

BRIA

Bill of Rights In Action

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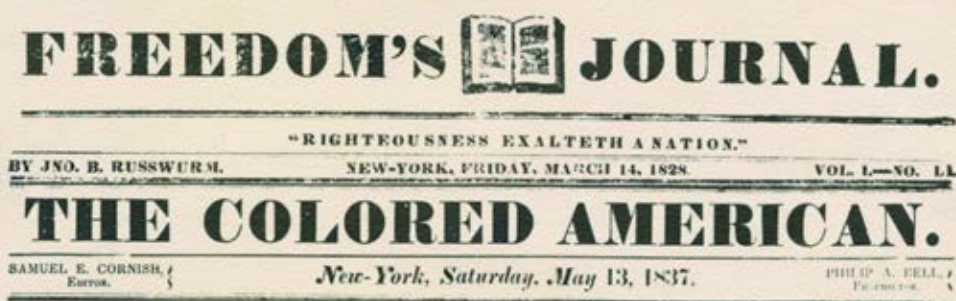
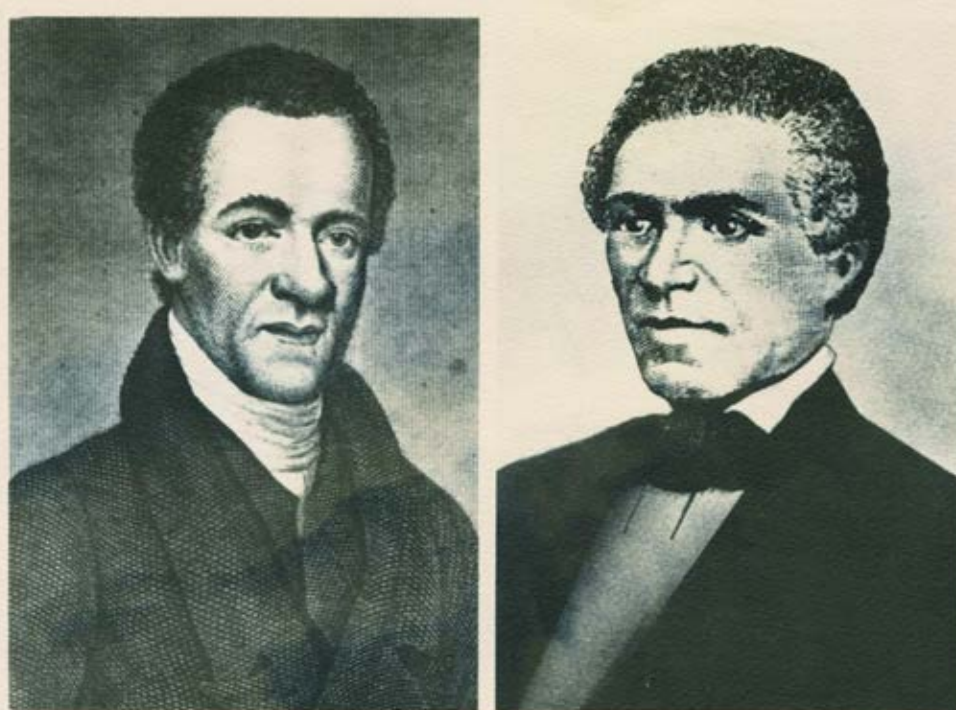


Emancipation Day: Past and Present

The holidays a country celebrates reflect a lot about its values, ideals, demographics, and of course, its history. In Australia, for example, the National Day of Healing, also known as Apology Day, is intended to acknowledge the harm and mistreatment suffered by indigenous Aboriginal people. In the United States, the Fourth of July commemorates the ratification of the Declaration of Independence; Presidents Day celebrates the birthdays of George Washington and Abraham Lincoln; and Memorial Day honors those who have

perished while serving in the military.

Similarly, the way in which we celebrate holidays demonstrates society's understanding of their significance and the emotions associated with them. A holiday like Dr. Martin Luther King Jr. Day, for example, is often thought of as a "day of service" to commemorate Dr. King's dedication to fighting for the rights of Black Americans. Those who volunteer on this day might see themselves as honoring his legacy by volunteering to help others.



Combination image of *Freedom's Journal* co-editors Samuel E. Cornish and John B. Russwurm. The *Freedom's Journal* masthead of March 14, 1828, and the masthead of *The Colored American*, which was edited later by Cornish, from May 13, 1837.

The Juneteenth Holiday

In June 2021, President Joe Biden signed a bill to make Juneteenth, also known as Emancipation Day, a federal holiday. This new civic holiday is meant as a day to mark the end of slavery in the United States. Though several states already officially recognized Juneteenth, this federal designation elevated and confirmed its significance on a national scale.

Historically, Juneteenth commemorated the day that enslaved people in Texas finally learned of their freedom on June 19, 1865. On that day, Union troops arrived in Galveston, Texas, after traveling around the country to Confederate states, notifying enslaved peoples of their freedom. This was two years after the ratification of the Emancipation Proclamation by President Lincoln in 1863. No one knows how long it might have taken for these individuals in Galveston to find out about the abolition of slavery had the troops not reached them.

It is crucial to remember that the legal status of slavery was determined by states before the enactment of the

13th Amendment, which ended slavery in the entire United States (allowing only for “involuntary servitude” as a just punishment for a crime). It was ratified on December 6, 1865. Before that date, enslaved people gained freedom at different moments in time, often gradually, and with different stipulations and clauses to “phase” slavery out. For example, Pennsylvania had passed a law in 1780 that gradually ended slavery in the state, and Massachusetts passed a similar law in 1783.

Before Juneteenth

Before Juneteenth was made a national holiday in 2021, Black communities throughout the country commemorated the end of slavery on different dates. They did so with parades, church services, and musical performances. But how was emancipation celebrated by Black communities historically, *before* the American Civil War? We can look closely at the example of the State of New York.

