SUMMARY

In its first constitutional challenge to the equal protection clause of the Fourteenth Amendment, the U.S. Supreme Court decided to hear a case brought by a Chinese immigrant, not an American citizen.

Yick Wo believed city ordinances had been unfairly applied to him, so he challenged their constitutionality under the equal protection clause, and took his case all the way to the Supreme Court. Initiated by the Chinese in San Francisco, the precedent-setting case expanded the interpretation of the equal protection clause to include both citizens and non-citizens alike. It also established foundational principles of law.

In *Yick Wo v. Hopkins*, the court ruled that “an administration of a municipal ordinance . . . violates the Constitution . . . if it makes arbitrary and unjust discriminations founded on differences of race . . .” “The guarantees of the Fourteenth Amendment extend to “all persons within the territorial jurisdiction of the United States, without regard to differences of race, or color, or of nationality.” “. . . the equal protection of the laws is a pledge of the protection of equal laws.”

In this lesson, students explore the cause-and-effect relationships between historical events and the development of constitutional principles that protect the rights of all people in America today. The words inscribed on the U.S. Supreme Court building are a reminder of that protection— “Equal Justice Under Law.”

NOTES AND CONSIDERATIONS

- This lesson presumes that students have some experience reviewing Supreme Court cases.

- Technology is relied on to enhance learning by facilitating information access, information gathering, and instruction.

- This is a self-contained lesson with a variety of resources and activities that can be adapted to different lengths of classes and levels of students.
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?

II. What are the foundations of the American political system?
   A. What is the American idea of constitutional government?
   B. What are the distinctive characteristics of American society?
   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?
   E. What is the place of law in the American constitutional system?
   F. How does the American political system provide for choice and opportunities for participation?

V. What are the roles of the citizen in American democracy?
   A. What is citizenship?
   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?
   B. What are the distinctive characteristics of American society?
   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?
   C. How are state and local governments organized, and what do they do?
   D. What is the place of law in the American constitutional system?
   E. How does the American political system provide for choice and opportunities for participation?

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.
Knowledge, skills, and dispositions

Students will . . .

1. Examine the cause-and-effect relationships between historical events and the development of constitutional principles related to the equal protection clause of the Fourteenth Amendment.
2. Explain the relationship between justice and law in the U.S.
3. Identify the legal precedents set by *Yick Wo v. Hopkins*.
4. Explain the significance of Yick Wo for citizens and non-citizens in the U.S. today.
5. Describe how the Supreme Court’s interpretation of “equal protection” expanded over time and the contribution of *Yick Wo v. Hopkins* to that expansion.
6. Appreciate the impact that one person can have on the development of the law when resources and supports are rallied to pursue justice under the Constitution.

Integrated Skills

1. Information literacy skills
   Students will . . .
   • Analyze primary and secondary sources to gather information
   • Organize and analyze information
   • Use skimming and search skills.
   • Make informed decisions.
   • 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 information.

3. Communication skills
   Students will . . .
   • Write and speak clearly to contribute ideas, information, and express own point of view.
   • Listen for understanding
   • Discuss with others to deepen understanding

4. Study skills
   Students will...
   • Manage time and materials
   • Organize work effectively

5. Thinking skills
   Students will . . .
   • Describe and recall information
   • Explain ideas or concepts
   • Make connections between concepts and principles
   • Draw conclusions
   • Synthesize information
   • Use sound reasoning and logic
   • Distinguish the facts
   • Evaluate different viewpoints

6. Problem-solving skills
   Students will . . .
   • Ask meaningful questions
   • Consider diverse perspectives
   • Support decisions with the facts
   • Explore alternative solutions

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

1. Student activities
2. Participation in small and large group discussions
3. Rubric

**VOCABULARY**

- **arbitrary** — depending on individual discretion and not fixed by standards, rules or law; based on preference, bias, prejudice, or convenience rather than on reason or fact.

- **citizen** — a native or naturalized individual who owes allegiance to a government (as of a state or nation) and is entitled to the enjoyment of governmental protection and to the exercise of civil rights

- **discriminate** (1) — to distinguish, single out, or make a distinction

  **discriminate** (2) — to make a difference in treatment or favor on a basis other than individual merit; to make a difference in treatment on a basis prohibited by law (as national origin, race, sex, religion, age, or disability)

- **discrimination** — unfair or unequal treatment of an individual (or group) based on certain legally protected characteristics, including age, disability, ethnicity, gender, national origin, race, religion, sexual orientation. Federal and state laws prohibit discrimination against members of these protected groups in a number of settings, including education, employment, governments services, housing, lending, public accomodations, transportation, and voting.

- **due process** — government procedures that follow principles of essential fairness; a requirement that laws and regulations must be related to a legitimate government interest (as crime prevention) and may not contain provisions that result in the unfair or arbitrary treatment of an individual

- **equal protection of the law** — a guarantee under the Fourteenth Amendment to the U.S. Constitution that a state must treat an individual or class of individuals the same as it treats other individuals or classes in like circumstances; the equal protection requirement of the Constitution protects against legislation that affects individuals differently without a rational basis for doing so.

- **habeas corpus** — a writ issued to inquire whether a person is lawfully imprisoned or detained; the writ demands that the persons holding the prisoner justify his detention or release him.

- **rights** — a person’s justifiable claim, protected by law, to act or be treated in a certain way.

- **rule of law** — The rule of law exists when a state’s constitution functions as the supreme law of the land, when the statues enacted and enforced by the government invariable conform to the constitution. 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
LESSON OVERVIEW

Class-Prep Assignment:
Advance preparation is important for students so they have the background knowledge and understanding needed for viewing the video on the first day, therefore a “Class Prep Assignment Sheet” is provided. In this assignment, students learn about law and justice in America through an analysis of the architecture and inscriptions on the U.S. Supreme Court building.

DAY 1
The Story of Yick Wo

Students watch and listen to the story of Yick Wo and the Equal Protection Clause to learn how important legal principles were established because a Chinese immigrant sought justice under the Constitution in 1886.

DAY 2
Understanding Yick Wo

Students gather information from the video, Yick Wo and the Equal Protection Clause, analyze the full text of Yick Wo v. Hopkins, and use a variety of other resources to complete the following 5-part study:

- Part 1: Historical Context
- Part 2: The Supreme Court Case
- Part 3: Use of Precedent
- Part 4: Contribution to American Law
- Part 5: Justice for All

DAY 3
A Continuum of Points of View

Students are encouraged to express their positions on controversial issues raised in the lesson by participating in a continuum activity in which they physically move to positions along a continuum that reflect their points of view.

Sources for Definitions
FindLaw—Law Dictionary
http://dictionary.lp.findlaw.com/

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

Annenberg Classroom Glossary
http://www.annenbergclassroom.org/terms
Class-Prep: Equal Justice Under Law

In preparation for the first class session, students complete a Class Prep Assignment Sheet (included) that requires background reading and responses to questions. In this assignment, students learn about law and justice in America through an analysis of the architecture and inscriptions on the U.S. Supreme Court building.

Note: Information and/or suggested answers for the teacher appear in red.

DAY 1: The Story of Yick Wo

OVERVIEW: Students watch and listen to the story of Yick Wo and the Equal Protection Clause to learn how important legal principles were established because a Chinese immigrant sought justice under the Constitution in 1886.

GOAL: Students identify cause-and-effecte relationships between historical events and the expanding interpretation of the equal protection clause.

MATERIALS/EQUIPMENT NEEDED:
- Computer with internet connection and projector for class viewing.

Student Materials:
- Completed Class Prep Assignment Sheet
- “Remarks by Justice Kennedy on the Rule of Law” (Handout). Includes a link to a video of Justice Kennedy defining the rule of law before the ABA (6 min.)

BEFORE VIEWING:
1. Discuss the questions on the Class Prep Assignment sheet.
   Focus on the meaning of the inscription in the picture: “Equal Justice Under Law”

2. Review Section 1 of the Fourteenth Amendment to identify and discuss the “equal protection clause.”
   Fourteenth Amendment, 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.

3. Discuss: What does the clause “equal protection of the laws” mean and to whom does it apply?
   (Parse the language)

4. Introduce the video:
   In 1868, the Fourteenth Amendment to the U.S. Constitution was ratified. In 1886 the Supreme Court issued its first decision based on the equal protection clause. It was a case brought to the court by a Chinese immigrant named Yick Wo, not an American citizen. In Yick Wo v. Hopkins, important constitutional principles were established that continue to guide judicial decisions today.

DURING VIEWING:
Ask students to watch and listen carefully to the story of Yick Wo so they can identify and explain the legal principles he helped establish.
AFTER VIEWING DISCUSSION:

1. Explain the principles established by Yick Wo presented in the video.

   Possible responses:
   - “Laws must be sound in theory and fair in practice. (Justice Kennedy)
   - A law that’s administered with an evil eye or unequal hand violates your right to equal protection.” (Justice Kennedy)
   - Even well-written laws must be applied consistently, fairly
   - If laws are applied in an arbitrary way, they can be used to discriminate against a person, a group, or even an entire race.
   - A facially neutral law is a violation of equal protection when it operates to discriminate in practice against a racial minority
   - Equal protection of the law applies to both citizens and non-citizens alike

2. What makes a law unfair? Give examples from the video

   - Laws that are discriminatory as written; laws that are neutral on their face but applied in a discriminatory way
   - San Francisco ordinances:
     - required a tax on every Chinese passenger traveling by ship
     - against lewd women and other undesirables coming to San Francisco by steamer
     - required every dwelling had to have 500 cubic feet of air per occupant
     - required those in jail to have their hair shaved to within 1 inch
     - required all laundries not made of brick or stone to get a special certificate of operation from the San Francisco board of supervisors

3. Explain Justice Kennedy’s closing comment:

   Yick Wo “wasn’t even a citizen of the United States, and he brings the case to establish a fundamental constitutional principle. The Supreme Court of the United States said we and our justice protect you. This is a gift that Yick Wo gave to us. And it’s a gift that we gave to him.”

   “We and our justice protect you” = Supreme Court as the highest court in the land has the ultimate responsibility to uphold and protect the Constitution and ensure that justice is applied equally to protect all people within the U.S. whether they are citizens or not.

   “Gift that Yick Wo gave us” = fairer laws, improved legal system, etc.

   “Gift that we gave to him” = protection, justice, respect, etc.

4. How did a Chinese immigrant help establish justice in America?

   When laws are applied in arbitrary ways, they cannot be depended on as a measure for justice. Equal protection of the law requires protection of equal laws and that protection applies to both citizens and non-citizens living within the jurisdiction of the U.S.

4. In 2006, Justice Kennedy spoke to the American Bar Association about the rule of law. Distribute the handout “Remarks by Justice Kennedy on the Rule of Law.” Review the 3 points he made about the law and relate them to the Yick Wo story, then view the 6-minute video.

   Answers will vary.
DAY 2: Understanding Yick Wo

OVERVIEW: Students gather information from the video *Yick Wo and the Equal Protection Clause*, analyze the full text of *Yick Wo v. Hopkins* (1886), and use other resources to complete the following 5-part study that explores the story of this case and the legal principles it established that are relevant today.

Part 1: Historical Context
Part 2: The Supreme Court Case
Part 3: Use of Precedent
Part 4: Contribution to American Law
Part 5: Justice for All

GOAL: Students will make connections between the past and the present through the story of Yick Wo, then draw conclusions about the role of the law and participation in a constitutional democracy.

MATERIALS/EQUIPMENT NEEDED:
- Computer with internet connection and projector for class viewing.

Readings Included:
- Video transcript: *Yick Wo and the Equal Protection Clause*
- Full Text: *Yick Wo v. Hopkins* (1886)
- Chapter 3: “Right to Equal Protection of the Laws” from Our Rights by David J. Bodenhamer
  Available online at: [http://www.annenbergclassroom.org/files/documents/books/our%20rights/chapter_3_our_rights.pdf](http://www.annenbergclassroom.org/files/documents/books/our%20rights/chapter_3_our_rights.pdf)
- Epilogue: “‘We Are All Slaves of the Law’” from The Pursuit of Justice by Kermit L. Hall and John Patrick

Readings Online:
- Article: “From victims to victors; A Chinese contribution to American law: Yick Wo versus Hopkins” by Laurene Wu McClain, Chinese America: History and Perspectives, 2003 (This format requires reading the article section by section.)
  [http://findarticles.com/p/articles/mi_hb3167/is_2003_Annual/ai_n28984317/?tag=content;col1](http://findarticles.com/p/articles/mi_hb3167/is_2003_Annual/ai_n28984317/?tag=content;col1)

Student Materials:
- 5-Part Study: “Understanding Yick Wo”

Teacher Materials:
- 5-Part Study: Teacher Notes “Understanding Yick Wo”

PROCEDURE:
1. Students may work individually, with partners, or in small groups to complete the study.
2. Allow one class session to get the study organized and underway, then assign for homework.
3. Keep track of any controversial issues that arise so they may be used in the continuum activity on Day 3.
Overview: This large group continuum activity involves the physical movement of students as they organize themselves at different points along a continuum that ranges from “strongly disagree” to “strongly agree” in order to show their points of view on a controversial issue.

Goal: Encourage students to express and support their own opinions, learn about different perspectives, and reflect on changes in their own points of view.

Materials/Equipment Needed:

**Student materials**
- Completed 5-part study

**Teacher materials**
- Materials to make a continuum across the room (e.g., tape, signs, string, etc.)
- “A Continuum of Points of View: Instructions” (Included)

Procedure: (This is a teacher-facilitated session)

1. Briefly discuss the 5-part study. Generate a list of controversial issues that came out of the study.

2. Introduce the continuum activity. Select one of the controversial issues to start the activity (Refer to the instruction sheet for “A Continuum of Points of View.”)

3. Remind students to back up opinions with information and facts, not just thoughts and feelings.
EXTENSION ACTIVITIES

Have more time to teach?

• Use one or more of the variations listed for the continuum activity.

• Examine discriminatory laws more in-depth. Compare and contrast examples of legal and illegal discrimination.

• Use the ABA dialogue program on the rule of law that “provides lawyers, judges, and teachers with the resources they need to engage students and community groups in discussion of fundamental American legal principles and civic traditions.” http://www.abanet.org/publiced/features/dialoguesruleoflaw.shtml


RESOURCES

Books

• Our Rights by David J. Bodenhamer
  http://www.annenbergclassroom.org/page/our-rights

• Our Constitution by Donald A. Ritchie
  http://www.annenbergclassroom.org/page/our-constitution

• The Pursuit of Justice: Supreme Court Decisions That Shaped America by Kermit L. Hall and John Patrick
  http://www.annenbergclassroom.org/page/the-pursuit-of-justice

Other Resources

• Architectural Information Sheets, U.S. Supreme Court
  http://www.supremecourt.gov/about/archdetails.aspx

• Chinese Immigration and the Chinese in the United States
  http://www.archives.gov/research/chinese-americans/guide.html

• Landmark Supreme Court Cases
  http://www.landmarkcases.org/korematsu/home.html

• U.S. Supreme Court
  http://www.supremecourtus.gov/

• Yick Wo v. Hopkins
  U.S. Supreme Court Center

The Fourteenth Amendment to the Constitution is not confined to the protection of citizens. It says: “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.”

These provisions are universal in their application to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality, and the equal protection of the laws is a pledge of the protection of equal laws.

— Opinion of the Court in Yick Wo v. Hopkins (1886) delivered by Mr. Justice Matthews
• Video Transcript: *Yick Wo and the Equal Protection Clause*

• Chapter 3: “Right to Equal Protection of the Laws” from *Our Rights* by David J. Bodenhamer

• Full text of Supreme Court case: *Yick Wo v. Hopkins* (1886)

• U.S. Constitution: Fourteenth Amendment

• Excerpts from *Understanding Democracy: a Hip Pocket Guide*
  
  - Citizen
  - Citizenship
  - Constitution
  - Equality
  - Justice
  - Liberty
  - Rights
  - Rule of Law

• “The Court and Constitutional Interpretation”

• Remarks by Justice Kennedy on the Rule of Law

• Epilogue: “We are all Slaves of the Law” from *The Pursuit of Justice* by Kermit L. Hall and John Patrick
JUSTICE ANTHONY KENNEDY: LET ME ASK YOU SOMETHING.

Anthony Kennedy is an Associate Justice of the United States Supreme Court.


----------------------------------------

Yick Wo went all the way to the Supreme Court to try to save his laundry business, and along the way, he ended up establishing a fundamental constitutional right for all of us. But before we get to Yick Wo, there are a couple of things we need to know….

MAI NGAI: THE FIRST CHINESE WHO CAME TO AMERICA IN ANY LARGE NUMBERS CAME DURING THE GOLD RUSH

CHARLES MCCLAIN: GOLD WAS DISCOVERED IN 1849 AND MANY PEOPLE FROM ALL OVER THE WORLD CAME TO CALIFORNIA TO MAKE THEIR FORTUNE IN THE GOLD FIELDS.

LINDA PRZYBYSZEWSKI: THAT’S WHEN YOU HAD LARGE NUMBERS OF CHINESE COMING. // THEY CAME TO WORK, THEY CAME TO MAKE MONEY.

Their hard work was noticed by the companies building the Transcontinental Railroad. They brought workers from China to do manual work and, literally, to move mountains.

JUSTICE ANTHONY KENNEDY: THE CHINESE LABORERS WERE THE ONLY ONES THEY COULD GET TO DO IT. THE RAILROAD SENT THEIR AGENTS TO CHINA TO RECRUIT WORKERS. // IT WAS VERY DANGEROUS WORK. THE CHINESE WOULD BE WORKING BY BEING SUSPENDED ON A ROPE. THEY’D PUT A CHARGE OF TNT, DYNAMITE, IN THE MOUNTAIN // AND THEY’D SAY, “NOW’S THE TIME,” AND THEY HAD TO QUICKLY PULL THEM UP BEFORE THE DYNAMITE WENT OFF.

The completion of the Transcontinental Railroad is one of the greatest achievements of the 19th Century and, when it was done, many of those same laborers went to San Francisco. To this day, it’s still home to the nation’s largest Chinatown.
MAI NGAI: SAN FRANCISCO’S CHINATOWN WAS CALLED "THE NUMBER ONE CITY" BECAUSE FOR CHINESE THAT WAS THE MAIN CITY THAT THEY ARRIVED THROUGH ON THEIR WAY TO ANY OTHER PLACE IN CALIFORNIA. AND SAN FRANCISCO WAS HEADQUARTERS TO THE FAMILY AND DISTRICT ASSOCIATIONS THAT COMPRISED THE SOCIAL ORGANIZATION FOR CHINESE. SO WHEN ONE ARRIVED BY SHIP IN SAN FRANCISCO ONE WOULD GO TO THE CHINESE QUARTER, ONE WOULD SEEK OUT ONE’S FAMILY OR DISTRICT ASSOCIATION. GET A HOT MEAL, A PLACE TO STAY OVERNIGHT AND IT WAS ALSO A PLACE WHERE ONE COULD SEND AND RECEIVE MAIL, SEND MONEY HOME. AND ALSO IN THE EVENT OF DEATH IT WOULD BE THE ORGANIZATION THAT WOULD SEND YOUR BONES BACK TO YOUR FAMILY.

JUSTICE ANTHONY KENNEDY: THEY THEN WANTED TO STAY, THE CHINESE, IN CALIFORNIA. AND WERE NOT TOO WELCOME BECAUSE THEY WERE COMPETING WITH OTHER RESIDENTS OF CALIFORNIA WHO WANTED ALSO TO EARN A LIVELIHOOD.

The Chinese immigrants were 10% of the total population in California by 1880. But they were outsiders whose rights had to be protected by powers that were very far away.

JUSTICE ANTHONY KENNEDY: THERE WERE TREATIES BETWEEN THE UNITED STATES AND CHINA. THIS PROVIDES FOR EQUAL TREATMENT. UNDER THE UNITED STATES SYSTEM, ALL LOCAL ENTITIES ARE BOUND BY A US TREATY. THAT’S IN THEORY. REMEMBER, THE LAW HAS TO BE SOUND IN THEORY AND FAIR IN PRACTICE. AND THE DIFFERENCE BETWEEN THEORY AND PRACTICE CAN BE VERY SIGNIFICANT.

Now, here’s something most Americans today would have a hard time with: until World War II, Chinese immigrants to America could not become citizens. We wouldn’t let them. The Naturalization Act of 1790 only allowed white persons to naturalize. Then the language became more direct. The United States Congress passed the Exclusion Acts in the 1880s, suspending immigration from China, and going one step further: the law actually prohibited Chinese immigrants from becoming US citizens.

JUSTICE ANTHONY KENNEDY: CITIZEN OF THE UNITED STATES MEANS THAT YOU CAN VOTE. YOU CAN HAVE POLITICAL POWER TO PROTECT YOUR INTERESTS IN LOCAL GOVERNMENT. THE CHINESE DID NOT HAVE THAT ADVANTAGE.

LINDA PRZYBYSZEWSKI: YOU HAVE TO REALIZE THAT IN PUBLIC DISCUSSION IN CALIFORNIA, DISLIKE OF THE CHINESE WAS EXPRESSED EXTREMELY OPENLY. THEY WANTED THE CHINESE IMMIGRANTS TO LEAVE. NEITHER THE STATE OR THE CITY HAS ANY POWER OVER IMMIGRATION. THAT ALL BELONGS TO THE NATIONAL GOVERNMENT. SO THEY COULDN’T BAN CHINESE IMMIGRANTS, THEY COULD JUST MAKE THEIR LIVES MISERABLE.
BILL ONG HING: SAN FRANCISCO WAS A HOTBED OF ANTI-IMMIGRANT SENTIMENT. AND SO SAN FRANCISCO PASSED A NUMBER OF LOCAL ORDINANCES. FOR EXAMPLE, SAN FRANCISCO PASSED AN ORDINANCE THAT ANYONE DISEMBARKING FROM A SHIP THAT LANDED IN SAN FRANCISCO HARBOR HAD TO PAY AN EXTRA TAX FOR EVERY PASSENGER THAT WAS CHINESE.

