

Topic:

Slavery and the Law: From Separate but Equal to Greater Equality Under the

Time:

3 class periods

Historical**Period:**

1890's to the present

Core:

US I 6120 - 0903
US II 6250 - 0901, & 0502
Gov. 6210 - 0202 & 0402

Objectives:

1. Students will understand the meaning and interpretation of the 13th, 14th, and 15th Amendments.
2. Students will see how the “separate but equal” doctrine of 1896 evolved into desegregation required in 1954 and compare these early cases to modern discrimination issues.

Procedure:

1. Distribute Handout 1: The Thirteenth, Fourteenth, and Fifteenth Amendments. List and/or discuss the guarantees afforded black people in each Amendment.
2. Distribute Handout 2: *Plessy v. Ferguson*, to half the class. Using the case study method, Handout 3, and allowing the students to work in groups of two or three, have them analyze the facts, issues, and Supreme Court decision of the case. These students should be prepared to present and argue the Court’s reasoning to the other half of the class.
3. Distribute Handout 4: *Brown v. Board of Education*, to the other half of the class. Have them analyze the facts, issues, and Supreme Court decision of the case. They, too, should be able to explain the case and the Court’s reasoning to the rest of the class.
4. Discuss the similarities and differences of discrimination in other areas — against the young, the old, women, the physically and mentally challenged, and immigrants. A brief discussion of women’s progress toward equal rights (Handout 5) follows the cases used earlier.
5. Distribute the summary *Cleveland Board of Education v. La Fleur*, Handout 6, and have students use the case study method on their own to analyze the case. (This could be a homework assignment.)
6. Compare the Supreme Court’s treatment of the women in *La Fleur* to its stand on discrimination in *Brown*. Use questions in Handout 7, if desired.

Handouts/Worksheets:

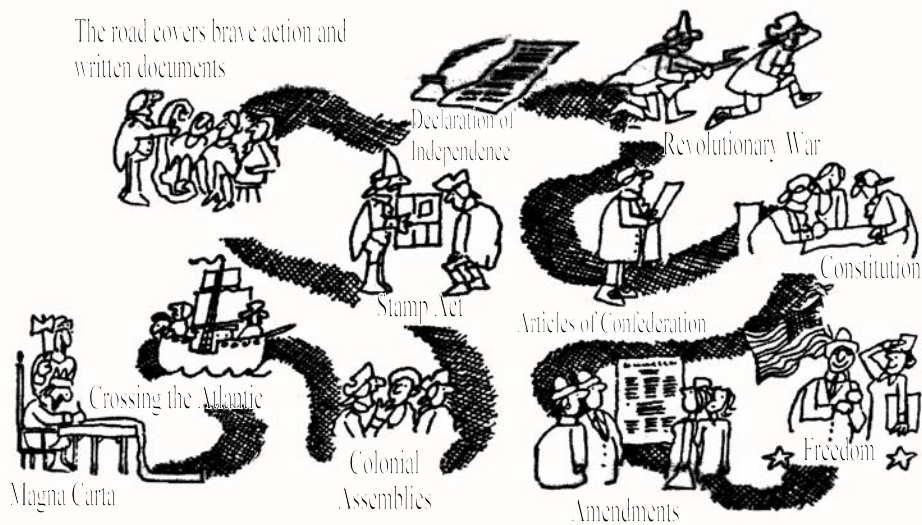
1. The 13th, 14th, and 15th Amendments
2. Summary of *Plessy v. Ferguson*
3. Case study sheet
4. Summary of *Brown v. Board of Education of Topeka*
5. “Women’s Progress toward Equal Rights”
6. Summary of *Cleveland Board of Education v. La Fleur*
7. “Are You Listening?” worksheet -- to use during class discussion, if desired
8. Answer sheet for “Are You Listening?”

