

# The Power of One Decision

## *Brown v. Board of Education*

A Lesson by Linda Weber

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### SUMMARY

As the highest court in the land, the Supreme Court decides cases and controversies that relate to the Constitution and laws of the United States. Because the Court is a reactive institution, it does not seek complaints to resolve. Instead, the Court relies on people to bring their concerns to it.

When minority students through legal representatives decided to take their challenge of the “separate but equal” doctrine to the Supreme Court, the 1954 decision handed down by the Court in *Brown v. Board of Education* and enforced by the executive branch, changed their lives and America forever.

“*Brown v. Board of Education* was one of the most important cases that this Court ever decided. It was really crucial in determining what it was that our Constitution means, and what our country stands for.” — Justice Sandra Day O’Connor

This lesson is based on a video of three Supreme Court Justices participating in a Q & A session with a group of high school students. The conversation revolves around the issues and arguments in the case of *Brown v. Board of Education*. Through the lesson, students gain insight into decision-making at the Supreme Court, learn about the people behind the case, construct a persuasive argument, and evaluate the significance of *Brown v. Board of Education*.

### NOTES AND CONSIDERATIONS

- This lesson presumes that students are familiar with the background story and Court’s opinion in *Brown v. Board of Education* (1954) and understand basic legal terminology.
- Technology is relied on to facilitate learning and instruction.
- This is a self-contained lesson with resources and activities that can be adapted to different teaching styles, length of classes, and levels of students.

### Snapshot of Lesson

**Grades:** Middle School; High School (Focus)

**Subject Focus:** Civics/Government

**Estimated Time:** 4 days

**Alignment to National Standards for Civics and Government:**

Grades 5-8; Grades 9-12

**Materials/Equipment Needed:**

- Video: *A Conversation on the Constitution: Brown v. Board of Education*
- Computer lab with Internet connections and projector for class viewing

**Materials Included:**

Readings and Resources

- Case Summaries: *Brown v. Board of Education* (1954); *Plessy v. Ferguson* (1896); *Sweatt v. Painter* (1950)
- Chapter 13: Public School Desegregation from *The Pursuit of Justice*—Kermit L. Hall and John J. Patrick
- Fourteenth Amendment from *Our Constitution*—Donald A. Ritchie
- Sections on values, principles, and the responsibilities of citizens from the National Civics and Government Standards.
- Rule of Law from *Understanding Democracy, A Hip Pocket Guide*—John J. Patrick
- Transcript for video

Student Materials

- “The Decisions We Make: A WebQuest”
- Student’s Video Guide
- Organizer: “Organize Your Video Notes”
- Diagram: “Construct a Persuasive Argument”
- Activity: “When the People Decide”
- Activity: “Evaluate the Significance of a Case”
- “A Model of Reasoned Decision-Making”

Teacher Materials

- Teacher’s Video Guide
- Keys for student activities

**National Standards for Civics and Government**

Standards level detail: grades 5-8; grades 9-12

## TOPICS

- Decision-making
- Equal protection clause
- Racial discrimination
- Rights
- Rule of law
- Segregation
- Supreme Court

## NATIONAL STANDARDS

Document: National Standards for Civics and Government (1994) Center for Civic Education  
<http://www.civiced.org/index.php?page=stds>

### Grades 5-8 Organizing Questions

The national content standards for civics and government are organized under five significant questions. The following outline lists the high-level organizing questions supported by this lesson.

- I. What are civic life, politics, and government?
  - A. What is civic life? What is politics? What is government? Why are government and politics necessary? What purposes should government serve?
  - B. What are the essential characteristics of limited and unlimited government?
  - C. What are the nature and purposes of constitutions?
  - D. What are alternative ways of organizing constitutional governments?
  
- II. What are the foundations of the American political system?
  - A. What is the American idea of constitutional government?
  - C. What is American political culture?
  - D. What values and principles are basic to American constitutional democracy?
  
- III. How does the government established by the Constitution embody the purposes, values, and principles of American democracy?
  - A. How are power and responsibility distributed, shared, and limited in the government established by the United States Constitution?
  - E. What is the place of law in the American constitutional system?
  
- V. What are the roles of the citizen in American democracy?
  - B. What are the rights of citizens?
  - C. What are the responsibilities of citizens?
  - D. What dispositions or traits of character are important to the preservation and improvement of American constitutional democracy?
  - E. How can citizens take part in civic life?

## Grades 9-12 Organizing Questions

The national content standards for civics and government are organized under five significant questions. The following outline lists the high-level organizing questions supported by this lesson.

- I. What are civic life, politics, and government?
  - A. What is civic life? What is politics? What is government? Why are government and politics necessary? What purposes should government serve?
  - B. What are the essential characteristics of limited and unlimited government?
  - C. What are the nature and purposes of constitutions?
  - D. What are alternative ways of organizing constitutional governments?
  
- II. What are the foundations of the American political system?
  - A. What is the American idea of constitutional government?
  - C. What is American political culture?
  - D. What values and principles are basic to American constitutional democracy?
  
- III. How does the government established by the Constitution embody the purposes, values, and principles of American democracy?
  - B. How is the national government organized, and what does it do?
  - D. What is the place of law in the American constitutional system?
  
- IV. What is the relationship of the United States to other nations and to world affairs?
  - C. How has the United States influenced other nations, and how have other nations influenced American politics and society?
  
- V. What are the roles of the citizen in American democracy?
  - B. What are the rights of citizens?
  - C. What are the responsibilities of citizens?
  - D. What civic dispositions or traits of private and public character are important to the preservation and improvement of American constitutional democracy?
  - E. How can citizens take part in civic life?

Note: A more detailed standards-level alignment related to these questions can be found in the “Standards” section at end of this lesson plan.

# STUDENT OUTCOMES

## Knowledge, skills, and dispositions

Students will . . .

- Describe the far-reaching impact of the decision in *Brown v. Board of Education*.
- Analyze the decision-making of the Supreme Court as it relates to *Brown*.
- Construct a persuasive argument.
- Define the separate and shared responsibilities of the judicial and executive branches.
- Apply a model of reasoned decision-making.
- Appreciate the power of the decisions they make.

## Integrated Skills

### 1. Information literacy skills

Students will . . .

- Extract, organize and analyze information from primary and secondary sources.
- Use skimming and research skills.
- Make informed decisions.
- Use prior and background knowledge to support new learning.
- Use technology as a tool for learning.

### 2. Media literacy skills

Students will . . .

- Read, view, and listen to information delivered via different media formats in order to make inferences and gather meaning.

### 3. Communication skills

Students will . . .

- Write and speak clearly to contribute ideas, information, and express own point of view.
- Write in response to questions.
- Respect diverse opinions and points of view.
- Develop and interpret visual models.
- Collaborate with others to deepen understanding.

### 4. Study skills

- Take notes
- Manage time and materials

### 5. Thinking skills

Students will . . .

- Describe and recall information.
- Make personal connections.
- Explain ideas or concepts.
- Draw conclusions.
- Identify constraints.
- Analyze and evaluate issues.
- Use sound reasoning and logic.

### 6. Problem-solving skills

Students will . . .

- Apply a process model to assist with decision-making
- Develop reasoned arguments to support decisions and solve problems.
- Examine reasoning used in making decisions.
- Ask meaningful questions.

### 7. Participation skills

Students will . . .

- Contribute to small and large group discussion.
- Work responsibly both individually and with diverse people.
- Express own beliefs, feelings, and convictions.
- Show initiative and self-direction.

## ASSESSMENT

Evidence of understanding may be gathered from student performance related to the following:

- “The Decisions We Make: A WebQuest”
- Responses to questions and activities in the video discussion guide.
- Organizer: “Organize Your Video Notes”
- Diagram: “Construct a Persuasive Argument”
- Activity: “When the People Decide”
- Activity: “Evaluate the Significance of the Case”

## VOCABULARY

discrimination	NAACP
equal protection clause	precedent
equal protection of the law	segregation
Fourteenth Amendment	separate but equal
inferiority	statute
inherently	Supreme Court
intangible factors	tangible factors

### Resources for Definitions

**FindLaw—Law Dictionary**  
<http://dictionary.lp.findlaw.com/>

**American Bar Association**  
<http://www.abanet.org/publiced/glossary.html>

**Understanding Democracy, A Hip Pocket Guide—John J. Patrick**  
<http://www.annenbergclassroom.org/page/understanding-democracy-a-hip-pocket-guide>

## LESSON OVERVIEW

### Goal

Students gain insight into the decision-making process at the Supreme Court and reflect on the significance of the Court's decision in *Brown v. Board of Education*.

### Class-Prep & DAY 1

#### The Decisions We Make

Students learn about the decision-making of the Supreme Court by gathering and synthesizing information through a WebQuest to complete an FAQ activity.

### DAY 2

#### Watch, Listen, and Learn

Students watch and listen to the video “A Conversation on the Constitution: *Brown v. Board of Education*” to learn about the people, issues, and decision-making involved, then construct a persuasive argument based on the case.

### DAY 3

#### When the People Decide

Students learn from the Little Rock Nine as they consider the obstacles faced, the decisions made, the assistance received, the traits of character displayed, and the consequences that resulted from the choices made by those teenagers in 1957.

### DAY 4

#### Analyze the Significance of the Case

Students evaluate the significance of *Brown v. Board of Education* according to a set of criteria that incorporates the six used by the authors of *The Pursuit of Justice*.

### **Class-Prep & DAY 1** **The Decisions We Make**

**Overview:** Students learn about the decision-making of the Supreme Court by gathering and synthesizing information through a WebQuest as they complete an FAQ activity.

**Goal:** Provide students with essential background knowledge for the video *Brown v. Board of Education* on Day 2.

#### **Materials/Equipment Needed:**

##### Technology

- Computer lab with Internet connection

##### Resources

- Load all Readings & Resources included with this lesson so students can refer to them as needed through the lesson.

##### Student Materials (Included)

- “The Decisions We Make: A WebQuest” (Document version with active links)
- “A Model of Reasoned Decision-Making”

##### Teacher Materials (Included)

- Teacher Resource: “The Decisions We Make: A WebQuest”

#### **Procedure:**

1. Review the WebQuest and your expectations with the students, then divide them into small research groups.
2. Divide the questions and assign them to the groups. Students will need copies of “A Model of Reasoned Decision-Making” for the conclusion of the WebQuest.
3. Plan on a combination of in-class work and homework for completing the assignment.
4. Students will use their WebQuest responses as a resource for other activities in this lesson.

### DAY 2

#### Watch, Listen, and Learn

**Overview:** Students watch and listen to the video “A Conversation on the Constitution: *Brown v. Board of Education*” to learn about the people, issues, and decision-making involved, then construct a persuasive argument based on the case.

**Goal:** Students learn about decision-making at the Supreme Court and consider the impact of the ruling in *Brown* on America and the world.

#### Materials/Equipment Needed:

##### Technology

- Computer lab with Internet connection and projector for class viewing
- Video—“A Conversation on the Constitution: *Brown v. Board of Education*” (Time 27 min.) Available from [www.AnnenbergClassroom.org](http://www.AnnenbergClassroom.org)

##### Student Materials (Included)

- Student’s Video Guide: “A Conversation on the Constitution: *Brown v. Board of Education*”
- Organizer: “Construct a Persuasive Argument”
- “A Model of Reasoned Decision-Making” and WebQuest responses

##### Teacher Materials (Included)

- Teacher’s Video Guide: “A Conversation on the Constitution: *Brown v. Board of Education*”

#### Procedure:

1. Refer to the Teacher’s Video Guide to prepare students for the video.
2. Distribute the student materials.
3. Briefly discuss the bulleted topics under Background Knowledge.
4. Review Vocabulary, preview the questions, and explain the use of the graphic organizer for note-taking.
5. After showing the video, divide students into small groups to complete the follow-up questions and activities.
6. Conclude by having students construct the persuasive argument for the case that incorporates the four supporting arguments (reasons) discussed in the video – moral, constitutional, legal, societal (practical). They will map out the argument using the graphic organizer.



### DAY 3

#### When the People Decide

**Overview:** Students learn from the Little Rock Nine as they consider the obstacles faced, the decisions made, the assistance received, the traits of character displayed, and the consequences that resulted from the choices made by those teenagers in 1957.

**Goal:** Students appreciate the power of the decisions they make.

#### Materials/Equipment Needed:

##### Technology

- Computer lab with Internet connection and projector for class viewing
- Video—“A Conversation on the Constitution: *Brown v. Board of Education*” (View the last 4.5 minutes)  
Available from [www.AnnenbergClassroom.org](http://www.AnnenbergClassroom.org)

##### Student Materials (Included)

- Activity: “When the People Decide” (1 copy each)

##### Teacher Materials (Included)

- Activity KEY: “When the People Decide”

#### Procedure:

1. Distribute the activity and review the requirements.
2. Divide the class into small discussion groups.
3. Watch the last 4½ min of the video again to learn from the students who made history in 1957.  
Begin at time 22:00, when Ernest Green is speaking.
4. Allow enough time for the groups to complete the activity, then reconvene to discuss the questions in the activity

### DAY 4

#### The Significance of the Case

**Overview:** Students evaluate the significance of Brown v. Board of Education according to a set of criteria that incorporates the six used by the authors of The Pursuit of Justice.

**Goal:** Students gain appreciation for the power of one decision made by the Supreme Court in Brown v. Board of Education.

**Materials/Equipment Needed:**

Technology

- Computer lab

Student Materials (Included)

- Activity: “Evaluate the Significance of a Case” (1 copy per student)

**Procedure:**

1. Explain each criterion on the chart, then give students 20 minutes to respond. Allow students to consult their notes and other resources as needed.
2. Reconvene to discuss as a class.
3. After the discussion, ask each student to think about the criteria as shades of meaning, then rank the criteria in order of importance with #1 being the most important. Tabulate the results to determine the top 3 reasons decided by the class.

