

# Activating My Democracy

- MIDDLE SCHOOL -

LESSON  
4

## Who Rules? The Democracy Crisis

Understanding  
the journey

ultimate  
CIVICS



# Activating My Democracy

**Civics lessons and resources for grades 6–8**  
**Second Edition, 2017**

**Explores how to:** (1) Move ideas into action; (2) Understand values and liberties (3) Rights, privileges, and the balance of power; (4) Trace the historic roots of the democracy crisis in current events; (5) Repair a democracy and protect our liberties; and (6) Use our rights to defend what we love.

**Empowers:** Youth by nurturing self-efficacy and teaching skills and strategies to take control of their destiny.

**Engages:** Youth as change agents to define their roles as global citizens during a critical time in human history.

## **Contributors**

Our Children's Trust  
Sunnyside Environmental School teachers (grades 6–8)  
Young Voices on Climate Change

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# Who Rules? The Democracy Crisis

## Understanding the journey

### Rationale

While bidding farewell to White House staff upon his retirement from public service in 1795, Alexander Hamilton spotted a copy of the Constitution. He remarked, "Now, mark my words. So long as we are a young and virtuous people, this instrument [the Constitution] will bind us together in mutual interests, mutual welfare, and mutual happiness. But when we become old and corrupt, it will bind us no longer."

Hamilton was not the only Founder to express doubts about the long-term viability of the great democracy experiment. Founders knew that intergenerational vigilance was necessary for success. Each generation had to do its part to guide our work in progress towards the ideal, defend our liberties, limit the power of government, and understand the big picture – the journey.

The previous lesson examined the inherent weaknesses embedded in the constitutional framework and the role of the judiciary in exploiting these weaknesses to consolidate wealth and power – its own and that of its creation, a new actor under the Constitution.

This lesson examines large-scale shifts in the balance of power between real persons and artificial persons that resulted from key legal changes in, or in interpretation of, the founding documents over time, leading to the present.

Our legal system is grounded in British common law, dating back to the Magna Carta. It included an understanding that legal entities, creatures of law like corporations, were "*artificial persons*" for legal purposes.

The basic separation of artificial persons – corporations with privileges, granted through charters and contracts – and natural persons with inalienable rights remained intact for the first one hundred years. There was no advantage to be gained for corporate owners to claim that their property had rights when entire classes of human persons, like African Americans and women, were still considered property with no rights.

**"Our country is now taking so steady a course as to show by what road it will pass to destruction, to wit: by consolidation of power first, then by consolidation of power, its necessary consequence. The engine of consolidation will be the Federal judiciary; the other two branches, the corrupting and corrupted instruments."**

**~ Thomas Jefferson, letter to Nathaniel Macon, 1821**



The status quo changed abruptly with the passage of the Civil War Amendments. In seeking to further consolidate power over the people, corporations began to secure human rights through the judiciary branch. In wielding these ill-conceived powers, corporations have trampled rights of real persons in the interest of increasing profits.

As Frederick Douglass observed in 1857, “Power concedes nothing without a demand. It never did and it never will.” The civil rights movements of the 1950s through 1970 demanded that government end discriminatory practices and industrial pollution of essential public resources, held in trust for the people. The monied power – a minority of wealthy real and artificial persons – organized and countered with a secret plan to take over the media, education, and the government by working through the judiciary.

The present era of domination by a wealthy minority was triggered by a series of successful demands for corporate “freedom of speech” that resulted in the dismantling of our nation’s campaign finance regulations. With free and fair elections no longer assured, a central pillar of our democratic state has fallen.

By viewing our history in time blocks of power shifts and plays, the present era can be seen clearly as a power imbalance in need of immediate correction. Securing the “Blessings of Liberty to ourselves and our Posterity” – the goal of our constitutional democracy – requires systemic solutions that address the cause, not the symptoms, of these the internal threats.

This responsibility falls to the people – young and old – present at this time: first, to understand the issues and larger journey, as described in Lessons 3 and 4; and second, to craft and implement remedies, the subject of Lesson 5.

### **Enduring Understanding for Civics Grades 6-8\***

- Describe the roles of political, civil, and economic organizations in shaping people’s lives. (D2.Civ.6.)
- Analyze ideas and principles contained in the founding documents of the United States, and explain how they influence the social and political system. (D2.Civ.8.)
- Assess specific rules and laws as a means of addressing public problems. (D2.Civ.12.)
- Analyze the purposes, implementation, and consequences of public policies in multiple settings. (D2.Civ.13.)

\*C3 Framework for Social Studies State Standards

<http://www.socialstudies.org/system/files/c3/C3-Framework-for-Social-Studies.pdf>

### **Essential Questions**

How have public policies addressed the internal threat of discrimination over time?

How have policies given rise to an internal threat that has gained power over the people?

### **Learning Objectives**

Students can:

- Describe the struggle for recognition of human rights as an intergenerational series of setbacks and victories.
- Explain how current policies threaten people’s liberties.
- Explain how artificial persons came to have power over the people.
- Give examples of ways in which artificial persons with human rights threaten liberties of real persons and democracy.
- Explain the difference between an unalienable right and a privilege.



# Who Rules? The Democracy Crisis

## Understanding the journey

Following a narrative thread in the interactive timeline, students explore how internal weaknesses from fear/discrimination and greed/consolidation-of-power have expressed through key laws, and how cycles of power shifts have shaped society during the last 130 years. Students trace the roots of corporate power and government abuses to current issues.

