HIGH SCHOOL LESSON PLAN

THE FOURTEENTH AMENDMENT: DEFINITIONS OF EQUALITY

In this three-part lesson, students will learn about the equal protection clause of the Fourteenth Amendment by analyzing the majority and dissenting Supreme Court opinions in *Plessy v. Ferguson*. While working in small groups, students will review the Court’s opinion in *Plessy* and Justice Harlan’s dissent. Discussion questions will encourage students to think about the purpose of the Fourteenth Amendment when it was drafted, the different ways the law can ensure “equality,” and how the Supreme Court has interpreted the equal protection clause of the Fourteenth Amendment over time.

Materials (linked online)

- Fourteenth Amendment Handout
- *Plessy* Majority Handout
- *Plessy* Dissent Handout
- Facilitator Answer Key

Part 1: Looking at the Fourteenth Amendment

1. **Ask students to share what they currently know about the Fourteenth Amendment.** Why was it created? What was going on in the country in 1868?

   **Note:** Students should be familiar with Section 1 of the Fourteenth Amendment before beginning this lesson. Depending on the class’s former knowledge, you may want to emphasize that unlike the Bill of Rights, which were written to protect individuals from the federal government, the Fourteenth Amendment was written to protect individuals against actions of state governments in the aftermath of the Civil War.

2. **Background on Fourteenth Amendment:** The Fourteenth Amendment was written, along with the other Reconstruction Amendments, to provide legal and political rights to former slaves and freedmen in the aftermath of the Civil War. The Thirteenth Amendment was ratified in 1865, the Fourteenth was ratified in 1868, and the Fifteenth was ratified in 1870.

3. **Distribute the Fourteenth Amendment handout to students:** This includes text of Section 1 of the amendment.

4. **Give students a few moments to complete the handout and then ask students to share the clauses that they identified.** Inform students that while Section 1 of the Fourteenth Amendment includes many important concepts including the privileges or immunities, citizenship, due process, and equal protection clauses. The Supreme Court cases that they will examine next focuses on the equal protection clause and how it has been interpreted by the Court.

All handouts and a facilitator answer key for handouts can be found at lawday.org
Part 2: Plessy v. Ferguson

1. Introduce students to the case:
   While the Fourteenth Amendment stated that all individuals must be guaranteed equal protection of the law, racial segregation remained custom in many areas throughout the country. Passage by Congress of the Civil Rights Act of 1875, which barred racial discrimination in public accommodations, provides evidence of the continued presence of segregation.

   The law lasted until 1883, when the Supreme Court of the United States declared the statute unconstitutional for regulating what the justices considered private companies, such as streetcars and entertainment facilities. The Supreme Court’s 1883 ruling in the Civil Rights cases spurred states to enact segregation laws. Between 1887 and 1892, Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Maryland, North Carolina, Kentucky, Tennessee, and Virginia refused equal access to African Americans on public accommodations and transportation. These laws forced blacks to sit in the back of the bus, on separate cars in trains, and in the balcony at theaters, for example.

2. Organize students into small groups:
   Distribute the two versions of the Plessy v. Ferguson case study. Half of the groups will examine the majority opinion and the other half will concentrate on the dissent. Each group will work together to answer a set of questions about the case.

3. Reassemble the whole class:
   Ask each group to report on various aspects of the case, the majority, and dissenting opinions. After students have reviewed both the majority and dissenting opinions, they should discuss the following three questions:

   1. Both the majority opinion and the dissent stated that the Fourteenth Amendment intended to establish absolute equality for the races before law. How did justices in the majority and the justice in the minority interpret equal protection under the law, in relation to segregation, differently?

   *The majority ruled that the law can only provide civil and political equality under the law and it cannot and should not try to change the social structure between the two races. Justice Harlan, in comparison, wrote that any legally sanctioned segregation or discrimination based on race has no place in the United States. Segregation perpetuates the idea of one race being inferior or unequal to the other.*

   2. What might have changed in the United States if Harlan’s reasoning represented the majority opinion of the justices? *Segregation sanctioned under law would not have had such a vast reach into so many areas of society.*

   3. What does this case show about the Court as a decision-making institution and its impact on American life?

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Part 3: Addressing Inequality

1. Display the following excerpt from the majority in Obergefell v. Hodges (2015), written by Justice Kennedy.

   The nature of injustice is that we may not always see it in our own times. The generations that wrote and ratified the Bill of Rights and the Fourteenth Amendment did not presume to know the extent of freedom in all of its dimensions, and so they entrusted to further generations a charter protecting the right of all persons to enjoy liberty as we learn its meaning... in interpreting the Equal Protection Clause, the Court has recognized that new insights and societal understandings can reveal unjustified inequality within our most fundamental institutions that once passed unnoticed and unchallenged...

2. Ask students to reflect on this quote and to think back on the origins of the Fourteenth Amendment. What specific injustice was the Fourteenth Amendment written to address?

3. Ask students if they believe there are still unjust inequalities in our country today? What are they? Should they be addressed through legislation, the courts, or in other ways?