*“[I]n view of the constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved.”*

—Justice John Marshall Harlan, dissenting opinion,  
*Plessy v. Ferguson (1896)*

## EXTENSION ACTIVITIES

### Have more time to teach?

1. View a Sunnylands video: “A Conversation on the Constitution: Judicial Independence”  
<http://www.annenbergclassroom.org/page/conversation-judicial-independence>
2. Learn more about the role of the courts from short videos provided by the Leonore Annenberg Institute for Civics. <http://www.annenbergclassroom.org/page/the-role-of-the-courts>
3. Play the Branches of Power game.  
<http://www.annenbergclassroom.org/page/branches-of-power>
4. Play the Court Quest game.  
<http://www.annenbergclassroom.org/page/court-quest>
5. Play the Supreme Decision game.  
<http://www.icivics.org/games/supreme-decision>
6. Play Argument Wars: Select *Brown v. Board of Education*  
<http://www.icivics.org/games/argument-wars>

## RESOURCES

### ***Brown v. Board of Education of Topeka***

- United States Reports  
<http://ftp.resource.org/courts.gov/c/US/347/347.US.483.1.2.4.10.html>
- FindLaw  
<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=347&invol=483>
- Justia  
<http://supreme.justia.com/us/347/483/case.html>
- Cornell University Law School  
Syllabus and Opinion  
[http://www.law.cornell.edu/supct/html/historics/USSC\\_CR\\_0347\\_0483\\_ZS.html](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0347_0483_ZS.html)
- Street Law: Landmark Cases  
*Plessy v. Ferguson*  
<http://www.streetlaw.org/en/Case.4.aspx>  
  
*Brown v. Board of Education*  
<http://www.streetlaw.org/en/Case.6.aspx>
- National Park Service: Curriculum Materials  
<http://www.nps.gov/brvb/forteachers/curriculummaterials.htm>
- Brown Foundation  
<http://brownvboard.org/>

- **Supreme Court of the United States Blog: “The Global Impact of Brown v. Board of Education”**  
<http://www.scotusblog.com/blog/2010/02/18/the-global-impact-of-brown-v-board-of-education/>
- **The National Archives: Teaching with Documents Related to Brown v. Board of Education**  
<http://www.archives.gov/education/lessons/brown-v-board/>
- **Smithsonian National Museum of Natural History**  
**Power of Precedent: Separate is Not Equal**  
<http://americanhistory.si.edu/brown/history/3-organized/power-of-precedent.html>

### **Rule of Law**

- **Vindicating the Rule of Law: The Role of the Judiciary\*** by Sandra Day O’Connor  
<http://chinesejil.oxfordjournals.org/cgi/reprint/2/1/1.pdf>  
\*Remarks delivered at the National Judges College, Beijing, China, on September 18, 2002
- **The World Justice Project: Rule of Law Index**  
<http://www.worldjusticeproject.org/rule-of-law-index/>

### **Teaching Strategies**

- **iCivics: Interactive curriculum on the Judicial Branch**  
<http://www.icivics.org/curriculum/judicial-branch>
- **The National Archives: Teaching with Documents—Analysis Worksheets**  
<http://www.archives.gov/education/lessons/>
- **Street Law**  
<http://www.streetlaw.org/en/Page.Landmark.TeachingStrategies.aspx>

### **Annenberg Classroom**

- **Understanding Democracy, A Hip Pocket Guide—John J. Patrick**  
<http://www.annenbergclassroom.org/page/understanding-democracy-a-hip-pocket-guide>
- **Our Rights by David J. Bodenhamer**  
<http://www.annenbergclassroom.org/page/our-rights>
- **The Role of the Courts**  
<http://www.annenbergclassroom.org/page/the-role-of-the-courts>

### **Federal Courts**

- **Supreme Court of the United States**  
<http://www.supremecourtus.gov>
- **U.S. Courts**  
<http://www.uscourts.gov>

# Readings & Resources

- Case Summaries:
  - *Brown v. Board of Education* (1957)
  - *Plessy v. Ferguson* (1896)
  - *Sweatt v. Painter* (1950)
- Chapter 13: Public School Desegregation from *The Pursuit of Justice* by Kermit L. Hall and John J. Patrick
- “Rule of Law” from *Understanding Democracy, a Hip Pocket Guide*
- Fourteenth Amendment from *Our Constitution* by Donald A. Ritchie
- Sections on values, principles and the responsibilities of citizens from the National Civics and Government Standards
- Video transcript: *A Conversation on the Constitution: Brown v. Board of Education*

Case Summary: *Brown v. Board of Education*

From OYEZ

[http://www.oyez.org/cases/1950-1959/1952/1952\\_1](http://www.oyez.org/cases/1950-1959/1952/1952_1)

<b>Brown v. Board of Education</b>	
<b>Citation:</b> <a href="#">347 U.S. 483 (1954)</a>	
<b>Petitioner:</b> Brown	
<b>Respondent:</b> Board of Education of Topeka	
<b>Abstract</b>	<b>Supreme Court Ruling</b>
<b>Argued:</b> Tuesday, December 9-11, 1952	<b>Decision:</b> 9 votes for Brown, 0 vote(s) against
<b>Reargued:</b> December 8, 1953	<b>Legal provision:</b> Equal Protection
<b>Decided:</b> Monday, May 17, 1953	Heard by Vinson Court
<b>Issues:</b> Equal protection, race discrimination	Decided by Warren Court
<b>Read the Case Preview</b>	
Justia.com	
<a href="http://supreme.justia.com/us/347/483/">http://supreme.justia.com/us/347/483/</a>	

**Facts of the Case**

Black children were denied admission to public schools attended by white children under laws requiring or permitting segregation according to the races. The white and black schools approached equality in terms of buildings, curricula, qualifications, and teacher salaries. This case was decided together with *Briggs v. Elliott* and *Davis v. County School Board of Prince Edward County*.

**Question**

Does the segregation of children in public schools solely on the basis of race deprive the minority children of the equal protection of the laws guaranteed by the 14th Amendment?

**Conclusion**

Yes. Despite the equalization of the schools by "objective" factors, intangible issues foster and maintain inequality. Racial segregation in public education has a detrimental effect on minority children because it is interpreted as a sign of inferiority. The long-held doctrine that separate facilities were permissible provided they were equal was rejected. Separate but equal is inherently unequal in the context of public education. The unanimous opinion sounded the death-knell for all forms of state-maintained racial separation.

Case Summary: *Plessy v. Ferguson*

From OYEZ

[http://www.oyez.org/cases/1851-1900/1895/1895\\_210/](http://www.oyez.org/cases/1851-1900/1895/1895_210/)

**Plessy v. Ferguson**

**Citation:** 163 U.S. 537 (1896)  
**Petitioner:** Plessy  
**Respondent:** Ferguson

**Abstract**

**Argued:** Monday, April 13, 1896  
**Decided:** Monday, May 18, 1896  
**Issues:** First Amendment, Establishment of Religion  
**Categories:** Equal protection, race discrimination

**Supreme Court Ruling**

**Decision:** 7 votes for Ferguson 1 vote(s) against  
**Legal Provision:** US Const. Amend 14, Section 1

**Read the Case Preview**

Justia.com  
<http://supreme.justia.com/us/163/537/>

**Facts of the Case**

The state of Louisiana enacted a law that required separate railway cars for blacks and whites. In 1892, Homer Adolph Plessy--who was seven-eighths Caucasian--took a seat in a "whites only" car of a Louisiana train. He refused to move to the car reserved for blacks and was arrested.

**Question**

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?

**Conclusion**

No, the state law is within constitutional boundaries. The majority, in an opinion authored by Justice Henry Billings Brown, upheld state-imposed racial segregation. The justices based their decision on the separate-but-equal doctrine, that separate facilities for blacks and whites satisfied the Fourteenth Amendment so long as they were equal. (The phrase, "separate but equal" was not part of the opinion.) Justice Brown conceded that the 14th amendment intended to establish absolute equality for the races before the law. But Brown noted that "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 unsatisfactory to either." In short, segregation does not in itself constitute unlawful discrimination.

Case Summary: *Sweatt v. Painter*

From OYEZ

[http://www.oyez.org/cases/1940-1949/1949/1949\\_44](http://www.oyez.org/cases/1940-1949/1949/1949_44)

**Sweatt v. Painter**

**Citation:** 339 U.S. 629 (1950)  
**Petitioner:** Sweatt  
**Respondent:** Painter

**Abstract**

**Argued:** Tuesday, April 4, 1950  
**Decided:** Monday, June 5, 1950  
**Issues:** Equal protection, race discrimination

**Supreme Court Ruling**

**Decision:** Unanimous

**Read the Case Preview**

<http://supreme.justia.com/us/339/629/>

**Facts of the Case**

In 1946, Herman Marion Sweatt, a black man, applied for admission to the University of Texas Law School. State law restricted access to the university to whites, and Sweatt's application was automatically rejected because of his race. When Sweatt asked the state courts to order his admission, the university attempted to provide separate but equal facilities for black law students.

**Question**

Did the Texas admissions scheme violate the Equal Protection Clause of the Fourteenth Amendment?

**Conclusion**

In a unanimous decision, the Court held that the Equal Protection Clause required that Sweatt be admitted to the university. The Court found that the "law school for Negroes," which was to have opened in 1947, would have been grossly unequal to the University of Texas Law School. The Court argued that the separate school would be inferior in a number of areas, including faculty, course variety, library facilities, legal writing opportunities, and overall prestige. The Court also found that the mere separation from the majority of law students harmed students' abilities to compete in the legal arena.



# 13

## Public School Desegregation

*Brown v. Board of Education of Topeka, Kansas* (1954, 1955)

### Brown v. Board of Education of Topeka, Kansas

- 347 U.S. 483 (1954)
- Decided: May 17, 1954
- Vote: 9–0
- Opinion of the Court: Earl Warren

### Brown v. Board of Education of Topeka, Kansas

- 349 U.S. 294 (1955)
- Decided: May 31, 1955
- Vote: 9–0
- Opinion of the Court: Earl Warren

*Brown v. Board of Education* was the Court’s greatest twentieth-century decision, a pivotal case that separated one era from another and that permanently reshaped the debate about race and American society. Time magazine declared that, with the exception of *Scott v. Sandford*, no other decision in the Court’s history was more significant. The Dred Scott case was universally acknowledged as a “wrong” decision and often considered the worst decision in Supreme Court history, whereas *Brown* was seen, outside the South, as a great moral victory. Thurgood Marshall, who argued the case for the National Association for the Advancement of Colored People (NAACP) and was later appointed to the high court, was especially pleased. He recalled that when he heard about the result, “I was so happy I was numb.”

The decision was actually two decisions, both unanimous and both authored by Chief Justice Earl Warren. The first, issued in 1954, is known as *Brown I*. In a nontechnical, direct, and unanimous opinion, the Court ended the practice of legal racial segregation in public schools. Warren explained that even if racially segregated schools had equal facilities and teachers, they would nevertheless always be unconstitutional under the equal protection clause of the Fourteenth Amendment. That clause provides that “No State shall make or enforce any law which shall...deny to any person within its jurisdiction the equal protection of the laws.” In the 1896 case of *Plessy v. Ferguson* the Court had previously interpreted equal protection to mean that a state could divide people along racial lines as long as it provided equal facilities for them; this doctrine became known as “separate but equal.” In the context of schools, for example, the *Plessy* ruling meant that black students could be sent to one school and white students to another as long as the facilities and teachers were of equal quality. The concept was something of a sham, because all-white legislatures and school boards seldom showered equal resources on white and black schools. In 1954, however, the Court rejected the position established in *Plessy*.

A year later the justices issued a second decision, known as *Brown II*. The Court knew that ending racial segregation and setting aside the “separate but equal” doctrine would be controversial. At the time of the *Brown* decision, segregation existed throughout the United States, but the Court’s ruling would have particular significance in the South. In most of the country, segregation was de facto, meaning that it existed not by force of law but by social custom and practice. In the South, however, it was de jure, meaning that it was established by law, and that put it in conflict with the Fourteenth Amendment’s

equal protection clause. The justices in *Brown II*, therefore, called for an end to de jure segregation with “all deliberate speed.”

What we today call the *Brown* decisions were actually composed of five different cases, four from southern and border states (South Carolina, Virginia, Delaware, and Kansas) and one from the District of Columbia. In each instance, Thurgood Marshall played a critical role.

In *Briggs v. Elliott*, Harry Briggs and more than sixty other black parents sued the Clarendon County, South Carolina, schools district to demand equal facilities. In Clarendon, white children rode buses to modern schools while black children walked as far as five miles to dilapidated buildings. The political leaders of South Carolina attempted to undercut the litigation by pouring money into black schools in an effort to make them materially equal to white schools, to fulfill the *Plessy* definition of “separate but equal.” Marshall, however, insisted that the impact of segregation was felt most fully and most tragically by black children. To support his position he hired the black social psychologist Kenneth Clark, who used experiments with black and white dolls to test black children’s self-image. When asked which doll was “nice” or which they liked best, black children repeatedly chose the white doll.

Three other state cases raised similar issues but in different ways. In *Davis v. County School Board of Prince Edward County, Va.*, the plaintiffs, ninth grader Dorothy Davis and 106 other students, complained about the poor facilities of all-black Moton High School in Farmville, Virginia. In *Gebhart v. Belton*, Ethel Belton and seven other black parents in Wilmington, Delaware, angry that their children had to travel downtown to attend an all-black high school that was inferior to a nearby all-white school, sued so their children would be able to attend the closer school. Finally, in *Brown v. Board of Education of Topeka, Kansas*, Oliver Brown had tried to enroll his daughter Linda in the Sumner School, a few blocks from their home. School authorities denied his request and directed Linda to attend the all-black Monroe School. To do so, Linda had to walk a mile through a railroad switchyard to catch a school bus. After the schools turned down his request, Brown went to the NAACP, which filed suit.

The fifth case, *Bolling v. Sharpe*, which involved the District of Columbia, was argued at the same time, although separately from the four other state cases. A representative for twelve-year-old Spotswood Bolling Jr. charged that racially segregated schools in the District were woefully deficient. Although the problem was the same as in the states, the fact that Congress controlled the District meant that Bolling’s counsel could not base his case on the Fourteenth Amendment, which applied to the states. In this instance, the argument was that de jure segregation by race violated the due process clause of the Fifth Amendment, which applied to the federal government.

The power of the *Plessy* precedent was obvious when the cases were argued in the lower federal courts. In each instance, except for Delaware, the blacks seeking desegregation lost. The cases made their way to the high court separately but were consolidated by the justices in order to expedite hearing them and addressing the broad issues they raised. As *Brown* was first alphabetically, it became the case name with which we associate the litigation.

Revolutionary though they were, the two *Brown* decisions and that in *Bolling* stemmed from nearly sixty years of litigation designed by the NAACP to bring an end to what was known as Jim Crow. The term originated in the 1830s when a white performer blackened his face with charcoal and danced a jig while

singing the song “Jump Jim Crow.” By the 1850s the Jim Crow character had become a standard of American minstrel shows that depicted stereotypical images of black inferiority. The term *Jim Crow* became a racial slur synonymous with black, colored, or Negro in the vocabulary of many whites; and by the end of the century acts of racial discrimination toward blacks were often referred to as Jim Crow laws and practices.

Beginning in the 1880s, states in the American South imposed so-called Jim Crow laws that segregated the races in public accommodations, schools, and transportation. In 1896 the high court in *Plessy v. Ferguson* gave constitutional validity to these laws. By a vote of 7 to 1, the justices held that state-imposed racial segregation was constitutionally acceptable under the equal protection clause of the Fourteenth Amendment as long as the facilities and personnel were equal. The author of the majority opinion, Justice Henry Billings Brown, observed that no law could overcome the prejudice that whites held against blacks. Under these circumstances, Brown concluded, segregation by race was “reasonable.” The lone dissenter in the case, Justice John Marshall Harlan, a former Kentucky slaveholder, reached exactly the opposite conclusion. Harlan explained, “Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law.” In *Brown* the justices made Harlan’s dissent the law of the land.

By the 1930s the increasingly aggressive NAACP had developed what it hoped would be a successful strategy to force the Court to abandon *Plessy*. The organization’s legal arm, the Legal Defense and Education Fund, and students and faculty at the Howard University Law School in Washington, D.C., led the charge. The NAACP, founded in 1909, took as its mission the expansion of rights for African Americans. The association struggled, however, to develop a coordinated legal strategy. In 1922, Charles Garland, a white Boston millionaire, established the Garland Fund for the purpose of providing legal defense to African Americans. The NAACP drew on its funds to finance the legal campaign to end segregation. In 1934 the NAACP appointed Charles Hamilton Houston, dean of the Howard Law School and the first black member of the *Harvard Law Review*, its first full-time counsel. Houston brought strong administrative leadership and excellent legal judgment to the task of resolving issues of discrimination, violence, and segregation. He also transformed the Howard Law School into a laboratory for civil rights litigation and trained two generations of African American lawyers.