### Time

Approximately 50 minutes: interactive exercises supported by films and power point slides.

### Materials

- Power point notes and slides
- One pocket copy of Declaration of Independence and U.S. Constitution per student
- Six (6) single-sided copies of the RESOURCE “Legal concepts” for working groups
- Three (3) single-sided copies of the DATA CARD “New Jim Crow” for working group 5 only
  - » Cut DATA CARD sheets in half to make six (6) ½-sheet copies total
- Three (3) uncollated, single-sided copies of the WORKSHEET

### “Understanding the journey”

- » Cut WORKSHEETS in half
- » Sort into six groups by IMAGE
- TIMELINE POSTERS from previous lesson
- Clothes pins or clips and a 60-foot long sturdy chord or wire to hang up POSTERS in a long double row, starting second row with “Popular Movements”
- One film
  - » Freedom is never more than one generation from extinction  
[https://www.youtube.com/watch?v=SDouNtnR\\_IA](https://www.youtube.com/watch?v=SDouNtnR_IA)
- One poster
  - » 13<sup>th</sup> the film  
<http://www.imdb.com/title/tt5895028/mediaviewer/rm378735872>

### Preparation

- Review lesson materials, including power point notes and slides, films, teaching guides for exercises, and vocabulary
- Download and cue film for viewing
  - » Slide 5 – Freedom is never more than one generation from extinction
  - » Slide 15 – Poster for 13<sup>th</sup> the film
- Hang up TIMELINE POSTERS
- Arrange desks into 6 working groups
- Provide working groups with:
  - » one (1) set of 6 copies of one identical image with WORKSHEET



- “Understanding the journey” (each group should have a different set of copies)
- » 2 copies of RESOURCE “Legal concepts”
  - » 6 copies of DATA CARD “New Jim Crow” for working group 5 only
  - » short stack of blank paper for reflections
- Clean white board
  - On poster paper to side of white board, write:
    - » Essential questions  
How have public policies and society addressed the internal threat of discrimination over time?  
How have policies given rise to an internal threat that has gained power over the people?
    - » Vocabulary & concepts  
ballot measure  
campaign finance regulations  
initiative  
poll tax  
referendum

**“The Bill of Rights was put into the Constitution not only to protect minorities against intolerance of majorities against intolerance of majorities, but to protect majorities against the enthronement of minorities.”**

**~ Franklin Delano Roosevelt,  
Address on Constitution Day,  
Washington, D.C., September 17, 1837**

**“Our democracy has been hacked and the hack is campaign finance.”**

**~ Al Gore,  
Oxford Martin School, 2013**



# Power Point Notes

## Lesson 4

### 1. *Ultimate Civics!* COVER SLIDE

In the last lesson, we examined key laws and their effects on shaping society during the first 100 years of our democracy experiment.

In this lesson, we will look at the consequences of these early laws and more recent laws on shaping our society during the past 130 years to present.

### 2. What happened to our democracy?

We will answer these questions: What happened to our democracy?

- How did “We the People” start as sovereign, above the Power Line and in charge of government and the institutions we created and...  
<CLICK>
  - » ... end up below the Power Line with many of us not exercising our rights to protect our liberties and more African Americans behind bars or under watch of the criminal justice system than there were enslaved in 1850?
- How did the American corporation start as a business model, below the Power Line and accountable to “We the People” through our government and...  
<CLICK>
  - » ... end up above the Power Line with human rights and consolidated power over the people?

<CLICK>

- What happened in the middle where the two story lines crossed?

Our essential questions are:

- How have policies addressed the internal threat of discrimination over time?  
This is the story of the yellow line in this slide and the yellow and blue data cards in our timeline.
- How have policies created an internal threat that gained power over the people?  
This is story of the orange line in this slide and the orange data cards in our timeline.

### 3. 1890–1950: Corporations gain rights & power

#### Instructions for teacher

- Narrate from TIMELINE for slides 3–8 and operate slides remotely, if possible.

We pick up our timeline again in blocks 4 and 5. Listen to the stories behind some of these orange data cards.

- In **1893**, the Supreme Court granted corporations standing in the Bill of Rights. This gave artificial persons access to inalienable human rights.
  - » The Court also granted 5<sup>th</sup> Amendment due process protection.



- » Corporations could use this right to limit the federal government's power to control corporate activities.
- Four years later in **1897**, the Supreme Court extended the Bill of Rights' 5<sup>th</sup> Amendment protection to corporations to limit the power of state governments to control corporate activities.

Then the corporations began going after other human rights.

- In **1906**, the Supreme Court gave corporations 4<sup>th</sup> Amendment protection against state and federal governments.
  - » This meant that government inspectors needed a warrant to inspect their workplaces and records to see if the corporation was obeying laws to protect workers and the environment.

"In my opinion, a corporation – 'an artificial being, invisible, intangible, and existing only in contemplation of law' – cannot claim the immunity given by the Fourth Amendment, for it is not a part of the 'people,' within the meaning of that Amendment. Nor is it embraced by the word 'persons' in the Amendment. If a contrary view obtains, the power of the government, by its representatives, to look into the books, records, and papers of a corporation of its own creation to ascertain whether that corporation has obeyed or is defying the law will be greatly curtailed, if not destroyed."

