
   a. What does it mean to have rights? Are they different from privileges?
   b. What privileges or rights go with citizenship?
   c. What is the difference between civil rights and civil liberties?
   d. How were/are voter qualifications set? in the nineteenth century? in the twentieth? at present?
3. Divide the class into groups of three or more. Write on the board in three columns the following: “Brainstorm” and list your ________ (use the lists on the next page as a guide).
4. Explain the following:
Civil liberties have historically meant the Bill of Rights. Nowadays civil rights and civil liberties mean pretty much the same thing; they are used interchangeably. But in the 1860s the term “civil rights” had a different meaning. It meant basically one’s economic pursuits. The protection was not only from other individuals but from the government as well. Political rights were not civil rights because they were considered to be privileges rather than rights. Social rights were a matter of personal taste and prejudice. No one considered it governmental business to be concerned with discrimination based on color, sex, etc. The Thirteenth Amendment really is the beginning of modern civil rights law and policy according to constitutional historian Herman Belz. Therefore, one can begin to see the development as it takes place in the twentieth century from its beginnings in the nineteenth:

19th Century
Civil Rights
Economic Rights
Political & Legal Rights
(Civil Liberties)

Mid-20th Century
Civil Rights
Economic Rights
Political & Legal Rights
Social Rights

5. Give each student Handout 1, the Student Background Information. Go over in class for understanding. Ask if the Thirteenth Amendment granted any rights. Point to the bar graph and explain that it did not. So there is no advance. Point out that the Civil Rights Act of 1866 has been done for them as an example. Go over and discuss whether they agree with the placement on the bar graph. Point out that it is subjective.

Distribute Handout 2 (Primary Sources) and Handout 3 (Bar Graph). Explain that in their groups they will read the congressional acts or Supreme Court decisions. To which point on the bar graph was the economic, political/legal or social right extended because of that act or decision? After marking their graph they should be able to explain their placement. It means weighing the rights granted to the blacks against those which the students understand to be full rights or equality. Go over together in class coloring the master bar graph for comparison and discuss.

6. Debriefing: You will want to ask follow-up questions such as:
   a. What were the causes for the advances and retreats?
   b. Which of the areas of civil rights is basic to others?
   c. Which is seemingly the most difficult to obtain?
   d. How would you assess the role of the Fourteenth Amendment in achieving equality? Is the struggle for equality over?

REFERENCES

Student Handout 1
STUDENT BACKGROUND INFORMATION
The Civil War destroyed an old economic system in the United States based on Negro slavery. The Thirteenth Amendment had freed the slaves. It had not, however, given blacks citizenship or any defined rights. This would have to be done in order to provide real freedom. True freedom, according to constitutional historians Harold M. Hyman and William Wiecek, is legal protection of person, property and rights. Without rights and legal protection of those rights, the blacks would be free in name only.

The idealists and the Radical Republicans had hoped to transform the nation during Reconstruction into a just society. The question for them was how to best secure rights for the blacks and to protect these rights. They were concerned about the state governments because it was to state governments that most people looked for governmental functions and rights. Federal power had been interpreted narrowly so that Washington, D.C. seemed not
only remote but unreliable. But, anything less than federal protection of rights would leave the blacks to the mercies of the states. They knew the southern states would attempt to re-enslave the blacks, if not legally then economically.

States also determined voter qualifications. Article I, Section 2 gave this power to the states. If a person was eligible to vote in state elections, then he was eligible to vote in federal elections. States had historically denied suffrage (the right to vote) and political participation in the early years to all but white, male property owners. As this changed to include more white males over 21, free blacks and women were still being excluded from the political process. When the Fourteenth Amendment was ratified in 1868, the Supreme Court then had the right to determine on the national level matters concerning citizenship. It made the federal government the source of citizenship as well as the states. The idealists believed they could use the federal laws to ensure the protection of the civil rights being granted to blacks and to protect their citizenship. But what was citizenship?

In 1866 it was not clear as to what was meant by citizenship. It is not totally clear today. Chief Justice Earl Warren once defined citizenship as “man’s basic right, for it is nothing less than the right to have rights. Remove this priceless possession and here remains a stateless person disgraced and degraded in the eyes of his countrymen.”

Through the Fourteenth Amendment, citizenship had been granted to the blacks. As a matter of fact, dual citizenship had been granted. As a citizen of both the state in which he lived and the nation, he enjoyed equal protection of the laws, immunities and privileges, and due process of law. And what about voting rights? Frederick Douglass felt that the minimum right for adequate protection was to have legal remedies through access to the courts and the voting booth. He shared this view with a number of others concerned about the ultimate withdrawal of federal troops from the South. As a result, the Fifteenth Amendment was ratified giving black men the right to vote. This granting of civil rights was the new congressional redefinition of a just society which included black men.

The promise of economic security and political equality was now in legal existence. The budding promise for a just society was unfolding. What happened? Why did it take the Second Reconstruction of the twentieth century before the emergence of true equality could begin? The following exercise will enable you to understand what happened in the struggle for a just society based on equality.

### Student Handout 2

**Primary Sources—Congressional Acts and Supreme Court Decisions**

1. **AMENDMENT XIII (1865)**

   *SECTION 1.* Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

   *SECTION 2.* Congress shall have power to enforce this article by appropriate legislation.

2. **THE CIVIL RIGHTS ACT (April 9, 1866)**

   Shortly after the Civil War was over several southern states, acknowledging the destruction of slavery within their borders, attempted to define what rights the newly freed blacks would have. As a result, several southern states passed what were called Black Codes. These codes were harsh, thinly disguised attempts to re-enslave the newly freed Negro. The Republican Congress passed a federal law to nullify these infamous “Black Codes.” The result was the Civil Rights Act of 1866 which was an attempt to define the civil rights belonging to the newly freed blacks. Most of its provisions were written into the Fourteenth Amendment two years later.

   An Act to protect all Persons in the United States in their Civil Rights, and furnish the Means of their Vindications

   BE IT ENACTED, that all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall have the same rights, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties to none other...

   The act went on to state that any person who tried to deprive the newly freed blacks of their rights would be charged with a misdemeanor, and if convicted, punished by a fine of not more than $1,000 or one year in jail or both. The case would be heard in the United States federal district courts.

3. **AMENDMENT XIV (1868)** (relevant section only)

   The Fourteenth Amendment “nationalized citizenship” which had previously been the domain of the states. States had up until this time defined who could be a citizen. It guaranteed “privileges and immunities,” a process due its citizens, and it mentioned equality for the first time in the Constitution. Citizens were to be protected equally.

   **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.

   **AMENDMENT XV (1870)**

   It soon became apparent that the Fourteenth Amendment was not going to secure the right to vote for the newly freed blacks, a right that Frederick Douglass had felt was the minimum for protecting other rights. Congress, therefore, attempted to remedy this with a constitutional amendment. In order to make the amendment effective, Congress also passed the “Enforcement Act” which sought to get rid of procedures and technicalities for registering and voting that would intimidate the blacks.

   **SECTION 1.** The right of citizens of the United States to vote shall not be denied or abridged by any State on account of race, color, or previous condition of servitude.

   **SECTION 2.** The Congress shall have power to enforce this article by appropriate legislation.
4. THE SLAUGHTER-HOUSE CASES, 16 Wallace 36 (1873)
A corrupt Louisiana legislature passed a bill in 1869 which established a monopoly for the Crescent City Stock Lading and Slaughterhouse Company. This meant that all livestock had to go through this company to be slaughtered and over a thousand butchers and livestock dealers were simply left out of the butchering business. The butchers and dealers filed suit under the Thirteenth Amendment prohibition of involuntary servitude and the Fourteenth Amendment privileges and immunities clause. The case went to the Supreme Court where, for the first time, "privileges and immunities" of U.S. citizens were defined. The Court stated that the Thirteenth Amendment protected former slaves but did not grant any more rights to the whites.

Decision:
This court is thus called upon for the first time to give construction of these articles [Amendments 13, 14 and 15]...the one pervading purpose in them all...is the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly-made freedman and citizen from the oppression of those who had formerly exercised unlimited dominion over him...[T]here is a citizenship of the United States, and a citizenship of a State, which are distinct from each other, of the privileges and immunities of the citizen of the United States, and of the citizens of the State. It is only the former which are placed by this clause under the protection of the federal Constitution, and that the latter...are not intended to have an additional protection by this paragraph of the amendment.

