

# Fourteenth Amendment

(1868)

## EQUAL PROTECTION OF THE LAW

As Congress contended with President Andrew Johnson over the post-Civil War Reconstruction of the South, it created a Joint Committee on Reconstruction to consider legislation that would protect the “freedmen,” as newly freed African Americans were called. Members of the joint committee considered various options, among them stripping political rights from former Confederate leaders and giving southern blacks the right to vote. They felt they needed to act promptly as the abolition of slavery had voided the Constitution’s “three-fifths compromise” and would increase the South’s representation in the House and its weight in the Electoral College. Some northerners feared that the South would rally to elect Robert E. Lee as President.

The joint committee considered a constitutional amendment that would have excluded anyone denied the right to vote because of race from being counted for purposes of congressional representation. But they soon realized that states could get around this formula by instituting literacy tests, poll taxes, and other discriminatory devices that could be presented as “race neutral.” Representative John A. Bingham, a member of the joint committee, then drafted another proposal to extend the “equal protection of life, liberty, and property” to all citizens. This was the seed of the Fourteenth Amendment, which was expanded, debated, and revised until passed by the House and Senate.

Woman suffrage advocates were upset with the Fourteenth Amendment’s reference to “male inhabitants,” marking the first time that the distinction “male” appeared in the Constitution. They believed that gender equality was being sacrificed for racial equality. But, others perceived that the amendment had broader implications than its obvious intention of protecting the freedmen. They believed that the amendment’s equal protection clause would apply to women as well as to men, to Indians, and to immigrants. They also believed that the amendment would at last apply the guarantees of the Bill of Rights to the states as well as to the federal government. They left the ultimate interpretation to the federal courts, however, and it would take another century before the courts embraced such an expansive view of the Fourteenth Amendment.

## WHAT IT SAYS

Section 1. 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.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

## WHAT IT MEANS

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Although it was created primarily to deal with the civil rights issues that followed the abolition of slavery, the Fourteenth Amendment has affected a broad range of American life, from business regulation to civil liberties to the rights of criminal defendants. Over time, the Supreme Court has interpreted the amendment to apply most of the guarantees of the Bill of Rights to the states as well as the federal government. The amendment contained three new limitations on state power: states shall not violate citizen's privileges or immunities or deprive anyone of life, liberty, or property without due process of law, and must guarantee all persons equal protections by the law. These limitations on state power dramatically expanded the reach of the U.S. Constitution.

Fulfilling its original purpose, the Fourteenth Amendment made it clear that everyone born in the United States, including a former slave, was a citizen. This voided the Supreme Court's ruling in *Dred Scott v. Sandford* (1857), which had asserted that African Americans were not citizens, and therefore were not entitled to constitutional rights. Yet, for a century after the ratification of the Fourteenth Amendment, the Supreme Court believed that racial segregation did not violate the "equal protection of the laws" provision in the amendment as long as equal facilities were provided for all races. This attitude changed dramatically in 1954 when the justices concluded that the intent of the Fourteenth Amendment made racially segregated schools unconstitutional. The Court has gradually adopted a much broader interpretation of the amendment that extends greater protection to women, minorities, and noncitizens.

The Fourteenth Amendment also specified that all adults must be counted for purposes of apportioning the House of Representatives, thereby voiding the "three-fifths" clause of the original Constitution. Ironically, this provision increased the number of representatives for the former Confederate states when they reentered the Union. By the twentieth century, this provision also justified the Supreme Court's insistence that state legislative bodies and the U.S. House of Representatives be apportioned equally. The amendment also addressed concerns about the number of Confederates seeking to serve in Congress after the Civil War. Former Confederate federal and state officials and military personnel were required to take an oath of loyalty to the United States. The former Confederate states were also prohibited from repaying the Confederate debts or compensating former slave owners for the property they lost with the abolition of slavery.

Finally, the last section of the amendment gave Congress the power to enforce all the provisions within the whole amendment. Under this provision, Congress passed the Civil Rights Act of 1964, the Voting Rights Act of 1965, sections of other civil rights legislation that protect women's rights, and the Americans with Disabilities Act, affording equal treatment for disabled people.

Over time, the Supreme Court has interpreted the Fourteenth Amendment's due process clause to incorporate (or apply) many of the guarantees of the Bill of Rights to the states, as well as to the federal government. The concept of incorporation has dealt mostly with such "fundamental" rights as freedom of speech, press, religion, assembly, and petition. Because the Court has not held the states subject to some of the other provisions of the Bill of Rights, such as the right to bear arms or the right to a trial by jury in civil cases, its approach has been called "partial incorporation."

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*Due process has not been reduced to any formula; its content cannot be determined by reference to any code. The best that can be said is that through the course of this Court's decisions it has represented the balance which our Nation built upon postulates of respect for the liberty of the individual, has struck between that liberty and the demands of organized society."*

—Justice John Marshall Harlan,  
dissenting opinion,  
*Poe v. Ullman* (1961)

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# Fourteenth Amendment

## The Bill of Rights applies only to the federal government

→ 1833

Although one of James Madison’s original amendments would have applied the Bill of Rights to the states, the Senate rejected it on the grounds that the states protect rights in their own constitutions. In the case of *Barron v. Baltimore* (1833), the Supreme Court reiterates this by arguing that the Fifth Amendment and other portions of the Bill of Rights apply only to the federal government.

