

Chapter 3: DEFINING EQUALITY

Abstract

One of the most litigated parts of the U.S. Constitution, the Fourteenth Amendment has been at the forefront of America's search for equality. The meaning of this obscure constitutional value has evolved over time as a result of changing cultural conceptions and legal interpretations of the Constitution's Amendments. As part of *Constitutionally Speaking's* inquiry into the question – “*How Does the Constitution Keep Up with the Times?*” – the materials that follow explore how the constitutional value of equality has evolved throughout American history.

Relevant *Constitutionally Speaking* Videos

Choice of Principles

Speakers: David H. Souter, U.S. Supreme Court Justice (Retired)
William Chapman, Esq., Shareholder, Orr & Reno
Patrick Shin, Assistant Dean & Professor, Suffolk University Law School

Length: 9 min 06 sec

Theme: Justice Souter, Attorney Chapman, and Professor Shin contrast the societal norms of 1896 when *Plessy v. Ferguson* was decided with those of 1954 when the *Brown v. Board of Education* ruling came down. The “separate but equal” doctrine is placed in its historical context, coming as it did 58 years before the Warren Court declared segregated schools unconstitutional.

The Great Dissenter

Speaker: Patrick Shin, Assistant Dean & Professor, Suffolk University Law School

Length: 4 min 00sec

Theme: Professor Shin examines Justice John Marshall Harlan's *Plessy v. Ferguson* dissent, which provides the historical basis for the idea of a “color-blind” Constitution. Replete with racist content, Harlan's dissent nonetheless expresses an aspirational view of the Constitution as conferring equality on all citizens regardless of skin color or economic class.

In the Interest of Equality

Speaker: Patrick Shin, Assistant Dean & Professor, Suffolk University Law School

Length: 6 min 15 sec

Theme: Professor Shin explores the tension between diversity and equality as the two values relate to affirmative action in higher education. In the absence of true racial equality, Shin considers the necessity for allowing consideration of race in university admissions decisions.

Chapter Outline

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Learning Objectives

Goal Students will be able to analyze how the constitutional value of equality has changed over time.

Students will understand that....

- The U.S. Supreme Court is the supreme authority over the meaning of the U.S. Constitution and has changed its interpretation of the Constitution over time.
- While the concept of equality was included in the Declaration of Independence, its meaning has changed over time.
- The Fourteenth Amendment prohibits states from denying any person within its jurisdiction the equal protection of the laws.
- Decisions of the Supreme Court have a profound impact on everyday lives of American citizens.
- Changing interpretations of constitutional values allow the Nation's founding document to keep up with the times.

Essential Questions

- How has the principle of equality changed over time?
- Why was the Fourteenth Amendment adopted?
- Is preferential treatment consistent with the constitutional value of equality?
- How far have we gone as a country in achieving equality for all?
- How far do we still have to go as a country to achieve equality for all?
- How does the Constitution keep up with the times?

Students will know...

- Important terms regarding equality and the Fourteenth Amendment.
- Key facts about the Fourteenth Amendment and how the Supreme Court has interpreted it over time.
- Key Supreme Court cases on equality and the Fourteenth Amendment.

Students will be able to...

- Recognize, define, and use vocabulary in context.
- Research Supreme Court cases and recent news on equality and the Fourteenth Amendment to add depth to their understanding of its development over time.
- Express their learning orally during class discussions and in writing.
- Collaborate successfully with their peers to improve and express their learning.

Relevant U.S. Supreme Court Cases

Each case is followed by a link to the full-text opinion at Cornell University's Legal Information Institute and a case summary at Oyez.org.

| <u>Title (year)</u> | <u>Full Text</u> | <u>Summary</u> |
|---|---------------------------|-------------------------|
| <u>Equal Treatment</u> | | |
| Dred Scott v. Sanford (1857)* | Full Text | Summary |
| Plessy v. Ferguson (1896)* | Full Text | Summary |
| Brown v. Board of Education (1954)* | Full Text | Summary |
| Hollingsworth v. Perry (2013) | Full Text | Summary |
| United States v. Windsor (2013) | Full Text | Summary |
| <u>Affirmative Action</u> | | |
| Regents of the University of California v. Bakke (1978) | Full Text | Summary |
| United Steel Workers of America v. Weber (1979) | Full Text | Summary |
| Fullilove v. Klutznick (1980) | Full Text | Summary |
| Memphis Fire Department v. Stotts (1984) | Full Text | Summary |
| Wygant v. Jackson Board of Education (1986) | Full Text | Summary |
| U.S. v. Paradise (1987) | Full Text | Summary |
| Johnson v. Transportation Agency (1987) | Full Text | Summary |
| City of Richmond v. Croson (1989) | Full Text | Summary |
| Adarand Constructors v. Peña (1995) | Full Text | Summary |
| Gutter v. Bollinger (2003) | Full Text | Summary |
| Gratz v. Bollinger (2003) | Full Text | Summary |
| Fisher v. University of Texas** (2013) | Full Text | Summary |