Among Howard’s graduates was Thurgood Marshall, who would later become the first African American appointed to the U.S. Supreme Court. Marshall graduated first in his class in 1933 and then joined Houston on the front lines of the civil rights struggle. Marshall worked full time for the NAACP, first as a counsel and then as the director of the Legal Defense and Education Fund. The purpose of the fund, which was established in 1939 and had its roots in Garland’s earlier contribution, was to “give the Southern Negro his constitutional rights.” Marshall achieved twenty-nine Supreme Court victories, including *Brown*.

Marshall and Houston realized that they could not directly confront *Plessy*. They knew that *Plessy* was a powerful precedent and that white southern parents were opposed to having their children mix with blacks in elementary and secondary schools. Instead, they strategically whittled away at the precedent by attacking segregation in professional and graduate education. Their first breakthrough came in *Missouri ex rel. Gaines v. Canada* (1938). The University of

Missouri School of Law denied Lloyd Gaines admission solely because of his race. The state offered to pay his tuition at a public law school in an adjacent state, but Gaines refused. He argued that he had a constitutional right to pursue a legal education in the state where he lived. Chief Justice Charles Evans Hughes wrote the majority opinion that invalidated Missouri's out-of-state tuition program for African American law students and required the state to provide appropriate facilities. After winning his victory, however, Gaines disappeared. Rumors circulated that he had been a victim of the Ku Klux Klan or other vigilantes opposed to racial equality, but no one has ever discovered his fate.

The litigation campaign reached another milestone in 1948 with *Shelley v. Kraemer*. In this case, for the first time, the attorney general of the United States submitted an amicus curiae (friend of the court ) brief.. The action not only signaled the positive support of the federal government for the NAACP's strategy, but also placed the government on the winning side. The justices held that restrictive covenants, agreements placed in real estate contracts to block the sale of property to a black person, were unenforceable.

Two years later the Legal Defense and Education Fund scored another victory when the Court, ruling in *McLaurin v. Oklahoma State Board of Regents* and *Sweatt v. Painter*, invalidated segregation first in graduate and then in legal education. Jim Crow, the justices held, could not be supported merely by claiming that facilities were equal; instead, the Court indicated that there were other intangible consequences to segregation by race. Among these was the isolation that blacks suffered from being unable to interact with white classmates.

Racial exclusion in other areas was also unraveling. For example, in *Smith v. Allwright* (1944) the Court began to strike down state laws that made it difficult if not impossible for blacks to vote in the southern states. With this string of successes, in the early 1950s the NAACP decided to move directly against segregation in elementary and secondary schools.

Chief Justice Fred Vinson, a Kentuckian and the author of the Court's opinions in *Sweatt* and *McLaurin*, was reluctant to hear the five cases that led to the *Brown* decision. So, too, were other members of the Court. They recognized how fully issues of race had become insinuated into American life. Any action by the Court would provoke a backlash from a southern white population secure in the precedent established by *Plessy*. The justices also understood that de facto desegregation had become a common feature of life in the North, but their attention was drawn most fully to the separation of race that was created in the South by law. That concern, and not the fate of blacks in segregated schools of the North, drew their almost exclusive attention. They recognized that any decision on segregation would affect millions of schoolchildren, their parents, and dozens of states where it was formal state policy.

Despite these concerns, the justices heard the *Brown* cases and the *Bolling* case in 1952. The result was a sharp division. Most of the justices accepted that legal segregation was wrong, but they disagreed sharply over the questions of how and how quickly to provide relief. The 1952 term ended with no decision.

Then fate intervened. Chief Justice Vinson, who was deeply worried about the impact that eliminating segregation would have on his native South, died. His replacement was Earl Warren, former attorney general and governor of California and aspirant for the Republican Presidential nomination in 1952. That nomination went instead to Dwight D. Eisenhower, who gained the Californian's support at the Republic National Convention by promising him the first

vacancy on the high bench. In retrospect, Eisenhower considered his selection of Warren to be his biggest political mistake. The new chief justice quickly moved to redefine much of the nation's fundamental law, usually in ways with which President Eisenhower disagreed. Warren's opinion in *Brown* was merely the first of what proved to be flood of landmark rulings.

Warren knew above all else that the Court had to speak with a unanimous voice on such a controversial matter as segregation. He persuaded his fellow justices that the best course of action was to order the cases to be reargued. The Court also asked the solicitor general of the United States to file an amicus curiae brief. (The solicitor is the government lawyer who argues its positions before the justices.) The new Eisenhower administration was reluctant to do so, in part because the issue was so divisive, in part because Eisenhower believed that the states should be left to handle racial issues, and in part because the President wanted to keep the support of the four southern states he had won. The Republicans also had captured the House and Senate, and they were reluctant to hurt their chances of building additional strength in the South. However, the administration reluctantly filed in support of desegregation, fearing that if Eisenhower failed to do so he would run the risk of alienating northern moderates in his party.

While the government was putting together its brief in the summer of 1953, Marshall and the NAACP organized an extensive research effort that drew on the work of historians and social scientists to establish the intent of the framers of the Fourteenth Amendment. The post-Civil War Congress had passed the amendment as one of several ways of making the states more responsible to the national government on matters of civil rights. The amendment was composed of five sections, of which the first and the fifth were the most important. The first provided, among other things, that

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.

This powerful language meant that certain forms of state action, such as establishing access to schools, hotels, and trains based on race, might well be subject to scrutiny in the federal courts. The Supreme Court had examined these actions in *Plessy*, but it had found that separate but equal facilities were in fact constitutional.

The fifth section of the amendment provided that "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." These words wrote a revolution in the relationship between the states and the federal government, but how broad a revolution was open to speculation. Did the framers of that amendment contemplate that it would encompass desegregation of public facilities in general and schools in particular? The NAACP's research proved inconclusive on the specific question of their intent, but it did affirm that the framers were pointing toward a broad, egalitarian future, a finding at odds with *Plessy*.

The reargument of *Brown* and *Bolling* occurred in December of 1953. Marshall contended that, contrary to *Plessy*, racial segregation was an unreasonable action because it was based on an arbitrary and capricious use of race and color. Marshall, drawing on the precedents he had fashioned over the previous two

decades, reminded the justices that they had already found racial distinctions in violation of the equal protection clause in cases involving higher education. The same principle, he insisted, should be extended to public education and all public facilities. In an appendix to his brief Marshall also invoked Kenneth Clark's research using black and white dolls to show that segregation had negatively affected black children. Not only did black children suffer from low self-esteem, but they were unable to live, work, and cooperate with the children of the majority population.

On the other side was John W. Davis, a legal powerhouse. He had argued more than 250 cases before the Supreme Court, more than any other lawyer in the twentieth century. At the time of *Brown*, Davis was a corporate lawyer with a lucrative practice in New York City. During an unsuccessful campaign for President, Davis had denounced the Ku Klux Klan. However, many considered Davis to be a "gentleman racist," a passionate conservative who dismissed federal woman suffrage and antilynching bills as egalitarian meddling in the rights of states to regulate their own social policies.

Davis's argument was a straightforward mix of established law and pragmatism. *Plessy* remained binding precedent, he argued, which the justices would set aside at their own peril. Moreover, Kansas had a history of segregation and it had produced little criticism from either blacks or whites. That state's legislature, not the courts, should be the deciding body on such a matter because it knew best what the local conditions were. Laws, *Davis* reminded the Court in words that echoed Henry Billings Brown's opinion in *Plessy*, never had and never could destroy prejudice. When facilities were materially equal or when the states were working hard to make them equal, there could be no violation of the equal protection clause. Davis also reminded the justices that, historically, social and political equality had been treated as entirely different matters under the Fourteenth Amendment, the purpose of which was merely to provide for the latter. Finally, Davis argued, segregation was fading and would soon be gone. Patience would be a virtue for the Court and the nation, since overturning *Plessy* would only produce social turmoil. The law of *Plessy* was clear: the principle of "separate but equal" was constitutional.

Warren had inherited a Court divided. The split among the justices reflected their differing beliefs about the social costs that would accompany the desegregation of thousands of schools with millions of students. Some justices believed that the Court should not intervene in matters that were best left to the states to handle as they saw fit. A majority agreed, however, that legally based segregation by race was socially and constitutionally wrong and that the Court had to do something to set the record right.

Warren's leadership was critical in two ways. First, he persuaded his colleagues to decide the merits of segregation in one opinion and to leave the question of relief to a second one following yet another reargument. Second, Warren used every persuasive power he could command to achieve unanimity. His two greatest challenges were Robert H. Jackson, who threatened to issue a concurring opinion, and Stanley F. Reed, a Kentuckian who planned to dissent. Jackson's law clerk, the future Supreme Court justice William H. Rehnquist, provided a memorandum that urged Jackson to accept the constitutionality of *Plessy*, a position that he ultimately resisted. Reed, fearing that his dissent would become fuel for racists and segregationists and with Warren's urging, decided to join the rest of the Court.

There is little doubt about Warren's sentiments. Although he had supported the relocation and internment of Japanese Americans during World War II, he understood clearly the social and human costs associated with segregation. For example, shortly before the Supreme Court announced its decision, Warren decided to visit a few of the Civil War battlefields in Virginia. He cut his trip short after his black chauffeur was unable to find lodging in the racially segregated region. Greatly upset by the incident, Warren viewed this experience as evidence of the need to overturn segregation.

Warren devised a strategy designed to foster harmony among the justices, convening three separate conferences to discuss the case. In the first conference he presented the issue in a moral perspective. The underlying proposition in *Plessy* was that blacks were in fact inferior to whites. Warren reminded his colleagues that to uphold *Plessy*, the Court would have to agree with such a presumption. At the second conference, Warren appeased his southern colleagues by assuring them that a decision in favor of desegregation would be flexible on the matter of a remedy, which would be addressed in a separate opinion. Warren announced as well that he would take on the task of preparing the opinion of the Court. At the third conference, he presented the broad outline of his opinion.

*Brown I* held unanimously that segregation in public schools was unconstitutional under the equal protection clause of the Fourteenth Amendment. The chief justice used a short, nontechnical, and nonaccusatory opinion to make this basic point. "We come then to the question presented," Warren wrote. "Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does," he concluded in words that no one could ignore. Segregation, regardless of circumstances, had deprived minority children of equal educational opportunities and probably generated feelings of inferiority among them. While *Plessy* may have been good law at one time, it was no longer supported by what Warren called "modern authority" and current psychological knowledge. In public education, separate facilities were inherently unequal even if materially the same.

Warren's opinion was unusual in that it drew upon few legal authorities and offered no immediate remedy. Instead, Warren stated what he and his colleagues believed to be the right, correct, and just thing to be done—children should not be categorized by race when it came to attending a public school. Warren avoided the use of extensive legal citations because doing so offered the best way of getting his somewhat divided colleagues to reach a decision in favor of desegregation. As important, legal precedent did not weigh fully on Warren's side and, as a result, he knew that invoking it would only confuse those who would read his opinion. The absence of legal authority, however, left the Chief Justice and the Court open to charges that they were substituting their own views for those of the elected representatives from the states where legal segregation by race was to end. Warren also avoided entangling the broad principle that he stated with a specific course of action, which meant that the elimination of racial segregation in public schools could be addressed fully as a moral matter rather than be framed as a specific set of difficult steps to bring about its end. The Court, therefore, requested that the parties provide further argument about how to remedy segregation, which would be addressed in a later opinion.

In a separate opinion in the *Bolling* case, Warren found for a unanimous court that segregation by race in the District of Columbia was unconstitutional.

As the equal protection clause of the Fourteenth Amendment did not apply to the federal government, Warren turned instead to the due process clause of the Fifth Amendment. He concluded that it implicitly forbade most racial segregation by the federal government. If the states were constitutionally prohibited from segregating in public schools, then it would be “unthinkable...to impose a lesser duty” in the District of Columbia. Because the Fifth Amendment did apply to the federal government, which governed the District, then it followed that the amendment’s due process clause forbade racial discrimination.

Warren also wrote for the Court in *Brown II*. The chief justice reiterated that racial discrimination and segregation in the public schools were unconstitutional and that state school authorities had the primary burden of enforcing this principle. He made the federal district courts in the affected states responsible for legal oversight of the school authorities. The defendants, under the supervision of district court judges, were required to admit children of color to the public schools on a nondiscriminatory basis “with all deliberate speed.” These words were meant to assure both sides that action would be taken but not in a hasty way. As it turned out, the impact of the decision was more deliberate than speedy.

The two *Brown* opinions and that in *Bolling* mixed moral symbolism with pragmatic expediency. The Court proclaimed an end to legal segregation based on race but then stopped short of demanding an immediate solution. No matter the immorality of segregation, it could only be eliminated gradually. The result was almost two decades of waffling and tardy implementation. Nevertheless, the *Brown* decision continued the venture of seeking democratic equality through the judicial system. Although Marshall and his colleagues were elated at first, they quickly realized that *Brown* was just the beginning.

Many southern officials labeled the day of the announcement of the *Brown I* decision as Black Monday, and most southern members of Congress signed a Southern manifesto, which denounced the decision and the justices. In 1957, Governor Orval Faubus of Arkansas ordered the state’s National Guard to physically prevent black students from attending Central High School in Little Rock. In response to a federal court order, Faubus removed the National Guard, and violence followed. A mob outside the school beat several black reporters, who were there to cover the event. Mothers yelled to their children, “Come out! Don’t stay with those niggers!” Inside the school, white students spat on the black students, who were forced to escape through a rear door. The editor of the *Arkansas Gazette* summed up the situation this way, “The police have been routed, the mob is in the streets and we’re close to a reign of terror.” President Eisenhower took control of the situation by placing the guard under his control and ordering U.S. Army troops to restore order and escort black students to their classes.

Following the events at Central High School, the Little Rock School District suspended desegregation efforts for two and a half years. The NAACP challenged this decision, and in the 1958 case of *Cooper v. Aaron*, the Court handed down an angry 9–0 opinion criticizing local officials’ resistance to *Brown*. Following the lead of Governor Faubus, the Arkansas legislature amended the state’s constitution to outlaw desegregation. William G. Cooper, President of the Little Rock School District, sued to have the desegregation program ended, claiming that the opposition of state government and public hostility created an intolerable situation. In effect, Arkansas and the Little Rock School District



were thumbing their noses at the Supreme Court and its decision in *Brown*. In an unusual action, all nine justices signed the Court's opinion, underscoring not just their unanimity but their decisiveness on the issue of a state attempting to subvert one of their decisions. "No state legislator or executive or judicial officer," the Court explained, "can war against the Constitution without violating his undertaking to support it." The justices were emphatic: they alone could interpret conclusively the meaning of the Constitution and no state authority had any power to intervene.

Issues of white flight from southern cities to the suburbs and de facto residential segregation in northern school districts further complicated the implementation of *Brown*. After resisting further direct involvement with the issue, the justices in 1970 accepted a new and controversial solution: bussing of children from one part of town to another to achieve integration, the active pursuit of racial diversity in the schools, not merely desegregation, and the ending of legally enforced racial separation. In the landmark case of *Swann v. Charlotte-Mecklenburg Board of Education* (1971) the Court permitted lower federal court judges to impose busing to achieve desegregation of school districts.

In the mid-1990s, however, after several rulings from a more conservative Supreme Court, federal judges abandoned the issue of integration. They asserted that local officials had made a good faith effort to desegregate and that was all that could be required.

