

Teaching Law Alongside the Educating for American Democracy Roadmap

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Note: In August, during the 2021 Hybrid Annual Meeting of the American Bar Association, in Chicago, the ABA House of Delegates adopted Policy Resolution 606, which “urges state, local, territorial, and tribal officials, and private sector entities to adopt the Educating for American Democracy (EAD) Roadmap as a model to expand and improve civic education in their jurisdictions.”

John Adams once described his efforts to write a state constitution for Massachusetts with the end goal of creating “...a government of laws, and not of men.” Adams epitomizes a key American civic principle, the power and importance of law within our nation. And by “law,” I mean the words themselves, the processes used in their creation, their historical moment, as well as debates about their interpretation. Law-related education provides students with examples of real-world issues relating to the law and instances of our national commitment to justice and the rule of law with its corresponding impact on real people. Teaching and learning through a legal lens encourages active participation within the classroom using case studies, role playing, and opportunities for students to critically think and deliberate about the law, its application, and place within American society. Applying a legal lens in teaching civic education is foundational to a rich and robust understanding of American history, civic ideals, and how those beliefs inform our civic structures and practices as well as present-day debates.

The recently launched **Educating**

for American Democracy (EAD) Roadmap reflects a keen awareness of how institutions, including our legal system, have shaped and defined multiple narratives of the American story. It highlights how various individuals and groups have used the law to gain and limit freedom. As a classroom Civics teacher for over two decades, I have seen the power of law-related education firsthand. Almost every EAD theme has a legal connection to the law, providing an effective means for student engagement. The purpose of this article is to demonstrate how each theme might be incorporated within classrooms using a legal perspective.

Theme #1: Civic Participation



...pertains to civics and a focus on the law-making process as well as how Americans have chosen to participate within civic and legal systems.

Offer students a case study such as the Federal Judicial Center’s trial resources for “*US v. Susan B. Anthony: The Fight*

for Women’s Suffrage” (see sidebar on page 370). Students can use the materials to determine how Susan B. Anthony civically participated within society (at much cost to self) using the law to advance her cause and the eventual ratification of the 19th amendment.



In comparison, learners can evaluate the Voting Rights Act 1965 from ourdocuments.gov (VRA) in terms of its guarantees, the circumstances surrounding its historical moment, as well as the law-making process. Students might research how civic participation through protest, civil disobedience, and litigation by Black Americans within the Civil Rights Movement led to the passage of the VRA.

Theme #2: Our Changing Landscapes



...focuses on the concept of place and how the American civic experience is innately influenced by the land, its use,

and its occupants. Much of American history in the nineteenth century is focused on territorial expansion justified by “manifest destiny” and is reflected within treaties made with Native Americans. Educators within both Civics and U.S. History classes might provide students the opportunity to evaluate the Supremacy Clause in Article 6 of the Constitution and its connection to historic and present-day debates surrounding treaty interpretation.

Encourage students to read a treaty of the tribe nearest to them and determine what each party (the federal government and specific tribe) is expected to do as conditions of treaty language and how those obligations are interpreted today. Teachers could use Native Knowledge 360’s “Northern Plains Treaties: Is a Treaty Intended to be Forever?” materials to support student analysis of a specific treaty case study. Students can evaluate and analyze primary sources from the Library of Congress primary source set “Westward Expansion: Encounters at Cultural Crossroads as Evidence of Varying Responses to American Territorial Expansion.” Washington State tribal treaty history affords many firsthand opportunities for students to evaluate treaty language, historical events relating to it, and contemporary debates about resource management. “The Fish-In Protests at Frank’s Landing,” from the Seattle Civil Rights & Labor History Project at the University of Washington, offers a case study for students rooted in treaty history, interpretation, civic participation, and federalism. Using Native Knowledge 360’s “The Pacific Northwest Fish Wars: What Kinds of Actions Can Lead to Justice?” lesson, students learn how Pacific Northwest tribal leaders organized and fought for their treaty rights to be honored by Washington State (resources listed in sidebar on p. 370). Additionally, consider using contemporary regional case studies, often “ripped from the (local) headlines,” to highlight current examples of how tribal treaty

language influences present-day debates.

Theme 3: We the People



...builds upon how the land, its use, and its people have influenced our national identity. It challenges students to evaluate how America has defined who is an American and how that definition and expectations of civic participation have changed over time. Students using a legal lens might evaluate the Declaration of Independence and Constitution for their respective definitions of who is “we the people” as defined within our founding documents. Students could also explore the rich assortment of primary sources from Citizen U Primary Source Nexus “Being American Primary Source Sets” to determine how various people, visually and in text, have defined what is an

American, and how those definitions were influenced by their historical moment and consequently influenced the law. Learners could conduct a thematic case study of American citizenship law beginning with the 1790 Naturalization Act, then analyze the thinking in the *Dred Scott v. Sandford* (1857) case for its treatment of citizenship.

