Activating My Democracy

- HIGH SCHOOL -

LESSON 3

Who Rules?

Rights, privileges, and the balance of power

ultimate CIVICS

Activating My Democracy

Civics lessons and resources for grades 9–12

First Edition, March 2018

Explores how to: (1) Move ideas into action; (2) Understand values, wealth, and liberties; (3) Understand rights, privileges, and the balance of power; (4) Trace the historic roots of the democracy crisis in current events; (5) Amend the U.S. Constitution to protect human rights; and (6) Exercise our rights to defend what we love.

Empowers: Youth by nurturing self-efficacy and by teaching foundational civics concepts and skills 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.

Special thanks to
ad hoc focus group of retired teachers of King County, WA
Sunnyside Environmental School grades 6–8 (2015–2016)

Contributors
occasional gifts from those able to pay it forward
and the Jane Smith Turner Foundation

Riki Ott, PhD
Ultimate Civics, a project of Earth Island Institute

© 2018 Earth Island Institute
www.ultimatecivics.org

"The greatest threat to democracy is the illusion that it has been achieved."

~ Anonyomous

"The most common way people give up their power is by thinking they don't have any."

~ Alice Walker

Copyright © 2018 Earth Island Institute. All rights reserved. All materials presented on this site are copyrighted and owned by Earth Island Institute, or other individuals or entities as designed.

These materials are intended for educational and informational purposes only in classrooms and communities. Educators, nonprofit organizations, and individuals may use materials under Fair Use for educational purposes under the following terms: 1) the Ultimate Civics logo must be maintained on all materials; 2) no charge for materials to educator or student/participant with exception for cost of photocopy or reproduction; 3) unlimited use of materials per student/participant during school or calendar year; and 4) materials may be used in part or entirety.

Timeline of Personhood Rights and Powers, 2002
Adapted and used with permission from Women's International League for Peace and Freedom
https://movetoamend.org/sites/default/files/CorpPersonhoodExplanationTimeline.pdf

POCLAD Artwork by Matt Wuerker
Reprinted and used with permission from Program on Corporations, Law, and Democracy
http://poclad.org/art/

Who Rules?

Rights, priviledges, and the balance of power

Rationale

Alexander Hamilton reflected upon the great democracy experiment in the *Federalist Papers*. He reasoned, "Why has government been instituted at all? Because the passions of men will not conform to the dictates of reason and justice, without constraint." (No. 15, 1787–88)

Our Founders were well aware of inherent weaknesses in human nature. They were also aware that two such weaknesses, fear of other and love of power, were built into the constitutional framework in the form of slavery – without ever using the word.

The great democracy experiment rests on an unstable, undemocratic foundation. The Founders created a balance of power among the three branches of government to add stability to the whole – and keep human nature in check. Yet, these internal threats persist in practice and continue to defy the underlying principles of our democratic ideal.

"What is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself." ~ James Madison, Federalist, No. 51, 1788

Lessons 3 and 4 offer a fresh perspective of American history through the lens of the legal system. By examining key changes in the U.S. Constitution and Bill of Rights from inception to present, it becomes clear that these basic operating instructions have radically changed since ratification and, further, that many of these changes were made *without the consent or knowledge of most Americans.*

Lesson 3 introduces two internal threats to democracy and focuses on the role of the judiciary branch in preserving discriminatory practices and creating ways to protect wealth and power. The purpose is to stimulate curiosity, inquiry, and discussion about ways to strengthen our democracy against ever-present internal threats to our civil liberties.

Enduring Understanding for Civics Grades 9-12*

- Explain how the U.S. Constitution establishes a system of government that has powers, responsibilities, and limits that have changed over time and that are still contested. (D2.Civ.4.)
- Critique relationships among governments, civil societies, and economic markets. (D2.Civ.6.)
- Analyze the impact and the appropriate roles of personal interests and perspectives on the application of civic virtues, democratic principles, constitutional rights, and human rights. (D2.Civ.10.)
- Analyze how people use and challenge local, state, national, and international laws to address a variety of public issues. (D2.Civ.12.)
- Evaluate public policies in terms of intended and unintended outcomes, and related consequences. (D2.Civ.13.)

**C3 Framework for Social Studies State Standards*
http://www.socialstudies.org/system/files/c3/C3-Framework-for-Social-Studies.pdf

"This member of the Government was at first considered as the most harmless and helpless of all its organs. But it has proved that the power of declaring what the law is, ad libitum, by sapping and mining slyly and without alarm the foundations of the Constitution, can do what open force would not dare to attempt."
~ Thomas Jefferson to Edward Livingston, 1825

Essential Questions

- What is the meaning of an "internal threat" to a democracy?
- Has judicial review changed the intended powers and limits of the Supreme Court?
- How did the concept of "person" change after passage of the 14th Amendment?
- Did the Civil War Amendments achieve their intended purposes?
- How are different rights recognized for different persons? Infringed for natural persons?

Learning Objectives

Students can:

- Understand and describe two persistent internal threats to our democracy, based on internal weaknesses in human nature.
- Explain the concept of judicial review and its role in shifting the balance of power in our democracy.
- Explain how the wording of the 13th and 14th Amendments allowed states to infringe newly recognized rights of African Americans and women.
- Describe how Supreme Court rulings preserved discriminatory practices and created ways for wealthy individuals to consolidate wealth and power after the Civil War.
- Explain how the concept of "person" under law has changed over time from a business model to an artificial entity that usurps fundamental human rights.

Materials & Preparation

Lesson 3

Students critically examine the conceptual framework of the Constitution and Bill of Rights to understand how internal threats institutionalized in these documents triggered a power dynamic that has shaped our society from inception to present. Students are introduced to a third entity that existed at the time of founding – artificial persons as corporations – and then explore the young government's dilemma of where to fit this entity into the legal framework. Using Socratic method in small groups, students critically examine key legal changes and their social consequences on the balance of power during the first 160 years of the democracy journey.

Time for Lesson 3
Approximately 100 minutes with assigned reading: interactive exercises supported by films and PowerPoint slides.

- First half of lesson: Slides 1–14
- Second half of lesson: Slides 15–31

Materials

- PowerPoint notes and slides
- ACTIVITY 1, "'People' – What did the Founders mean?"
  - 1 single-sided copy for one-quarter of the class
  - Cut in half
- ACTIVITY 2, "Exploring the Timeline"
  - 1 double-sided copy per student of pages 1–2
  - 1 double-sided copy for one-half of the students in class of pages 3–4
  - 1 double-sided copy for one quarter of the students in class of pages 5–8, uncollated
- Timeline Stories
  - 1 double-sided copy per student of pages 1–2 only
- Exit ticket: 1 single-sided copy per student of ACTIVITY, "Rights and Powers"
- Painter's tape for labels

Materials & Prep for Shared Resources in Lessons 3–5

- 1 pocket copy per student of Declaration of Independence and U.S. Constitution
  - Bulk discounts available: www.nccs.net/pc
- 8 double-sided copies (2 per table group) of "Timeline Stories"
- 8 double-sided copies (2 per table group) of "Timeline Summary"
- 8 single-sided copies (2 per working group) of Lessons 3–4 "Core Vocabulary"
- 8 single-sided copies (2 per working group) of Lessons 3–4 "Support Vocabulary"
- OVERRULED labels: 2 single-sided copies on BLUE paper, cut apart

TIMELINE files – Prep once and reuse!