LINDA PRZYBYSZEWSKI: THEY ALSO HAD AN ORDINANCE AGAINST LEWD WOMEN AND OTHER KINDS OF UNDESIRABLE PEOPLE COMING BY STEamer. EUROPEANS CAME BY LAND, MEXICANS CAME OVER LAND AS WELL. THE ONLY PEOPLE WHO REGULARLY CAME BY STEAMER WERE THE CHINESE.

MAI NGAI: EVERY DWELLING HAD TO HAVE 500 CUBIC FEET OF AIR PER OCCUPANT.

LINDA PRZYBYSZEWSKI: DESIGNED TO TARGET THE CHINESE WHO LIVED IN VERY CLOSE QUARTERS WHERE THE DENSITY WAS VERY HIGH. THIS WOULD BE ANOTHER WAY TO MAKE IT IMPOSSIBLE FOR THEM TO STAY IN THE SAME APARTMENT, IN THE SAME HOUSE.

CHARLES MCCLAIN: SINCE THE PENALTY FOR VIOLATING A LAW WAS EITHER A FINE OR TIME IN THE COUNTY JAIL, AND MOST CHINESE WHEN CONVICTED FOR VIOLATING THE LAW WOULD CHOOSE TIME IN THE COUNTY JAIL. AND THIS IRRITATED THE SAN FRANCISCO BOARD OF SUPERVISORS, AND SO THEY PASSED A LAW.

LINDA PRZYBYSZEWSKI: ANYONE WHO WAS CONVICTED OF A CRIME AND WAS IN JAIL WOULD HAVE TO HAVE THEIR HEAD SHAVED TO WITHIN AN INCH.

MAI NGAI: THIS WAS SO OBNOXIOUS THAT EVEN THE MAYOR VETOED IT. WEARING ONE’S HAIR, FOR MALES, IN A CUE, OR A TAIL, WAS A REQUIRED PRACTICE UNDER THE MANCHU DYNASTY. IT WAS A SIGN OF RESPECT TO THE EMperor. SO TO HAVE ONE’S HAIR SHORN WOULD MEAN NOT ONLY HUMILIATION BUT WOULD MEAN THAT ONE COULDN’T GO BACK TO CHINA WITHOUT BEING ARRESTED.

LINDA PRZYBYSZEWSKI: ALL OF THESE LAWS ON THEIR FACE SEEM TO BE NEUTRAL – RACE NEUTRAL, RIGHT? THE STEAMER STATUTE DOESN’T SAY “JUST THE CHINESE,” BUT IT’S OBVIOUS IT’S ABOUT THE CHINESE BECAUSE THEY’RE THE ONLY ONES WHO CAME IN LARGE NUMBERS VIA STEAMER.

JUSTICE ANTHONY KENNEDY: PRISONERS HAD TO HAVE HAIRCUTS. AND THIS WAS REALLY DIRECTED AT THE CHINESE WHICH EVERYBODY KNEW – THEY KNEW THAT YOU KNEW THAT THEY KNEW THIS. AND YET THE LAW LOOKED FAIR ON ITS FACE. AND THAT’S REALLY THE BEGINNING FOR AN UNDERSTANDING OF YICK WO.
We really don’t know that much about Yick Wo. He didn’t leave any pictures of himself, and there’s not much beyond court records. We’re not even really sure that that was his name. But it was the name of the laundry service he had run for 22 years. Yick Wo was, in every way, an exemplary businessman.

LINDA PRZYBYLSZEWSKI: ONE OF THE OCCUPATIONS THAT THE CHINESE TENDED TO SPECIALIZE IN WERE LAUNDERIES.

CHARLES MCCLAIN: THEY DOMINATED THE CALIFORNIA LAUNDRY INDUSTRY FROM THE VERY BEGINNING.

MAI NGAI: ATTACKING THE CHINESE LAUNDRIES WAS ONE PART OF A LARGER STRATEGY OF HARASSING CHINESE IN SAN FRANCISCO. AND BECAUSE SO MANY CHINESE WERE EMPLOYED IN THE LAUNDRY OCCUPATION THIS WAS A PARTICULARLY EFFECTIVE KIND OF TARGET.

BILL ONG HING: THE ORDINANCE LANGUAGE SIMPLY SAYS THAT ANYONE WHO OPERATES A LAUNDRY THAT IS NOT MADE OF BRICK OR STONE MUST OBTAIN A SPECIAL CERTIFICATE OF OPERATION FROM THE SAN FRANCISCO BOARD OF SUPERVISORS.

Yick Wo’s building... you guessed it... wood. In fact, every Chinese laundry in the city – every single one – was in a wooden building.

CHARLES MCCLAIN: AT THIS TIME IN SAN FRANCISCO, THE VAST MAJORITY OF STRUCTURES ARE MADE OF WOOD. STONE BUILDINGS WOULD HAVE BEEN THE EXCEPTION.

JUSTICE ANTHONY KENNEDY: EVEN AS TO WOODEN LAUNDERIES, AS THE STORY TURNS OUT, THE ORDINANCE WAS NOT FAIR IN THE WAY IT WAS ADMINISTERED. IT WAS NOT FAIR IN PRACTICE. WHY? THE RECORD IN THIS CASE SHOWS THAT THERE WERE TWO HUNDRED AND EIGHTY PERMIT APPLICATIONS FOR WOODEN LAUNDERIES. EIGHTY WERE GRANTED. TWO HUNDRED DENIED. THE EIGHTY WERE ALL GRANTED TO CAUCASIANS. THE TWO HUNDRED WERE ALL DENIED TO THE CHINESE.

CHARLES MCCLAIN: ALL THE CHINESE WHO APPLIED WERE – FOR PERMITS – WERE TURNED DOWN.

Not one Chinese laundry was granted a license. None. Zero. Goose Egg. Ling.

JUSTICE ANTHONY KENNEDY: IT’S A 21ST CENTURY METAPHOR TO SAY THAT THIS IS NOT ROCKET SCIENCE TO FIGURE OUT THAT SOMETHING WAS WRONG. SOMETHING IS DRastically WRONG.
CHARLES MCCLAIN: ALL THE CHINESE WHO APPLIED FOR PERMITS WERE TURNED DOWN.

The Board of Supervisors ordered Yick Wo to shut down without ever explaining why. Even though he had already obtained a safety certificate from the Fire Warden, and he had also passed an inspection by the city’s health department. Yick Wo refused to close, so he went to jail, where he would fight his case from behind bars.

CHARLES MCCLAIN: THE CHINESE HAD A WELL-DEVELOPED LEGAL CONSCIOUSNESS. // THEY KNOW THAT THEY WERE NOT TOTALLY WITHOUT PROTECTION, EVEN THOUGH THEY WERE VERY, VERY VULNERABLE. THEY KNEW THAT THEY COULD GO TO COURT.

BILL ONG HING: IT TOOK TREMENDOUS COURAGE AND A WILLINGNESS TO PUT YOUR NECK ON THE LINE, IF YOU’RE YICK WO, // TO FILE THIS LAWSUIT.// BUT I ACTUALLY THINK THAT THE ATTORNEYS THAT BROUGHT THESE LAWSUITS DESERVE A CERTAIN AMOUNT OF RECOGNITION AS WELL. BECAUSE THEY WERE GOING AGAINST THE POPULAR GRAIN.

With the help of one of the most powerful associations in Chinatown…

CHARLES MCCLAIN: THE CHINESE LAUNDRYMAN’S GUILD, OR IN CHINESE, THE TUNG HING TONG.

…Yick Wo hired Hall McAllister, widely considered the best lawyer in all the west (there’s actually a statue dedicated to him outside of San Francisco’s City Hall today). In all 150 laundry owners got themselves arrested for resisting the ordinance. Two cases went through the courts. Yick Wo took his case all the way to the California Supreme Court, where he lost. Another owner, Wo Lee, took his case to the Federal Ninth Circuit Court, where it was heard by Judge Lorenzo Sawyer.

LINDA PRZYBYSZEWSKI: JUDGE SAWYER REALIZED EARLY ON THAT STATE AND LOCAL GOVERNMENT IN CALIFORNIA WAS USING THE POLICE POWER AS A CLOAK IN ORDER TO MASK LEGISLATION THAT THEY WERE PASSING THAT SPECIFICALLY TARGETED THE CHINESE.

“Police Power” is a concept that goes about four centuries back to England and the development of town and cities. And it’s the idea that there are some rules and behaviors that are best regulated and enforced by local government. Public safety and order… health issues…

LINDA PRZYBYSZEWSKI: EVEN SOMETHING LIKE // MAKING SURE THAT BUTCHERS AND BAKERS HAVE SCALES THAT ACTUALLY WEIGH A POUND WHEN THEY SAY THEY WEIGH A POUND. THAT WOULD’VE ALL BEEN UNDER THE LOCAL POLICE POWER.
But the Civil War changed that a little, as many states and cities had laws that were at odds with the federal Constitution – slavery being the most obvious. The Fourteenth Amendment was virtually brand new, ratified just 3 years after the end of the war, and it guaranteed that everyone throughout the country would be protected by the same fundamental rights, equally. And Judge Sawyer cited it in his opinion. He thought the city was using police power as an excuse – that the laundry ordinance was so vague it allowed the city to discriminate because it never had to explain how it decided who got a license and who didn’t.

LINDA PRZYBYSZEWSKI: SAWYER WAS DISGUSTED. // HE SAYS, “EVERYONE KNOWS WHAT IS GOING ON HERE, WE ALL KNOW THIS IS DISCRIMINATION AGAINST THE CHINESE, I’M NOT GOING TO PRETEND I DON’T KNOW IT JUST BECAUSE I’M A JUDGE SITTING ON THE BENCH.”

Judge Sawyer was no slouch. He had served on California’s very first State Supreme Court. And he knew that Yick Wo had already lost there, so he deferred to that court and decided against Wo Lee, knowing that both cases, being virtually identical, would get bundled as one case and go on to the Supreme Court of the United States. And that case was Yick Wo verses. Hopkins.

JUSTICE ANTHONY KENNEDY: YICK WO GOES TO THE SUPREME COURT OF THE UNITED STATES.

MAI NGAI: YICK WO SAYS THAT THIS // ORDINANCE AROUND THE LAUNDRIES AND THE WAY IN WHICH THEY ARE ADMINISTERED VIOLATED HIS RIGHTS UNDER THE 14TH AMENDMENT. THEY VIOLATED HIS RIGHTS TO A DUE PROCESS AND TO EQUAL PROTECTION.

The Fourteenth Amendment was one of three amendments added to the Constitution after the Civil War to ensure that former slaves were given full citizenship and the equal protection of the law anywhere in the country. Of course, it didn’t say “former slave,” it said “person.” So even though Yick Wo wasn’t a former slave or a citizen, he figured the Fourteenth Amendment applied to him, too. San Francisco argued that, in the end, none of that mattered.

MAI NGAI: THE CITY SAYS THAT THEY’RE NOT DISCRIMINATING, THAT THE LANGUAGE OF THE LAW IS NEUTRAL. IT DOES NOT SINGLE OUT ANY CLASS OF PEOPLE, AND IF THE CHINESE ARE FOUND WANTING IN ANY WAY, IT IS BECAUSE THE WAY IN WHICH THEY RUN THEIR LAUNDRIES IS WANTING.

But the Justices weren’t buying it. Justice Stanley Matthews wrote the opinion for a unanimous Court, saying that the local ordinance was a violation of the Fourteenth Amendment’s guarantee to any person the equal protection of the law. In its very first decision based on the equal protection clause of the Fourteenth Amendment, the Supreme Court chose to protect the rights of a Chinese immigrant who was not an American citizen.

CHARLES MCCLAIN: YICK WO IS ONE OF THE VERY FIRST CASES // TO CONSTRUE THE 14TH AMENDMENT – TO SAY WHAT IT WAS THAT THE 14TH AMENDMENT MEANT.

MAI NGAI: YICK WO MEANS THAT AN IMMIGRANT HAS THE SAME PROTECTIONS UNDER THE 14TH AMENDMENT AS CITIZENS.

CHARLES MCCLAIN: IT’S ALSO THE FIRST CASE TO SAY THAT A LAW THAT IS NEUTRAL ON ITS FACE, AS THIS ONE WAS, COULD BE APPLIED IN SUCH A DISCRIMINATORY FASHION, THAT IT WOULD AMOUNT TO WHAT THE COURT CALLED A “PRACTICAL DENIAL OF EQUAL PROTECTION.”

Justice Matthews insisted that legitimate police power had to regulate safety and health practices more clearly and it had to be applied in good faith. San Francisco’s laundry ordinance was too arbitrary.

JUSTICE ANTHONY KENNEDY: ARBITRARY IS ONE OF THE REALLY IMPORTANT WORDS IN CONSTITUTIONAL LAW. ARBITRARY MEANS NO REASON. // THE LAW IS BASED ON REASONS. THE LAW IS BASED ON STANDARDS THAT ARE OPEN, THAT ARE TRANSPARENT, THAT ARE FAIR.

JUSTICE ANTHONY KENNEDY (Cont.): THE LAW SAYS YOU’RE ENTITLED TO THIS PERMIT.//IT’S YOUR RIGHT. YOU HAVE A RIGHT TO THAT PERMIT. THIS IS NOT UNDERSTOOD IN MANY PARTS OF THE WORLD.

JUSTICE ANTHONY KENNEDY (Cont.): NOT LONG AGO I WAS INTERESTED IN KNOWING HOW LONG IT TAKES TO GET A LICENSE – A PERMIT – TO HAVE A BAKERY IN EGYPT. // THERE’S A PROBLEM WITH LICENSES THERE. // IF YOU WANNA OPEN A BAKERY IN CAIRO, IT TAKES YOU FIVE HUNDRED AND THIRTY DAYS TO GET THE PERMIT, AND YOU HAVE TO GO ALMOST EVERY DAY TO SEE HOW THE PERMIT PROCESS IS GOING. // SO WHAT DO YOU DO IF YOU WANNA OPEN A BAKERY? YOU NUMBER ONE OPEN WITHOUT ANY PERMIT AT ALL. YOU’RE LIVING OUTSIDE THE LAW. NUMBER TWO, YOU BRIBE THE OFFICIAL. YOU’RE LIVING OUTSIDE THE LAW.

JUSTICE ANTHONY KENNEDY (Cont.): IN BRAZIL, THE BEACH NEAR IPANEMA IS A GREAT PLACE FOR SURFING. THEY NEED SURF BOARD SHOPS // AND IT’S A GOOD BUSINESS. TO GET A LICENSE // IS CLOSE TO SIX MONTHS IN BRAZIL. COMPLETELY UNNECESSARY. THIS IS THE LEGAL SYSTEM BEING USED TO CHOKE THE PEOPLE.
A law is supposed to work on behalf of those who abide by it. People shouldn’t have to go around it, and it should treat everyone equally. If the law is applied in an arbitrary way, it can be used to discriminate against a person, a group, or even an entire race.

JUSTICE ANTHONY KENNEDY (Cont.): THEN THE FACT THAT IT IS THE MOST BEAUTIFULLY WRITTEN LAW // YOU CAN POSSIBLY DEVISE ON ITS FACE MEANS NOTHING, CAUSE THE LAW OPERATES IN THE REAL WORLD. AND THE HOLDING OF YICK WO WAS THAT A LAW THAT’S ADMINISTERED WITH AN EVIL EYE OR UNEQUAL HAND // VIOLATES YOUR RIGHT TO // EQUAL PROTECTION.

So it’s fitting that we end where we started…back at those law books. Since Yick Wo verses Hopkins was decided in 1886, it has been cited in more than 160 opinions in the Supreme Court alone. It was used time and again to strike down laws judged to be unfair, on everything from education to loitering, voter apportionment to jury selection – laws that seemed to be neutral, but were actually in violation of the Fourteenth Amendment’s equal protection clause. All of those stories might not have been possible, without the story of Yick Wo.

Chapter 3: “Right to Equal Protection of the Laws”
from Our Rights by David J. Bodenhamer

CHAPTER 3

The Right to Equal Protection of the Laws

“All, too, will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable; that the minority possess their equal rights, which equal law must protect, and to violate would be oppression.”

—President Thomas Jefferson, First Inaugural Address, March 4, 1801

All men are created equal.” This phrase has stirred hearts around the world for more than 200 years. It is one of the values most associated with the United States, but nowhere is the language of equality among individuals found in the Constitution. It comes instead from the Declaration of Independence, the document that signaled the intentions of the founding generation. Not until after the Civil War did the nation’s governing charter include equality before the law as a constitutional guarantee, when the Fourteenth Amendment promised, “Nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws.”

When Thomas Jefferson wrote the Declaration of Independence, few people believed in social or economic equality. The document’s language did not mean the founders intended to level society. Like others of their day, they accepted upper and lower classes, or social hierarchy, as natural. What they desired was an equal opportunity for people to make the most of their abilities and to stand equal before the law. This idea was quite radical in the late eighteenth century, even though it is common today. It departed sharply from the world of privilege enjoyed by the men who led the Revolution. The declaration also pledged more than these men were willing to grant in fact; equal opportunity did not apply to women, slaves, the poor, native Americans, and many immigrants. Yet as limited as the ideal was in practice, all Americans ultimately were heirs to its promise.

The notion of equality as an essential part of democracy became deeply embedded in American society during the first half of the nineteenth century. Alexis de Tocqueville, the French visitor whose classic work, Democracy in America (1835), remains the best guide to the young nation’s character, noted the popular insistence that “rights must be given to each citizen or to no one.” The Civil War tested this principle, but the Union victory reaffirmed not only the nation’s unity but also its commitment to equality before the law. When it became apparent that the defeated Confederate states were intent on severely restricting the legal and economic rights of former slaves, Congress passed the Fourteenth Amendment, which the states ratified in 1868. It made all persons born in the United States citizens of the nation and of the state where they lived. It also prohibited any state from “abridging the privileges and immunities of citizens of the United States,” or denying its citizens “due process of law” or “equal protection of the laws.” For the first time, the concept of equality became part of the Constitution.

The framers of the Fourteenth Amendment used open-ended phases—“due process of law” and “equal protection of the laws”—that had no clear or settled definition. Most scholars believe that they intended, at a minimum, to apply the protections of the Bill of Rights to the states, but this is not what happened. In a
series of cases during the late nineteenth century, the Supreme Court ruled that Americans had to turn to their states, rather than the federal government, for protection of their rights. The justices also voided most federal laws designed to protect blacks and decided that Congress did not have the power under the amendment to prohibit private acts of discrimination. The Court in fact supported state laws requiring discrimination, most famously in *Plessy v. Ferguson* (1896), when it interpreted the equal protection clause to allow racial segregation as long as separate facilities were equal. The Fourteenth Amendment, the Court decided, “could not have been intended to abolish distinctions based upon color.” This “separate but equal” standard used to justify legal discrimination made the equal protection clause, in effect, a dead letter.

African Americans did not accept segregation willingly, however. Throughout the first half of the twentieth century, they resorted increasingly to the courts to win recognition of their rights. Led by the National Association for the Advancement of Colored People’s (NAACP) Legal Defense Fund, blacks won significant victories on issues related to voting, police brutality, and rights of the accused. World War II played a big role in changing American attitudes. Segregation and the violence against blacks that accompanied it reminded many Americans of Nazi Germany’s efforts to breed a pure race and to exterminate entire groups of people who failed to satisfy Adolf Hitler’s notion of desirable human traits. After black soldiers demonstrated their courage on the battlefields, President Harry Truman acknowledged their contribution in 1947 by ending segregation in the U.S. Army. In 1950, the Supreme Court held in two cases that segregated law schools and graduate programs could never be equal to ones provided for whites. Four years later, in *Brown v. Board of Education*, the standard of “separate but equal” was discredited completely when the justices unanimously decided that segregated education was inherently unequal; it violated the Fourteenth Amendment’s promise of equal protection of the law.

The *Brown* decision was one of the most momentous in Supreme Court history. It stimulated a revolution in civil rights and revitalized the Fourteenth Amendment’s equal protection clause. The unavoidable logic of *Brown* was that if separating people in school on the basis of race violated the equal protection clause, then so did racial segregation in other parts of public life. In case after case, litigants used the *Brown* doctrine successfully to challenge statutory segregation, while the civil rights movement pushed the nation to open all of American public life to equality before the law.

Soon the Court was faced with questions about laws that regulated private conduct on the basis of race. One of the most volatile of these issues concerned interracial marriage. Southern states prohibited it, but how could law regulate matters of the heart? Were these laws a violation of the equal protection guarantee of the Fourteenth Amendment? In the 1960s, a young Virginia couple was determined to find out. Newlyweds Richard and Mildred Loving were asleep in their home in Caroline County, Virginia, in July 1958, when they were awakened by flashlights shining in their faces. The intruders demanded to know why they were in bed together, and the Lovings produced a marriage certificate from the District of Columbia. The leader of the group, the local sheriff, told them the certificate was not valid in Virginia and arrested them for violating the state’s Racial Integrity Act of 1924, which prohibited a white from marrying anyone other than another white person. Richard was white; Mildred, black. Their crime was marrying each other. At their trial six months later, they waived a jury trial and accepted a deal from the judge. In exchange for a suspended sentence of

“I think that democratic peoples have a natural taste for liberty. Left to themselves, they seek it out, love it, and suffer if deprived of it. For equality, however, they feel an ardent, insatiable, eternal, invincible passion. They want equality in liberty.”