*Teaching materials – including case summaries and excerpts – are available for these cases at [Landmark Supreme Court Cases of the U.S. Supreme Court](#).

**The full text opinions of the *Fisher v. University of Texas* are available at the Supreme Court's website but is not yet available through Cornell University's Legal Information Institute. The [New York Times](#) has an excellent summary the case and the arguments on both sides on its website as well.

Important Terms

| | |
|--------------------------------|--|
| affirmative action | A set of procedures designed to eliminate discrimination between applicants, remedy the results of such prior discrimination, and prevent such discrimination in the future. Applicants may be seeking admission to an educational program or looking for professional employment. |
| discrimination | Different treatment for similarly situated parties, especially when no legitimate reason appears to exist. An employer who rejects all male applicants and hires the first female applicant with the same qualifications might be discriminating on the basis of gender. The more repugnant the discrimination, the more likely it is to be found unlawful under the U.S. Constitution or some other law. |
| due process | The Constitution states only one command twice. The Fifth Amendment says to the federal government that no one shall be "deprived of life, liberty or property without due process of law." The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the Due Process Clause, to describe a legal obligation of all states. These words have as their central promise an assurance that all levels of American government must operate within the law ("legality") and provide fair procedures. |
| Equal Protection Clause | The Equal Protection Clause of the 14th amendment of the U.S. Constitution prohibits states from denying any person within its jurisdiction the equal protection of the laws. See U.S. Const. amend. XIV. In other words, the laws of a state must treat an individual in the same manner as others in similar conditions and circumstances. |
| intermediate scrutiny | Intermediate scrutiny is a test courts sometimes use to determine if a law is constitutional. To pass intermediate scrutiny, the challenged law must further an important government interest by means substantially related to that interest. Intermediate scrutiny is less rigorous than strict scrutiny, but more rigorous than rational basis review. It is used in Equal Protection challenges to gender classifications, as well as in some First Amendment cases. |
| procedural due process | Constitutional principle that a citizen must be given notice and an opportunity to be heard before the state or federal |

government acts in such a way that denies life, liberty, or property interest.

rational basis

Rational basis review is the most lenient form of judicial review, sometimes used to determine a law's constitutionality. To pass rational basis review, the challenged law must be rationally related to a legitimate government interest. It is generally used when in cases where no fundamental rights or suspect classifications are at issue.

stare decisis

Latin for “to stand by things decided.” Stare decisis is essentially the doctrine of precedent. Courts cite stare decisis when an issue has previously been brought to the court and a ruling already issued. Generally, courts will adhere to the previous ruling, though this is not universally true.

strict scrutiny

Strict scrutiny is a form of judicial review that courts use to determine the constitutionality of certain laws. To pass strict scrutiny, the legislature must have passed the law to further a "compelling governmental interest," and must have narrowly tailored the law to achieve that interest. For a court to apply strict scrutiny, the legislature must either have significantly abridged a fundamental right with the law's enactment or have passed a law that involves a suspect classification. Suspect classifications have come to include race, national origin, religion, and alienage.

substantive due process

A doctrine holding that the Constitution's 5th and 14th Amendments require that all governmental intrusions into fundamental rights and liberties be fair and reasonable and in furtherance of a legitimate governmental interest. During the middle of the 20th century, the U.S. Supreme Court used substantive due process to give added force to the 4th, 5th and 6th Amendments by constraining certain actions by law enforcement, prosecutors, and judges.

Learning Activities & Assessments

Part 1: Equality and the Constitution

In these activities students will construct a definition of equality; trace the evolution of equality over the course of American history; and consider how the constitutional value of equality is applied in practical terms.