The impact of *Brown* extended beyond school desegregation. Shortly after the decision, federal courts at all levels were citing *Brown* in cases challenging different forms of segregation. These included segregated beaches in Baltimore, golf courses in Atlanta, and public housing in Michigan and Missouri. In this way, *Brown* helped to break down the system that had made blacks the nation's official pariahs. For example, by the early 1980s, at least according to public opinion surveys, the color line was close to disappearing completely. Ninety-four percent of Americans, both black and white, subscribed to the principle that black and white children should go to the same schools.

Today, save for extraordinarily few holdouts, racism and the color line that went with it are deemed unacceptable, and racial diversity is viewed as a public good. That said, there is still substantial disagreement about how to achieve diversity and how to use the state's power to allot some of society's most important rewards and benefits, such as access to a college education. We live, today, in a nation where African Americans make up more than 50 percent of the prison population, even though they make up just 12 percent of the general population. Black males between ages eighteen and twenty-four are almost ten times more likely than white males of the same age to be the victims of homicide. Black children are far more likely than white children to live in poverty; their parents are far more likely to be unemployed or to earn low incomes.

We are also in the middle of a national trend toward school resegregation. That process has pushed more and more African American and Latino students into those schools with 75 percent or more minority children. Gary Orfield, co-director of Harvard University's Civil Rights Project, released a major research report in 2001 that documented the emergence of a substantial group of American schools that are virtually nonwhite. Many school systems outside the South are more racially segregated today than they were in 1954. And in the South the picture is mixed. Take, for example, Clarendon County, South Carolina, where one of the *Brown* desegregation cases began. The public schools there are 98

percent black; the private schools established following court orders that compelled integration are 98 percent white.

Both the U.S. military and major corporations have concluded that having well-educated minority students is essential to providing leaders for the nation's increasingly diverse population. By the beginning of the twenty-first century, persons from minority backgrounds occupied posts of major national trust, including the secretary of state, national security advisor to the President, secretary of education, chairman of the joint chiefs of staff, and attorney general. Since 1968 there has been an African American on the high court.

These developments were, in 1954, beyond comprehension, and they signal a profound change in American life. Did *Brown* make these developments possible? The answer is clearly yes, although it does not follow that *Brown* alone made them possible.

During the period in which the high court considered *Brown*, the members of the Court viewed the changes taking place among blacks as astounding. Justice Robert Jackson noted privately that the advances made by blacks since the Civil War were among the most impressive in human history. Justice Felix Frankfurter agreed, and he even made the point to his colleagues as they deliberated *Brown* that, in the end, it was these changes that should prompt the Court to support desegregation.

Finally, *Brown* stirred a massive backlash, one that is hard for Americans who did not live through the decades of the 1950s and 1960s to appreciate. The decision, for example, inspired action from the South's white supremacists. It profoundly radicalized southern politics and made such figures as arch-segregationist governor George C. Wallace of Alabama temporarily legitimate. In his 1963 inauguration speech Wallace intoned the words, "segregation today. . . segregation tomorrow. . . segregation forever." Such words stirred violence against peaceful civil rights demonstrators, but they also mobilized national political support for civil rights and voting rights legislation that struck at the heart of segregation.

In 2004, the fiftieth anniversary of the Court's decision in *Brown*, critics were out in force, arguing that the justices' landmark ruling had accomplished little. It would be a mistake, they insisted, to attribute too much to the work of the Court. Yet the appropriate measure of the Court's success is not what it should have done measured against today's standards but instead what it did during the 1950s and 1960s. In that context, the decision was one of the great milestones in the course of human rights and freedom, a conclusion the rest of the world seems to recognize. In international human rights law, *Brown* is one of the most, if not *the* most, respected of American cases.

## The Southern Declaration on Integration



*Justice Earl Warren's opinions in Brown I and Brown II ignited a storm of protest in the South. An entire generation of segregationists, such as George C. Wallace of Alabama, built their careers by claiming that the decision was unconstitutional. Wallace and other southern political leaders understood what the broader white population wanted: resistance to the Court and, more generally, to federal authorities demanding that they yield their historic race-based social practices. The "Southern Declaration on Integration" was the first step in a program of resistance to Brown that stretched over more than two decades. This document was signed by ninety-six southern congressmen—practically the entire southern delegation in the House of Representatives—and published in the Congressional Record.*



We regard the decision of the Supreme Court in the school cases as clear abuse of judicial power. It climaxes a trend in the Federal judiciary undertaking to legislate, in derogation of the authority of Congress, and to encroach upon the reserved rights of the states and the people.

The original Constitution does not mention education. Neither does the Fourteenth Amendment nor any other amendment. The debates preceding the submission of the Fourteenth Amendment clearly show that there was no intent that it should affect the systems of education maintained by the states.

The very Congress which proposed the amendment subsequently provided for segregated schools in the District of Columbia.

When the amendment was adopted in 1868, there were thirty-seven states of the Union. Every one of the twenty-six states that had any substantial racial differences among its people either approved the operation of segregated schools already in existence or subsequently established such schools by action of the same law-making body which considered the Fourteenth Amendment.

As admitted by the Supreme Court in the public school case (*Brown v. Board of Education*), the doctrine of separate but equal schools "apparently originated in *Roberts v. City of Boston* (1849), upholding school segregation against attack as being violative of a state constitutional guarantee of equality." This constitutional it was followed not only in Massachusetts but in Connecticut, New York, Illinois, Indiana, Michigan, Minnesota, New Jersey, Ohio, Pennsylvania and other northern states until they, exercising their rights as states through the constitutional

processes of local self-government, changed their school systems.

In the case of *Plessy v. Ferguson* in 1896 the Supreme Court expressly declared that under the Fourteenth Amendment no person was denied any of his rights if the states provided separate but equal public facilities. This decision has been followed in many other cases....

This interpretation, restated time and again, became a part of the life of the people of many of the states and confirmed their habits, customs, traditions, and way of life. It is founded on elemental humanity and common sense, for parents should not be deprived by Government of the right to direct the lives and education of their own children.

Though there has been no constitutional amendment or act of Congress changing this established legal principle almost a century old, the Supreme Court of the United States, with no legal basis for such action, undertook to exercise their naked judicial power and substituted their personal political and social ideas for the established law of the land.

This unwarranted exercise of power by the court, contrary to the Constitution, is creating chaos and confusion in the states principally affected. It is destroying the amicable relations between the white and Negro races that have been created through ninety years of patient effort by the good people of both races. It has planted hatred and suspicion where there has been heretofore friendship and understanding.

Without regard to the consent of the governed, outside agitators are threatening immediate and revolutionary changes in our public school systems. If done, this is certain to destroy the system of public

education in some of the states.

With the gravest concern for the explosive and dangerous condition created by this decision and inflamed by outside meddlers:

We reaffirm our reliance on the Constitution as the fundamental law of the land.

We decry the Supreme Court's encroachments on rights reserved to the states and to the people, contrary to established law and to the Constitution.

We commend the motives of those states which have declared the intention to resist forced integration by any lawful means.

We appeal to the states and people who are not directly affected by these decisions to consider the constitutional principles involved against the time when they too, on issues vital to them, may be the victims of judicial encroachment.

Even though we constitute a minority in the present Congress, we have full faith that a majority of the American people believe in the dual system of government which has enabled us to achieve our greatness and will in time demand that the reserved rights of the states and of the people be made secure against judicial usurpation.

We pledge ourselves to use all lawful means to bring about a reversal of this decision which is contrary to the Constitution and to prevent the use of force in its implementation.

In this trying period, as we all seek to right this wrong, we appeal to our people not to be provoked by the agitators and troublemakers invading our states and to scrupulously refrain from disorder and lawless acts.

# Fourteenth Amendment

—♦—♦—♦—  
(1868)

## EQUAL PROTECTION OF THE LAW

As Congress contended with President Andrew Johnson over the post-Civil War Reconstruction of the South, it created a Joint Committee on Reconstruction to consider legislation that would protect the “freedmen,” as newly freed African Americans were called. Members of the joint committee considered various options, among them stripping political rights from former Confederate leaders and giving southern blacks the right to vote. They felt they needed to act promptly as the abolition of slavery had voided the Constitution’s “three-fifths compromise” and would increase the South’s representation in the House and its weight in the Electoral College. Some northerners feared that the South would rally to elect Robert E. Lee as President.

The joint committee considered a constitutional amendment that would have excluded anyone denied the right to vote because of race from being counted for purposes of congressional representation. But they soon realized that states could get around this formula by instituting literacy tests, poll taxes, and other discriminatory devices that could be presented as “race neutral.” Representative John A. Bingham, a member of the joint committee, then drafted another proposal to extend the “equal protection of life, liberty, and property” to all citizens. This was the seed of the Fourteenth Amendment, which was expanded, debated, and revised until passed by the House and Senate.

Woman suffrage advocates were upset with the Fourteenth Amendment’s reference to “male inhabitants,” marking the first time that the distinction “male” appeared in the Constitution. They believed that gender equality was being sacrificed for racial equality. But, others perceived that the amendment had broader implications than its obvious intention of protecting the freedmen. They believed that the amendment’s equal protection clause would apply to women as well as to men, to Indians, and to immigrants. They also believed that the amendment would at last apply the guarantees of the Bill of Rights to the states as well as to the federal government. They left the ultimate interpretation to the federal courts, however, and it would take another century before the courts embraced such an expansive view of the Fourteenth Amendment.

## WHAT IT SAYS

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.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

## WHAT IT MEANS

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Although it was created primarily to deal with the civil rights issues that followed the abolition of slavery, the Fourteenth Amendment has affected a broad range of American life, from business regulation to civil liberties to the rights of criminal defendants. Over time, the Supreme Court has interpreted the amendment to apply most of the guarantees of the Bill of Rights to the states as well as the federal government. The amendment contained three new limitations on state power: states shall not violate citizen's privileges or immunities or deprive anyone of life, liberty, or property without due process of law, and must guarantee all persons equal protections by the law. These limitations on state power dramatically expanded the reach of the U.S. Constitution.

Fulfilling its original purpose, the Fourteenth Amendment made it clear that everyone born in the United States, including a former slave, was a citizen. This voided the Supreme Court's ruling in *Dred Scott v. Sandford* (1857), which had asserted that African Americans were not citizens, and therefore were not entitled to constitutional rights. Yet, for a century after the ratification of the Fourteenth Amendment, the Supreme Court believed that racial segregation did not violate the "equal protection of the laws" provision in the amendment as long as equal facilities were provided for all races. This attitude changed dramatically in 1954 when the justices concluded that the intent of the Fourteenth Amendment made racially segregated schools unconstitutional. The Court has gradually adopted a much broader interpretation of the amendment that extends greater protection to women, minorities, and noncitizens.

The Fourteenth Amendment also specified that all adults must be counted for purposes of apportioning the House of Representatives, thereby voiding the "three-fifths" clause of the original Constitution. Ironically, this provision increased the number of representatives for the former Confederate states when they reentered the Union. By the twentieth century, this provision also justified the Supreme Court's insistence that state legislative bodies and the U.S. House of Representatives be apportioned equally. The amendment also addressed concerns about the number of Confederates seeking to serve in Congress after the Civil War. Former Confederate federal and state officials and military personnel were required to take an oath of loyalty to the United States. The former Confederate states were also prohibited from repaying the Confederate debts or compensating former slave owners for the property they lost with the abolition of slavery.

Finally, the last section of the amendment gave Congress the power to enforce all the provisions within the whole amendment. Under this provision, Congress passed the Civil Rights Act of 1964, the Voting Rights Act of 1965, sections of other civil rights legislation that protect women's rights, and the Americans with Disabilities Act, affording equal treatment for disabled people.

Over time, the Supreme Court has interpreted the Fourteenth Amendment's due process clause to incorporate (or apply) many of the guarantees of the Bill of Rights to the states, as well as to the federal government. The concept of incorporation has dealt mostly with such "fundamental" rights as freedom of speech, press, religion, assembly, and petition. Because the Court has not held the states subject to some of the other provisions of the Bill of Rights, such as the right to bear arms or the right to a trial by jury in civil cases, its approach has been called "partial incorporation."



*Due process has not been reduced to any formula; its content cannot be determined by reference to any code. The best that can be said is that through the course of this Court's decisions it has represented the balance which our Nation built upon postulates of respect for the liberty of the individual, has struck between that liberty and the demands of organized society."*

—Justice John Marshall Harlan, dissenting opinion, *Poe v. Ullman* (1961)



# Fourteenth Amendment

## The Bill of Rights applies only to the federal government

→ 1833

Although one of James Madison's original amendments would have applied the Bill of Rights to the states, the Senate rejected it on the grounds that the states protect rights in their own constitutions. In the case of *Barron v. Baltimore* (1833), the Supreme Court reiterates this by arguing that the Fifth Amendment and other portions of the Bill of Rights apply only to the federal government.

## State regulation of business does not violate the Fourteenth Amendment

→ 1873

A group of butchers in New Orleans sue when the state gives monopoly rights to a single slaughterhouse. In a 5-to-4 decision, the justices rule in the Slaughterhouse Cases that the due process and equal protection provisions of the amendment do not limit state powers to regulate business. The dissenters on the Court argue for a broader interpretation of the Fourteenth Amendment as a safeguard against state violations of personal rights and due process.

## The interpretation of the Fourteenth Amendment is broadened

→ 1882

Concerned about increasing state regulation, corporations seek to overturn the Supreme Court's decision in the Slaughterhouse Cases. Former U.S. senator Roscoe Conkling, who had been one of the authors of the Fourteenth Amendment, argues in *San Mateo County v. Southern Pacific Railroad Company* that the Amendment's phrase "any person" also applies to a corporation. Therefore, the county's efforts at regulation violate the railroad's right to "substantive due process." The Court accepts this line of reasoning, frustrating state and federal governments' efforts to regulate business practices for the next half century.

## Equal protection guarantees one person, one vote

→ 1962

In many state legislatures, rural districts have far fewer voters than densely packed urban districts, yet each district has the same number of representatives. In *Baker v. Carr*, the U.S. Supreme Court orders federal courts to consider suits that challenge the apportionment of state legislatures, arguing that legislative bodies that are not apportioned equally violate the equal protection clause of the Fourteenth Amendment. All legislative bodies (except the U.S. Senate) are held to a standard of one person, one vote, so that all districts in a legislative body must represent roughly the same number of constituents.

## The Supreme Court broadens the incorporation doctrine

→ 1963

When a man in Florida is convicted after being denied an attorney—because he cannot afford to hire one—he petitions the Supreme Court. The case *Gideon v. Wainwright* (1963) results in a ruling in which the Court asserts that the Fourteenth Amendment embraces the fundamental principles of liberty and justice that lie at the base of all our civil and political institutions. Writing for the majority, Justice Hugo Black reasons that the due process provisions of the Fourteenth Amendment mean that the states are not immune from the Bill of Rights.

## The Fourteenth Amendment protects a right to privacy

→ 1964

In striking down a Connecticut law that prohibits the sale of contraceptives, the U.S. Supreme Court, in *Griswold v. Connecticut*, cites the Fourteenth Amendment as one of the amendments supporting its decision that the Constitution gives Americans a right to privacy.