Author: Adapted from *Law in U. S. History* by Carol Lear

INTRODUCTION

The Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution theoretically ended slavery and discrimination in the United States. Still, the United States Supreme Court, in *Plessy v. Ferguson*, sanctioned the “separate but equal” doctrine for over half a century. This lesson uses discussion and the case study method to explore *Plessy* and the case that overruled it in 1954, *Brown v. Board of Education of Topeka*. Then, we take the ramifications of discrimination one step and several decades further — into the area of sex discrimination and the *La Fleur* case.

The Long Road to Freedom



CIVIL WAR AMENDMENTS

After the Civil War, the Thirteenth, Fourteenth, and Fifteenth Amendments gave citizenship to four million black Americans. What rights did these Constitutional Amendments guarantee?

13th Amendment (1865)

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

14th Amendment (1868)

. . . 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.

15th Amendment (1870)

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

Even though the Constitutional Amendments were the new “law of the land,” they did not bring freedom to black people. After the war, government troops had been sent to the South to keep order and protect the rights of freed slaves. After the last soldiers were withdrawn from the South in 1877, white Southerners soon began to regain control of their states. Slowly, all black men were forced out of state governments. Their right to vote was taken away. Most of their new rights became nothing but words on a piece of paper.

PLESSY v. FERGUSON (1896)

In the late 1800's, the black American was free. But he wasn't treated equally. Some blacks fought back. One of them took a "Jim Crow" law to court. His name was Homer Plessy. Homer Plessy was a proud man. But he had no reason in 1892 to suspect that he would soon become a key figure in American History.

Homer Plessy was part white and part black. Out of eight great-grandparents, only one had been black. The other seven were white. But he was treated as black under the "Jim Crow," or segregation, laws of Louisiana. This meant he had to be careful in public places. He had to stay in areas marked "for coloreds only" — that is, for black people. He was expected to stay away from areas marked "for whites only." To do otherwise would break the law.

Homer Plessy, in June of 1892, went to the railroad station in New Orleans. He was headed for Covington, Louisiana. This was on the far northern side of Lake Pontchartrain by New Orleans. The East Louisiana Railway made the trip from New Orleans around the lake to Covington. So Mr. Plessy bought a first-class ticket and walked toward the waiting train. Signs were on the railroad cars. Some said "for coloreds only." Others said "for whites only." Plessy boarded a car marked "for whites only" and took an empty seat.

When the conductor arrived, he asked Homer Plessy to leave. He said that Mr. Plessy would have to sit in the car meant for blacks. But Mr. Plessy refused to move. Finally, a policeman was found. And Mr. Plessy was removed from the "whites only" car by force.

Homer Plessy was arrested and jailed. He was accused of breaking a segregation law. This Louisiana law of 1890 ordered railway companies to set up "equal but separate" areas for white and colored races. No persons were allowed to sit in seats or cars marked for those of another race.

In court, Mr. Plessy attacked this law. He said this law denied him his rights under the Fourteenth Amendment. It especially denied him "equal protection of the laws."

The lawyers for Louisiana said the Fourteenth Amendment was only intended to protect political rights such as voting and holding public office. They said state laws could separate the races, as long as equal rights were provided for each race.

The courts of Louisiana did not agree with Plessy. They ruled that Louisiana's "Jim Crow" law of 1890 was **constitutional**. But Homer Plessy had another hope left. He asked the Supreme Court of the United States to look into his case.

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The Supreme Court ruled in favor of the State of Louisiana. The Court said it was not the intention of the Fourteenth Amendment to “abolish distinctions based upon color, or to enforce social, as distinguished from political, equality.” According to the Court, the State of Louisiana could make laws that took into account the customs and traditions of the people and the need to keep public peace and order. The Court said if the two races were ever to meet “on terms of social equality, it must be the result of natural affinities . . . and a voluntary consent of individuals,” not a result of law.

Only one Justice disagreed. In his famous dissent, John Marshall Harlan said that “in the eye of the law, there is in this country no superior, or dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens”

Justice Harlan warned that this decision would be used to segregate all aspects of life in many states. He was right. “Separate but equal” laws hit blacks in every part of their lives. They kept blacks out of the best schools and libraries. They put blacks in the back of public buses. These laws made blacks sit in separate waiting rooms in train stations. They even made blacks use separate drinking fountains.