- 1 single-sided copy of the "poster HEADERS" file on white paper
- 1 double-sided (book-type) copy of the "posters BLUE" file on medium BLUE paper
- 1 double-sided (book-type) copy of the "posters YELLOW" file, printed on sun YELLOW paper
- 1 double-sided (book-type) copy of the "posters ORANGE" file on ORANGE paper
- Arrange color POSTERS in chronological order with earliest date on top
- Insert header POSTERS into chronology as follows:
  - Founding documents: Lead header before 1789 poster
  - Sovereignty threat? Balance of power shifts: Before 1803 poster
  - Fundamental rights: Who is a "person"? Before 1857 poster
  - Usurpation of fundamental rights: Before 1893 poster
  - Fundamental rights & civil rights: Before 1954 poster
  - Usurpation of fundamental rights: "What is "speech"? Before 1976 poster
  - (Mostly) violations of civil liberties: Before 2001 poster
- 60 clear protective covers for POSTERS, if possible
- 60 clothes pins, paper clips, or key rings and one 100-foot long sturdy cord (two 100-foot cords if possible) to hang up POSTERS in a long single row; see suggestion to display TIMELINE

SUGGESTION to display TIMELINE

1. Put all data cards in clear plastic sheet protectors.
2. Insert key ring hoops or paper clips in center hole of sheet protectors.
3. Run a 100-foot line through the hoops or clips, making sure the data cards are in chronological order.
4. To transport, tie off posters in a small loop and wrap and secure extra cord.
5. To display 70-foot long TIMELINE, *ensure access to reach and read both sides*.
   ON A WALL WITH CORD: Secure cord end with the earliest date to the left side of a wall and the other end to the right side of wall (or wrap around 2 walls). Support cord every 10 to 12 feet to prevent sagging and sliding of data cards to lowest point. Run a second 100-foot line about 6 inches below line with data cards to keep the cards from twisting.
   ON TABLES WITH CORD: Arrange one set of long rectangular tables, length-wise, along two walls. Arrange second set of matching tables on their sides, legs towards room (not wall). Secure cord end with the earliest date to the left side of the upper table leg. Support cord by wrapping around table legs to prevent sagging and sliding of data cards to lowest point. Run a second 100-foot line about 6 inches below line with data cards to keep the cards from twisting.

Preparation

- Review lesson materials, including PowerPoint notes and slides, films, teaching guides for exercises, and vocabulary
- Post online material for assigned reading
  - » Timeline: Stories, Summary, and Resources
  - » Core and support vocabulary for Lessons 3 and 4
- In classroom, display Timeline of Rights and Powers
- Arrange desks into 4 table groups
- Provide table groups with:
  - » Shared resources: pocket Constitutions, Timeline Stories and Summary
  - » Vocab sheets for Lessons 3 and 4

First half of lesson

- Slide 5: Partner ACTIVITY 1, "Person – What did the Founders mean?"
- Slide 8: Table ACTIVITY 2, "Exploring the Timeline"
  - » All 4 tables: 1789–1819, pages 1–2

Second half of lesson

- Label table groups 1–4 and ask students as they enter classroom to sit at table for their assigned reading
- Slide 16, Table ACTIVITY 2, "Exploring the Timeline"
  - » Tables 1 and 2: 1857–1886, pages 3–4
  - » Table 3: 1893–1933 (Monied Power), pages 5–6
  - » Table 4: 1893–1947 (People Power), pages 7–8
- Slide 31: Exit tickets 10 minutes before end of class
- Prep 3 OVERRULED labels
  - » Affix rolled piece of tape to back of each label
  - » Post labels on wall behind Timeline 1857–1947 posters
- On side of white board, write:
  - » Vocabulary
    artificial person
    charter rights
    corporate personhood
    corporation
    internal threat
    natural person

"But you must remember, my fellow citizens, that eternal vigilance by the people is the price of liberty, and that you must pay the price if you wish to secure the blessing. It behooves you, therefore, to be watchful in your States as well as in the Federal Government."
~ Andrew Jackson, Farewell Address March 4, 1837

PowerPoint Notes

Lesson 3

1. *Ultimate Civics!* COVER SLIDE

Everyone has a story.

Suggested instruction for teacher

- ADD your 1-minute story to set this lesson on the difference between democracy in principle and practice.

In this lesson and the next, we will introduce internal threats to a democracy and explore landmark laws that have shaped social process during the first 160 years of our constitutional democracy.

2. Essential questions

Our essential questions are:

<CLICK> for first question and after each question except last

- What is the meaning of an "internal threat" to a democracy?
- Has judicial review changed the intended powers and limits of the Supreme Court over time?
- How did the concept of "person" change after passage of the 14th Amendment?
- Did the Civil War Amendments achieve their intended purposes?
- How are different rights recognized for different persons? Infringed for natural persons?

3. The ideal: Sovereign self-governance

We are going to frame the Timeline activity with four basic concepts and memes.

Here's the meme for the first concept: the ideal democracy or sovereign self-governance.

Founders imagined a democratic republic. "We the People" would be "*sovereign*" – the ultimate rulers. We would govern ourselves through elected representatives.

"We the People" is in quotes to remind us that, at the time, the Founders meant only certain people – and that applied also to fundamental rights listed in the Bill of Rights.

- What is the difference between inalienable rights and fundamental rights? (Either have students turn to partners and discuss or ask for volunteers to answer.)
  - » *Inalienable rights* are natural rights that cannot be transferred, sold, or denied, because a human being is born with them.
  - » *Fundamental rights* are human rights recognized by the Supreme Court as requiring a high degree of protection from government encroachment.

Our fundamental rights limit the power of our governments to interfere in our *"private sphere"* – our homes, our cars, our persons – our private spaces. "Private sphere" is part of your support vocabulary.

- Who is the ultimate power in our democratic republic?
  - » people, not government
  - » because people created government

<CLICK>

Founders imagined a clear separation-of-power line between private citizens and the government, between rulers and the ruled.

<CLICK>

The government would be tasked with duties and held accountable.

- The government is accountable to whom?
  - » "We the People"

- Who assigns the duties?
  - » "We the People" through elected representatives

- Who holds the government accountable?
  - » Internal system of checks and balances
  - » Elected officials
  - » "We the People," always, but especially when all else fails

Government operates in the "*public sphere*" – the spaces where people come together to identify and address social problems.

Any government has the potential to get corrupted.

<CLICK>

Our government is like a wolf. Damage is contained when people are mindful, alert, and act to fix threats to our sovereign rule. People have to pay attention.

4. Of kings and corporations

The second concept is: corporations. Besides creating a government, the Founders had to decide how to handle corporations.

A "*corporation*" is a group of persons who are granted a "*charter*" or license to do business by a ruler or government.

<CLICK>

Our legal system is grounded in British Common Law, dating back to the Magna Carta. It included an understanding that things created by law for legal purposes, like corporations, were "*artificial entities*" or "*artificial persons*." These things had distinct identities and existences, and they had duties and rights.

However, these concepts originated in authoritarian Rome law. Rome recognized corporations as artificial persons around 300 B.C. So, when a law said, "A person shall do this or that…" it applied to "artificial persons" as well as to "*natural persons*," meaning humans.

<CLICK>

These concepts carried forward into U.S. law from British law. They are all core vocab.

Before the American Revolution, about 20 large corporations were doing business in the colonies under charters from European nations and rulers such as the King of England. These corporations were chartered to exploit the New World.