# TIMELINE

## Jim Crow laws are accepted as constitutional

1896

In response to efforts in the southern states to segregate people by race—“Jim Crow” laws and practices—Congress passes the Civil Rights Act of 1875, which guarantees equal rights to all citizens in all public places. When African Americans are denied equal accommodations they sue, but in 1883 the Supreme Court rules that the Fourteenth Amendment deals with discrimination by the states, not by individuals. Then in *Plessy v. Ferguson*, the Court upholds a Louisiana law that segregates railroad cars, reasoning that if the law provides equal accommodations it does not violate the Fourteenth Amendment.

## The Supreme Court upholds minimum wage laws

1937

For decades, the Supreme Court strikes down reforms designed to aid women and children workers on the grounds that these laws impair the freedom of contract under the Fourteenth Amendment. After California enacts a minimum wage for women workers, Elsie Parrish sues a hotel company for paying her less than this minimum wage. The Supreme Court upholds the state law by noting that the Constitution does not mention the freedom of contract, that all liberties are subject to due process, and that employers and employees are not equally free when it comes to negotiating work agreements.

## School segregation is found unconstitutional

1954

Since *Plessy v. Ferguson*, the courts have accepted racial segregation as long as all races are treated equally. In many states, schools for whites and African Americans are separate but far from equal in funding and equipment. In *Brown v. Board of Education of Topeka, Kansas*, the Supreme Court concludes that school segregation denies students the equal protection of the laws. The Court orders schools to integrate “with all deliberate speed.”

## English literacy tests cannot ban otherwise qualified voters

1966

As citizens of the United States, Puerto Ricans who moved to New York State seek to vote, but the state requires them to pass an English-language literacy test. Some file suit on the grounds that this law violates the Voting Rights Act of 1965. In *Katzenbach v. Morgan* the Supreme Court cites the Fourteenth Amendment’s equal protection clause in upholding the Voting Rights Act, and stipulates that those who have achieved at least a sixth-grade education in Puerto Rico cannot be denied the right to vote.

## U.S. citizens have a right to challenge being held as an enemy combatant

2004

The U.S. government believes that Yaser Esam Hamdi, an American citizen, has taken up arms to support the Taliban, the radical regime in Afghanistan. After U.S. forces overthrow the Taliban, Hamdi is seized and detained in Guantanamo Bay, and later transferred to a prison in Charleston, South Carolina. By calling Hamdi an enemy combatant, the Defense Department asserts that it can hold him indefinitely without trial. In *Hamdi v. Rumsfeld*, the U.S. Supreme Court disagrees, finding that due process demands that any U.S. citizen held in the United States be given a meaningful opportunity to contest the basis for that detention.

## Execution of juveniles is ruled unconstitutional

2005

In a 5-to-4 decision in the case of *Roper v. Simmons*, the U.S. Supreme Court rules that executing juveniles who were under eighteen at the time they committed a capital crime is a violation of the Eighth and Fourteenth Amendments to the Constitution. The majority cites “evolving” social attitudes in the United States, where thirty states have banned the execution of juveniles, and around the world, where all but five other nations have also prohibited it.



**Sections on values, principles and the responsibilities of citizens from the National Civics and Government Standards**

**– Check Lists –**

**Values, Principles, and Responsibilities Essential for a Constitutional Democracy**

(Excerpts from The National Civics and Government Standards, Grade 9-12)

<http://www.civiced.org/index.php?page=stds>

**II. WHAT ARE THE FOUNDATIONS OF THE AMERICAN POLITICAL SYSTEM?**

**D. What values and principles are basic to American constitutional democracy?**

The values and principles of American constitutional democracy are sometimes in conflict, and their very meaning and application are often disputed. For example, although most Americans agree that the idea of equality is an important value, they may disagree about what priority it should be given in comparison with other values such as liberty. And they may disagree on the meaning of equality when it is applied to a specific situation. To participate constructively in public debate concerning fundamental values and principles, citizens need to understand them sufficiently.

Disparities have always existed between the realities of daily life and the ideals of American constitutional democracy. The history of the United States, however, has been marked by continuing attempts to narrow the gap between these ideals and reality. For these reasons, Americans have united in political movements to abolish slavery, extend the franchise, remove legal support for segregation, and provide equality of opportunity for each individual. Citizens must be aware of historical and contemporary efforts in which Americans have joined forces to achieve this end.

Citizens, therefore, need to understand that American society is perpetually "unfinished" and that each generation must address ways to narrow the disparity between ideals and reality.

Values and principles fundamental to American civic life	Values and principles fundamental to American constitutional democracy
<ul style="list-style-type: none"> <li><input type="checkbox"/> individual rights, i.e., life, liberty, property, and the pursuit of happiness</li> <li><input type="checkbox"/> the public or common good</li> <li><input type="checkbox"/> self government</li> <li><input type="checkbox"/> justice</li> <li><input type="checkbox"/> equality</li> <li><input type="checkbox"/> diversity</li> <li><input type="checkbox"/> openness and free inquiry</li> <li><input type="checkbox"/> truth</li> <li><input type="checkbox"/> patriotism</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> popular sovereignty--the concept that ultimate political authority rests with the people who create and can alter or abolish governments</li> <li><input type="checkbox"/> constitutional government</li> <li><input type="checkbox"/> rule of law</li> <li><input type="checkbox"/> representative institutions</li> <li><input type="checkbox"/> separated and shared powers</li> <li><input type="checkbox"/> checks and balances</li> <li><input type="checkbox"/> individual rights</li> <li><input type="checkbox"/> separation of church and state</li> <li><input type="checkbox"/> federalism</li> <li><input type="checkbox"/> civilian control of the military</li> </ul>

## Values, Principles, and Responsibilities Essential for a Constitutional Democracy

(Excerpts from The National Civics and Government Standards, Grade 9-12)

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### V. WHAT ARE THE ROLES OF THE CITIZEN IN AMERICAN DEMOCRACY?

#### C. What are the responsibilities of citizens?

The purposes of American constitutional democracy are furthered by citizens who continuously reexamine the basic principles of the Constitution and monitor the performance of political leaders and government agencies to insure their fidelity to constitutional values and principles. In addition, they must examine their own behavior and fidelity to these values and principles.

Citizens also need to examine situations in which their responsibilities may require that their personal desires or interests be subordinated to the common good. To make these judgments requires an understanding of the difference between personal and civic responsibilities as well as the mutual reinforcement of these responsibilities.

#### Personal Responsibilities

- taking care of one's self
- supporting one's family and caring for, nurturing, and educating one's children
- accepting responsibility for the consequences of one's actions
- adhering to moral principles
- considering the rights and interests of others
- behaving in a civil manner

#### Civic Responsibilities

- obeying the law
- being informed and attentive to public issues
- monitoring the adherence of political leaders and governmental agencies to constitutional principles and taking appropriate action if that adherence is lacking
- assuming leadership when appropriate
- paying taxes
- registering to vote and voting
- serving as a juror
- serving in the armed forces
- performing public service

– Check Lists –

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**V. WHAT ARE THE ROLES OF THE CITIZEN IN AMERICAN DEMOCRACY?**

**D. What civic dispositions or traits of private and public character are important to the preservation and improvement of American constitutional democracy?**

American constitutional democracy requires the responsible self-governance of each individual; one cannot exist without the other. Traits of private character such as moral responsibility, self-discipline, and respect for individual worth and human dignity are essential to its well-being.

American constitutional democracy cannot accomplish its purposes, however, unless its citizens are inclined to participate thoughtfully in public affairs. Traits of public character such as public spiritedness, civility, respect for law, critical mindedness, and a willingness to negotiate and compromise are indispensable for its vitality.

These traits of private and public character also contribute to the political efficacy of the individual, the healthy functioning of the political system, and the individual's sense of dignity and worth.

**Civic Dispositions**

- civility**--treating other persons respectfully, regardless of whether or not one agrees with their viewpoints; being willing to listen to other points of view; avoiding hostile, abusive, emotional, and illogical argument
- respect for the rights of other individuals**--having respect for others' right to an equal voice in government, to be equal in the eyes of the law, to hold and advocate diverse ideas, and to join in associations to advance their views
- respect for law**--willingness to abide by laws, even though one may not be in complete agreement with every law; willingness to work through peaceful, legal means to change laws which one thinks to be unwise or unjust
- honesty**--willingness to seek and express the truth
- open mindedness**--considering others' points of view
- critical mindedness**--having the inclination to question the validity of various positions, including one's own
- negotiation and compromise**--making an effort to come to agreement with those with whom one may differ, when it is reasonable and morally justifiable to do so
- persistence**--being willing to attempt again and again to accomplish worthwhile goals
- civic mindedness**--paying attention to and having concern for public affairs
- compassion**--having concern for the well-being of others, especially for the less fortunate
- patriotism**--being loyal to the values and principles underlying American constitutional democracy, as distinguished from jingoism and chauvinism
- courage**--the strength to stand up for one's convictions, when conscience demands
- tolerance of ambiguity**--the ability to accept uncertainties that arise, e.g., from insufficient knowledge or understanding of complex issues or from tension among fundamental values and principles

## Rule of Law

In a limited government administered according to the rule of law, the rulers use power following established principles and procedures based on a constitution. By contrast, when the rulers wield power capriciously, there is rule by the unbridled will of individuals without regard for established law. The rule of law is an essential characteristic of every constitutional democracy that guarantees rights to liberty. It prevails in the government, civil society, and market economy of every state with a functional constitution.

The rule of law exists when a state’s constitution functions as the supreme law of the land, when the statutes enacted and enforced by the government invariably conform to the constitution. For example, the second clause of Article 6 of the U.S. Constitution says,

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding.

The third clause of Article 6 says, “The Senators and Representatives before mentioned and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation to support this Constitution.” These statements about constitutional supremacy have been functional throughout the history of the United States, which is the reason that the rule of law has prevailed from the country’s founding era until the present.

The rule of law, however, is not merely rule by law; rather, it demands equal justice for each person under the authority of a constitutional government. So, the rule of law exists in a democracy or any other kind of political system only when the following standards are met:

- laws are enforced equally and impartially
- no one is above the law, and everyone under the authority of the constitution is obligated equally to obey the law
- laws are made and enforced according to established procedures, not the rulers' arbitrary will
- there is a common understanding among the people about the requirements of the law and the consequences of violating the law
- laws are not enacted or enforced retroactively
- laws are reasonable and enforceable

There is a traditional saying about the rule of law in government: "It is a government of laws and not of men and women." When the rule of law prevails in a democracy, there is equal justice and ordered liberty in the lives of the people. In this case, there is an authentic constitutional democracy. When rule of law does not prevail, there is some form of despotism in which power is wielded arbitrarily by a single person or party.

SEE ALSO Constitutionalism; Government, Constitutional and Limited

— Video Transcript —

A Conversation on the Constitution

With Justices Stephen G. Breyer, Sandra Day O'Connor, and Anthony M. Kennedy

**BROWN V. BOARD OF EDUCATION**

(Edited and reformatted for this lesson)

- 00:00:01:00 **FEMALE ANNOUNCER:** This video is a project of the Annenberg Foundation Trust at Sunnylands.
- 00:00:25:00 **JEFFERSON THOMAS:** On September 27th, 1957, President Eisenhower sent 1,000 men of the United States Army to carry out the law. The Supreme Court of the United States had said, "The entire strength of the nation may be used to enforce, in any part of the land, the security of all rights entrusted by the Constitution," and that included my rights and the rights of eight other Negro Americans who wanted to go to Central High School in Little Rock, Arkansas.
- 00:01:02:00 **JUSTICE ANTHONY M. KENNEDY:** Does any of you know the name of the attorney who argued-- for the students in Brown Versus Board of Education?
- 00:01:11:00 **JUSTICE ANTHONY M. KENNEDY:** Thurgood Marshall. Why would-- the three of us here have known s-- Thurgood Marshall, do you know?
- 00:01:16:00 **MALE STUDENT:** He was the first African American Supreme Court Justice--
- 00:01:19:00 **JUSTICE ANTHONY M. KENNEDY:** He as on--, --he was on the Supreme Court. He was our colleague.
- 00:01:22:00 **JUSTICE SANDRA DAY O'CONNOR:** And he was here when I came to the court. Thurgood Marshall grew up in Baltimore, Maryland. And he went to school there. And when he wanted to go to law school, he applied to the University of Maryland, and he was turned down. Do you know why? Because he was African American.
- "No, we won't take you in this law school." Isn't that amazing? So, he came down to Washington DC and he went to the law school called Howard, which was developed to take African American students and law students. And that's where he got his law degree.
- And they had-- they had it in an old house, and they didn't have a library. They met up in the attic of the old house, the students did, to get books and study. And Thurgood Marshall used to talk about ways that when they got out of law school, they could help the people of his race to improve their lives, and that's what he dedicated his life to doing.
- 00:02:28:00 **JUSTICE ANTHONY M. KENNEDY:** And he had tried lots of cases in the South, in the trial level, with juries, not just up here. And had to go into the town and o-- one route, in one car, and then leave another, because it was dangerous, what he was doing. But-- they made a movie out of Thurgood's life, and they showed all the investigations that he did.
- Th-- they showed his trials and they showed the background of Brown Versus Board of

**Video Transcript: BROWN V. BOARD OF EDUCATION**

Education. And the title was "Separate But Equal." Is there anything about my description of the movie that makes you stop and think, that you think you might have suggested a change?

00:03:05:00 **MALE STUDENT:** That-- separate wasn't actually equal?

00:03:08:00 **JUSTICE ANTHONY M. KENNEDY:** Well, that's-- that's-- that's exactly the point. What about this doctrine of separate but equal? It-- it-- I mean, separate but e-- equal is a good thing, isn't it?

00:03:20:00 **MALE STUDENT:** Yes, but separate is inherently unequal because once you separate--

00:03:23:00 **JUSTICE ANTHONY M. KENNEDY:** Why?

00:03:24:00 **MALE STUDENT:** --once you separate two groups based on a certain characteristic, a psychological barrier arises that makes-- another group-- the-- the group that's separated feel inferior. It's a badge of inferiority that arises--

00:03:36:00 **JUSTICE ANTHONY M. KENNEDY:** What's-- suppose th-- there's two schools-- one black, one white, in this small-- two high schools. Let's make 'em high schools. A small city. It's two high schools, one black-- but the black school has swimming pools and gyms and wonderful teachers and TV monitors and it --it-- it's-- it's-- it's a-- it's a better school from all the physical facility-- what's wrong with that?

00:03:58:00 **MALE STUDENT:** Well, one, it doesn't matter who, which two groups you're separating. It's wrong to separate two groups--

00:04:03:00 **JUSTICE ANTHONY M. KENNEDY:** Why is it wrong?

00:04:03:00 **MALE STUDENT:** --'cause it makes the other group--

00:04:03:00 **JUSTICE ANTHONY M. KENNEDY:** Why is it wrong?

00:04:04:00 **MALE STUDENT:** --feel bad. It's morally wrong to separate two groups.

00:04:06:00 **JUSTICE ANTHONY M. KENNEDY:** Why is it morally wrong?

00:04:08:00 **MALE STUDENT:** It makes people feel bad.

00:04:09:00 **JUSTICE ANTHONY M. KENNEDY:** It hurts them--

00:04:11:00 **JUSTICE SANDRA DAY O'CONNOR:** Separate but equal was the argument for the people who wanted to be able to maintain separate schools, based on race. And that was what Justice Marshall and the other lawyers who were opposed to it were arguing against. And what's the provision in the Constitution that the court looks to in answering these questions?

00:04:34:00 **FEMALE STUDENT:** In the Constitution, the 14th Amendment says that, "Nor deny any

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person within jurisdiction the equal protection of the laws."