New York passed a gradual emancipation law in 1799, but the law did not apply to all enslaved people in

the state. With another law in 1817, New York set the date for slavery to end completely in the state. That date was July 4, 1827.

In early 1827, *Freedom's Journal*, the United States' first anti-slavery newspaper created by Black Americans for Black Americans, was founded in New York City. John B. Russwurm and Samuel E. Cornish were its editors. The *Journal* chronicled discussions and debates within the Black community about how the abolition of slavery in New York state should be celebrated and commemorated. By looking at some of the letters written to the *Journal's* editors, as well as the *Journal's* own articles, we can get a glimpse of the varying opinions and concerns that existed at the time regarding how to commemorate the end of slavery.

One significant point of contention that was discussed in *Freedom's Journal* was whether or not the commemoration of the end of slavery should take place on July 4 or July 5. As noted, July 4, 1827, marked the date that the gradual emancipation law would come into effect. Because of this, some people believed that July 4



was a better day to celebrate, noting also that it coincided with Independence Day. Others, however, argued that abolition merited its own standalone day. They did not want to associate a celebration of the end of slavery in their state with a day to celebrate a nation where slavery was still widespread.

Another aspect of this debate centered on *how* emancipation should be celebrated. Some felt that a public procession might invite harassment or violence from white racists. In its place, they preferred a more “respectable” event, such as an oration.

In the end, there ended up being two celebrations: one on each day. *Freedom’s Journal* published an announcement stating that it was their “duty to state” that there would be two celebrations. The celebration on July 4 would not have a procession, but the celebration on July 5 would feature a procession, oration, and public dinner.

Coverage of the Celebrations

Similar to the debate about when the commemoration should take place, *Freedom’s Journal’s* coverage after the celebrations also reflected strong opinions. One *Freedom’s Journal* reader who wrote a letter to the board was critical of the newspaper’s coverage of the July 4th event. The letter was published on July 13, 1827. This reader, identified as “Auditor,” highlighted different aspects of the celebration that they felt the newspaper neglected to cover. They wrote about an oration given by someone named Mr. Hamilton. Auditor believed the *Journal* “has hardly done justice” to Mr. Hamilton. At the event, there was also a musical performance by one young female singer whom Auditor noted “thrilled the hearts of the audience.”

In an article about the July 5th event also published on July 13, 1827, the *Freedom’s Journal* reported on the day’s events. The author of the article wrote, “we cannot but express our satisfaction, at the great degree of order observed throughout the day.” This celebration was highly attended, with nearly 2,000 people participating in the procession. The article ended by noting that the day went off “without disturbance.” These statements echo the caution some Black New Yorkers felt about the potential negative attention such a public event might draw. In addition to the procession, a local abolitionist delivered an oration, and bands from across the city gave musical performances.

In these two instances, we see the different ways in which Black New Yorkers commemorated the abolition of slavery in New York. The discourse within the Black community around the questions of when and how the abolition of slavery in New York should be celebrated played out in the pages of *Freedom’s Journal*. These events were also moments for the community to discuss the continued push for abolition at the national level. It is important to understand that there was no single way to celebrate and commemorate the abolition of slavery. Likewise, there is no single way to celebrate Juneteenth today.

The emancipation commemoration events in New York in 1827 certainly were joyous occasions. However, many Black New Yorkers were concerned about the state of abolition across the nation and acknowledged the pain and suffering that the Black community endured under enslavement. They worried about discrimination, the lack of equal rights, and the threat of violence they continued to experience despite their status as free people. Thus, these commemoration events were just as much necessary gathering places to discuss next steps for the abolitionist movement as they were celebrations.

Writing & Discussion

1. In your own words, what do celebrations of national holidays say about our society? Give one example of a national holiday and describe what its celebration means.
2. What does establishing Juneteenth as a national holiday tell us about America’s values? What else should the government do to commemorate the abolition of slavery?
3. What were the concerns of Black New Yorkers in deciding when and how to celebrate emancipation in New York? Cite at least two examples described in the article.
4. Why was *Freedom’s Journal* such an important document of the emancipation celebrations in New York?

Author: Lisa Gomez is a writer and educator with over 10 years of experience working with students and teachers. She is currently a curriculum writer at the New York Public Library.

New York Public Library’s Center for Educators and Schools’ curriculum, “To Make Public Our Joy: Black New Yorkers Commemorating Emancipation, 1808-1865” covers this moment in time as well as important historical moments on the road to Emancipation both nationally and in New York, with an emphasis on the perspectives of Black New Yorkers. To access the entire curriculum, visit us at www.nypl.org/ces.



ACTIVITY: READING FREEDOM'S JOURNAL

As a warm-up, work with a partner to think about and answer the following questions:

What does it mean to celebrate? How do you celebrate special occasions?

How would you describe the difference between a *celebration* and a *commemoration*?

What public celebrations are you familiar with?

How do we, as a society, determine what holidays to celebrate? What do these celebrations indicate about the values of those who participate?

Using the selected *Freedom's Journal* newspaper articles [below and on page 5], form small groups of four students each. Your teacher will tell you if your group reads *St. John's Day* or the *Auditor's Letter* excerpt.

Read your assigned newspaper article. Within your group, use the following guiding questions to discuss your article. Be ready to have a spokesperson share your group's findings with the rest of the class:

1. What words are unfamiliar to you? Jot them down and look up their definitions.
2. Was there anything that surprised you about this article? Explain.
3. What 1827 celebration is the article describing: July 4 or July 5?
4. How is the newspaper article helping the public in planning emancipation celebrations?
5. Did the article raise any questions that you would like to research?

After hearing from a group that used a different article than yours, write a paragraph answering the following question:

What were the differences between the celebrations and why was there a difference in opinion over how to mark the 1827 emancipation?

