Is the Constitution Color-Blind?

“No state shall…deny to any person within its jurisdiction the equal protection of the laws.”

—Equal Protection clause of the 14th Amendment

Issues of race and race relations have always been a constitutional dilemma. The Constitution of 1787 protected slavery—our nation’s original sin. In the centuries since—through Civil War, Jim Crow segregation, the Civil Rights era and beyond—constitutional debates about race and equality have shaped the nation, and changed our Constitution.

Writing in 1896, Justice John Marshall Harlan observed: “Our Constitution is color-blind, and neither knows nor tolerates classes among citizens.” Today, debates over affirmative action and equal opportunity still center on whether the Constitution tolerates distinctions on the basis of color. Believers in a color-blind Constitution say it does not. They say affirmative action is wrong because it treats people unequally. Believers in a color-conscious Constitution support affirmative action. They say that until racism disappears from our society, government may take race into account to guarantee equal access to education and employment.

Now it’s your turn to answer the question:

Is the U.S. Constitution color-blind?

YES

• The Constitution demands that government treat people on the basis of individual merit, not as members of racial groups.

• The 14th Amendment should be interpreted to prohibit any and all discrimination, against racial minorities and whites alike.

• It is not fair to penalize people who themselves have committed no acts of discrimination for the past discrimination of others.

NO

• The Constitution demands that all people have a fair chance; sometimes that means government must make up for discrimination.

• The 14th Amendment should be interpreted to give special protection to African-Americans and other racial minorities that have experienced discrimination.

• In a color-conscious society, taking account of race is necessary to promote diversity.

www.constitutioncenter.org/exchange
When challenging an idea, focus on the idea not the person you are challenging. To promote diversity and non-discrimination, students should use values listed in the Constitution connections. For the African-American community, that path means embracing the burdens of our past without becoming victims of our past. It means continuing to insist on a full measure of justice in every aspect of American life. But it also means understanding that African Americans cannot advance their genuine interests without the participation and support of the larger community. This is why Abraham Lincoln’s words 145 years ago still ring true today: ‘...government of the people, by the people, for the people...’

The Exchange is a dynamic way for high school students to discover how they can be part of the civic process. It encourages them to consider how shifting demographics, in the context of higher education, might affect the United States. This lesson was created as part of the National Constitution Center’s educational project, "A More Perfect Union: Exploring the Fourteenth Amendment and Affirmative Action," designed to engage teachers, students, and their communities in a conversation about the Constitution connections. Students should infer values connected to the issue. Students should list moral principles or standards which they believe influence this choice. Students should list moral principles or standards which influence both choices.

**INVESTIGATION**

4. Divide your students into groups of four and provide each group with the following four articles. Assign each group to discuss one of the questions below. Then ask them to share their conclusions.

**LESSON**

**Constitution Connections:**

**A More Perfect Union: Exploring the Fourteenth Amendment and Affirmative Action**

**Grades:** 12

**Classroom Time:** 1 hour

**Constitution Connections:**

National Constitution Center

United States Constitution

**BE HEARD**

For more information and resources, visit www.constitutioncenter.org or www.sunnylandsclassroom.org.

Join the conversation online at www.constitutioncenter.org/exchange.