00:04:42:00 **JUSTICE STEPHEN G. BREYER:** Well, what do you think? They had two sets of schools in the South. They had two sets of drinking fountains. They had two sets of railroad stations in the South. They had two sets of everything. One was called White and one was called Colored.

Normally, that was what they had. Okay, in your opinion, does that violate that provision of the Constitution? How many think yes? Okay. How many think no? Okay. Let's take anyone who says yes and explain to me why?

00:05:12:00 **FEMALE STUDENT:** I think it's wrong because the basis of the separation stems from discrimination. And the whole reason that they're separated is from discrimination and knowing that they will feel-- they will feel inferior.

00:05:26:00 **JUSTICE STEPHEN G. BREYER:** People might have thought this is a system designed to make black people feel worse. Now, why do we wanna do that? Well, maybe we want control. And-- maybe we'll-- that way, we can maintain more control over our society and we don't have to give those people who are the descendants of the former slaves a chance. But my question is why, if this is all so clear to us, which I think it is fairly clear, why did it take all that time before the court did anything?

00:05:58:00 **MALE STUDENT:** I believe that-- it took 50, 60 years for-- for this case to be pushed through because of-- Plessy Versus Ferguson .

00:06:07:00 **JUSTICE SANDRA DAY O'CONNOR:** Exactly. There was an earlier case, wasn't there?

00:06:10:00 **MALE STUDENT:** Yes.

00:06:11:00 **JUSTICE SANDRA DAY O'CONNOR:** Called Plessy Versus Ferguson.

00:06:13:00 **JUSTICE ANTHONY M. KENNEDY:** Was Plessy Versus Ferguson right when it was decided?

00:06:16:00 **MALE STUDENT:** At that time, it was, because that was kind of the mentality of the country. But--

00:06:20:00 **JUSTICE SANDRA DAY O'CONNOR:** That didn't make it right though, under the Constitution, did it? (NOISE)

00:06:24:00 **MALE STUDENT:** No.

00:06:25:00 **JUSTICE ANTHONY M. KENNEDY:** If you were writing the opinion to reverse Plessy Versus Ferguson, you had to give the reasons-- would you say that society has changed?

00:06:39:00 **MALE STUDENT:** I would say that society-- had changed, because-- the recognition of Plessy-- as black because of the percentage he was had changed-- by that time.

00:06:50:00 **JUSTICE ANTHONY M. KENNEDY:** But doesn't that indicate that Plessy might have been



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okay when it was e-- Plessy is 1896. Th-- that means it was probably a c-- a closer call in 1896 than in 1954?

00:07:01:00 **MALE STUDENT:** It was never correct, but it was the decision that the court made at the time.

00:07:06:00 **JUSTICE ANTHONY M. KENNEDY:** Well-- I-- I see s-- some of the problem you're having. You-- you want to be respe-- you say it's correct, it's the law of the land. What we're asking is was it properly reasoned? Was th-- the result-- correct under the Constitution? And-- sure, just because we say it, and I s-- suppose it is the law for a while, but we can still ask if it's correct. And you indicate no, and I take it that's because why? Why was it wrong in 1896?

00:07:36:00 **MALE STUDENT:** It was wrong in 1896 because at the same time-- racial discrimination was still wrong at that time.

00:07:41:00 **JUSTICE ANTHONY M. KENNEDY:** There was still a hurt, there was still a moral wrong that your colleague said there was-- there-- there-- it's-- still something that was just wrong as a matter of morals, because we're hurting other people, even then.

00:07:54:00 **JUSTICE SANDRA DAY O'CONNOR:** Well, of course, it-- it-- do you think that the Supreme Court decides legal questions like the meaning of the Constitution based on whether the justices think it's moral or-- or logical? Or did they have to look at the language of the Constitution to make the decision?

00:08:15:00 **MALE STUDENT:** They would have to look at the language of the Constitution. In the 14th Amendment-- where it says it "cannot deny any person-- within its jurisdiction equal protection of the law."

00:08:24:00 **JUSTICE SANDRA DAY O'CONNOR:** Yes. And so, what does equal protection of the law mean? The argument then that was accepted in Plessy was that if you have a separate school for white students and a separate one for blacks, but they're both equal, it's all right. It doesn't violate that section of the Constitution. So, what's the legal argument, do you suppose?

00:08:50:00 **MALE STUDENT:** The-- argument in Brown Versus Board of Education was that separate schools, while they could be equal in all the tangible factur-- factors that could be measured-- were unequal in the intangible factu-- factors.

00:09:03:00 **JUSTICE ANTHONY M. KENNEDY:** A-- sense of "inferiority that affects their hearts and minds in a way never to be undone." Let me ask you this. Segregated schools existed-- in the public sector all across the South. In-- some states, in the north. Kansas. Topeka was the Brown Versus Board of Education. Delaware. And-- society was used to it, in the sense that that's what they had. That's where the-- the-- the financing wou-- that-- that's the way it was all organized.

If you were Thurgood Marshall, and you thought this was wrong under the Constitution-- how would you begin to attack the doctrine of separate but equal? Do you know what he

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did? Do you know what their strategy was? Would-- would you go-- would you attack it first at the university level or at the grammar school level? Where would you attack it first?

00:10:00:00 **MALE STUDENT:** Thurgood Marshall and the NAACP first attacked it at the university level--

00:10:04:00 **JUSTICE ANTHONY M. KENNEDY:** Why-- why did they do that?

00:10:06:00 **MALE STUDENT:** Because they could establish a precedent that-- I forget the court case--

00:10:12:00 **JUSTICE ANTHONY M. KENNEDY:** The Sweatt Versus Painter--

00:10:13:00 **MALE STUDENT:** Sweatt Versus Pain--

00:10:15:00 **MALE STUDENT:** --where they established that-- in a law school-- th-- if a student was treated differently, he wouldn't receive the same education and the same benefits.

00:10:26:00 **JUSTICE ANTHONY M. KENNEDY:** Yeah, th-- th-- they had cases in-- in law schools where a student was admitted to the law school, but he had a study table in the library and it was-- his own table, and was surrounded by little cardboard thing-- to separate him. And as you say, it was just easier to show-- that this kind of separation was inherently un-- unequal. And that s-- an-- and that was thei-- that was their strategy.

00:10:55:00 **JUSTICE STEPHEN G. BREYER:** But think of that part of the Constitution. So, here we have on the one hand they're not being treated properly, because of race. And on the other hand, we have this part of the Constitution, says you have to treat people equally. So, you're looking at that, and you think, "How can we get that changed?" Well, who are the people who could change it?

00:11:20:00 **MALE STUDENT:** The people who could change that is the people.

00:11:24:00 **JUSTICE STEPHEN G. BREYER:** That's one group. You could get them to vote to change it. Now, there's a problem with that. There are two problems. What do you think the problem with that was? Big problem?

00:11:34:00 **MALE STUDENT:** Th-- the majority wa-- was against it.

00:11:35:00 **JUSTICE STEPHEN G. BREYER:** A majority was against it. And by the way, what group of people would've been most for it?

00:11:41:00 **MALE STUDENT:** Minorities.

00:11:42:00 **JUSTICE STEPHEN G. BREYER:** Right. And what about their voting?

00:11:44:00 **MALE STUDENT:** They were not counted.

00:11:46:00 **JUSTICE STEPHEN G. BREYER:** No. They weren't (LAUGH) allowed to vote, either, just in

**Video Transcript: BROWN V. BOARD OF EDUCATION**

case. So, we have, like, a--

00:11:49:00 **JUSTICE SANDRA DAY O'CONNOR:** So, that was a big problem, wasn't it--

00:11:50:00 **JUSTICE STEPHEN G. BREYER:** Okay, so it looked pretty bad to go to the public here, because for one thing, the people most affected, they tried to stop 'em from voting and very often successfully. And on the other hand, maybe they would've lost anyway, 'cause they were in the minority. So, we don't know how the election would've come out, or if it's some other people who might change that.

00:12:06:00 **JUSTICE SANDRA DAY O'CONNOR:** So, what else could they have done?

00:12:10:00 **JUSTICE STEPHEN G. BREYER:** Who could've said, "This equal protection clause is one thing, and this isn't right"?

00:12:15:00 **JUSTICE SANDRA DAY O'CONNOR:** The Supreme Court.

00:12:16:00 **JUSTICE STEPHEN G. BREYER:** It was so obvious you were looking for something else--

00:12:18:00 **JUSTICE SANDRA DAY O'CONNOR:** The Supreme Court could do it, and that's where they went--

00:12:21:00 **JUSTICE STEPHEN G. BREYER:** All right, so now you have to use your imagination, and-- and just use your imagination and think back in 1953, '54. We weren't there then, but there were nine people. And some of them were clearly for Thurgood Marshall, but some were hesitant.

Now, if they were in their room-- there's a room back over here. And they would sit around and discuss this, if the case is in front of 'em. So, now here's what mu-- Thurgood Marshall have to do, what you should do. Imagine what they're saying. Imagine the people who are hesitant. What would they say?

00:13:05:00 **JUSTICE SANDRA DAY O'CONNOR:** Don't you think they might say, "Well, that's already been decided. Don't come to us. We've-- we decided that, back in the 1800s"--

00:13:13:00 **JUSTICE STEPHEN G. BREYER:** Okay, so-- so, "We decided that already." And they would've referred to what case?

00:13:17:00 **MALE STUDENT:** Oh-- Plessy Versus--

00:13:19:00 **JUSTICE STEPHEN G. BREYER:** Exactly.

00:13:20:00 **JUSTICE SANDRA DAY O'CONNOR:** Sure--

00:13:20:00 **JUSTICE STEPHEN G. BREYER:** So, some could've thought that. But (BACKGROUND VOICE) then, now you're Thurgood Marshall. So, you're thinking, "How am I going to step 'em from saying that?" And how is he gonna do it?

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00:13:31:00 **MALE STUDENT:** Okay. In Plessy versus --ver-- Plessy Versus Ferguson, they argued that separate but equal is correct because even though it's separate, they have equal accommodations. But Thurgood Marshall argued that even though accommodations can be equal, it's inherently wrong, because--

00:13:45:00 **JUSTICE ANTHONY M. KENNEDY:** Okay--

00:13:47:00 **MALE STUDENT:** --of inferiority.

00:13:46:00 **JUSTICE STEPHEN G. BREYER:** Right. That's an argument. You have a very good argument that Plessy Versus Ferguson is wrong. But it's decided. So, why should we go back? There is the problem Thurgood Marshall is facing. And so, how does he attack that?

00:14:04:00 **JUSTICE SANDRA DAY O'CONNOR:** What did he say and what did he argue?

00:14:08:00 **JUSTICE STEPHEN G. BREYER:** He made the argument you just made. That's certainly one of the things he did. Yeah. And-- and wha-- where else, what did he do? You also said what he did first. Where did he go?

00:14:19:00 **JUSTICE STEPHEN G. BREYER:** To the law schools.

00:14:20:00 **JUSTICE STEPHEN G. BREYER:** Now, -- he won the law school case, 'cause they all understood the law school-- the judges all understand this is a very unfair way to run a law school. You can't get an education in a law school while you're sitting by yourself with a lamp somewhere.

00:14:31:00 Now, he got them to-- he won that case. Now, we go back and someone says to you, you're the lawyer, "Oh, we decided this a long time ago." And what do you say? "Hey, Judge. (LAUGH) You said you decided Plessy v. Ferguson a long time ago, and (UNINTEL) been decided this case. But just recently, you decided a law school case, and you held the opposite. So, now you don't have all the law a-- against me. You have some law (LAUGH) against me and some law for me."

See, that's a pretty good way to argue a case. So, he got what was happening was the law was changing. He proved to the judges that the law is changing. Therefore, they can't just go back and rely on that old case. They have to think. (LAUGH)

All right, now we got 'em thinking, at least. That's a plus. And then you've come in with your moral argument, and what practical is happening, very good. Now, one more problem. Think of the people in that room, and there are some, what you might call Nervous Nellies (?). (LAUGH) And these Nervous Nellies are gonna say what? They say, "I see you're right. I see you're right. I'm so sorry that we have this horrible case of Plessy Versus Ferguson. And I even see how we could get rid of it, because we've now decided things opposite ways, and we could do it. But I'm still really worried about something." What am I worried about? What is Nervous Nelly worried about?

00:15:56:00 **MALE STUDENT:** Because the public opinion is against.

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- 00:15:58:00 **JUSTICE STEPHEN G. BREYER:** And why should that make-- why should that make Judge Nervous Nelly worried?
- 00:16:02:00 **JUSTICE SANDRA DAY O'CONNOR:** 'Cause the judge isn't elected, is he?
- 00:16:05:00 **JUSTICE STEPHEN G. BREYER:** He's got his job. They send him his paycheck. Small but okay. (LAUGH)
- 00:16:08:00 **MALE STUDENT:** The judge is not elected, but--
- 00:16:11:00 **JUSTICE STEPHEN G. BREYER:** What-- what's g-- what is he worried about happening?
- 00:16:13:00 **MALE STUDENT:** Well, when public opinion is-- is against something, it causes conflicts.
- 00:16:18:00 **JUSTICE STEPHEN G. BREYER:** Yeah. What does he think could happen?
- 00:16:19:00 **MALE STUDENT:** That should be avoided.
- 00:16:20:00 **JUSTICE STEPHEN G. BREYER:** And what does he think could happen?
- 00:16:22:00 **MALE STUDENT:** The President could not enforce it.
- 00:16:24:00 **JUSTICE STEPHEN G. BREYER:** Yes. That's what he's worried about. Yes. "We'll say it, but they might not do it."
- 00:16:33:00 **JUSTICE SANDRA DAY O'CONNOR:** Do you all remember what happened after the Supreme Court overturned Plessy Versus Ferguson and decided in Brown Versus Board of Education that separate could not be equal? What happened then, in the schools, in states like Alabama? Any of you know?
- 00:16:53:00 **MALE STUDENT:** Private schools were created.
- 00:16:55:00 **JUSTICE SANDRA DAY O'CONNOR:** They created some private schools to do what? Keep them separate?
- 00:16:59:00 **MALE STUDENT:** Yes.
- 00:16:59:00 **JUSTICE SANDRA DAY O'CONNOR:** Yes.
- 00:17:00:00 **JUSTICE STEPHEN G. BREYER:** And by the way, does anybody know what happened in Little Rock, where the judge said, "Go ahead, Little Rock High School, in September in 1957. You go put some of those black children in that white class"? Wha-- you know the governor? Have you ever heard his name?
- 00:17:13:00 **JUSTICE SANDRA DAY O'CONNOR:** Who was the governor back then, in-- in Arkansas, in Little Rock? You remember?
- 00:17:20:00 **JUSTICE STEPHEN G. BREYER:** Governor Faubus was his name. See, I could remember

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that. I was growing up then. I was alive--

00:17:24:00 **JUSTICE SANDRA DAY O'CONNOR:** --he stood at the schoolhouse door.

00:17:26:00 **JUSTICE STEPHEN G. BREYER:** Yeah, and he said, "No."

00:17:27:00 **JUSTICE SANDRA DAY O'CONNOR:** And said, "You can't come in here. You're not white." Imagine.

00:17:32:00 **JUSTICE ANTHONY M. KENNEDY:** And what happened next?

00:17:33:00 **JUSTICE SANDRA DAY O'CONNOR:** Do you recall what happened?