—Alexis de Tocqueville, *Democracy in America* (1835)
one year in the state prison, they would leave Virginia for twenty-five years. “Almighty God created the races white, black, yellow, malay and red,” the judge explained later when the case came back to him on appeal, “and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix.” This view was by no means an isolated one. A public opinion poll in 1965 revealed that 42 percent of northern whites and 72 percent of southern whites supported laws banning interracial marriages.

The Lovings moved to Washington, D.C., but found it difficult to adjust to urban life. Mildred especially wanted to move back to the county where both she and Richard had family. In desperation, she wrote U.S. Attorney General Robert F. Kennedy, asking for his help. The Justice Department referred the letter to the American Civil Liberties Union (ACLU), which agreed to take the case. It offered the civil rights organization an opportunity to challenge the anti-mixing laws then on the books of sixteen states. The Lovings reluctantly accepted the ACLU’s plan. They were private people who preferred to be left alone in their marriage. “We have thought about other people,” Richard Loving told a reporter, “but we are doing it for us—because we want to live here.”

After Virginia’s highest court unanimously refused to overturn their convictions, the Lovings appealed to the U.S. Supreme Court. Their argument was straightforward: the statutes were “relics of slavery” and expressions of racism. “There are no laws more symbolic of the Negro’s relegation to second-class citizenship. . . . [T]hey are legalized racial prejudice, unsupported by reason or morals, and should not exist in a good society,” their petition argued. In the oral presentation, the Lovings’ attorney advanced another, more poignant reason why the justices should void the marriage law. Richard had asked him to “tell the Court I love my wife, and it is just unfair that I cannot live with her in Virginia.”

The justices agreed, 9 to 0. “The clear and central purpose of the Fourteenth Amendment was to eliminate all official state sources of invidious racial discrimination in the States,” Chief Justice Earl Warren wrote. “There can be no doubt that restricting the freedom to marry solely because of racial classifications violates the central meaning of the equal protection clause.” Racial classifications are “so directly subversive of the principle of equality at the heart of the Fourteenth Amendment,” he concluded, that they also deprived citizens of

“[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 guarantied by the supreme law of the land are involved.”

—Justice John Marshall Harlan, dissenting opinion, 
Plessy v. Ferguson (1896)
liberty without due process of law.

Surprisingly, there was no public backlash to the decision in *Loving v. Virginia*, despite the social outrage that historically had attended intimate interracial relationships. Most Americans were sympathetic to the need to redeem the promise of equal protection made by the Fourteenth Amendment, at least when it came to racial classifications. For the Lovings, the result was more immediate and more personal. “I feel free now,” Mildred said when she learned of the decision. Soon they returned to Virginia to live among family and friends without fear of going to prison. Their lives had changed, but they never understood why the public should be interested in their case. “All we ever wanted,” they claimed, “was to get married, because we loved each other.”

In the series of cases from *Brown* to *Loving*, the Supreme Court gave life to the equal protection clause and extended the promise of equality before the law to racial minorities who previously had been denied this right. But in some ways these cases were easy once the justices decided that laws requiring segregation by race violated the Fourteenth Amendment. What followed were issues far more difficult to resolve because they involved not legal discrimination but rather attempts to remedy past wrongs based on race and other suspect classifications such as gender.

Ending legal segregation did not end racial separation. Whether for economic opportunity or prejudice against minorities, many whites moved from cities into suburbs, leaving the inner cities poorer and less integrated. One response was to end segregation in fact and not simply in law. For example, schools were segregated in part because students lived in all-white or all-black neighborhoods, so courts required busing of blacks into white schools to ensure a racial balance approximately equal to the entire community’s ratio of black and white citizens.

Another response was to allow affirmative action programs to guarantee minority access to higher education, civil service positions, labor unions, and government contracts. Under these programs, governments could take race into account as a way to increase minority participation. Although many people viewed these efforts as reverse discrimination, the Supreme Court upheld many affirmative action programs, especially in states where legal segregation had been strongest. The most important case was *Regents of the University of California v. Bakke* (1978). The Court allowed universities to consider race as a factor in admission decisions as a way of boosting the number of minority students, so long as they did not use strict racial quotas to reach a desirable mix, a result the justices reaffirmed in 2005 in two decisions involving the University of Michigan. The justices also struck down laws that resulted in discrimination, even if the result was unintentional and the law was fair otherwise. Finally, in 1987, in *St. Francis College v. Al-Khazraj*, they expanded the legal definition of race beyond its traditional meaning to include “identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics.”

Equal protection of laws applied to any person, an Arab in this case, who was a member of one of these classes. The successful attack on racial discrimination was not lost on women, who looked to the equal protection clause as a way to remove inequalities based on gender. In the 1970s, the Court began to strike down gender classifications as a violation of the Fourteenth Amendment, just as they had done with racial classifications in earlier decades. The justices were responding in both instances to a broad national consensus brought about
in the first instance by the civil rights movement and in the second by the women’s movement. By the mid-1990s, one of the last male-only bastions fell before the equal protection standard when the Court ruled, in United States v. Virginia, that Virginia could not deny admission to women at the state-supported Virginia Military Institute. The belief that women would falter under the rigors of military training was a stereotype that could not be used to deny an individual’s right to equal protection. Even though an Equal Rights Amendment narrowly failed to win ratification, courts and legislatures at the federal and state level increasingly refused to accept discrimination based on gender.

Equal protection does not mean absolutely equal treatment. By its nature, law relies on classifications, and it treats people differently for good reason. We as a society do not provide driver’s licenses, for example, to people who are blind, and we accept the idea that seniority confers different benefits, such as higher pay or greater privileges, on people who do the same job. What we do not accept is different treatment based solely on race, gender, or other classifications—age, sexual orientation, physical disability, among others—that have no reasonable relationship to the job, admission criteria, eligibility requirements, or the like. Also, equal protection does not apply equally to all groups. Distinctions based on race are more suspect than those based on gender, in part because the Fourteenth Amendment was designed specifically to eliminate the ill effects of racial classifications, even if the Court did not apply it in this fashion until the last half of the twentieth century. Not all our expectations for equal treatment before the law are based on the Fourteenth Amendment, however. The Americans with Disabilities Act (1990) is a federal statute, for instance, and not a constitutional requirement, but it and similar statutes reflect our constitutional commitment to equality.

The late-twentieth-century movement toward equality—the so-called egalitarian revolution—came from a variety of circumstances, but it could not have occurred without a Constitution capable of accommodating new meanings. John Marshall, a member of the founding generation and perhaps the nation’s greatest chief justice, reminded his contemporaries that the document they had ratified in 1788 would always have “to be adopted to the various crises of human affairs.” A second justice with the same surname but not the same heritage, Thurgood Marshall, the first African American on the Supreme Court, stated it more bluntly two centuries later:

The men who gathered in Philadelphia in 1787 could not have imagined nor would they have accepted that the document they were drafting would one day be construed by a Supreme Court to which had been appointed a woman and a descendent of an African slave. “We the People” no longer enslaves, but the credit does not belong to the framers. It belongs to those who refused to acquiesce in outdated notions of “liberty,” “justice,” and “equality” and who strived to better them.

History presents new opportunities to apply—and extend—older concepts. The principle of equal protection of the law is one of the best examples of how our constitutional rights gain meaning from experience. Americans have always been committed to allowing individuals an equal opportunity to reach their full potential, to engage in the pursuit of happiness on equal terms with each other in the marketplace, in education, and in other parts of society. We have also understood that the ability to compete equally depends upon equality before the
law. The idea of equal protection of laws is a fundamental concept of democratic citizenship. With it, each of us can participate in decisions that affect us and our society, and we each bear responsibility for the choices we make. Without it, we would have categories of citizenship, with some members of society enjoying greater rights and power than others. We as a people have rejected this more restricted view of the role and responsibilities of citizenship by embracing, ultimately, a national goal of equality before the law. In doing so, we have acted to redeem the promise of 1776 that all men and women are created equal.
“A Broader Protest Is Made in Behalf of Woman”

Margaret Fuller was a writer, lecturer, early women’s right advocate, and one of the most influential literary personalities in the nineteenth century. Daughter of a U.S. congressman and a close friend of Ralph Waldo Emerson, she organized a series of discussion groups in the 1840s around topics such as art, education, and equal rights for women. Many of the leading crusaders for equal rights for women attended these sessions. Fuller developed the ideas from these discussions more fully in a major work, Woman in the Nineteenth Century (1845), which argued for the independence of women. Fuller was America’s first public intellectual woman of letters, and her work helped to shape the early women’s rights movement.

It should be remarked that, as the principle of liberty is better understood, and more nobly interpreted, a broader protest is made in behalf of Woman. As men become aware that few men have had a fair chance, they are inclined to say that no women had a fair chance. . . .

We would have every arbitrary barrier thrown down. We would have every path laid open to Woman as freely as to Man. Were this done, and a slight temporary fermentation allowed to subside, we should see crystallizations more pure and of more various beauty. We believe the divine energy would pervade nature to a degree unknown in the history of former ages, and that no discordant collision, but a ravishing harmony of the spheres, would ensue.

Yet, then and only then will mankind be ripe for this, when inward and outward freedom for Woman as much as for Man shall be acknowledged as a right, not yielded as a concession. As the friend of the negro assumes that one man cannot by right hold another in bondage, so should the friend of Woman assume that Man cannot by right lay even well-meant restrictions on Woman. . . .

What Woman needs is not as a woman to act or rule, but as a nature to grow, as an intellect to discern, as a soul to live freely and unimpeded, to unfold such powers as were given her when we left our common home. . . .

It is therefore that I would have Woman lay aside all thought, such as she habitually cherishes, of being taught and led by men. I would have her, like the Indian girl, dedicate herself to the Sun, the Sun of Truth, and go nowhere if his beams did not make clear the path. I would have her free from compromise, from complaisance, from helplessness, because I would have her good enough and strong enough to love one and all beings, from the fullness, not the poverty of her being.
Arguments about an Opinion

After a Supreme Court case has been decided, the justice assigned to write the majority opinion circulates a draft for comment by the other justices. Chief Justice Earl Warren, who wrote the opinion in Loving v. Virginia outlawing racial classifications, received the following memo from Justice Byron White, who expressed a reservation about Warren’s draft. White told the chief justice that he prefers not to say that any legal classification by race is illegal because he thinks there might be an instance, “although perhaps rare,” where it would be rational to do so. In the end, however, he agreed to support the opinion as the chief justice wrote it. The memo, dated May 31, 1967, reveals how the justices confer with each other to reach a decision, especially how they try to persuade other justices.

Re: No. 395 - Loving v. Virginia
Dear Chief:
I may misunderstand your opinion, but it seems to me that we must meet the second contention made by the State which you mention on page 7 of your opinion—the so-called rationality of the statutory classification—and that you do meet it by saying either that there can be no rational racial classification, at least where criminal liability is concerned, or that the test is much more onerous than mere rationality where racial classification are involved and that this heavier burden has not been met here. I prefer the second approach since I think there are some racial classifications, although perhaps rare, which I would approve, although I see no reason for me or the Court to say so at this point.

Also, if the statute satisfied the Equal Protections Clause, I would not hold it a violation of due process as “arbitrary.” On the other hand, since it does not meet equal protection standards, it may automatically be a violation of due process also. All in all, I see no reason to reach the due process question.

Perhaps in the interest of time, I should just concur in the result on the ground that the statute violates the Equal Protection Clause since the heavy burden of justifying the racial classification employed by the statue has not been met by the State in this case.

Sincerely,
Byron
U.S. Supreme Court

Yick Wo v. Hopkins, 118 U.S. 356 (1886)

Yick Wo v. Hopkins
Submitted April 14, 1886
Decided May 10, 1886
118 U.S. 356

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CALIFORNIA

Syllabus

In a suit brought to this court from a State court which involves the constitutionality of ordinances made by a municipal corporation in the State, this court will, when necessary, put its own independent construction upon the ordinances.

A municipal ordinance to regulate the carrying on of public laundries within the limits of the municipality violates the provisions of the Constitution of the United States if it confers upon the municipal authorities arbitrary power, at their own will, and without regard to discretion in the legal sense of the term, to give or withhold consent as to persons or places, without regard to the competency of the persons applying, or the propriety of the place selected, for the carrying on of the business.

An administration of a municipal ordinance for the carrying on of a lawful business within the corporate limits violates the provisions of the Constitution of the United States if it makes arbitrary and unjust discriminations, founded on differences of race between persons otherwise in similar circumstances.

The guarantees of protection contained in the Fourteenth Amendment to the Constitution extend to all persons within the territorial jurisdiction of the United States, without regard to differences of race, of color, or of nationality.

Those subjects of the Emperor of China who have the right to temporarily or permanently reside within the United States, are entitled to enjoy the protection guaranteed by the Constitution and afforded by the laws.

These two cases were argued as one, and depended upon precisely the same state of facts; the first coming here upon a writ of error to the Supreme Court of the State of California, the second on appeal from the Circuit Court of the United States for that district. The plaintiff in error, Yick Wo, on August 4, 1885, petitioned the Supreme Court of California for a writ of habeas corpus, alleging that he was illegally deprived of his personal liberty by the defendant as sheriff of the city and county of San Francisco.
The sheriff made return to the writ that he held the petitioner in custody by virtue of a sentence of the Police Judges Court, No. 2, of the city and county of San Francisco, whereby he was found guilty of a violation of certain ordinances of the board of supervisors of that county, and adjudged to pay a fine of $10, and, in default of payment, be imprisoned in the county jail at the rate of one day for each dollar of fine until said fine should be satisfied, and a commitment in consequence of nonpayment of said fine.

The ordinances for the violation of which he had been found guilty were set out as follows:

Order No. 156, passed May 26, 1880, prescribing the kind of buildings in which laundries may be located.

"The people of the city and county of San Francisco do ordain as follows:"

"SEC. 1. It shall be unlawful, from and after the passage of this order, for any person or persons to establish, maintain, or carry on a laundry within the corporate limits of the city and county of San Francisco without having first obtained the consent of the board of supervisors, except the same be located in a building constructed either of brick or stone."

"SEC. 2. It shall be unlawful for any person to erect, build, or maintain, or cause to be erected, built, or maintained, over or upon the roof of any building now erected or which may hereafter be erected within the limits of said city and county, any scaffolding without first obtaining the written permission of the board of supervisors, which permit shall state fully for what purpose said scaffolding is to be erected and used, and such scaffolding shall not be used for any other purpose than that designated in such permit."

"SEC. 3. Any person who shall violate any of the provisions of this order shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail not more than six months, or by both such fine and imprisonment."

Order No. 1587, passed July 28, 1880, the following section:

"SEC. 68. It shall be unlawful, from and after the passage of this order, for any person or persons to establish, maintain, or carry on a laundry within the corporate limits of the city and county of San Francisco without having first obtained the consent of the board of supervisors, except the same be located in a building constructed either of brick or stone."

The following facts were also admitted on the record: that petitioner is a native of China and came to California in 1861, and is still a subject of the Emperor of China; that he has been engaged in the laundry business in the same premises and building for twenty-two years last past; that he had a license from the board of fire wardens, dated March 3, 1884, from which it appeared

"that the above described premises have been inspected by the board of fire wardens, and upon such inspection said board found all proper arrangements for carrying on the business; that the stoves, washing and
drying apparatus, and the appliances for heating smoothing irons are in good condition, and that their use is not
dangerous to the surrounding property from fire, and that all proper precautions have been taken to comply
with the provisions of order No. 1617, defining "the fire limits of the city and county of San Francisco and
making regulations concerning the erection and use of buildings in said city and county," and of order No. 1670,
"prohibiting the kindling, maintenance, and use of open fires in houses;" that he had a certificate from the health
officer that the same premises had been inspected by him, and that he found that they were properly and
sufficiently drained, and that all proper arrangements for carrying on the business of a laundry, without injury to
the sanitary condition of the neighborhood, had been complied with; that the city license of the petitioner was in
force and expired October 1st, 1885, and that the petitioner applied to the board of supervisors, June 1st, 1885,
for consent of said board to maintain and carry on his laundry, but that said board, on July 1st, 1885, refused
said consent."

It is also admitted to be true, as alleged in the petition, that, on February 24, 1880,

"there were about 320 laundries in the city and county of San Francisco, of which

Page 118 U. S. 359

about 240 were owned and conducted by subjects of China, and of the whole number, viz., 320, about 310
were constructed of wood, the same material that constitutes nine-tenths of the houses in the city of San
Francisco. The capital thus invested by the subjects of China was not less than two hundred thousand dollars,
and they paid annually for rent, license, taxes, gas, and water about one hundred and eighty thousand dollars."

It was alleged in the petition, that

"your petitioner and more than one hundred and fifty of his countrymen have been arrested upon the charge of
carrying on business without having such special consent, while those who are not subjects of China, and who
are conducting eighty odd laundries under similar conditions, are left unmolested and free to enjoy the
enhanced trade and profits arising from this hurtful and unfair discrimination. The business of your petitioner,
and of those of his countrymen similarly situated, is greatly impaired, and in many cases practically ruined, by
this system of oppression to one kind of men and favoritism to all others."

The statement therein contained as to the arrest, &c., was admitted to be true, with the qualification only that
the eighty odd laundries referred to are in wooden buildings without scaffolds on the roofs.

It was also admitted

"that petitioner and 200 of his countrymen similarly situated petitioned the board of supervisors for permission
to continue their business in the various houses which they had been occupying and using for laundries for
more than twenty years, and such petitions were denied, and all the petitions of those who were not Chinese,
with one exception of Mrs. Mary Meagles, were granted."

By section 2 of article I of the Constitution of California, it is provided that
"any county, city town, or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws."

By section 74 of the Act of April 19, 1856, usually known as the consolidation act, the board of supervisors is empowered, among other things,

"to provide by regulation for the prevention and summary removal of nuisances to public health, the prevention of contagious diseases; . . . to prohibit the erection of wooden buildings within any fixed limits where the streets shall have been established and graded; . . . to regulate the sale, storage, and use of gunpowder or other explosive or combustible materials and substances, and make all needful regulations for protection against fire; to make such regulations concerning the erection and use of buildings as may be necessary for the safety of the inhabitants."

The Supreme Court of California, in the opinion pronouncing the judgment in this case, said:

"The board of supervisors, under the several statutes conferring authority upon them, has the power to prohibit or regulate all occupations which are against good morals, contrary to public order and decency, or dangerous to the public safety. Clothes washing is certainly not opposed to good morals or subversive of public order or decency, but, when conducted in given localities, it may be highly dangerous to the public safety. Of this fact, the supervisors are made the judges, and, having taken action in the premises, we do not find that they have prohibited the establishment of laundries, but that they have, as they well might do, regulated the places at which they should be established, the character of the buildings in which they are to be maintained, etc. The process of washing is not prohibited by thus regulating the places at which and the surroundings by which it must be exercised. The order No. 1569 and section 68 of order No. 1587 are not in contravention of common right or unjust, unequal, partial, or oppressive in such sense as authorizes us in this proceeding to pronounce them invalid."

After answering the position taken in behalf of the petitioner, that the ordinances in question had been repealed, the court added:

"We have not deemed it necessary to discuss the question in the light of supposed infringement of petitioner's rights under the Constitution of the United States, for the reason that we think the principles upon which contention on that head can be based have in effect been set at rest by the cases of Barbier v. Connolly, 113 U. S. 27, and Soon Hing v. Crowley, 113 U. S. 703."

