That “all men are created equal” was a truth so obvious, it needed no defense, according to the Declaration of Independence. Indeed, equality itself appeared to need no defense, as the Declaration next claimed that the function of government was not to guarantee natural equality, but to protect natural rights, and in particular, the right to liberty. Thus, the purpose of government was the prevention of tyranny, and not the promotion of equality.

That focus shifted following the Civil War. The Reconstruction Congress found the oppression of an entire race abhorrent and drafted the 13th, 14th, and 15th amendments to correct the situation. These amendments, which Southern states were required to ratify before readmission to the Union, were intended to end this unequal treatment by correcting those portions of the Constitution which could be used to support slavery or discrimination. And two Supreme Court Cases in particular, Prigg v. Pennsylvania (1842) and Barron v. Baltimore (1833) appear to have been especially targeted.

Prigg involved the Fugitive Slave Act and Article IV, Section 2 of the Constitution. Edward Prigg, who captured and returned a fugitive slave to her owner, was arrested and charged with kidnapping. The Court ruled that Article IV, Section 2, the “service or labour” clause, required states to assist in returning fugitive slaves to their owners. But several of the Justices went further, reading in the clause a positive affirmation of the property right of the slaveowner to the slave.

Of similar trouble to the Reconstruction Congress was Barron v. Baltimore, which involved not issues of equality, but property (as arguably did Prigg). In Barron, Mr. Barron lost his property and his livelihood because of the actions of the City of Baltimore. He claimed that this constituted a “taking” in violation of his rights guaranteed in the 5th Amendment. The Court agreed that Baltimore’s act amounted to a “taking” but argued that the guarantees contained in the Bill of Rights applied only to national action, not action by the states.

These two cases find their ultimate expression in Dred Scott (1856), the case that affirmed the property rights of slave owners, denied the claims to citizenship and equality of the Negro race, and voided the Missouri Compromise. Although it is grounded in some measure by a most curious understanding of race relations at the Founding, following on the heels of Prigg and Barron, and to some degree bound by stare decisis, the Court
defends slavery and denies that the civil liberties enshrined in the Bill of Rights extend to the citizens of the states. That is, following Prigg, slaves are property, not persons, and following Barron, the states are free to deny constitutionally-guaranteed civil rights and civil liberties. It is this which the Civil War Amendments in general and the 14th Amendment in particular, attempted to change. The result is the requirement that the states extend to all citizens of the United States, the “equal protection of the laws.”

But this is perhaps easier said than done. The Founders either took human equality for granted, or believed that government need not enforce equality. But with the adoption of the 14th Amendment which requires the equal protection of the laws, it was the task of government, especially the Court, to determine just what “equal protection of the laws” required. Unsurprisingly, the Court interpreted the Equal Protection Clause as a group of lawyers might; what was protected, they said, was legal and political equality, not social or economic equality.

In Plessy v. Ferguson (1896), the Court determined that separate accommodations for the races are constitutionally permissible. The Equal Protection Clause does not require the intermingling of the races, merely their equal treatment under the law. Indeed, the Court suggested that legislation requiring integration was likely to fail, and that racism could only be eradicated by the slow and informal process of voluntary social interaction. The Court found the claim that segregation imposes a stigma on the excluded race without merit, as such a stigma is the result of that race’s assumptions regarding the purpose of the segregation.

Although the Court defended the notion of “separate but equal” regarding social or economic conditions, it protected the legal and political equality of the races. In 1880, the Court defended the rights of blacks to serve on juries (Strauder v. West Virginia, 1880). Six years later, the Court ruled that the Equal Protection Clause applied with equal force to Asians (Yick Wo v. Hopkins, 1886). And in 1927, the Court defended the rights of minorities to participate in political primaries (Nixon v. Herndon, 1927).

But it was not until 1954 that the Equal Protection Clause was extended beyond the legal and political realms to social and economic activity. In Brown v. Board of Education, the Court found persuasive the claim raised in Plessy that segregation necessarily stigmatized the excluded race, and that therefore, separate conditions could never be equal. A unanimous Court ordered the end of de jure segregation in education, finding, “We conclude that in the field of public education the doctrine of ‘separate but equal’ has
no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.”

In its interpretation of the Equal Protection Clause, the Court developed a doctrine of “suspect classifications” which, if involved in the policy at issue, would trigger “strict scrutiny.” In *University of California Regents v. Bakke*, Justice Powell, writing for a divided Court, employed the doctrine of suspect classifications to find a policy setting aside seats for minority students violated the Equal Protection Clause. He noted that suspect classifications had not been reserved only for those in minority positions. “Nor has this Court held that discreteness and insularity constitute necessary preconditions to a holding that a particular classification is invidious. ... These characteristics may be relevant in deciding whether or not to add new types of classifications to the list of “suspect” categories or whether a particular classification survives close examination. Racial and ethnic classifications, however, are subject to stringent examination without regard to these additional characteristics.” Thus, the Equal Protection Clause protects against reverse discrimination as well as discrimination against minorities. Nevertheless, Justice Powell also concluded that although racial quotas could not be established, race could be considered as a factor in admissions since a diverse student body was a compelling interest.