St. John's Day excerpt:

Transcription (with some terms in bold defined):

We should before this have noticed the Celebration of the Annual Festival of St. John's Day, by the Boyer Lodge, No. 1, City of New York, but for the Secretary's delay in furnishing the Toasts. And as his avocations still prevent his complying with our requests, we proceed to inform our readers that, that intent, yet prosperous institution met in their **Masonic-Room** [men's social and charitable club], on the morning of the 25th **ult.** [a term meaning "of the previous month"] and moved in to Zion Church, where a large and attentive audience were highly entertained by a very appropriate and eloquent address from the Rev. B.F. Hughes, and by excellent Music. After which, the Brotherhood partook of an elegant Dinner. We are not members of the fraternity, and therefore know nothing of their mysteries. Yet from that very respectable institution, we anticipate the most happy result.

A large number of our brethren, who had deemed it proper to celebrate the final **Abolition of Slavery**

[the movement to end slavery] in this State, by a public Procession, assembled on the morning of the 5th inst. in the **vicinity** [surrounding area] of St. John's Park. The **procession** [a parade] was joined by several Societies from Brooklyn, together with a number of newly liberated slaves. The several coloured bands in this city and Brooklyn, were employed upon the occasion. About noon, the whole Procession, under the command of Mr. Samuel Hardenburgh, marshal of the day, took up the line of march, and after passing through some of the principal streets, proceeded to Zion Church, where an **oration** [a formal speech usually given for a special occasion] was delivered by Mr. *John Mitchel* Not having been present, we can say nothing of its merits. We cannot but express our satisfaction, at the great degree of order observed throughout the day. The procession was very large, numbering near two thousand, and notwithstanding the great concourse from the neighbouring places, the day passed off without disturbance.

"No Title." *Freedom's Journal* (New York, NY), July 13, 1827, 6.



Auditor's Letter

Transcription (with some terms in bold defined):

FOR THE FREEDOM'S JOURNAL.

MESSRS: EDITORS –

I think you have hardly done justice, to Mr. HAMILTON'S Oration, delivered on the 4th **inst.** [a term meaning "of the current month"]. Without pretending to superiority of judgment, I cannot but think it merited a higher character, than that of a *plain, sensible piece of composition*. It indeed lacked a classical finish, and *one or two positions assumed by him*, might be objected to, but certainly few Orations exhibit more mind. It was distinguished throughout for originality and beauty and in some passages was truly **sublime** [beautiful beyond description]. He was peculiarly happy, in the tribute of respect and gratitude, which he paid to the founders of the **Manumission Society** [an organization of white New Yorkers for emancipation] in general, and to the memories of John Murray, jun., and Robert Browne.

This reasoning upon the inconsistency of men holding slaves, and at the same time declaring the most solemn manner, that they hold as *self-evident truths, that all men are created equal, and are endowed with certain inalienable rights, among which are life, liberty, and the pursuit of happiness*, was masterly. I hope the oration will

be published. It was listened to with such interest, and has been spoken of in such strong terms approbation, that I am sure every one who heard it, would be glad to procure a copy. For myself, I was too much gratified to sit down quietly, and let the public suppose, as I feared they would from your notice that it was but an indifferent performance. It was indeed *highly creditable* to him, and to all the people of colour; and showed that if Mr. H. had had the benefit of a **liberal education** [a broad education, including the humanities, arts, and sciences], he would have ranked among the first class of learned men.

I think also, that the musical performance of the day, deserve honourable notice.

The pieces were well adapted to the occasion and performed, (considering the deficiency of instruments) very finely. The young woman, who sung the solos, has a voice exceedingly clear and powerful. The sentiments of the piece as sung by her, thrilled through the hearts of the audience. I understand she is not yet 16 years of age. She should be encouraged to cultivate her talents. No doubt with suitable instructions, she would make a first rate vocalist.

AUDITOR

Auditor. "Letter to the Editors," *Freedom's Journal* (New York, NY), July 13, 1827, 2.

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Endangered Species Act at 50 Years



This 1875 illustration shows a passenger pigeon flock being hunted in Louisiana.

In 1914, a 29-year-old passenger pigeon named Martha died at the Cincinnati Zoo. Martha was the last of her species. Once the most prolific bird in North America, passenger pigeons were officially extinct. People had noted declining pigeon populations as early as the 1850s. The pigeon population suffered from over-hunting and habitat loss, but there was no widespread understanding that a species could be driven to extinction through human action. Several states drafted laws banning the hunting of these birds, but the laws were difficult to enforce and were largely ignored.

Passenger pigeons became extinct in the wild by the end of the 19th century, with a few individuals remaining in captivity. Martha's death marked the failure of a 60-year-long conservation effort. But her death planted the seed for what would become the most comprehensive conservation legislation in history: the 1973 Endangered Species Act. In 2023, this landmark legislation is entering its 50th year.

Early Attempts at Legislation

Long before the ESA, there were early attempts at environmental protection laws. Recognition and protection of endangered species had been a part of federal law since the passage of the Lacey Act in 1900. This law, inspired by the impending extinction of the passenger pigeon, outlawed the transportation of listed animals across state lines. The U.S. and Canada (then a dominion of Great Britain) signed a law several years later that offered further protection to bird species whose migratory paths spanned the two countries.

In 1966, the Endangered Species Preservation Act granted the Secretary of the Interior the authority to declare a species as endangered and enact programs to aid their conservation, including setting aside land for these animals in their habitats. Under this law, 78 species were declared endangered, meaning they were threatened with extinction and required assistance to survive. It was the first federal law to offer protection to so many endangered species.



This law was severely limited as it allowed government funding for conservation projects, but did not prohibit behaviors, such as hunting or land degradation, that led to declining populations. It did not ban the taking (killing, or otherwise harming) of endangered animals, nor did it offer habitat protection.

The next version of the law came three years later with the Endangered Species Conservation Act of 1969. This law established guidelines for determining endangered species domestically and internationally. This new law banned the sale of any domestic endangered animal or animal product and the importation of any foreign endangered animals or animal products. It also expanded on the earlier law by setting aside \$15 million for the Secretary of the Interior to procure land for protected habitats.