~ Justice Harlan in  
*Hale v. Henkel*, 1906

- » No more surprise inspections – and lots of pollution as factories spewed poisons into the air and water.
- In **1919**, Dodge sued the industry giant Ford when Henry Ford claimed his company couldn't afford to pay dividends after Ford lowered the price of its autos to increase jobs... really? Or was it done to squeeze out competition from Dodge?
  - » Dodge stockholders cried, "Fraud!" The Michigan Supreme Court agreed, ruling that corporations exist to profit stockholders.
  - » This is still the leading case today on corporate purpose. Corporations exist to make money; nothing else matters.
- In **1922**, Pennsylvania Coal Company sued a property owner when the owner tried to prevent the company from mining coal under his house. <CLICK>
  - » The coal was part of the land that supported the house. The company argued that the coal was valuable and the state law was a "takings," because the law decreased the company's profit.
  - » The court ruled that the landowner had only purchased surface rights, not rights to the coal under their house. <CLICK>
  - » The corporation mined the coal under the home – and the home fell.
  - » This ruling granted corporations 5<sup>th</sup> Amendment just compensation protection against government regulations. In this case, the government would have to pay for the coal that was supporting the home – or let the company mine the coal.



## RESOURCES

*Chicago, Burlington & Quincy Railways case, 1897*

<http://billofrightsinstitute.org/educate/educator-resources/lessons-plans/landmark-supreme-court-cases-lessons/quincy-railways-v-chicago-189/>  
*Lochner v. New York case, 1905*  
<http://kids.laws.com/lochner-v-new-york>

*Hale v. Henkel case, 1906*

<https://supreme.justia.com/cases/federal/us/201/43/case.html>

*Dodge v. Ford, 1919* Landmark Michigan Supreme Court case

<http://www.casebriefs.com/blog/law/business-associations/business-associations-keyed-to-hamilton/financial-matters-and-the-corporation-business-associations-keyed-to-hamilton-business-associations-law/dodge-v-ford-motor-co-3/>

*Pennsylvania Coal Co. v. Mahon case, 1922*

<http://www.casebriefs.com/blog/law/property/property-law-keyed-to-dukeminier/ eminent-domain-and-the-problem-of-regulatory-takings/pennsylvania-coal-co-v-mahon-2/>

*Louis K. Liggett v. Lee case, 1933*

<http://www.casebriefs.com/blog/law/corporations/corporations-keyed-to-hamilton/the-development-of-corporation-law-in-the-united-states/louis-k-liggett-co-v-lee/>

Courts also recognized new rights for corporations. These rights gave artificial persons even more power over real people. For example...

<CLICK>

- In **1905**, a New York bakery owner, Joseph Lochner, was fighting a state law that limited workers to 10 hours a day and 60 hours a week. The law was to protect the workers' health and safety... but many new immigrants were desperate for work and willing to work long hours.
  - » The court ruled that the state law interfered with "freedom of contract" – the right of persons to form contracts without government restrictions.
  - » This ruling exploited poor people who could not refuse to work.

## RESOURCE

*Lochner v. New York case, 1905*

<http://kids.laws.com/lochner-v-new-york>

Corporations, armed with their new human rights, began to challenge state laws that interfered with their "freedom of contract" – laws that protected workers' health and safety, public health, people's homes, and the environment.

- Corporations argued that state laws were "takings," because the cost of obeying laws took away some of their profits.
  - » It cost money to buy safety equipment to protect workers.
  - » It cost money to operate equipment to remove pollution from air and water, instead of releasing pollutants into the air and water.



“The prevalence of the corporation in America has led men of this generation to act, at times, as if the privilege of doing business in corporate form were inherent in the citizen; and has led them to accept the evils attendant upon the free and unrestricted use of the corporate mechanism as if these evils were the inescapable price of civilized life, and hence to be borne with resignation. Throughout the greater part of our history a different view prevailed.”

~ Justice Brandeis dissents in *Liggett Company v. Lee*, 1933

Courts tossed out about 200 such laws – each a lawsuit brought by corporations – during the next 25 years. The courts transformed the privilege of doing business in corporate form into corporate rights that could be used to smash the very laws that were meant to control corporations.

<CLICK>

### Instructions



Consider this: Does every person have equal access to the court system? Then? Now? Why or why not?

- Turn to a partner and discuss.
- Discuss as a class.  
Then and now, people with more money have more access to the courts. It costs money to sue.

## 4. Defending liberties

Now let’s look at the same time frame, but focus on the people’s story for recognition of rights. Listen.

Despite the victories from the Civil War Amendments, old attitudes held strong in southern states.

In **1891**, citizens in New Orleans, Louisiana, organized to test if “separate but equal” state laws were constitutional. A 30-year-old Creole (of French, Spanish, and African descent) shoemaker bought a first-class train ticket. He was arrested when he boarded the white only car.

<CLICK>

- In **1896**, the Supreme Court ruled that
  - » Louisiana state law did not violate the 13<sup>th</sup> Amendment, because it did not require slavery, and
  - » it did not violate the 14<sup>th</sup> Amendment, because it dealt with political, not social, equality.
  - » Mostly southern states passed a series of Black Codes – laws that defied the 13<sup>th</sup> and 14<sup>th</sup> Amendment and promoted segregation and discrimination practices. Such laws became known as “Jim Crow” laws. These undemocratic practices still continue to this day, as we will see.

However, people began to gain some progressive reforms in politics and society. People passed two amendments.

<CLICK>

- In **1913**, the 17<sup>th</sup> Amendment passed to elect the U.S. Senate by the people instead of appointed by state legislatures. This was part of a popular movement for direct elections of senators, pioneered by Oregon in 1907. By 1912, 29 states elected their senators more directly.