The writ was accordingly discharged, and the prisoner remanded.
In the other case, the appellant, Wo Lee, petitioned for his discharge from an alleged illegal imprisonment upon a state of facts shown upon the record precisely similar to that in the case of Yick Wo. In disposing of the application, the learned Circuit Judge, Sawyer, in his opinion, 26 Fed.Rep. 471, after quoting the ordinance in question, proceeded at length as follows:

"Thus, in a territory some ten miles wide by fifteen or more miles long, much of it still occupied as mere farming and pasturage lands and much of it unoccupied sand banks, in many places without a building within a quarter or half a mile of each other, including the isolated and almost wholly unoccupied Goat Island, the right to carry on this, when properly guarded, harmless and necessary occupation, in a wooden building is not made to depend upon any prescribed conditions giving a right to anybody complying with them, but upon the consent or arbitrary will of the board of supervisors. In three-fourths of the territory covered by the ordinance, there is no more need of prohibiting or regulating laundries than if they were located in any portion of the farming regions of the State. Hitherto, the regulation of laundries has been limited to the thickly settled portions of the city. Why this unnecessary extension of the limits affected, if not designed to prevent the establishment of laundries, after a compulsory removal from their present locations, within practicable reach of the customers or their proprietors? And the uncontradicted petition shows that all Chinese applications are, in fact, denied, and those of Caucasians granted -- thus, in fact, making the discriminations in the administration of the ordinance, which its terms permit. The fact that the right to give consent is reserved in the ordinance shows that carrying on the laundry business in wooden buildings is not deemed, of itself, necessarily dangerous. It must be apparent to every well informed mind that a fire, properly guarded, for laundry purposes, in a wooden building, is just as necessary, and no more dangerous, than a fire for cooking purposes or for warming a house. If the ordinance under consideration is valid, then the board of supervisors can pass a valid ordinance preventing the maintenance, in a wooden building, of a cooking stove, heating apparatus, or a restaurant, within the boundaries of the city and county of San Francisco, without the consent of that body, arbitrarily given or withheld, as their prejudices or other motives may dictate. If it is competent for the board of supervisors to pass a valid ordinance prohibiting the inhabitants of San Francisco from following any ordinary, proper, and necessary calling within the limits of the city and county except at its arbitrary and unregulated discretion and special consent, and it can do so if this ordinance is valid, then it seems to us that there has been a wide departure from the principles that have heretofore been supposed to guard and protect the rights, property, and liberties of the American people. And if, by an ordinance, general in its terms and form like the one in question, by reserving an arbitrary discretion in the enacting body to grant or deny permission to engage in a proper and necessary calling, a discrimination against any class can be made in its execution, thereby evading and, in effect, nullifying the provisions of the National Constitution, then the insertion of "

provisions to guard the rights of every class and person in that instrument was a vain and futile act. The effect of the execution of this ordinance in the manner indicated in the record would seem to be necessarily to close up the many Chinese laundries now existing, or compel their owners to pull down their present buildings and
reconstruct of brick or stone, or to drive them outside the city and county of San Francisco to the adjoining counties, beyond the convenient reach of customers, either of which results would be little short of absolute confiscation of the large amount of property shown to be now, and to have been for a long time, invested in these occupations. If this would not be depriving such parties of their property without due process of law, it would be difficult to say what would effect that prohibited result. The necessary tendency, if not the specific purpose, of this ordinance, and of enforcing it in the manner indicated in the record, is to drive out of business all the numerous small laundries, especially those owned by Chinese, and give a monopoly of the business to the large institutions established and carried on by means of large associated Caucasian capital. If the facts appearing on the face

Page 118 U. S. 363

of the ordinance, on the petition and return, and admitted in the case and shown by the notorious public and municipal history of the times indicate a purpose to drive out the Chinese laundrymen, and not merely to regulate the business for the public safety, does it not disclose a case of violation of the provisions of the Fourteenth Amendment to the National Constitution, and of the treaty between the United States and China, in more than one particular? . . . If this means prohibition of the occupation and destruction of the business and property of the Chinese laundrymen in San Francisco -- and it seems to us this must be the effect of executing the ordinance -- and not merely the proper regulation of the business, then there is discrimination and a violation of other highly important rights secured by the Fourteenth Amendment and the treaty. That it does mean prohibition as to the Chinese it seems to us must be apparent to every citizen of San Francisco who has been here long enough to be familiar with the cause of an active and aggressive branch of public opinion and of public notorious events. Can a court be blind to what must be necessarily known to every intelligent person in the State? See Ah Kow v. Nunan, 5 Sawyer, 552, 560; 70 U. S. 104; Brown v. Piper, @ 91 U. S. 37, 91 U. S. 42.

But, in deference to the decision of the Supreme Court of California in the case of Yick Wo, and contrary to his own opinion as thus expressed, the circuit judge discharged the writ and remanded the prisoner.

Page 118 U. S. 365

Mr. JUSTICE MATTHEWS delivered the opinion of the court.

In the case of the petitioner, brought here by writ of error to the Supreme Court of California, our jurisdiction is limited to the question whether the plaintiff in error has been denied a right in violation of the Constitution, laws, or treaties of the United States. The question whether his imprisonment is illegal under the constitution and laws of the State is not open to us. And although that question might have been considered

Page 118 U. S. 366

in the Circuit Court in the application made to it, and by this court on appeal from its order, yet judicial propriety is best consulted by accepting the judgment of the State court upon the points involved in that inquiry.
That, however, does not preclude this court from putting upon the ordinances of the supervisors of the county and city of San Francisco an independent construction, for the determination of the question whether the proceedings under these ordinances and in enforcement of them are in conflict with the Constitution and laws of the United States necessarily involves the meaning of the ordinance, which, for that purpose, we are required to ascertain and adjudge.

We are consequently constrained, at the outset, to differ from the Supreme Court of California upon the real meaning of the ordinances in question. That court considered these ordinances as vesting in the board of supervisors a not unusual discretion in granting or withholding their assent to the use of wooden buildings as laundries, to be exercised in reference to the circumstances of each case with a view to the protection of the public against the dangers of fire. We are not able to concur in that interpretation of the power conferred upon the supervisors. There is nothing in the ordinances which points to such a regulation of the business of keeping and conducting laundries. They seem intended to confer, and actually do confer, not a discretion to be exercised upon a consideration of the circumstances of each case, but a naked and arbitrary power to give or withhold consent not only as to places, but as to persons. So that, if an applicant for such consent, being in every way a competent and qualified person and having complied with every reasonable condition demanded by any public interest, should, failing to obtain the requisite consent of the supervisors to the prosecution of his business, apply for redress by the judicial process of mandamus to require the supervisors to consider and act upon his case, it would be a sufficient answer for them to say that the law had conferred upon them authority to withhold their assent without reason and without responsibility. The power given to them is not confided to their discretion in the legal sense of that term, but is granted to their mere will. It is purely arbitrary, and acknowledges neither guidance nor restraint.

This erroneous view of the ordinances in question led the Supreme Court of California into the further error of holding that they were justified by the decisions of this court in the cases of *Barbier v. Connolly*, 113 U. S. 27, and *Soon Hing v. Crowley*, 113 U. S. 703. In both of these cases, the ordinance involved was simply a prohibition to carry on the washing and ironing of clothes in public laundries and washhouses within certain prescribed limits of the city and county of San Francisco from ten o'clock at night until six o'clock in the morning of the following day. This provision was held to be purely a police regulation within the competency of any municipality possessed of the ordinary powers belonging to such bodies, a necessary measure of precaution in a city composed largely of wooden buildings like San Francisco, in the application of which there was no invidious discrimination against anyone within the prescribed limits, all persons engaged in the same business being treated alike, and subject to the same restrictions and entitled to the same privileges under similar conditions.

For these reasons, that ordinance was adjudged not to be within the prohibitions of the Fourteenth Amendment to the Constitution of the United States, which, it was said in the first case cited,

*undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in
the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their
happiness and acquire and enjoy property; that they should have like access to the courts of the country for the
protection of their persons and property, the prevention and redress of wrongs, and the enforcement of
contracts; that no impediment should be interposed to the pursuits of anyone except as applied to the same
pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid
upon others in the same calling and condition; and that, in the administration of criminal justice no different or
higher punishment should be imposed upon

Page 118 U. S. 368

one than such as is prescribed to all for like offences. . . . Class legislation, discriminating against some and
favoring others, is prohibited, but legislation which, in carrying out a public purpose, is limited in its application
if, within the sphere of its operation, it affects alike all persons similarly situated, is not within the amendment."

The ordinance drawn in question in the present case is of a very different character. It does not prescribe a rule
and conditions for the regulation of the use of property for laundry purposes to which all similarly situated may
conform. It allows without restriction the use for such purposes of buildings of brick or stone, but, as to wooden
buildings, constituting nearly all those in previous use, it divides the owners or occupiers into two classes, not
having respect to their personal character and qualifications for the business, nor the situation and nature and
adaptation of the buildings themselves, but merely by an arbitrary line, on one side of which are those who are
permitted to pursue their industry by the mere will and consent of the supervisors, and on the other those from
whom that consent is withheld at their mere will and pleasure. And both classes are alike only in this, that they
are tenants at will, under the supervisors, of their means of living. The ordinance, therefore, also differs from
the not unusual case where discretion is lodged by law in public officers or bodies to grant or withhold licenses
to keep taverns, or places for the sale of spirituous liquors, and the like, when one of the conditions is that the
applicant shall be a fit person for the exercise of the privilege, because, in such cases, the fact of fitness is
submitted to the judgment of the officer, and calls for the exercise of a discretion of a judicial nature.

The rights of the petitioners, as affected by the proceedings of which they complain, are not less because they
are aliens and subjects of the Emperor of China. By the third article of the treaty between this Government and
that of China, concluded November 17, 1880, 22 Stat. 827, it is stipulated:

"If Chinese laborers, or Chinese of any other class, now either permanently or temporarily residing in the
territory of the United States, meet with ill treatment at the hands of any other persons,

Page 118 U. S. 369

the Government of the United States will exert all its powers to devise measures for their protection, and to
secure to them the same rights, privileges, immunities and exemptions as may be enjoyed by the citizens or
subjects of the most favored nation, and to which they are entitled by treaty."

The Fourteenth Amendment to the Constitution is not confined to the protection of citizens. It says:
"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."

These provisions are universal in their application to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality, and the equal protection of the laws is a pledge of the protection of equal laws. It is accordingly enacted by § 1977 of the Revised Statutes, that

"all persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

The questions we have to consider and decide in these cases, therefore, are to be treated as invoking the rights of every citizen of the United States equally with those of the strangers and aliens who now invoke the jurisdiction of the court.

It is contended on the part of the petitioners that the ordinances for violations of which they are severally sentenced to imprisonment are void on their face as being within the prohibitions of the Fourteenth Amendment, and, in the alternative, if not so, that they are void by reason of their administration, operating unequally so as to punish in the present petitioners what is permitted to others as lawful, without any distinction of circumstances -- an unjust and illegal discrimination, it is claimed, which, though not made expressly by the ordinances, is made possible by them.

When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power. Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but, in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. And the law is the definition and limitation of power. It is, indeed, quite true that there must always be lodged somewhere, and in some person or body, the authority of final decision, and in many cases of mere administration, the responsibility is purely political, no appeal lying except to the ultimate tribunal of the public judgment, exercised either in the pressure of opinion or by means of the suffrage. But the fundamental rights to life, liberty, and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the commonwealth "may be a government of laws, and not of men." For the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life at the mere will of another seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself.
There are many illustrations that might be given of this truth, which would make manifest that it was self-evident in the light of our system of jurisprudence. The case of the political franchise of voting is one. Though not regarded strictly as a natural right, but as a privilege merely conceded by society according to its will under certain conditions, nevertheless it is regarded as a fundamental political right, because preservative of all rights.

In reference to that right, it was declared by the Supreme Judicial Court of Massachusetts, in *Capen v. Foster*, 12 Pick. 485, 489, in the words of Chief Justice Shaw,

"that, in all cases where the constitution has conferred a political right or privilege, and where the constitution has not particularly designated the manner in which that right is to be exercised, it is clearly within the just and constitutional limits of the legislative power to adopt any reasonable and uniform regulations, in regard to the time and mode of exercising that right, which are designed to secure and facilitate the exercise of such right, in a prompt, orderly, and convenient manner;"

nevertheless,

"such a construction would afford no warrant for such an exercise of legislative power as, under the pretence and color of regulating, should subvert or injuriously restrain the right itself."

It has accordingly been held generally in the States that, whether the particular provisions of an act of legislation establishing means for ascertaining the qualifications of those entitled to vote, and making previous registration in lists of such, a condition precedent to the exercise of the right were or were not reasonable regulations, and accordingly valid or void, was always open to inquiry as a judicial question. *See Daggett v. Hudson*, 1 Western Reporter 9, decided by the Supreme Court of Ohio, where many of the cases are collected; *Monroe v. Collins*, 17 Ohio St. 665.

The same principle has been more freely extended to the *quasi*-legislative acts of inferior municipal bodies, in respect to which it is an ancient jurisdiction of judicial tribunals to pronounce upon the reasonableness and consequent validity of their by laws. In respect to these, it was the doctrine that every bylaw must be reasonable, not inconsistent with the charter of the corporation, nor with any statute of Parliament, nor with the general principles of the common law of the land, particularly those having relation to the liberty of the subject or the rights of private property. *Dillon on Municipal Corporations*, 3d ed., § 319, and cases cited in notes. Accordingly, in the case of *The State of Ohio ex rel. &c. v. The Cincinnati Gas-Light and Coke Company*, 18 Ohio St. 232, 300, an ordinance of the city council purporting to fix the price to be charged for gas, under an authority of law giving discretionary power to do so, was held to be bad, if passed in bad faith, fixing an unreasonable price, for the fraudulent purpose of compelling
the gas company to submit to an unfair appraisement of their works. And a similar question, very pertinent to
the one in the present cases, was decided by the Court of Appeals of Maryland in the case of the City of
Baltimore v. Radecke, 49 Maryland 217. In that case, the defendant had erected and used a steam engine in
the prosecution of his business as a carpenter and box-maker in the city of Baltimore, under a permit from the
mayor and city council, which contained a condition that the engine was "to be removed after six months' notice
to that effect from the mayor." After such notice and refusal to conform to it, a suit was instituted to recover the
penalty provided by the ordinance, to restrain the prosecution of which a bill in equity was filed. The court
holding the opinion that

"there may be a case in which an ordinance, passed under grants of power like those we have cited, is so
clearly unreasonable, so arbitrary, oppressive, or partial, as to raise the presumption that the legislature never
intended to confer the power to pass it, and to justify the courts in interfering and setting it aside as a plain
abuse of authority;"

it proceeds to speak, with regard to the ordinance in question, in relation to the use of steam engines, as
follows:

"It does not profess to prescribe regulations for their construction, location, or use, nor require such precautions
and safeguards to be provided by those who own and use them as are best calculated to render them less
dangerous to life and property, nor does it restrain their use in box factories and other similar establishments
within certain defined limits, nor in any other way attempt to promote their safety and security without
destroying their usefulness. But it commits to the unrestrained will of a single public officer the power to notify
every person who now employs a steam engine in the prosecution of any business in the city of Baltimore to
cease to do so, and, by providing compulsory fines for every day's disobedience of such notice and order of
removal, renders his power over the use of steam in that city practically absolute, so that he may prohibit its
use altogether. But if he should not choose to do this, but only to act in particular cases, there is nothing in the
ordinance to guide or control his action. It lays down no

rules by which its impartial execution can be secured or partiality and oppression prevented. It is clear that
giving and enforcing these notices may, and quite likely will, bring ruin to the business of those against whom
they are directed, while others, from whom they are withheld, may be actually benefited by what is thus done to
their neighbors; and, when we remember that this action or nonaction may proceed from enmity or prejudice,
from partisan zeal or animosity, from favoritism and other improper influences and motives easy of
concealment and difficult to be detected and exposed, it becomes unnecessary to suggest or to comment upon
the injustice capable of being brought under cover of such a power, for that becomes apparent to everyone
who gives to the subject a moment's consideration. In fact, an ordinance which clothes a single individual with
such power hardly falls within the domain of law, and we are constrained to pronounce it inoperative and void."

This conclusion, and the reasoning on which it is based, are deductions from the face of the ordinance, as to its
necessary tendency and ultimate actual operation. In the present cases, we are not obliged to reason from the
probable to the actual, and pass upon the validity of the ordinances complained of, as tried merely by the
opportunities which their terms afford, of unequal and unjust discrimination in their administration. For the cases present the ordinances in actual operation, and the facts shown establish an administration directed so exclusively against a particular class of persons as to warrant and require the conclusion that, whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration, and thus representing the State itself, with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws which is secured to the petitioners, as to all other persons, by the broad and benign provisions of the Fourteenth Amendment to the Constitution of the United States. Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution. This principle of interpretation has been sanctioned by this court in Henderson v. Mayor of New York, 92 U. S. 259; Chy Lung v. Freeman, 92 U. S. 275; Ex parte Virginia, 100 U. S. 339; Neal v. Delaware, 103 U. S. 370, and Soon Hing v. Crowley, 113 U. S. 703.

The present cases, as shown by the facts disclosed in the record, are within this class. It appears that both petitioners have complied with every requisite deemed by the law or by the public officers charged with its administration necessary for the protection of neighboring property from fire or as a precaution against injury to the public health. No reason whatever, except the will of the supervisors, is assigned why they should not be permitted to carry on, in the accustomed manner, their harmless and useful occupation, on which they depend for a livelihood. And while this consent of the supervisors is withheld from them and from two hundred others who have also petitioned, all of whom happen to be Chinese subjects, eighty others, not Chinese subjects, are permitted to carry on the same business under similar conditions. The fact of this discrimination is admitted. No reason for it is shown, and the conclusion cannot be resisted that no reason for it exists except hostility to the race and nationality to which the petitioners belong, and which, in the eye of the law, is not justified. The discrimination is, therefore, illegal, and the public administration which enforces it is a denial of the equal protection of the laws and a violation of the Fourteenth Amendment of the Constitution. The imprisonment of the petitioners is, therefore, illegal, and they must be discharged. To this end,

The judgment of the Supreme Court of California in the case of Yick Wo, and that of the Circuit Court of the United States for the District of California in the case of Wo Lee, are severally reversed, and the cases remanded, each to the proper court, with directions to discharge the petitioners from custody and imprisonment.
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

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 protection 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.

Fourteenth Amendment

The Bill of Rights applies only to the federal government

1833

State regulation of business does not violate the Fourteenth Amendment

1873

The interpretation of the Fourteenth Amendment is broadened

1882

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.

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.

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

The Supreme Court broadens the incorporation doctrine

1963

The Fourteenth Amendment protects a right to privacy

1964

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.

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.

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

The Supreme Court upholds minimum wage laws

School segregation is found unconstitutional

1896 1937 1954

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.

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.

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

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

Execution of juveniles is ruled unconstitutional

1966 2004 2005

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.

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.

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.
A citizen is a full and equal member of a political community, such as a country or nation-state. Such membership is a necessary condition for the establishment and maintenance of a democracy. The citizens are “the people” to whom a democratic government is accountable. In most countries, the status of a natural citizen is derived primarily or even exclusively from one’s parents; if the parents are citizens, then their children automatically become citizens, too. If one does not have a birthright to citizenship, either through one’s parents or place or birth, there usually are legal procedures by which a person can become a naturalized citizen of a country. A country’s constitution and the laws based on it specify the means for obtaining the status of citizen. For example, the 14th Amendment of the U.S. Constitution says, “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.”

In a democracy, all citizens, both natural and naturalized, are equal before the law. For example, the constitution of Italy says, “All citizens have the same social dignity and are equal before the law, without discrimination of sex, race, language, religion, political opinion, and personal or social conditions.” In a constitutional democracy, all citizens have the same fundamental rights, duties, and responsibilities.

All citizens have a common civic identity based on their freely given consent to basic principles and values of their country’s constitutional democracy. In countries with great religious, racial, or ethnic diversity, a common civic identity among all citizens is the tie that binds them together under their constitutional and democratic government.

A passport is evidence of a person’s status as a citizen of a particular nation. A citizen of one country usually needs a passport to enter and depart legally from another country.

SEE ALSO Citizenship; Government, Constitutional and Limited; Popular Sovereignty; State
Citizenship

Citizenship is the legal relationship between citizens and their government and country. Citizens owe their government loyalty, support, and service. The government owes the citizens the protection of constitutionally guaranteed rights to life, liberty, property, and equal justice under law.

The rights of citizenship are set forth in the constitution of a democratic government, which may distinguish between the rights of citizens and noncitizens within the country. For example, in the United States, only citizens have the right to vote, serve on juries, and be elected to certain offices of the government, and only a natural-born citizen can become President. All other constitutional rights are guaranteed to citizens and noncitizens alike.

Citizenship in a democracy entails serious responsibilities. For example, good citizens in a democracy exhibit civic engagement, which means they are ready, willing, and able to use their constitutionally protected political rights to advance the common good. Citizens are expected to be loyal and patriotic, to assume responsibility for the defense of their country against internal and external threats or attacks. Citizenship also entails certain duties, such as paying taxes, serving on juries when summoned, joining the country’s armed forces if drafted, and obeying the laws.

In the world today, citizenship is the fundamental condition that connects individuals to the protective institutions of a democratic government and provides the means through which they can participate politically and civically in their governance. The rights, responsibilities, and duties of citizenship in a democracy have practical meaning today only within a particular kind of political order, a constitutional democracy. Only within the authority of a democratically governed country are there dependable institutional means to enforce constitutional guarantees of rights.

SEE ALSO Citizen; Civil Society; Government, Constitutional and Limited; State
A constitution is the basic law and general plan of government or a people within a country. The purposes, powers, and limitations of government are prescribed in the constitution. It thus sets forth the way a people is governed or ruled.

A constitution is the supreme law of a country. Laws later enacted by the government must conform to the provisions of the constitution. All institutions, groups, and individuals within the community are expected to obey the supreme law of the constitution.

A constitution is a framework for organizing and conducting the government of a country, but it is not a blueprint for the day-to-day operations of the government. The Constitution of the United States of America, for example, is less than 7,500 words long. It does not specify the details of how to run the government. The officials who carry out the business of the constitutional government supply the details, but these specifics must fit the general framework set forth in the U.S. Constitution.

A defining attribute of a democratic constitution is its granting and limiting of powers to the government in order to guarantee national safety and unity as well as individuals’ right to liberty. It sets forth generally what the constitutional government is and is not permitted to do. There cannot be an authentic democracy unless the powers of government are limited constitutionally to protect the people against tyranny of any kind.

Constitutions vary in length, design, and complexity, but all of them have at least seven common attributes: (1) a statement of the purposes of government, usually in a preamble; (2) specification of the structure of government; (3) enumeration, distribution, and limitation of powers among the legislative, executive, and judicial functions of government; (4) provisions about citizenship; (5) guarantees of human rights; (6) means of electing and appointing government officials; and (7) procedures for amendment.

Most countries of the world today have a constitution that is written in a single document. A very few countries, such as Israel, New Zealand, and the United Kingdom, have “unwritten”
constitutions. These so-called unwritten constitutions are composed of various fundamental legislative acts, court decisions, and customs, which have never been collected or summarized in a single document. However, as long as an unwritten constitution really limits and guides the actions of the government to provide the rule of law, then the conditions of constitutional government are fulfilled.