Passage of the ESA

By the 1970s, it became clear that existing environmental legislation was missing a critical element needed to protect wildlife: the taking of an animal listed as endangered. Those laws instead sought to protect species by removing the economic incentives for killing them.

President Richard Nixon championed environmental protection during this time. In 1970, he proposed and established the Environmental Protection Agency. Between 1970 and 1972, he signed the Clean Air Act and Clean Water Act. He also signed the Migratory Bird Treaty Act and the Marine Mammal Protection Act to protect several animal species. There was no penalty in these laws, however, for a person killing an animal if it could not be proven that the person intended to sell the animal. Nixon declared the existing protections for endangered species inadequate and called on Congress to pass stronger legislation.

The Endangered Species Act (ESA) passed in both the Senate and the House with overwhelming bipartisan support. Senator Harrison A. Williams (D-NJ) introduced the bill to the Senate on June 12, 1973, and on July 24 it was passed unanimously. Three months later, the bill passed the House 390-12 with revisions.

What the ESA Says

The Endangered Species Act outlines the ways that the federal government can protect plant and animal species from extinction. First, the law sets criteria for a species to be considered endangered. The act defines an endangered species as one that “is in danger of becoming extinct throughout all, or a significant portion of its range.” A species can be listed under the ESA if it is endangered throughout its range or in specific areas. For example, beluga whales are endangered within Cook Inlet, Alaska, but all other populations are considered healthy.

Many species face endangerment due to habitat loss and land degradation. Therefore, the ESA protects habitats of endangered species. Areas found essential for the recovery of an endangered population are designated as “critical habitats” and have strict regulations for development and contamination.

When the ESA was sent from the Senate to the House, a key provision was added to the law. That was the inclusion of the category of “threatened” species. These are species at risk of becoming endangered without intervention. Threatened species are afforded some or all the same protections as an endangered species, on a species-by-species basis. This addition allows for earlier intervention for populations, such as the Southern Sea otter, that are in decline but not yet in danger of extinction.

The ESA grants federal agencies the power to make decisions regarding endangered species. It also directs federal funding to conservation efforts. Listed species are reevaluated by the Fish and Wildlife Service every five years to maintain the accuracy of their status.

The ESA also established that the taking, possession, or sale of an endangered species is a federal crime. The punishment for a violation includes a fine up to \$50,000 and/or a year-long prison sentence.

Amendments

Over the past 50 years, the ESA has been amended several times to clarify and focus its mission. The first of these amendments came in 1978. This amendment

INTERNATIONAL AGREEMENT

The International Union for Conservation of Nature (IUCN) is a union of governments, non-profit organizations, indigenous peoples' organizations, and scientific and business associations. Its goals are conservation and advancing *sustainability* (the protection of natural resources against depletion). In 1963, IUCN drafted the Convention on International Trade in Endangered Species of Wild Fauna and Flora. This international agreement regulates the international trade of plant and animal products to protect endangered species. The U.S. was the first country to sign the agreement in 1973, and it was entered in force in 1975. Today 183 parties belong to the convention.



THE BANNING OF DDT

Dichlorodiphenyltrichloroethane (DDT) is a highly effective insecticide that was made available to the U.S. public in the mid-20th century. It drew international acclaim for its use in anti-malaria public health campaigns. It was widely used in agriculture and in homes across the U.S. DDT is a nervous system disruptor that causes nerve cells to “misfire,” leading to tremors and eventual death.

Almost immediately after DDT was introduced to the marketplace, scientists raised concerns over its use. They warned that DDT could not only kill beneficial insects, but impact larger animals who were exposed to the toxin through their environment. Naturalist and writer Rachel Carson’s 1962 book *Silent Spring* documented the numerous environmental and public health impacts of DDT. One of those effects in birds was the thinning of eggshells, which led to a drop in reproduction. In 1972, the EPA banned the use of DDT in the United States.



Jerald E. Dewet, USDA Forest Service, Bugwood.org

Before it was banned in 1972, DDT was sometimes sprayed over forests much the same way you see in this photo from the United States Department of Agriculture.

expanded protections for listed species by empowering the Department of Agriculture to create conservation programs. Before that amendment, only the Departments of Interior, Commerce, and Defense could create such programs. The amendment also established that habitat ranges must be identified for any species to be listed as endangered, so those habitats can be deemed “critical” and get protection.

Later revisions focused on the scientific basis of listing a species. In part, they established that if a species is used unsustainably for commercial purposes in or out of the U.S., it can be listed. Examples of unsustainable commercial purposes include overfishing of fish species, like salmon and tuna, and capturing parrots or tropical fish for exotic markets. There is no need for evidence of ecological harm in such cases.

The amendments also gave researchers leeway to study populations under different conditions to determine the best course of action for conservation. They could introduce species into suitable new environments to increase the species’ population. These “experimental populations” are listed as “threatened” instead of “endangered” because they are outside of their original habitat. For example, the whooping crane is native to the Southeast but has experimental populations in the other U.S. regions. Because of this work, the total population has grown from just 42 in the 1960s to 600 today.

In 1988, amendments strengthened requirements for financial reporting. All federal agencies, and state governments receiving federal funding through the ESA must provide detailed reports to account for these funds. These reports were tied to individual species to better keep track of the efficiency of programs.

The final amendments came in 2004, which gave the Department of Defense (DOD) exemptions for the use of critical habitats. The DOD could now hold activities on critical habitat lands if deemed necessary by the Secretary of Interior.

Challenges

Over the decades, the ESA has received criticism based on its economic impacts. Many opponents believe that the ESA creates causes too much government spending and industry regulation. The U.S. Fish and Wildlife agency estimates that federal agencies spend about \$1.5 billion annually enforcing the act.

