



The 14th Amendment: Battles for Freedom and Equality



Vocabulary

Concept Words – These words can help you understand the big ideas.

black codes: Unfair laws passed in the Southern United States after the Civil War to limit the rights of freed African Americans.

citizenship: Being a member of a country, which gives you rights (like voting) and responsibilities (like following laws).

Due Process Clause: A part of the Constitution that says the government must treat people fairly and follow proper legal steps before taking away rights, freedom, or property.

enumerated rights: Specific rights that are listed in the Constitution (like freedom of speech).

unenumerated rights: Rights not directly listed but still protected (like the right to travel between the states).

Equal Protection Clause: A part of the 14th Amendment that says the government must provide everyone equal protection of the laws.

incorporation: A legal process that applies federal rights enshrined in the Bill of Rights to state laws through the 14th Amendment.

Jim Crow laws: Unfair laws that enforced racial segregation (separating Black and white people) in the Southern U.S. after the Civil War.

natural rights: Rights that are given by God or by nature and are fundamental to all humans.

Speed Bump Words – These words can help you better comprehend the text.

abridge: To shorten or limit something, like reducing someone's rights or freedoms.

anarchy: A radical ideology based on the rejection of organized government.

construed: How something is understood or interpreted, especially laws or rules.

disparage: To speak badly about someone or something, making it seem less important.

infringe: To limit or break someone's rights or freedoms.

Interference: When someone or something gets in the way or interrupts a process or right.

liberty: Freedom.

ratification: To officially approve.

Understanding the 14th Amendment

During the Reconstruction period following the Civil War (1861-1865), the nation faced big questions, like:

- What did the Civil War really mean? How might we rebuild America on a firmer constitutional foundation?
- What does “freedom and equality” mean?
- Who should be a U.S. citizen?
- Who should have the right to vote?
- What role should the national government play in protecting people’s rights?

Questions like these led to the 14th Amendment, when the American people transformed the Constitution forever.

Federalism, Slavery, and the Question of Citizenship

The Constitution created a federal system with a national government, state governments, and local governments. With federalism, power is divided vertically between different levels of government. Each level has its own authority and responsibilities. Some power is shared, while other powers are reserved exclusively to the states or the federal government.

Prior to the Civil War, the issue of slavery was largely left to the states. But the Constitution protected the institution in a few important ways, such as through the Three-Fifths Clause and the Fugitive Slave Clause. By the 1850s, the institution of slavery was firmly entrenched in the laws, social customs, and economies of many mostly Southern states. Enslaved men, women, and children were not considered citizens in these states. And even the citizenship of free African Americans was unclear, as the Constitution did not define citizenship and states often passed laws that discriminated against free African Americans. Some states like Massachusetts recognized African Americans as citizens. Many other states did not. Then, in 1857, the Supreme Court ruled in *Dred Scott v. Sandford* that African Americans “had no rights which the white man was bound to respect.” This ruling insisted that both free and enslaved African Americans were not – and could not become – U.S. citizens.

The Civil War and the ratification of the 13th Amendment (1865) resolved the issue of slavery. But it did not resolve the issue of citizenship. During Reconstruction, many Southern states enacted laws known as the Black Codes. These were designed to prevent Black people from exercising their freedoms and participating in the nation as full citizens.

Understanding the 14th Amendment

The Black Code laws made it hard for Black Americans to vote, own property, get certain jobs, or travel freely. In short, these laws preserved the unequal status of African Americans. The 14th Amendment was needed to make it clear to the states that African Americans, including the formerly enslaved, were full and equal citizens of the United States. As you watch the video, listen for information that tells you more about the 14th Amendment. Use the Video Notes handout to support your learning while watching the video.

The 14th Amendment includes important ideas like birthright citizenship, freedom, due process, equality, and the national protection of civil rights organized in five different clauses.