<CLICK>



## RESOURCES

*Plessy v. Ferguson case, 1896*  
[http://landmarkcases.org/en/landmark/cases/plessy\\_v\\_ferguson](http://landmarkcases.org/en/landmark/cases/plessy_v_ferguson)

<https://www.icivics.org/teachers/lesson-plans/plessy-v-ferguson-1896>

<http://www.casebriefs.com/blog/law/constitutional-law/constitutional-law-keyed-to-cohen/defining-the-scope-of-liberty-and-property-protected-by-the-due-process-clause-the-procedural-due-process-cases/plessy-v-ferguson-4/>

- In **1920**, the 19<sup>th</sup> Amendment passed and women got the vote – 72 years after the first women’s rights convention in Seneca Falls, New York.

<CLICK>

- In **1935**, workers gained 14<sup>th</sup> Amendment rights to organize unions and to bargain collectively – to work together – for contracts with corporations to stop unfair labor practices. Up until then, union organizing and bargaining were considered criminal activities that interfered with freedom of contract.

## 5. Freedom is never more...

“Freedom is never more than one generation from extinction.” We’re going to watch a short film and reflect on this statement.



## SHOW FILM

### Instructions

- Consider the timeframe of these power struggles for equality, fair wages and fair treatment in the workplace, and a more democratic nation.
- Turn to a partner and discuss the statement on the slide. Do you agree? Why or why not?



- What evidence can you draw from the movement stories to support your position?

### Discuss as a class

- These power struggles are intergenerational. What if even one generation of African Americans or women had given up?
- Recognition of African American rights took intergenerational organizing for:
  - » 70–80 years for the Civil War Amendments,
  - » another 100 or so years for Civil Rights, Voting, and Housing Acts, and school desegregation, and
  - » it continues to this day as discriminatory practices have not ended.
- Recognition of women’s right to vote took intergenerational organizing for:
  - » 85 years after Constitution was ratified to *Minor v. Happersett* setback in 1874,
  - » another 45 years to the 19th Amendment in 1920, and
  - » it continues to this day since discriminatory practices have not ended.



## RESOURCES

History of direct election of senators  
[https://www.senate.gov/artandhistory/history/common/briefing/Direct\\_Election\\_Senators.htm](https://www.senate.gov/artandhistory/history/common/briefing/Direct_Election_Senators.htm)

National Labor Relations Act, 1935  
<http://www.american-historama.org/1929-1945-depression-ww2-era/wagner-act.htm>

History of union organizing  
<http://grovesapush.wikispaces.com/commonwealth+v.+hunt>

Taft-Hartley Act of 1947, history  
<http://www.american-historama.org/1945-1989-cold-war-era/taft-hartley-act.htm>  
<https://www.britannica.com/topic/Taft-Hartley-Act>

## 6. 1950s–1970s: Popular movements

Popular movements of the 1950s, sixties, and seventies united people along shared values and vision, along moral and ethical principles. Listen.

Burning buses and burning rivers, marches for civil and political rights, marches to end the Vietnam war and to protect the environment – all led to laws, amendments, and Supreme Court rulings to end major forms of discrimination and to recognize rights.

<CLICK>

- In **1954**, Supreme Court ruled that separate is not equal and that public schools cannot be racially segregated.

This overturned *Plessy* – on paper.

- » However, it took another generation and more lawsuits to settle *how* to desegregate schools. After 25 years of waiting, Oliver Brown’s daughter, Linda, and others successfully reopened *Brown 3* in **1979** to demand a plan.
- » Another generation passed before Topeka schools finally met court standards of racial balance in 1998.

## RESOURCES

*Brown v. Board (1) case, 1954*  
[http://landmarkcases.org/en/landmark/cases/brown\\_v\\_board\\_of\\_education](http://landmarkcases.org/en/landmark/cases/brown_v_board_of_education)  
<https://www.icivics.org/teachers/lesson-plans/brown-v-board-education-1954>

*Brown v. Board (2) case, 1955*  
<http://www.casebriefs.com/blog/law/constitutional-law/constitutional-law-keyed-to-stone/equality-and-the-constitution/brown-v-board-of-education-of-topeka-brown-ii/>

*Brown v. Board (3) case reopens, 1979*  
<http://www.nytimes.com/1989/12/14/us/topeka-has-failed-to-do-enough-to-integrate-schools-court-rules.html>  
[https://en.wikipedia.org/wiki/Brown\\_v.\\_Board\\_of\\_Education](https://en.wikipedia.org/wiki/Brown_v._Board_of_Education)



## RESOURCES

### Civil Rights Act, 1964

<http://www.history.com/topics/black-history/civil-rights-act>

### Voting Rights Act & history, 1965

<https://www.icivics.org/teachers/lesson-plans/voting-rights>

<http://www.history.com/topics/black-history/voting-rights-act>

### Fair Housing Act, 1968

<http://www.history.com/topics/black-history/fair-housing-act>

### *Lovings v. Virginia* case, 1967

<http://kids.laws.com/loving-v-virginia>

[http://www.academickids.com/encyclopedia/index.php/Loving\\_v.\\_Virginia](http://www.academickids.com/encyclopedia/index.php/Loving_v._Virginia)

### *Roe v. Wade* case, 1973

[http://landmarkcases.org/en/landmark/cases/roe\\_v\\_wade](http://landmarkcases.org/en/landmark/cases/roe_v_wade)

<CLICK>

- In the **1960s**, Congress passed laws overturning racial discrimination practices in voting, housing markets, and financing.