Land developers such as foresting companies have long challenged the ESA. As recently as 2021, the American Forest Resource Council (AFRC) sued the U.S. Department of the Interior for failing to roll back ESA protections of the northern spotted owl in the Pacific Northwest. The AFRC claimed that the protections unfairly restricted timber harvests, and it wanted a certain amount of forest timber to be sold each year. A federal court of appeals upheld the land protections.



The ESA was also challenged when it affected development projects that were already in progress when the ESA was passed. In the 1970s, scientists were concerned that a dam the Tennessee Valley Authority (TVA) was building along the Little Tennessee River would destroy a critical habitat of the snail darter fish. TVA argued that its dam project predated the ESA and should be allowed to be completed. In 1978, the U.S. Supreme Court ruled in favor of the scientists in the case *Tennessee Valley Authority v. Hill*. The court held that priority must be given to preserving an endangered species, regardless of economic cost.

Other critics question whether the ESA is effective in rehabilitating dwindling animal populations. In its 50 years, the number of species covered by the act has grown from 124 to over 1700. As of 2021, only 110 populations have recovered enough to move up the list: 56 have moved from “endangered” to “threatened,” and 54 have moved off the list entirely. While most species have not recovered, only one percent of listed species have reached extinction while under the protection of the act.

Success Stories

Supporters of the ESA state that conservation efforts provide more than \$1 trillion annually in “ecosystem services.” Ecosystem services refer to the tangible benefits humans gain from nature. This includes both material assistance such as food, wood, and plant fibers, and regulatory services like pollination, erosion control, and nutrient cycling. Additionally, a U.S. Department of Agriculture study found that visitors to federal wildlands spent \$49 billion and supported 826,000 jobs.

While the number of endangered species grows each year, conservationists have celebrated some major

victories. The national bird, the American bald eagle, once numbered over 100,000. In 1963, it had a population of only 417. This drop was due to habitat loss, hunting, and poisoning from the now-banned pesticide DDT. Thanks to recovery efforts, the bald eagle was delisted from the ESA in 2007, and today numbers are estimated to be over 71,000.

Another iconic species, the American alligator, was listed as endangered in 1967. Habitat loss and demand for alligator skin for commercial goods drove the species nearly to extinction by the mid-1950s. After two decades of conservation efforts, the species was delisted in 1987, and alligator populations remain stable across the Southeast United States.

The Endangered Species Act is a landmark in environmental protection across the U.S. For the past 50 years it has also acted as a living document, adjusting to the needs and values of the time. As we look towards the future in our changing environment, it will continue to adapt to preserve our valuable natural resources.

Writing & Discussion

1. Why was the Endangered Species Act passed? What were the problems with previous laws that the ESA solved?
2. Explain how the Endangered Species Act protects both species and their habitats.
3. What criticism of the Endangered Species Act do you think is strongest and which is weakest? Why?

Author: Kathleen Hughes, a former high school science teacher, is a program director at Teach Democracy.

ACTIVITY: AMENDING THE ENDANGERED SPECIES ACT

You are a member of the U.S. House of Representatives Committee on Natural Resources. Your committee has been tasked with proposing any necessary amendments to the Endangered Species Act. After your committee has drafted proposed amendments, you will present them to the rest of the House assembled.

1. Form groups of five representatives. Each group will act as the House Committee on Natural Resources focused on updating the Endangered Species Act.
2. Re-read the sections “Amendments,” “Challenges,” and “Success Stories” in the article. Take notes on what changes have been made to the ESA in the past, and what issues might be addressed through new amendments.
3. Choose a chairperson for your committee. The chairperson keeps the committee on task and will be the spokesperson for the committee.
4. In your committee, discuss which amendment or combination of amendments your committee will propose to be added to the ESA.
5. Be ready to present your committee’s proposal to the rest of the House assembled. Your presentation must include three reasons why your committee reached its conclusion and must reference facts from the article.



The Constitution, Reconstruction, and Race-Conscious Admissions



A number of people in the United States agree that racial diversity in schools is an important factor in young people's education. But there has been deep disagreement about how to achieve such diversity.

One method has been race-based college admissions. Generally called affirmative action, this method promotes admissions for people from certain historically disadvantaged racial and ethnic groups. Some Americans believe it is fair to take measures to advance traditionally excluded groups in society, including affirmative action. Others say that affirmative action is itself an unfair form of discrimination, and therefore oppose affirmative action.

In June of 2023, Pew Research conducted a nationwide survey on affirmative action in college admissions. It showed that half of adult Americans disapproved of affirmative action. One-third of Americans approved of it. The remaining people surveyed were not sure if they approved or disapproved.

Later in June 2023, the Supreme Court of the United States struck down race-based admissions at colleges and universities nationwide. In *Students for Fair Admissions v. President and Fellows of Harvard College*, the court decided that race-based admissions programs at both Harvard College (a private university) and the University of North Carolina (UNC) (a state school) were unconstitutional. Specifically, the court decided that the programs violated the equal protection clause of the 14th Amendment.

To understand the legal and social impacts of these cases, we need to look back in time to the Reconstruction era.

The Impact of Reconstruction

In 1863, President Abraham Lincoln issued the Emancipation Proclamation. It was during the American Civil War. This pivotal document changed the legal status of more than 3.5 million Black people in the Confederate states from enslaved to free. But the fight for racial equality was far from over.

When the Civil War ended in 1865, America entered a period known as Reconstruction. During this time, the U.S. government made efforts to repair – or reconstruct – the nation. It sought to amend the Constitution to counteract the political, social, and economic legacies of slavery and the aftermath of the Civil War.

Congress passed the 13th, 14th, and 15th Amendments to the U.S. Constitution, sometimes called the Reconstruction Amendments. The 13th Amendment abolished slavery. The 14th Amendment granted citizenship to anyone born in the United States. And the 15th Amendment protected against racial discrimination in voting.