<CLICK>

RESOURCES
Magna Carta and human rights
http://www.projectbritain.com/calendar/June/magnacarta.html

Origin of artificial persons
Chapter 2 in *The Origin of Value: The Financial Institutions That Created Modern Capital Markets*, Oxford University Press, 2005

Under charter rights, corporations could own property, sue or be sued, collect fees and raise taxes for the crown, pass laws, and quarter soldiers in people's homes. This made them very unpopular with the colonists.

<CLICK>

- For example, what corporation was the target of the Boston tea party?
  - » East India Company
  - » This corporation was chartered by the Queen of England in 1600!

<CLICK>

- How do "*charter rights*" differ from fundamental rights? Look at your core vocab. (Either have students turn to partners and discuss or ask for volunteers to answer.)
  - » Charter rights are privileges for artificial persons; artificial persons are not born with them.
  - » Charter rights may be transferred or sold to other business, if approved by the authority.
  - » Charter rights could be removed by the authority, if the license terms were violated. Fundamental rights cannot.

Charter rights are privileges for the purpose of doing business.

<CLICK>

5. "Person" – What did the Founders mean?

The third concept is: Person.

After the American Revolution, the Founders needed to do business with these very same royal corporations, but under new rules. In Europe, corporations had great wealth and power to influence government. The Founders did not want this to happen in the United States.

Did the Founders make it clear in the Constitution and Bill of Rights — that this was government "of, for, and by the People?" And that only natural persons were entitled to fundamental rights? Let's look.

<CLICK>

- What did the Founders mean when they used the word "person" in the Constitution or Bill of Rights? You decide.

Instructions
- Turn to a partner.
- Read and discuss each of the 8 examples in your ACTIVITY, "'Person' – What did the Founders mean?" These examples are from the Constitution and Bill of Rights.
- Circle your answer for each example – human or artificial or both.

Class discussion
- What did you decide?
- Ask students to support their answers with evidence from the ACTIVITY sheet or Constitution and Bill of Rights.
  - » Considering that colonists had just fought a war against many of these corporations and the nations they served, it seems reasonable that Founders wanted to maintain a basic separation

of power between natural and artificial persons.

- It also seems reasonable that a separation of powers was necessary to protect fundamental rights of natural persons and to hold artificial persons accountable to laws.
- So, it seems likely that Founders reserved natural and fundamental rights for natural persons, as sovereigns, and that they intended to control corporations through charter rights as privileges for doing business.

<CLICK>

Here's the tally of "person" references in the Constitution and Bill of Rights. You might consider applying the question to all of them yourself.

The Constitution and Bill of Rights never defined the word "person." This lack of clarity was ripe for exploitation.

6. Founders dilemma: How to control corporations?

The fourth concept is about: How to control corporations.

- On which side of the power line did the Founders envision these powerful royal corporations?
  - » Above as sovereign?
  - » Or below as accountable to the People?

You decide.

Instructions and discussion

- Turn to a partner and discuss.
- Ask what students decided and why before proceeding.

<CLICK>

» Likely answer: Below the line and accountable to the people!

Powerful fundamental rights were intended and reserved for natural persons.

<CLICK>

Granting corporate charters was a duty assigned to state governments, and they handled it just like passing a bill into law. It was serious business.

Corporate charters had:

- Rules… rules… RULES!
- And one of the rules was to follow the rules.

<CLICK>

Here were some of the rules:

- Corporations had to provide a public service. They couldn't be only for private profit.
- Corporations were banned from political activity. They couldn't influence government.
- Corporations had an expiry date like 3 to 5 years or 20 years.
- Corporations that did not play by the rules were ended – their contracts were cancelled.

Besides corporations, back then most people did business in the public sphere as people.

<CLICK>

A cobbler, a baker, a grocer…

Everyone – or thing – on the "ruled" side of the power line had to follow the government rules – even the royal and state-created corporations. It was part of their social contract to do business. Why?

Because everyone – or thing – on the "ruled" side of the power line could be a threat to people's civil liberties if they didn't follow the rules.

<CLICK>

So, here's the wolf to remind us that the things people create – government and businesses – need to be watched and held accountable.

The basic separation of power – between natural persons with fundamental rights and artificial persons with privileges – remained intact for the first 100 years.

During most of this time, nearly 95 percent of the people were ineligible to vote under state law and did not own property. The Monied Power was in firm control of government and the economy.

7. Intro: Timeline of Rights & Powers

Now let's figure out what the "Timeline of Rights and Powers" represents.

Instructions
With a partner, explore the Timeline data cards and answer these questions:

- What do these 3 colors represent?
- What are 3 ways to change the letter or rule of law?
  - » Changing the *letter* of law is like changing the board game.
  - » Changing the *rule* of law is like changing the rules of the game, but same game.

RESOURCES
Separation of power: First 100 years
http://www.amendmentgazette.com/what-is-corporate-personhood/

http://press-pubs.uchicago.edu/founders/documents/a1_8_18s16.html

- What do the 2 sides of each data card tell?
- Be ready to share your answers in a few minutes.

Discussion guide
What do the 3 colors represent?

Students might observe:

- The WHITE posters are themes for the different time periods.
- The 3 colors represent key legal rulings that changed the letter of the Constitution or the rules – how the Constitution was interpreted by the Court.
- BLUE
  - » a victory for human rights
  - » strengthens democracy

<CLICK>

- YELLOW
  - » setbacks in the struggle for recognition of human rights and power
  - » relates to discrimination against race, class, gender, age, or "other"
- ORANGE
  - » money and power
  - » relates to consolidation of wealth by individuals and artificial persons as corporations

<CLICK>

YELLOW and ORANGE data cards are different forms of "*internal threats*." Internal threats are weaknesses within a system that can destroy it. It's core vocab.

- YELLOW is for internal threats that stem from our fear of other – our prejudices.
- ORANGE is for internal threats that

stem from our greed – our love of power, wealth, and privilege.

Instructor explains: These internal threats are always present in a centralized government, because we are human. It's up to the people to limit the power of our centralized governments to keep these threats in check.

What the 3 ways to change letter or rule of the Constitution?

- An "*amendment*" is an official change in the Constitution, usually driven by popular demand – people.

<CLICK>

- An "*act*" is legislation passed by Congress and usually signed by the President into law. Congressional acts are supposed to conform with the Constitution.

<CLICK>

- A "*lawsuit*" changed the rule of law through a court decision. Lawsuit rulings are also supposed to conform with the Constitution, as the rulings carry the power of law and have social consequences.

<CLICK>

What do the 2 sides of the data cards tell?

- One side is a summary.
- One side is a story.

Instructor comments: Lawsuits are identified on the story side by the name of the person claiming harm from violation of fundamental rights versus the name of the person accused of causing harm.

We're ready to explore the Timeline!

8. Exploring the Timeline

Instructor hands out ACTIVITY sheet, "Exploring the Timeline."

Instructions

- Look at your ACTIVITY sheet, "Exploring the Timeline."
- One side has 3 support questions, sometimes with clues
- The other side (flip over) asks you to:
  - » identify rights that were recognized
  - » laws that were amended or overruled
  - » summarize findings and finish statement

<CLICK>

We're going to work through the first time period together.