In **1970**, President Nixon created the Environmental Protection Agency to protect America's air and water from industrial pollution and Americans from cancer-causing chemicals.

<CLICK>

- In the **1970s** and early **1980s**, Congress passed dozens of major laws passed to protect environmental health, public health, and worker health and safety.

<CLICK>

Two amendments were driven into law.

- In **1964**, the 24<sup>th</sup> Amendment removed poll taxes – fees to qualify to vote. After the 15<sup>th</sup> Amendment passed nearly 100 years earlier, many southern states had passed poll taxes to prevent African Americans from voting.
- In **1971**, the 26<sup>th</sup> Amendment lowered voting age to draft age.

<CLICK>

Two landmark Supreme Court decisions recognized new rights.

- In **1967**, the court recognized people's rights to interracial marriage.
- In **1973**, the court recognized women's rights of privacy and choice.

- In **1958** when the Lovings married, **4%** of Americans approved of interracial marriage. By **2013**, **87%** of Americans approved.
- In the U.S. there are at least **22 million** multiracial families and this is growing **3 times** faster than the U.S. population.
- Loving Day was founded on **June 12, 2004**. It is now the largest interracial celebration in the U.S.



## 7. Monied power organizes

Predictably – we know how this works now – there was a challenge from the monied power.

In **1971**, corporate lawyer Lewis Powell wrote a secret memo to the U.S. Chamber of Commerce. The memo called for corporations to organize and push back against the people’s “broad attack” on the American free enterprise system. Two months later, Powell became a Supreme Court justice.

- Big corporations organized to gain control of:  
<CLICK>
  - » the media, the education system, the political arena, and the courts.
  - » The key was the judiciary.

<CLICK>

Read quote on slide: “Under our constitutional system... the judiciary may be the most important instrument for social, economic, and political change.” ~ Powell Memo, 1971

<CLICK>

### Instructions



- Consider this: Congress had set limits on how much money a “person” could give or spend on political campaigns for elections. Congress regulated money in elections to protect election integrity.
- Turn to a partner and discuss what might happen to our election process if spending or giving money to elect candidates is made a form of protected speech. Can free speech be censored or limited?
- Discuss as a class.
  - » If money is protected speech, then it would be easy for persons

with more money to out-spend and out-speak persons with less money.

- » It would make it very easy for wealthy persons to install their candidates.
- » It would destroy integrity of elections – and democracy, since free and fair elections are critical to protect our liberties.

### RESOURCES

The Powell Memo, 1971

<http://law2.wlu.edu/powellarchives/page.asp?pageid=1251>

A Call-to-Arms for Corporations

<http://billmoyers.com/content/the-powell-memo-a-call-to-arms-for-corporations/2/>

## 8. What is “Speech”?

Democracies are carried by free and fair elections. The history of “*campaign finance regulation*” – rules on giving money, spending money, and reporting donor names – predates the Constitution by over 30 years.

In **1757**, George Washington bought \$195 worth of rum punch, whiskey, hard cider, and food for friends prior to an election. He handily won, after being defeated three years earlier when he had not plied his friends with food and drink, as was the custom of the times.

After the election, the House of Burgesses – the first legislative assembly of elected representatives in North America – passed a law prohibiting candidates, or persons on their behalf, from giving voters “money, meat, drink, entertainment or provision ...any present, gift, reward or entertainment, etc. in order to be elected.”



## RESOURCE

Campaign finance regulation history  
[https://ballotpedia.org/History\\_of\\_campaign\\_finance\\_regulation](https://ballotpedia.org/History_of_campaign_finance_regulation)

### Instructions

Start stop-motion animation slide.

- In **1971**, over 200 years later, Congress created the Federal Elections Commission to oversee and enforce campaign finance laws. New or revised rules included:
  - <CLICK 1>
  - » strict limits on campaign giving by persons and entities – corporations and unions;
  - » overall limits on campaign giving;  
<CLICK 2>
  - » strict limits on campaign spending by persons and entities;  
<CLICK 3>
  - » donor disclosure – reporting the names of donors;
  - » truth in campaign and marketing advertising; and
  - » a ban on corporate money in citizens' initiatives and referendums.

*"Initiatives"* and *"referendums"* are tools used by citizens to place a proposed rule change on a ballot for a popular vote.

- Initiatives allow citizens to propose a statute or constitutional amendment.
- Referendums allow citizens to repeal a bill passed by their state legislature.

Getting back to the TIMELINE, the Supreme Court began to examine protected speech under 1<sup>st</sup> Amendment. The Court found creative ways to interpret the word "speech" like it had done with "person."



<CLICK 4>

- In **1976**, the Supreme Court decided that money is equal to speech in campaigns, because more money meant more media access. Since limits on protected speech are mostly unconstitutional,
  - <CLICK 5>
  - » then limits on spending in election campaigns are unconstitutional.  
<CLICK 6>
  - » This made television and media a powerful "voice" for persons who could afford campaign advertising.

<CLICK 7>

- The next target was citizen initiatives. Here, citizens organized to pass a measure to ban plastic bags.
  - <CLICK 8>
  - » In **1978**, the Supreme Court overturned state restrictions on corporate spending on citizen initiatives and referendum.  
<CLICK 9>
  - » Justice Powell wrote the opinion for the majority.  
<CLICK 10>
  - » This triggered a spending boom on initiatives, as wealthy people and corporations sought to influence the public debate and pass their own laws through "citizen" initiatives.