Step 1: The Declaration of Independence

Write or project the following text from the Declaration of Independence on the board or screen:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

Ask students to write down whether they think this phrase applied to everyone at the time the Declaration was written. Who did the phrase apply to and who was not covered? Have students share their responses with partners or in small groups for several minutes, then lead a class discussion. Create a list of the students' responses that is visible to the class.

Step 2: Defining Equality

Ask students to define the word equality. Rather than writing their responses down on paper, have students record their answers on a random or designated spot on the classroom whiteboard, chalkboard, or chart paper. When all of the responses have been posted, have students walk around and analyze their classmates' responses. Develop a chart to note similarities, differences, and surprises. Have students return to their seats and lead a class discussion about the results.

Discussion Questions

- Does the word equality mean different things to different people? Why?
- Does treating people equally mean treating them the same?
- Is equality a desirable outcome for society? Why or why not? Explain.
- Is equality an achievable outcome for society? Why or why not? Explain?
- Is equality an inherent right of all people?
- Does context change the meaning of equality?
 - Racial equality?
 - Equal opportunity?
 - Equal access?
 - Equal ability?
 - Historical time period?
 - Does everybody deserve to be treated equally? Is inequality ever justified?

Use these results and discussion to create a class definition. When the class has finalized its definition, write it on the board, a large piece of paper posted on the wall, or another location that will remain visible for the duration of the lesson. Use the class definition throughout the lesson and allow it to change as students discuss the idea of equality and their thinking evolves.

Step 3: The Road to Equality

Ask students to fold a piece of paper in half so they can create two lists. Entitle one list ‘Inequality in the Past,’ and the other list ‘Inequality Today’. Ask students to list the inequalities people have faced throughout American history and the inequalities people endure today. Have students check their lists against the class definition of equality and adjust the definition if necessary. Ask probing questions to encourage deeper thinking among students.

Using the lists created by students, create a master list on the board or projector for students to see. Discuss and debate the examples given and determine if each is an example of past or present inequality, adjusting the lists as necessary.

Discussion Questions

- Based on the lists, has there been noticeable progress on any issues of inequality? What accounts for this progress?
- Based on the lists, has there been any noticeable lack of progress on any issues of inequality? What accounts for this lack of progress?
- Have there been any attempts at rectifying these inequalities? With what results?
- Does government play any role in trying to eradicate these inequalities?
- What can society do, if anything, to eradicate these inequalities?

As a wrap up exercise, define and discuss strict scrutiny, intermediate scrutiny, and rational basis review (see Important Terms, pages 51, 52). Then, provide each student with a Debate Carousel sheet (see APPENDIX B). Have students respond to the prompt below:

Is it ever acceptable for the government, individuals, or institutions to discriminate against individuals or groups of people?

After completing the Debate Carousel, lead a class discussion.

Discussion Questions

- Why might people disagree about discrimination and/or equality?
- Do you think other generations would respond the same way you did?
- Why might historical/political context affect responses to this question?
- Where do individual concepts of equality come from? Where did you learn about equality and from whom?
- Do you think your response to this question would vary depending on the context of the discrimination?

Learning Extension

Conduct a Constitutional Convention Role Play exercise. First, divide students into five groups to research what life was like for communities of people at the time of the Constitutional Convention. They might also consider how the social, political, and economic issues facing their communities influenced their views on the proposed adoption of a new Constitution. The groups could include:

1. Workers (e.g. shoemaker from N.H.)
2. Southern Planters (e.g. tobacco planter)
3. Farmers (e.g. small farmer from Massachusetts)
4. Enslaved African American (e.g. slave from Virginia tobacco plantation)
5. Banker / Merchant (e.g. banker from New York)

Let students know they are going to have to resolve some issues at a Constitutional Convention based on their research. Issues to be addressed could include:

1. Should slavery be legal in any states?
2. Should the slave trade be legal?
3. Should Northerners be forced to return runaway slaves to their owners?
4. Can states allow debts to be “paid in kind”?
5. Should bonds issued during the Revolutionary War be paid back?
6. Who should be allowed to vote in general elections? Should states be able to exclude certain classes or groups of people from voting?

Open the Convention. Have each group present its positions on the issues under consideration, then vote on each question. After members of the Convention have made their decisions, compare their results to what actually happened by reviewing the United States Constitution.