- Assign support questions to each table group.
  - » Table 1: Q1. Clue 1
  - » Table 2: Q1. Clues 2–4
  - » Table 3: Q2. 1803 data card
  - » Table 4: Q3. 1819 data card
- Work at your tables to answer your support questions.
  - » Read your Timeline Stories.
  - » Follow the clues and vocab suggestions.
  - » Identify what laws were amended or overruled.
  - » Prepare to summarize the answer to your questions.
- We will finish the key points and concluding statement as a class after we listen to all the findings.
  - » Clarify any questions.
- Allow 10 minutes for exploration and 10 minutes for sharing findings.

9. 1789–1791: Founding Documents

Instructions
Ask Tables 1 and 2:

- By whose authority were the founding documents recognized?
  - » Constitution: Authority of sovereign people to create a government to secure their rights
  - » Bill of Rights, by amendment: Fundamental rights of free people to limit the power of a centralized government

Ask class:

- What does this political cartoon depict?
  - » Expresses the artist's opinion that "We the People" did not include everyone
  - » Founders were white men with property and, in some states, of the "right" religion
  - » People left out included American Indians, African American slaves, women, immigrants, white men without property

- Any ideas what percentage of the population was left out – the percentage whose basic rights were infringed?
  - » Students might guess 99%
  - » Close: 96%

How did Constitution and Bill of Rights institutionalize racism, classism, and genderism – and slavery without ever using the word?

RESOURCES
Original Three-Fifths Clause in Constitution
"in proportion to the whole number of ~~white and other~~ free Citizens ~~and inhabitants of every age sex and condition~~ including those bound to servitude for a term of years and three-fifths of all other persons ~~not comprehended in the foregoing description~~, except Indians paying taxes, in each state."

http://common-place.org/book/women-and-the-constitution-why-the-constitution-includes-women/

http://common-place.org/book/women-and-the-constitution-why-the-constitution-includes-women/

Why wasn't the Bill of Rights originally in the Constitution? https://ed.ted.com/lessons/why-wasn-t-the-bill-of-rights-originally-in-the-us-constitution-james-coll

Perspectives on the Constitution: A Republic, if you can keep it https://constitutioncenter.org/learn/educational-resources/historical-documents/perspectives-on-the-constitution-a-republic-if-you-can-keep-it

Presentation guide
Slavery, racism, and classism

<CLICK>

- Three-Fifths Clause, Art. 1, Sec. 2, (3rd paragraph): Counts slaves as property and "three-fifths" of a person for censuses that determine number of representatives in Congress

<CLICK>

- Migration & Importation Clause, Art. 1, Sec. 9: Prohibited Congress from abolishing slavery until 1808

- Fugitive 'Laborer' Clause, Art. IV, Sec. 2, (3rd paragraph): Required escaped 'Laborers' including slaves to be "delivered up" to their masters

<CLICK>

Genderism, racism, classism, and slavery

- States decided qualifications for citizenship, not federal government. Most states allowed only certain white men to vote.

10. Concept of "judicial review"

Did the 1803 Supreme Court ruling shift the balance of power? Why or why not?

Presentation guide

1803 Yes. Supreme Court recognized itself as sole arbitrator of constitutional law with judicial review. This broke the balance of power, as it allows the Court de facto to change the rule of law through interpretation.

<CLICK>

The Court overruled the Judiciary Act of 1801 (mentioned in Timeline Stories)…

… and the Court broadly infringed People's sovereignty, as noted by Thomas Jefferson.

Instructor clarifies these points, if needed, before moving on.

- Did the Constitution give this power to the judiciary?
  - » No. The Constitution made the 3 branches of government co-equal.

- What did this ruling do to the system of checks and balances?
  - » Destroyed it – the other two branches cannot challenge the judiciary's interpretation of the Constitution.

QUOTE
"I hope we shall crush in its birth the aristocracy of our monied corporations, which dare already to challenge our government to a trial of strength and bid defiance to the laws of our country."
~ Thomas Jefferson, 1802

- Who can challenge the judiciary's interpretations of Constitutional laws?
  - » future Supreme Courts
  - » the ultimate check and balance on the system – the people, as people's amendments overrule judge-made law

- Would government have worked if each of the three branches could interpret the law?
  - » No, probably not
  - » It would be like playing a game, in which each player could make up the rules, and there was no referee.

After we explore the democracy journey, we will revisit this 1803 decision in light of the social consequences of 215 years of judicial review.

RESOURCES
Midnight Judges Act of 1801
https://www.fjc.gov/history/legislation/landmark-judicial-legislation-text-document-1

***Marbury v. Madison*, 1803**
http://landmarkcases.org/en/landmark/cases/marbury_v_madison

11. Corporations gain "standing" in the Constitution

Did the 1819 Supreme Court ruling create a new actor under the Constitution? What were the social consequences of this ruling?

Presentation guide

1819 Yes. When the Supreme Court recognized artificial persons – corporations – with "*standing*," or the ability to bring constitutional claims to court, the Court created a new actor under the Constitution.

The Contract Clause of the Constitution established that no state may pass a law that prevents a corporation from fulfilling its contractual or legal duties. (Art. I, Sec. 10)

When the Court recognized corporate charters as contracts under the Constitution, it created a new economic theory that courts could, and would, weigh against fundamental rights – against civil liberties.

This economic theory specifically infringed the 10th Amendment police powers of states to control the corporations that they created.

Corporations became a popular business model that shaped the free enterprise system to meet their needs – largely free of state control.

<CLICK>

Instructor clarifies these points, if needed, before moving on.

- How many times is the word "corporation" in the Constitution?
  - » zero
- Does the Supreme Court have the authority to create new actors under the Constitution?
  - » No. The Founders created a way for people to amend the Constitution.

> **"This 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 corruption, its necessary consequence. The engine of consolidation will be the federal judiciary and the other two branches the corrupting and corrupted instruments."**
> **~ Thomas Jefferson, 1821**

This case and judicial review changed the Constitution without officially amending it. And this was just the beginning.

> **RESOURCE**
> ***Dartmouth College v. Woodward*, 1819**
> **http://www.americanbar.org/groups/public_education/initiatives_awards/students_in_action/dartmouth.html**

12. Balance of power shifted towards...

Presentation guide

Summarize key points & finish statement below

- U.S. constitutional democracy rests on an unstable, undemocratic foundation that did not recognize fundamental rights of all peoples.
- The balance of power was altered with judicial review, a way for the Supreme Court to change the rule of law at its pleasure through creative interpretation.
- Court recognized a new actor, artificial persons, under Constitution.

- Court recognized an economic theory under Constitution that court could weigh against civil liberties.

Balance of power shifted towards… those with "property" and financial wealth – the Monied Power, who drafted the Constitution and Bill of Rights. The Monied Power also dominated the legal profession and the Courts. Courts were expensive and inaccessible to most people.

13. Prep for exploring Timeline

Instructions

- Assign reading of Timeline Stories
  - » Tables 1 and 2: 1857–1886
  - » Table 3: 1893–1933 (Monied Power, Orange data cards)
  - » Table 4: 1893–1947 (People Power, Yellow and Blue data cards and 1947)
- Review amendments: 1, 4, 5, 6, 10, 13, 14, 15
- Review Core and Support Vocab
- Find more info about cases in Timeline Resources
- Tomorrow we will work at tables to explore this part of our democracy journey.

14. Completion of Constitutional framework and actors

Suggested stopping point for class.

Next: First civil rights rising & social consequences

15. Review essential questions

- Remind students as they enter classroom to sit at the table that matches their assigned reading.

Let's review our essential questions again.

<CLICK> for first question and after each question except last

- What is the meaning of an "internal threat" to a democracy?
- Has judicial review changed the intended powers and limits of the Supreme Court?
- How did the concept of "person" change after passage of the 14th Amendment?
- Did the Civil War Amendments achieve their intended purposes?
- How are new fundamental rights recognized for different persons? Infringed for natural persons?

16. Exploring the Timeline

Instructions

- Review your ACTIVITY sheet, "Exploring the Timeline."

<CLICK>

- Assign support questions to 4 table groups.
  - » Table 1, 1857–1886: Blue data cards; Questions 1, 4
  - » Table 2, 1857–1886: Yellow and Orange data cards; Questions 2, 3, 4
  - » Tables 1 and 2 work together to answer Question 5.
  - » Table 3, 1893–1933: Orange data cards except 1947; all questions
  - » Table 4, 1893–1947: Yellow and Blue data cards and Orange 1947; all questions
- Work at your tables to answer the assigned questions.
- Clarify any questions.
- Allow 20 minutes for exploration and 20 minutes for sharing findings.

17. Civil War Amendments & social change

Did the Civil War Amendments achieve their intended social purposes to abolish slavery and give African American males the vote? Why or why not?
Presentation guide

13th Amendment

- Abolished slavery in U.S., states, and territories, "except as a punishment for crime"
- Amended Constitution, Article IV, Section 2: Fugitive Laborer Clause
- The exception for crime led to increased arrests of African Americans, due to Jim Crow laws, and involuntary servitude of another form – as prisoners of law from Reconstruction to present.

14th Amendment, Section 1

- Recognized citizenship status of African Americans as free people
- Recognized "privileges and immunities" so that citizens of one state could enjoy equality in another state
- Recognized due process and most Bill of Rights protections for "persons" to apply against *states*
- Recognized equal protection of persons under law
  This became crucial to protection of civil rights and was held to apply against the federal government during the civil rights movements during mid 1900s.

14th Amendment, Section 2

- Amended Three Fifths Clause by basing apportionment on "… the whole number of persons in each State…" excepting tribal Indians
- Added a penalty if eligible male citizens were denied the vote, except for those participating in crimes
- While African Americans could now be counted for apportionment, states could still deny the vote to males accused of crimes and to women, because there were no penalties for denying women the vote
- Amendment overruled court ruling in *Dred Scott*, 1857
  - » Post Blue OVERRULED label across 1857

RESOURCES

13th Amendment history
https://constitutioncenter.org/blog/abraham-lincoln-and-the-two-13th-amendments

Corwin Amendment: https://en.wikipedia.org/wiki/Corwin_Amendment

14th Amendment history
https://www.ourdocuments.gov/doc.php?flash=false&doc=43

15th Amendment history
https://www.ourdocuments.gov/doc.php?flash=false&doc=44

American Indian suffrage
http://www.americaslibrary.gov/jb/jazz/jb_jazz_citizens_1.html

https://en.wikipedia.org/wiki/Indian_Citizenship_Act

https://www.times.org/breaking-point-in-the-bering-sea/2018/3/12/slaves-of-the-fur-seal-harvest

Dred Scott v. Sandford (sic), 1857
http://landmarkcases.org/en/landmark/cases/dred_scott_v_sandford

http://www.history.com/topics/black-history/dred-scott-case

Substantive due process
https://legal-dictionary.thefreedictionary.com/Substantive+Due+Process

15th Amendment

- Recognized voting as a constitutional right of citizens
- The exception for crimes in the 13th and 14th Amendments led to increased arrests of African Americans due to Jim Crow laws – and the ability of states to deny the vote to males accused of crimes

<CLICK>

How is the 14th Amendment (Section 1) related to these rulings?

1857 The Supreme Court overturned the Missouri Compromise, ruling that Congress lacked authority to ban slavery in U.S. territories. The Court ruled that African Americans were "not citizens of any state," had no standing, and "no rights a court must respect." Court recognized "*substantive due process*" as right of certain persons to own slaves.

- *Dred Scott* was overruled by 14th Amendment, which established that citizenship included African Americans.
  - **Post** Blue OVERRULED label across data card

RESOURCES
The Slaughterhouse Cases, 1873
https://www.britannica.com/event/Slaughterhouse-Cases

Minor v. Happersett, 1875
https://www.britannica.com/event/Minor-v-Happersett

https://en.wikipedia.org/wiki/Minor_v._Happersett

RESOURCES
Women's rights movement timeline
https://www.infoplease.com/spot/womens-rights-movement-us

Abolitionists movement timeline
https://www.infoplease.com/spot/timeline-key-moments-black-history

Black Americans in Congress
http://history.house.gov/Exhibitions-and-Publications/BAIC/Historical-Data/Constitutional-Amendments-and-Legislation/

1873 In the first test of the 14th Amendment's Privileges and Immunities Clause, the Supreme Court ruled it did not apply to States – instead of outright denying this fundamental right to artificial persons like corporations that owned slaughter houses. Ruling effectively quashed this right for citizens and preserved the ability of states to enforce Black Codes and to deny women the right to vote.

"I see in the near future a crisis approaching that unnerves me and causes me to tremble for the safety of my country. As a result of the war, corporations have been enthroned and an era of corruption in high places will follow, and the money power of the country will endeavor to prolong its reign by working upon the prejudices of the people until all wealth is aggregated in a few hands and the Republic is destroyed."

~ U.S. President Abraham Lincoln, Nov. 21, 1864
(letter to Col. William F. Elkins)
https://ratical.org/corporations/Lincoln.html

1875 Supreme Court ruled voting was not an inherent right of citizenship, based on its earlier decision that Privileges and Immunities Clause did not apply to states. Ruling did not recognize 14th Amendment privileges and immunities rights of women, so states continued to deny women the vote.

18. 1857–1880s: Zeitgeist

Court opinions often reflect the "zeitgeist" or spirit of the times. Before discussing the 1886 court ruling, let's reflect on was going on during these times that primed the court for its opinion.

<CLICK for Lincoln quote>

Instructions

- At your tables, use the images and quote to reconstruct the historical framework for the court opinion in 1886.
- Allow about 5 minutes, then open to class discussion.

Discussion guide

- Congress managed a tense agreement – the Missouri Compromise – that limited the spread of slavery in U.S. territories, but created a great divide between Northern free states and Southern slave states. *Dred Scott* decision increased tensions.
- The struggle for rights and power turned violent with war and labor strikes.
- Classes of people left out of the Constitution – African Americans, women, and Knights of Labor – were pursuing amendments and other ways to gain recognition of fundamental rights.
- Wealthy businessmen turned to the courts for ways to further consolidate their wealth and power over the people.
- Corporations had become popular as the Civil War period increased growth of manufacturing – and built fortunes of people who owned large corporations: steel makers, sugar trusts, textiles, railroads, and bankers.
  - » Congress even passed the first laws to fight corporate war profiteering.
- President Lincoln foresaw how the Monied Power/ greed would destroy

RESOURCE
False Claims Act on March 2, 1863, to combat the problem of war profiteering.
https://opinionator.blogs.nytimes.com/2013/03/07/the-civil-wars-war-on-fraud/

> **"Society in every state is a blessing, but government, even in its best state, is but a necessary evil: in its worst state, an intolerable one. "**
> **~ Thomas Paine, Common Sense, 1776**

the Republic – "by working upon the prejudices of the people."

19. Rise of corporate power

During the first 20 years after the 14th Amendment passed, 307 lawsuits were brought to the courts.

<CLICK and talk>

Only 19 of these lawsuits were brought by human persons – women and African American men.

The other 288 were brought by corporations seeking equal protection under the 14th Amendment – under the same law that granted birthright citizenship to natural persons.

And what did the court finally decide?

RESOURCES
***Santa Clara County* case, 1886**
https://ballotpedia.org/Santa_Clara_County_v._Southern_Pacific_Railroad_Company

307 lawsuits
Unequal Protection by Thom Hartmann (Rodale Books, 2004)

'Corporations are People' review
https://www.theatlantic.com/business/archive/2018/03/corporations-people-adam-winkler/554852/

20. Court creates corporate personhood

Presentation guide

1886 While failing to recognize 14th Amendment rights of privileges and immunities for people, Supreme Court Justices recognized that 14th Amendment equal protection rights applied to artificial persons.

<CLICK>

21. Effect on self-governance

Did the 1886 opinion alter the ideal self-governance concept? Why or why not?

Presentation guide

Supreme Court made both natural and artificial persons equal under law. This ruling removed the basic separation of power between natural persons with constitutional (fundamental) rights and artificial persons with privileges.

<CLICK>

The ruling is the basis of corporate personhood. It set the stage for artificial persons to claim constitutional rights – the same rights and protections of natural persons.

In effect, the Supreme Court changed the balance of power. The Bill of Rights and 14th Amendment were intended to be used by people to limit the power of a centralized government *and the institutions it creates – like corporations.*

<CLICK>

Instead the Court allowed corporations to apply for many of the same protections as

real persons. This would become a highly controversial theory in human rights law – made more controversial by the fact that for-profit corporations are likely to be perpetrators of human rights violations, using these very court-created rights! (Discussed further in slide 27.)

22. Balance of power shifted towards…

Presentation guide

Summarize key points & finish statement below

- Human (natural) persons gained rights through constitutional amendments, although the exceptions preserved discriminatory practices to this day.
- The wealthy elite (Monied Power) sought to reestablish power over the people through the courts with judge-made law.
- The Supreme Court removed the basic separation of power between natural persons with fundamental rights and artificial persons with privileges when it made both natural and artificial persons equal under law.

Balance of power shifted towards… the Monied Power, because new amendments still institutionalized racism, classism, and genderism. Also, because the Court shifted power away from the people by denying use of 14th Amendment Privileges and Immunities Clause against states and by giving artificial persons 14th Amendment equal protection rights – and ability to usurp fundamental rights.

> Slides 23–25 are concepts from *Activating My Democracy* Lesson 2 that provide scaffolding for Timeline 1893–1947.
>
> - OPTION 1: If students have completed Lesson 2, skip to slide 25.
> - OPTION 2: If students have not completed Lesson 2, continue with slide 23.

23. People's tools

The Bill of Rights recognizes some of our inalienable rights as constitutional rights. These fundamental rights are meant as tools for people to limit the power of a centralized government and to defend against oppression by the federal government *and the institutions it creates*.

<CLICK>

After the Civil War, the 14th Amendment extended most of these rights to people for people to limit the powers of state governments as well – and to defend against oppression by state governments *and the institutions they create.*

We've just learned that the Supreme Court extended the 14th Amendment Equal Protection Clause to corporations, as artificial persons. Now we'll learn the social consequences of this opinion.

24. Types of shared values

But to understand harm in the next time period, we have to first understand wealth. Let's review these types of wealth.

<CLICK>

Economic wealth is the total of things with a sticker price; things that are owned, have value, and could be sold or bartered.

<CLICK>

Environmental wealth is healthy ecosystems – all life and the natural habitat to support it.

- Environmental wealth includes light, dark, air, water, soil, trees, rainbows, minerals, wildlife, stars and planets, and more.

<CLICK>

Social wealth is things in demand but with no price like: trust, relationships, family, knowledge, health, culture, safety, friends. It is also peace of mind, happiness, enjoyment of art, music, sciences; i.e., priceless things.

- Social wealth is the glue that holds a civil society together.
- For example, friendships and marriages are based on trust. Barter or trade is built on trust.

<CLICK>

Political wealth is our inalienable and fundamental rights – and respect of these rights from governments and institutions that people create.

Instructions

- Turn to a partner and share what you love or value that might fit into each category.
- Share something that fits into multiple categories.
- After a couple minutes, ask students to share things that fit multiple categories.

25. When society reflects human values

When a society or culture reflects what people love and value, our types of wealth weave together to create a quality of life.

<CLICK>

Our personal "*wellbeing*"…

<CLICK>

…depends on all forms of wealth to create and maintain a state of health, happiness, and comfort.

Our quality of life as a society – our "*public welfare*"…

<CLICK>

… improves when people, and the government and the institutions and businesses we create, all work together to take care of our shared wealth.

Protecting these forms of wealth are critical to the general welfare of society – the health, happiness, and comfort of everyone.

26. 1890s–1940s: Monied Power

Presentation guide

How are court rulings in 1893 and 1897 related to the 1819 and 1886 rulings?

Related: The earlier rulings (that corporations have standing in Constitution, and that they are entitled to constitutional rights) set precedent – established a legal foundation – for the Court to build its theory of corporate personhood.

<CLICK>

"A nation's greatness is measured by how it treats its weakest members."
~ Mahatma Ghandi

"Any society, any nation, is judged on the basis of how it treats its weakest members – the last, the least, the littlest."
~ Cardinal Roger Mahony, 1998 letter, Creating a Culture of Life

1893 Court recognized standing for artificial persons under Bill of Rights. This gave corporations power to usurp fundamental human rights and to use these rights to claim economic harm against federal government. Court recognized 5th Amendment due process rights for corporations.

1897 Court recognized Bill of Rights protections for artificial persons under 14th Amendment. This gave corporations power to usurp fundamental human rights and use these rights to claim economic harm against state governments. Court recognized 5th Amendment just compensation rights for corporations.

Using the following cases, give examples of harm to real people when artificial persons usurp fundamental rights.

<CLICK>

1905 Court recognized right of 'persons' to be free to form contracts without government interference under 14th Amendment substantive due process. Business owners and corporations used 'freedom of contract' to exploit the poor and workers – people willing to work more than the 10 hours a day and 60 hours a week allowed by state laws. Ruling infringed 10th Amendment police power of states to protect workers' health and safety.

Examples of harm to wealth

- Increased chance of illnesses and injury from long work hours (social and economic wealth)
- Loss of free time to visit and establish relationships that ground civil marriages, friendships, and civil societies (social and political wealth)
- Loss of free time to discuss and organize to defend individual wellbeing and public welfare (social and political wealth)

<CLICK>

1906 Court recognized 4th Amendment protections for corporations and 5th Amendment immunity protections for officers of corporations under Bill of Rights. These fundamental rights allow corporations to hide illegal business practices. Ruling limited the federal government's power to enforce laws, as required under the Constitution's Take Care Clause (Article I, Section 3).