<CLICK 11>

- Here, small dairy farmers and allies in Vermont organized and passed a state law to require GMO dairy products to be labeled.
  - <CLICK 12>
  - » Explain, or ask for a student to explain, GMO foods
  - » Genetically Modified Organisms are produced in a laboratory using genetic modification or genetic engineering.

- » Provide examples: Dairy cows injected with bovine-growth hormone produce GMO foods such as milk and cheese.
- » Scientists and consumer safety groups cite many health and environmental risks with GMO foods.
- A **1986** case established a corporation's right NOT to speak as a protected form of free speech.
- In **1996**, the Supreme Court applied the right not-to-speak ruling in a case about GMO labeling of foods.
  - » The Supreme Court overturned Vermont's law that required GMO labeling in dairy foods and gave corporations the right NOT to speak – or in this case, the right NOT to inform consumers that their product contained GMO.
  - » The court also extended the corporation's right NOT to speak to political and commercial speech. <CLICK 13>
  - » This eliminated truth in labeling – <CLICK 14>
  - » in political speech like election campaigning
  - » and in commercial speech like ads.

***“Political speech”*** – expressions of government or candidates for office; also any discussion of social issues

***“Commercial speech”*** – advertises a product or service for sale

<CLICK 15>

- Here, citizens organized to support their candidates during election season.

<CLICK 16>

- » In **2010**, the Supreme Court removed overall contribution limits on campaigns <CLICK 17>
- » This ruling reversed a 100-year track record of Congress regulating spending in political campaigns. <CLICK 18>

**RESOURCES**

*Buckley v. Valeo case, 1976*  
 How spending money became a form of free speech  
<http://www.amendmentgazette.com/how-spending-money-became-a-form-of-speech/>

*First National Bank of Boston v. Bellotti case, 1978*  
<http://www.casebriefs.com/blog/law/constitutional-law/constitutional-law-keyed-to-chemerinsky/first-amendment-freedom-of-expression/first-national-bank-of-boston-v-bellotti/>

Corporate influence on citizens' initiatives  
[https://www.washingtonpost.com/blogs/govbeat/wp/2013/11/08/initiative-spending-booms-past-1-billion-as-corporations-sponsor-their-own-proposals/?utm\\_term=.1a27e96988e4](https://www.washingtonpost.com/blogs/govbeat/wp/2013/11/08/initiative-spending-booms-past-1-billion-as-corporations-sponsor-their-own-proposals/?utm_term=.1a27e96988e4)

International Dairy Foods Association v. Amestoy case, 1996  
<http://caselaw.findlaw.com/us-2nd-circuit/1210635.html>



- » Now during elections, citizens' voices are drowned by a flood of misinformation and corporate ads.
- Even though over 80 percent of the American people disagreed with the *Citizens United* decision, the Supreme Court continued to eliminate other rules to protect free and fair elections.
  - <CLICK 19>
  - » In **2010**, a U.S. District Appeals Court removed overall limits on campaign contributions:
    - » for corporations and unions <CLICK 20>
    - » and persons
    - » Further, it allowed unlimited giving without reporting donor names.

<CLICK 21>

- In **2014**, the Supreme Court removed overall limits on campaign contributions for wealthy persons.
  - <CLICK 22>
  - » The majority – 5 Justices – claimed that aggregate limits do not act to prevent corruption.

<CLICK 23>

### Instructions



- Turn to a partner and discuss:
  - Do you think elections can be “free and fair” without safeguards in campaign finance laws? Why or why not?
- Discuss as a class.

<CLICK 24>

After discussion, read Justice Breyer’s dissent for the minority in *McCutcheon*: “Taken together with *Citizens United*... [this] decision eviscerates our Nation’s campaign finance laws, leaving a remnant incapable of dealing with the grave problems of democratic legitimacy...”



### RESOURCES

#### *Citizens United v. Federal Election Commission case, 2010*

- <https://www.britannica.com/event/Citizens-United-v-Federal-Election-Commission>
- <http://www.casebriefs.com/blog/law/constitutional-law/constitutional-law-keyed-to-sullivan/rights-ancillary-to-freedom-of-speech/citizens-united-v-federal-election-commission/>

#### *SpeechNow.org v. Federal Election Commission case, 2010*

[https://ballotpedia.org/SpeechNOW.org\\_v.\\_Federal\\_Election\\_Commission](https://ballotpedia.org/SpeechNOW.org_v._Federal_Election_Commission)

#### *McCutcheon v. Federal Election Commission case, 2014*

<https://www.publicintegrity.org/2014/04/22/14611/mccutcheon-decision-explained-more-money-pour-political-process>

<CLICK 25>

Democracies have a hard time being legitimate without free and fair elections.

<CLICK 26>

Other Justices have written similar warnings. Read Justice Stevens’ dissent in *Citizens United*: “A democracy cannot function effectively when its constituent members believe laws are being bought and sold.”

<CLICK 27>

Ever since *Citizens United*, people have organized to get Big Money out of politics.

## 9. Understanding the Journey: What happened?

As citizens in a constitutional democracy, our goal is to strengthen our democracy by overcoming internal threats. Let's step back, look at the big picture, and see how we are doing.

We are going to work in groups to interpret six political art images about our democracy journey – from start to present.