It would take another half century before the “separate but equal” doctrine would be reversed.

HANDOUT 3

Student's Name: _____ Date: _____

CASE STUDY SHEET

Case Name: _____

Court: _____

Decision Date: _____

Facts:

Legal Issues:

Decision:

Court's Reasoning:

Student's Comments:

HANDOUT 4

BROWN v. BOARD OF EDUCATION OF TOPEKA (1954)

On school mornings, Linda Brown would wake up early. She had to get up earlier than most of the kids in her neighborhood. She was black, and she lived in Topeka, Kansas. A Kansas law allowed segregated schools. This law allowed the men who ran Topeka's schools to have separate schools for black children and white children.

There was a grade school just five blocks from Linda's house. But that school was for white children only. Linda had to take a bus that would carry her 21 blocks to the school for black kids. She had to get up early.

Linda's parents were angry about this situation. They took their case to a federal court in Topeka. They said that Linda's black school was not as good as the white school in their neighborhood. The black school's building was old. The classrooms were crowded, and there weren't enough teachers.

Mr. and Mrs. Brown said that Linda had been denied the "equal protection of the laws" promised by the Fourteenth Amendment. But Mr. and Mrs. Brown claimed even more. They said that Linda's school could never be equal as long as it was separate. They argued that segregated schools were harmful to black children. Such schools, they argued, seemed to say that blacks weren't good enough to go to school with whites. The only way to prevent this harm was to put an end to all segregated schools.

The federal court in Topeka ruled against the Browns. This court said that the black school and the white school were just about equal. But Linda's parents were sure they were right. So they asked the United States Supreme Court to look into their case. The Supreme Court made a unanimous decision in favor of Brown. It said that separate education was, by its very nature, unequal and a violation of the equal protection clause of the Fourteenth Amendment. The Court thus overruled the doctrine of "separate but equal."

The following is an excerpt from the opinion written by Chief Justice Earl Warren:

Today, education is perhaps the most important function of state and local government. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping

Case only from *Law in a New Land*, Law in American Society Foundation, Houghton Mifflin Company. Used with permission.

him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even through the physical facilities and other “tangible” factors may be equal, deprive the children of the minority group of equal education opportunities? We believe that it does

To separate . . . (children) from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone Whatever may have been the extent of psychological knowledge at the time of *Plessy v. Ferguson*, this finding is amply supported by modern authority. Any language in *Plessy v. Ferguson* contrary to this finding is rejected.

We conclude that in the field of public education the doctrine of “separate but equal” has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiff and others similarly situated from whom the actions have been brought are, by reason of segregation complained of, deprived of the equal protection of the law guaranteed by the Fourteenth Amendment.

HANDOUT 5

Meanwhile, as blacks and sympathetic whites agitated for greater equality between the races, discontented women worked against slavery and simultaneously designed their own campaign for equality

WOMEN'S PROGRESS TOWARD EQUAL RIGHTS

Though many of those who worked most actively against slavery were women, the state of American women had changed very little since colonial times. They were not allowed to vote or hold property of their own. If married, they had to give the wages they earned to their husbands.

Women were active in a number of the reform movements. Many joined the abolition movement, expecting to be treated as equals with male reformers. However, they were not allowed to speak in public, and other activities open to men were closed to them. Soon they realized that the issue of women's rights was itself a serious social problem. The first women's rights convention was held in Seneca Falls, New York, in 1848. Some gains were gradually made in the years following, but women's suffrage was still a long way off.

1. Were women abolitionists treated equally with and by the men who opposed slavery?
2. When was the first women's rights convention held? How many years was this before the Supreme Court decided *Plessy v. Ferguson*?

Abolitionist leaders did not support the call for women's rights. Although many were sympathetic, they did not want to raise the issue of women's equality until the struggle against slavery had been won.