Was it the purpose of the Fourteenth Amendment...to transfer the security and protection of all the civil rights...from the States to the federal government?...to bring within the power of Congress the entire domain of civil rights heretofore belonging exclusively to the States?...[T]he effect is to fetter and degrade the state governments by subjecting them to the control of Congress...We are convinced that no such results were intended by the Congress which proposed these amendments, nor by the legislature of the States which ratified them...Having shown that the privileges and immunities relied on in the argument are those which belong to the State as such, and that they are left to the State governments for security and protection, and not by this article placed under the special care of the federal government.

And what were these national rights?
To come to the seat of government to assert any claim...to seek its protection...to demand and protection of the Federal government over his life, liberty and property when on the high seas or within the jurisdiction of a foreign government. In other words, neither the Thirteenth nor the Fourteenth Amendment could help the butchers because they were meant for the protection of the newly freed slave. The Fourteenth did not extend the butchers' rights as citizens; therefore, they would have to go back to state courts for remedy. As for protection of citizenship rights for blacks, since the states granted the political, social, and economic rights, the states would have to protect those rights. The federal government had no power to protect those. But the federal government could protect the rights of blacks while on the high seas!

5. THE CIVIL RIGHTS ACT (March 1, 1875)
An Act to protect all Citizens in their Civil and Legal Rights. Whereas, it is essential to just government, we recognize the equality of all men before the law, and hold that it is the duty of government in its dealings with the people to mete out equal and exact justice to all, or whatever nativity, race, color, or persuasion, religious or political; and it being the appropriate object of legislation to enact great fundamental principles into law; Therefore,

BE IT ENACTED, That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters, and to other places of public amusement, subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude.

Any person who violated the law was subject to conviction of a misdemeanor which carried punishment of fine and or imprisonment. The federal district courts had jurisdiction to hear these cases.

6. UNITED STATES v. CRUIKSHANK, 92 U.S. 542 (1876)
Fraud and intimidation were used in the elections of 1872. The governorship of Louisiana was in question. Also, in Grant Parish, the Democrats and Republicans were contesting the sheriff's race. When President Grant recognized the Republican candidate as the winner, rifles were sent to the new governor to arm the Republican sheriff and his nearly all black followers. The all white supporters of the Democratic contender attacked the Colfax Courthouse where the Republicans were holding out. At least 69 black Republicans were killed in the rout; 20 of these were murdered the night after the battle.

Nine white men, among whom was a William B. Cruikshank, were put on trial for having violated the "Enforcement Act" which was passed in 1870 to make the voting rights guaranteed in the Fifteenth Amendment effective. It was charged that these white men had conspired to intimidate blacks to prevent them from exercising their constitutional rights. Four were convicted and the case went to the Supreme Court. In its decision, the Supreme Court dealt a serious blow to the effectiveness of the Fourteenth Amendment in protecting the citizenship rights of blacks.

Decision:
[The Fourteenth Amendment] adds nothing to the rights of one citizen as against another. It simply furnishes an additional guarantee against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of society. The right to vote in the States comes from the States; but the right of exemption from the prohibited discrimination comes from the United States. The first has not been granted or secured by the Constitution of the United States; but the last has been...[I][t] does not appear that it was their (Cruikshank and the three others) intent to interfere with any right granted or secured by the Constitution or law...although we may suspect that "race" was the cause of the hostility;...

So, the Fourteenth Amendment added no new civil rights, but it did prohibit the denial by the states of existing rights if you already had them. It was then left up to the states to prevent the denial of civil rights by individuals. And those individuals knew that state authorities couldn't or wouldn't interfere in their intimidation of black voters.

7. CIVIL RIGHTS CASES, 109 U.S. 3 (1883)
In 1877, federal troops were withdrawn from the South ending the regime of the carpetbaggers. It also was the beginning of the end of any political and social equality blacks had enjoyed during the period of Reconstruction. The South began to use intimidation and fear to recapture political control. Social equality had already been
eroded through Jim Crow practices during the later Reconstruction period. The term “Jim Crow” had come to mean the practice of segregation of blacks. The term was thought to have come from a song performed by a minstrel. Whatever the origin, it meant separateness, segregation, a black's “place.” During the 1880s, these practices were transformed into rigid codes which had the force of law behind them. It became racial ostracism sanctioned by law which extended to housing and jobs, churches and schools, eating and drinking, sports and play, public transportation, prisons and orphanages, hospitals, the armed forces, funeral homes and cemeteries.

Jim Crow also extended into the polling places where residence requirements, poll taxes, the ability to read and interpret sections of state constitutions, etc. became a means of denying voting rights to blacks. But would Jim Crow hold up against the Fourteenth Amendment and its protection of black citizenship rights? Only the Supreme Court could answer that. And, indeed the Court did in the following two cases—the Civil Rights Cases and Plessy v. Ferguson.

The Civil Rights Act of 1876 had not only struck down as unconstitutional any state law that discriminated but it attempted to get at private acts of discrimination. Six cases went before the Supreme Court to be heard together all involving black patrons. The first case involved a refusal of admission to the Grand Opera House in New York City. The others involved refusals to serve food, to rent hotel lodging, to be seated in the ladies car of a train and the dress circle of a San Francisco theater. In an 8-1 decision, the Supreme Court struck down as unconstitutional the most important parts of the Civil Rights Act of 1875. The Court could find nothing in the Thirteenth and Fourteenth Amendments to give authority to the act.

Decision:
Rights and privileges are undoubtedly secured by the Fourteenth Amendment; but they are secured by way of prohibition against State laws . . . . The wrongful act of an individual ... is simply a private wrong, or a crime of that individual; but if not sanctioned in some way by the State, or not done under State authority, his rights remain in full force, and may presumably be vindicated by resort to the laws of the State for redress.

If one were discriminated against, one would have to go to the state for a correction of the wrong. The states had been the problem in the first place, which is why the Fourteenth Amendment was enacted.

It would be running the slavery argument in the ground to make it apply to every act of discrimination which a person may see fit to make as to the guest he will entertain or as to the people he will take into his cab . . . . Mere discrimination on account of race or color was not regarded as badges of slavery . . . . On the whole we are of the opinion that no authority for the passage of the law in question (the Civil Rights Act of 1876) can be found in the Thirteenth or Fourteenth Amendment of the Constitution; and no other ground of authority for its passage being suggested, it must necessarily be declared void, at least so far as its operation in the several States is concerned . . . .

Justice John Marshall Harlan delivered a dissenting opinion. He denied the lack of authority in the Thirteenth and Fourteenth Amendments.

Exemption from race discrimination in respect of the civil rights which are fundamental in citizenship in a republican government is . . . a new right, created by the nation, with express power in Congress, by legislation, to enforce the constitutional provision from which it is derived.

He went on to stress that the states still have the same authority to define and regulate civil rights. But now its exercise is the subject of enforcement through the national government to make sure that exemption of citizens from discrimination is protected. Harlan referred to the Commerce Clause, leaving open a suggestion that would be taken up by a more determined people in a more determined time.

Might not the act of 1875 be maintained in that case, as applicable at least to commerce between the States . . . . I suggest, that it may become a pertinent inquiry whether Congress may in . . . . its power to regulate commerce among the States enforce . . . . equality of rights, without regard to race, color or previous condition of servitude . . . .

8. PLESSY v. FERGUSON, 163 U.S. 537 (1896)
Jim Crow laws spread rapidly through the South after 1877. The question was, were they constitutional because of Supreme Court interpretations of the meaning of the Thirteenth and Fourteenth Amendments? In 1891, the “Citizens’ Committee to Test the Constitutionality of the Separate Car Law” formed in Louisiana. It was composed of a group of black citizens determined to test the Jim Crow laws, in particular the Jim Crow Act of 1890 which required “separate accommodations for the white and colored races” and prohibited either race from sitting in the seats of the other. Homer Plessy, who was one-eighth black and could pass for white, boarded the East Louisiana Railroad in New Orleans and sat down in the white-only coach. He refused to leave when asked to do so and was arrested and convicted of violating the Jim Crow Car Act. The case went to the Supreme Court. There the Court upheld not only the act but the idea that separate but equal was constitutional.