- **Citizenship Clause:** 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.
- **Privileges or Immunities Clause:** No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;
- **Due Process Clause:** nor shall any State deprive any person of life, liberty, or property, without due process of law;
- **Equal Protection Clause:** nor deny to any person within its jurisdiction the equal protection of the laws.
- **Enforcement Clause:** The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Notes and Questions:

The 14th Amendment and the States

The 14th Amendment plays a huge role in some of the most important constitutional debates and Supreme Court cases today. In fact, many of the biggest legal battles in modern history have been about what this amendment means. When people go to court to fight about fairness, freedom, discrimination, or government power, the 14th Amendment is often at the center of the argument.

Tests of the 14th Amendment

“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.”

Over time, the Supreme Court has used the 14th Amendment to decide important cases that have shaped American society. Some of these landmark cases include:

United States v. Wong Kim Ark (1898)

Wong Kim Ark, a man born in San Francisco to Chinese immigrant parents, was not allowed to re-enter the United States after traveling to China. The U.S. government argued that he was not a U.S. citizen because his parents were Chinese. Wong Kim Ark challenged this, claiming his birth in the U.S. made him a citizen under the citizenship clause of the 14th Amendment.

Brown v. Board of Education (1954)

Linda Brown, a young Black girl in Topeka, Kansas, was forced to attend a segregated Black school in Topeka, Kansas. The school she was assigned to was farther away from her home than the white school. Her family felt this was unfair and joined a class-action lawsuit arguing that racial segregation in public schools violated the 14th Amendment.

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Gideon v. Wainwright (1963)

Clarence Earl Gideon was arrested in Florida for burglary. He couldn't afford a lawyer and asked the court to appoint one. The judge refused. Under Florida law at the time, lawyers were only provided for defendants in death-penalty or very serious cases. Gideon ended up defending himself and was convicted. While in prison, he petitioned the Supreme Court, arguing that Florida had violated his 14th Amendment right to a fair trial, including his right to counsel.

Loving v. Virginia (1967)

Mildred and Richard Loving, a Black woman and a white man, were married in Washington, D.C. They then returned to their home state of Virginia where interracial marriage was illegal. Authorities in Virginia arrested them for violating the law. The Lovings challenged their conviction, arguing that the law against marriages like theirs violated the 14th Amendment.

United States v. Virginia (1996)

The Virginia Military Institute (VMI), a state-supported military school, had a policy of only admitting male students. The U.S. government sued, arguing that the exclusion of women violated the Equal Protection Clause of the 14th Amendment. The case tested whether a state-funded institution could legally deny access to women on the basis of sex.

Obergefell v. Hodges (2015)

Same-sex couples in several states, including James Obergefell, who had married his partner in Maryland, sued to have their marriages recognized in their home states. These states did not allow same-sex marriage, and the couples argued that state bans violated the 14th Amendment's Equal Protection and Due Process Clauses, which the Supreme Court had interpreted to guarantee the right to marry.

Incorporation

When the Bill of Rights was ratified, it only applied to the federal government, not state governments. The 14th Amendment changed this by, among other things, stating that:

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"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; . . ."

But even with the 14th Amendment, the Supreme Court was reluctant to extend the protections of the Bill of Rights to the states. Beginning in earnest in the 1920s, the Court began incorporating rights one at a time in case after case over several decades in a process called selective incorporation.

Gideon v. Wainwright

One famous example of incorporation is a 1963 case called *Gideon v. Wainwright*. The roots of this case started thirty years earlier, in 1938, when the Supreme Court ruled that the 6th Amendment's right to assistance of counsel required the federal government to appoint a lawyer to a defendant who could not afford one in federal cases. States were not required to do this. For example, Florida only provided free attorneys in cases where the death penalty was considered. It was in Florida where Clarence Earl Gideon was arrested and tried for burglarizing a pool hall. He could not afford an attorney, so had to represent himself. He was convicted and sentenced to five years in prison. While in prison, Gideon studied the Constitution. And he eventually petitioned the Supreme Court to hear the case and consider his argument that states should be required to follow the 6th Amendment and provide lawyers for those who could not afford them. The Court agreed, thus incorporating the 6th Amendment.