4. Distribute stick-it notes to students and ask them to write down an unjustified inequality that is currently not protected by federal law.

5. Project a timeline across a classroom wall that is marked by increments of ten years.

6. Ask students to place their stick-it notes along the timeline based on when they think the issue will be addressed either through the Court or through the legislature. Discuss the completed timeline as a class. What are the similarities or surprises?
Fourteenth Amendment Handout

Read Section 1 of the Fourteenth Amendment shown below. Identify the main ideas or clauses of the Amendment. What does the Amendment prohibit states from doing?

Amendment XIV

Section 1.
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
**Plessy v. Ferguson (1896)**

**Facts:**
On June 7, 1892, 30-year-old Homer Plessy was jailed for sitting in the “White” car of the East Louisiana Railroad. He was a Creole of Color, a term used to refer to black persons in New Orleans who traced some of their ancestors to the French, Spanish, and Caribbean settlers of Louisiana before it became part of the United States. Plessy could easily pass for white but under Louisiana law, he was considered black despite his light complexion and therefore required to sit in the “Colored” car. When Louisiana passed the Separate Car Act, legally segregating common carriers in 1892, a black civil rights organization decided to challenge the law in the courts. Plessy deliberately sat in the white section and identified himself as black. Plessy was arrested. His lawyer argued that the Separate Car Act violated the Thirteenth and Fourteenth Amendment. The U.S. District Court Judge John H. Ferguson dismissed the contention that the Act was unconstitutional. The state Supreme Court affirmed the district court’s ruling; the U.S. Supreme Court agreed to hear the case.

**Questions before the U.S. Supreme Court:** Is Louisiana’s law mandating racial segregation on its trains an unconstitutional infringement on both the privileges and immunities and the equal protection clauses of the Fourteenth Amendment?

**Court Ruling:** In a 7-1 decision, the U.S. Supreme Court held that equal but separate accommodations for whites and blacks imposed by Louisiana do not violate the Equal Protection Clause of the Fourteenth Amendment.

Writing for the majority, Justice Brown conceded that the Fourteenth Amendment intended to establish absolute equality for the races before the law,

> . . . but, in the in the nature of things, it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality, or a commingling 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. . .

**Significance:** The *Plessy* decision set the precedent that “separate” facilities for blacks and whites were constitutional as long as they were “equal.” The majority opinion did not contain the phrase “separate but equal” but this doctrine gave constitutional sanction to laws designed to achieve racial segregation which was quickly extended to cover many areas of public life, such as restaurants, theatres, restrooms, and public schools.

**Excerpts from** Justice Harlan’s Dissent in *Plessy v. Ferguson*
In respect of civil rights common to all citizens, the Constitution of the United States does not, I think, permit any public authority to know the race of those entitled to be protected in the enjoyment of such rights. . . Indeed, such legislation as that here in question is inconsistent not only with that equality of rights which pertains to citizenship, National and State, but with the personal liberty enjoyed by everyone within the United States.

The Thirteenth Amendment does not permit the withholding or the deprivation of any right necessarily inhering in freedom. It not only struck down the institution of slavery as previously existing in the United States, but it prevents the imposition of any burdens or disabilities that constitute badges of slavery or servitude. It decreed universal civil freedom in this country. . . But that amendment having been found inadequate to the protection of the rights of those who had been in slavery, it was followed by the Fourteenth Amendment, which added greatly to the dignity and glory of American citizenship and to the security of personal liberty. . .

These two amendments, if enforced according to their true intent and meaning, will protect all the civil rights that pertain to freedom and citizenship. . .

These notable additions to the fundamental law were welcomed by the friends of liberty throughout the world. They removed the race line from our governmental systems. They had, as this court has said, a common purpose, namely to secure to a race recently emancipated, a race that through many generations have been held in slavery, all the civil rights that the superior race enjoy. They declared, in legal effect, this court has further said, that the law in the States shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the States, and, in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color. . .

The destinies of the two races in this country are indissolubly linked together, and the interests of both require that the common government of all shall not permit the seeds of race hate to be planted under the sanction of law. What can more certainly arouse race hate, what more certainly create and perpetuate a feeling of distrust between these races, than state enactments which, in fact, proceed on the ground that colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens. . .

**Breaking Down the Case**

After your group reads the case summary, answer the following questions:

1. What is the name of the case and when was it decided?
2. What are the underlying facts of the case?
3. What is are the questions before the Court?
4. How did the Court rule?
Answer the following questions based on Justice John Marshall Harlan’s dissent and use text to support your answer, be prepared to present your thoughts with the class.

Discussion Questions:

1. According to Justice Harlan, the Thirteenth and Fourteenth Amendments were created for what purposes?

2. What is Justice Harlan’s view on laws based upon racial distinctions?

3. According to Justice Harlan, what would be the consequences of the ruling? Why would it be dangerous to sanction segregation under law?