Decision:
The object of the [Fourteenth] Amendment was undoubtedly to enforce the absolute equality of the two races before the law, but . . . it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality or a co-mingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other . . . . [W]e cannot say that a law which authorized or even requires the separation of the two races in public conveyances is unreasonable or more obnoxious to the Fourteenth Amendment than the acts of Congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding acts of state legislatures . . . . [T]he underlying fallacy [is] in the assumption that the enforced separation of the two races stamps the colored race with the badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction on it . . . . If the two races are to meet on terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits and a voluntary consent of individuals . . . . Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races be equal, one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the Constitution of the United States cannot set it up on the same plane.
Justice John Marshall Harlan dissented with one of the most quoted ideas in constitutional history:

...these two amendments [Thirteenth and Fourteenth] if enforced according to their true intent and meaning, will protect all the civil rights that pertain to freedom and citizenship. ... The white race deems itself to be the dominant race in this country. ... But in the view of the Constitution, in the eye of the law, there is ... no superior, dominant, ruling class of citizens. ... Our constitution is colorblind, and neither knows nor tolerates classes among citizens. With respect to civil rights, all citizens are equal before the law.

9. THE CIVIL RIGHTS ACT OF 1964

As a result of Supreme Court decisions, such as the Civil Rights Cases of 1883 which gave support to Jim Crow laws, segregated society became fact in America. In 1896, Plessy v. Ferguson cemented the practice with its "separate but equal" decision. Therefore, there were separate schools, drinking fountains, waiting rooms, sections on trains and buses, graveyards, mortuaries, churches, even separate armies fighting common enemies in World War I and II. For all practical purposes, their economic, political/legal and social rights were non-existent. White America had forgotten blacks were even here. And when whites did remember, it was to participate in lynchings, acts of intimidation, humiliation, and degradation.

During the New Deal era, Eleanor and President Roosevelt took steps to force white America to remember its black citizens, the segment of the society hardest hit by the Depression. Blacks were appointed to senior government posts and relief was fairly apportioned to the one out of two unemployed black workers.

President Harry Truman made the first assault on civil rights issues with his Justice Department. It entered cases, filed by the NAACP (National Association for the Advancement of Colored People), as a "friend of the court." Truman forbade segregation in the military and ordered an end to racial discrimination in federal employment and government contracting.

The historic ending of school segregation came with Brown v. Board of Education in 1954. Blacks ended segregation on buses in Montgomery, Alabama, with a boycott. Student sit-ins at segregated lunch counters attacked segregation in public eating places. The University of Mississippi, traditionally a bastion of white supremacy, was forced to admit James Meredith, its first black student. Dr. Martin Luther King, Jr. led a peaceful march of a quarter of a million people to Washington, D.C., and spoke eloquently for the cause of black citizens. The date was August 1963. White America had become profoundly aware of black America.

But no major legislation dealing with civil rights had been enacted for over 82 years. In June 1963, President John F. Kennedy called on Congress to provide legislation to address all forms of individual discrimination. Its stated purpose was "to promote the general welfare by eliminating discrimination based on race, color, religion, or national origin in ... public accommodations, ... to enforce the provisions of the Fourteenth and Fifteenth Amendments, to regulate commerce among the several states ... ."

President Kennedy was assassinated in November. President Johnson, returning from Dallas shortly after taking the oath of office, decided on Air Force One to go "all the way" on civil rights. Five days after the assassination, he told a joint session of Congress that passage of the Civil Rights Act would be the greatest tribute they could make to honor President Kennedy's memory. The Civil Rights Act of 1964, 78 Stat. 243, Pub. L. No. 88-352, was signed into law on July 2, 1964. Since Title II is the part of the act that was constitutionally challenged, that is the relevant part provided here.

SEC. 201. (a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

(b) Each of the following establishments which serves the public is a place of public accommodation within the meaning of this title if its operations affect commerce, or if discrimination or segregation by it is supported by State action:

1. any inn, hotel, motel, ... which provides lodging to transient guests, other than an establishment ... which contains not more than five rooms for rent ... and which is actually occupied by the proprietor ... as his residence;

2. any restaurant, cafeteria ...;

3. any motion picture house ...;

... "commerce" means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State ...

10. THE HEART OF ATLANTA MOTEL v. THE UNITED STATES, 379 U.S. 241 (1964)

The appellant, the owner of a large motel in Atlanta, Georgia, sued to have Title II of the Civil Rights Act of 1964 struck down as unconstitutional. The owner restricted his clientele to white persons, three-fourths of whom were interstate travelers. He had 216 rooms available to transient guests and was conveniently located near two interstate highways and two state highways. There was national advertising to solicit business through national magazines and 50 billboards and highway signs within the state. Approximately 75% of the motel's registered guests were from out of state which included convention trade. The appellant maintained that Title II of the Act exceeded Congress' power to regulate commerce and thus violated the Commerce Clause under Article I, Section 8, clause 3; that the Act violated the Fifth Amendment by taking liberty and property without due process of law and just compensation; and that by having to rent available rooms to Negroes against his will, he was being subjected to involuntary servitude in violation of the Thirteenth Amendment.

Decision: The Supreme Court upheld Title II of the Civil Rights Act of 1964 as constitutional, a valid exercise of Congress' power under the Commerce Clause as applied to a place of public accommodation serving interstate travelers. It pointed out that the decision handed down in the civil rights cases of 1883 was not applicable because the "Court did not fully consider whether the 1875 Act could be sustained as an exercise of the commerce power." They determined that the test
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Legend:
- E: Economic equality
- P: Political equality
- S: Social equality

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of the exercise of the power of Congress under the Commerce Clause is simply "whether the activity sought to be regulated is "commerce which concerns more States than one" and has a real and substantial relation to the national interest."

The Court then proceeded to prove that denying people accommodations in motels because of race fell under the definition in that of "approximately 20,000,000 Negroes in our country," many are able to, and do, travel among the states in automobiles.

Congress also considered this a "moral problem" as well. In a concurring opinion, Justice Goldberg pointed out that the purpose of the act was to solve the problem of "the deprivation of personal dignity that surely accompanies denials of equal access to public establishments. Discrimination is not simply dollar and cents, hamburgers and movies; it is the humiliation, frustration, and embarrassment that a person must surely feel when he is told that he is unacceptable as a member of the public because of his race or color. It is equally the inability to explain to a child that regardless of education, civility, courtesy, and morality he will be denied the right to enjoy equal treatment, even though he be a citizen of the United States and may well be called upon to lay down his life to assure this Nation continues."

Through concurring opinions, the Thirteenth and Fourteenth Amendments were again focused upon as constitutional authority against discrimination. Justice Douglas stated, "... our decision should be based on the Fourteenth Amendment, thereby putting an end to all obstructionist strategies and allowing every person...to patronize all places of public accommodation without discrimination whether he travels interstate or intrastate..." In addition, it was pointed out that the Thirteenth Amendment was to be regarded as "additional authority" for the legislation.

Civil rights legislation dealing with individual discrimination had thus come full circle. The Fourteenth Amendment had once again become the constitutional centerpiece in the struggle for social equality.

11. THE VOTING RIGHTS ACT OF 1965

For over fifty years blacks in the South were denied access to what Frederick Douglas called the most minimum right — voting. Congress and the President tried to enact legislation during the 1950s and early 1960s that would force the South to give the vote to its black citizens. The Civil Rights Act of 1957 made it a federal offense to interfere with a citizen's right to vote in federal, state, or local elections. It didn't solve the problem. The Civil Rights Act of 1960 further strengthened the '57 law by allowing the federal government to sue states for failure to allow voter registration of blacks. Then Title I of the Civil Rights Act of 1964 made a sixth-grade education in English a basis for voter literacy. It was a means of attacking the literacy test southern states used to keep blacks from registering. The '64 law also threw out trivial reasons such as spelling errors for denying a person's registration. The same year the poll tax was targeted through the Twenty-Fourth Amendment to the Constitution, ratified January 23, 1964, which states:

The right of citizens of the United States to vote in any primary or other election for President or Vice President, for senators for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

The most important and most sweeping advance came when President Lyndon Johnson sent to Congress on March 17, 1965, a voting rights bill aimed at removing the rest of the obstacles to black voter registration and voting rights.

An Act to enforce the Fifteenth Amendment to the Constitution of the United States, and for other purposes.

BE IT ENACTED by the Senate and House of Representatives of the United States of America in Congress assembled, That: This Act shall be known as the "Voting Rights Act of 1965."

SEC. 2. No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color.

Congress stated in the "Purpose of the Legislation" that the bill was designed primarily to enforce the Fifteenth Amendment to the Constitution of the United States and is also designed to enforce the Fourteenth Amendment and Article I, Section 4. To accomplish this...the bill (i) suspends the use of literacy and other tests in areas where...these tests and devices have been or are being used to deny the right to vote on account of race or color; (ii) authorizes the appointment of Federal examiners in such areas to register persons who are qualified; (iii) empowers the Federal courts...to enforce the guarantees of the Fifteenth Amendment... (iii) provides criminal penalties for intimidating, threatening, or coercing any person for voting or attempting to vote. Upon the basis of finding that poll taxes as a prerequisite to voting violate the Fourteenth and Fifteenth Amendments to the Constitution, the bill abolished the poll tax in any State or subdivision where it still exists.

SEC. 4. (i) Congress hereby declares that to secure the rights under the Fourteenth Amendment of persons educated in American schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

In the following 10 years literacy tests were permanently abolished. The number of black voters in the South increased by 2 million. The number of black elected officials increased from 100 to nearly 1,000. And these numbers have steadily increased since that time. Additional laws were passed that protected the voting rights of "language minorities." This means in some states bilingual elections are held where there are significant numbers of American Indians and Hispanics. In New Mexico, for example, election information is printed in both English and Spanish, and Navajo on their reservation.

The Fourteenth Amendment has been the basis for countless laws passed and legal challenges made in an ongoing struggle to define equality. Perhaps there is a good reason for this struggle. Is an understanding of equality fundamental to achieving a just society?

Mary Louise Williams is a staff member and education consultant for Project Crossroads, a non-profit education organization in Santa Fe, NM. She serves as a mentor teacher/education consultant for the Los Alamos Public Schools and is Chairman of the Advisory Council of the New Mexico Law-Related Education Project.
Congress of the United States
began and held at the City of New York, on
Wednesday the Fourth of March, one thousand seven hundred and eighty nine
THE Congress of the United States, having at their last session adopted an
Amendment of the Articles of Confederation, expressed a desire to give to
the Constitution a more perfect Constitution,
RESOLVED by the Senate and House of Representatives of the United States of America in Congress assembled, Two thirds of the Whole
convening, that the following Articles be proposed to the States for their
Assent, and the Constitution of the United States, all of which are declared to be necessary by the same Articles of
Congress, shall be valid, when ratified by a majority of the citizens of three
each State, in each House, and the Senate, and the House of Representatives shall have the power to pass all laws which
may be necessary for carrying this Constitution into execution.

ARTICLES in addition to, and Amendment of, the Constitution of the United States proposed by Congress, and ratified by the Legislatures
of nine of the States, at the Congress of the United States, pursuant to the fifth Article of the original Constitution.

Article the first. Four Senators shall be chosen in each State, who shall have resided for six years in that State, and who shall be inhabitants of that State, for six years in each of those six years, and who shall have been elected by the Legislature thereof.

Article the second. The House of Representatives shall be chosen in each State at an election, in the year of our Lord one thousand eight hundred and thirteen, and every subsequent year, in the manner which the Legislature of each State shall direct, which shall be the same in the several States, as near as may be.

Article the third. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December.

Article the fourth. The individual States shall have one vote each, and the proportion of that vote shall be determin'd by the number of inhabitants in each State, according to the last census of the United States, and if any of the States, at an election of the President of the United States, shall give two votes, the highest number shall be preferred.

Article the fifth. The Congress shall consist of two Houses, each to be chosen in the manner hereinbefore provided, for the term of six years, a House of Representatives to be chosen every second year, and a Senate to be chosen every third year, and each State shall have two Senators.

Article the sixth. The House of Representatives shall be divided into six equal parts, every part to vote as a whole, and shall have the power of impeachment.

Article the seventh. The right of the citizens of each State to vote at any election where the vote is given, or to be a member of any of the Houses of Congress, or of the State legislature, shall not be questioned.

Article the eighth. The Congress shall have the power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Article the ninth. No part of this Constitution shall be altered or amended, unless by a majority of the States, at an election, in the year of our Lord one thousand eight hundred and thirty nine, and every subsequent election, in the manner hereinbefore provided.

Article the tenth. This Constitution shall remain in force for ever, unless altered or amended as aforesaid.

John Adams, Vice President of the United States, and President of the Senate.
### PATHWAY 5: FREEDOM AND EQUALITY

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SESSION V – THE FRONT LINES OF EQUALITY AND FREEDOM
[Time: 1hr & 45 min]

Concepts and Topics: equal protection under the law/Fourteenth Amendment, civil liberties, voting as a right and responsibility, expanding the franchise

Lesson
“Fannie Lou Hamer and the Fourteenth Amendment”

Handouts
Student Handout – The Courage of Her Convictions [without the Questions for Discussion]

Material
Chart and poster paper, markers for role play signage

Procedure
Opening
(1) Welcome [5 minutes]
   • Refer to previous study of evolving civil rights
   • Review today’s agenda

(2) Warm Up [10 minutes]
Form fairs to consider what is meant by “equal protection of the laws.” Seek some responses then introduce the lesson by using the information under Background.

Curricular Focus
The major portion of this session will be devoted to preparing and conducting the roleplay depicting Fannie Hamer’s role in the struggle for civil rights.

(3) Distribute the Student Handout and provide time for participants to read Hamer’s story. [10 minutes]

(4) Set up the roleplay by forming 5 small groups, each assigned to depict one scene from Hamer’s story:
   • Hamer’s life up to the time she first tried to register.
   • When she first tried to register.
   • “On her way home . . .” and “When she returned home . . .”
   • From her successful registration through the struggle to have the MFDP seated.
   • Her run for Congress, the House investigation, and the 1968 convention seating
Allow time for groups to identify and assign the roles for each roleplay of the unfolding story. They should allot approximately no more than 10 minutes for their roleplay. [20 minutes]

(5) Conduct the roleplays. [60 minutes total]

Closing
(6) Debrief and Wrap Up [15 minutes]
Review the roleplay experience. Discuss such things as how they felt about the person they portrayed, the actions they took? Draw on the Questions for Discussion to complete your debrief and wrap up.

(7) Look Ahead
Ask participants what the term affirmative action means? Tell them that next session will be spent on this subject.

(7) Adjourn – remind participants when and where they will meet next!
Equal Protection

Fannie Lou Hamer and the Fourteenth Amendment/Secondary  Linda R. Monk and Charles R. Sass

Background

Although the Fourteenth Amendment promises “equal protection of the laws,” that promise began to be fulfilled for black Americans only after the Supreme Court struck down segregated public schools in the 1954 case of Brown v. Board of Education. However, equal rights for blacks were not gained by court decisions alone. Thousands of people across the nation risked their lives—and some died—to make sure those court decisions were enforced. The civil rights movement is perhaps the best example in American history of citizens themselves enforcing a provision of the Constitution. Fannie Lou Hamer was not a plaintiff in any court decision, but as a civil rights worker she played an important role in securing “equal protection of the laws” for all Americans. By reading and discussing her story, students will gain a greater appreciation of the role of citizens in enforcing constitutional rights.

Objectives

In this lesson, students will:
- list and discuss the events and leaders of the civil rights movement of the 1960s;
- describe the efforts and accomplishments of Fannie Lou Hamer in advancing the cause of blacks in Mississippi and the nation;
- explain the relationship between the Fourteenth Amendment and the civil rights movement; and
- understand citizens’ roles in enforcing constitutional rights.

Procedure

1. Begin by discussing the civil rights movement of the 1960s with your class. Remind students of the struggle of black Americans to gain the rights that had been denied them since Reconstruction. Discuss “Jim Crow” laws, school desegregation, Rosa Parks and the Montgomery bus boycott, lunch counter sit-ins, Dr. Martin Luther King, Jr., and the March on Washington, the Civil Rights Bill of 1964, and so forth.