The Court’s reasoning in *Bakke* was recently confirmed in *Gratz v. Bollinger* and *Grutter v. Bollinger*, two cases testing admissions policies at the University of Michigan and the University of Michigan Law School respectively. In both cases, the admission of traditionally under-represented minorities constituted a compelling state interest, but the law school considered the applicants as individuals, thus meeting the requirement that the procedure be “narrowly tailored.” On the other hand, the University of Michigan treated all minorities equally, automatically awarding them twenty percent of the score needed for admission, and was thus not sufficiently narrowly-tailored to survive strict scrutiny.

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Case Background

After the Civil War, the Fourteenth Amendment was passed to grant citizenship to former slaves and protect them from civil rights violations in their home states. Public schools were relatively rare throughout the United States, but were often segregated by race where they existed. The same Congress that passed the Fourteenth Amendment created racially segregated schools for the District of Columbia.

Beginning in 1877, many states passed “Jim Crow” laws requiring segregation in public places. Jim Crow laws were adopted in every southern state as well as some in the North. Louisiana’s policy requiring that blacks sit in separate railcars from whites was challenged and upheld in the Supreme Court case *Plessy v. Ferguson* (1896). The Court held that there was nothing inherently unequal—nor anything unconstitutional—about separate accommodations for races.

In the twentieth century, the National Association for the Advancement of Colored People (NAACP) began a litigation campaign designed to bring an end to state-mandated segregation, calling attention to the shabby accommodations provided for blacks, as well as arguing the damaging psychological effects that segregation had on black school children. One case was brought on behalf of Linda Brown, a third-grader from Topeka, Kansas. Several additional school segregation cases were combined into one, known as *Brown v. Board of Education*. This case reached the Supreme Court in 1953.
**DOCUMENT A**

**Virginia Criminal Code, 1847**

Any white person who shall assemble with slaves, [or] free Negros ... for the purpose of instructing them to read or write ... shall be punished by confinement in the jail ... and by fine....

- What does this law reveal about African Americans’ access to education in mid-nineteenth century Virginia?

**DOCUMENT B**

**Section of the Fourteenth Amendment, 1868**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

- What was the historical context of the passage of this amendment?
- What level of government does this amendment limit? What prohibitions did it create?

**DOCUMENT C**

**Majority Opinion, Plessy v. Ferguson, 1896**

The object of the [Fourteenth] amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality, or a co-mingling of the two races upon terms unsatisfactory to either....

Laws permitting, and even requiring, the separation [of races] in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power....

- Restate this opinion in your own words.

[In the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law....The destinies of the two races, in this country, are indissolubly linked together, and the interests of both require that the common government of all shall not permit the seeds of race hate to be planted under the sanction of law.]

- Compare and contrast the ideas in this comment with those in Document B.


- Describe the condition of this schoolhouse using two or three adjectives.
DOCUMENT F

“African American Schoolgirls in Classroom, Learning to Sew,” 1899

- Compare and contrast this classroom with the one in Document E.

DOCUMENT G

“Crowded Segregated Classroom,” ca. 1940s

- Describe the condition of this schoolhouse using two or three adjectives.
How does this map reflect the legacy of *Plessy v. Ferguson*?

In approaching this problem, we cannot turn the clock back to 1868 when the [Fourteenth] Amendment was adopted, or even to 1896 when *Plessy v. Ferguson* was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.

Today, education is perhaps the most important function of state and local governments. ...In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms....

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

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

- How did the *Brown* decision overturn *Plessy v. Ferguson* in Document B?
- On what grounds did the Court base its decision?
**Majority Opinion in Brown II, 1955**

*Note: After the 1954 decision in Brown v. Board of Education declared state-mandated segregation in public schools unconstitutional, the case was reargued to determine how to correct the violations.*

The cases are remanded to the District Courts to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases.

- **What did the Supreme Court order District Courts to do?**
- **How does this document reveal the Court’s dependence on other branches and levels of government for enforcement of its decisions?**
DOCUMENT K

“Supreme Court Decision,” 1954


DIRECTIONS

Answer the Key Question in a well-organized essay that incorporates your interpretations of Documents A-J, as well as your own knowledge of history.

KEY QUESTION

Assess the role played by the Court as the protector of individual rights against the tyranny of the majority in Brown v. Board of Education.
Identify the man blocking the door, the man confronting him, and describe the historical context.

How is this 1963 event relevant to the issue and outcome in Brown v. Board of Education?