Examples of harm to wealth

- Air and water pollution harms environmental wealth and public health (social wealth).
- Unsafe work practices and standards harms social wealth through illnesses and injury to workers. This also harms economic wealth of dependent families.
- Allowing industry to protect profits at public expense harms political wealth

RESOURCES

***Noble v. Union River Logging Railroad Co.*, 1893**
https://supreme.justia.com/cases/federal/us/147/165/

***Chicago, Burlington & Quincy Railroad Co. v. Chicago*, 1897**
http://billofrightsinstitute.org/educate/educator-resources/lessons-plans/landmark-supreme-court-cases-elessons/quincy-railways-v-chicago-189/

by increasing wealth inequity and destabilizing democracy.

<CLICK>

1922 Court recognized 14th Amendment protections of just compensation for corporations for economic harm from "regulatory takings." Court ruling allowed a mining company to take the coal in support pillars that protected surface private property rights of homeowners. Corporation argued that obeying the regulations (law) would have decreased its future profits.

Examples of harm to wealth

- As above.
- Also, harm to political wealth from loss of democratic control of Court. Court often recognizes court-granted rights of artificial persons over fundamental and civil rights of people.

RESOURCES
***Lochner v. New York*, 1905**
https://legaldictionary.net/lochner-v-new-york/

https://www.britannica.com/event/Lochner-v-New-York

https://www.casebriefs.com/blog/law/constitutional-law/constitutional-law-keyed-to-cohen/the-due-process-contract-and-just-compensation-clauses-and-the-review-of-the-reasonableness-of-legislation/lochner-v-new-york-2/

***Hale v. Henkel*, 1906**
https://supreme.justia.com/cases/federal/us/201/43/case.html

***Pennsylvania Coal Co. v. Mahon*, 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/

27. Clash of values

Instructor frames student presentations by explaining photo of Holy Rosary Cemetery in Taft, Louisiana. Taft lies along an 85-mile stretch of the Mississippi River with many industrial plants that emit toxic chemicals into the air and water. "*Toxic trespass*" occurs when chemicals that cause harm enter our bodies without our consent from the air we breathe, water we drink, and food we eat. The area is known as "cancer alley," because of numerous cases of cancer among community residents.

Cancer Alley: Big Industry, Big Problems, 2015
http://www.msnbc.com/interactives/geography-of-poverty/se.html

Polluted Children, Toxic Nation, 2008, 5 minutes
https://www.youtube.com/watch?v=OpdqKAC73CM

Little Things Matter: The Impact of Toxins on the Developing Brain, 2014, 7 minutes
https://www.youtube.com/watch?v=E6KoMAbz1Bw

Presentation guide

Did these court rulings impede government law enforcement powers?

The Constitution authorizes the federal government to enforce laws through the Take Care Clause. The 10th Amendment grants states police power to enact and enforce laws for the betterment of the public's health, safety, and general welfare.

1919 Michigan Supreme Court recognized that corporations exist to make money for owners. This established the economic theory of "stockholder primacy." It is still the leading case cited on corporate purpose, and it is used to claim economic harm from government regulations that decrease corporate profits. Since it costs money to obey laws that make safe products for consumers and safe work places, this ruling limits the federal government's ability to enforce laws under the Take Care Clause and, similarly, it limits state governments' ability to enforce laws under 10th Amendment.

1922 Court granted corporations protection against very laws meant to protect people and the environment under the economic theory of "regulatory takings." This effectively prioritized a corporation's ability to profit at the expense of general health and welfare of the people, as the courts must only weigh a corporation's costs to comply with laws against a corporation's potential loss of its property value.

The connection between toxic trespass and the economic theories advanced in these court rulings is corporate profitability.

The question that is being debated in human rights law is: Should artificial persons have the same legal protections as real persons?

- Instructor asks: What do you think? Should artificial persons have fundamental human rights?

Instructions and discussion guide

Discuss with a partner. Be prepared to share.

The discussion might include the following:

- Fundamental human rights are meant to be use by humans to protect humans, human values, and forms of human wealth, and to meet basic human needs.
  - » Many of the laws to protect "the environment" actually exist to protect public health and

"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

There are two types of laws: just and unjust. I would be the first to advocate obeying just laws. One has not only a legal but a moral responsibility toobey just laws. Converssely, one has a moral responsibility to disobey unjust laws."

~Martin Luther King, Jr., Letter from a Birmingham Jail

An unjust law is no law at all."

~St. Augustine

An unjust law is a human law that is not rooted in eternal law and natural law. Any law that uplifts human personality is just. Any law that degrades human personality is unjust.

~St. Thomas Aquinas

  - welfare by establishing minimum environmental quality standards.
  - » These laws are a social contract among the people, government, and industry.

- Fundamental human rights are not, and were never meant, to be used by artificial persons to protect – or guarantee – profitability.

- Court rulings that favor corporate welfare over public welfare are unjust laws, because unjust laws are amoral in that they break social contracts and degrade what it means to be human.

Summarize key points

Instructor asks for only the summary of findings. We will finish the statement in Q. 5 with People Power group after they present their findings.

Monied Power

- Building on legal theories and precedent established in 1819 and 1886, Supreme Court began to empower corporations, as artificial persons, with individual fundamental rights against federal and state governments.
- Whenever a corporation exercises a fundamental right, it infringes the same right or other rights for real people.
- State Supreme Court ruling in 1919 allows corporations to claim profits over individual wellbeing and societal welfare.
- Courts transformed the privilege of doing business, in corporate form, into constitutional rights that were used to avoid the very laws meant to protect people, public health, and the environment.
- Court rulings infringed federal and state governments' duty to enforce laws under Constitution – and it effectively prioritized profit and consolidation of wealth and power over protection of individual wellbeing and societal welfare.

On just and unjust law
https://home.isi.org/unjust-law-no-law-all-excerpts-letter-birmingham-jail

Right to profit?
https://theconversation.com/how-human-rights-law-has-been-used-to-guarantee-corporations-a-right-to-profit-74593

RESOURCES
Example of current use of Dillon's Rule
"I was worried about fracking to start with. Now I'm worried about democracy."
~ Adam Briggle, 2014, professor University of North Texas

In 2004, citizens of Denton, Texas, organized and passed a ballot measure to ban oil and gas activities within city limits, due to concerns with health and water supplies.
The oil industry lobbied the state legislature. Within a year, Texas had a new law preempting local governments from regulating a wide range of oil and gas activities, including fracking. Denton had to repeal its ban.
http://www.nbcnews.com/news/us-news/what-happened-denton-war-local-democracy-n620926

28. 1890s–1940s: People Power

Presentation guide

Did the 1896 ruling 'overrule' fundamental rights under Civil War Amendments? Why or why not?

<CLICK>

1896 Supreme Court held that state laws enforcing racial segregation were constitutional under the 14th Amendment if separate accommodations were "equal."

A court decision cannot 'overrule' a constitutional amendment, as the Supreme Court's duty is to uphold the Constitution.

<CLICK>

RESOURCES
***Plessy v. Ferguson*, 1896**
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/

However, the 1896 ruling effectively infringed 14th Amendment protections for African Americans, as it legalized Jim Crow laws and practices. African Americans lost access to much of the white world.

Did the 1907 ruling usurp people's power? How might this benefit Monied Power?

<CLICK>

1907 Yes. Supreme Court ruled that local governments have no rights not granted by state legislatures. The ruling is used to prevent people from passing local laws to protect public health and welfare and the environment.

During this time period, corporations were steadily usurping fundamental rights

through the courts to increase their profits by limiting the ability of federal and state governments to enforce laws protecting public health, worker safety, and the environment, among others. The 1907 ruling extended this trend to local governments.