The 14th Amendment also contained the equal protection clause. It states that “No State shall... deny to any person within its jurisdiction the equal protection of the laws.” It is meant to prevent state governments from denying their citizens the right to be treated equally under the law.

During the Reconstruction era, the U.S. government used its lawmaking and executive powers to further the goal of equal rights for every person regardless of race. The government established the Bureau of Refugees, Freedmen, and Abandoned Lands (the “Freedmen’s Bureau”) in the South. This agency assisted formerly enslaved Black people. It also assisted Southern white people who lost their homes and jobs in the war (the “refugees”).

The Freedmen’s Bureau worked to help set up a system of fair wages and working conditions for formerly enslaved people. It also created a formal education system for Black people, legally recognized marriages of Black people, and helped reunite Black families. By 1870, more than 1,000 schools for Black students were built in the South.

As we will see, the Reconstruction-era understanding of the equal protection clause was particularly important to the 2023 case.

The Harvard and UNC Cases

The case that ended with the Supreme Court’s 2023 decision began nine years earlier. In 2014, a nonprofit program called Students for Fair Admissions (SFFA) sued Harvard and UNC. SFFA argued that Harvard’s and UNC’s race-conscious admissions programs violated the equal protection clause of the 14th Amendment. Specifically, affirmative action led to unfair admission results for Asian American applicants.

The Supreme Court consolidated, or joined together, the two cases against the universities into one decision. This is common when the Supreme Court has to reconcile more than one decision on similar legal issues.

SFFA presented evidence that Asian American applicants were disfavored in the admissions process. For example, Harvard and UNC gave otherwise highly qualified Asian American applicants lower “personal rating” scores. These scores are based on admissions reviewers’ personal opinions, or what a Harvard dean of admissions once called a “hunch.”

In response, Harvard and UNC argued that their race-conscious admissions programs lead to measurable benefits for Black applicants. Black students who benefit from affirmative action tend to have higher incomes after college. In addition, racial diversity on campus prepares all graduates to live in a pluralistic society. Through



Widener Library at Harvard University in 2007.

affirmative action, these schools said they produce new knowledge from diverse outlooks.

Harvard and UNC relied on the Supreme Court case *Grutter v. Bollinger* (2003). In *Grutter*, the Supreme Court held that diversity on campus is a compelling (or extremely strong) government interest. A university may consider an applicant’s race as a “plus factor” to encourage diversity.

Harvard and UNC argued that their race-conscious admissions programs properly considered race as a “plus factor.” Race-conscious admissions increased enrollment for many historically excluded groups, including Black, Hispanic, and Native American students.

The Court’s Opinion and Reconstruction

Chief Justice John Roberts wrote the majority opinion, joined by five other justices. The majority held that Harvard’s and UNC’s race-conscious admissions programs violated the equal protection clause by treating college applicants differently based on their race.

The court did not explicitly overrule the *Grutter* case. However, the court stated that Harvard and UNC did not clearly show why diversity on their campuses was a compelling interest. Also, the court said the programs did not clearly show when they would no longer be necessary.

To explain the reasoning behind the court’s decision, the majority’s opinion looked back to the history of the





This image captures one of the many Freedmen's Schools established during Reconstruction, tasked with educating, clothing, and housing formerly enslaved people.

Reconstruction era. The court quoted from a congressional session in 1866 that explained the equal protection clause. The clause represented a “foundational principle” of “absolute equality of all citizens of the United States.”

The history of Reconstruction, the majority said, demanded that everyone be treated equally, regardless of their race. Therefore, the decision in *Students for Fair Admissions* demands that colleges and universities treat all applicants equally, regardless of their race.

The court described how the country failed to live up to the principle of racial equality after Reconstruction. Only in 1954 did the Supreme Court decide that racially segregated schools violated the equal protection clause in *Brown v. Board of Education*. “In the decades that followed [*Brown v. Board of Education*],” Chief Justice Roberts wrote, “this Court continued to vindicate the Constitution’s pledge of racial equality.”

In a notable passage, Roberts explained that race is not necessarily irrelevant to college admissions. Even without affirmative action, college applicants are not prohibited from describing “how race affected his or her life, be it through discrimination, inspiration, or otherwise.”

In a concurring opinion, Justice Clarence Thomas also discussed the Freedmen’s Bureau. According to Justice Thomas, the federal government created the Freedmen’s

Bureau to serve “newly freed slaves alongside white refugees.” Thus, the Freedmen’s Bureau did not benefit Black people “exclusively.” It was meant to be “colorblind.”

Dissenting Views

Justice Sonia Sotomayor and Justice Ketanji Brown Jackson wrote dissenting opinions and joined each other’s opinions. Justice Elena Kagan joined both of them, as well. Justice Sotomayor wrote that this ruling “rolls back decades of precedent and momentous progress.” To explain their reasoning, the dissenting justices also looked to the history of Reconstruction.

The dissenting justices interpreted the history of the Reconstruction era differently than the majority. They argued that Reconstruction illustrated that the federal government has made special efforts to protect traditionally excluded groups. The policies of Reconstruction, the dissenters argued, are precedent for policies of affirmative action. Both Reconstruction laws and affirmative action specifically addressed the needs of people who had experienced oppression.

The dissenting justices also quoted from a congressional session in 1866 to explain the 14th Amendment. A key goal was to “protect the black man in his fundamental rights as a citizen with the same shield which it throws over the white man.”

The dissenting justices emphasized that education was fundamental to the Reconstruction program. “Black people,” Sotomayor wrote, “were the targeted beneficiaries of the [Freedmen’s] Bureau’s programs, especially when it came to investments in education in the wake of the Civil War.” For example, the Freedmen’s Bureau provided land and funding to establish many of America’s historically Black colleges and universities (HBCUs).

The dissenting justices critiqued the court’s decision for imposing a “superficial rule of colorblindness.”

The dissenters emphasized that simply “[ignoring] race will not equalize a society that is racially unequal” and that true “[equality] recognizes acknowledgment of inequality.”

