



## 14th Amendment, Part I

### Slavery in America from the Constitution to Reconstruction

# Scholar Exchange Outline

#### WATCH THE EXCHANGES

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View conversations about the history and legacy of the 14th Amendment, presented by National Constitution Center scholars. In this exchange, attendees explored the history and drafting of the Constitution, the Reconstruction Amendments, and slavery in America.

- Watch the April 22 session with Eric Foner: <https://constitutioncenter.org/interactive-constitution/educational-video/scholar-exchange-slavery-in-america-from-the-constitution-to-reconstruction-with-eric-foner>
- Watch the April 23 session: <https://constitutioncenter.org/interactive-constitution/educational-video/slavery-in-america-from-the-constitution-to-reconstruction-round-2>

#### More helpful links:

- Watch recordings of all of our past Scholar Exchange sessions on our YouTube page: <https://www.youtube.com/user/ConstitutionCenter>
- View the schedule for upcoming Scholar Exchange sessions on our website: <https://constitutioncenter.org/interactive-constitution/classroom-exchanges/online-civic-learning-opportunities>

**Book:** *The Second Founding: How the Civil War and Reconstruction Remade the Constitution* by Eric Foner

#### INTRODUCTION

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*Big Question #1:* Slavery was embedded into America’s fabric by the time of the ratification of the Constitution. How did this affect how long slavery lasted in America and how it ended?

*Big Question #2:* The 13th, 14th, and 15th Amendments ended slavery in America and tried to rebuild our nation on a stronger constitutional foundation. Do you think that these Amendments changed the Constitution so much that it was like a re-birth—a “Second Founding”—of our nation?

## SLAVERY IN THE CONSTITUTION

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- [Article I, Section 2](#) (The Three-Fifths Clause) on our [Interactive Constitution](#)
- [Article IV, Section 2](#) (The Fugitive Slave Clause) on our [Interactive Constitution](#)
- [Article I, Section 9](#) (The Slave Trade Clause) on our [Interactive Constitution](#)

## THE RECONSTRUCTION AMENDMENTS

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- [The 13th Amendment](#) on our [Interactive Constitution](#)
- [The 14th Amendment](#) on our [Interactive Constitution](#)
- [The 15th Amendment](#) on our [Interactive Constitution](#)

### The Drafting Table

Explore key historical documents that inspired the framers of the Constitution and each amendment during the drafting process, as well as the early drafts and major proposals behind each provision.

- [The 13th Amendment on the Drafting Table](#)
- [The 14th Amendment on the Drafting Table](#)
- [The 15th Amendment on the Drafting Table](#)

### Incorporation and the Bill of Rights

A longstanding debate in constitutional law is what is known as “incorporation.” This refers to the application of different rights in the Bill of Rights to state governments and actors. Before the Civil War, a Supreme Court decision—*Barron v. Baltimore*—declared that the Bill of Rights only applied to the federal government, as the First Amendment, for instance, refers to “Congress shall not...” John Bingham, the author of the 14th Amendment, believed that the Bill of Rights was always meant to apply to the states, and wrote the text of the 14th Amendment (particularly Section 1) to accomplish this—particular through the “Privileges or Immunities Clause.” After *Slaughterhouse* (an 1873 case) severely limited the meaning of the “Privileges or Immunities” Clause, another case—*Cruikshank v. U.S.*—suggested that several of rights in the Bill of Rights did not apply to the states, including the right to assembly and the Second Amendment. By the turn of the century, the Court began to turn to the “Due Process” Clause to incorporate the Bill of Rights, but only by each individual right, a process called “selective incorporation.” While some justices—namely Justice Hugo Black—believed the Court should incorporate the whole of the Bill of Rights at once, the Court over the 20th and into the 21st century continued to “incorporate” most rights in the Bill of Rights against the states. However, some still remain to be incorporated, including the Third Amendment, the Fifth Amendment grand jury clause, the Sixth Amendment right to an impartial jury of the state and district where a crime is committed, and the Ninth and the 10th Amendments. However, the Ninth and the 10th Amendments are unlikely to be incorporated, as the 10th Amendment refers directly to the rights states retain and the Ninth Amendment protects natural rights which existed before the Constitution and Bill of Rights not enumerated or named in the document.

## SUPREME COURT CASES

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- [Dred Scott v. Sandford \(1857\)](#)
- [Slaughter-House Cases \(1873\)](#)
- [Brown v. Board of Education of Topeka \(1954\)](#)
- [Obergefell v. Hodges \(2015\)](#)
- [Ramos v. Louisiana \(2020\)](#)
- [Department of Homeland Security v. Regents of the University of California](#) (Awaiting decision)



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Scholar Exchange Briefing Document

### MORE RESOURCES

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#### Watch

The National Constitution Center's video lessons offer a great introduction to 14th Amendment topics!

- [14th Amendment Overview Video Lesson](#)
- [Eric Foner, professor of history at Columbia University, discusses the creation and contents of the 14th Amendment](#)
- [Jeffrey Rosen, president and CEO of the National Constitution Center, explores three major clauses of the 14th Amendment and the ways in which the Supreme Court has interpreted those clauses](#)
- [Tomiko Brown Nagin, professor at Harvard Law School, examines the continuing relevance of the 14th Amendment](#)
- [Clip from \*FOURTEEN: A Theatrical Performance\* explores the Emancipation Proclamation](#)
- [Clip from \*FOURTEEN: A Theatrical Performance\* explores the effect of Black Codes on newly-freed African Americans during the Reconstruction era](#)
- [Clip from \*FOURTEEN: A Theatrical Performance\* explores the arguments of members of the 39th Congress as they debate the proposed 14th Amendment to the U.S. Constitution](#)

#### Listen

On the Center's podcasts, President and CEO Jeffrey Rosen brings together leading experts to discuss current constitutional topics! Recent episodes touching on the 14th Amendment include:

- [The Promise and the Thwarting of Reconstruction](#)
- [Eric Foner on the Second Founding](#)
- Listen to more podcasts on the 14th Amendment [here](#)

#### Read

The Center's *Constitution Daily* blog is the place to turn to for informative nonpartisan articles on historic and contemporary constitutional issues. Some great posts touching on the 14th Amendment include:

- [On This Day, Supreme Court Refuses Women Right to Vote](#)
- [The Supreme Court and Birthright Citizenship: The Wong Kim Ark Case](#)
- [Dred Scott Decision Still Resonates Today](#)
- Read more blog posts on the 14th Amendment [here](#)

**Plus!** Download our [14th Amendment Civic Calendar](#), featuring great artwork with images and explainers on all provisions of the amendment.