**Plessy v. Ferguson (1896)**

**Facts:**
On June 7, 1892, 30-year-old Homer Plessy was jailed for sitting in the “White” car of the East Louisiana Railroad. He was a Creole of Color, a term used to refer to black persons in New Orleans who traced some of their ancestors to the French, Spanish, and Caribbean settlers of Louisiana before it became part of the United States. Plessy could be mistaken for white, but under Louisiana law he was considered and therefore required to sit in the “Colored” car. When Louisiana passed the Separate Car Act, legally segregating common carriers in 1890 a black civil rights organization decided to challenge the law in the courts. Plessy deliberately sat in the white section and identified himself to the conductor as black. Plessy was arrested. His lawyer argued that the Separate Car Act violated the Thirteenth and Fourteenth Amendment. United States District Court Judge John H. Ferguson dismissed the contention that the Act was unconstitutional. The state Supreme Court affirmed the district court’s ruling; the U.S. Supreme Court agreed to hear the case.

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**Court Ruling:** In a 7-1 decision, the U.S. Supreme Court held that equal but separate accommodations for whites and blacks imposed by Louisiana do not violate the Equal Protection Clause of the Fourteenth Amendment.

**Excerpt from the Majority Opinion**
Writing for the majority, Justice Henry Brown conceded that the Fourteenth Amendment intended to establish absolute equality for the races before the law,

> . . . but, in the in the nature of things, it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality, or a commingling 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. . . 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 put them upon the same plane.
Significance: The *Plessy* decision set the precedent that “separate” facilities for blacks and whites were constitutional as long as the facilities were “equal.” The Court’s opinion did not contain the phrase “separate but equal” but this doctrine gave constitutional sanction to laws designed to achieve racial segregation which was quickly extended to cover many areas of public life, such as restaurants, theatres, restrooms, and public schools.

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After reading the case summary discuss the following questions and be prepared to present your thoughts with the class.

Discussion Questions:

1. According to the Court, why don’t laws establishing separate accommodations for whites violate the Equal Protection Clause of the Fourteenth Amendment?

2. According to the Court, what was the Fourteenth Amendment intended to do?

3. According to the Court, what role does the law play in establishing civil, political, and social equality?
Facilitator Answer Key

_Plessy v. Ferguson (1896)_

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On June 7, 1892, 30-year-old Homer Plessy was jailed for sitting in the “White” car of the East Louisiana Railroad. He was a Creole of Color, a term used to refer to black persons in New Orleans who traced some of their ancestors to the French, Spanish, and Caribbean settlers of Louisiana before it became part of the United States. Plessy could be mistaken for white, but under Louisiana law he was considered and therefore required to sit in the “Colored” car. When Louisiana passed the Separate Car Act, legally segregating common carriers in 1890 a black civil rights organization decided to challenge the law in the courts. Plessy deliberately sat in the white section and identified himself to the conductor as black. Plessy was arrested. His lawyer argued that the Separate Car Act violated the Thirteenth and Fourteenth Amendment. United States District Court Judge John H. Ferguson dismissed the contention that the Act was unconstitutional. The state Supreme Court affirmed the district court’s ruling; the U.S. Supreme Court agreed to hear the case.

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Discussion Questions:

1. According to the Court, why don’t laws establishing separate accommodations for whites violate the Equal Protection Clause of the Fourteenth Amendment? *Laws permitting, and even requiring, the separation or races in places where they are likely to be brought into contact do not necessarily imply the inferiority of either race to the other.*

2. According to the Court, what was the Fourteenth Amendment intended to do? *It was intended to establish absolute equality for the races before the law, but it was not created to abolish distinctions based upon race or enforce social interactions between the races.*

3. According to the Court, what role does the law play in establishing civil, political, and social equality? *The law can create civil and political equality, but not social equality. The Constitution cannot establish social equality.*
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The destinies of the two races in this country are indissolubly linked together, and the interests of both require that the common government of all shall not permit the seeds of race hate to be planted under the sanction of law. What can more certainly arouse race hate, what more certainly create and perpetuate a feeling of distrust between these races, than state enactments which, in fact, proceed on the ground that colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens. . .

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Discussion Questions:

1. According to Justice Harlan, the Thirteenth and Fourteenth Amendments were created for what purposes? The Thirteenth Amendment made slavery illegal and prohibited the burdens that the legacy of slavery or servitude might impose on former slaves and provided for their civil rights. The Fourteenth Amendment made former slaves citizens to provide them the same protection under the law that is afforded to all citizens.

2. What is Justice Harlan’s view on laws based upon racial distinctions? The Constitution of the United States does not permit race to be a consideration in determining who should receive equal protection of the law. The black and white races stand equal before the law and no legal discrimination shall be made against blacks because of their race.

3. According to Justice Harlan, what would be the consequences of the ruling? Why would it be dangerous to sanction segregation under law? The ruling will encourage the belief that it is possible, by means of state enactments, to undermine the purposes of the Thirteenth, Fourteenth, and Fifteenth Amendments and continue to support conflict between the races.

Justice Harlan argued that sanctioning segregation under law allows the seeds of race hate to be planted against the interests of all citizens. When a state enacts a law prohibiting races to sit on the same public train cars it creates and perpetuates a feeling of distrust and hate between the races and implies an inferiority of one race.