The *Students for Fair Admissions* case reflects a long-standing tension in the nation’s history on the true meaning of equality. Race-conscious admissions has been an important part of an ongoing conversation. As colleges and universities continue to seek diversity, the conversation will very likely continue in the years to come.

Writing & Discussion

1. How did the majority and dissenting opinions use the legacy of Reconstruction differently? Who do you think had the better argument and why?
2. One proposal for increasing diversity on campuses has been for colleges and universities to give “plus factors” to qualified students of low-income households. Do you think this would address the same historical issues as race-conscious admissions? Why or why not?
3. The Supreme Court left open the possibility that colleges and universities may ask applicants to show “how race affected his or her life, be it through discrimination, inspiration, or otherwise.” Is this approach different than race-conscious admissions? Might there be potential for abuse of this standard? Explain your answer with examples from the majority and dissenting opinions.

Author: Pauline Alarcon, Esq., is a graduate of UCLA Law School and is a judicial law clerk for The Honorable John W. Holcomb of the U.S. District Court, Central District of California, in Santa Ana, California.

ACTIVITY: RACE-NEUTRAL ALTERNATIVES

In 1996, voters in the state of California ended affirmative action in public universities. In response, California’s university system began using race-neutral alternatives to race-conscious affirmative action. (Examples of alternatives are listed below.)

After 25 years of experimenting with alternatives, vice chancellor for the University of California (UC) system Mitchell Chang said that UC schools have begun to restore racial diversity measured before the 1996 ban. “Some things worked better than other things,” said Chang, “And this is also work that doesn’t happen overnight.”

You are now on the governing board of your state’s public university system. Meet with three to four other members of your board. As a board, consider the following four race-neutral alternatives. How effective is each in achieving diversity? Rank them from *best* to *worst* and include at least *one reason* why you ranked each of the four the way you did. Be ready to have a spokesperson share your findings with the class.

1. **Expanded outreach and recruitment.** The universities should put more money toward recruiting students from high schools in lower-income areas, especially those students who are the first in their families to go to college.
2. **“Holistic” application review.** In addition to test scores and grades, universities should give weight to applicants’ extracurricular activities. Applicants can write essays in which they describe their lived experiences in high school.
3. **“Top ten percent” program.** High school students who graduate in the top ten percent of their class will be guaranteed admission to at least one state university. This includes all high schools in the state from diverse cities and neighborhoods.
4. **Increased scholarships for low-income students.** Universities should raise more money for more scholarships to help pay tuition for qualified applicants from lower-income households.



BRIA's Longtime Writer Carlton Martz

BRIA has a long history. Begun in the 1960s as a newsletter of the work and events at Constitutional Rights Foundation (CRF) — now Teach Democracy — BRIA has had many writers and editors. Through the decades, the writer Carlton Martz has been a consistent voice. If you have been a regular reader of BRIA, it is doubtless you have seen Carl's name attached to many of the articles and lessons you have learned from and used in your classroom. In total, he has written hundreds. I recently had a chance to speak with Carl at length about his career and his time writing for CRF.

Born in 1940 in Waltham, Massachusetts, Carl came to Pomona, California, with his family when he was 15 years old. He graduated high school in 1958 and attended Mt. San Antonio College. He transferred to Cal Poly Pomona around 1961 where he also earned his teaching credential in social studies, minoring in English. He earned a master's degree in government from Claremont Graduate University and began working as a social studies teacher at Edgewood High School in the West Covina Unified School District. Carl describes himself as "kind of a radical teacher" in the 1960s: "I was the first one to wear a mustache, which upset the principal."

In the wake of the Watts Riots of 1965, Carl had the foresight to pitch an ethnic studies elective course to his principal and school board, who agreed to Carl's vision. Carl developed the syllabus himself. He focused on African American history. At the recommendation of Black students in his class, the local NAACP chapter awarded Carl with a commendation for his work in ethnic studies.

He began using CRF's *The Bill of Rights—A Source Book for Teachers* in the early 1970s. "Using the *Source Book*," says Carl, "got me out of the boring textbook and helped change my teaching." He started using "seminars with lots of student discussion and debates on Supreme Court decisions and other current, controversial issues."

Carl began writing for CRF's *Bill of Rights Newsletter* in 1975 when he entered and won a writing contest developed by Todd Clark. This enabled Carl to take a two-year sabbatical from Edgewood High School to work at CRF full-time. In September 1976, the publication changed its name to *Bill of Rights in Action*, which we now call

BRIA. Todd Clark eventually became the executive director of CRF and sadly passed away this year.

Carl authored a lesson sequence to introduce young people to criminal law. In the ensuing years, CRF expanded those lessons to become its *Criminal Justice in America* textbook, which is now being revised for its 6th edition.

Carl also wrote the original *Police Patrol* simulation that has been updated and is still part of Teach Democracy's Youth and Police program.

After returning to teaching, Carl continued writing for CRF, and specifically for BRIA. He wrote everything for this magazine. Marshall Crodgy, who would later become CRF's president, was Carl's editor in 1980. Of his work with Marshall, Carl says, "We had a really great relationship."

Carl's deep sense of civic commitment has enabled him to write on countless subjects in U.S. history and U.S. government. Carl's ever-expansive intellectual curiosity has also led him to travel the world to various archaeological sites and write about diverse world history subjects, too. A voracious reader, Carl broadened his career by earning a degree in library studies from Cal

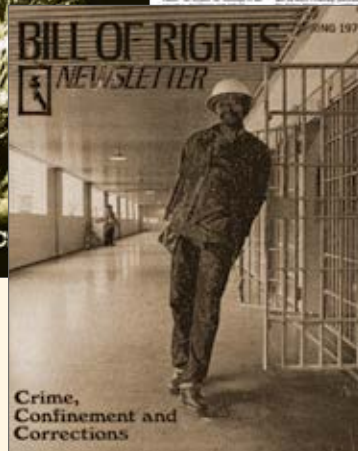
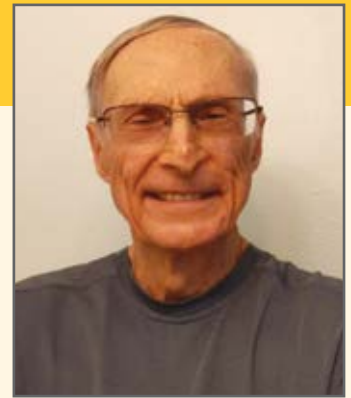
State, Los Angeles, in 1991. He then worked as a librarian at Yucaipa High School starting in 1993, where he spent the rest of his career in schools. His dual skill sets in writing and research have served him and BRIA's readers well.