The Constitution of the United States, written in 1787 and ratified by the required nine states in 1788, is the oldest written constitution in use among the countries of the world today. However, the constitution of the state of Massachusetts was written and ratified in 1780 and, although extensively amended, is still operational, which makes it the world’s oldest written constitution in use today. Most of the world’s working constitutions have existed only since 1960, and many of the world’s democracies have adopted their constitutions since 1990.

SEE ALSO Constitutionalism; Democracy, Representative and Constitutional; Government, Constitutional and Limited
Equality in a constitutional democracy means equal justice under the law. No one is above or beyond the reach of the law, and no one is entitled to unfair advantages or subjected to unequal penalties based on the law. Three main examples of equality in a democracy are constitutionally guaranteed protection for equality of treatment according to the law, equality in fundamental human rights, and equality of citizenship.

Statements about equality of treatment under the law are found in the constitutions of every democratic state. For example, Article 29 of the Lithuanian constitution says,

All people shall be equal before the law, the court, and other State institutions and officers. A person may not have his or her rights restricted in any way, or be granted any privileges, on the basis of his or her sex, race, nationality, language, origin, social status, religion, convictions, or opinions.

The 5th and 14th Amendments of the U.S. Constitution guarantee legal equality, too. The due process clauses of the 5th and 14th Amendments require that the federal and state governments must follow fair and equal legal procedures in matters pertaining to an individual’s rights to life, liberty, and property. The 14th Amendment says, “No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.”

Equality in the possession of fundamental human rights is another essential attribute of every constitutional democracy. This idea of equality was dramatically put forward in the 1776 Declaration of Independence, which proclaimed to the international community the emergence of a newly independent country, the United States of America. The declaration asserted a self-evident truth: that each person is born with equal possession of certain inherent rights, such as the right to “Life, Liberty, and the Pursuit of Happiness.” Further, this declaration held, “That to secure these Rights, Governments are instituted among Men.”
The founders of the United States were not claiming that all individuals are equal in their personal attributes, such as physical strength, intelligence, or artistic talent. They were not saying that a government is established to enforce equality or uniformity in the way people think, act, or live. Rather, the founders were committed to establishing a government that would guarantee equally, to all individuals under its authority, security for liberty based on the rule of law. The idea of natural equality in rights, that every person inherently possesses fundamental rights stemming from his or her equal membership in the human species, has been expressed in the constitutions of democracies throughout the world.

Equality of citizenship is another characteristic of constitutional democracies today. There are not degrees of citizenship whereby, for example, some persons have first class citizenship with superior rights and privileges relative to different classes of citizens with different rights. Thus, Article 4 of the U.S. Constitution says, “The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.”

SEE ALSO Citizen; Citizenship; Democracy, Representative and Constitutional; Justice; Liberalism; Rights; Rule of Law
Justice

Justice is one of the main goals of democratic constitutions, along with the achievement of order, security, liberty, and the common good. The Preamble to the Constitution of the United States, for example, says that one purpose of the document is to “establish Justice.” And, in the 51st paper of The Federalist, James Madison proclaims, “Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit.” So, what is justice? And how is it pursued in a constitutional democracy?

Since ancient times, philosophers have said that justice is achieved when everyone receives what is due to her or him. Justice is certainly achieved when persons with equal qualifications receive equal treatment from the government. For example, a government establishes justice when it equally guarantees the human rights of each person within its authority. As each person is equal in her or his membership in the human species, each one possesses the same immutable human rights, which the government is bound to protect equally.

By contrast, the government acts unjustly if it protects the human rights of some individuals under its authority while denying the same protection to others. The racial segregation laws that prevailed in some parts of the United States until the mid-1960s, for example, denied justice to African American people. America’s greatest civil rights leader, Martin Luther King Jr., said that racial segregation laws were “unjust laws” because they prevented black Americans from enjoying the same rights and opportunities as other citizens of the United States. When he opposed unjust racial segregation laws, King asserted that the worth and dignity of each person must be respected equally because each one is equally a member of the human species. Thus, any action by the government or groups of citizens that violated the worth and dignity of any person, as did the racial segregation laws, was unjust and should not be tolerated. King and his followers, therefore, protested these laws and eventually brought about their demise.
Justice

Another example of justice is procedural justice. It is pursued through due process of law to resolve conflicts between individuals or between individuals and their government. The government administers fair and impartial procedures equally to everyone under its authority in order to settle disputes among them or to prosecute persons charged with crimes against the state. For example, the 5th Amendment of the U.S. Constitution says that no person shall "be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation." The 4th, 5th, and 6th Amendments include several guarantees of fair procedures for anyone accused of criminal behavior, including "the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed."

When procedural due process prevails, conflicts are settled in an orderly and fair manner in a court of law, according to the rule of law, and not by the arbitrary actions of people in power. This equal justice under the law regulates the interactions among private individuals and between individuals and government. Punishments, such as incarceration in prison, payment of fines, or performance of community service, may be carried out against a wrongdoer. One party harmed by another may receive compensation from the perpetrator of the grievance.

Distributive justice, another type of justice pursued in every constitutional democracy, pertains to the government's enactment of laws to distribute benefits to the people under its authority. Distributive justice certainly is achieved when equals receive the same allocation of benefits. For example, public programs that provide social security or medical care to all elderly and retired persons are examples of distributive justice in a constitutional democracy.

In the various democracies of our world, people debate the extent and kind of distributive justice there should be to meet adequately the social and economic needs of all the people. Should the regulatory power of government be increased greatly so that it can bring about greater social and economic equality through redistribution of resources?

Countries that provide extensive social and economic benefits through the redistribution of resources are known as social democracies or welfare states. The consequences of distributive justice in a social democracy, such as Sweden, are to diminish greatly unequal social and economic conditions and to move toward parity in general standards of living among the people. However, the achievement of this kind of social justice requires a substantial increase in the power of government to regulate the society and economy. Thus, as social and economic equality increase through government intervention in the lives of individuals, there is a decrease in personal and private rights to freedom. People in democracies throughout the world debate whether justice is generally served or denied by big public programs that extensively redistribute resources in order to equalize standards of living among the people.

SEE ALSO Equality; Liberalism; Liberty; Rule of Law; Social Democracy
Liberty

A person who has liberty is free to make choices about what to do or what to say. A primary purpose of government in the United States and other constitutional democracies is to protect and promote the liberty of individuals. The Preamble to the U.S. Constitution proclaims that a principal reason for establishing the federal government is to “secure the Blessings of Liberty to ourselves and our Posterity.” The Preamble to the 1992 Czech constitution also stresses liberty: “We, the citizens of the Czech Republic . . . in the spirit of the inviolable values of human dignity and liberty, as a homeland of equal, free, citizens . . . hereby adopt, through our freely elected representatives, the following Constitution of the Czech Republic.”

The U.S. Constitution, the Czech constitution, and the constitutions of other democracies throughout the world include guarantees for the protection of fundamental civil liberties, such as freedom of speech and press, freedom of assembly and association, freedom to vote and otherwise participate in elections of representatives in government, freedom of conscience, free exercise of religion, and freedom from unwarranted invasions of one’s home or other private spaces in society. These freedoms are called civil liberties because individuals enjoy them only within the context of civil society and constitutional government.

Civil liberty in a constitutional democracy means liberty under laws enacted by the elected representatives of the people. Rights to civil liberty are exercised, constrained, and protected by laws made through the free and fair procedures of democracy. Liberty is secured by limiting the power of government to prevent it from abusing the people’s rights. But if the government has too little power, so that law and order break down, then liberties may be lost. Neither freedom of thought nor freedom of action is secure in a lawless and disorderly society.

Ordered liberty is the desirable condition in which both public order and personal liberty are maintained. But how can liberty and authority, freedom and power, be combined and balanced so that one does not predominate over the other? This was the basic problem of constitutional government that concerned the
founders of the United States, and it has continued to challenge Americans as democracy has evolved and expanded throughout the history of their country. Early on, James Madison noted the challenges of ordered liberty in a 1788 letter to Thomas Jefferson: “It is a melancholy reflection that liberty should be equally exposed to danger whether the Government has too much or too little power; and that the line which divides these extremes should be so inaccurately defined by experience.”

Madison noted the standing threat to liberty posed by insufficient constitutional limits on government. He also recognized that liberty carried to the extreme, as in a riot, is equally dangerous to the freedom and other rights of individuals. Constitutional democracy may provide both liberty and order, but the right mix of these two factors can be difficult to find and maintain.

There are two continuously challenging questions about liberty and order that every democracy must confront and resolve. First, at what point, and under what conditions, should the power of government be limited in order to protect individuals’ rights to liberty against the threat of despotism? Second, at what point, and under what conditions, should expressions of individual liberty be limited by law in order to maintain public order and stability and to prevent the demise of constitutional democracy? Every country that strives to achieve or maintain democracy must resolve these questions about liberty and order.

SEE ALSO Constitutionalism; Democracy, Representative and Constitutional; Liberalism; Rights
Rights

The constitution of a democracy guarantees the rights of the people. A right is a person’s justifiable claim, protected by law, to act or be treated in a certain way. For example, the constitutions of democracies throughout the world guarantee the political rights of individuals, such as the rights of free speech, press, assembly, association, and petition. These rights must be guaranteed in order for there to be free, fair, competitive, and periodic elections by the people of their representatives in government, which is a minimal condition for the existence of a democracy. If a democracy is to be maintained from one election to the next, then the political rights of parties and persons outside the government must be constitutionally protected in order for there to be authentic criticism and opposition of those in charge of the government. Thus, the losers in one election can use their political rights to gain public support and win the next election.

In addition to political rights, the constitutions of democracies throughout the world protect the rights of people accused of crimes from arbitrary or abusive treatment by the government. Individuals are guaranteed due process of law in their dealings with the government. Today, constitutional democracies protect the personal and private rights of all individuals under their authority. These rights include:

• freedom of conscience or belief
• free exercise of religion
• privacy in one’s home or place of work from unwarranted or unreasonable intrusions by the government
• ownership and use of private property for personal benefit
• general freedom of expression by individuals, so long as they do not interfere with or impede unjustly the freedom or well-being of others in the community

A turning point in the history of constitutionally protected rights was the founding of the United States of America in the late 18th century. The United States was born with a Declaration
of Independence that proclaimed as a self-evident truth that every member of the human species was equal in possession of “certain unalienable rights” among which are the rights to “Life, Liberty, and the Pursuit of Happiness.”

The founders declared that the primary reason for establishing a government is “to secure these rights.” And, if governments would act legitimately to protect the rights of individuals, then they must derive “their just Powers from the Consent of the Governed.” Further, if the government established by the people fails to protect their rights and acts abusively against them, then “it is the Right of the People to alter or to abolish it, and to institute new Government” that will succeed in fulfilling its reason for existence—the protection of individual rights.

Ideas expressed in the Declaration of Independence about rights and government were derived from the writings of political philosophers of the European Enlightenment, especially those of the Englishman John Locke. Enlightenment philosophers stressed that rights belonged equally and naturally to each person because of their equal membership in the human species. According to Locke, for example, persons should not believe that the government granted their rights, or that they should be grateful to the government for them. Instead, they should expect government to protect these equally possessed rights, which existed prior to the establishment of civil society and government. Thus, the rights of individuals, based on the natural equality of human nature, were called natural rights.

This Declaration of Independence, based on this natural rights philosophy, explained to the world that Americans severed their legal relationship with the United Kingdom because the mother country had violated the rights of the people in her North American colonies. As a result, the Americans declared they would independently form their own free government to protect their natural rights. In 1787, the Americans framed a constitution to “secure the Blessings of Liberty” and fulfill the primary purpose of any good government as expressed in the Declaration of Independence, the protection of natural rights, and they ratified this Constitution in 1788.
In 1789, the U.S. Congress proposed constitutional amendments to express explicitly the rights of individuals that the government was bound to secure; in 1791, the requisite number of states ratified 10 of these amendments, which became part of the U.S. Constitution. Thus, the American Bill of Rights was born. Since then, the American Bill of Rights has been an example and inspiration to people throughout the world who wish to enjoy liberty and equality in a constitutional democracy.

Following the tragedies of World War II, which involved gross abuses by some governments and their armies—Nazi Germany and imperial Japan, for example—against millions of individuals and peoples of the world, there was a worldwide movement in favor of the idea of human rights. The United Nations, an organization of the world’s nation-states established after World War II in order to promote international peace and justice, became a leader in the promotion of human rights throughout the world. In 1948, this international body issued the United Nations Universal Declaration of Human Rights, which is a statement of the rights every human being should have in order to achieve a minimally acceptable quality of life.

Its first article says, “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act toward one another in a spirit of brotherhood.” Article 2 continues, “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” The remainder of the document details the human rights that ideally should be enjoyed by each person in the world.

Since 1948, the United Nations has issued several other documents on human rights, such as the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights. The UN documents are statements of ideals about human rights intended to guide the actions of the world’s nation-states, but the United Nations cannot enforce them in the way that a sovereign nation-state can compel
obedience to laws within its territory. Thus, practical protection for human rights is possible today only through the governmental institutions of the world’s independent nation-states. The quality of the protection of human rights varies significantly from country to country. It depends upon what the nation’s constitution says about rights and the capacity of the government to enforce the rights guaranteed in its constitution.

There is general international agreement that there are two basic categories of human rights. First, there are rights pertaining to what should not be done to any human being. Second, there are rights pertaining to what should be done for every human being. The first category of human rights involves constitutional guarantees that prohibit the government from depriving people of some political or personal rights. For example, the government cannot constitutionally take away someone’s right to participate freely and independently in an election or to freely practice a particular religion. The second category of human rights requires positive action by the government to provide someone with a social or economic right that otherwise would not be available to her or him. Thus, the government may be expected to provide opportunities for individuals to go to school or to receive healthcare benefits.

The constitutions of many democracies specify certain social and economic rights that the government is expected to provide. In other democracies, for example the United States, programs that provide social and economic rights or entitlements, such as social security benefits for elderly persons and medical care for indigent persons, are established through legislation that is permitted but not required by the constitution.

SEE ALSO Equality; Justice; Liberalism; Liberty; Social Democracy
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
EQUAL JUSTICE UNDER LAW”—These words, written above the main entrance to the Supreme Court Building, express the ultimate responsibility of the Supreme Court of the United States. The Court is the highest tribunal in the Nation for all cases and controversies arising under the Constitution or the laws of the United States. As the final arbiter of the law, the Court is charged with ensuring the American people the promise of equal justice under law and, thereby, also functions as guardian and interpreter of the Constitution.

The Supreme Court is “distinctly American in concept and function,” as Chief Justice Charles Evans Hughes observed. Few other courts in the world have the same authority of constitutional interpretation and none have exercised it for as long or with as much influence. A century and a half ago, the French political observer Alexis de Tocqueville noted the unique position of the Supreme Court in the history of nations and of jurisprudence. “The representative system of government has been adopted in several states of Europe,” he remarked, “but I am unaware that any nation of the globe has hitherto organized a judicial power in the same manner as the Americans . . . . A more imposing judicial power was never constituted by any people.”

The unique position of the Supreme Court stems, in large part, from the deep commitment of the American people to the Rule of Law and to constitutional government. The United States has demonstrated an unprecedented determination to preserve and protect its written Constitution, thereby providing the American “experiment in democracy” with the oldest written Constitution still in force.

The Constitution of the United States is a carefully balanced document. It is designed to provide for a national government sufficiently strong and flexible to meet the needs of the republic, yet sufficiently limited and just to protect the guaranteed rights of citizens; it permits a balance between society’s need for order and the individual’s right to freedom. To assure these ends, the Framers of the Constitution created three independent and coequal branches of government. That this Constitution has provided continuous democratic government through the periodic stresses of more than two centuries illustrates the genius of the American system of government.

The complex role of the Supreme Court in this system derives from its authority to invalidate legislation or executive actions which, in the Court’s considered judgment, conflict with the Constitution. This power of “judicial review” has given the Court a crucial responsibility in assuring individual rights, as well as in maintaining a “living Constitution” whose broad provisions are continually applied to complicated new situations.

While the function of judicial review is not explicitly provided in the Constitution, it had been anticipated before the adoption of that document. Prior to 1789, state courts had already overturned legislative acts which conflicted with state constitutions. Moreover, many of the Founding Fathers expected the Supreme Court to assume this role in regard to the Constitution; Alexander Hamilton and James Madison, for example, had underlined the importance of judicial review in the Federalist Papers, which urged adoption of the Constitution.
Hamilton had written that through the practice of judicial review the Court ensured that the will of the whole people, as expressed in their Constitution, would be supreme over the will of a legislature, whose statutes might express only the temporary will of part of the people. And Madison had written that constitutional interpretation must be left to the reasoned judgment of independent judges, rather than to the tumult and conflict of the political process. If every constitutional question were to be decided by public political bargaining, Madison argued, the Constitution would be reduced to a battleground of competing factions, political passion and partisan spirit.

Despite this background the Court’s power of judicial review was not confirmed until 1803, when it was invoked by Chief Justice John Marshall in *Marbury v. Madison*. In this decision, the Chief Justice asserted that the Supreme Court’s responsibility to overturn unconstitutional legislation was a necessary consequence of its sworn duty to uphold the Constitution. That oath could not be fulfilled any other way. “It is emphatically the province of the judicial department to say what the law is,” he declared.

In retrospect, it is evident that constitutional interpretation and application were made necessary by the very nature of the Constitution. The Founding Fathers had wisely worded that document in rather general terms leaving it open to future elaboration to meet changing conditions. As Chief Justice Marshall noted in *McCulloch v. Maryland*, a constitution that attempted to detail every aspect of its own application “would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. . . . Its nature, therefore, requires that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves.”

The Constitution limits the Court to dealing with “Cases” and “Controversies.” John Jay, the first Chief Justice, clarified this restraint early in the Court’s history by declining to advise President George Washington on the constitutional implications of a proposed foreign policy decision. The Court does not give advisory opinions; rather, its function is limited only to deciding specific cases.

The Justices must exercise considerable discretion in deciding which cases to hear, since more than 10,000 civil and criminal cases are filed in the Supreme Court each year from the various state and federal courts. The Supreme Court also has “original jurisdiction” in a very small number of cases arising out of disputes between States or between a State and the Federal Government.

When the Supreme Court rules on a constitutional issue, that judgment is virtually final; its decisions can be altered only by the rarely used procedure of constitutional amendment or by a new ruling of the Court. However, when the Court interprets a statute, new legislative action can be taken.

Chief Justice Marshall expressed the challenge which the Supreme Court faces in maintaining free government by noting: “We must never forget that it is a constitution we are expounding . . . intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs.”

[The foregoing was taken from a booklet prepared by the Supreme Court of the United States, and published with funding from the Supreme Court Historical Society.]
United States Supreme Court Justice Anthony M. Kennedy Defines Rule of Law

Excerpts from United States Supreme Court Justice Anthony M. Kennedy’s Remarks to the American Bar Association Opening Assembly
August 5, 2006

The Rule of Law

1. The Law is superior to, and thus binds, the government and all its officials.

2. The Law must respect and preserve the dignity, equality, and human rights of all persons. To these ends the Law must establish and safeguard the constitutional structures necessary to build a free society in which all citizens have a meaningful voice in shaping and enacting the rules that govern them.

3. The Law must devise and maintain systems to advise all persons of their rights, and it must empower them to fulfill just expectations and seek redress of grievances without fear of penalty or retaliation.

VIDEO: Justice Kennedy’s Remarks at ABA 2006 Opening Assembly (6 min)

http://www.abavideonews.org/ABA374/media/kennedy.wmv
Epilogue: “We are all Slaves of the Law” from *The Pursuit of Justice* by Kermit L. Hall and John Patrick

Source: http://www.annenbergclassroom.org/page/the-pursuit-of-justice

---

The pivotal Supreme Court cases described in this book remind us that our constitutional system places change and continuity in constant tension. And that is just what the framers of the Constitution intended. They wanted the Constitution to be difficult to change because its predictability is essential to its legitimacy. We believe in the Constitution when we know that it will be applied in a stable, routine way. But the framers, faced in Philadelphia with the need to compromise over issues such as slavery and the representation of the states in the new government, purposefully crafted a short, incomplete document. The original U.S. Constitution was one of the briefest in the history of the world, only 4,069 words exclusive of the signers’ names and subsequent amendments. Today, with twenty-seven amendments, it is only 7,606 words long.

The framers also knew that those areas of government they did not address when they wrote the Constitution would have to be considered as the document was adapted to changing circumstances. A static constitution was as sure to lose its base of popular support as one that was constantly undergoing change. The device they provided for adapting the Constitution was the amendment process outlined in Article 5. In order to change the Constitution, Congress has to pass a proposed amendment by a two-thirds majority and then have it ratified by three-quarters of the states, a very demanding and time-consuming process. In the nation’s more than two-hundred-year history, only thirty-three such proposals, including the twenty-seven that were ultimately ratified, have been sent to the states. Of the twenty-seven amendments, ten, collectively called the Bill of Rights, were ratified in 1791. Today, members of Congress propose an average of two hundred amendments each term, with the vast majority dying in the same place they were born.