## State regulation of business does not violate the Fourteenth Amendment

→ 1873

A group of butchers in New Orleans sue when the state gives monopoly rights to a single slaughterhouse. In a 5-to-4 decision, the justices rule in the Slaughterhouse Cases that the due process and equal protection provisions of the amendment do not limit state powers to regulate business. The dissenters on the Court argue for a broader interpretation of the Fourteenth Amendment as a safeguard against state violations of personal rights and due process.

## The interpretation of the Fourteenth Amendment is broadened

→ 1882

Concerned about increasing state regulation, corporations seek to overturn the Supreme Court’s decision in the Slaughterhouse Cases. Former U.S. senator Roscoe Conkling, who had been one of the authors of the Fourteenth Amendment, argues in *San Mateo County v. Southern Pacific Railroad Company* that the Amendment’s phrase “any person” also applies to a corporation. Therefore, the county’s efforts at regulation violate the railroad’s right to “substantive due process.” The Court accepts this line of reasoning, frustrating state and federal governments’ efforts to regulate business practices for the next half century.

## Equal protection guarantees one person, one vote

→ 1962

In many state legislatures, rural districts have far fewer voters than densely packed urban districts, yet each district has the same number of representatives. In *Baker v. Carr*, the U.S. Supreme Court orders federal courts to consider suits that challenge the apportionment of state legislatures, arguing that legislative bodies that are not apportioned equally violate the equal protection clause of the Fourteenth Amendment. All legislative bodies (except the U.S. Senate) are held to a standard of one person, one vote, so that all districts in a legislative body must represent roughly the same number of constituents.

## The Supreme Court broadens the incorporation doctrine

→ 1963

When a man in Florida is convicted after being denied an attorney—because he cannot afford to hire one—he petitions the Supreme Court. The case *Gideon v. Wainwright* (1963) results in a ruling in which the Court asserts that the Fourteenth Amendment embraces the fundamental principles of liberty and justice that lie at the base of all our civil and political institutions. Writing for the majority, Justice Hugo Black reasons that the due process provisions of the Fourteenth Amendment mean that the states are not immune from the Bill of Rights.

## The Fourteenth Amendment protects a right to privacy

→ 1964

In striking down a Connecticut law that prohibits the sale of contraceptives, the U.S. Supreme Court, in *Griswold v. Connecticut*, cites the Fourteenth Amendment as one of the amendments supporting its decision that the Constitution gives Americans a right to privacy.

# TIMELINE

## Jim Crow laws are accepted as constitutional

1896

In response to efforts in the southern states to segregate people by race—“Jim Crow” laws and practices—Congress passes the Civil Rights Act of 1875, which guarantees equal rights to all citizens in all public places. When African Americans are denied equal accommodations they sue, but in 1883 the Supreme Court rules that the Fourteenth Amendment deals with discrimination by the states, not by individuals. Then in *Plessy v. Ferguson*, the Court upholds a Louisiana law that segregates railroad cars, reasoning that if the law provides equal accommodations it does not violate the Fourteenth Amendment.

## The Supreme Court upholds minimum wage laws

1937

For decades, the Supreme Court strikes down reforms designed to aid women and children workers on the grounds that these laws impair the freedom of contract under the Fourteenth Amendment. After California enacts a minimum wage for women workers, Elsie Parrish sues a hotel company for paying her less than this minimum wage. The Supreme Court upholds the state law by noting that the Constitution does not mention the freedom of contract, that all liberties are subject to due process, and that employers and employees are not equally free when it comes to negotiating work agreements.

## School segregation is found unconstitutional

1954

Since *Plessy v. Ferguson*, the courts have accepted racial segregation as long as all races are treated equally. In many states, schools for whites and African Americans are separate but far from equal in funding and equipment. In *Brown v. Board of Education of Topeka, Kansas*, the Supreme Court concludes that school segregation denies students the equal protection of the laws. The Court orders schools to integrate “with all deliberate speed.”

## English literacy tests cannot ban otherwise qualified voters

1966

As citizens of the United States, Puerto Ricans who moved to New York State seek to vote, but the state requires them to pass an English-language literacy test. Some file suit on the grounds that this law violates the Voting Rights Act of 1965. In *Katzenbach v. Morgan* the Supreme Court cites the Fourteenth Amendment’s equal protection clause in upholding the Voting Rights Act, and stipulates that those who have achieved at least a sixth-grade education in Puerto Rico cannot be denied the right to vote.

## U.S. citizens have a right to challenge being held as an enemy combatant

2004

The U.S. government believes that Yaser Esam Hamdi, an American citizen, has taken up arms to support the Taliban, the radical regime in Afghanistan. After U.S. forces overthrow the Taliban, Hamdi is seized and detained in Guantanamo Bay, and later transferred to a prison in Charleston, South Carolina. By calling Hamdi an enemy combatant, the Defense Department asserts that it can hold him indefinitely without trial. In *Hamdi v. Rumsfeld*, the U.S. Supreme Court disagrees, finding that due process demands that any U.S. citizen held in the United States be given a meaningful opportunity to contest the basis for that detention.

## Execution of juveniles is ruled unconstitutional

2005

In a 5-to-4 decision in the case of *Roper v. Simmons*, the U.S. Supreme Court rules that executing juveniles who were under eighteen at the time they committed a capital crime is a violation of the Eighth and Fourteenth Amendments to the Constitution. The majority cites “evolving” social attitudes in the United States, where thirty states have banned the execution of juveniles, and around the world, where all but five other nations have also prohibited it.