Most women reformers were eager to cooperate. As abolitionists, they expected to be treated equally within the abolitionist societies. They were very disappointed, however. William Lloyd Garrison's nomination of a woman to the executive council of the American Anti-Slavery Society was one of the reasons that the Society split in 1840. Its members disagreed over many issues. However, over one-half of the members walked out rather than accept a woman in a leadership position.

In that same year of 1840, the World Anti-Slavery Convention met in London. That convention, too, refused to seat American women delegates. One of the delegates, Ann Phillips, tried to fight this decision openly. However, she was not allowed to speak on her own behalf or even to enter the meeting hall. She had to rely on her husband, Wendell Phillips, a forceful speaker and friend of Garrison, to publicly defend her rights. However, Phillips was unable to convince most of the delegates. Instead, the convention leaders invited the American women to sit behind a curtain and listen in silence while the men at the meeting debated slavery!

3. How did abolitionist leaders feel about the early women's rights movement?
4. Does it seem strange to you that a group or convention meeting to promote freedom and equal rights and opportunities for one group (black people) would discriminate and refuse the right to be heard to another group (women)?

From the 1850's on, some states passed laws to improve the status of women. For example, beginning in 1854, married women in Massachusetts were allowed to control their own property. Six years later, a similar law was passed in New York State. The New York law also made it possible for women to sue and be sued in court and allowed them to have custody of their children. Other states gradually passed similar laws. However, there were still many years to go before women were given the right to vote.

Although women made many gains, the U. S. Supreme Court was slow to recognize sex discrimination as a problem. Even after passage of the Nineteenth Amendment, it took another 50 years for the Court to find a government policy based on gender to be unconstitutional.

Although the Equal Rights Amendment, which would have prohibited federal, state, and local governments from passing discriminatory laws or enforcing laws unequally based on gender, failed to become part of the Constitution, at least 16 states have equal rights provisions for women in their state constitutions.

Several sex discrimination issues have been addressed by Congress and the Supreme Court. In 1963, Congress passed the Equal Pay Act, which made it illegal to pay women less money than men for doing the same job. Today, however, some women still earn less than men. Congress also passed the Civil Rights Act of 1964, and Title VII of this act prohibits discrimination by companies with more than 15 employees against women and minorities in all forms of employment. When women face discrimination by government because of their gender, they may sue under the Fourteenth Amendment which guarantees "equal protection under the law."

5. Give two specific ways in which women have gained greater equality.

The careers of women who work in a corporate setting are often limited by a so-called "glass-ceiling" which refers to barriers, such as actions, beliefs, and attitudes, that prevent qualified women and minorities from advancing in the corporate world.

Clearly, elimination of sex bias was not one of the purposes of the framers of the Fourteenth Amendment. The second section of the Amendment recognized a right to restrict voting to males and it took the Nineteenth Amendment to eliminate sex as a qualification for voting. Yet, in many respects, women have suffered discrimination similar to the rights denied black people, especially prior to *Brown v. Topeka Board of Education*.

The following case summary, *Cleveland Board of Education v. La Fleur*, indicates that, though the Supreme Court does not consider sex a forbidden classification — like “race, color, or previous condition of servitude” — it would place a great burden on the defendant to justify the discrimination.

HANDOUT 6

CLEVELAND BOARD OF EDUCATION v. LA FLEUR (1974)

Jo Carol La Fleur and Ann Elizabeth Nelson were junior high school teachers who were expecting babies in late July and late August. They enjoyed teaching school and depended on their income from their jobs.

They wanted to finish out the school year before having their babies. However, the Board of Education in Cleveland had a rule requiring a female teacher to take maternity leave without pay at least five months before the expected birth of her child. Also, the teacher could not return to work until the next regular school semester after the baby was three months old. Both these women were forced to leave their teaching jobs in March. Those two teachers and Susan Cohen from another school district that required leave without pay four months prior to the expected birth, challenged the school district's regulations in District Court. The District Court agreed with the Cleveland School Board, but the United States Sixth Circuit Court reversed the District Court decision and found the Cleveland rule in violation of the Equal Protection clause of the Fourteenth Amendment. The three teachers argued that their personal decisions to have babies should not cause them to lose their jobs even for a short period of time. They felt and doctors argued, that they were very healthy and should be allowed to teach as long as they could physically do their jobs well.

