Immigrants and the US Constitution

\*\*\*Much of this lesson was adapted from a lesson from the Constitutional Rights Foundation

\*\*\*I am going to do this lesson plan after the Introduction to US Immigration Policy lesson plan.

***Direct Instruction/individual reading***: The following parts of the US Constitution are often used in discussion about immigration.

* U.S. Constitution (1789) gave Congress the power to "establish an uniform Rule of Naturalization." - Article 1, Section 8, Clause 4. Discuss with students what “naturalization” means - an individual that was born in another country and has become a US citizen. Ask students what are ways that an individual can become a US citizen?

Have students read the essay below on Naturalization written by Joseph Bezette. Students should highlight key arguments that Bezette makes.

Provide context that our original Framers gave a lot of power to the states but clearly put “naturalization” (or immigration) in the authority of the federal government. What were some advantages of moving the power of naturalization from the states to the national government? Also mention to students that this clause spurred the Naturalization Act of 1790 (and then subsequent versions) that we will be discussing later.

* Citizenship Clause - 14th Amendment to the U.S. Constitution (1868) guaranteed that "All persons born or naturalized in the United States . . . are citizens of the United States . . . ."

Explain that the Citizenship Clause requires that one be born or naturalized in the United States and subject to the jurisdiction thereof to be a citizen. Have the students brainstorm by writing the following phrase on the board: “What It Means to Be a United States Citizen”. Give students five minutes to write down their ideas. Tell students that their responses can relate to freedoms, responsibilities, civic virtues, or anything else pertaining to the topic that comes to mind. Then ask them to share their answers and write their responses on the board.

Have students read the essay below on Citizenship written by Edward Erler. Students should highlight key arguments that Erler makes.

Begin class discussion after students have read. Erler points out that America’s approach to citizenship was different from European understandings of citizenship. What are the core differences, according to the two clauses, between the Founders’ understanding of citizenship and that of their European counterparts? (European understandings of citizenship were based on the feudal system: People were born under sovereigns and had an absolute fealty to the reigning sovereign. However, American citizenship was based on the idea of consent contained within the Declaration of Independence. The idea of consent presents a new grounding for citizenship: It does not consist of sovereigns and subjects, but of equal citizens who rule and are ruled in turn. Consent is twofold: The individual must consent to join the community as a citizen, and the community must consent to the individual’s joining it. People can choose to renounce and transfer their citizenship, but the trend of Supreme Court decisions indicates that involuntary expatriation is unlawful.)

For further class discussion, ask *Why were the Founders leery of the idea of dual citizenship*? (America understood political communities to be free associations of individuals. A free citizen of one country had a right to transfer his citizenship to another country. The Founders required naturalized citizens to renounce their allegiance to their prior nation. Citizenship required allegiance to one nation.)

You can also ask the class *Why did the Founders see consent in citizenship as twofold*? (The individual must consent to join the community as a citizen, and the community must consent to the individual’s joining. Individuals have a natural right to emigrate from their homeland, but that does not translate into a right to join the United States without the consent of the American people as expressed through the laws of the United States.)

* Equal Protection Clause - 14th Amendment to the US Constitution (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*.”

The Supreme Court has recognized the right to due process for immigrants under the Equal Process Clause as far back as 1886 in the case *Yick Wo v. Hopkins*. Show the students the following video on this case: <http://www.annenbergclassroom.org/page/yick-wo-equal-protection-clause> (20 minutes)

***Direct Instruction****:* Introduce students to the Naturalization Act of 1790 which comes out of Article 1 of the US Constitution. The Act contains several key criterion, such as two years of lawful residence in the United States, a good moral character, the taking of a formal oath to support the Constitution and to renounce any foreign allegiance, and the renunciation of any hereditary titles. You also had to be a free white person of moral character.

Have students read this short article from *Politico* on this first immigration law. <https://www.politico.com/story/2012/03/the-united-states-enacts-first-immigration-law-074438>

***Article Reading***: Have students read the following excerpts on ProCon.org (this is a general reference page for the website, not one that is a flushed-out debate). Have students highlight key constitutional provisions and rights for \*undocumented\* immigrants. <https://immigration.procon.org/view.answers.php?questionID=000811>

“Naturalization” by Joseph Bessette

*Naturalization — Article I, Section 8, Clause 4 Essay by Joseph Bessette (pp. 109–112)*

The Naturalization Clause grants Congress the power to establish a uniform rule of naturalization, the process by which immigrants may become American citizens. Under the Articles of Confederation, states established rules for naturalization, and this resulted in a variety of policies. At the Constitutional Convention, granting the new national legislature the authority to create rules for naturalization was widely accepted.