Discussion Questions

- Were all groups treated equally at the Constitutional Convention?
- Should we scrutinize the Constitutional Convention with a modern or historical lens?
- Did the Constitution at the time of its adoption provide a means through which underrepresented groups could achieve equality?

Part 2: The Fourteenth Amendment & Equality

These activities will help students articulate the meaning of the Fourteenth Amendment; examine how over time the Supreme Court has changed its interpretation of equality and the Fourteenth Amendment; and evaluate the outcome of landmark cases and the evolving meaning of equality.

Step 1: The Impact of the Civil War on American Values

Ask students to consider how American values have changed since the Civil War. Have them fold a piece of paper in half to create two columns. Title one column “Causes of the Civil War”, and the other “Outcomes of the Civil War.” Divide students into small groups to discuss what they believe were the causes and outcomes of the Civil War, then report their findings to the class. Keep a master list on the board or projector for reference during a class discussion.

Discussion Questions

- How did the Civil War affect American values?
- How might these changes in values influence the United States Constitution?
- Can you think of specific examples of how the Constitution/ laws/society changed after the Civil War?
- How did the Civil War affect the idea of equality?

Step 2: Equality and Constitutional Text

Explain to students that while equality is a deeply regarded constitutional and cultural belief, it is not mentioned in the United States Constitution. The closest the text comes to addressing the concept of equality is the Equal Protection Clause of the Fourteenth Amendment, ratified in 1868. Section I of the Fourteenth Amendment reads as follows:

“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.”

To better understand this text, have students rewrite the language from Section I of the Fourteenth Amendment in their own words. Tell students the point is to capture *the meaning* of the text, not to engage in a word-for-word translation. When students have completed their interpretations, divide them into groups to consider what their classmates have come up with. Alternatively, small groups could discuss and debate the meaning of the text and develop a group interpretation, then report to the class verbally or by writing it somewhere that is visible to all. The class can use the various interpretations to develop a class understanding of the text.

Step 3: The Evolving Meaning of the Fourteenth Amendment

First, have students read The Fourteenth Amendment in its entirety as well as the four pages of background information (link below), which is written at an advanced reading level.

Ritchie, Donal A. Our Constitution. N.p.: Oxford University Press, 2006. 158-162. Annenberg Classroom, The Leonore Annenberg Institute for Civics. Web. 9 July 2013.

<http://www.annenbergclassroom.org/Files/Documents/Books/Our%20Constitution/Fourteenth%20Amendment%20Our%20Constitution.pdf>

Based on the reading and using the questions that follow, lead a class discussion or ask students to write out their responses.

Discussion Questions

- What was the original intent of the Fourteenth Amendment?
- Why was the Fourteenth Amendment necessary if the Declaration of Independence stated all men were created equal?
- What are the main components of the Fourteenth Amendment?
- What is the difference between due process and equal protection? What are the two types of due process and what is the difference between them?
- How does the Fourteenth Amendment limit the power of the states?
- How has the Fourteenth Amendment affected the composition of Congress?
- How has Congress used the last section of the Fourteenth Amendment to enforce its provisions?
- Explain the concept of incorporation and how it has been carried out.
- Using the timelines from the reading, explain how interpretations of equality and the Fourteenth Amendment have changed over time.

Step 4: Supreme Court Interpretations of Equality

Have students review *Dred Scott v. Sanford*, *Plessy v. Ferguson*, and *Brown v. Board of Education* (links provided below). These Supreme Court cases deal specifically with equality and the Fourteenth Amendment, and illustrate the evolving nature of both. Use Street Law's Case Study Teaching Strategy while reviewing the cases.

http://www.streetlaw.org/en/landmark/teaching_strategies/case_study

Dred Scott v. Sanford (1857)

http://www.streetlaw.org/en/landmark/cases/dred_scott_v_sanford

Plessy v. Ferguson (1896)

http://www.streetlaw.org/en/landmark/cases/plessy_v_ferguson

Brown v. Board of Education (1954)

http://www.streetlaw.org/en/landmark/cases/brown_v_board_of_education

Discussion Questions

- How did the Court's interpretation of equality change over time?
- What *about* the facts mattered to the Court in each of these cases? Did what they *considered* facts and what the facts meant change over time?
- How did the Court's interpretation of the Fourteenth Amendment change over time?