2. Next, distribute the Student Handout and give students time to read the Fourteenth Amendment and the story of Fannie Lou Hamer. Students should write down their answers to the “Questions for Discussion” and be prepared to respond to those questions in class.

3. Discuss the Fourteenth Amendment and ask students what they think it means. Emphasize the importance of the amendment as it applied to the civil rights struggle. Then, ask students their feelings about the efforts of Fannie Lou Hamer. Contrast today’s voter registration procedures with those of 1962. Conclude the discussion by asking students to respond to the “Questions for Discussion.”

Optional Activity

This lesson can be expanded by organizing a role playing activity in which students portray characters in a voter registration office in Mississippi in 1962. Roles should include Hamer and several of her friends, one or two white voters who are seeking to register, members of the voter registration board, law enforcement officials, and so forth. Students should research their parts to plan what they might say or questions they might ask. Debrief by asking the class to express their feelings about what they just saw in the activity.

Linda R. Monk and Charles R. Sass are on the academic publications staff at Close Up Publishing.
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SESSION VI – AFFIRMATIVE ACTION
[Time: 1hr & 45 min]

Concepts and Topics: affirmative action/equality of opportunity, civil liberties

Lesson
“Affirmative Action Employment Programs”

Handouts
- Student Handout
- Supplemental Data
- “Minority Inclusion Programs”

Procedure
Opening
(1) Welcome
- Refer to the previous study of measures to expand civil rights and note that this session focuses on another—affirmative action programs.
- Review the agenda.

(2) Warm Up
Use the Procedure #1 as your warm up. Consider writing the words “Minority Inclusion and Affirmative Action Programs” on the board and heading one sheet of chart paper “What We Know” and the other “What We Want to Know.” [15 minutes]

Curricular Focus
(3) Distribute the article “Minority Inclusion Programs.” Direct participants to read the article up to the section on Voting and Elections and follow Procedure #2. [20 minutes]

(4) Procedures 3-4. In order to accommodate the time available and keep the integrity of this activity, the following adjustments are recommended.
   - Alter Procedure #3 by forming groups of 8 with 2 assigned to each role.
   - Distribute the Student Handout together with the Supplemental Data [eliminating Procedure #6]. Provide time for groups to formulate their affirmative action programs. [40 minutes]
   - Bring the groups together and follow Procedure 5. [20 minutes]

Closing
(5) Debrief and Wrap Up [10 minutes]
Probe for participant understanding by asking questions such as: What problems are affirmative action programs designed to correct? Why is there opposition to such programs? How can an affirmative action program be justified? What are criteria used by the courts?

(6) Look Ahead
Point out that in the next session they will consider rights of women and sex discrimination.
(7) Adjourn – remind participants when and where they will meet next!
We thank Judge Barry Loncke for this response to Justice Earl Johnson’s foreword in the fall 1994 “Equal Justice” edition. Judge Loncke is a municipal court judge with the Sacramento Superior and Municipal Courts in California and a member of the American Bar Association Special Committee on Youth Education for Citizenship.

There is no doubt in my mind of the meritorious intent of Justice Earl Johnson, Jr.’s, foreword to the fall 1994 issue of Update on Law-Related Education. It was to inspire lawyers to support “justice for all” by providing legal services to those who cannot afford to pay. Justice Johnson has had significant experience in the area of providing legal services to the poor and understands the great need for the expansion of such services. I hope that his words inspired many attorneys to consider making significant increases in the amount of time they devote to pro bono representation.

However, as a trial court judge who has served for 13 years in the California court system, I was dismayed by Justice Johnson’s bleak portrayal of America’s courts to make his point: “...I can now assure you from personal experience that no one can hope to get justice in America’s courts unless they have a lawyer to represent them... Those without lawyers, and there are many, don’t stand a chance.” This unrestrained hyperbole must not go unchallenged, however worthwhile its purpose.

To the extent that lawyers and judges subscribe to an elitist, exclusionary view of the nature and function of our courts, there is a real danger that what I have termed hyperbole will become reality. Professionals who are uncomfortable with lay people representing themselves in court may allow bias to obscure justice.

The lack of “lawyers for all” is not only reason that justice is such an elusive goal. Judicial attitudes may play an important role in making “justice for all” more difficult to achieve than it should be. For example, in California during 1994, a trial court consolidation measure was opposed by a significant minority of trial and appellate judges on the grounds that “good lawyers from prominent law schools with significant practices would not be as willing to serve as trial court judges if they might have to preside over some (or any) less significant cases.” Likewise, sitting judges did not want to contemplate devoting any of their time or talent to such cases. Thus, cases in which the monetary amount or issue involved is unimportant by law firm or academic standards, but greatly significant to the consumer, tenant, or other poor or middle-income litigant, were viewed as beneath the dignity of “an important trial judge.” It is no surprise to me that justice is unlikely to be achieved in the courts of judges who hold the problems of the average person in such contempt.

Despite the attitude of some, there are hundreds of judges in California’s court system who regularly see to it that justice is afforded to litigants without lawyers. The vast majority of trial judges here have seen, and participated in, justice being achieved by unrepresented nonlawyers who have appeared in California’s courtrooms. I believe that the story is similar throughout the United States. In many cases, the judge’s job would be easier if lawyers represented both sides, but nonlawyers do not inevitably lose. Certainly, the more complex the case, the more helpful and even necessary a lawyer is. Most cases, however, are fact driven; and judges have a major role in assuring that truth is ascertained and justice achieved. In fact, many good, caring lawyers turn down significant retainers and advise potential clients to represent themselves when the anticipated fee is not justified by the expected result, and when they believe the party can adequately handle the case in court and achieve justice.

Given an expanding availability of alternative dispute resolution techniques throughout the country, and a significant increase in the willingness of members of the bar to assure “justice for all” by providing free (or reduced fee) legal services to poor and middle-income people, it would be possible to increase both the availability and the appearance of justice in our nation. For this reason, I applaud the efforts of Justice Johnson to inspire action on the part of attorneys.

It isn’t often that a judge of an “inferior” trial court comments on the opinion of an appellate court justice. However, I suspect that Justice Johnson would be disappointed if his foreword did not provoke a response from the trial bench. His challenge to lawyers to commit themselves to the continuing pursuit of “equal justice for all” should also inspire judges, as it has inspired me, to redouble efforts to combat judicial elitism and to assure that “justice for all”—including unrepresented nonlawyers—is achieved in courtrooms throughout this nation.
The year was 2081, and everybody was finally equal. They weren't only equal before God and the law. They were equal every which way. Nobody was smarter than anybody else. Nobody was better looking than anybody else. Nobody was stronger or quicker than anybody else. All this equality was due to the 211th, 212th, and 213th Amendments to the Constitution, and to the unceasing vigilance of agents of the United States Handicapper General.

Some things about living still weren't quite right, though. April, for instance, still drove people crazy by not being springtime. And it was in that clammy month that the H-G men took George and Hazel Bergeron's fourteen-year-old son, Harrison, away.

It was tragic, all right, but George and Hazel couldn't think about it very hard. Hazel had a perfectly average intelligence, which meant she couldn't think about anything except in short bursts. And George, while his intelligence was way above normal, had a little mental handicap in his ear. He was required by law to wear it at all times. It was tuned to a government transmitter. Every 20 seconds or so, the transmitter would send out some sharp noise to keep people like George from taking unfair advantage of their brains.

George and Hazel were watching television. There were tears on Hazel's cheeks, but she'd forgotten for the moment what they were about.

On the television screen were ballerinas.

A buzzer sounded in George's head. His thoughts fled in panic, like bandits from a burglar alarm.

"That was a real pretty dance, that dance they just did," said Hazel.

"Huh?" said George.

"That dance—it was nice," said Hazel.

"Yup," said George. He tried to think a little about the ballerinas. They weren't really very good—no better than anybody else would have been, anyway. They were burdened with sashweights and bags of birdshot, and their faces were masked, so that no one, seeing a free and graceful gesture or a pretty face, would feel like something the cat drug in. George was toying with the vague notion that maybe dancers shouldn't be handicapped. But he didn't get very far with it before another noise in his ear radio scattered his thoughts.

George winced. So did two out of the eight ballerinas.

Hazel saw him wince. Having no mental handicap herself, she had to ask George what the latest sound had been.