00:17:36:00 **MALE STUDENT:** He called in the National Guard to ensure that the blacks would not be admitted?

00:17:39:00 **JUSTICE ANTHONY M. KENNEDY:** And then what happened?

00:17:40:00 **MALE STUDENT:** And then President Eisenhower recalled the National Guard and then sent in the troops from the 101st Airborne Division to escort the African Americans to school.

00:17:50:00 **JUSTICE STEPHEN G. BREYER:** Yeah--

00:17:50:00 **JUSTICE ANTHONY M. KENNEDY:** Exactly.

00:17:50:00 **JUSTICE SANDRA DAY O'CONNOR:** Yes.

00:17:51:00 **JUSTICE ANTHONY M. KENNEDY:** Did the President have to do what he did?

00:17:53:00 **MALE STUDENT:** Yes, he did.

00:17:54:00 **JUSTICE ANTHONY M. KENNEDY:** Why?

00:17:56:00 **MALE STUDENT:** Because the Supreme Court ruled that that was the law.

00:17:58:00 **JUSTICE SANDRA DAY O'CONNOR:** Well, what--

00:17:59:00 **JUSTICE ANTHONY M. KENNEDY:** What does the President say on January 20th, when he raises his hand?

(Start video clip: Swearing in of President Eisenhower by Chief Justice Fred Vinson on January 20, 1953)

00:18:04:00 **CHIEF JUSTICE VINSON:** Dwight D. Eisenhower, do you solemnly swear?

00:18:07:00 **DWIGHT D. EISENHOWER:** I, Dwight D. Eisenhower, do solemnly swear.

00:18:11:00 **CHIEF JUSTICE VINSON:** That you will faithfully execute the office of President of the United States?

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- 00:18:18:00 **DWIGHT D. EISENHOWER:** That I will faithfully execute the office of the President of the United States.
- 00:18:24:00 **CHIEF JUSTICE VINSON:** And will, to the best of your ability.
- 00:18:27:00 **DWIGHT D. EISENHOWER:** And will, to the best of my ability.
- 00:18:30:00 **CHIEF JUSTICE VINSON:** Preserve, protect, and defend the Constitution of the United States.
- 00:18:39:00 **DWIGHT D. EISENHOWER:** Preserve, protect, and defend the Constitution of the United States.
- 00:18:44:00 **CHIEF JUSTICE VINSON:** So help you God?
- 00:18:46:00 **DWIGHT D. EISENHOWER:** So help me God.  
(End video clip)
- 00:18:50:00 **JUSTICE ANTHONY M. KENNEDY:** Let's say you're the attorney for General Eisenhower. You're the White House Counsel. Big deal. You have an office right next to him. And you know what's goin' on. You-- you hear on the radio. You get phone calls that the Governor has called the troops out. And you go into-- President Eisenhower and you say-- (KNOCKING NOISE) "Excuse me, Mr. President. I know you're busy, but I've got to tell you something." And I'm the Presid-- "Yeah, I'm busy. What have you got?"
- 00:19:14:00 **MALE STUDENT:** It's your duty to protect the Constitutional rights of these African American citizens, so you must take action to s--
- 00:19:20:00 **JUSTICE ANTHONY M. KENNEDY:** Well, I'll-- I'll give a speech next week on it.
- 00:19:24:00 **MALE STUDENT:** We have to take immediate action, 'cause it is your duty to--
- 00:19:26:00 **JUSTICE ANTHONY M. KENNEDY:** What do you mean? Th-- the minute I see s-- something wrong, I have to send the army in? I-- I-- I mean, I used to be a general. I know how to do that kind of thing if I have to. But do we have a s-- there's a lot of people violating a lot of laws here. I'm gonna send the army in every time you come rushin' into my office, bothering me?
- 00:19:45:00 **MALE STUDENT:** Well, the Supreme Court just declared that schools must be integrated, so you have to protect their decision and support their decision.
- 00:19:51:00 **JUSTICE SANDRA DAY O'CONNOR:** But I guess the Supreme Court can't order the President to send troops, can it?
- 00:19:57:00 **MALE STUDENT:** No, it cannot. But-- however, the Preside-- since it is the President's duty to protect and preserve the Constitution--

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00:20:03:00 **JUSTICE ANTHONY M. KENNEDY:** Was there a special reason here-- do-- do we usually use the army to enforce our laws in this country?

00:20:08:00 **MALE STUDENT:** No, we don't.

00:20:09:00 **JUSTICE ANTHONY M. KENNEDY:** Wha-- wha-- what's the specia-- what's the special reason for you comin', chargin' in my office, tellin' me I have to use the army?

00:20:14:00 **MALE STUDENT:** Well, the army's purpose is to protect and preserve the Constitution, as well.

00:20:18:00 **JUSTICE ANTHONY M. KENNEDY:** But that's true in any time the laws are being violated. What's different about this?

00:20:23:00 **MALE STUDENT:** You have to protect the individual rights of these individ--

00:20:26:00 **JUSTICE ANTHONY M. KENNEDY:** Why?

00:20:31:00 **MALE STUDENT:** Because-- by discriminating against these pers-- well, the purpose of the government is to protect the rights of the individuals, and by discriminating against them, you are inherently not protecting their rights.

00:20:36:00 **JUSTICE ANTHONY M. KENNEDY:** D-- do you know what happened when the-- Governor sent the troops to prevent these-- s-- small-- black-- girls and small black boys from going to this school? Well-- what happened? Did the rest of the world know about it? I was in England, in school at the time. It was on the front page of every single newspaper, in-- in the world. In the world.

And this was an opportunity and a necessity to show that we enforce our laws where people are being hurt. And if you have a governor take the extreme step of calling in hi-- his own army, an extreme step-- almost unheard of, then you are violating your duty, Mr. President. The oath you took when you took this office, to preserve, protect, and defend the Constitutio-- and if you don't do it now, every other school in the country that's segregated is gonna do this same thing, and your laws are shambles, and your Constitution's a shambles, and your Presidency is in danger. That-- that-- that's the kind of thing you say.

00:21:45:00 **JUSTICE SANDRA DAY O'CONNOR:** Brown Versus Board of Education was one of the most important cases that this court ever decided. It was really crucial in determining what it was that our Constitution means, and what our country stands for.

00:22:34:00 **ERNEST GREEN:** We were nine teenagers. We thought this was the place that would accept us, that we'd belong. We saw it as a building that offered opportunity and options for us. And you know what . . . 50 years later I think we were right! Thank you and God bless you.



# Student Materials

- “The Decisions We Make: A WebQuest”
- Student’s Video Guide: A Conversation on the Constitution: *Brown v. Board of Education*
- Organizer: “Organize Your Video Notes”
- Diagram: “Construct a Persuasive Argument”
- Activity: “When the People Decide”
- Activity: “Evaluate the Significance of a Case”
- “A Model of Reasoned Decision-Making”

**Introduction**

Learn about the decision-making of the U.S. Supreme Court by gathering and synthesizing information from a variety of Internet resources.

**Tasks & Process:**

1. Consult the resource(s) provided for each of the FAQs before writing a concise ANSWER to the question.

While specific pages are often indicated, it may be necessary to expand your reading for additional context and understanding. At minimum, answers should reflect the information found in the reference provided. If text is cited as part of an answer, put it in quotation marks. Should you choose to include additional information or quotes from other resources, include a citation.

2. After completing the FAQs, compare what you learned to “A Model of Reasoned Decision-Making,” then make observations and draw conclusions about your own decision-making and decision-making at the Supreme Court.

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**? ? ? ? ?                      FAQs                      ? ? ? ? ?**

**Question 1:    When it comes to the law, what is the authority of the Constitution?**

READ: [Our Constitution](#): pg. 18

ANSWER:

**Question 2:    What does the Constitution say about the power of the Supreme Court?**

READ: [Our Constitution](#): pg. 96-98

ANSWER:

**Question 3:    What is the role of the federal courts as defined by the Constitution?**

READ: [Our Constitution](#): pg. 99

ANSWER:

**Question 4:    What is the power of judicial review and how did the Supreme Court get it?**

READ: - [Our Constitution](#): pg. 99

- [The Pursuit of Justice](#): pg. 11, 14

- [“The Court and Constitutional Interpretation”](#)

- [“Vindicating the Rule of Law: the Role of the Judiciary”](#): pg. 2

ANSWER:

**Question 5: How is a Supreme Court decision both similar and different from a law enacted by the legislature?**

READ: - Definition of law from the [FindLaw Dictionary](#)  
- [Our Constitution](#), pg. 37

ANSWER:

**Question 6: How has the Supreme Court changed since the Constitution was written?**

READ: [Our Constitution](#): pg. 11, 18

ANSWER:

**Question 7: What is the jurisdiction of the Supreme Court?**

READ: - [“The Court and Constitutional Interpretation”](#)  
- [“A Brief Overview of the Supreme Court”](#)  
- [Our Constitution](#): pg. 98-99

ANSWER:

**Question 8: How do Supreme Court decisions related to constitutional questions and decisions related to statutory questions differ?**

READ: - [“The Court and Constitutional Interpretation”](#)  
- [Case 1](#)  
- [Case 2](#)

ANSWER:

**Question 9: How can a Supreme Court decision on a constitutional matter be changed? Cite the examples given of when this occurred.**

READ: - [The Pursuit of Justice](#): pg. 42  
- [“The Court and Constitutional Interpretation”](#)  
- [Our Rights](#): pg. 33

ANSWER:

**Question 10: How can the Constitution be formally changed and where do these changes appear?**

READ: [Our Constitution](#), pg. 28, 29, 113

ANSWER:

**Question 11: How does judicial interpretation change the Constitution? Compare this approach to change via amendments.**

**READ:** [Our Constitution](#): pg. 28, 29

**WATCH and LISTEN:** View a clip from the Sunnylands Classroom Video *The Constitution in Context* to learn from Justice Ruth Bader Ginsburg. Watch the first 3 minutes.

[Question 10: Do we need an Equal Rights Amendment?](#)

**ANSWER:**

**Question 12: How do justices decide (interpret) what the Constitution means? What factors do they consider? How does the Court reach a decision?**

**READ:** [Our Constitution](#), pg. 18

**WATCH and LISTEN:** Sunnylands Video: [A Conversation on the Constitution with Justices Stephen G. Breyer and Antonin Scalia: Judicial Interpretation](#)

Begin watching at 22 minutes.

**ANSWER:**

**Question 13: Why have more changes to the Constitution come through judicial interpretation than through amendments?**

**READ:** [Our Constitution](#): pg. 28-30, 36

**ANSWER:**

**Question 14: How many Supreme Court decisions have been overruled by subsequent decisions?**

**READ:** [“Supreme Court Decisions Overruled by Subsequent Decision”](#)

**ANSWER:**

**Question 15: What persuades the Supreme Court to change its mind and overturn prior decisions when the Constitution has not been changed?**

**READ:** - [The Pursuit of Justice](#): pg. 85-87, 167

- [Our Constitution](#): pg. 34

**WATCH and LISTEN:** (Time 5:54)

View a clip from the Sunnylands Classroom Video *The Constitution in Context* to learn from Justice Ruth Bader Ginsburg and the commentary of constitutional scholars.

[Question 9: Is the 14<sup>th</sup> Amendment interpreted differently over time?](#)

(Select “View the question and commentary.”)

**ANSWER:**

**Question 16: Why is the Supreme Court a reactive institution and not a proactive one?  
What metaphor is given by Justice Ruth Bader Ginsburg that explains this role?**

**READ:** [The Pursuit of Justice](#): pg. 8

**WATCH and LISTEN** (Time: 1: 25)

Review the first 1 min. 25 sec. this clip from the Sunnylands Classroom Video *The Constitution in Context* to learn from Justice Ruth Bader Ginsburg and the commentary of constitutional scholars.

[Question 9: Is the 14<sup>th</sup> Amendment interpreted differently over time?](#)

(Select “View the question and commentary.”)

**ANSWER:**

**Question 17: How do cases end up at the Supreme Court for its consideration?**

**WATCH and LISTEN:** (Time 3:13)

View a clip from the Sunnylands Classroom Video *The Constitution in Context* to learn from Chief Justice John Roberts and the commentary of constitutional scholars.

[Question 2: How do cases get to the Supreme Court?](#)

(Select “View the question and commentary.”)

**ANSWER:**

**Question 18: Why does the Supreme Court formalize its decisions in written opinions and where are these opinions kept?**

**READ:** [Rules of the Supreme Court](#): Rule 41, pg. 54

**WATCH and LISTEN:** (Time 4:34)

View a clip from the Sunnylands Classroom Video *The Constitution in Context* to learn from Chief Justice John Roberts and the commentary of constitutional scholars.

[Question 3: Why is it necessary to deliver an opinion?](#)

(Select “View the question and commentary.”)

**ANSWER:**

**Question 19: How are Supreme Court Justices persuaded to decide a case one way or another?**

**READ:** [Rules of the Supreme Court](#): Rule 28, pg. 35-36

**WATCH and LISTEN:** (Time 3:43)

View a clip from the Sunnylands Classroom Video *The Constitution in Context* to learn from Chief Justice John Roberts and the commentary of constitutional scholars.

[Question 6: How did you prepare to argue before the Supreme Court?](#)

(Select “View the question and commentary.”)

**ANSWER:**

**Question 20: What is a brief and how is it used by the Court?**

READ: - Definition of “brief” from the [Glossary of the American Bar Association](#)  
- [Rules of the Supreme Court](#) Do a word search for “brief,” then read the context.

ANSWER:

**Question 21: What is the rule of law and what role does it play in judicial decisions?**

READ: - [“Vindicating the Rule of Law: The Role of the Judiciary\\*”](#) : pg. 1  
- [The Pursuit of Justice](#): pg. 202

ANSWER:

**Question 22: How is American life reflected in and shaped by Supreme Court decisions?**

READ: [The Pursuit of Justice](#): pg. 5-11

ANSWER:

**Question 23: The Supreme Court has made thousands of decisions over the years, but it was the Court’s decision in *Brown v. Board of Education* that captured the interest of the world. Why?**

READ: - [The Pursuit of Justice](#): pg. 17  
- Supreme Court of the United States Blog: [The Global Impact of \*Brown v. Board of Education\*](#)

ANSWER:

**Question 24: In our system of separated powers, how does the Supreme Court relate to and rely on the other branches of government when it comes to the laws?**

READ: [The Pursuit of Justice](#): pg. 101

ANSWER:

**Question 25: Why should Supreme Court decisions matter to me?**

READ: [Our Constitution](#): “Introduction”

ANSWER:

- Conclusion -

**Reflect, Analyze, & Make Connections** (Class Discussion)

Discuss decision-making at the Supreme Court and relate it to the steps in “A Model of Reasoned Decision-Making.” How is decision-making at the Supreme Court similar to and different from the model and the way you make decisions?

# Student's Video Guide

## A Conversation on the Constitution: *Brown v. Board of Education*

(Time: 27 minutes)

### **Introduction**

In this video, a group of high school students converse with a panel of U.S. Supreme Court Justices (Sandra Day O'Connor, Anthony M. Kennedy, and Stephen G. Breyer) about the people, issues, and arguments in the landmark case of *Brown v. Board of Education* (1954). Added photos, commentary, and news footage help viewers better understand the issues of the times and learn about the nine teenagers who made history in Little Rock, Arkansas on September 27, 1957.