The school districts argued that the mandatory cutoff dates were necessary for two reasons: (1) to allow students to have a regular teacher and not have their education threatened by a change of teachers, and (2) to keep teachers who were physically unwell or unfit to be teachers out of the classroom.

The majority of the United States Supreme Court decided that the school boards really wanted what was best for the students. However, the Court said that a pregnant woman's physical fitness to teach school is an individual thing. And each teacher's termination date should be looked at separately. All teachers should **not** have to quit teaching at a certain point defined by law. Otherwise, a female teacher is being penalized for deciding to have a baby.

Questions for Discussion

1. Do you agree with the school boards or the pregnant teachers in this case?
2. Are there other arguments you could make for each side?
3. Is it disruptive when a teacher has to quit teaching in the middle of the year?
4. Pretend you (or you and two or three of your friends) are a school board. Develop a rule that would be fair to students who need consistency in their classes and to school teachers who choose to have babies.

HANDOUT 7

Name: _____ Date: _____

**ARE YOU LISTENING? WORKSHEET
CAN “SEPARATE” BE “EQUAL”?**

1. The _____ Amendment officially gave black people the right to vote.
2. After the 13th Amendment, slavery was only legal when used as a _____ for a _____.
3. The important Supreme Court case *Plessy v. Ferguson* decided that separate rights were okay for different races so long as those rights were “_____.”
4. Explain “separate but equal” in your own words.
5. Another important Supreme Court case, *Brown v. Board of Education of Topeka*, agreed/disagreed (circle one) with the decision of the *Plessy* one-half century later.
6. Does the 13th, 14th, or 15th Amendment say that women must be allowed to vote?
7. Explain, in your own words, the meaning of “discrimination.”
8. There are three plaintiffs in the Supreme Court case *La Fleur v. Cleveland Board of Education*.
 - a. What is a plaintiff?
 - b. Name the three plaintiffs.
9. Because of the *La Fleur* case, school boards cannot make a rule that all pregnant women must quit teaching at a certain point in their pregnancy. True ___ False ___
10. When you are using the case study method to read a court case, first tell about the _____ of the case.

**ANSWER SHEET
ARE YOU LISTENING? WORKSHEET
CAN “SEPARATE” BE “EQUAL”?**

1. The 15th Amendment officially gave black people the right to vote.
2. After the 13th Amendment, slavery was only legal when used as a punishment for a crime.
3. The important Supreme Court case *Plessy v. Ferguson* decided that separate rights were okay for different races so long as those rights were “equal.”
4. Explain “separate but equal” in your own words.

Races can be kept apart, or segregated, and facilities or rights provided for them if those facilities or rights are the same as for other races.

5. Another important Supreme Court case, *Brown v. Board of Education of Topeka*, agreed/**disagreed** (circle one) with the decision of the *Plessy* one-half century later.
6. Does the 13th, 14th, or 15th Amendment say that women must be allowed to vote?
No
7. Explain, in your own words, the meaning of “discrimination.”

Not treating two or several things or people fairly — showing prejudice.

8. There are three plaintiffs in the Supreme Court case *La Fleur v. Cleveland Board of Education*.
 - a. What is a plaintiff?
The person or group who starts the lawsuit; the person who files the “complaint” or formally objects to a law.
 - b. Name the three plaintiffs.
Jo Carol La Fleur, Ann Elizabeth Nelson, Susan Cohen
9. Because of the *La Fleur* case, school boards cannot make a rule that all pregnant teachers must quit teaching at a certain point in their pregnancy. **True x False**
10. When you are using the case study method to read a court case, first tell about the facts of the case.