Next, students can learn about the historical circumstances influencing the legal interpretation of citizenship in *United States v. Wong Kim Ark* (1898), which affirmed that the young Chinese American did in fact hold American citizenship due to the 14th amendment. In contrast, the experiences of Takao Ozawa in *Ozawa v. United States* (1922), and Bhagat Singh Thind in *Thind v. United States* (1923), offer excellent narratives and case facts for students analyzing how the law was used to construct race and consequently define and deny citizenship to both men. These



Twenty-five Resources for Teaching Legal Topics within the EAD Roadmap

American Bar Association, Policy Resolution 606 (August 9–10, 2021), www.americanbar.org/content/dam/aba/directories/policy/annual-2021/606-annual-2021.pdf

Educating for American Democracy Initiative and Roadmap, www.educatingforamericandemocracy.org/

Educating for American Democracy Roadmap and Teaching Legal Topics Series, American Bar Association, www.youtube.com/watch?v=EnliqFE7gcQ

Theme 1

Trial of Susan B. Anthony, Federal Judicial Center, www.fjc.gov/history/cases/famous-federal-trials/us-v-susan-b-anthony-fight-womens-suffrage

Voting Rights Act of 1965, National Archives & Records Administration, Our Documents, www.ourdocuments.gov/doc.php?flash=false&doc=100

Theme 2

“Northern Plains Treaties: Is a Treaty Intended to be Forever?” Native Knowledge 360, National Museum of the American Indian, <https://americanindian.si.edu/nk360/resources/Northern-Plains-Treaties-Is-a-Treaty-Intended-to-Be-Forever>

“Westward Expansion: Encounters at a Cultural Crossroads,” Library of Congress, www.loc.gov/classroom-materials/westward-expansion-encounters-at-a-cultural-crossroads/

“The Fish-In Protests at Frank’s Landing,” Seattle Civil Rights & Labor History Project, University of Washington, <https://depts.washington.edu/civilr/fish-ins.htm>

“Pacific Northwest Fish Wars: What Kinds of Actions Can Lead to Justice?” Native Knowledge 360, National Museum of the American Indian, <https://americanindian.si.edu/nk360/resources/Pacific-Northwest-Fish-Wars-What-Kinds-of-Actions-Can-Lead-to-Justice>

Theme 3

“Being American Primary Source Sets,” Citizen U Primary Source Nexus, <https://primarysourcenexus.org/2020/08/primary-source-learning-being-american-primary-source-sets/>

Naturalization Act (1790), Library of Congress, A Century of Law-Making for a New Nation: U.S. Congressional Documents and Debates, 1774–1875, <https://memory.loc.gov/ll/llsl/001/0200/02270103.tif>

Dred Scott v. Sandford (1857), Landmark Cases of the U.S. Supreme Court, www.landmarkcases.org/cases/dred-scott-v-sandford

United States v. Wong Kim Ark (1898), Densho Encyclopedia, https://encyclopedia.densho.org/United_States_v._Wong_Kim_Ark/

Ozawa v. United States (1922), Immigration History, University of Texas at Austin, <https://immigrationhistory.org/item/takao-ozawa-v-united-states-1922/>

Thind v. United States (1923), Immigration History, University of Texas at Austin, <https://immigrationhistory.org/item/thind-v-united-states%E2%80%8B/>

Theme 4

Drafting the U.S. Constitution, National Constitution Center, <https://draftingtable.constitutioncenter.org/item/drafting-the-united-states-constitution>

Theme 5

Interactive Constitution, National Constitution Center, <https://constitutioncenter.org/interactive-constitution>

Rosa Parks Interview, November 14, 1985, American Archive of Public Broadcasting, <https://americanarchive.org/catalog/cpb-aacip-151-610vq2sx12>

Indians at Alcatraz Island: First Anniversary, November 20, 1970, American Archive of Public Broadcasting, <https://americanarchive.org/catalog/cpb-aacip-28-p843r0q996>

Theme 6

Selective Service Act (1917), Library of Congress, <https://guides.loc.gov/chronicling-america-wwi-draft/selected-articles>

Alien and Sedition Act (1918), First Amendment Encyclopedia, Middle Tennessee State University, www.mtsu.edu/first-amendment/article/1239/sedition-act-of-1918

Executive Order 9066, National Archives and Records Administration, Our Documents, www.ourdocuments.gov/doc.php?flash=false&doc=74

USA Patriot Act (2001), 107th Congress of the United States, www.congress.gov/107/plaws/publ56/PLAW-107publ56.pdf

Theme 7

Civic Online Reasoning, Stanford University, <https://cor.stanford.edu/>

Vaccine Mandates, National Constitution Center, <https://constitutioncenter.org/blog/current-constitutional-issues-related-to-vaccine-mandates>

cases offer students the ability to see how the law both extended and restricted citizenship in response to historical forces. Additionally, asking students to evaluate how we as a nation have defined “who is an American,” also places front and center the question of what civic ideals we value, when we have met those ideals, and when we have collectively fallen short.

Theme 4: A New Government and Constitution



...is the bread and butter of any Civics course with its focus on how America as a nation under its constitutional structure came to be.