### **Background Knowledge**

In order to understand the conversation between the Justices and the group of students in this video, viewers should have advance knowledge about the following:

- *Brown v. Board of Education* (1954)
- *Plessy v. Ferguson* (1896)
- *Sweatt v. Painter* (1950)
- Fourteenth Amendment
- separate but equal doctrine
- role and authority of the Supreme Court
- role and authority of the executive branch
- purpose of government
- rights under the Constitution

### **Vocabulary**

discrimination  
equal protection clause  
Fourteenth Amendment  
inferiority  
inherently  
intangible factors

NAACP  
precedent  
segregation  
separate but equal  
Supreme Court  
tangible factors

### **Preparation for Viewing**

1. Review your WebQuest activity.
2. Review the cases and vocabulary named above.
3. Understand how to use the graphic organizer for note-taking ("Organize Your Video Notes"). After the video you will have a chance to fill in additional information by using other resources.

### **During the Video**

Jot down notes on the organizer as you watch and listen to the video.

## Student's Video Guide

### A Conversation on the Constitution: *Brown v. Board of Education*

#### Follow-Up Questions & Activities

Use information gained from the video and prior reading to complete the following:

1. Reflect on the opening narration in the video:

**JEFFERSON THOMAS:** On September 27th, 1957, President Eisenhower sent 1,000 men of the United States Army to carry out the law. The Supreme Court of the United States had said, "The entire strength of the nation may be used to enforce, in any part of the land, the security of all rights entrusted by the Constitution," and that included my rights and the rights of eight other Negro Americans who wanted to go to Central High School in Little Rock, Arkansas.

What law is Jefferson Thomas referring to?

2. Identify/define the following and tell the role of each in the story.

- a) Thurgood Marshall
- b) separate but equal
- c) rule of law
- d) *Sweatt v. Painter*
- e) U.S. Constitution
- f) Fourteenth Amendment
- g) President Eisenhower
- h) Supreme Court
- i) Governor Faubus
- j) Ernest Green
- k) racial segregation
- l) Little Rock Central High School

3. According to Justice Kennedy, what is the primary reason "separate but equal" is wrong?



## Student's Video Guide

### A Conversation on the Constitution: *Brown v. Board of Education*

4. In your opinion, is separate always unequal, always wrong? Explain.
5. After the discussion about obvious problems with “separate but equal,” reflect on this part of the conversation (Start Time 5:26)

**JUSTICE STEPHEN G. BREYER:** . . . “But my question is why, if this is all so clear to us, which I think it is fairly clear, why did it take all that time before the court did anything?”

**MALE STUDENT:** I believe that-- it took 50, 60 years for-- for this case to be pushed through because of-- Plessy Versus Ferguson .

Explain why *Plessy v. Ferguson* would be a concern for the Supreme Court?

6. Once the Supreme Court makes a ruling, it has the force of law. Elaborate on the two ways Supreme Court decisions can be changed.
7. List at least three reasons the executive branch got involved.
8. How does the Supreme Court rely on the executive branch?
9. How does the executive branch rely on the Supreme Court?
10. Name at least two ways the Supreme Court is limited in what it can do.
11. Was the use of federal troops justified or not? Explain.
12. In a constitutional democracy, what is the responsibility of the government?
13. What message did the President’s action send to citizens, the nation, and to the world?
14. Revisit your notes on the graphic organizer to fill in any gaps.
15. Relate what you learned from the video and your prior work to each of the steps in “A Model of Reasoned Decision-Making.”

**Organize Your Video Notes: *Brown v. Board of Education***

Add dates and details from your viewing and prior reading.

**Timeline**

<b>THE CONSTITUTION</b>	
→	Cite:

<b>SUPREME COURT DECISION: <i>Plessy v. Ferguson</i></b>	
Question before the Court:	
Opinion of the Court:	
Consequences:	

**DATES/ EVENTS/ISSUES**

<b>CITIZEN ACTION</b>		
Issues/concerns:		
Ways to change law: Option #1:	PROS	CONS
Option #2:	PROS	CONS
WHAT ORGANIZATION supported change?		
WHO argued the case?		
GOALS? Short term and Long term:		
STRATEGY?		
WHO got involved?		

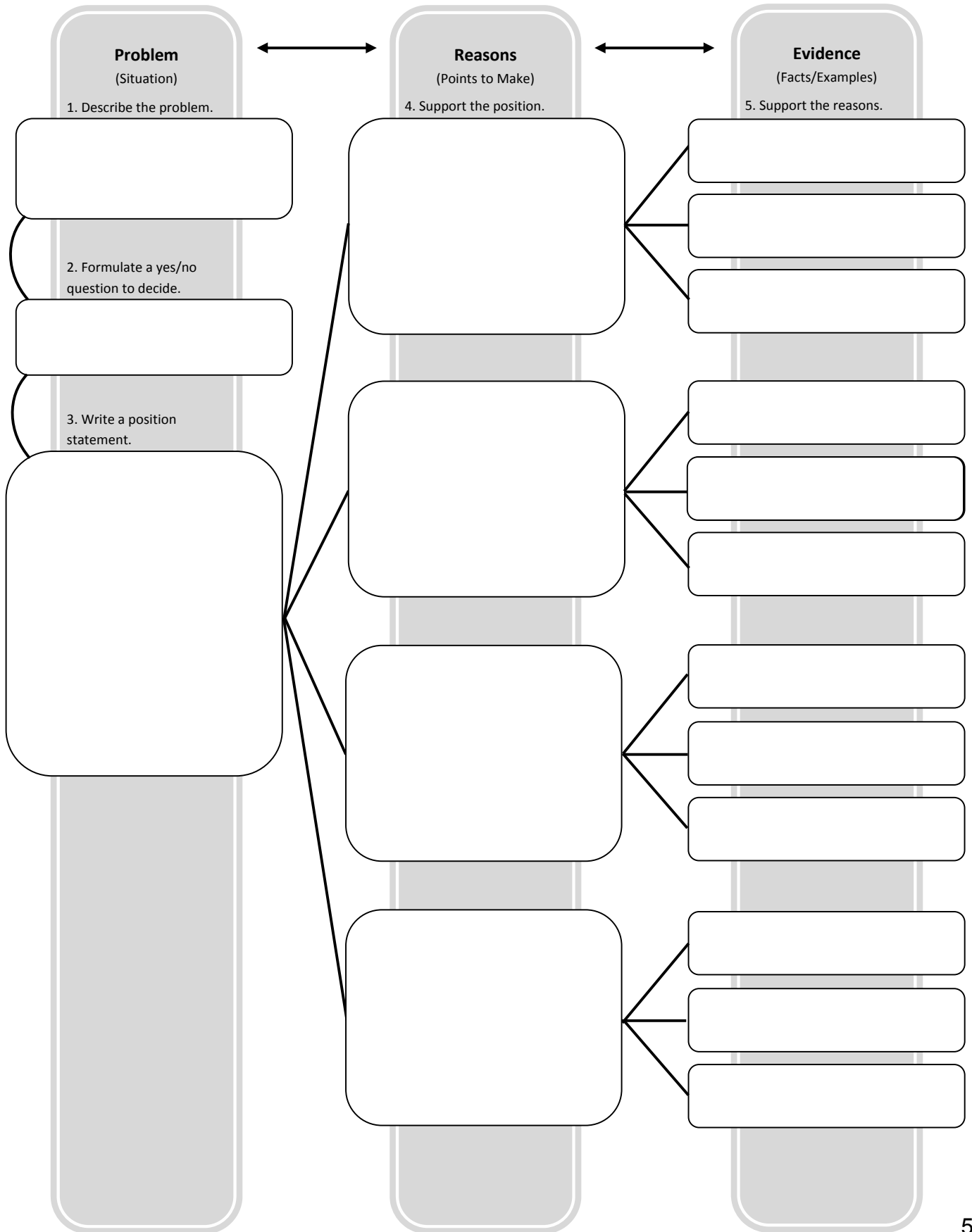
<b>SUPREME COURT DECISION: <i>Brown v. Board of Education</i></b>	
Problem before the Court:	
<b>Nature of Arguments Used/Examples</b>	<b>Concerns for the Court</b>
1.	<b>Obligations of the Court</b>
2.	
3.	
4.	
Opinion of the Court:	

<b>CONSEQUENCES</b>	
<b>Opposition:</b> Where? Why?	Who? What happened?
<b>Enforcement:</b> Where? Why?	Who? What happened?
<b>Recognition:</b>	
<b>Impact:</b> Tangible	Intangible

1999 →

TODAY →

# Construct a Persuasive Argument



## Activity: “When the People Decide

### Introduction:

The decisions we make as individuals and as a country both shape our future lives and define the nation we will become. Sometimes, like in the case of *Brown v. Board of Education*, the two are tightly woven together.

### Tasks:

1. Reflect on the comment made at the end of the video:

**22:34 ERNEST GREEN:** We were nine teenagers. We thought this was the place that would accept us, that we’d belong. We saw it as a building that offered opportunity and options for us. And you know what . . . 50 years later I think we were right! Thank you and God bless you.

When and where was it made?

2. List the names of the nine students and briefly tell what became of them.

Student	Education	Accomplishments
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		

3. Make some observations about the students in the video. Identify the obstacles they faced, the decisions they made, the assistance they received, the traits of character they displayed, and the impact of their decisions on both the country and their own futures.

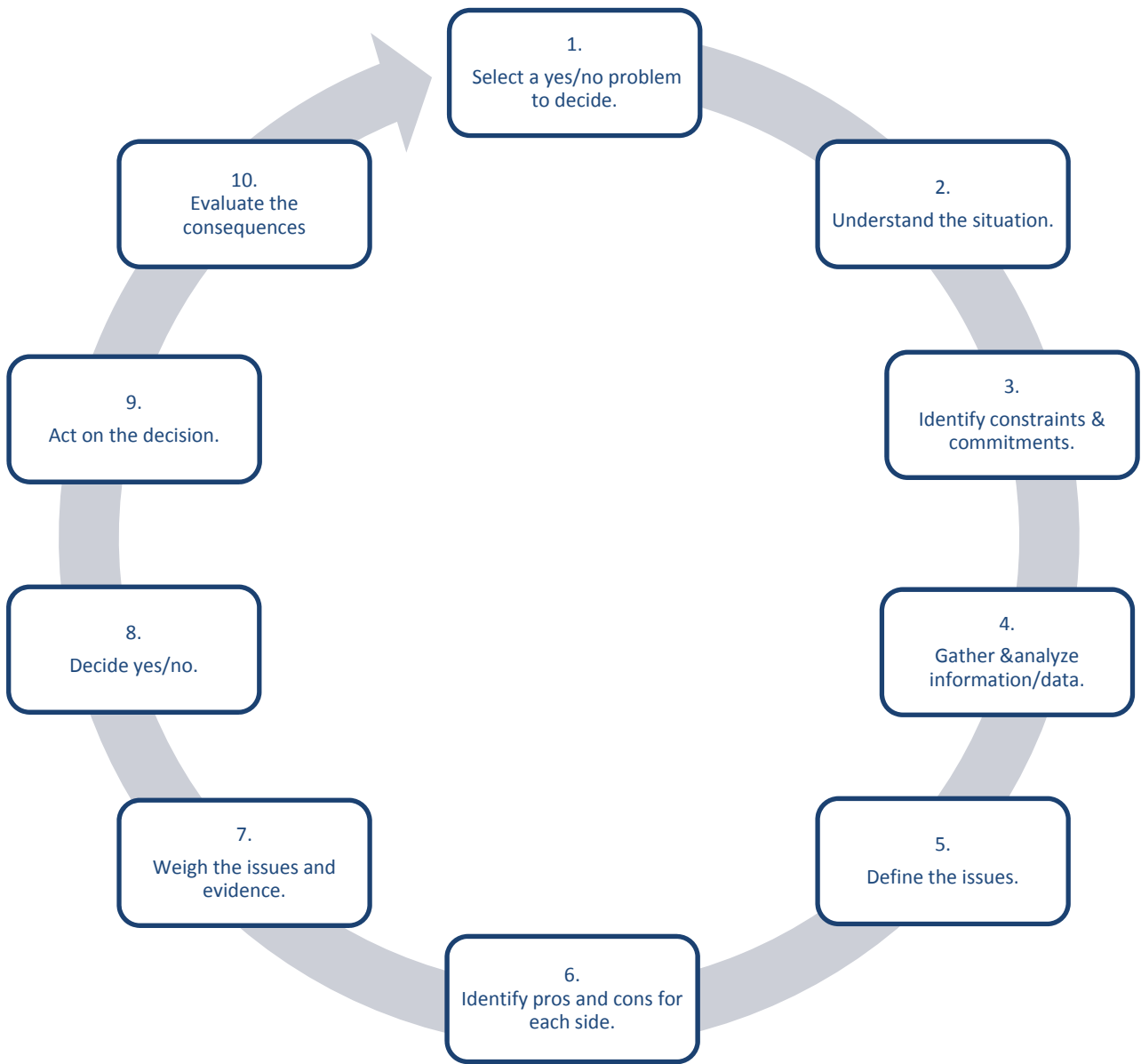
## Activity: “Evaluate the Significance of a Case”

Case: \_\_\_\_\_

CRITERIA	RANK
a. The Court’s decision is “a response to a pivotal public issue, which had a deep and abiding impact on the course of U.S. history.”* <b>Three Reasons:</b>	
b. The Court “overturned a significant precedent and thereby acted as a catalyst for political and social change.”* <b>Three Reasons:</b>	
c. The Court’s decision includes “memorable and edifying statements of enduring American constitutional principles expressed in opinions of justices either for the Court or in dissent.”* <b>Three Reasons:</b>	
d. The Court’s decision is “a definitive or illuminating response to an issue about a core principle of American constitutionalism, such as federalism, separation of powers, checks and balances, civil liberties, or civil rights.”* <b>Three Reasons:</b>	
e. The Court’s decision is important for “cultivating standards of civic education.”* <b>Three Reasons:</b>	
f. The case tells a compelling story about the personal courage required to bring and sustain a case before the high court, whether on the winning or losing side.* <b>Three Reasons:</b>	
g. The Court’s decision helped define what our Constitution means. <b>Three Reasons:</b>	
h. The Court’s decision directly affected the hearts, minds, and daily lives of most Americans. <b>Three Reasons:</b>	
i. The Court’s decision was internationally significant for America and democracy. <b>Three Reasons:</b>	
j. The case vindicated the rule of law and affirmed its importance to the individual and society. <b>Three Reasons:</b>	

\*Criteria used by Hall and Patrick to select cases for inclusion in *The Pursuit of Justice: Supreme Court Decisions that Shaped America*, pg. 10-11.  
<http://sunnylandsclassroom.org/Asset.aspx?id=1257>

## “A Model of Reasoned Decision-Making”



Problem (1,2)	Constraints (3)	Information (4,5)	Evaluation (6,7)	Decision (8)	Action (9)	Reflection (10)
Understand the situation—people, facts, history, concerns  Define what needs to be decided.	Identify values, principles, priorities, & legal restrictions that put limits on what can be done.	Gather, organize, analyze, & synthesize relevant information/facts  Determine the main issues.	Make a value judgment.  Prioritize  Consider potential consequences.  Identify strengths, weaknesses, opportunities, and threats.	Take a stand and make a choice based on the best information available.  Be able to support the decision and explain why it was made.	Act on the decision.	Reflect on the outcome/ consequences.  Identify another question to decide.