The framers did provide an even more dramatic means of changing the Constitution—a constitutional convention that would meet if two-thirds of the state legislatures applied to Congress to hold one. Efforts to hold a second convention have routinely failed, largely because of fears that a new convention might get out of control and go beyond the purpose for which it was originally called. The most serious attempt occurred on the eve of the Civil War. Outgoing President James Buchanan urged a convention to deal with the future of slavery, as a way of preventing the secession of the southern states, but incoming President Abraham Lincoln and the Congress rejected his plea.

Despite the difficulties associated with amending the Constitution by means of Article 5, the nation’s ruling document has been adapted, sometimes dramatically, to social circumstances the framers did not contemplate. The instrument for doing so has been the Supreme Court, making it, for better or worse, a kind of continuing constitutional convention.

The justices have made themselves indispensable to the American scheme of government by establishing three broad concepts. These are: judicial review (the right to review and, if necessary, set aside not only acts of Congress and the President, but also those of state governments, including state courts and legislatures); judicial independence (the concept that the Court is free of political entanglements and that its actions are controlled by principles of law not politics); and, perhaps the most important of all, judicial sovereignty (the idea that what the justices say about the Constitution is final and authoritative).

Because the justices have successfully established their right to decide conclusively the meaning of the Constitution and because their decisions almost always leave one party unhappy, critics of the Court have argued that it has become too powerful. They typically complain that the Court has been too activist, meaning that it has been willing to substitute its views for those of the elected branches of government. It would be far better, these critics argue, for the justices to adhere to the intentions of the framers of the Constitution. Others, however, insist that the Court cannot be restrained by what they describe as the dead hand of the past; in their view, the nation’s ruling document has to fit the times if it is to be legitimate.

As a matter of history, the Court has actually embraced a bit of both of these views, as its landmark decisions remind us. The justices are not free to exercise their power any way they wish; even though the Court’s power has grown, it remains constrained in what it can do. For example, in order to render a decision, a litigant has to bring them a dispute. They cannot simply issue opinions on their own without first hearing a case. Moreover, the
justices must rely on others to enforce those decisions. As Alexander Hamilton wrote in The Federalist No. 78, the justices command neither the power of the sword nor of the purse. And the Court cannot perpetuate itself; instead, the President nominates its members, with the advice and consent of the Senate.

The justices are also beholden to Congress for most of their jurisdiction to hear cases. While the Constitution in Article 3 outlines the jurisdiction of the Court, it places in the hands of Congress considerable authority to specify the circumstances under which that power can be exercised. Article 3 of the Constitution provides that “The Judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.” Congress can limit or expand the jurisdiction of the Court; Congress can add or subtract justices.

Over two centuries the Court as an institution has changed, almost always with the blessing of Congress. The size of the Court has grown, from six to nine justices. The Court has had many homes, from its quarters in the old Senate chamber in the Capitol to the marble palace of today. As in the federal government as a whole, the work of the Court has grown to meet the demands of an expanding nation. In the first decade of the Court’s history the justices decided just one hundred cases; today the Court has as many as ten thousand cases brought to it annually. An equally important development has been the willingness of Congress to expand the certiorari jurisdiction of the Court, which has given the justices greater control over the cases they ultimately decide. Out of the thousands of cases it could potentially decide, the Court today usually issues written opinions in seventy to eighty. As its discretion to pick and choose among those cases has grown so, too, has its power and visibility.

Many of its pivotal decisions, such as Brown v. Board of Education (1954, 1955), reveal that the justices have understood that if they try to reach too far and too fast, they are likely to suffer a backlash. Indeed, that is exactly what happened in response to their decisions involving slavery in the territories, Scott v. Sandford (1858), and the New Deal. The latter produced President Franklin Roosevelt’s ill-fated court-packing scheme.

Although there are some who might wish that the Court would remain anchored in the past, its history has been one of adapting American constitutional law to changing social circumstances, often in subtle ways. Take for example the authority that the justices cite to make decisions. Although the Court is above all an institution of law that relies on legal precedents, its justices in the twentieth century turned increasingly to fields outside the law (sociology, psychology, statistics, and the social sciences generally) to support their opinions. The groundbreaking Brandeis brief in Muller v. Oregon (1908), which relied heavily on statistics about the impact of factory work on women, established a pattern of using nonlegal materials that was amplified in Brown and other cases.

The Court has changed its views on critical matters, as the cases in this volume often remind us. And when the Court has changed its mind, it has produced some of the most memorable moments in the history of the nation. We might prefer a Supreme Court founded on the idea of original intent, that is, a Court that constantly refers to the wishes of the framers of the Constitution. But its most important decisions reveal that while the justices have kept an eye to precedent and the work of the Philadelphia convention, they have also been willing to gaze decisively into the future when confronted with new realities, such as abortion and affirmative action, that the framers did not envision.

The high court has been something of a magic mirror that reflects back to us the assumptions and values of earlier times. It decisions remind us how important it is that the Court has the power and opportunity to change its mind. In the Scott decision (1857), the justices approved the institution of slavery and issued the sobering declaration that “persons of African descent have no rights which the white man is bound to respect.” A century later, in Brown, the justices ended the practice of racial segregation in public schools and challenged America to live up to the pledge of “equal justice under law,” words that are carved above the entrance to the Supreme Court.

These historic cases also remind us that disputes in society about how to deal with controversial issues are repeatedly framed through constitutional arguments. Ours is truly a dynamic constitutional order. Alexis de Tocqueville, a French writer who traveled across early nineteenth-century America, wrote one of the great surveys of American life, Democracy in America (1835, 1840). He stylly observed that “there is hardly a political question in the United States which does not sooner or later turn into a judicial one.” Congress has often found it useful to expand the powers of the Court so that the justices can address legally matters, such as slavery in the territories and apportionment of legislative districts, that would be difficult to compromise on politically.

Social change has often meant new challenges (and opportunities) for the justices. The Civil War left a bloody wound in America’s heart, but it also produced the Thirteenth, Fourteenth, and Fifteenth Amendments.
amendments, especially the Fourteenth, gave the justices new opportunities to reassess such critical issues as federalism, the rights of the accused, the scope of freedoms of speech and press, the relationship between church and state, and race relations. The justices also seized the wording in the due process clause of the Fourteenth Amendment to develop through substantive due process whole new areas of law involving privacy, women’s rights, and the related issues of birth control and abortion.

The Court is not today and historically never has been a runaway train. It is, at its heart, a legal institution, one shaped by the institutions and traditions of the law. The Court listens to lawyers who typically frame their arguments through the law’s language and processes, crafts its decision through that same language and those same processes, and sustains itself through the idea that it above all other institutions embodies the rule of law, meaning that no person is above the law.

The Supreme Court is a powerful institution and its justices have become an integral part of American government. The closely fought Presidential election of 2000 turned on a decision by the high court about who would become the nation’s chief executive. Although many commentators condemned the Court for tackling a political question, the American people as a whole embraced the Court’s decision, in part because they held the justices in such high regard and in part because they so distrusted the political process that might have otherwise resolved the election results. As Justice Robert H. Jackson once observed, the justices “are not final because we are infallible, but we are infallible only because we are final.”

The Court’s most significant decisions also affirm the pragmatism of the framers and of the justices who interpret the Constitution they created. The framers knew they were creating a legal institution with a human dimension. It makes a difference who sits on the Court. The nation’s most important legal body is, after all, composed of human beings who bring a variety of experiences and talents to the bench, although they are bound together by being trained in the law. The process by which Supreme Court justices are selected (appointment by the President with the advice and consent of the Senate) has always been political. For example, the selections of John Roberts and Samuel Alito, both made by George W. Bush, would be unthinkable had Al Gore been President.

Yet the justices have not been mere extensions of the Presidents who selected them. Tenure during good behavior and freedom from having their salaries reduced gives them a high degree of independence. We should not be surprised that they have often behaved accordingly. Former President Dwight Eisenhower, when asked what his biggest mistakes had been, reputedly replied: the appointments of Earl Warren and William J. Brennan Jr. Both justices proved far more liberal than either Eisenhower or his Republican Party would have liked. President Richard Nixon appointed Warren Burger in the hope that he would be a social conservative and a supporter of Presidential power. Burger ended up voting in favor of women having a right to an abortion in Roe v. Wade (1978) and ordering Nixon to turn over the Watergate tapes in United States v. Nixon (1974). And the list could go on. Scholars estimate that about half of the justices who have served have taken positions consistently at odds with the Presidents who appointed them.

The question of what qualities make for great or failed Supreme Court justices has stirred considerable debate. Some commentators insist that the intellectual ability to deal with the complex legal issues that come before the Court is critical. That means that a great justice must also be a great lawyer, but one of a special sort. A vision for what law can be rather than for what it is seems to be critical, especially in eras marked by powerful social change, such as the Civil War and the Great Depression. An old Yugoslav proverb holds that “If you want to know what a man is, place him in a position of authority.” The greatest of our justices have, in the end, been those who have grown in response to and have been shaped by the authority vested in them. Some of the greatest justices in the Court’s history, notably Oliver Wendell Holmes Jr. and John Marshall Harlan, were important as much for their dissents, which were later embraced by the majority, as for the majority opinions they wrote for the Court. Leadership and persuasiveness, the ability to encourage fellow justices to see in new ways and then to lead them there, have also been valuable talents. A justice has to be able to write not only clearly but persuasively and to argue in the close quarters of the conference in a way that can build and hold the votes necessary to forge a majority.

In order to be a great justice, it is also necessary to have spent an extended period of time on the Court. A justice may be a quick study, but in order to have a lasting impact he or she must persist for at least a decade. John Marshall, for example, was the Court’s greatest chief justice not only because he had extraordinary leadership skills but because he exercised those skills over thirty-four years of service (1801–1835). Learning to be a justice, whether for better or worse, takes time, but it is equally true that, because change in the law often comes gradually, endurance is important in shaping it.

These great cases also remind us that the justices mix
pragmatism with nobility. The justices have not left an unalloyed legacy of support for equality, freedom, and fairness. During periods of national crisis the Court has frequently deferred to the executive branch to the detriment of individual liberty, as its decisions in Schenck v. United States (1919) and Abrams v. United States (1919) during World War I underscore. In the Japanese American internment cases of World War II, the Court tragically permitted the detention of thousands of Japanese American citizens in one of the worst moments in its history. Perhaps the best we can say is that the high court is, like every other feature of American government, imperfect, an institution that, like the American people, is fully capable of holding contradictory views simultaneously.

Yet, its imperfections notwithstanding, the Court has had the unique role of being America’s most visible manifestation of the rule of law. The Constitution has evolved into America’s civic religion, a collection of words whose noblest principles rally a nation. The justices who interpret those words are its high priests; their opinions shape the contours of American life. For these efforts the justices and their Court have earned praise, provoked criticism, and generated controversy.

There is no doubt that the Supreme Court’s principal role has been to remind us that the law generally and constitutional law in particular cannot be a game of roulette. We depend on the justices and the high court to exercise a limited degree of discretion in return for a high degree of certainty. As a matter of history, the justices have performed this task sufficiently well that there has been no need for a second constitutional convention. It is left to the justices to wrestle with applying the rule of law while acknowledging that the Constitution rests on a base of popular will that is articulated in its Preamble with the words “We the People.”

The Roman philosopher Cicero summed matters up nicely with the observation that “We are all slaves of the law that we may enjoy freedom.” The framers of the Constitution, schooled as they were in the classics, knew and appreciated this basic insight. One of the most important reasons they created the Court—and one of the most important reasons it has played such a critical role in our history—is that it has maintained the concept of the rule of law as an essential, if sometimes not fully realized, element of our liberty.
Student Materials

• Class-Prep Assignment Sheet

• 5-Part Study: “Understanding Yick Wo”
The following assignment provides important background knowledge and context for the video *Yick Wo and the Equal Protection Clause*, which will be shown in class.

**INSTRUCTIONS:** Read, review and become familiar with the following resources, then answer the questions. Bring this sheet and the completed work with you to class.

1. **Readings:** (copies are available from the teacher or the readings may be viewed at the links provided)
     
     Available at Annenberg Classroom:  
   - Justice Kennedy Defines Rule of Law
   - The Court and Constitutional Interpretation  
     [http://www.supremecourt.gov/about/constitutional.aspx](http://www.supremecourt.gov/about/constitutional.aspx)

2. **Questions:**
   - Define justice and law in your own words and explain the relationship between the two.
   - How are laws made in the U.S.?
   - What is an unjust law, and what can be done about it?
   - How does the U.S. Constitution “ensure justice?”
   - What is the responsibility of the Supreme Court concerning matters of justice and law?

3. **Research:**

   Read about the architectural design of the Supreme Court building at these links:

   - The Supreme Court Building: Visitor’s Guide to the Supreme Court  
   - Architectural Information Sheets, U.S. Supreme Court  
     [http://www.supremecourt.gov/about/archdetails.aspx](http://www.supremecourt.gov/about/archdetails.aspx)

   **Questions:**
   a. Where are these words located?
   
   b. Make a chart of the figures and symbols used to portray justice and law on the Supreme Court building.

<table>
<thead>
<tr>
<th>Figure/Symbol</th>
<th>Location</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
   
   c. Which Aesop’s fable appears on one part of the building? Where is it located, and why do you think it was included?
   d. What can be learned about law and justice in the United States from the architectural design of the Supreme Court building? Reference specific sections of the building.
PART 1: HISTORICAL CONTEXT

Every person's story is shaped by the events and issues of the times in which they live.

Instructions: Describe the historical context needed to understand who Yick Wo was and why the decision he made in a particular time and place is important for all people in America today.

<table>
<thead>
<tr>
<th>Facts about the place, the people, the times, the events</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Facts about the laws (requirements and intent)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Legal issues</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>
### 5-Part Study: Understanding Yick Wo

**PART 2: THE SUPREME COURT CASE**

**Instructions:** Reproduce the following chart, then analyze the case *Yick Wo v. Hopkins* (1886) to extract details and create a case profile. Use highlighters to mark (and number) where responses can be found within a full text version of the case. Use the Internet to conduct additional research as needed. Make a list of the sites used.

_Note:_ A copy of the case is available from the teacher. It can also be accessed at this link: [http://supreme.justia.com/us/118/356/case.html](http://supreme.justia.com/us/118/356/case.html)

<table>
<thead>
<tr>
<th>1. Case Name:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Citation:</td>
<td></td>
</tr>
<tr>
<td>3. Background facts</td>
<td></td>
</tr>
<tr>
<td>4. Problems/Issues</td>
<td></td>
</tr>
<tr>
<td>5. Petitioner</td>
<td></td>
</tr>
<tr>
<td>6. Respondent</td>
<td></td>
</tr>
<tr>
<td>7. Movement of case through the courts</td>
<td></td>
</tr>
<tr>
<td>8. Identify the constitutional issue(s)</td>
<td></td>
</tr>
<tr>
<td>9. Reason Supreme Court accepted the case</td>
<td></td>
</tr>
<tr>
<td>10. State the question before the Court</td>
<td></td>
</tr>
<tr>
<td>11. Date of the decision</td>
<td></td>
</tr>
<tr>
<td>12. Decision of the Court</td>
<td></td>
</tr>
<tr>
<td>13. Vote of the Court</td>
<td></td>
</tr>
<tr>
<td>14. Action of the Court</td>
<td></td>
</tr>
<tr>
<td>15. Justice delivering the Court’s opinion</td>
<td></td>
</tr>
<tr>
<td>16. Reasoning behind opinion of the Court</td>
<td></td>
</tr>
<tr>
<td>17. Justices who dissented</td>
<td></td>
</tr>
<tr>
<td>18. Reasoning behind dissenting opinions</td>
<td></td>
</tr>
</tbody>
</table>

**List Internet sites used:**
PART 3: USE OF PRECEDENT

Instructions: The precedent of Yick Wo v. Hopkins (1886) has been used to support arguments by one side of the other in a variety of Supreme Court cases. Several of these cases are named in the chart below. Research to find the applicable issues in each one and the Yick Wo principle cited when the case was argued. (The validity of the argument and interpretation of Yick Wo are not being evaluated at this time.)

Procedure:
1. Use the following link to access the full text of Yick Wo v. Hopkins.
2. Click on “Cases citing this case: Supreme Court” in blue font above and to the left of the title for a list of all the cases. You will be searching each case named in the chart below.
3. Principle from Yick Wo: Open the case on Findlaw and search by keyword to locate the citation within the text of the case.
4. Read the context around the citation to determine the principle. Copy the text into the chart.
5. Case Issues: These may be identified from information on this site. Search by case name.
   [http://www.oyez.org](http://www.oyez.org)

<table>
<thead>
<tr>
<th>Supreme Court Case</th>
<th>Case Issues (search by case at <a href="http://www.oyez.org">www.oyez.org</a>)</th>
<th>Principle from Yick Wo (Search by keyword using the full text from Findlaw.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5. Roe v. Wade, 410 U.S. 113 (1973)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9. Plessy v. Ferguson, 163 U.S. 537 (1896)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
1. Review the *Yick Wo* principles cited in the cases in Part 3, then summarize the precedent-setting principles that endure to this day.

2. The ruling in *Yick Wo* was an exception to how the Supreme Court interpreted the Fourteenth Amendment in the late 19th century. Explain the early position of the Court and the significance of this change.

3. Since *Yick Wo*, the body of law against discriminatory practices has expanded to cover other groups and situations. Learn about the legal aspects of discrimination from Findlaw to complete the following:
   

### Unlawful Discrimination

<table>
<thead>
<tr>
<th>Discrimination prohibited for these protected groups</th>
<th>Discrimination prohibited in these settings</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Discrimination may or may not be unlawful. What constitutes unlawful discrimination?

Give an example of lawful discrimination:

Give an example of unlawful discrimination:
PART 5: JUSTICE FOR ALL

1. Explain what Yick Wo did for justice in America?

2. Describe the resources and supports that helped Yick Wo in his pursuit of justice.
   
   Personal:
   
   Community:
   
   Work:
   
   Legal:

3. What lessons can alien immigrants in America learn from Yick Wo?

4. What lessons can American citizens learn from Yick Wo?

5. Explain the impact of Yick Wo on the rule of law in America.
Teacher Materials

• 5-Part Study: Teacher Notes “Understanding Yick Wo”

• “A Continuum of Points of View: Instructions”

• Rubric
5-Part Study Teacher Notes: Understanding Yick Wo

RESOURCES FOR THIS STUDY:

- Video and video transcript for “Yick Wo and the Equal Protection Clause”
- Full text of *Yick Wo v. Hopkins* (1886)
- Chapter 3: “Right to Equal Protection of the Laws” from *Our Rights* by David J. Bodenhamer
- Article: “From victims to victors; A Chinese contribution to American law: Yick Wo versus Hopkins” by Laurene Wu McClain in *Chinese America: History and Perspectives*, 2003
  http://findarticles.com/p/articles/mi_hb3167/is_2003_Annual/ai_n28984317/?tag=content;coll1

PART 1: HISTORICAL CONTEXT

Every person’s story is shaped by the events and issues of the times in which they live.

**Instructions:** Describe the historical context needed to understand who Yick Wo was and why the decision he made in a particular time and place is important for all people in America today.

Answers will vary but will likely include the following:

### Facts about the place, the people, the times, the events

- Gold Rush in California – 1849 Transcontinental Railroad
- San Francisco’s Chinatown “The Number One City”
- Chinese were 10% of total population in California by 1880
- Chinese not allowed to become U.S. citizens

### Facts about the laws (requirements and intent)

- Treaties between U.S. and China provided for equal treatment under the U.S. system.
- Naturalization Act of 1790 allowed only white persons to naturalize.
- Only the federal government had power over immigration, but the city and state could make laws, too
- San Francisco passed face-neutral ordinances that obviously targeted the Chinese
  - ordinance requiring a tax on every Chinese passenger traveling by ship
  - ordinance against lewd women and other undesirables coming to San Francisco by steamer
  - ordinance requiring every dwelling had to have 500 cubic feet of air per occupant
  - haircut ordinance: those in jail had to have their hair shaved to within 1 inch
  - ordinance requiring laundries not made of brick or stone to get a special certificate of operation from the San Francisco board of supervisors

### Legal issues

- Defining the equal protection clause of the Fourteenth Amendment in a broader way.
- Expanding the definition for discriminatory laws to include the way face neutral laws are applied.
- Extending equal protection to any *person* within the U.S., citizen and non-citizen alike.
## PART 2: THE SUPREME COURT CASE

**Instructions:** Reproduce the following chart, then analyze the case *Yick Wo v. Hopkins* (1886) to extract details and create a case profile. Use highlighters to mark (and number) where responses can be found within a full text version of the case. Use the Internet to conduct additional research as needed. Make a list of the sites used.