- What factors led the Court to rule the way it did in each of these cases? Do you think Americans' concept of equality played a role?
- How might society be different today if "separate but equal" had remained constitutional?

Step 5: Choice of Principles Video Presentation

Show the *Constitutionally Speaking* video *Choice of Principles* to facilitate your students' understanding of the Supreme Court's changing interpretation of the Fourteenth Amendment and the constitutional value of equality. Students will need time after the video ends to complete the questions. They may benefit from working with a partner or in a small group. Discuss the answers in small groups and/or as a class.

Video Discussion Questions: Choice of Principles

1. How did the Court's view of equality change between *Plessy v. Ferguson* and *Brown v. Board of Education*?
2. Why does Justice Souter believe it is unrealistic and unfair to suggest *Plessy* was wrong the day it was decided?
3. Why is it significant that the Court not only considered the objective, physical, measurable facts in *Brown v. Board of Education*, but also what those facts meant?
4. How can "what we see" affect how the Supreme Court interprets the meaning of the Constitution and its specific provisions?
5. Why did the Warren Court consider separate but equal educational facilities inherently unequal in *Brown v. Board of Education*?
6. How does our capacity to determine the meaning of facts change over time?

Step 6: An Impassioned Dissent

Ask students to reread *Plessy v. Ferguson*. If they have not done so already, have them read the Dissenting Opinion authored by Justice John Marshall Harlan. Key excerpts can be found at the Street Law website (link below). After students have read Harlan's dissent, have a class discussion to check for understanding.

http://www.streetlaw.org/en/Page/434/Key_Excerpts_from_the_Dissenting_Opinion

Discussion Questions

- How can dissenting opinions affect the outcome of future cases?
- How does this illustrate the concept of the Constitution keeping up with the times?
- Is there text in the *Brown* decision that reflects Harlan's sentiments in *Plessy*?
- How, if at all, does this relate to *stare decisis*, the Court's deference to previous rulings, and judicial review?

Next, introduce the *Constitutionally Speaking* video *The Great Dissenter*, in which Professor Shin introduces students to the social context in which Justice Harlan wrote his

dissent. After viewing, have students discuss the questions below, either in small groups or as a class.

Video Discussion Questions: *The Great Dissenter*

1. Explain the competing concepts of color blindness espoused by Justice Harlan in his dissent in *Plessy v. Ferguson* (1896).
2. Are Justice Harlan's words regarding race in America encouraging or discouraging given the historical and political context of the case?
3. How do Justice Harlan's words illustrate Justice David Souter's assertion that our understanding of the Constitution changes over time?
4. Did Justice Harlan's Dissenting Opinion have a significant impact on the outcome of *Brown v. Board of Education* (1954)?

Learning Extension

Break students into small groups and have them review different cases related to equality and the Fourteenth Amendment. Each group could review one or multiple cases and the cases could address different topics (e.g. Due Process, Equal Protection, Suspect Classifications). Particular attention should be paid to *Hollingsworth v. Perry*, the challenge to California's ban on same-sex marriage that was decided by the U.S. Supreme Court in June 2013, and *United States v. Windsor*, the U.S. Supreme Court's ruling on the constitutionality of the federal Defense of Marriage Act. Use the Case Study Teaching Strategy from Street Law when reviewing cases.

http://www.streetlaw.org/en/landmark/teaching_strategies/case_study

Once students have mastered the material, reassign the groups so that each new group has one student expert on each case. Have students explain their cases and record outcomes for a master list of chronologically ordered developments in Fourteenth Amendment rulings. Individually or by group, have students diagram the changes that have occurred over time.

Discussion Questions

- How has the Supreme Court's interpretation of equality and the Fourteenth Amendment changed over time?
- What text of the Fourteenth Amendment did the Court cite in their decisions? Why did the Court cite these sections? Did the interpretation of these sections change over time?
- Did you agree with the Court's view in each case? With which rulings did you disagree? Why? With which decisions did you agree? Why?
- Was there a "play of constitutional values" taking place in any of these cases? In other words, did the Court have to strike a balance between equality and another value such as liberty? Which principle prevailed and why?
- Did shifts in the attitudes of American society played a role in how the Supreme Court ruled in any of these cases?