Teachers within Civics and U.S. History courses should introduce students to the historic events that brought about the writing of the Constitution and the fears surrounding the creation of a too-powerful government. One effective activity is a mock Constitutional Convention wherein students represent individual founders and their historical perspectives. Asking students to debate and discuss with one another the potential powers of the president drives home the importance of word choice and omission relating to legal interpretation. Have students use the National Constitution Center’s Drafting the Constitution resources (see sidebar on p. 370 for the url) to follow the various wordings and drafts of specific constitutional proposals and better understand a provision’s evolution. By participating in the activity of creating their own version of the Constitution, students experience firsthand the imperative of compromise in creating a governing structure. Building upon this, students within both civics and history classes can evaluate how constitutional language and guarantees have both formally and informally changed over time.

Additionally, this theme encourages exposing students to the facts surrounding the creation of the Bill of Rights and the manner in which the incorporation

doctrine has enabled greater protection from government overreach. Students can participate in case analysis and moot court activities to understand firsthand how Bill of Rights guarantees have been interpreted throughout our history. Specific case narratives can demonstrate legal interpretation in relationship to a historical moment. Possible cases to use include *Minersville v. Gobitis* (1940) used alongside *West Virginia v. Barnette* (1943). Both of these cases center on whether or not a school district can require students to participate in recitation of the Pledge of Allegiance. The legal questions within both cases focus on First Amendment freedoms of religion and speech. Yet each case can also speak to much more. They represent the tension in American society between the right of the individual to practice freedom versus the common good, and they tell the stories of young people defending their freedom through interaction with the law.

Theme 5: Institutional and Social Transformation - A Series of Refoundings?



...speaks to the ongoing American commitment to define and redefine “we the people,” as well as to live up to the ideals in our

Preamble. This theme provides students multiple examples of how individuals and groups have used the law to gain equality and safeguard those rights. Our constitutional structure provides for change through an amendment process. Students can learn about the process by studying the wording of the amendments and their historic moments, as well as how the 13th, 14th, 15th, and 19th Amendments have been interpreted and defined. The 14th Amendment’s equal protection and due process clauses, as well as its deep history, offers extensive content for learners to analyze. Debates about its meaning are at the core of

some of the most controversial issues in American society today including educational access, abortion, LGBTQ rights, and privacy. Furthermore, consider offering students firsthand accounts of individuals whose actions challenged the law—such as the American Archive of Public Broadcasting interviews with Rosa Parks for *Eyes on the Prize* or its Pacifica Radio recording about the 1969 Native American occupation of Alcatraz Island (see the sidebar on page 370).



Theme 6: A People in the World



...lends itself well to the study of American engagement with the world through trade and conflict beginning in the

late nineteenth century to the present. Students evaluating American history with a global focus might analyze justifications for American involvement overseas in declared wars, examining the debate surrounding congressional authorization for war as well as corresponding approval of treaties ending hostilities. A domestic angle could invite students to determine how the law at home was used to support foreign policy. Students could explore such topics as the Selective Service Act beginning in 1917, the 1918 Alien and Sedition Act, Executive Order 9066 detaining Japanese Americans, and the Patriot Act in response to 9/11. Additionally, after studying several conflicts as case studies, students could participate in a Socratic Seminar discussing ways war has positively and negatively impacted America at home and abroad.

Theme 7: Contemporary Debates and Possibilities



...offers educators a lens to encourage students as critical thinkers analyzing multiple sources in their study of both history, civics, and

law. This theme invites informed discussion and disagreement through close study of the past as related to present-day controversies, with an emphasis on the development of skills essential to being informed civic participants. Educators using this theme will offer students support in developing media literacy skills and a critical eye in evaluating sources and claims. One example of engaging students critically is to identify a contemporary debate with historical and legal roots. For example, with regard to vaccine mandates, students can investigate any similar moments in history and consider how our legal system

historically interpreted the issues pertaining to such controversies. The National Constitution Center offers an overview (see the sidebar on page 370). Grounding the discussion within history and legal precedent offers content for students to evaluate and decreases the likelihood of topics being limited solely to their current moment.

Law, its creation, and its interpretation lies at the heart of American civic life. Our laws, constitutional structure, and legal systems have both limited and expanded freedom. With its centrality to our civic practices, teaching with a legal lens belongs at the heart of engaging civic education. Law-related education and its focus on active learning including informed discussions, role plays, and deliberation, as well as its grounding in inquiry and critical thinking, offers social studies educators the ability to provide students meaningful learning opportunities. With the framework set forth in the Educating for American

Democracy Roadmap, educators have a powerful toolbox to equip students for meaningful and informed participation in American society. 🌐



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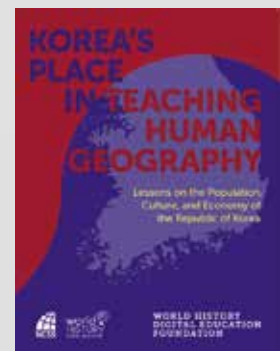
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World History Digital Education Foundation

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