Did these laws strengthen rule by the people? Did they achieve their intended purpose? Why or why not?

<CLICK>

1913 Yes and yes. 17th Amendment established that the U.S. Senate is elected by the people, as a sovereign right. Elections replaced a corrupt system of insider voting by (mostly) privileged Monied Power.

<CLICK>

1920 Yes and no. 19th Amendment recognized right of women to vote, but women of color were not guaranteed this right until the Voting Rights Act of 1965.

- Overruled earlier court ruling in *Minor v. Happersett*, 1875
  - » **Post** Blue OVERRULED label across 1875 court ruling

<CLICK>

1935 Yes and yes (briefly). National Labor Relations Act recognized rights of workers to self-organize in unions, to bargain collectively, and to engage in activities to support these rights – as a check on corporate employers. It also penalized unfair labor practices by employers and created a federal board to arbitrate disputes.

<CLICK>

1937 Yes and yes. Supreme Court realized that exploitation of economically disadvantaged workers (women and children) harms health of workers and economic health of their community.

Court recognized minimum wage and hour laws as part of 5th Amendment due process rights under Constitution.

RESOURCES

17th Amendment history
https://www.ourdocuments.gov/doc.php?flash=false&doc=58

History of direct election of senators
https://www.senate.gov/artandhistory/history/common/briefing/Direct_Election_Senators.htm

19th Amendment history
https://www.ourdocuments.gov/doc.php?flash=false&doc=63

RESOURCES

***West Coast Hotel Co. v. Parrish*, 1937**
https://www.casebriefs.com/blog/law/constitutional-law/constitutional-law-keyed-to-chemerinsky/economic-liberties/west-coast-hotel-co-v-parrish/

National Labor Relations Act history
https://www.ourdocuments.gov/doc.php?flash=false&doc=67

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

Taft-Hartley Act of 1947, history
https://www.britannica.com/topic/Taft-Hartley-Act

- Overruled earlier court ruling in *Lochner*, 1905
  - » **Post** Blue OVERRULED label across 1905 court ruling

<CLICK>

1947 No and yes. In an anti-union climate, Congress enacted the Taft-Hartley Act over a presidential veto. It greatly weakened the National Labor Relations Act of 1935, as it recognized 1st Amendment right to free speech for corporate employers in the union certification process.

29. Balance of power shifted towards…

Presentation guide

Summarize key points & finish statement

People Power

- 1896 Court ruling preserved discriminatory practices and refused to recognize fundamental rights for black citizens and other people of color.
- 1907 Court ruling enhanced wealth inequality and weakened democracy by divesting people of local governing authority.
- People-driven amendments strengthened democracy by direct elections of U.S. Senators and voting rights for some women.
- Congress granted – then weakened – organizing rights of workers by recognizing 1st Amendment rights for corporate employers to participate in (interfere with) union organizing process.

Instructor facilitates class discussion to finish statement.

Balance of power shifted towards… the Monied Power. Mostly through the courts, corporations became an instrument to challenge laws, usurp fundamental human rights, and consolidate wealth and power for their owners. Democratic reforms were infringed by Jim Crow laws, voting rights for some (not all) women, and undermining of organizing rights for workers.

30. Prep for exploring Timeline

Instructions

- Post online Lesson 4 Vocab sheet.
- Assign reading Timeline Stories to 3 table groups.
  - » *1954–1970s:* All data cards
  - » *1976–2014:* Orange data cards except 2005 data cards; i.e., campaign finance regulations only
  - » *2001–2016:* Yellow and Blue data cards plus Orange 2005 data cards; i.e., civil rights and eminent domain
- Tomorrow we will work at tables to explore the rest of the democracy journey.

31. Ultimate Civics! COVER SLIDE

Instructions

- Hand out exit tickets for ACTIVITY, "Rights and Powers."
- Allow about 10 minutes for students to complete exercise.
- Collect as students exit.

Find exit ticket guide right before the vocabulary section.

Rights and Powers

Exit ticket guide

1. Describe the meaning of an "internal threat" to democracy and give two examples.

Internal threat: a weakness within a system capable of destroying the whole. In a democracy, internal threats are constantly present, because of inherent weaknesses in human nature; e.g., fear of other and love of power. Threat-driven policies result in discrimination and extreme wealth inequity that can destroy a democracy.

2. Has judicial review changed the intended powers and limits of the Supreme Court over time? Give an example of a body of law created by this process.

Yes. The power of judicial review extended the original authority of the Supreme Court under the Constitution and broke the balance of power among the 3 branches. Judicial review gave the Court power to change rule of law (and social consequences) through creative interpretation. Examples: Corporate personhood doctrine, economic theories

3. How did the concept of "person" change after passage of the 14th Amendment?

First, the concept expanded to include all people through birthright citizenship rights in 14A – all people except Indians who were recognized as citizens of separate Nations.

Second, the concept expanded to include artificial persons as entitled to fundamental rights. This removed the separation of power between natural and artificial persons – and led to rise of corporate rule over the people.

4. Did the Civil War Amendments achieve their intended purposes? Explain.

No. 13A abolished slavery, but the exception for crime led to increased arrests of African Americans and slaves of a different nature – as prisoners of the state.

14A defined citizenship and rights of citizenship, but subsequent Court rulings denied citizens their power to use their new rights against states and so preserved discriminatory practices like Black Codes and denying voting rights for women.

15A voting rights for certain citizens were not achieved, because of exceptions for crime in 13A and 14A and court rulings that infringed use of 14A rights against states.

5. How are different rights recognized for different persons? Infringed for natural persons?

Natural persons:

- Fundamental rights recognized by People's amendments, by court rulings, and by congressional acts;
- Civil rights recognized by court rulings and congressional acts

Artificial persons:

- Charter rights granted by states
- Fundamental rights usurped through court rulings or congressional acts

Civil liberties and civil rights are infringed by:

- internal wording (like the Three-Fifths Clause or exception for crime in 13A)
- court rulings like "equal under law,"
- Acts of Congress (Taft-Hartley Act)

6. What is your "take-away" from this lesson?

Vocabulary

Core Vocabulary

artificial person: an entity or thing created by law with a distinct identity, existence, duties, and rights

constitution: a collection of key concepts and established models by which the people agree to be governed; operating rules for the government with consent of the governed

corporation: a group of people with a license (charter) to do business as type of artificial entity; an artificial person

Democracy: rule by majority

internal threat: a weakness within a system capable of destroying the whole

Republic: rule by representative government

sovereign: ultimate or supreme power

Support Vocabulary

act: a bill or legislation passed by Congress and enacted into law

amendment: an official rule change made to a constitution, law, contract, or other legal document

charter rights: special privileges granted under a license to do business by an authority; the privileges may be transferred, sold, or removed by the authority

due process: fairness, equal opportunity and treatment

free enterprise: an economic system in which private business operates in competition and largely free of state controlv

judicial review: power of courts to review and overrule actions of the executive and legislative branches

lawsuit: a process by which a dispute between people or legal entities is decided in court

private sphere: a part of society in which a person enjoys some authority, free from government interruption

public sphere: a part of society in which people freely come together to identify and address societal problems

SCOTUS: Supreme Court of the United States

standing: ability of a person to bring a lawsuit before a court to obtain judicial remedy or relief

usurp: take someone's power or property by force