In recent years, Carl has written some of BRIA's best articles and classroom activities. In particular, he has pitched and written the articles "Tlaxcalan: the Indigenous Democracy of Mexico"; "Mother Jones: 'The Most Dangerous Woman in America'"; "The Fugitive Slave Law of 1850";

"The United States, China, and Taiwan"; and a forthcoming article on the rapidly developing controversies of artificial intelligence.

We have been fortunate to have an inspired writer like Carl write for BRIA for so long and with such careful attention to Teach Democracy's mission. Please join us in appreciating Carl and his work, and we look forward to many more years of his contributions.

Author: Damon Huss is the director of publications for Teach Democracy.



Standards Addressed

Emancipation Day: Past and Present

California History Social-Science Standard 8.9: Students analyze the early and steady attempts to abolish slavery and to realize the ideals of the Declaration of Independence. (6) Describe the lives of free blacks and the laws that limited their freedom and economic opportunities.

California History Social Science Framework (2016), Ch. 16, p. 379 – Grade 12: Students may wish to participate in any number of Constitution Day activities on September 17. Students address the question What are key tenets of American democracy? Teachers may want to highlight the emergence of a free, democratic system of government alongside an entrenched system of chattel slavery that lasted for nearly a century. The question How have American freedom and slavery coexisted in the nation's past? reminds students of the parallel—and seemingly paradoxical—relationship.

C3 Framework Indicators (National)

D2.His.1.9-12. Evaluate how historical events and developments were shaped by unique circumstances of time and place as well as broader historical contexts.

D2.His.12.9-12. Use questions generated about multiple historical sources to pursue further inquiry and investigate additional sources.

D2.His.15.9-12. Distinguish between long-term causes and triggering events in developing a historical argument.

Common Core State Standards: RH.6-8.4, RH.6-8.10; RL.8.10; WHST.6-8.10.

Endangered Species Act at 50 Years

California History-Social Science Standard 12.3. Students analyze the influence of the federal government on the American economy. (1) Understand how the role of government in a market economy often includes . . . addressing environmental concerns . . .

California History-Social Science Standard 12.4. Students analyze the unique roles and responsibilities of the three branches of government as established by the U.S. Constitution. (1) Discuss Article I of the Constitution as it relates to the legislative branch, including . . . the enumerated legislative powers; and the process by which a bill becomes a law.

California History-Social Science Standard 12.7. Students analyze and compare the powers and procedures of the national, state, tribal, and local governments. (8) Understand the scope of presidential power and decision making through examination of case studies . . .

C3 Framework Indicators (National)

D2.Civ.4.9-12. 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.13.9-12. Evaluate public policies in terms of intended and unintended outcomes, and related consequences.

Common Core State Standards: SL.11-12.1, SL.11-12.3, RH.11-12.1, RH.11-12.2, RH.11-12.10, WHST.11-12.10

The Constitution, Reconstruction, and Race-Conscious Admissions

California History-Social Science Standard 8.11.1: List the original aims of Reconstruction and describe its effects on the political and social structures of different regions.

California History-Social Science Standard 8.11.3: Understand the effects of the Freedmen's Bureau and the restrictions placed on the rights and opportunities of freedmen, including racial segregation and "Jim Crow" laws.

California History-Social Science Standard 8.11.5: Understand the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution and analyze their connection to Reconstruction.

California History-Social Science Standard 11.10.2: Examine and analyze the key events, policies, and court cases in the evolution of civil rights, including *Dred Scott v. Sandford*, *Plessy v. Ferguson*, *Brown v. Board of Education*, *Regents of the University of California v. Bakke*, and California Proposition 209.

California History-Social Science Standard 12.5.1: Understand the changing interpretations of the Bill of Rights over time, including interpretations of the basic freedoms (religion, speech, press, petition, and assembly) articulated in the First Amendment and the due process and equal-protection-of-the-law clauses of the Fourteenth Amendment.

California History-Social Science Standard 12.5.4: Explain the controversies that have resulted over changing interpretations of civil rights, including those in *Plessy v. Ferguson*, *Brown v. Board of Education*, *Miranda v. Arizona*, *Regents of the University of California v. Bakke*, *Adarand Constructors, Inc. v. Peña*, and *United States v. Virginia (VMI)*.

C3 Framework Indicators (National)

D2.Civ.4.6-8. Explain the powers and limits of the three branches of government, public officials, and bureaucracies at different levels in the United States and in other countries.

D2.Civ.13.6-8. Analyze the purposes, implementation, and consequences of public policies in multiple settings.

D2.His.5.6-8. Explain how and why perspectives of people have changed over time.

D2.Civ.4.9-12. 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.13.9-12. Evaluate public policies in terms of intended and unintended outcomes, and related consequences.

D2.His.5.9-12. Analyze how historical contexts shaped and continue to shape people's perspectives.

Common Core State Standards: SL.6-8.1, SL.6-8.3, RH.6-8.1, RH.6-8.2, RH.6-8.10, WHST.6-8.10; SL.11-12.1, SL.11-12.3, RH.11-12.1, RH.11-12.2, RH.11-12.10, WHST.11-12.10

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(Continued on page 16.)



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