- The yellow line represents what internal threat?
  - Fear of other
    - » Fear of other shows up as what kinds of practices and policies?
    - » Discrimination against race or gender or age or ethnicity; segregation
- The orange line represents what internal threat?
  - Love of power
    - » Love of power shows up as what kinds of practices and policies?
    - » Consolidation of wealth and privileges

Let's start with one familiar political cartoon as an example.

## 10. Cartoon example: Left out

### Instructions



Allow at least 30 minutes for this exercise.

Everyone should have a copy of an Image with a WORKSHEET.

People in a group have the same image and will work together to interpret their image.

Each group has a different image with a WORKSHEET. Each group will take turns explaining their image to the class.

- Each WORKSHEET has 5 questions.

- » **When?** What is the date or time period addressed in the cartoon?
  - » Example: 1789–1791
- » **What?** What is the story illustrated by the cartoon?
  - Example: Our democracy rests on unstable undemocratic foundation, as 96 percent of the populace was literally “left out.”
- » **So what?** What are the consequences of the story in this cartoon?
  - Example: This created a power imbalance between “People Power, PP” and the “Monied Power, MP” that still plays out to this day.
- » **PP POV** (point of view): What did the People Power set out to change or do?
  - Example: People who were left out of the Constitution worked to have their rights recognized under the Constitution and Bill of Rights.
- » **MP POV:** What was the Monied Power determined to do?
  - Example: The Monied Power sought to retain control of, and build their power over, the majority of the people.

- Teams will have 5 minutes to complete their analysis and decide how your group will present its results.
- One group member may ask for specific TIMELINE data cards for their time period. The data cards may have evidence to support your story on the reverse side.
- Each group will take turns explaining their image to the class.
- Special instructions for Group 5: Read the data card at your table before you start the “So what?” section.
- Any questions?

Let's get started!



## Teacher guide

- Allow about 5 minutes for the working group discussions.
- Ask each group to present their work in order, starting with Group 1–Image 1–Slide 1–Slide 12.
- Discussion guide covers some of the main points.
- Allow discussion and comment from other groups after each presentation.

## 11. Image 1: Standing

### Discussion guide



- **When?** 1803–1819
- **What?**
  - » The cartoon shows that the Supreme Court granted Corporations standing in the Constitution through the Contract Clause.
  - » Before the Court could create a new actor under the Constitution, the Court first had to give itself the sole power to interpret the Constitution. This broke the balance of power.
- **So what?**
  - » The Court could now make law through creative interpretation. It could empower its creation with rights and powers far beyond the privileges granted in their charters.
  - » The Court’s decision created a process to change the Constitution through judicial review rather than a formal amendment.
- **PP POV:**
  - » Courts were expensive and inaccessible to most people. This ruling made it harder for people without wealth to get their rights recognized.
- **MP POV:**



- » The Monied Power could work through the judiciary, as needed, to retain control of, and build their power over, the majority of the people.
- » Some of the Founders expressed concern over the long-term viability of the democracy, given the Court’s self-granted ability to consolidate wealth and power over people.

Thank you. Here’s our next group.

## 12. Image 2: An idea

### Discussion guide



- **When?** 1857–1886
- **What?**
  - » The Civil War Amendments abolished slavery and involuntary servitude; extended equal protection and due process rights of persons to limit the power of state governments; and recognized voting as a constitutional right of citizens.
  - » The cartoon shows the Monied Power starting to dream about a new, bold goal: Supreme Court recognition that corporate persons were entitled to real human rights – “equal protection” under the law to natural persons through the 14<sup>th</sup> Amendment.
- **So what?**
  - » The “Monied Power pursued this goal, filing nearly 300 lawsuits in less than 20 years after the 14<sup>th</sup> Amendment passed.
  - » In 1886, an informal pre-trial comment elevated the status of corporations to natural persons and created the doctrine of legal personhood – artificial persons with human rights.
- **PP POV:**

- » The People Power quickly learned that “equal protection” was still elusive.
- » The exception in the 13<sup>th</sup> Amendment led to “slaves of the state” as states imprisoned African American free men under new state Jim Crow laws.
- » States passed poll tax laws to deny black male citizens the vote.
- » The *Minor v. Happersett* ruling allowed states to defy the 14<sup>th</sup> and 15<sup>th</sup> Amendments and to continue denying women the vote. The People Power continued the intergenerational work to have their rights recognized under the Constitution and Bill of Rights.
- **MP POV:**
  - » *Santa Clara County* paved the way for the Monied Power to challenge rule of, for, and by the people and to create rule of, for, and by the corporation/ Monied Power.

Thank you. We are ready for our next group.

### 13. Image 3: Coming aboard!

#### Discussion guide



- **When?** 1865–1935
- **What?**
  - » The story illustrated in the cartoon shows that, once more people were empowered with rights (13<sup>th</sup> and 19<sup>th</sup> Amendments) and equal protection under the law (14<sup>th</sup> Amendment), the People Power began a wave of progressive reforms for a more democratic governance (17<sup>th</sup> Amendment) and workplace (NLRA).
- **So what?**
  - » The progressive reforms

threatened the powers and privileges of the Monied Power.

- **PP POV:**
  - » The People Power continued its wave of democratic reforms and recognition of more rights into the 1950s through early 1980s.
- **MP POV:**
  - » The Monied Power began to organize under the Powell Memo (1971) to secure its power over the people. It’s first target was the judiciary and the 1<sup>st</sup> Amendment.