**Note:** A copy of the case is available from the teacher. It can also be accessed at this link: [http://supreme.justia.com/us/118/356/case.html](http://supreme.justia.com/us/118/356/case.html)

<table>
<thead>
<tr>
<th>1. Case Name:</th>
<th><em>Yick Wo v. Hopkins</em></th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Citation:</td>
<td><em>Yick Wo v. Hopkins</em>, 118 U.S. 356 (1886)</td>
</tr>
<tr>
<td>3. Background facts</td>
<td>After owning a laundry business for 22 years that never had any safety violations, Yick Wo was denied his license by the City of San Francisco</td>
</tr>
<tr>
<td>4. Problems/Issues</td>
<td>Racial discrimination, denial of Fourteenth Amendment right to equal protection</td>
</tr>
<tr>
<td>5. Petitioner</td>
<td>Yick Wo, a Chinese immigrant and laundry owner</td>
</tr>
<tr>
<td>6. Respondent</td>
<td>Hopkins, San Francisco sheriff</td>
</tr>
<tr>
<td>7. Movement of case through the courts</td>
<td>Brought to this court from a state court</td>
</tr>
<tr>
<td>8. Identify the constitutional issue(s)</td>
<td>Equal protection clause of the Fourteenth Amendment</td>
</tr>
<tr>
<td>9. Reason Supreme Court accepted the case</td>
<td>The plaintiff in error, Yick Wo, on August 4, 1885, petitioned the Supreme Court of California for a writ of habeas corpus, alleging that he was illegally deprived of his personal liberty by the defendant as sheriff of the city and county of San Francisco.</td>
</tr>
<tr>
<td>10. State the question before the Court</td>
<td>Whether the plaintiff in error has been denied a right in violation of the Constitution, laws, or treaties of the United States.</td>
</tr>
<tr>
<td>11. Date of the decision</td>
<td>May 10, 1866</td>
</tr>
<tr>
<td>12. Decision of the Court</td>
<td>Yick Wo’s conviction for violating the ordinance was unconstitutional.</td>
</tr>
<tr>
<td>13. Vote of the Court</td>
<td>Unanimous</td>
</tr>
<tr>
<td>14. Action of the Court</td>
<td>The judgment of the Supreme Court of California in the case of Yick Wo, and that of the Circuit Court of the United States for the District of California in the case of Wo Lee, are severally reversed, and the cases remanded, each to the proper court with directions and to discharge the petitioners from custody and imprisonment.</td>
</tr>
<tr>
<td>15. Justice delivering the Court’s opinion</td>
<td>Justice Matthews</td>
</tr>
<tr>
<td>16. Reasoning behind opinion of the Court</td>
<td>An administration of a municipal ordinance for the carrying on of a lawful business within the corporate limits violated the provisions of the Constitution of the United States if it makes arbitrary and unjust discriminations, founded on differences of race between persons otherwise in similar circumstances. The guarantees of protection contained in the Fourteenth Amendment to the Constitution extend to all persons within the territorial jurisdiction of the United States, without regard to differences of race, of color, or of nationality.</td>
</tr>
<tr>
<td>17. Justices who dissented</td>
<td>No dissents</td>
</tr>
<tr>
<td>18. Reasoning behind dissenting opinions</td>
<td>No dissents</td>
</tr>
</tbody>
</table>
**PART 3: USE OF PRECEDENT**

**Instructions:** The precedent of *Yick Wo v. Hopkins* (1886) has been used to support arguments by one side of the other in a variety of Supreme Court cases. Several of these cases are named in the chart below. Research to find the applicable issues in each one and the *Yick Wo* principle cited when the case was argued. (The validity of the argument and interpretation of *Yick Wo* are not being evaluated at this time.)

**Procedure:**
1. Use the following link to access the full text of *Yick Wo v. Hopkins.*
2. Click on “Cases citing this case: Supreme Court” in blue font above and to the left of the title for a list of all the cases. You will be searching each case named in the chart below.
3. **Principle from Yick Wo:** Open the case on Findlaw and search by keyword to locate the citation within the text of the case.
4. Read the context around the citation to determine the principle. Copy the text into the chart.
5. **Case Issues:** These may be identified from information on this site. Search by case name.
   http://www.oyez.org

<table>
<thead>
<tr>
<th>Supreme Court Case</th>
<th>Case Issues (search by case at <a href="http://www.oyez.org">www.oyez.org</a>)</th>
<th>Principle from Yick Wo (Search by keyword using the full text from Findlaw.) Answers may vary.</th>
</tr>
</thead>
</table>
| 2. *Miller v. Johnson*, 515 U.S. 900 (1995) | reapportionment | Statutes are subject to strict scrutiny under the equal protection clause not just when they contain express racial classifications, but also when, though race neutral on their face, they are motivated by a racial purpose or object.  
As early as *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886), the court recognized that a laundry permit ordinance was administered in a deliberate way to exclude all Chinese from the laundry business. |
| 3. *Plyler v. Doe*, 457 U.S. 202 (1982) | immigration, aliens | Aliens, even aliens whose presence in this country is unlawful, have long been recognized as “persons” guaranteed due process of law by the Fifth and Fourteenth Amendments.  
<table>
<thead>
<tr>
<th>Supreme Court Case</th>
<th>Case Issues (search by case at <a href="http://www.oyez.org">www.oyez.org</a>)</th>
<th>Principle from Yick Wo (Search by keyword using the full text from Findlaw.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. University of California v. Bakke, 438 U.S. 265 (1978)</td>
<td>Affirmative action, race, education, race discrimination</td>
<td>The guarantees of equal protection, said the Court in [438 U.S. 265, 293] Yick Wo, “are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws.” 118 U.S., at 369.</td>
</tr>
<tr>
<td>5. Roe v. Wade, 410 U.S. 113 (1973)</td>
<td>Privacy, abortion</td>
<td>My understanding of past practice is that a statute found [410 U.S. 113, 178] to be invalid as applied to a particular plaintiff, but not unconstitutional as a whole, is not simply “struct down” but is, instead, declared unconstitutional as applied to the fact situation before the Court. Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886); Street v. New York, 394 U.S. 576 (1969).</td>
</tr>
<tr>
<td>6. Cox v. Louisiana, 379 U.S. 536 (1965)</td>
<td>Protest demonstrations</td>
<td>In the case before us Louisiana has by a broad, vague statute given policemen an unlimited power to order people off the streets, not to enforce a specific, nondiscriminatory state statute forbidding patrolling and picketing, but rather whenever a policeman makes a decision on his own personal judgment that views being expressed on the street are provoking or might provoke a breach of the peace. Such a statute does not provide for government by clearly defined laws, but rather for government by the moment-to-moment opinions of a policeman on his beat. Compare Yick Wo v. Hopkins, 118 U.S. 356, 369-470 (1886). This kind of statute provides a perfect device to arrest people whose views do not suit the policeman or his superiors, while leaving free to talk anyone with whose views the police agree.</td>
</tr>
<tr>
<td>8. Adamson v. California, 332 U.S. 46 (1947)</td>
<td>Privileges and immunities, self-incrimination, Fifth Amendment, criminal</td>
<td>But this Court as held in a number of cases that colored people must, because of the Fourteenth Amendment, be accorded equal protection of the laws. See, e.g., Strauder v. West Virginia, 100 U.S. 303, cf. Virginia v. Rives, 100 U.S&gt; 313; see also Yick Wo v. Hopkins, 118 U.S. 356.</td>
</tr>
<tr>
<td>Supreme Court Case</td>
<td>Case Issues (search by case at <a href="http://www.oyez.org">www.oyez.org</a>)</td>
<td>Principle from Yick Wo (Search by keyword using the full text from Findlaw.) Answers may vary.</td>
</tr>
<tr>
<td>--------------------</td>
<td>-----------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>9. <em>Plessy v. Ferguson</em>, 163 U.S. 537 (1896)</td>
<td>Slavery, segregation, race, equal protection, race discrimination, discrimination.</td>
<td>&quot;...every exercise of the police power must be reasonable, and extend only to such laws as are enacted in good faith for the promotion of the public good, and not for the annoyance or oppression of a particular class. Thus, in <em>Yick Wo v. Hopkins</em>, 118 U.S. 356, 6 Sup. Ct. 1064, it was held by this court that a municipal ordinance of the city of San Francisco, to regulate the carrying on of public laundries within the limits of the municipality, violated the provisions of the constitution of the United States, if it conferred upon the municipal authorities arbitrary power, at their own will, and without regard to discretion, in the legal sense of the term, to give or withhold consent as to persons or places, without regard to the competency of the persons applying or the propriety of the places selected for the carrying on of the business.&quot;</td>
</tr>
</tbody>
</table>
PART 4: CONTRIBUTION TO AMERICAN LAW

1. Review the *Yick Wo* principles cited in the cases in Part 3, then summarize the precedent-setting principles that endure to this day. Refer to the chart in part 3

2. The ruling in *Yick Wo* was an exception to how the Supreme Court interpreted the Fourteenth Amendment in the late 19th century. Explain the early position of the Court and the significance of this change. After the Fourteenth Amendment passed, the Supreme Court interpreted the “equal protection” clause very narrowly, so that both states and governmental entities within them maintained considerable power to infringe upon the people’s rights and liberties. Supreme Court upheld laws supporting “separate but equal” practices. The Supreme Court expanded its interpretation of the equal protection clause by ruling that facially neutral laws are unconstitutional if they are racially discriminatory in practice.

3. Since *Yick Wo*, the body of law against discriminatory practices has expanded to cover other groups and situations. Learn about the legal aspects of discrimination from Findlaw to complete the following:

   http://public.findlaw.com/civil-rights/civil-rights-basics/discrimination-defined.html

<table>
<thead>
<tr>
<th>Unlawful Discrimination</th>
</tr>
</thead>
<tbody>
<tr>
<td>Discrimination prohibited for these protected groups</td>
</tr>
<tr>
<td>(From Findlaw)</td>
</tr>
<tr>
<td>• Age</td>
</tr>
<tr>
<td>• Disability</td>
</tr>
<tr>
<td>• Ethnicity</td>
</tr>
<tr>
<td>• Gender</td>
</tr>
<tr>
<td>• Marital status</td>
</tr>
<tr>
<td>• National origin</td>
</tr>
<tr>
<td>• Race</td>
</tr>
<tr>
<td>• Religion</td>
</tr>
<tr>
<td>• Sexual orientation</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

Discrimination may or may not be unlawful. What constitutes unlawful discrimination?

(From Findlaw) In the context of civil rights law, unlawful discrimination refers to unfair or unequal treatment of an individual (or group) based on certain characteristics

Give an example of lawful discrimination: (From Findlaw) Example 1: Applicant 1, an owner of two dogs, fills out an application to lease an apartment from Landlord. Upon learning that Applicant 1 is a dog owner, Landlord refuses to lease the apartment to her, because he does not want dogs in his building. Here, Landlord has not committed a civil rights violation by discriminating against Applicant 1 based solely on her status as a pet owner. Landlord is free to reject apartment applicants who own pets.

Give an example of unlawful discrimination: (From Findlaw) Example 2: Applicant 2, an African-American man, fills out an application to lease an apartment from Landlord. Upon learning that Applicant 2 is an African-American, Landlord refuses to lease the apartment to him, because he prefers to have Caucasian tenants in his building. Here, Landlord has committed a civil rights violation by discriminating against Applicant 2 based solely on his race. Under federal and state fair housing and anti-discrimination laws, Landlord may not reject apartment applicants because of their race.
PART 5: JUSTICE FOR ALL

1. Explain what Yick Wo did for justice in America?
   In *Yick Wo v. Hopkins*, the court ruled that “an administration of a municipal ordinance . . . violates the Constitution . . . if it makes arbitrary and unjust discriminations founded on differences of race . . .” “The guarantees of the Fourteenth Amendment extend to “all persons within the territorial jurisdiction of the United States, without regard to differences of race, or color, or of nationality.” “. . . the equal protection of the laws— is a pledge of the protection of equal laws.”

2. Describe the resources and supports that helped Yick Wo in his pursuit of justice.
   Personal: knowledge of the 14th Amendment; recognized how the Constitution applied to him; followed the law, willing to face the challenge; persistent; economically productive; courageous
   Community: strong social organization in Chinatown; received support from the powerful Chinese LaunLaundryman’s Guild
   Work: hardworking; ran a laundry service for 22 years; exemplary businessman
   Legal: Chinese had a well-developed legal conscience; knew how to use the court system for protection; hired the best lawyer in the west, Hall McAllister; faced Judge Sawyer who recognized that discriminatory practices were happening.

3. What lessons can alien immigrants in America learn from Yick Wo?
   American laws cannot discriminate against alien immigrants; while certain rights of alien immigrants are protected by the Constitution, only citizens have the right to vote

4. What lessons can American citizens learn from Yick Wo?
   Discriminatory practices should be challenged in court; laws are improved through participation in the judicial process; voting gives citizens the political power to protect their interests in local government—the Chinese at the time of Yick Wo did not have that advantage.

5. Explain the impact of Yick Wo on the rule of law in America.
   It expanded the interpretation of the equal protection clause to included non-citizens; it established that courts could not only determine the constitutionality of a law by examining at how it was written, but also consider its application. In other words, laws cannot discriminate in word or application.
A Continuum of Points of View: Instructions

**Purpose:** A Continuum of Points of View is an effective activity for getting students to discuss their opinions, beliefs, and values about controversial issues. It helps them recognize that a wide range of perspectives may be found on different issues, allows them to learn what others think, and gives them an opportunity to reflect on or change their own position.

**Description:** The continuum activity involves the physical movement of students as they organize themselves at different points along a continuum that ranges from “strongly disagree” to “strongly agree.” Students select a physical position on the continuum that represents their position on the issue.

**Procedure:**
1. Identify a pool of controversial questions or statements related to an area of study. Questions or issues raised during a lesson could be revisited in this way.

   **Examples of controversial statements/questions:**
   1. Treating people equally means treating them the same.
   2. Voting in elections should be limited to citizens.
   3. Curfew laws for juveniles are discriminatory.
   4. Male drivers under the age of 25 have the highest rates for car insurance. This is discrimination.
   5. People in America don’t respect the law.

2. Set up a continuum across the room and post signs at various points by using tape, string, or a single line of desks.

3. Give students 2-3 minutes to reflect on the issue and the reasons for their opinions. At your signal, ask students to position themselves on the continuum where they feel most comfortable.

4. Opinion Exchange: Ask students to move toward a person who is far away from them on the continuum and partner up to exchange ideas. The purpose of this exchange is not to change somebody’s mind, but to understand another’s point of view and have an opportunity to explain one’s own position.

   **Rules for the exchange:** (Teacher as timer and moderator.)
   - Use alphabetical order to determine who goes first.
   - First speaker explains and supports his/her point of view without interruption (1-2 min). Listener restates the speaker’s position. (30 sec)
   - Second speaker explains and supports his/her position without interruption (1-2 min). Listener restates the speaker’s position. (30 sec)
   - After the exchange, if students change their minds, they can physically move on the continuum to reflect that change.
5. Debrief on the experience through a general discussion. Ask students what they learned about sharing one’s own opinion and listening to the opinion of another. Did the speaker clearly communicate his/her viewpoint? Did the listener accurately summarize the viewpoint of the speaker? Was the reasoning presented logical and based on facts, not feelings? What prompted students to change or not change their minds?

6. Repeat the process with other controversial questions or statements as time allows.

Variations:

1. Partner exchanges may be with those nearby.

2. Exchanges may take the form of a debate.

3. Instead of having the students partner up after they are distributed along the continuum, hold a discussion while the students are in place.

   Ask students to express their opinions orally, using follow-up questions to help them clarify, elaborate on, or support their positions. Ask other students to respond. Do they agree or disagree? As students change their minds, they may move to a new location on the continuum.

4. Ask students to identify what they believe are the strongest arguments/reasons they heard from the OPPOSING side.

5. Reword the questions or statements in ways that prompt students to move on the continuum.

6. Introduce factual information that may sway positions on the issues and prompt students to move on the continuum. Ask them to move after each fact is presented.

7. Use this activity at the beginning of a lesson to gain insight into student opinions and knowledge about the topic.
**Rubric: A Continuum of Points of View**
(Note: Adjust the rubric if any variations for the continuum activity are used.)

<table>
<thead>
<tr>
<th>Criteria</th>
<th>4</th>
<th>3</th>
<th>2</th>
<th>1</th>
<th>0</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Personal viewpoint</strong></td>
<td>States own point of view clearly, succinctly, and</td>
<td>States own point of view clearly so others</td>
<td>Point of view is not clearly stated; thoughts, opinions, feelings, and ideas; reflects on own position in light of other views.</td>
<td>Rarely volunteers a point of view.</td>
<td>Never states a point of view on the topic.</td>
</tr>
<tr>
<td></td>
<td>convincingly so others understand; freely shares</td>
<td>understand; freely shares thoughts, opinions, feelings, and ideas; reflects on own position in light of other views.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>thoughts, opinions, feelings, and ideas; reflects</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>on own position in light of other views.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Critical thinking</strong></td>
<td>Personal responses demonstrate more sophisticated thinking and reasoning.</td>
<td>Personal responses demonstrate logical and reasoned thinking.</td>
<td>Some personal responses demonstrate logical and reasoned thinking.</td>
<td>Few personal responses demonstrate logical and reasoned thinking.</td>
<td>Personal responses are inappropriate.</td>
</tr>
<tr>
<td><strong>Use of facts and examples</strong></td>
<td>Uses multiple relevant facts and examples to support own position, make inferences, and draw conclusions.</td>
<td>Uses basic facts and examples to support own position.</td>
<td>Responses are based primarily on emotions and impressions with few relevant facts cited.</td>
<td>Responses are emotional and unsubstantiated.</td>
<td>Responses are inflammatory or off the subject.</td>
</tr>
<tr>
<td><strong>Interaction</strong></td>
<td>Eager participant; stays on topic; interacts</td>
<td>Willing participant; interacts appropriately;</td>
<td>There is effort at participation but it is restrained and interaction is limited.</td>
<td>A reluctant participant who contributes little.</td>
<td>Behavior interferes with others’ learning.</td>
</tr>
<tr>
<td></td>
<td>appropriately; demeanor motivates and encourages</td>
<td>shares views freely; listens to understand another’s position.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>others.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Listening</strong></td>
<td>Engaged and attentive listener; does not interrupt the speaker; uses strategies to assist memory (e.g., note-taking); asks clarifying questions; accurately restates and elaborates on position.</td>
<td>Attentive listener; does not interrupt the speaker; asks questions to improve understanding; accurately restates the position.</td>
<td>Moderately attentive at listening; interrupts the speaker occasionally; asks appropriate questions; restatement of a position does not show understanding.</td>
<td>Little focus on the speaker; interrupts frequently; asks inappropriate questions; restatement of a position is not accurate.</td>
<td>Not interested in listening; interrupts the speaker; asks inappropriate questions; misrepresents the position presented.</td>
</tr>
<tr>
<td><strong>Respect for different points of view</strong></td>
<td>Body language and verbal responses communicate respect for other positions; objectively restates different positions on the topic.</td>
<td>Body language and verbal responses communicate respect for other positions.</td>
<td>Body language and verbal responses communicate moderate respect for other positions.</td>
<td>Body language and verbal responses communicate little respect for other positions.</td>
<td>Body language and verbal responses consistently communicate disrespect for other positions.</td>
</tr>
</tbody>
</table>
Source Document:
National Standards for Civics and Government (1994)
Center for Civic Education
www.civiced.org/index.php?page=stds

• Grades 5-8

• Grades 9-12
### National Standards for Civics and Government

**Equal Justice Under Law**

Source: *National Standards for Civics and Government* (1994) Center for Civic Education


### Grades 5-8 Content Standards Alignment

The following chart shows a more granular alignment at the standards level.

<table>
<thead>
<tr>
<th>National Standards for Civics and Government (Grades 5-8)</th>
<th>Lesson: Equal Justice Under Law</th>
<th>Understandings Reinforced by the Lesson</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>I.A.1. Defining civic life, politics, and government.</strong> Students should be able to explain the meaning of the terms civic life, politics, and government.</td>
<td></td>
<td>Courts are among the institutions of government with the power and authority to direct or control the behavior of those in society.</td>
</tr>
<tr>
<td><strong>I.A.2. Necessity and purposes of government.</strong> Students should be able to evaluate, take, and defend positions on why government is necessary and the purposes government should serve.</td>
<td></td>
<td>The federal courts, which make up the judicial branch of the federal government, are responsible for interpreting the law, evaluating the constitutionality of federal laws, and the peaceful resolution of legal disputes.</td>
</tr>
<tr>
<td><strong>I.B.2. The rule of law.</strong> Students should be able to explain the importance of the rule of law for the protection of individual rights and the common good.</td>
<td></td>
<td>Adherence to the rule of law by all parties makes it possible to resolve legal disputes peacefully through the judicial process.</td>
</tr>
<tr>
<td><strong>I.C.2. Purposes and uses of constitutions.</strong> Students should be able to explain the various purposes constitutions serve.</td>
<td></td>
<td>As the supreme law of the land, the U.S. Constitution protects individual rights and promotes the common good.</td>
</tr>
<tr>
<td><strong>I.C.3. Conditions under which constitutional government flourishes.</strong> Students should be able to explain those conditions that are essential for the flourishing of constitutional government.</td>
<td></td>
<td>Participation in the judicial process helps reinforce, refine, and define constitutional principles that are essential for the survival of a constitutional democracy.</td>
</tr>
<tr>
<td><strong>II.A.1. The American idea of constitutional government.</strong> Students should be able to explain the essential ideas of American constitutional government.</td>
<td></td>
<td>One purpose of government as stated in the Preamble to the Constitution is to establish justice.</td>
</tr>
<tr>
<td><strong>II.B.1. Distinctive characteristics of American society.</strong> Students should be able to identify and explain the importance of historical experience and geographic, social, and economic factors that have helped to shape American society.</td>
<td></td>
<td>Immigration of the Chinese to America helped shaped American society.</td>
</tr>
<tr>
<td><strong>II.B.3. Diversity in American society.</strong> Students should be able to evaluate, take, and defend positions on the value and challenges of diversity in American life.</td>
<td></td>
<td>Conflicts are inevitable in a culturally diverse society, but in a constitutional democracy, conflicts can be resolved peacefully in a way that respects individual rights and promotes the common good.</td>
</tr>
<tr>
<td><strong>II.C.1. American identity.</strong> Students should be able to explain the importance of shared political values and principles to American society.</td>
<td></td>
<td>The U.S. Constitution identifies basic values and principles that are American distinctives. These include respect for the law, protection of individual rights, and justice under the law.</td>
</tr>
<tr>
<td><strong>II.C.2. The character of American political conflict.</strong> Students should be able to describe the character of American political conflict and explain factors that usually prevent violence or that lower its intensity.</td>
<td></td>
<td>Political conflicts continue to arise over extending civil rights to all people in America, not just citizens. In most cases, however, respect for the Constitution and its principles enables a peaceful resolution.</td>
</tr>
</tbody>
</table>
### National Standards for Civics and Government (Grades 5-8)

| II.D.1. Fundamental values and principles. Students should be able to explain the meaning and importance of the fundamental values and principles of American constitutional democracy. | The following values and principles are important for maintaining a constitutional democracy include:  
- individual rights (majority and minority rights)  
- the common or public good  
- justice  
- equality  
- diversity  
- truth  
- patriotism  

Principles fundamental to American constitutional democracy include:  
- Individual rights  
- Rule of law  

Disputes and conflicts may arise regarding the right of individuals to be treated equally, especially if they are not citizens. People may agree on values or principles in general, but disagree when applying them to specific issues. When legal disputes arise, aggrieved parties may seek resolution in the courts. |
| II.D.2. Conflicts among values and principles in American political and social life. Students should be able to evaluate, take, and defend positions on issues in which fundamental values and principles are in conflict. | Important American ideals include equal justice for all and respect for the rights of others.  