America had a unique understanding of citizenship. America understood political communities to be free associations of individuals. The European understanding of citizenship did not see citizenship as something that could be forfeited or transferred. But, American naturalization law assumed that a free citizen of one country had a right to transfer his citizenship to another country. Because citizenship required allegiance to one nation, the Founders did not recognize dual citizenship.

Congress passed its first uniform rule in March 1790. Though some states continued to naturalize foreigners, Congress clarified in 1795 that it had exclusive power to establish naturalization rules and standards. The Naturalization Act of 1795 contained many of the criteria that people still must meet to become citizens: being a lawful resident for five years, good moral character and attachment to America’s principles, taking an oath to the Constitution, renouncing any hereditary titles. The acquisition of the Louisiana Territory and Florida raised the question of collective naturalization, which the Supreme Court upheld in 1828.

America’s unique view of citizenship led to some conflict with Great Britain and France about voluntary expatriation. The American understanding of citizenship presumed that one could renounce prior citizenship, but the European understanding held that men born in a country could never end their allegiance to that nation. As late as the 1860s, Great Britain would not allow naturalization of its former subjects. America responded with the Expatriation Act of 1868.

Federal law and the U.S. Department of State have established the process by which Americans may renounce their citizenship. Until 1958, one’s citizenship might be stripped if, for instance, an individual declared allegiance to a foreign state, voted in a foreign election, or deserted during wartime. Since 1958, however, several Supreme Court decisions have limited expatriation so that it seems that no involuntary expatriation is lawful, even voting in a foreign election and deserting during wartime. Another departure from the Founders’ understanding of citizenship is the rise in dual citizenship.

“Citizenship” by Edward Erler

Citizenship — Amendment XIV, Section 1 Essay by Edward Erler (pp. 384–386)

Section 1 of the Fourteenth Amendment outlines the conditions for U.S. and state citizenship. In the years before the amendment was approved, citizens of a state were automatically considered citizens of the United States. In Dred Scott v. Sanford (1857), the Supreme Court ruled that no black person could be a citizen. The Fourteenth Amendment settled the question of citizenship for newly freed slaves: All persons born or naturalized in the United States and “subject to the jurisdiction” thereof are United States citizens. The Fourteenth Amendment makes United States citizenship primary and state citizenship secondary.

Prior to the adoption of the Fourteenth Amendment, Congress passed the Civil Rights Act of 1866 to clarify the status of citizenship for newly freed slaves, but the constitutional authority for the Civil Rights Act was questionable (it relied on the Thirteenth Amendment), and a constitutional amendment would be more difficult to overturn than a piece of legislation.

The Citizenship Clause of the Fourteenth Amendment has two criteria for Citizenship: One must be born or naturalized in the United States and subject to the jurisdiction of the United States. “Subject to the jurisdiction” means more than being subject to the laws of the country; it requires an exclusive allegiance to it. Diplomats, foreign tourists, Indians, and illegal immigrants would not be subject to the complete jurisdiction of the United States, because these individuals would still owe allegiance to another sovereign.

The American understanding of citizenship departs from the British common-law understanding of citizenship. Under common law, one was born a citizen and could never renounce or forfeit that citizenship. According to the Declaration of Independence, individuals become citizens by consent, which includes the right to forfeit one’s citizenship.

The consent requirement is twofold: The individual must consent to join the community as a citizen, and the community must consent to the individual’s joining. The Supreme Court case of Elk v. Wilkins (1884) reveals this twofold understanding of consent. In that case, an Indian who renounced his tribal allegiance was not automatically a citizen of the United States. The Court explained that neither Indian tribes, nor a member of a tribe, nor any other foreigner can become citizens of their own will. Beginning in 1870, Congress extended offers to members of Indian tribes to become United States citizens if they chose to do so.

The 1898 case of United States v. Wong Kim Ark has confused the understanding of citizenship under the Fourteenth Amendment. The Supreme Court declared that the amendment adopted a common-law understanding of citizenship, suggesting that citizenship was conferred at birth. The Court has not revisited this decision or explicitly held that the Fourteenth Amendment requires birthright citizenship.