Short Answer/Essay/Debate Prompts

- How has the constitutional interpretation of equality changed over time?
- Why has the constitutional interpretation of equality changed over time?
- Does the Supreme Court's current view of equality and the Fourteenth Amendment reflect the views of 21st century Americans? Does it adequately protect equality? Why or why not?
- Do your views of the Fourteenth Amendment and equality mesh with the Supreme Court's view?

Summative Assessments

- Conduct a class debate or have students create position papers on the following question: *Has the Supreme Court's interpretation of equality kept up with the times?* This could be a research project with students presenting their papers or taking part in a formal debate.
- Create a timeline illustrating the evolution of equality throughout the course of American history. Include specific historical events, court cases, figures, and explanations about how the view/interpretation of equality changed at each juncture. This could be done as a long-term project broken into chunks.
- Conduct a Moot Court related to a case not already reviewed by the students. The case could be historical or from a lower court, but should be related to equality and the Fourteenth Amendment.
- Compare two or more cases related to equality and the Fourteenth Amendment using the Case Study Teaching Strategy. After reviewing the cases, students could explain how the interpretation of equality has changed over time.
- Research the Civil Rights Act of 1964. What were the key components of the legislation and why were they included? How does the Civil Rights act relate to the Supreme Court cases reviewed in class, and how does it relate to a change in the views towards equality and Fourteenth Amendment?
- Research *Hollingsworth v. Perry*. How does this case relate to the issues of equality and the Fourteenth Amendment? Is it a violation of the Fourteenth Amendment for states to prohibit same sex marriage?

Part 3: Equality and Equal Treatment

These activities will introduce students to the history of affirmative action and the tension between the constitutional values of equality and equal treatment.

Step 1: Introductory Activity: Defining Affirmative Action

First, ask students to write their own definitions of affirmative action on a random or designated spot on the classroom whiteboard, chalkboard, or chart paper. After everyone

has finished, have students walk around and analyze their classmates' responses. Create a chart to note similarities, differences, and surprises. Have students return to their seats and compare their definitions with the definition in Important Terms (see page 51) and adjust accordingly. Discuss examples of affirmative action so students better understand the practice.

Step 2: In the Interest of Equality Video Presentation

Introduce the *Constitutionally Speaking* video *In the Interest of Equality*, which explores the tension between the constitutional values of equality and equal treatment in the affirmative action context. Pause the video at the 1:07 mark and have students complete a Debate Carousel exercise (see APPENDIX B) using the following prompt:

Is it consistent with the constitutional value of equality to give some people a preference in order to make a particular community more diverse?

After students have reviewed their completed Debate Carousel sheets, conduct a class discussion about the results. What were the most compelling arguments?

Resume the video at the 1:07 mark. After the viewing, have students discuss its key points in small groups or as a class.

Video Discussion Questions: In the Interest of Equality

1. Is it in conflict with the constitutional value of equality to give under-represented populations a “boost” in order to achieve diversity?
2. What is affirmative action and what is its purpose or goal?
3. Why did the Supreme Court find affirmative action within higher education consistent with the constitutional value of equality?
4. Does diversity serve the constitutional value of equality?
5. Is affirmative justifiable outside of higher education?

Step 3: Executive & Legislative Affirmative Action Initiatives

Tell students they are going to explore affirmative action and anti-discrimination practices through the use of primary sources. Set up stations with one document per station and have students fill out a primary source analysis sheet for each. Use the APPARTS method (see APPENDIX A) when completing the primary source analysis. Students can then use the primary source analysis sheets to answer the follow up questions. The documents are as follows:

Executive Order 10925

<http://www.eeoc.gov/eeoc/history/35th/thelaw/eo-10925.html>

Executive Order 11246

http://www.dol.gov/ofccp/regs/compliance/ca_11246.htm

Civil Rights Act of 1964

<http://www.archives.gov/education/lessons/civil-rights-act/>

Voting Rights Act of 1965

<http://www.ourdocuments.gov/doc.php?flash=true&doc=100>

Title IX of The Education Amendments of 1972

<http://www.justice.gov/crt/about/cor/coord/titleixstat.php>

Individually or in groups, have students address the questions below using the primary source documents and analysis sheets. Discuss the responses as a class and keep track of significant excerpts and text from the documents. Use an overhead or projector to point out this language to students and have them highlight or write down these passages.