The Chinese at the time of Yick Wo were discriminated on the basis of race and did not experience equal justice. |
| II.D.3. Disparities between ideals and reality in American political and social life. Students should be able to evaluate, take, and defend positions on issues concerning ways and means to reduce disparities between American ideals and realities. | Laws must be sound in theory and fair in practice. Laws are designed to protect individual rights and may not be biased for or against any individual or group. |
| III.E.1. The place of law in American society. Students should be able to explain the importance of law in the American constitutional system. | Habeas corpus was used by Yick Wo. He was not a citizen but sought justice through the U.S. legal system. Non-citizens have judicial protection of their rights when residing within the jurisdiction of the United States. |
| III.E.3. Judicial protection of the rights of individuals. Students should be able to evaluate, take, and defend positions on current issues regarding judicial protection of individual rights. | Supreme Court opinions are published and made accessible to the public through electronic and print media produced by official and unofficial sources. |
| III.F.2. Political communication. Students should be able to evaluate, take, and defend positions on the influence of the media on American political life. | Yick Wo received help from the Chinese Laundryman’s Guild. |
| III.F.4. Associations and groups. Students should be able to explain how interest groups, unions, and professional organizations provide opportunities for citizens to participate in the political process. | At the time of Yick Wo, treaties existed between China and the U.S. that provided for equal treatment of the Chinese under the U.S. system. All local entities were bound by the treaties. |
| IV.A.2. Interaction among nation-states. Students should be able to explain how nation-states interact with each other. | All citizens have equal rights under the law which confers certain rights and privileges, including the right to vote. |
| V.A.1. The meaning of citizenship. Students should be able to explain the meaning of American citizenship. | Anyone born in the United States is a U.S. citizen. One may also become a citizen through a naturalization process. Non-citizens (aliens) are not born in the U.S. and have an allegiance to a different country. |
| V.A.2. Becoming a citizen. Students should be able to explain how one becomes a citizen of the United States. |  

---

**National Standards for Civics and Government**  
**Equal Justice Under Law**
<table>
<thead>
<tr>
<th>Specific Content Standards</th>
<th>Lesson: Equal Justice Under Law</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>V.B.1. Personal rights.</strong> Students should be able to evaluate, take, and defend positions on issues involving personal rights.</td>
<td>Non-citizens living within the jurisdiction of the U.S. have certain personal rights protected by equal protection clause of the Constitution such as freedom of expression and association.</td>
</tr>
<tr>
<td><strong>V.B.2. Political rights.</strong> Students should be able to evaluate, take, and defend positions on issues involving political rights.</td>
<td>Non-citizens living within the jurisdiction of the U.S. have some political rights, due to the equal protection clause, but do not have the right to vote.</td>
</tr>
<tr>
<td><strong>V.B.3. Economic rights.</strong> Students should be able to evaluate, take, and defend positions on issues regarding economic rights.</td>
<td>Non-citizens living within the jurisdiction of the U.S. have certain rights protected by equal protection clause of the Constitution such as establishing and operating a business.</td>
</tr>
<tr>
<td><strong>V.B.4. Scope and limits of rights.</strong> Students should be able to evaluate, take, and defend positions on issues regarding the proper scope and limits of rights.</td>
<td>“Equal opportunity” is a criterion often used to determine the limits to rights.</td>
</tr>
</tbody>
</table>
| **V.C.1. Personal responsibilities.** Students should be able to evaluate, take, and defend positions on the importance of personal responsibilities to the individual and to society. | Citizens have the personal responsibility to respect the rights and interests of others, including non-citizens. Important personal responsibilities include:  
- considering the rights and interests of others  
- behaving in a civil manner |
| **V.C.2. Civic responsibilities.** Students should be able to evaluate, take, and defend positions on the importance of civic responsibilities to the individual and society. | There are civic responsibilities associated with being an American citizen. These include:  
- obeying the law  
- respecting the rights of others  
- being informed and attentive to public issues |
| **V.D.1. Dispositions that enhance citizen effectiveness and promote the healthy functioning of American constitutional democracy.** Students should be able to evaluate, take, and defend positions on the importance of certain dispositions or traits of character to themselves and American constitutional democracy. | Courts may help with problem-solving in a constitutional democracy, but the extent of their success depends on all participants exercising certain dispositions or traits of character:  
- individual responsibility  
- self discipline/self governance  
- civility  
- courage  
- respect for the rights of other individuals  
- honesty  
- critical mindedness  
- negotiation and compromise  
- persistence  
- patriotism |
<p>| <strong>V.E.1. Participation in civic and political life and the attainment of individual and public goals.</strong> Students should be able to explain the relationship between participating in civic and political life and the attainment of individual and public goals. | Participation in the judicial process is not only a way to resolve current disputes, but a way to affect the way of life for others in the future. Courts can only hear cases that are brought before them. They do not seek cases. Citizen action is required to bring cases and activate the judicial process. Citizen action, therefore, is needed to prompt interpretations of the law and is required before courts can do their work. Actions my non-citizens may also contribute to development of the law in America. |</p>
<table>
<thead>
<tr>
<th>National Standards for Civics and Government (Grades 5-8)</th>
<th>Lesson: Equal Justice Under Law</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>V.E.3. Forms of political participation.</strong> Students should be able to describe the means by which Americans can monitor and influence politics and government.</td>
<td>Students who are knowledgeable can seek to promote individual rights by participating in the judicial process to resolve constitutional issues.</td>
</tr>
<tr>
<td><strong>V.E.5. Knowledge and participation.</strong> Students should be able to explain the importance of knowledge to competent and responsible participation in American democracy.</td>
<td>Those who are knowledgeable about the values and principles of American constitutional democracy can challenge perceived offenses and have disputes over those principles decided by the courts. When people use the judicial process to seek resolution of disputes over legal matters, they activate a system that seeks to reaffirm or change laws for the immediate and future benefit of all Americans.</td>
</tr>
</tbody>
</table>
# National Standards for Civics and Government

**Equal Justice Under Law**

Source: *National Standards for Civics and Government* (1994) Center for Civic Education


## Grades 9-12 Content Standards Alignment

The following chart shows a more granular alignment at the standards level.

<table>
<thead>
<tr>
<th>National Standards for Civics and Government (Grades 9-12)</th>
<th>Lesson: Equal Justice Under Law</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>I.A.1. Defining civic life, politics, and government.</strong> Students should be able to explain the meaning of the terms civic life, politics, and government.</td>
<td>Courts are among the formal institutions of government with the power and authority to direct or control the behavior of those in society.</td>
</tr>
<tr>
<td><strong>I.A.3. The purposes of politics and government.</strong> Students should be able to evaluate, take, and defend positions on competing ideas regarding the purposes of politics and government and their implications for the individual and society.</td>
<td>Sometimes there are conflicts that arise involving individual rights and those conflicts may make it to the Supreme Court for resolution.</td>
</tr>
<tr>
<td><strong>I.B.2. The rule of law.</strong> Students should be able to evaluate, take, and defend positions on the importance of the rule of law and on the sources, purposes, and functions of law.</td>
<td>Court decisions help ensure that the law is interpreted consistently and applied fairly for the protection of individual rights and the common good.</td>
</tr>
<tr>
<td><strong>I.C.1. Concepts of &quot;constitution.&quot;</strong> Students should be able to explain different uses of the term &quot;constitution&quot; and to distinguish between governments with a constitution and a constitutional government.</td>
<td>The Constitution as the supreme law of the land is augmented over time by amendment changes through legislation and Supreme Court decisions.</td>
</tr>
<tr>
<td><strong>I.C.2. Purposes and uses of constitutions.</strong> Students should be able to explain the various purposes served by constitutions.</td>
<td>As the supreme law of the land, the U.S. Constitution places limits on government power in order to protect individual rights of all persons in the jurisdiction of the U.S. The Fourteenth Amendment has been used to help resolve social issues and strike down discriminatory laws.</td>
</tr>
<tr>
<td><strong>I.D.1. Shared powers and parliamentary systems.</strong> Students should be able to describe the major characteristics of systems of shared powers and of parliamentary systems.</td>
<td>In a shared powers system, laws may be passed by cities and states, but the judiciary may declare them unconstitutional.</td>
</tr>
<tr>
<td><strong>I.D.3. Nature of representation.</strong> Students should be able to evaluate, take, and defend positions on how well alternative forms of representation serve the purposes of constitutional government.</td>
<td>Yick Wo received support in his efforts because he was represented by the Chinese Laundryman’s Guild.</td>
</tr>
<tr>
<td><strong>II.A.1. The American idea of constitutional government.</strong> Students should be able to explain the central ideas of American constitutional government and their history.</td>
<td>All persons have the right to life, liberty, property, and the pursuit of happiness just because they are human beings; that the major purpose of government is to protect those rights.</td>
</tr>
<tr>
<td><strong>II.A.2. How American constitutional government has shaped the character of American society.</strong> Students should be able to explain the extent to which Americans have internalized the values and principles of the Constitution and attempted to make its ideals realities.</td>
<td>Landmark Supreme Court decisions help make the values and principles of the Constitution a reality for all Americans. These shared values include respect for individual rights, justice under the law, and the right to live in peace. When people get involved in the judicial process they act on these shared values and principles in ways that end up shaping society.</td>
</tr>
<tr>
<td>National Standards for Civics and Government (Grades 9-12)</td>
<td>Lesson: Equal Justice Under Law</td>
</tr>
<tr>
<td>------------------------------------------------------------</td>
<td>---------------------------------</td>
</tr>
<tr>
<td>II.B.1. Distinctive characteristics of American society. Students should be able to identify and explain the importance of historical experience and geographic, social, and economic factors that have helped to shape American society.</td>
<td>Immigration of the Japanese to America helped shaped American society.</td>
</tr>
<tr>
<td>II.B.3. The role of organized groups in political life. Students should be able to evaluate, take, and defend positions on the contemporary role of organized groups in American social and political life.</td>
<td>With help from the Chinese Laundryman’s Guild, Yick Wo got the best lawyer in the west and was able to win his case.</td>
</tr>
<tr>
<td>II.B.4. Diversity in American society. Students should be able to evaluate, take and defend positions on issues regarding diversity in American life.</td>
<td>Conflicts are inevitable in a culturally diverse society, but in a constitutional democracy, legal conflicts can be resolved peacefully in a way that respects individual rights and promotes the common good. It is the mutual respect for Constitutional principles that makes resolution between parties possible.</td>
</tr>
<tr>
<td>II.C.1. American national identity and political culture. Students should be able to explain the importance of shared political and civic beliefs and values to the maintenance of constitutional democracy in an increasingly diverse American society.</td>
<td>The U.S. Constitution identifies basic values and principles that are American distinctives. These include respect for the law, protection of individual rights, equal justice under the law, and equality of opportunity.</td>
</tr>
<tr>
<td>II.C.2. Character of American political conflict. Students should be able to describe the character of American political conflict and explain factors that usually prevent violence or that lower its intensity.</td>
<td>Because there is a shared respect for the Constitution and its principles, conflicts over extending civil rights to all people in the U.S. are more easily resolved.</td>
</tr>
<tr>
<td>II.D.3. Fundamental values and principles. Students should be able to evaluate, take, and defend positions on what the fundamental values and principles of American political life are and their importance to the maintenance of constitutional democracy.</td>
<td>The following values and principles are important for maintaining a constitutional democracy include • individual rights • justice • equality • diversity Principles fundamental to American constitutional democracy include • individual rights • rule of law</td>
</tr>
<tr>
<td>II.D.4. Conflicts among values and principles in American political and social life. Students should be able to evaluate, take, and defend positions on issues in which fundamental values and principles may be in conflict.</td>
<td>Disputes and conflicts may arise regarding the right of individuals to be treated equally, especially if they are not citizens. People may agree on values or principles in general, but disagree when applying them to specific issues. When legal disputes arise, aggrieved parties may seek resolution in the courts.</td>
</tr>
<tr>
<td>II.D.5. Disparities between ideals and reality in American political and social life. Students should be able to evaluate, take, and defend positions about issues concerning the disparities between American ideals and realities.</td>
<td>Important American ideals include equal justice for all and respect for the rights of others. The Chinese at the time of Yick Wo were discriminated on the basis of race and did not experience equal justice.</td>
</tr>
<tr>
<td>National Standards for Civics and Government (Grades 9-12)</td>
<td>Lesson: Equal Justice Under Law</td>
</tr>
<tr>
<td>---------------------------------------------------------</td>
<td>---------------------------------</td>
</tr>
</tbody>
</table>
| **III.B.1. The institutions of the national government.** Students should be able to evaluate, take, and defend positions on issues regarding the purposes, organization, and functions of the institutions of the national government. | The three branches of government share powers over the laws:  
- **Legislative branch:** Congress makes the laws  
- **Executive branch:** President and agencies in the executive branch enforce the laws  
- **Judicial branch:** Supreme Court of the United States and other federal courts interpret the law |
| **III.C.1. The constitutional status of state and local governments.** Students should be able to evaluate, take, and defend positions on issues regarding the proper relationship between the national government and the state and local governments. | The Fourteenth Amendment places certain limits on the powers of the states. |
| **III.D.1. The place of law in American society.** Students should be able to evaluate, take, and defend positions on the role and importance of law in the American political system. | The courts make decisions based on the rule of law in order to protect the rights of those within the jurisdiction of the U.S. |
| **III.D.2. Judicial protection of the rights of individuals.** Students should be able to evaluate, take, and defend positions on current issues regarding the judicial protection of individual rights. | All individuals, citizens and non-citizens alike, who are accused of a crime have the right to due process of law. Yick Wo used habeas corpus. Interpretation of the equal protection clause has expanded over time to include more groups. |
| **III.E.2 Public opinion and behavior of the electorate.** Students should be able to evaluate, take, and defend positions about the role of public opinion in American politics. | The mood of the public influences decisions of public officials and the development of laws. |
| **III.E.3. Political communication: television, radio, the press, and political persuasion.** Students should be able to evaluate, take, and defend positions on the influence of the media on American political life. | Messages conveyed in the media can significantly impact the mood of the country. |
| **III.E.5. Associations and groups.** Students should be able to explain how interest groups, unions, and professional organizations provide opportunities for citizens to participate in the political process. | Yick Wo received help from the Chinese Laundryman’s Guild. |
| **IV.C.2. Interactions among nation-states.** Students should be able to explain how nation-states interact with each other. | At the time of Yick Wo, treaties existed between China and the U.S. that provided for equal treatment of the Chinese under the U.S. system. All local entities were bound by the treaties. |
| **IV.C.4. Demographic and environmental developments.** Students should be able to evaluate, take, and defend positions about what the response of American governments at all levels should be to world demographic and environmental developments. | As immigration from Asia to the U.S. increased, laws supporting racial discrimination increased and restrictions were placed on citizenship. |
| **V.A.1. The meaning of citizenship in the United States.** Students should be able to explain the meaning of citizenship in the United States. | All citizens have equal rights under the law which confers certain rights and privileges, including the right to vote. |
| **V.B.1. Personal rights.** Students should be able to evaluate, take, and defend positions on issues regarding personal rights. | Non-citizens living within the jurisdiction of the U.S. have certain personal rights protected by equal protection clause of the Constitution such as freedom of expression and association. |
### National Standards for Civics and Government (Grades 9-12)

#### Specific Content Standards

<table>
<thead>
<tr>
<th>V.B.2. Political rights.</th>
<th>Students should be able to evaluate, take, and defend positions on issues regarding political rights.</th>
<th>Non-citizens living within the jurisdiction of the U.S. have some political rights, due to the equal protection clause, but do not have the right to vote.</th>
</tr>
</thead>
<tbody>
<tr>
<td>V.B.3. Economic rights.</td>
<td>Students should be able to evaluate, take, and defend positions on issues regarding economic rights.</td>
<td>Non-citizens living within the jurisdiction of the U.S. have certain rights protected by equal protection clause of the Constitution such as establishing and operating a business.</td>
</tr>
<tr>
<td>V.B.5. Scope and limits of rights.</td>
<td>Students should be able to evaluate, take, and defend positions on issues regarding the proper scope and limits of rights.</td>
<td>“Equal opportunity” is a criterion often used to determine the limits to rights.</td>
</tr>
<tr>
<td>V.C.1. Personal responsibilities.</td>
<td>Students should be able to evaluate, take, and defend positions on issues regarding the personal responsibilities of citizens in American constitutional democracy.</td>
<td>Citizens have the personal responsibility to respect the rights and interests of others. Important personal responsibilities include:  - taking care of one's self  - 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</td>
</tr>
<tr>
<td>V.C.2. Civic responsibilities.</td>
<td>Students should be able to evaluate, take, and defend positions on the importance of civic responsibilities to the individual and society.</td>
<td>There are civic responsibilities associated with being an American citizen. These include:  - obeying the law  - respecting the rights of others  - being informed and attentive to public issues  - monitoring political leaders and governmental agencies and taking appropriate action if their adherence to constitutional principles is lacking</td>
</tr>
<tr>
<td>V.D.1. Dispositions that lead the citizen to be an independent member of society.</td>
<td>Students should be able to evaluate, take, and defend positions on the importance to American constitutional democracy of dispositions that lead individuals to become independent members of society.</td>
<td>Courts may help with problem-solving in a constitutional democracy, but the extent of their success depends on all participants exercising certain dispositions or traits of character:  - Individual responsibility  - Self discipline/self governance  - civility  - courage  - respect for the rights of other individuals  - honesty  - critical mindedness  - negotiation and compromise  - persistence  - patriotism</td>
</tr>
<tr>
<td>V.D.2. Dispositions that foster respect for individual worth and human dignity.</td>
<td>Students should be able to evaluate, take, and defend positions on the importance to American constitutional democracy of dispositions that foster respect for individual worth and human dignity.</td>
<td>Those with respect for individual worth and human dignity tend to have these dispositions:  - Respect for the rights and choices of individuals—holding and advocating differing ideas  - Compassion--concern for the well-being of others</td>
</tr>
</tbody>
</table>
## National Standards for Civics and Government

**Lesson: Equal Justice Under Law**

### Specific Content Standards

| V.D.3. Dispositions that incline the citizen to public affairs. Students should be able to evaluate, take, and defend positions on the importance to American constitutional democracy of dispositions that incline citizens to public affairs. | Citizens inclined to public affairs, such as public servants, tend to have these dispositions:
- Civic mindedness--what the Founders called civic virtue--or attentiveness to and concern for public affairs
- Patriotism--loyalty to the values and principles underlying American constitutional democracy |
|---|---|
| V.D.4. Dispositions that facilitate thoughtful and effective participation in public affairs. Students should be able to evaluate, take, and defend positions on the importance to American constitutional democracy of dispositions that facilitate thoughtful and effective participation in public affairs. | Traits that facilitate thoughtful and effective participation in public affairs include:
- Civility
- Respect for the rights of other individuals
- Respect for law
- Honesty
- Open mindedness
- Critical mindedness
- Negotiation and compromise
- Persistence
- Civic mindedness
- Compassion
- Patriotism
- Courage |
| V.E.1. The relationship between politics and the attainment of individual and public goals. Students should be able to evaluate, take and defend positions on the relationship between politics and the attainment of individual and public goals. | Participation in the judicial process is not only a way to resolve current disputes, but a way to affect the way of life for others in the future.

Courts can only hear cases that are brought before them. They do not seek cases. Citizen action is required to bring cases and activate the judicial process. Citizen action, therefore, is needed to prompt interpretations of the law and is required before courts can do their work. Actions by non-citizens may also contribute to development of the law in America. |
| V.E.3. Forms of political participation. Students should be able to evaluate, take, and defend positions about the means that citizens should use to monitor and influence the formation and implementation of public policy. | Knowledgeable citizens and non-citizens can seek to promote individual rights by participating in the judicial process to resolve constitutional issues. |
| V.E.5. Knowledge and participation. Students should be able to explain the importance of knowledge to competent and responsible participation in American democracy. | Those who are knowledgeable about the values and principles of American constitutional democracy can challenge perceived offenses and have disputes over those principles decided by the courts.

When people use the judicial process to seek resolution of disputes over legal matters, they activate a system that seeks to reaffirm or change laws for the immediate and future benefit of all Americans. |