"Sounded like somebody hitting a milk bottle with a ball peen hammer," said George.

"I'd think it would be real interesting, hearing all the different sounds," said Hazel, a little envious. "All the things they think up."

"Um," said George.

"Only, if I was Handicapper General, you know what I would do?" said Hazel. Hazel, as a matter of fact, bore a strong resemblance to the Handicapper General, a woman named Diana Moon Glampers. "If I was Diana Moon Glampers," said Hazel, "I'd have chimes on Sunday—just chimes. Kind of in honor of religion."

"I could think, if it was just chimes," said George.

"Well—maybe make 'em real loud," said Hazel. "I think I'd make a good Handicapper General."

"Good as anybody else," said George.

"Who knows better'n I do what normal is?" said Hazel.

"Right," said George. He began to think glimmeringly about his abnormal son who was now in jail, about Harrison, but a 21-gun salute in his head stopped that.

"Boy!" said Hazel. "That was a doozy, wasn't it?"

It was such a doozy that George was white and trembling, and tears stood on the rims of his red eyes. Two of the eight ballerinas had collapsed to the studio floor, were holding their temples.

"All of a sudden you look so tired," said Hazel. "Why don't you stretch out on the sofa, so's you can rest your handicap bag on the pillows, honeybunch." She was referring to the 47 pounds of birdshot in a canvas bag, which was padlocked around George's neck. "Go on and..."
Minority Inclusion Programs
A review of affirmative action in government contracting and electoral arrangements

M. David Gelfand

The United States has a long, sad history of discrimination against minority group members, especially in the areas of employment and the electoral franchise. Modern attempts to include racial minority group members and women in the political and economic processes of American society have taken a variety of forms. The early programs sought to outlaw overt discrimination; later programs have taken additional, often controversial, steps, sometimes including “race-conscious” remedies.

Affirmative Action Programs

Early in this century, many employers posted signs reading “No Irish need apply.” Later, universities still set quotas on the number of Jews who could be admitted; and, until the 1960s, African Americans were excluded from many universities. Patterns of direct and indirect discrimination severely restricted the number of women and minority group members who could enter higher-status, better-paying professions or attain higher-level management positions in most companies. Several statutes and executive orders were adopted outlawing employment discrimination on the basis of race, gender, or national origin. Given the history and continuing effects of racial discrimination, however, many policymakers believed that additional actions were needed to provide specific advantages for minority group members—in university admissions, government employment, and other areas. Programs of this nature, which take various forms, are generally referred to as “affirmative action” programs.

These programs are based upon two fundamental assumptions. The first is that racial minority group members and women would today be in a different position, in terms of power and influence, if they had not been subjected to discrimination in the past. The second is that government (or private companies or society as a whole) should, in some manner, take responsibility for removing the continuing effects of this prior discrimination. Affirmative action employment programs have often met stiff opposition, especially from those who believe that these programs constitute a form of “reverse discrimination” against white men.

Government Employment and Contracting

Most forms of overt employment discrimination against women and minorities have been outlawed by federal and state antidiscrimination laws, especially Title VII of the federal Civil Rights Act of 1964. Yet more subtle forms of discrimination sometimes prevent women from attaining top management positions, financial barriers still face minority-owned businesses, and income and wealth differences between men and women and between African Americans and whites persist.

The U.S. Supreme Court has placed severe constraints upon certain types of affirmative action programs—those that “set aside” jobs for minority employees or contracts for minority-owned businesses—when such programs are adopted by state or local governments. For example, City of Richmond v. J. A. Croson, 488 U.S. 469 (1989), holds that state or local governments may implement minority set-asides, and other aggressive affirmative action employment programs may be adopted, only if there has been a demonstrated history of discrimination against minorities and/or women by the enacting governmental entity. Past discrimination can be established, for example, by an authoritative decision (e.g., a federal court ruling that the police department’s employment test discriminates against women).

In the absence of such an authoritative determination, past discrimination can be proven through an elaborate, often expensive, disparity study. Disparity studies compare, over time, the difference between the “availability” of particular types of minority-owned businesses (how many exist in the area) and their “utilization” (the extent to which they have received contracts from the relevant government). The data must be quite specific—in terms of the minority groups covered, the type of work involved (e.g., construction, professional services), and the locality involved. Even without a judicial ruling or disparity
study, a local government may adopt race-neutral measures to help disadvantaged businesses (e.g., technical assistance, subsidies for construction loans or bonds). A race-neutral measure is a law of general application not intended to prefer any group.

In contrast to Croson's very strict approach to local government minority-inclusion programs, the Supreme Court has generally deferred to determinations made by congressional and federal agencies regarding the existence of and remedies for past discrimination. A pending case seeks to challenge that traditional difference. See Adarand Constructors, Inc. v. Pena, 16 F.3d 1537 (10th Cir. 1994), cert. granted, 62 U.S.L.W. 3809 (Sept. 26, 1994) (No. 93–1841).

Voting and Elections

In the early days of the American Republic, only white men who owned a certain amount of property were allowed to vote. Several constitutional amendments and statutes extending the franchise to women and to racial and language minorities have been adopted as a result of struggles in the
street, courts, Congress, and state legislatures. Also, judicial decisions have invalidated various devices (e.g., poll taxes, literacy tests) that created additional barriers to voter registration. Modern cases go further, by challenging the structure and racial composition of election districts.

Various amendments to the U.S. Constitution forbid absolute barriers to voting based upon race (Fifteenth Amendment, ratified 1870), gender (Nineteenth Amendment, ratified 1920), or age for adults (in 1971, the Twenty-sixth Amendment set 18 as the minimum voting age). A variety of devices that were employed in Southern states to prevent African Americans from registering, such as poll taxes, “white primaries,” and literacy tests, have also been outlawed. In addition, Supreme Court decisions in the late 1960s and early 1970s eliminated most, but not all, property-ownership requirements and durational residency requirements (which had required potential voters to reside in the area for a specified time before registering). Many states have adopted legislation facilitating registration and voting by persons with physical disabilities, the homeless, and others.

During the last 12 years, a wide array of lawsuits, based upon the Voting Rights Act of 1965 (as amended in 1982) and the Equal Protection Clause of the Fourteenth Amendment, has challenged electoral arrangements that result in “vote dilution.” In general, these lawsuits claim that the traditional electoral arrangements dilute (make less effective) the votes of racial minorities, when compared to the votes of the white majority. For example, in “at-large” elections, an entire city is used as a single election district, and usually a candidate must receive a majority of the votes from the entire city in order to be elected (a “majority vote” requirement). It is often difficult (and sometimes impossible) for members of a geographically concentrated racial minority to elect candidates of their choice in such city elections. Challenges to this type of vote dilution have been based upon the Voting Rights Act and the Equal Protection Clause of the Fourteenth Amendment. Such challenges have often resulted in court-ordered districting or redistricting. (See the fall 1994 edition of Update on the Courts, pp. 5–10, for a case analysis and a teaching strategy regarding voting rights and redistricting.)

The Supreme Court has long required that all congressional election districts within a state must have nearly identical populations, based upon the latest decennial census. Therefore, prior to the 1992 elections, most state legislatures had to redraw their congressional (as well as their state legislative) districts in light of the 1990 census figures. At that time, it was also widely believed that Thornburg v. Gingles, 478 U.S. 30 (1986), and several lower court cases required districting or redistricting to increase minority participation and voter strength, by drawing African-American or Hispanic-American majority districts wherever possible. In several states (e.g., Florida), such race-conscious districting resulted in the election of the first African American from that state to the U.S. Congress.

Today, various lawsuits have challenged several of those districts drawn in 1992 (e.g., North Carolina, Louisiana), and some cases raise questions about the appropriate role of the various players—state legislatures, the U.S. Justice Department, and the federal courts—in the redistricting process. See generally Shaw v. Reno, 113 S.Ct. 2816 (1993). Some commentators have suggested alternative voting arrangements, such as cumulative voting, rather than redistricting to remedy past discrimination in electoral arrangements. (For a closer look at cumulative voting issues, see page 38.)

**Conclusions**

The histories of the two types of minority inclusion programs discussed here—employment remedies and electoral remedies—are different in important ways, yet these programs sometimes may be directly linked. For example, city councils that include racial minority group members are more likely to adopt minority inclusion programs in employment and other fields. Also, they may be more willing to forbid prior discriminatory practices.