Thank you! Here’s our next group.

### 14. Image 4: Money is speech

#### Discussion guide



- **When?** 1971–1996 (or 1954–1996)
- **What?**
  - » The story illustrated in the cartoon shows that, after the Supreme Court ruled “money is speech” (1976), the Monied Power used its new rights of unlimited spending (as uncensored speech) to drown out the voice of the People – unfairly and even dishonestly – to influence public opinion in citizen’s initiatives and commercial advertising.
- **So what?**
  - » This created extremely bad precedent, and it undermined over 100 years of Congressional authority to regulate campaign finances.
  - » Once the Court decided to eliminate individual limits on spending in election campaigns, they would examine the limits on campaign giving as protected “speech” as well.
  - » Removing such safeguards to protect free and fair elections



could destroy a legitimate democracy.

- **PP POV:**

- » The “money is speech” ruling made it much more difficult for the People Power to retain or regain their rule over the government and corporations.
- » It made it more difficult to ensure free and fair elections, protect liberties, and make government hold corporations accountable (as “bought” elected officials would do their master’s bidding).

- **MP POV:**

- » Why stop with unlimited spending as protected speech? The Monied Power began to pursue unlimited contributions as well – and with that, complete control of the election process.

Our next group worked with a movie poster and a new data card.

## 15. Image 5: Slave to criminal

### Discussion guide



- **When?** 1868 to present
- **What?**
  - » The story illustrated in the poster shows the consequences of the exemption in the 13<sup>th</sup> Amendment. The exemption allowed slavery and involuntary servitude as “a punishment for a crime.”
  - » The civil rights movement of the 1950s and 60s ended many discriminatory practices that had persisted through state-controlled Jim Crow laws since passage of the Civil War Amendments.
  - » Many people believe that the “war on drugs” became the new Jim Crow.

- **So what?**

- » Mass incarceration practices disproportionately affect poor people and minorities, especially blacks.
- » Right now, we have more African-Americans behind bars or under watch of the criminal justice system than there were enslaved in 1850.
- » 5.85 million Americans have lost their voting rights because of previous convictions.

### RESOURCES

Brief history of the war on drugs with 3-minute video by hiphop artist Jay Z

<http://www.drugpolicy.org/facts/new-solutions-drug-policy/brief-history-drug-war-0>

### Social consequences of the war on drugs

- Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (The New Press, 2010)
- U.S. Senator Cory Booker, D-NJ, CNS News interview, 8/10/15 <http://www.cnsnews.com/news/article/susan-jones/sen-booker-more-african-americans-under-criminal-supervision-all-slaves>
- Madison Pauly, A brief history of America’s Private Prison Industry, Mother Jones, July/Aug 2016 <http://www.motherjones.com/politics/2016/06/history-of-americas-private-prison-industry-timeline>



- » The U.S. has only 5% of the world's population, but more than 20% of the world's prison population. The U.S. is the world's largest jailer.
- **PP POV:**
  - » The war on drugs extends discriminatory practices into current times.
  - » People who can't vote and can't exercise their rights can't defend democracy or individual liberties.
- **MP POV:**
  - » The war on drugs is profitable and serves to consolidate power over the people.

Thank you. Here is our last group.

## 16. Image 6: Corporate knight

### Discussion guide



- **When?** 2000 to present
- **What?**
  - » The story illustrated in the cartoon shows how the Supreme Court created an internal threat to democracy in the form of artificial persons – corporations – entitled to human rights.
  - » The Supreme Court empowered its creation with key rulings that granted rights and privileges far beyond the corporate charters.
  - » The corporate knight thinks it is invincible or too big to fail.
- **So what?**
  - » A small minority uses this legal fiction to further consolidate its wealth and power over the people.
  - » In recent times, the wealthy minority and their corporations have removed limits to giving and spending in election campaigns, as well as requirements to list donor names.

### RESOURCES

Energy Policy Act, 2005, exempts oil & gas activities from many health laws

DeSmogBlog.com, Fracking the Future Report, 2010

<https://www.desmogblog.com/fracking-the-future/desmog-fracking-the-future.pdf>

- » This undermines legitimacy of free and fair elections – and democracy.
- **PP POV:**
  - » In recent times, People are increasing subject to laws that violate civil liberties and reverse the victories of the 1950s to early 1980s.
  - » The PATRIOT Act and NDAA of 2011 violate 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Amendment liberties.
  - » The Energy Policy Act of 2005 allows industrial dumping of chemical-causing pollutants into our air and drinking water.
  - » A 2013 Supreme Court ruling struck down the heart of the Voting Rights Act of 1965.
- **MP POV:**
  - » Has the Monied Power with its corporate knight achieved government of, for, and by the corporation?

That depends on us.

In the next lesson, we will explore options that the People Power could use to overcome the internal threats to legitimate democracy.

## 17. Ultimate Civics! COVER SLIDE



# Vocabulary

## Core Vocabulary

**ballot measure:** a piece of proposed legislation to be voted upon by eligible voters; see initiative and referendum

**campaign finance regulations:** rules on giving and spending money, and reporting donor names

**initiative:** a type of ballot measure that allows citizens to propose a statute or constitutional amendment

**poll tax:** a fee required as a qualification for voting

**referendum:** a type of ballot measure that allows citizens to repeal a bill passed by the legislature

## Other Legal Vocabulary

**commercial speech:** advertises a product or service for sale

**political speech:** expressions by government or candidates for office and discussion of social issues