Discussion Questions

- What was the intent of these Executive Orders and Acts of Congress?
- How does each Executive Order and Act represent changing views on equality and how society should go about achieving it?
- Do these Executive Orders and Acts appeal to the values of the Fourteenth Amendment? If so, cite specific sections or clauses.
- In your view, have Americans' views of equality changed to the point where these Executive Orders and Acts are unnecessary?
- How does affirmative action differ from diversity?

Step 4: Supreme Court Rulings on Affirmative Action

To facilitate student exploration of how the Supreme Court has weighed in on affirmative action, select cases from those listed under Affirmative Action (page 50) – reserving *Grutter v. Bollinger*, *Gratz v. Bollinger*, and *Fisher v. University of Texas at Austin* for later in the lesson. Using Street Law's Case Study Teaching Strategy, have students work in small groups to complete case studies.

http://www.streetlaw.org/en/landmark/teaching_strategies/case_study

Once students have mastered the material, reassign the groups so that each new group has one student expert on each case. Have students explain their cases and record outcomes for a master list of chronologically ordered developments in affirmative action rulings. Individually or in groups, have students diagram the changes that have occurred over time.

Next, have students review *Grutter v. Bollinger* (2003), *Gratz v. Bollinger* (2003), and *Fisher v. University of Texas at Austin* (2013).

Discussion Questions

- How has the Supreme Court's interpretation of equality and affirmative action changed over time?
- What different circumstances did the Court consider in each case?

- Has the Court historically viewed affirmative action as absolute or permissible only under certain circumstances?
- Do you disagree with the Court’s decision in any of the cases? Which ones and why?
- Do you agree with the Court’s decision in any of these cases? Which ones and why?
- What did the Court decide in *Grutter* and *Gratz*? What did it rule in *Fisher* and what are its implications for university admissions policies in the future?
- Is discrimination/sexism /racism still an issue that needs to be addressed by Congress, the Court, and the various states?

Short Answer/Essay/Debate Prompts:

- Has your opinion toward the question from the Debate Carousel exercise changed? If so why? If not, what affirmed their position?
- Do you agree with the Supreme Court’s pre-*Fisher* ruling that affirmative action, in the context of higher education, is permissible?
- Did the Court reach its decision in a similar fashion in *Brown v. Board of Education*? Was it necessary to look beyond the “measurable facts” and consider what those facts meant?
- Is affirmative action permissible in any context other than higher education?
- Does affirmative action conflict with or serve the constitutional value of equality?
- Is it consistent with the constitutional value of equality to give some people a preference in order to make a particular community more diverse?

Summative Assessments

- Create position papers on or debate the following question: *Does affirmative action conflict with or serve the constitutional value of equality?*
- Conduct a Moot Court related to an affirmative action or equality case not already reviewed by the students. The case could be historical or from a lower court.
- Create a graphic tool that illustrates the evolution of equality over time. Include dates, case names where possible, and descriptions of how equality changed at each point. Students could undertake additional research to add depth to the material covered in class.
- Compare two or more Supreme Court cases on equality, specifically describing the facts and holding of each case; the reasoning used by the Court; and how the understanding of equality as a right changed as a result of the later case.
- Write a letter to a federal government official that explains why you agree or disagree with the Supreme Court’s current interpretation of equality and ask the official to take a specific action in support of or to challenge existing case law.

Additional Resources

[Your Bill of Rights](#) (Time magazine online)

11 short videos explaining the history and meaning of each Amendment in the Bill of Rights.

Equality

[Annenberg Classroom: A Conversation on the Constitution-The 14th Amendment](#)

[Best Civics Sites for Teachers at Annenberg Classroom](#)

[Our Constitution, an eBook on the U.S. Constitution from Annenberg Classroom](#)

[Our Rights, an eBook on civil rights from Annenberg Classroom](#)

[Teaching the Constitution resources at Annenberg Classroom](#)

[American Bar Association Lesson Plans](#)

Affirmative Action

[American Civil Liberties Union: Affirmative Action](#)

[United States Department of Labor: Hiring-Affirmative Action](#)

[Miller Center: National Discussion and Debate Series- The Future of Affirmative Action](#)

[Cornell Legal Information Institute: Affirmative Action](#)

[Bill of Rights Institute: Affirmative Action and the Constitution](#)

[New York Times: Times Topics- Affirmative Action](#)

[American Bar Association: What's Next for Affirmative Action](#)