For example, Dade County, Florida, was long governed by a county commission composed primarily of white commissioners elected on an at-large basis. In a 1992 suit based upon the Voting Rights Act, Meek v. Metropolitan Dade County (Case #86-1820-CIV-GRAHAM), a federal court required the Dade County Commission to create electoral districts that would more accurately reflect the demographic makeup of the county. A new commission was elected in 1993 from the resulting 13 new districts—3 with African-American majorities, 7 with Hispanic majorities, and 3 with white-Anglo (European American) majorities.

Not surprisingly, the first commission elected from these new districts was much more diverse than previous commissions. One of its first official acts was to repeal an ordinance (passed by prior commissioners) that had required all county government documents and reports to be prepared exclusively in English. The ordinance was both insulting to and inconvenient for the county’s substantial Hispanic population. 

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SESSION VII – SEX DISCRIMINATION
[Time: 1 hr & 45 min]

Concepts and Topics: civil rights, equal rights

Lessons
"Sex Discrimination"

Handouts
Sex Discrimination Cases
Major Federal Civil Rights Laws

Preparation for Resource for Leader
Read the Background material on each case and be prepared to augment the information given here. Come of the information may need to be updated, such as that regarding gender and the military.

Procedure
Opening
(1) Welcome and Warm Up
Remind participants that earlier they studied how women fought for the right to vote. In this session they will examine some cases of discrimination against women. Review the agenda

Curricular Focus
These directions are a slight adjustment of Procedures given in the lesson.

(2) Divide students into groups of five and distribute copies of the Sex Discrimination Cases and Major Federal Civil Rights Laws to each participant. Have group members work together to respond to each case and reach a group consensus. [Consider providing worksheets for participants to record their responses for each case: Is this illegal discrimination? Possible reasons for treating women differently from men. Possible reasons for treating them the same.] [45 minutes]

(3) Bring the groups together to compare and discuss their responses for each case. Use the Teacher/Resource Person Background to provide information, explain the reasoning behind each case or law, and respond to questions. Be sure participants understand the principles underlying each instance. [30 minutes]

Closing
(4) Debrief and Wrap Up [10 minutes]
Close by asking questions such as those provided at the end of the section on Procedures. Are there any justifiable reasons to treat men and women differently? Can equal treatments be fair and just?

(5) Look Ahead
The next and final session of this Academy will give participants an opportunity to review constitutional rights they have in both the U.S. and their state constitutions.

(6) Adjourn – remind participants when and where they will meet next!
Equality

Sex Discrimination/Grades 7-12

Dale Greenawald

By analyzing a series of situations based upon landmark sex discrimination cases, students will identify some of the legal principles concerning this topic. At the end of the 45-minute activity they should be able to explain legal reasoning in sexual discrimination cases; to support equality of opportunity; and to develop critical thinking skills.

Procedures

Provide students with the readings in the box on page 20 (constitutional provisions and laws dealing with equality). Tell students to apply these guidelines as criteria for determining if illegal discrimination has occurred or not.

Have students form groups of four or five and assign each student a case to consider (divide the cases among the groups). After each person has come to a conclusion with regard to his/her case, share their answer and reasons with the group. Each group should discuss each of its cases and seek to reach a group consensus for each one.

After each small group has analyzed each of its cases and developed a response, discuss each case as an entire class. The teacher or resource person should explain the reasoning behind each case and respond to student questions. It is extremely important to explain each decision in sufficient detail for students to grasp the principles underlying that decision.

At the conclusion, the entire class should consider:
1. Are there ever any justifiable reasons to treat men and women differently?
2. Can different treatment be fair and just?

Sex Discrimination Cases

Consider each of the following situations and decide if you think it is an example of illegal discrimination or not. Also consider for each situation some reasons for treating women differently from men and reasons for treating them the same.

1. Congress passes a resolution requiring all males—but not all females—to register for the draft.
2. Two sisters, one 5 foot 6 inches weighing 170 pounds and one 5 foot 9 inches weighing 212, decide to try out for their high school football team because there is no girls’ team. The State Interscholastic Athletic Activity Association declares the girls ineligible.
3. Alice Keene is refused a job because the job description requires the employee to lift bags weighing about 30 pounds.
4. The Gravel Hill Glass Company pays an all-women day shift less than an all-male night shift which does the same work.
5. JoCarol Lafleur is a teacher in a junior high school. School board policies force her to take an unwanted leave without pay five months before she expects a child.
6. The Widget Manufacturing Company has 150 assembly-line employees, all of whom are men. The company doesn’t hire women for its production jobs because it says its male workers would be distracted and productivity would decline.
7. Joyce finds out that her employer is requiring her to pay more per month for pension benefits than it requires male employees to pay. The company says this difference reflects the fact that women as a group live longer, so she will probably live longer than the males and, therefore, receive more benefits.
8. Nancy Oaks-Johnson applies for a credit card from the local department store. She uses her maiden name, Nancy Oaks. The store will not issue a card in that name, but it will issue one for Nancy Oaks-Johnson.
9. Harvey Miller works at Fred’s Fast Foods. He is told to get a shorter haircut, although all of the women who do the same work have longer hair than Harvey. They wear hair nets.

Teacher/Resource Person Background

1. The U.S. Supreme Court decided the case of the all-male draft. In Rostker v. Goldberg, 453 U.S. 57, the Court held that the male-only requirement did not violate the due process clause of the Fifth Amendment. (The Fifth Amendment is involved, rather than the Fourteenth, because the draft is a federal matter.) The Court reasoned that Congress was acting well within its constitutional authority to raise and regulate armies. The Court said that it customarily deferred to congressional judgments regarding military affairs, and should so defer in this case, since Congress had extensively considered the constitutional implications of its actions. The Court noted that the arguments pro and con were extensively aired in congressional hearings, and it is not for courts to reconsider this evidence and substitute their judgment for that of elected representatives.

2. In this hypothetical, the language of the controlling statute—Title IX of the Education Act Amendments of 1972—would require the school either to begin a girls’ football team or permit the girls to try out for the boys’ team.
3. In Weeks v. Southern Bell Telephone and Telegraph, 408 F.2d 228 (1969), the Court considered the case of a woman who filed suit under Title VII of the Civil Rights Act of 1964 when she was denied the job of switchman because the company labelled the work “strenuous” and said that it was unsuitable for a woman. The Court held that the company had the burden of proof of showing that its gender-related classification was a “bona fide occupational qualification.” The Court said this exemption from the normal rule was intended to be narrow, and that the company had not met the burden of proof.
4. The Equal Pay Act of 1963 requires employees doing equal work to be paid the same. Unless the employer could convince a court that workers on the night shift were facing different working conditions from those facing the day shift, the two shifts would have to be paid equally.
Major Federal Civil Rights Laws

**AMENDMENT V:** No person shall... be deprived of life, liberty, or property, without due process of law...(applies to the federal government; a similar provision in Amendment XIV applies to state governments)

**AMENDMENT XIV:** No state shall deny to any person within its jurisdiction the equal protection of the law.

**EQUAL PAY ACT OF 1963**
* Requires equal pay for equal work, regardless of sex.
* Requires that equal work be determined by equal skill, effort, and responsibility under similar working conditions at the same place of employment.
* Requires equal pay when equal work is involved even if different job titles are assigned.
(Enforced by the Wage and Hour Division of the U.S. Department of Labor or by private lawsuit)

**CIVIL RIGHTS ACT OF 1964** (amended in 1972)
* Prohibits discrimination based on race, color, religion, or national origin in public accommodations (e.g., hotels, restaurants, movie theaters, sports arenas). Does not apply to private clubs not open to the public.
* Prohibits discrimination because of race, color, sex, religion, or national origin by businesses with more than fifteen employees or by labor unions. This deals with hiring, recruitment, wages, and conditions of employment. (This section is commonly referred to as Title VII).
* Permits employment discrimination based on religion, sex, or national origin if it is a necessary qualification of the job (a “bona fide occupational qualification”)
* Prohibits discrimination based on race, color, religion, sex, or national origin by state and local governments and public educational institutions.
* Prohibits discrimination based on race, color, national origin, or sex in any program or activity receiving federal financial assistance, and authorizes termination of federal funding when this ban is violated.
(Enforced by the Equal Employment Opportunity Commission or by private lawsuit)

**AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967** (amended in 1978)
* Prohibits arbitrary age discrimination in employment by employers of twenty or more persons, employment agencies, labor organizations with twenty-five or more members, and federal, state, and local governments.
* Protects persons between the ages of forty and seventy.
* Permits discrimination where age is a necessary qualification for the job.
(Enforced by the Equal Employment Opportunity Commission or similar state agency)

**TITLE IX OF THE EDUCATION ACT AMENDMENTS OF 1972**
* Prohibits discrimination against students and others on the basis of sex in educational institutions receiving federal funding.
* Prohibits sex discrimination in a number of areas, including student and faculty recruitment, admissions, financial aid, facilities, and employment.
* Requires that school athletic programs effectively accommodate the interests and abilities of members of both sexes. Equal total expenditure on men’s and women’s sports is not required.
* Does not cover sex-stereotyping in textbooks and other curricular materials.
(Enforced by the Department of Education’s Office of Civil Rights)

**REHABILITATION ACT OF 1973**
* Prohibits private and government employers from discriminating on the basis of physical handicap.
* Requires companies that do business with the government to undertake affirmative action to provide jobs for the handicapped.
* Prohibits activities and programs receiving federal funds from excluding otherwise qualified handicapped persons from participation or benefits.
(Enforced by lawsuit in federal court or, in some cases, state or local human rights or fair employment practices commissions)

**EQUAL CREDIT OPPORTUNITY ACT OF 1974**
* Requires all financial institutions to make credit equally available to credit-worthy customers, regardless of sex and marital status.
* Prohibits creditors from: asking the sex of the credit applicant; asking about the use of birth-control procedures or the applicant’s childbearing plans; differentiating between male and female heads of households, insisting a married woman’s charge accounts be in her husband’s name; terminating credit based on change of marital status; and requiring a credit cosigner of a woman when one would not be asked of a man.
(Enforced by civil suit against the violator for as much as $10,000 in damages or by complaints filed with the Federal Reserve System (banks) or the Federal Trade Commission (all other institutions))

(Most of the above is used by permission from Street Law: A Course in Practical Law, Arbetman, McMahon, and O’Brien (St. Paul: West Publishing House, 1980) pp. 306-308.)
### PATHWAY 5: FREEDOM AND EQUALITY

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SESSION VIII – STATE V. FEDERAL RIGHTS
[Time: 1hr & 45 min]

Concepts and Topics: civil liberties, equal protection of the law

Lesson
“State v. Federal Rights”

Handouts (for every student)
Background and Introduction sections of the lesson
State Bill of Rights worksheet
Your state constitution
U.S. Constitution

Material
Large chart paper & marker for each small group

Procedure
Opening
(1) Welcome
- Refer to the constitutional rights focused on previously.
- Review today’s agenda.

(2) Warm Up [5 minutes]
Pose the question: “Where do constitutional rights come from?” After a few responses have been given, note that we are governed by a federal system in which both the U.S. Constitution and state constitutions protect individual rights. Turn to the lesson.

Curricular Focus
(3) Distribute copies of the Background and Introduction sections and review it with the participants. The closing paragraph is a good introduction and enticement for the activity. You may need to explicate the statement “The Fourteenth Amendment creates a ‘floor’ . . .” [10 minutes]

(4) Follow the Procedure as indicated
- Procedure #2, small groups work (15 minutes)
- Procedure #3, whole group work (30 minutes)
- Procedure #4, small group work (20 minutes)
- Procedure #5, whole group discussion (20 minutes)

Closing
(5) Debrief and Wrap Up
What did they find to be the major strengths and weaknesses of their state constitution. Do they agree with Linde’s assertion [in Background] that their “state court should always consider its state constitution before the Federal Constitution. . . .”

(6) Adjourn
Freedom Has a Name

State v. Federal Rights/Secondary
Joseph L. Calpin

Background
The First Amendment of the United States Constitution provides that, “Congress shall make no laws . . . abridging the freedom of speech . . . .” Article I, section 8 of the Oregon Constitution provides that, “No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this right.” Oregon is by no means unique in having such a “free speech” clause in its state constitution; each of the other 49 state constitutions contain such a clause. As this comparison illustrates, the language used frequently differs, thus giving rise to myriad interpretations from the highest courts of the individual states. The celebration of the Bill of Rights bicentennial offers an opportunity to explore some intriguing questions surrounding the relationship between the federal Bill of Rights and the rights enumerated in the constitutions of the various states.

During this century, the Fourteenth Amendment established the Bill of Rights guarantees as the minimum benchmark of a citizen’s rights. State courts, while bound by this federally imposed minimum standard, have ruled in certain areas that state constitutional bills of rights provide a higher standard of rights and protections than does the federal Bill of Rights. This has led in recent years to an emerging trend by state courts to review both an individual state constitution as well as the United States Constitution in deciding the protections afforded its citizens.

In an article in the summer 1978 issue of The Judge’s Journal, Charles G. Douglas outlines from a New Jersey case seven factors which might require a state constitution control instead of the United States Constitution. These factors are: a) the text differs, b) the legislative history of the clause differs, c) state law holdings predate the federal change, d) there is a difference in state structure, e) the subject matter is of unique local interest, f) there is a countervailing state or local tradition, and (or) g) public attitudes on the issue differ. Foerger Oregon State Supreme Justice Hans A. Linde is nationally recognized as a leader in his use of the state constitution to decide cases. In the spring 1980 issue of the University of Baltimore Law Review, Linde wrote: “In my view, a state court should always consider its state constitution before the Federal Constitution. It owes its state the respect to consider the state constitutional question even when counsel does not raise it, which is most of the time.”

Neither Linde nor others in the states’ first “group downplay the importance of the federal Constitution. They simply stress that ours is a federal system, one in which citizens have different levels of government with rights and protections that differ at each level. Written constitutions that listed the rights of citizens existed in the states before the federal Constitution. The Bill of Rights was added after the federal Constitution was adopted by the states in part to codify the rights of the citizens. Many of the Anti-Federalist arguments opposing ratification of the federal Constitution were based on its lack of these rights. A comprehensive examination of state constitutional protections as suggested by this lesson may well result in the discovery of a separate and distinct source of protections which, in some cases, may far exceed those provided by the federal Constitution.

Introduction
The Fourteenth Amendment creates a “floor” or minimum level of rights citizens of this country enjoy but what might the result be if you analyze your state’s bill of rights along side the federal Bill of Rights? How are they the same? How do they differ? The focus of this activity is to have students compare the language, meaning, coverage, similarities, and differences in their state constitution’s bill of rights and the federal Bill of Rights.

Objectives
1. Students will examine both their state’s bill of rights and the federal Bill of Rights.
2. Students will examine the content of both and judge areas of strengths and weaknesses in each.
3. Students will understand the importance of proper word usage in written rights.
4. Students will analyze differences in the two documents.

Procedure
1. Distribute copies of your state constitution and the U.S. Constitution to each student.
2. Divide the class into small groups. Using the sample worksheets on page 19, have the groups fill in the top part by listing the sections/articles of the state bill of rights. (Note that most state constitutions are much longer than the federal Bill of Rights, so you may need more than one page of each in order to list all the items.)
3. Reassemble the entire class. Review the state bill of rights with the whole group and agree upon the issues of each section/article.
4. Return to the groups. As a group, have the students go through the chart and locate the point where the rights correspond. Have them mark an “S” where the language used to describe the rights is similar or “D” where it differs. Designate one student in each group to record, on a separate piece of paper, the areas where differences are noted.
5. Reassemble the class and review the chart and the lists.
6. If possible, work with a local attorney or LRE resource person to determine the strengths and weaknesses of your state constitution. Using this knowledge, ask students questions to determine why they think these strengths and weaknesses exist. The Oregon Constitution, for example, has a much broader free speech clause than does the federal Constitution. This is also true in the area of search and seizure. For this reason, people in Oregon file these types of cases in state court if possible.
7. If possible, invite an attorney to class after the chart exercise to further explain the range of rights citizens enjoy in our nation at both the state and federal level.

Joseph L. Calpin teaches government and United States history at Tigard High School in Tigard, OR.
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