Over several decades, the Supreme Court has used selective incorporation to incorporate nearly every right enshrined in the Bill of Rights. That means that through multiple decisions, over many decades, the Court has applied the protections included in the Bill of Rights to state violations.

***Cantwell v. Connecticut* (1940)**

Newton Cantwell and his sons were Jehovah's Witnesses sharing their religious beliefs in a Catholic neighborhood in Connecticut. They played recordings criticizing organized religion, which offended some listeners. They were arrested for breaching the peace and for not having a permit to solicit. The Cantwells challenged the law, saying it violated their

religious freedom. The Supreme Court agreed.

Mapp v. Ohio (1961)

Police in Ohio entered the home of Dollree Mapp without a proper search warrant while looking for a fugitive. Instead, they found obscene images. This was illegal in Ohio, and she was charged and convicted for possession. Mapp argued that her rights had been violated because the search was conducted without a warrant. The Supreme Court agreed and ruled that evidence obtained through an illegal search cannot be used in state courts.

Malloy v. Hogan (1964)

William Malloy was arrested for illegal gambling in Connecticut. After serving his sentence, he was called to testify in a later gambling investigation. He refused, saying that answering questions might incriminate him. The state jailed him for contempt. Malloy took his case to the Supreme Court. The Court sided with him, ruling that he could not be compelled to testify.

McDonald v. Chicago (2010)

The city of Chicago had a strict handgun ban. That ban applied to those with conviction records and those who had always been law-abiding citizens. Otis McDonald, a law-abiding citizen who wanted to own a handgun, determined that this law violated his rights. He sued the city and the case went to the Supreme Court. The Supreme Court agreed, ruling that Chicago's law was unconstitutional.

Rights: Enumerated and Unenumerated

Enumerated rights are rights that are clearly listed and specifically mentioned in the Constitution. For example, the Bill of Rights includes enumerated rights like the right to free speech, the right to keep and bear arms, and the right to petition the government. There are different opinions on what these rights mean in practice. But there is no real debate on whether they exist.

Unenumerated rights are different. These are rights we possess but are not spelled out specifically in the Constitution, such as the right to marry or travel. Frequently, the Due Process Clause of the 14th Amendment has been crucial in recognizing unenumerated rights.

Substantive Due Process is a constitutional doctrine that protects certain unenumerated (not written in the Constitution) fundamental rights from government interference. The idea is that these are rights so important that they cannot be infringed without a very good reason for doing so. It doesn't matter how much process the government gives. At the Supreme Court, the Due Process Clause of the 14th Amendment is the foundation for this doctrine. But how does the Court determine which rights are fundamental if they are not written in the Constitution? The answer to this question is full of controversy.

To help answer some of these questions, the Supreme Court uses something called the Glucksberg test, from the decision in *Washington v. Glucksberg* (1997).

The Glucksberg test asks three questions.

- Is the Court providing a "careful description" of the fundamental liberty interest? Meaning, has the Court clearly and narrowly defined the right?
- Is the right "deeply rooted in our history and traditions"? Meaning, was it recognized when the Bill of Rights was framed and ratified, recognized when the 14th Amendment was framed and ratified, and/or recognized by most states in law or custom?
- Is the right "implicit in the concept of ordered liberty"? Meaning, is it a right so essential to a free and just society that it must be protected even if it isn't in the Constitution?

The Debate Over Substantive Due Process

Substantive due process, protecting unenumerated rights, is not without controversy. Even restrictive methods like the Glucksberg test have been criticized. Here are the two sides in the debate.

Those who support substantive due process argue that:

- The text of the Constitution points to the existence of unenumerated rights. For example, the 9th Amendment says that there are other rights not listed in the Constitution that are "retained by the people."
- Without it, many potential rights would be vulnerable to government infringement.
- The Supreme Court has long recognized the existence of these rights.

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Those who oppose substantive due process argue that:

- The Constitution simply doesn't mention these rights.
- The doctrine gives the judiciary too much power.
- There is no clear standard for what counts as a fundamental right. How are judges going to identify these rights if they aren't in the Constitution?

Notes and Questions:

