The 14th Amendment
Transforming Our Relationship to Rights and the Federal Government
National Citizenship
Fundamental Rights and Same-Sex Marriage

ALSO IN THIS ISSUE:
Perspectives on the Fourteenth Amendment
Learning Gateways
Teaching Legal Docs
Law Review Profile
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Tiffany Middleton
Managing Editor
n 2018, the nation will mark the 150th anniversary of the ratification of the Fourteenth Amendment to the U.S. Constitution. Historian David Blight called the amendment, in 2015, “a holy writ that binds our national community.” Indeed, it is. When it was ratified in 1868, it marked a turning point, defining national citizenship, guaranteeing equal protection before the law, and due process execution of all laws. It is arguably one of the most significant amendments to the U.S. Constitution, laying the groundwork for extending the guarantees in the Bill of Rights to the states, and essentially redefining the relationship between Americans and their government. It is with this in mind that the 2017 national Law Day (May 1) theme is “The Fourteenth Amendment: Transforming American Democracy.” This issue of Insights seeks to unpack the “transformation” and delve deeper into the Fourteenth Amendment and its constitutional promises.

The issue opens with Duke University history professor Laura F. Edwards grappling with the transformative nature of the amendment, discussing how it fundamentally changed the rule of law in the United States. A second feature article by Linda Monk, the “Constitution Lady,” explores how the promise of birthright citizenship in the Fourteenth Amendment is still raising questions today. The final feature article by Evan Gerstmann looks at how the Fourteenth Amendment has been used to protect the fundamental right of marriage. A special Learning Gateways feature follows the article and uses a case study of the landmark U.S. Supreme Court case Loving v. Virginia to discuss the fundamental right of marriage.

In Perspectives, experts offer some ideas on how we might consider the Fourteenth Amendment 150 years after its ratification. Our regular primary source series, Teaching Legal Docs, provides a detailed look at birth certificates. In Law Review, David Hudson details how the Fourteenth Amendment provides the foundation for “incorporation” of the Bill of Rights to the states. Finally, in Profile, we interview Sam Mihara, whose family spend three years in a Japanese-American relocation center during World War II.

Please remember than an issue of Insights is never complete without a visit to www.insightsmagazine.org for additional resources, materials, and useful links to help you bring this and other law-related topics to your classroom. There you will find articles, links to primary source documents, and ready-to-use handouts. As always, there are opportunities to let us know how you use this edition. We value your input and look forward to your comments.

Best wishes for a bright and productive spring,

Tiffany Middleton
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The Fourteenth Amendment: Transforming Our Relationship to Rights and the Federal Government

by Laura F. Edwards

Today, many Americans assume that it is the federal government’s job to protect their rights, which they define broadly to include individual liberties and access to physical spaces, social organizations, and economic opportunities as well as equal treatment before the law. If they think about history at all, they assume that it is this way now because it was always that way. But it was not.

The legal context that so many of us now take for granted traces back to the Fourteenth Amendment, which established birthright citizenship, linked citizenship to civil rights and provided for federal oversight of those rights. In history textbooks, the amendment usually appears in the context of discussions about the extension of existing civil rights to African Americans after the Civil War, during Reconstruction. As significant as those changes were, however, the Fourteenth Amendment did much more. Its provisions meant that all Americans, not just African Americans, could appeal to the federal government to protect rights that used to be within the exclusive jurisdiction of states. As people used the amendment to challenge state law, rights not only became more accessible but also acquired new meanings. The Fourteenth Amendment thus dramatically changed the legal order of the United States, transforming all Americans’ relationship to rights and the federal government.

States, Rights, and Citizenship before the Fourteenth Amendment

Until ratification of the Fourteenth Amendment in 1868, states had the power to define and distribute rights. The Thirteenth Amendment, which abolished slavery in 1865, did not change that situation, as a group of former slaves in Tennessee knew all too well. With the abolition of slavery, they wrote, “our prayers were answered, and the secret hopes of our hearts were realized.” But while “legally free,” they still did not have the same rights as white Tennesseans. Tennessee, like other states of the former Confederacy, passed laws constraining Africans Americans’ basic rights after the Civil War and before the Fourteenth Amendment, limiting access to the courts and restricting property rights. “We have no where to look for protection, save to the United States Authority. . . . But we want some way of easily bringing our cases before them,” they wrote.

In appealing to federal authority to intervene in state law, these African Americans were asking for something new. Before the Fourteenth Amendment, the federal government dealt with the rights of individuals only when those people or the legal issues in which they were involved were not within a state’s jurisdiction: in the territories, in relation to Indian nations, in the District of Columbia, and in federal cases, of which there were relatively few. Even the rights enumerated in the U.S. Constitution’s Bill of Rights remained out of reach for most Americans because these rights applied only in cases that involved federal law, not state law. It was impossible to appeal a case from state courts to federal courts based on a violation of the federal Bill of Rights.
in expansive terms, often in connection to liberty, freedom, and equality, with the implication that they could accomplish those ends. But, in law, rights were neither as capacious nor as powerful as the political rhetoric suggested and were focused narrowly on matters involving the ownership and transfer of property and access to the legal venues that dealt with such matters. States did have bills of rights that were similar to the federal Bill of Rights. But the fact that states also had broad powers to regulate in the name of the public good made those rights contingent, not absolute. The application of rights, moreover, tended to preserve existing

The federal government did not even attach rights to citizenship. In fact, there was no clear definition of citizenship at all in federal law. The 1790 Naturalization Act did limit citizenship to those who were free and white. But that act and subsequent legislation addressed the situation of new immigrants who sought application for naturalization, not to those who were born here. When asked in 1863 to determine whether African Americans could be citizens of the United States, Attorney General Edward Bates’s answer underscored the ambiguity of citizenship generally. “Who is a citizen? What constitutes a citizen of the United States?” he asked rhetorically. He found no definition in either federal legislation or judicial decisions. Even the U.S. Supreme Court’s infamous decision in Dred Scott v. Sandford (1858), which denied citizenship to all people of African descent, did not resolve the question because it was such an outlier and generated such controversy. “Eighty years of practical enjoyment of citizenship, under the Constitution,” he concluded, “have not sufficed to teach us either the exact meaning of the word, or the constituent elements of the thing we prize so highly.”2

To the extent that there was a link between U.S. citizenship and rights at all, it was at the state level, where there was a concept of state citizenship, which did establish claims to rights, as defined within states. States’ jurisdiction over Americans’ legal status was why some sanctioned slavery and others did not. And it was not just slave states that restricted Americans’ rights. All states limited or negated the rights of African Americans, all women, many propertyless men, and a range of other racial, ethnic, and religious minorities as well. No free woman of any race, married or single, could claim the full array of civil rights or political rights. Many men found themselves in a similar situation. Free blacks, in particular, had very limited rights, even if they lived in free states, many of which had laws nearly identical to those imposed on the freedpeople in Tennessee in 1865.

To be sure, political leaders, regardless of party affiliation, invoked rights...
The Fourteenth Amendment’s first and most famous provision clarified the definition of U.S. citizenship: “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.”

inequalities because they were intended to uphold the interests of those who owned property, not those without.

Fourteenth Amendment
States’ authority over Americans’ rights, once accepted without comment, appeared increasingly problematic after the Civil War. The complaints of former slaves, such as the Tennessee petitioners, acquired resonance because of the Republican Party’s policies during the Civil War. Theirs was the nation depicted by President Abraham Lincoln in the Gettysburg Address, the one “our fathers brought forth on this continent . . . conceived in liberty and dedicated to the proposition that all men are created equal.” The Fourteenth Amendment wrote that nationalizing political rhetoric into the legal order of the nation. Even so, the commitment to states’ traditional powers placed definite limits on the federal government’s authority.

The Civil Rights Act of 1866 foreshadowed the Fourteenth Amendment. Its formal title, “An Act to protect all Persons in the United States in their Civil Rights, and furnish the Means of their Vindication” expressed the basic intent. The act clarified the vexing question of African Americans’ citizenship by declaring “all persons born in the United States and not subject to any foreign power” to be citizens, although it specifically excluded Indians. It then affirmed access to those rights that had been denied African Americans in Tennessee and in other states. All citizens, “of every race and color, without regard to any previous condition of slavery or involuntary servitude shall have . . .” the same right to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens. They also “shall be subject to like punishment, pains, and penalties.” The act made the denial of rights a crime and prescribed penalties for convicted offenders. It also provided for the removal of such cases to federal courts, allowing defendants to bypass hostile state and local jurisdictions—what the Tennessee petitioners had requested.3

Proponents of the 1866 Civil Rights Act, however, feared that its provisions were insecure. The U.S. Supreme Court could declare it unconstitutional at any time, and Congress could gut it or even repeal it. Such concerns led to the recommendation that the act’s basic provisions be written into the U.S. Constitution in the form of a new amendment.

The Fourteenth Amendment’s first and most famous provision clarified the definition of U.S. citizenship: “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.” In so doing, the amendment went beyond the 1866 Civil Rights Act, which affirmed the citizenship of African Americans but referred only to those people born within the United States. The Fourteenth Amendment included naturalized citizens because it was intended to offer a general definition of citizenship. In so doing, the new amendment not only asserted federal authority by applying a uniform definition of citizenship but also forged a direct connection with its citizens.

The remaining sentences of the first provision connected citizenship to civil rights, turning the 1866 Civil Rights Act’s list of guaranteed rights into general promises of equity. “No State,” the amendment promised, “shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

The Fourteenth Amendment then charged the federal government with the protection of those rights, although it framed that power in the passive voice. It promised that “no State . . . shall abridge” citizens’ rights. The passive construction spoke volumes about contemporary political currents, particularly widespread doubts about the wisdom of extending federal authority into areas once exclusively controlled by the states. It was not until the final clause that the rhetorical curtain was lifted to reveal the enhanced authority of the federal government: “The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.” That statement, remarkable in its brevity, nonetheless turned what might have been mere political aspirations into tangible goals by giving Congress the enforcement power.

The Fourteenth Amendment did not give the federal government direct
authority over civil rights, even though many congressional Republicans had argued for that. In fact, the amendment did not grant rights to anyone at all, not even African Americans. It gave the federal government a negative power: to prohibit states from discriminating on the basis of race or previous servitude. That situation left states with the authority they traditionally held to determine the rights of American citizens. African Americans could only claim the same rights that their states gave—or not—to others. Only later in the twentieth century was the Fourteenth Amendment reinterpreted to allow Americans to challenge state laws by claiming rights specified in the U.S. Constitution.

The Legal Legacy

The Fourteenth Amendment linked citizenship to rights but did not define the rights of citizens. In that sense, it captured the political conflicts of the time and preserved them in legal amber: What were the privileges and immunities of citizens? What constituted due process of law and equal protection? Under what circumstances would the federal government intervene? How would it do so, given the hostility of state governments and without the necessary administrative support? After all, the justice department was only a bare-bones operation, with a handful of lawyers in the late nineteenth century. In fact, there were no clear answers to those questions then, and they remain contested today.

The conflicts surrounding the Fourteenth Amendment were evident in the assault on African Americans’ rights after Reconstruction. In 1867, congressional Republicans required Confederate states to pass the Fourteenth Amendment for readmission to the United States, which forced them to reframe their constitutions and laws to recognize African Americans’ civil rights. Conservative white lawmakers, however, found ways around the amendment when they regained political power in the 1870s. The federal government—the legislative, executive, and judicial branches—all failed to circumvent those efforts. While some in the federal government remained committed to the Fourteenth Amendment, they faced an uphill battle in realizing its promises, a struggle made more difficult by continued resistance, even within the federal government, to the use of federal power to override state policy, even for flagrant violations of African Americans’ rights.

The Fourteenth Amendment, nonetheless, provided the means by which Americans could, in theory, access federal power. It did not take them long to do so, as evidenced in Bradwell v. State and The Slaughter-House Cases, both of which were heard by the U.S. Supreme Court in 1873. Myra Bradwell played an influential role in Illinois legal circles as editor of the Chicago Legal News, the publication on which many lawyers in the state depended to keep current on the law. It was, then, deeply ironic when the Illinois state legislature—filled with lawyers who read her publication—refused to consider her application to the bar. Not one to be cowed, Bradwell challenged the decision, making creative use of the Fourteenth Amendment. She admitted that the opportunity to apply to the bar was not, in itself, a right. Even so, it was connected to her right to pursue her livelihood and her property interests—issues of central importance to women, who lost property rights when they married because of the laws of coverture. The state, she argued, had violated the Fourteenth Amendment by denying rights to her that were granted to other (male) citizens. The U.S. Supreme Court rejected the first part of the argument, which focused on what qualified as a protected right, thereby evading the second part, which dealt with Fourteenth Amendment’s application to women. Still, her use of the amendment illustrates the broader transformation underway.

Discussion Questions

1. Why did lawmakers think the Fourteenth Amendment was necessary, following the Civil War?
2. How was the Fourteenth Amendment “transformative,” according to the author? What implications has the transformation had for individual rights?
3. What new questions did the Fourteenth Amendment raise in courts? What questions did it answer? What questions are still unanswered, and what do you think they mean for Americans?

Suggested Resources


It is difficult to imagine stranger legal allies than Myra Bradwell and the New Orleans butchers in the Slaughter-House Cases. The butchers were challenging a local ordinance that regulated the slaughtering of meat, regulations that were not particularly unusual. But the butchers in New Orleans had a particular beef (so to speak) with their government: they were white men, mostly Democrats, who characterized the regulation as overreach on the part of the Republican Party, then in control of the city. With the backing of their party’s leadership, they reached for the laws of their political opponents and used the Fourteenth Amendment to protect...
Learning Gateways
Tracking the Transformative Fourteenth Amendment

by JoEllen Ambrose

This lesson offers several instructional strategies for teaching the Fourteenth Amendment. First, students speak the protections stated in Section 1 of the Fourteenth Amendment. Second, students research and role-play plaintiffs in landmark cases tracking the Fourteenth Amendment’s impact in society. Finally, students participate in a Socratic seminar evaluating the transformative nature of the Fourteenth Amendment. This lesson and accompanying handouts are available at www.insightsmagazine.org.

Learning Targets
• Identify citizenship, equal protection and due process protections in the Fourteenth Amendment.
• Analyze landmark cases interpreting the Fourteenth Amendment and their impact.
• Evaluate how the Fourteenth Amendment has transformed society in achieving civic ideals of equality, justice, and liberty.

C3 Framework for Social Studies Standards
D2.Civ.5.9–12. Evaluate citizens’ and institutions’ effectiveness in addressing social and political problems at the local, state, tribal, national, and/or international level.

Common Core State Standards
CCSS.ELA- Literacy. RH.11-12.2—Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.

GRADES: 9–12

DURATION: One class period for speaking strategy and research; one class period for role-play and class discussion tracking impact of cases; one class period for Socratic seminar.

Materials
• Links to U.S. Supreme Court case studies
• Words in Section 1 of the Fourteenth Amendment
• Available at www.insightsmagazine.org
  – Handout 1: TFA investigator report
  – Handout 2: Tracking the impact of the Fourteenth Amendment (Graphic organizer)

Procedure
Introductory discussion. Teacher asks:
• Have you ever experienced unfair treatment in your life? Who mistreated you and why? How did you respond to the situation? What changes should be made to correct the situation?

STRATEGY ONE: Speaking words of protection in the Fourteenth Amendment—a literacy strategy
1. Students read the words of Section 1 of the Fourteenth Amendment and do the following:
   1) Circle important words. Look up words you do not know and write definitions in margin.
   2) Underline main ideas. Number them.
   3) Box the level of government restricted by this amendment. Why is this important?
   4) Paraphrase individual protections provided in the Fourteenth Amendment.
   5) Identify ideals embodied in Fourteenth Amendment.
2. Teacher-led class reads the Fourteenth Amendment.
   1) Teacher reads out loud the words of Section 1, Fourteenth Amendment.
   2) Asks students to join in the reading by saying out loud any circled words students identified as important.
   3) Asks students to clap when the level of government restricted by this amendment is read.
   4) Asks students to read in a louder voice phrases underlined as main ideas.
   5) Repeats reading a second time so everyone joins in and students hear emphasis.
3. Asks class after reading:
   1) Which words and ideas did you hear emphasized in our class reading?
   2) How does the Fourteenth Amendment reflect ideals found in the Declaration of Independence? Gettysburg address?
   3) What significance is there in the Fourteenth Amendment’s ratification after the Civil War?
   4) What has been the impact of the Fourteenth Amendment in our society today?
Strategy Two: Researching Fourteenth Amendment cases

1. Assign student pairs a landmark case interpreting the Fourteenth Amendment (see sidebar).
2. Research Supreme Court cases as a primary source or use secondary sources with edited case studies (see sources below).
3. Students write out a case analysis including:
   - Identity of parties in the case
   - Summary of events leading to lawsuit
   - Issue before the U.S. Supreme Court
   - Tell who won the case and explain rationale of Court’s decision
   - Describe how the Fourteenth Amendment is interpreted
   - Explore impact of case today

Sources for edited case studies:
- Oyez https://www.oyez.org/

Strategy Three: Tracking the impact of the Fourteenth Amendment

1. For each case, students in pairs each choose a role:
   - the plaintiff (see side panel) or a legal expert (see written case analysis from research). Students review relevant information needed for them to role-play the plaintiff and a legal expert familiar with the case.
2. Assign several students to play a third role “TFA (Tracking the Fourteenth Amendment) investigator” whose job is to interview the plaintiff and legal expert about their case and report findings back to the class. To prepare TFA investigators, review interview questions (see Handout 1).
3. In groups of 3, interviews are conducted by the TFA investigator assigned to the case. Plaintiffs and legal experts role-play their parts and answer investigator’s questions. Investigator writes down answers and summarizes conclusion in a final report. (10–15 minutes)
4. Class Follow-up Discussion. During discussion, plot cases on a graphic organizer to overview development of Fourteenth Amendment law (see Handout 2).
   - Ask TFA investigators to present final reports.
   - How has each case interpreted the Fourteenth Amendment?
   - Do you see any patterns in the Court’s decisions?
   - Can you plot other key Fourteenth Amendment cases that extend further protections?
   - What has been the overall impact of the Fourteenth Amendment in our society today?
   - There have been circumstances when the Fourteenth Amendment did not create social change (see ‘deadend’ circle), how has Congress (Civil Rights Act, ADA) or the president (Truman’s executive order desegregating military) or states (Assisted-physician suicide legislation) or later constitutional amendments (Nineteenth Amendment) acted to change society and further our civic ideals?
   - Predict how the Fourteenth Amendment will continue to evolve in the future.

Landmark Cases

- Trial of Susan B. Anthony (1873)
  Role: Susan B. Anthony, suffragette
- United States v. Wong Kim Ark (1898)
  Role: Wong Kim Ark, born in U.S. to parents “of Chinese descent”
- Lochner v. New York (1905)
  Role: Joseph Lochner, bakery owner
- Meyer v. Nebraska (1923)
  Role: Robert T. Meyer, teacher
- Gitlow v. New York (1925)
  Role: Benjamin Gitlow, socialist
- Powell v. Alabama (1932)
  Role: Defendant in Scottsboro Boys trial
- Brown v. Board of Education (1954)
  Role: Linda Brown, student
- Baker v. Carr (1962)
  Role: Charles Baker, resident of Shelby County
- Loving v. Virginia (1967)
  Role: Mr. and Mrs. Loving, interracial marriage
- Regents of University of California v. Bakke (1978)
  Role: Allan Bakke, rejected UCLA medical student
  Role: Anonymous VA female high school student seeking admission to all-male VA Military Institute
- McDonald v. Chicago (2010)
  Role: Otis McDonald, gun-rights advocate
  Role: James Obergefell, seeking legal recognition of same-sex marriage

Amendment XIV ~ 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.

U.S. Constitution
Insights on Law & Society 17.2

Cans framed claims to access in terms of rights that the federal government should protect, through the Fourteenth Amendment. The 1875 Civil Rights Act acknowledged such claims as rights. Those provisions were subsequently declared unconstitutional, a decision that ultimately sanctioned segregation. But cases involving access to public space continued to cast the issues in terms of rights protected by the Fourteenth Amendment, a characterization that was ultimately accepted and institutionalized later in the twentieth century, through the pressure of the civil rights movement. The implications, however, changed all Americans’ expectations about hiring and promotion practices and college admission, as well as access to public spaces and services. As a result of other legal challenges in the twentieth century, moreover, the U.S. Supreme Court extended the Fourteenth Amendment to include rights in the U.S. Constitution, providing for something like the federal standard of rights envisioned by some during the Civil War era and shifting power away from states even more.

Conclusion

In positioning the federal government as the protector of rights, the Fourteenth Amendment enhanced the importance of rights in the legal order. It not only extended rights—at least in theory—to more people, particularly African Americans, but also made rights a means of accessing federal authority to challenge state policy. Americans embraced their new relationship to rights and federal authority, insisting that the federal government act on their conceptions of rights—conceptions that reached far beyond the rights allotted to them by states and even those initially protected in the 1866 Civil Rights Act. Those efforts, however, often resulted in conflict, because there was no consensus about definition of rights, either at the time of the Fourteenth Amendment’s ratification or now—and those conflicts are also the amendment’s legacy.

EXTENSION ACTIVITY: Socratic seminar answering compelling questions

1. In preparation, students should choose to read one of the articles about the Fourteenth Amendment in this issue of Insights. Teacher should follow Socratic seminar guidelines.

2. Possible questions:
   • Has the Fourteenth Amendment addressed transformative change in our society? If so, how?
   • Are we closer to achieving our civic ideals of justice, liberty, and equality?

What changes would you like to see in our shared future?
What constitutional, legislative, and political strategies will you employ to bring about effective change?

JoEllen Ambrose is a lawyer and teacher in Minnesota. She is active with the Learning Law and Democracy Foundation and is a member of the advisory council of the ABA Standing Committee on Public Education. She received the Isidore Starr Award for Excellence in Law-Related Education in 2013.
The great importance of the Fourteenth Amendment is that it defined U.S. citizenship and it empowered the Supreme Court to initiate three revolutions in the law: the revolution in criminal rights, the revolution in civil rights, and the revolution in apportionment.

The Thirteenth Amendment freed the slaves and the Fourteenth Amendment made them citizens. The Fourteenth Amendment extended citizenship not only to all former slaves but to all persons born or naturalized in the United States.

The Fourteenth Amendment made it possible for the Warren Court to extend the nationalization of many of the rights in the Bill of Rights through the Due Process Clause. This resulted in a revolution in criminal rights.

For example, prior to the landmark Gideon case in 1963, each state had the option of furnishing counsel in criminal cases, except in death penalty cases. By incorporating the Sixth Amendment through the Fourteenth Amendment’s Due Process Clause, the Gideon case mandated representation in felony cases for all federal, state, and local prosecutions. In this way, the Supreme Court made rights at the national level apply to the states.

In the second revolution, civil rights, the Fourteenth Amendment expanded the Bill of Rights to prohibit discrimination against school children, disabled persons, women, the disenfranchised, same-sex couples and others under the Equal Protection Clause.

The third revolution—voting—that took place under the Fourteenth Amendment established the principle of “one person, one vote.” The Supreme Court ruled that state legislatures must establish voting districts (that applies to state legislative districts, too) with roughly equal represented populations. Both houses of the state legislatures also need to have representation based on districts of roughly the same number of people. These districts may need to be redrawn after the census held every ten years.

Section 5 of the Fourteenth Amendment was added to give muscle to Congress to enforce the rights of the Fourteenth Amendment. One can only conjecture what the lives of Americans would be like without the Fourteenth Amendment.

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Isidore Starr, at 102 years old, is recognized as the “Father of Law-Related Education.” He spent a career teaching audiences, including K–12 students, about law and why it is important.

Why It Is Important to Teach about the Fourteenth Amendment

by Margaret E. Fisher and Isidore Starr

The Fourteenth Amendment extended citizenship not only to all former slaves but to all persons born or naturalized in the United States.
Will the Federal Government Enforce the Fourteenth Amendment at 150 Years?

by Valena E. Beety

History moves in cycles. When state governments permit violence against the people, the federal government has a duty to enforce the Constitution and the Fourteenth Amendment for its citizens: that no State shall deprive a person of life, liberty, or property without due process of law, nor deny a person equal protection of the laws.

Congress passed the Fourteenth Amendment during the American era of Reconstruction, a time of rebuilding the South after the devastation of the Civil War. Reconstruction was a time of hope for recently enslaved African Americans. Yet for many white Americans, Reconstruction was a time of insecurity, particularly for poor white Americans who felt economically threatened by newly freed bondspeople. Racial oppression of people of color created an illusion of unity for white people, compensating poor white Americans for their class disadvantage. Poor white people joined white elites to ensure racial privilege, even when it meant undermining their own populist movements for economic advancement. Insecure white Americans inflicted unbridled violence on African Americans and created the Ku Klux Klan.

The Fourteenth Amendment was ratified in 1868 to recognize and ensure the equal rights and protection of all citizens. Klan atrocities and lynchings led the federal legislature to pass 42 U.S.C. § 1983 less than three years later, as the Ku Klux Klan Act, or the Enforcement Act of 1871. Section 1983 acts as a means to enforce the Fourteenth Amendment and provide damages and injunctive relief for state-sanctioned violence. At the time, the Ku Klux Klan was connected to local law enforcement in the South and supported by local governments.

Today, we again confront insecurity of working-class Americans in the face of economic disenfranchisement and an inevitable minority-majority nation. With the election of Donald Trump, regions like my own of West Virginia, where ninety-four percent of the population is white, acted for the re-creation of a “great” America: an America with jobs and economic security for all white Americans. The ugly face of this basic calling for economic empowerment is often racism and sexism. Both before and after the presidential election violence increased against people of color.1

The Ku Klux Klan Act of 1871, Section 1983 acts as vital responses to the violence of Reconstruction, they are equally necessary now to protect people of color from state-sanctioned violence. Yet our current moment does not have an exact historical analogy.

The existence of the Fourteenth Amendment will not suffice without a federal government committed to enforcing these rights. As aptly stated by Derrick Bell, “Equality envisaged and equality guaranteed . . . have not meant equality achieved.” The words of the Fourteenth Amendment on paper cannot alone create equal opportunities—or equal protection—for people of color.

1. Several outlets have attempted to catalog the incidents of violence, hate speech, or intimidation against people of color before and after the election, including ProPublica and the Southern Poverty Law Center, in the United States; and Ushahidi, in Kenya. The FBI reported a 6.8% national increase in hate crimes in 2015, compared to 2014, and the New York City Police Department reported a 31% increase in hate crimes in 2016, compared to the same data in 2015.

Valena Beety is an associate professor at the West Virginia University College of Law and director of the West Virginia Innocence Project.
Only One Way to Celebrate the Fourteenth Amendment: Teach It!

by Marshall Croddy

Teaching the Fourteenth Amendment is crucial if students are to understand our Constitution, how it has changed over time, and the impact it has had on protections and rights afforded our citizens. At its inception and through its interpretation by the U.S. Supreme Court, it has fueled both hope and controversy.

Within months of the end of the Civil War, former rebel states began passing Black Codes, laws engineered to restrict the civil rights of freed African Americans. Though the Thirteenth Amendment had ended slavery, it did not explicitly assure the rights of citizenship to the newly emancipated. Congress soon crafted a Civil Rights Act to assure their equal civic participation and protection, but President Andrew Johnson vetoed it. Among other things, he believed that Congress lacked the constitutional authority to enact the law. Though Congress overrode the veto, a new constitutional amendment was needed to make sure that civil rights legislation would pass constitutional scrutiny. That amendment would become the Fourteenth, and its ratification by the Southern states was required for readmission to the Union. Declared adopted on July 28, 1868, the amendment nullified the Supreme Court’s decision in Dred Scott, denying that black Americans could be citizens and providing a constitutional basis for civil rights legislation. Ultimately, the new amendment changed our constitutional scheme of government.

The Constitution, in its original form, served only as a restriction on the power of the federal government, and whatever rights and protections against state power were enjoyed by the residents of the various states depended on state constitutions and laws. The Fourteenth Amendment, through its “privileges and immunities,” “due process of law,” and “equal protection of the law” clauses, for the first time restricted the power of the states. And under the Due Process and Equal Protection Clauses, the protections applied to all “persons,” not just citizens.

It would fall to the United States Supreme Court to determine the meaning and scope of the Fourteenth Amendment. Through its “incorporation doctrine,” the Court, on a case-by-case basis, slowly at first and then more rapidly, began making the rights and protections deemed fundamental in the Bill of Rights apply to the states through the amendment’s Due Process Clause. Today, most of the Bill of Rights applies to states, but the process has not been without controversy, most recently with the Court’s decisions on the Second Amendment right to bear arms and same-sex marriage.

The Supreme Court’s interpretation over time of the Fourteenth Amendment’s Equal Protection Clause offers another compelling constitutional narrative. Late nineteenth-century Court decisions finding that equal protection only applied to actions of the state and that states could provide separate but equal facilities and accommodations dashed the hopes of black Americans and reformers. But the mid-twentieth century case of Brown v. Board of Education overturned “separate but equal,” and later decisions extended equal protection to other peoples of color, the disabled, women, and the LGBT community.

Teaching this history and the current controversies surrounding the Fourteenth Amendment is the best way to commemorate its sesquicentennial.

Marshall Croddy is president of the Constitutional Rights Foundation. He has authored numerous publications and directed many programs in the law-related and civic education fields.

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National Citizenship and the Fourteenth Amendment

by Linda R. Monk

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.

Almost 150 years ago, the Fourteenth Amendment to the Constitution was ratified as part of the Reconstruction period after the Civil War. It created such vast changes in American law that some scholars refer to the passage of the three Civil War-era amendments (Thirteenth, Fourteenth, and Fifteenth) as a “second founding” of the United States. According to constitutional scholars Jeff Rosen and Tom Donnelly: “While the 1787 Framers succeeded in creating the most durable form of government in history, it’s only after the Second Founding that the Constitution fully protected the liberty and equality promised in the Declaration of Independence.” Justice Thurgood Marshall made a similar assessment in 1987, during the bicentennial of the Constitution: “While the Union survived the Civil War, the Constitution did not. In its place arose a new, more promising basis for justice and equality, the Fourteenth Amendment.”

One of the most fundamental changes enacted by the Fourteenth Amendment was its definition of national and state citizenship. Although the 1787 Constitution referred to citizenship several times, it did not define the term. In Dred Scott v. Sandford (1857), the Supreme Court held that African Americans, slave or free, could never be citizens of the United States—a ruling that helped spark the Civil War. The Fourteenth Amendment was specifically designed to overturn that decision.

Defining Citizenship

Throughout early American history, state citizenship determined national citizenship. According to Yale Law professor Akhil Reed Amar, the Constitution “was widely read in the antebellum era as making national citizenship derivative of state citizenship, except in cases involving the naturalization of immigrants and the regulation of federal territories.” Thus, it was virtually impossible to be a citizen of the United States without also being a citizen of a particular state.

As new states joined the Union, the balance of power between free and slave-holding states changed. Western expansion exacerbated sectional
tensions and became a flashpoint for violence, as in the Bleeding Kansas episode in the 1850s. During the midst of this upheaval, a case came before the Supreme Court about the legal status of Dred Scott, an enslaved man who had been taken into free territory with his family and thereafter sued to be released. At the time, such cases were not uncommon and often resulted in a ruling in favor of the former slave. But President James Buchanan actively lobbied justices on the Supreme Court to craft a judicial solution about slavery that would avert the threat of Southern secession and a civil war. Such action by a president today would be highly suspect.

However, in the case of Dred Scott v. Sandford (1857), Chief Justice Roger Taney ruled that no African American, slave or free, could ever be a citizen of the United States, due to a theory of racial supremacy under which the black man had “no rights which the white man was bound to respect.” But Justice Benjamin R. Curtis pointed out in dissent that free descendants of African slaves at the time of the Constitution’s adoption not only were citizens but also could vote in the states of New Hampshire, Massachusetts, New York, New Jersey, and North Carolina. As such, they were also citizens of the United States. The Dred Scott decision made political compromise on the issue of slavery impossible, hastening the Civil War.

As the war was ending, President Abraham Lincoln fought to outlaw slavery permanently through a constitutional amendment. Although the Thirteenth Amendment abolished slavery in 1865, it did not resolve the legal status of former slaves. Legislatures in the previously Confederate states passed “black codes” that completely regulated the lives of former slaves to an extent that was little better than slavery itself. Such states did not recognize the freedmen as citizens, which also cast doubt on their status as U.S. citizens.

Congress attempted to address this problem through statutory law in the Civil Rights Act of 1866 but feared the law would eventually be overturned by the Supreme Court. Instead, Congress made ratification of the Fourteenth Amendment, which for the first time defined both national and state citizenship in the Constitution, a condition for allowing the readmission of Southern states during Reconstruction.

Linda R. Monk, J.D., is a constitutional scholar, journalist, and nationally award-winning author, whose passion is the U.S. Constitution and the American story. She is the author of The Words We Live By: Your Annotated Guide to the Constitution and The Bill of Rights: A User’s Guide.
Some members of Congress and President Trump have said that they oppose birthright citizenship for children whose parents are in the United States without authorization. Such opponents have proposed changing this standard.

Birthright Citizenship
The Fourteenth Amendment states that all persons born in the United States and "subject to the jurisdiction thereof" become citizens at birth, a standard known as birthright citizenship. The exact meaning of this phrase has become more controversial today, during an era with high rates of illegal immigration. Some members of Congress and President Trump have said that they oppose birthright citizenship for children whose parents are in the United States without authorization. Such opponents have proposed changing this standard.

In 1866, the Civil Rights Act extended birthright citizenship to persons “not subject to any foreign power, excluding Indians not taxed.” Native Americans who remained members of their tribes, and thus were not taxed, were subject to the sovereignty of their own nations. President Andrew Johnson vetoed the bill because he said it applied to persons of all races, including “the Chinese of the Pacific states, Indians subject to taxation, the people called gypsies, as well as the entire race designated as blacks.” Congress overrode the veto and also added a Citizenship Clause to the proposed Fourteenth Amendment, which set a higher standard for Reconstruction than did President Johnson.

However, the language of the new Citizenship Clause differed from the Civil Rights Act. Instead of conferring birthright citizenship to persons “not subject to any foreign power,” the new language applied to persons “subject to the jurisdiction” of the United States. Senator Jacob Howard of Michigan, who introduced the clause in the amendment, described its meaning: “This will not, of course, include persons born in the United States who are foreigners, aliens, who belong to the families of ambassadors or foreign ministers.”

But many senators disagreed about the interpretation of this change in language. According to Senator Willard Saulsbury of Delaware, the goal of the Citizenship Clause was “simply to declare that Negroes shall be citizens of the United States.” Senator Edgar Cowan of Pennsylvania argued that a foreigner “has a right to the protection of the laws; but he is not a citizen within the ordinary acceptance of the word.” He worried that the clause would make citizens of Chinese immigrants in California or a “Gypsy” born in his state. But Senator John Conness of California—an Irish immigrant—took exception, noting that Chinese immigrants in his state had already been allowed to become citizens and were few in number.

The Supreme Court and Citizenship
After the Fourteenth Amendment was ratified in 1868, the argument about birthright citizenship switched from Congress to the Supreme Court. Under its first interpretation of the Citizenship Clause in The Slaughter-House Cases (1873), the Court held that the wording excluded “children of ministers, consuls, and citizens or subjects of foreign States.” Regarding Indian tribes, the Court ruled in Elk v. Wilkins (1884) that the Citizenship Clause did not mean “merely subject in some respect or degree to the jurisdiction of the United States, but completely subject to their political jurisdiction and owing them direct and immediate allegiance.”

Yet in United States v. Wong Kim Ark (1898), the Supreme Court applied British common law to the meaning of the Fourteenth Amendment’s guarantee of birthright citizenship. The Court ruled that the only exceptions to this principle were those recognized under common law: children born to foreign ambassadors or enemy troops. Otherwise, according to the feudal principle of *jus solis* (law of soil), allegiance attached to the land of one’s birth rather than the nationality of one’s parents (*jus sanguinis*, law of blood). The Court ruled that since Wong Kim Ark’s parents had established a domicile in San Francisco, although they were legally still subjects of the Emperor of China, Ark acquired birthright citizenship despite the fact that as a laborer he was otherwise ineligible for citizenship under the Chinese Exclusion Act. In a 6-2 decision, the Court ruled: “To hold that the Fourteenth Amendment of the Constitution excludes from citizenship the children born in the United States of citizens or subjects of other countries, would be to deny citizenship to thousands of persons of English, Scotch,
Irish, German, or other European parentage, who have always been considered and treated as citizens of the United States."

**Illegal Immigration and Citizenship**

Congress has the power under Article I of the Constitution to regulate immigration and naturalization. In 1798, a Congress dominated by the Federalist Party passed the Alien Act, which allowed citizenship for a “free white person” but extended the required residency from five to fourteen years. This action penalized the Democratic-Republican Party, which was popular among new immigrants. The Alien Act was so unpopular that it led to the defeat of the Federalists in the election of 1800. But for much of U.S. history, all immigration was legal because no law prevented it. However, the Page Act of 1875 and the Chinese Exclusion Act of 1882 began to limit Asian immigration. The Indian Citizenship Act, which made all Indians citizens of the United States but did not give them the right to vote under state law. These state prohibitions against Indians voting, because they were still free from state taxation, finally ended through court rulings.

The Supreme Court has not directly addressed the question of whether the children of illegal immigrants are eligible for birthright citizenship. The Court did say in *INS v. Rios-Pineda* (1985) that such children are citizens, but that was in *dicta*, or language not directly part of the holding. The Court had previously ruled in *Pluyer v. Doe* (1982) that the Equal Protection Clause, another part of the Fourteenth Amendment, applied to illegal immigrants.

From 1990 to 2008, the number of illegal immigrants in the United States increased threefold, from a population of 3.5 million to 11.9 million, according to a study by the Pew Hispanic Center. The flow of unauthorized immigrants declined sharply with the Great Recession in 2008. As of 2014, about 4.7 million minor children born in the United States were living with parents who were illegal immigrants. The United States and Canada are currently the only two Western nations who allow birthright citizenship. The issue of illegal immigration in general, and birthright citizenship specifically, played a key role in the 2016 presidential election. Then-candidate Donald Trump vowed to make elimination of birthright citizenship for children of illegal immigrants a priority of his new administration. Constitutional scholars disagree about how that might be done. Some, like influential federal judge Richard Posner, believe Congress could make the change by statute, given its Article I powers over immigration and citizenship. Others argue that such change would require a constitutional amendment, or at the very least a reinterpretation by the current Supreme Court of the *Wong Kim Ark* precedent.

For instance, birthright citizenship was extended to all Native Americans, regardless of their tribal status, by statute and not by constitutional amendment. In 1924, Congress passed the Indian Citizenship Act, which made all Indians citizens of the United States but did not give them the right to vote under state law. These state prohibitions against Indians voting, because they were still free from state taxation, finally ended through court rulings.

Similarly, opponents of birthright citizenship argue that a constitutional amendment is not required to end the practice. They believe Congress can pass a law to clarify that birthright citizenship does not pass to the children of people who are unauthorized to live in the United States, just as it is currently not allowed for foreigners who are in domestic U.S. waters while traveling. In addition, they say the Supreme Court has been misinterpreting the Citizenship Clause of the Fourteenth Amendment for more than 100 years. Therefore, the Supreme Court could overturn the *Wong Kim Ark* case or hold that the ruling does not apply to the children of illegal immigrants. Yet, until any of these outcomes come to pass, the Fourteenth Amendment will continue to provide a constitutional guarantee of birthright citizenship. IN

**Discussion Questions**

1. What is “birthright citizenship”? How is it different from other types of acquiring legal citizenship?
2. What are some of the potential benefits of living in a country with birthright citizenship? What are some of the challenges?
3. The author explores several methods for changing the Fourteenth Amendment. Are there methods that you think would be more appropriate than others? Why?
4. Do you think that the Fourteenth Amendment should be changed to potentially limit birthright citizenship? What impact do you think such a change would have on our country?

**Suggested Resources**


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4. Ofagi v. Ashcroft, 354 F.3d 609, 621 (7th Cir. 2003).
When the Constitution and the Bill of Rights were first drafted, the Framers were largely concerned with the prospect of federal tyranny. It’s easy to forget that the first word of the First Amendment is “Congress” and that the Bill of Rights did not apply to the states. For example, at the time of our nation’s founding, it was considered perfectly acceptable for states to have their own official church. Maryland, Massachusetts, New Hampshire, Vermont, Connecticut, and South Carolina all funded churches out of their state treasuries. The Constitution was largely concerned with protecting states... and the majorities within those states, from deprivations of their liberties by the federal government.

In the shadow of the Civil War and the battle over slavery, Congress became far more aware of the dangers of state governments depriving Americans of their liberties and denying equality. The passage of the “Civil War amendments” to the Constitution has been called the “second founding,” as it broadened constitutional protections to minorities against discrimination by state and local governments. The Thirteenth Amendment banned involuntary servitude while the Fifteenth Amendment protected the right of citizens to vote regardless of race. The Fourteenth Amendment, though, was more complex. At its heart was 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.

While the meaning of the Thirteenth and Fifteenth Amendments has always been reasonably clear, the courts have struggled considerably with the meaning of the Fourteenth Amendment. Phrases such as “liberty” and “equal protection” are far from self-defining. In terms of equality, the Supreme Court first focused on racial equality. Shortly after the passage of the Fourteenth Amendment, the Court held that African Americans could not be kept off of juries, yet it also held that “equal protection of the laws” did not extend to “social equality.” Thus, while African Americans could sit with whites on juries, the notorious case of <i>Plessy v. Ferguson</i> held that it was perfectly constitutional to segregate the races on railway cars, and, by implication, other venues where the races might mix socially. This understanding of “equal” did not change until the 1950s, beginning with the Court’s landmark decision in <i>Brown v. Board of Education</i> striking down legally segregated public schools. Ironically, it was the Supreme Court’s controversial decision upholding the forced relocation of Japanese Americans during World War II, <i>Korematsu v. United States</i>, in which the Court first declared that all race-based
laws, not just those targeting African Americans, are subject to the Court’s highest level of judicial scrutiny.

When the Fourteenth Amendment was first passed, it was considered to have little to do with women’s equality. In 1873, the Supreme Court upheld the State of Illinois’ prohibition on women practicing law, opining that:

[A] married woman is incapable, without her husband’s consent, of making contracts which shall be binding on her or him. This very incapacity was one circumstance which the Supreme Court of Illinois deemed important in rendering a married woman incompetent fully to perform the duties and trusts that belong to the office of an attorney and counselor.

It was not until the 1970s that the Court began to seriously consider the idea that “equal protection of the laws” also meant equal rights for women. The Court struggled mightily with that idea, first holding that gender discrimination was irrational, then leaning toward the idea that it was the constitutional equivalent of race discrimination, and finally settling on the conclusion that gender discrimination is subject to an “intermediate” form of scrutiny.

Of course, there were many other groups that wanted their rights protected as part of “equal protection of the laws.” These groups included the elderly, the poor, and LGBT persons. The Supreme Court has never been willing to hold that laws that discriminate against any of these groups are subject to “strict scrutiny” (as are race-based laws) or even to intermediate scrutiny (as are gender-based laws).

The legal battle of gays and lesbians for Fourteenth Amendment protection has been particularly complex. Throughout this nation’s post-Fourteenth Amendment history, gays and lesbians received virtually no protection from discrimination. A good illustration is a 1990 federal appellate court case called High Tech Gays v. Defense Industrial Security Clearance Office. High Tech Gays was a social organization for homosexuals employed in the technology industry that was established in California in 1983, then disbanded in 1998. At the time of the case, the defense department routinely denied people top secret security clearance simply because they were gay. The defense department argued that gays and lesbians are subject to blackmail and are therefore inherent security risks. Although High Tech Gays pointed out that all of its members were openly gay, the court still upheld the exclusion
because even openly gay people may have current or former partners who are closeted, so members of High Tech Gays could still be subject to blackmail. So the level of protection under the Fourteenth Amendment for gays and lesbians was low indeed.

In 1996, the Supreme Court indicated that it might give gays and lesbians more protection when it struck down a Colorado state constitutional amendment that nullified all civil rights protection based on sexual orientation. However, the Court still refused to say that LGBTs are entitled to anything more than minimal protection.

As a result, it became clear that if the courts were going to give meaningful protecting under the Fourteenth Amendment to LGBTs, they were going to have to take a different avenue. That is where the doctrine of “fundamental rights” came in. Fundamental rights are those rights that the Supreme Court has held are implicitly protected by the United States Constitution. These rights include the right to marry, to travel from state to state, to vote in state elections, and a right to privacy that is broad enough to cover access to contraceptives and abortion. As most people know, the Court recently decided that the right to marry is broad enough to cover same-sex marriage.

Unlike such rights as freedom of religion, freedom of speech, and the right to a jury trial, fundamental rights are not always explicitly mentioned in the text of the Constitution. Therefore, some critics argue that the Supreme Court, which is not democratically elected or accountable to the public, should not create rights that are not directly supported by the constitutional text. These critics argue that issues such as abortion, access to contraceptives, and marriage equality should be decided by the people or by elected officials accountable to the people. But others counter that the Framers of the Constitution could not put every fundamental right into writing, and that if the Court did not protect rights that do not explicitly appear in the Constitution, then the government could deprive all people the right to get married or could even tell people who do not own property that they could not vote in state elections.

The Supreme Court itself has often seemed confused about where fundamental rights come from. The Court has sometimes said that fundamental rights can be implied from the entire constitution. At other times, Supreme Court justices have suggested that they come from the Ninth Amendment, which says, “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” Most frequently, the Court has argued that fundamental rights come from the parts of the Fourteenth Amendment that protect due process of laws and the equal protection of the laws.

The Court has also struggled with how to decide what rights are fundamental. The Court has generally relied upon vague phrases to define such rights. It has said that those rights “implicit in ordered liberty” are fundamental and that the Court uses its “reasoned judgment” to decide what those rights are. Importantly, the Court has also said that fundamental rights are defined and limited by this nation’s “history and tradition.” This last idea has been problematic for advocates of same-sex equality since our nation’s history and traditions have generally been hostile to LGBTs.

Because it became increasingly clear that the Supreme Court would not treat sexual orientation like race or gender, fundamental rights came to occupy center stage in the legal battle for same-sex equality. In the 2003 case, Lawrence v. Texas, the Supreme Court held that the fundamental right to privacy (which also protects women’s right to reproductive choice) prohibits criminal prosecution of same-sex sodomy. This was a dramatic development, since less than two decades earlier the Court had called such an argument “at best facetious.”

The Lawrence Court could have struck down the law under the Equal Protection Clause but chose instead to rely on the Due Process Clause, which protects the fundamental right of privacy. The Court wrote that it did not want to rely on equal protection because if it did, “some might question whether a prohibition would be valid if drawn differently, say, to prohibit the conduct both between same-sex and different sex participants.” Lawrence was also important because, while it protected everyone’s privacy, not just LGBTs, it explicitly discussed LGBT’s capacity for
love, intimacy, and dignity. Although the Court noted that same-sex marriage was not at issue in the case, the implications for marriage equality were obvious.

Into the twenty-first century, various state and lower federal courts began ruling that same-sex couples had the right to marry. Some held that the ban on same-sex marriage was a form of irrational prejudice. Others held that the ban was a form of gender discrimination. If Susan wants to marry John she can, but if Steven wants to marry John, he can’t. Therefore, Steven is being discriminated against on the basis of his gender. Meanwhile, the Obama administration was arguing that all laws discriminating on the basis of sexual orientation should be subject to the same strict level of scrutiny as race discrimination.

When the Supreme Court finally took a case on marriage equality, in the 2015 case Obergefell v. Hodges, it rejected all of these options and instead relied upon the fundamental rights arguments. The Court had long held that there is a fundamental right to marry. Its most famous holding was in Loving v. Virginia, when it struck down state antimiscegenation laws that prohibited interracial marriage. But the Court had gone well beyond that. It had also held that the fundamental right to marry protects felons currently serving their time in prison and fathers who were not financially supporting their existing children. The Court had even strongly implied that there is a right to divorce and remarriage.

The most serious doctrinal obstacle to finding that the right to marry extends to same-sex couples was the idea that fundamental rights are limited by our history and tradition, which, as noted, have not embraced same-sex equality. Sometimes the Court takes the idea of history and tradition quite seriously. In a case called Washington v. Glucksberg, the Court held that there was no constitutional right to physician-assisted suicide because “for over 700 years, the Anglo-American common-law tradition has punished or otherwise disapproved of both suicide and assisting suicide.”

Perhaps the most novel part of the decision in Obergefell is how it addressed the interplay between fundamental rights and history and tradition and how it viewed the relationship between the Equal Protection Clause and the Due Process Clause. It held that the two clauses exist in “synergy” with one another so that each partially defines the contours of the other. History and tradition can restrict the right to suicide because we all have the same chance of being put in a position where we might feel the need to end our own life. There are liberty issues but no equality issues at play. But when equality is at issue, then the Equal Protection Clause prohibits the Court from using history and tradition as a basis for denying fundamental rights to any group just because that group has been historically and traditionally denied those rights.

The Obergefell Court therefore held that the right to marry fully extended to same-sex couples:

This dynamic also applies to same-sex marriage. It is now clear that the challenged laws burden the liberty of same-sex couples, and it must be further acknowledged that they abridge central precepts of equality. Here the marriage laws enforced by the respondents are in essence unequal: same-sex couples are denied all the benefits afforded to opposite-sex couples and are barred from exercising a fundamental right. Especially against a long history of disapproval of their relationships, this denial to same-sex couples of the right to marry works a grave and continuing harm. The imposition of this disability on gays and lesbians serves to disrespect and subordinate them. And the Equal Protection Clause, like the Due Process Clause, prohibits this unjustified infringement of the fundamental right to marry.

So we can see that as important as Obergefell’s specific holding on marriage equality was, the case is even more important than most people realize. It reset the boundaries between liberty and equality under the Fourteenth Amendment. While our liberties are, in part, defined by our nation’s history and tradition, our constitutional ideals of equality mean that no group can be denied their rights simply because those rights have been denied in the past. Thus, Obergefell represents a significant breakthrough not only for same-sex couples but for all groups that have historically been denied liberty. IN
Learning Gateways

The Fourteenth Amendment: Expanding Definitions of Equality

by Christine Lucianek

In this lesson, students will analyze the Supreme Court decision Loving v. Virginia (1967) and study the Fourteenth Amendment and the Equal Protection Clause. Students will examine how the amendment has been used as a tool to address pressing social concerns in our history and how it has been applied to ensure equal protection of rights across state lines. Note that this lesson and handouts are available at www.insightsmagazine.org.

Learning Targets
• Identify equal protection guarantees in the Fourteenth Amendment.
• Analyze landmark cases interpreting the Equal Protection Clause of the Fourteenth Amendment and their impact.
• Evaluate how the Fourteenth Amendment has transformed society in achieving civic ideals of equality, justice, and liberty.

C3 Framework for Social Studies Standards
D2.Civ.5.9-12. Evaluate citizens’ and institutions’ effectiveness in addressing social and political problems at the local, state, tribal, national, and/or international level.

Common Core State Standards
CCSS.ELA- Literacy. RH.11-12.2—Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.

GRADES: 9–12
DURATION: One class period

Materials
• Available at www.insightsmagazine.org
  – Handout 1: Loving v. Virginia Case Study

PART 1: Looking at the Fourteenth Amendment

Procedure
Ask students to share what they currently know about the Fourteenth Amendment. Why was it created? What was going on in the country in 1868?

Students should be familiar with Section 1 of the Fourteenth Amendment before beginning this lesson. Depending on the class’s former knowledge, you may want to emphasize that unlike the Bill of Rights preceding the Fourteenth Amendment, which were written to protect individuals from the federal government, this amendment was written to protect individuals from state governments in the aftermath of the Civil War.

Background on Fourteenth Amendment: The states ratified the Fourteenth Amendment in 1868 in the immediate aftermath of the American Civil War, along with the other Reconstruction Amendments—the Thirteenth, ratified in 1865, and the Fifteenth, which was ratified in 1870. These amendments were written to provide legal and political rights to former slaves and freedmen.

Share the text of Section 1 of the Fourteenth Amendment with students:
Amendment 14, 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.

Ask students to identify the main ideas or clauses of the amendment.
Students should understand that Section One of the Fourteenth Amendment includes many important concepts, including the privileges or immunities, citizenship, and Due Process, and Equal Protection Clauses. The Supreme Court cases that they will examine next focus on the Equal Protection Clause and how it has been interpreted by the Court to address the issue of marriage.

PART 2: Loving v. Virginia Case Study

Introduce students to the case.
Distribute the Loving v. Virginia Case Study and have students review it before discussing the questions as a class.

After the groups read the case summary, students should answer the following questions:
• What is the name of the case and when was it decided?
• What are the underlying facts of the case?
• What are the questions before the Court?
• How did the Court rule?
• Whom does this ruling apply to?
Discussion Questions

1. How would the Lovings' legal situation have been different if they stayed in Washington, D.C., rather than returning to Virginia?
2. Why did the Court view that restricting the freedom to marry based on racial classifications violated the Equal Protection Clause?
3. The Court stated: “The Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discriminations. Under our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual, and cannot be infringed by the State.” What other rights do you think should be considered so important that they must be protected in every state?

PART 3: Analyzing the Legal, Social, and Political Context of Loving

Have students work in pairs.
Distribute Handout 2 in order to answer questions and draw conclusions about the social and political context leading up to the Supreme Court decision in Loving v. Virginia.

Discussion Questions

1. As you look at the map, how many states had laws against interracial marriage at the time of the Loving decision?
2. How do you think the decision in the Loving case affected people in states outside of Virginia?
3. As you look at the timeline, what roles did each of these groups (federal government, Supreme Court, state governments, individual citizens or groups) play during the 1950s and 1960s in either supporting or hindering the advancement of equality and individual rights?
4. Do you see any patterns emerge across the years represented in the timeline?
5. How do you think civil rights events impacted the Loving case?
6. Do you think it was significant that the Supreme Court made a unanimous decision in this ruling? Why, or why not?

Christine Lucianek is a manager of educational programs at the American Bar Association in the Division for Public Education. She manages the ABA's National Civics and Law Academy, which offers high school students from across the country opportunities to visit Washington, D.C., to learn more about law and policy.
Maybe yours is tucked in a box or filed for safekeeping. The odds are that you have one: a birth certificate. On any given day, according to the U.S. Census Bureau, an estimated 10,800 babies are born in the United States, or one birth every eight seconds. Most, if not all, of them will be issued birth certificates. A birth certificate is a document issued by a government that records the birth of a child for vital statistics, tax, military, and census purposes. The birth certificate is among the first legal documents an individual might acquire. They are so common that we might even overlook their significance. In the United States, birth certificates serve as proof of an individual’s age, citizenship status, and identity. They are necessary to obtain a social security number, apply for a passport, enroll in schools, get a driver’s license, gain employment, or apply for other benefits. Humanitarian Desmond Tutu described the birth certificate as “a small paper, but it actually establishes who you are and gives access to the rights and privileges, and the obligations of citizenship.”

A Decentralized System

In the United States, there is no national (federal) birth registry, as you might see in other nations, such as the United Kingdom. Instead, birth certificates are issued by the states, which are obligated under law to report annual vital statistics data to the federal government. (Note that if a baby is born to American parents overseas, the U.S. Department of State collects that data.) Within each state, the management of birth certificates might be further decentralized, with data collected and certificates issued at the county or municipal level. Birth data is submitted to the state, county, or municipality by parents, doctors, midwives, and hospitals, typically via paper or electronic forms. The state and federal governments use this data to understand population changes, childbirth trends, maternal and fetal health and mortality, new parent demographics, and other trends that inform policymakers.

Within this decentralized system, there is not a required standard birth certificate document that states must issue to individuals. The federal government does, however, offer a standard birth certificate application form, the U.S. Standard Certificate of Live Birth, which states use to collect data about individual births. States are then free to produce their own birth certificate documents for distribution to individuals. The federal government issues guidance to the states about what information should appear on the certificates. Both the Standard Certificate of Live Birth and the guidelines about state-issued birth certificate documents are updated periodically, per requirements of the Model State Vital Statistics Act (1959). Under this framework, with one standard birth certificate application form and no standard birth certificate document, the National Center for Health Statistics estimates that there are 14,000 different birth certificate documents circulating in the United States. This “Teaching Legal Docs” will consider both the U.S. Standard Certificate of Live Birth application form and a typical state-issued birth certificate document.

The documentation of births and other vital statistics (e.g., birth, death, marriage, divorce) has been a long-standing tradition among populations for centuries, typically through individual families or their churches. The idea that a government should also record this vital information is a relatively modern development.

Not a Clear Paper Trail

The documentation of births and other vital statistics (e.g., birth, death, marriage, divorce) has been a long-standing tradition among populations for centuries, typically through individual families or their churches. The idea that a government should also record this vital information is a relatively modern development. The United Kingdom was the first country to mandate collection of birth data at the national level in 1853. The United States began collecting birth data at the national level in 1902, via the U.S. Census. Certain individual states had already been collecting birth data, including Virginia, which began collecting data as a colony in 1632 and Massachusetts in 1639, so it
became a matter of getting each state to follow suit.

The federal government first developed a standard birth certificate application form in 1907, five years after the Census Bureau began collecting data. The current system of the states collecting and reporting it to the federal government developed between 1915, when the federal government mandated that states collect and report the data, and 1933, by which time all of the states were participating. In 1946, responsibility for collecting and publishing vital statistics at the national level shifted from the Census Bureau to the national Office of Vital Statistics, which is now the National Center for Health Statistics (NCHS). Today, the NCHS is part of the Centers for Disease Control, which is part of the U.S. Department of Health and Human Services.

**Proof of Citizenship**

During World War II and the years after, employers increasingly asked prospective employees to offer proof of their citizenship status. Federal employment laws for certain industries, such as aircraft manufacturing, already mandated that employers hire citizens, and many Americans did not have any proof of their citizenship status. Many Americans trying to get jobs in the wartime economy expressed frustration at this seemingly bureaucratic hurdle. One Rhode Island man wrote, “This is America and it’s not right to refuse me a job because I have not got my birth papers. I have a wife and child and I want a job.” Grace Wilson, age 42, from Kansas, hoped to get a job in the aircraft industry but could not even enroll in the training school. “It is a bitter hurt feeling to know you are an American citizen whose grandparents as well as parents also were, and still not be able to establish citizenship.” Birth certificates were acceptable documentation of American citizenship, but many people did not maintain copies. During the period 1940–1945, approximately 43 million Americans, nearly one-third of the working population, filed requests with their states to get a state-certified copy of their birth certificate. In 1942, *Good Housekeeping* published an article on the importance of getting copies of one’s birth certificate. States struggled to keep up with the demand. By the end of 1942, the War Manpower Commission responded to the national “birth certificate crisis” by announcing that wartime workers no longer needed to show birth certificates or other documentation to prove their citizenship status. Workers could simply swear to their citizenship “in the presence of an Army or Navy plant representative.” Penalties for falsely claiming American citizenship included $10,000 in fines and up to five years in prison.

In the years following World War II, employers, schools, and the federal government increasingly relied on birth certificates as documentation for certain activities and benefits. Soldiers needed to show a marriage license and child’s birth certificate in order to secure health coverage for dependents. Public schools required birth certificates for student enrollment. One of the
provisions in the Fair Labor Standards Act of 1938 was that workers prove their age in order to enter into the labor market, which was a legislative victory reminiscent of Progressive Era reform efforts to eliminate child labor in the United States. By the 1950s, Americans, primarily mothers, understood the importance of registering child births with their state and securing a birth certificate. It became a way to secure their children’s birthright as citizens.

The Birth Certificate

Birth certificates in the United States generally consist of the U.S. Standard Certificate of Live Birth application form, which states use to collect the data to issue a formal birth certificate, and the birth certificate document that states issue to individuals.

Currently, the U.S. Standard Certificate of Live Birth looks like an application, with boxes asking for specific pieces of information. The entire form is two pages long, and consists of 58 questions. (A copy of the full application is available at www.insights magazine.org.) The questions concern the newborn child and its mother and father. Concerning the child, the application form asks for a name, date of birth, place of birth, weight, height, and other vital statistics. The form also asks if the child was born in a hospital, if it’s a twin or “multiple,” and if the child was born with any health conditions. Of the mother and father, the form asks for a name, address, and other racial, ethnic, and demographic information. There are also questions about the health of the mother during pregnancy. The Standard Certificate of Live Birth must also be certified by a medical professional who was present at the birth or performed an examination. Typically, the Standard Certificate of Live Birth is completed by the parents of the child, then certified by a medical professional, and submitted to the state, county, or municipality, which will issue the final birth certificate document back to the individual.

The state-issued birth certificate document typically looks very different from the Standard Certificate of Live Birth form. It is usually more formal-looking, printed on thicker paper with the issuing state, county, or municipality’s name and seal clearly visible. There might be a watermark on the page, or signature of a state official. The information that is presented is generally basic, compared to the earlier application form. The birth certificate document will show a person’s name, birthdate, place of birth, and other vital information. The names, addresses, birthdates, and occupations of both the mother and father are typically listed. Typically, the copies of birth certificate documents issued by the state are also certified, which means that they include an embossed seal unique to the issuer (state, county, or municipality) and a signature. Usually when birth certificates are required for identification purposes, they must be certified and include the raised seal in order to be appropriately valid.

Changing a Birth Certificate Document

It is rare that a birth certificate requires a change, but each issuing state, county, or municipality has protocols in place to request changes. The laws about what might be changed, and for what reasons, however, vary from state to state. Sometimes birth certificates contain errors, so the requested change could be a simple correction. Other common birth certificate document changes include name changes, and, increasingly, gender changes. Every state allows for corrections and name changes, but not every state will allow for a change of gender on a birth certificate. It is important to contact the issuing state, county, or municipality about changes to a birth certificate. Typically, each state’s website will offer contact information for changing a birth certificate, usually through a vital statistics, department of health, or secretary of state’s office.

Requesting a Copy of a Birth Certificate Document

Requests for copies of a birth certificate are far more common than changes to a birth certificate document. Much like the protocols in place to request changes, each state has protocols in place for requesting copies of birth certificate documents. Typically, requests may be made online, via a state’s website. Conducting a simple Internet search for the state name + “request birth certificate” should be sufficient to direct you to an office of vital statistics, department of health, or secretary of state’s office. Many states charge a modest fee for copies, especially certified copies.
The Bill of Rights—the first ten amendments to the United States Constitution—originally only applied to the federal government. The First Amendment begins with the words “Congress shall make no law . . .” “Congress” refers to the United States Congress, but it was assumed that “Congress” applied to all branches of the federal government.

However, the Founding Congress refused to include in the Bill of Rights one of James Madison’s initial proposals that would have prohibited states from infringing upon certain individual liberties. Madison’s proposal provided: “No state shall violate the equal rights of conscience, or the freedom of the press, or trial by jury in criminal cases.”

Madison considered it his most valuable proposed amendment, because he recognized that state and local governments may be more prone to abuse individual liberties than the federal government.

It would not be until well into the nineteenth century, 1833, that the Supreme Court would consider the question of whether the Bill of Rights limited both federal and state governments. The Supreme Court initially determined that the Bill of Rights only limited the federal government.

**Barron v. Baltimore**

John Barron, a Baltimore wharf owner, sued the city after his property was damaged by city-sanctioned excavation activities. Barron alleged that the city violated his right to just compensation under the Fifth Amendment, a provision that is sometimes called the Takings Clause. In other words, government officials cannot damage or take someone’s property without justly compensating the owners of the property.

The case reached the U.S. Supreme Court. Writing for a unanimous Court, Chief Justice John Marshall wrote in *Barron v. Baltimore* (1833) that whether the Fifth Amendment applied to a local government was “of great importance, but not of much difficulty.” Marshall reasoned that if the First Congress had intended for the Bill of Rights to limit state government officials, it “would have declared this purpose in plain and intelligible language.”

He noted that states had their own individual state constitutions, which should protect and limit state and local governments. He wrote that the “Fifth Amendment must be understood as restraining the power of the general government, not as applicable to the states.”

**Fourteenth Amendment**

In the aftermath of the Civil War, the so-called Radical Republicans of the 39th Congress instituted fundamental changes to the U.S. Constitution. Some of the leading Radical Republicans included Thaddeus Stevens, Jacob Howard, and John Bingham.

These men led the fight for the adoption of the three so-called Reconstruction Amendments—the Thirteenth Amendment, the Fourteenth Amendment, and the Fifteenth Amendment. The Thirteenth Amendment outlawed slavery and involuntary servitude; the Fourteenth Amendment provided for due process and equal protection; and the Fifteenth Amendment focused on the right to vote.

Section one of the Fourteenth Amendment provides:

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.

Some scholars believe that the 39th Congress intentionally sought to use the Fourteenth Amendment as the means to extend the freedoms in the Bill of Rights to the states. The second sentence of the Fourteenth Amendment begins with the words “No state shall . . .” In the wake of the ratification of the Fourteenth Amendment in 1868, the initial constitutional question was whether the first clause of the Fourteenth Amendment—“No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States”—applied the Bill of Rights to the states. However, in the *Slaughter-House Cases* (1873), the U.S. Supreme
Court narrowly interpreted the Privileges and Immunities Clause only to prohibit states from infringing on the privileges and immunities that citizens held as national citizens. The net effect of this ruling was that the Privileges and Immunities Clause could not serve as the vehicle to extend the Bill of Rights to the states.

Another clause in the Fourteenth Amendment is the Due Process Clause—that no state shall “deprive any person of life, liberty, or property, without due process of law.” In Chicago Burlington & Quincy Railroad Co. v. City of Chicago (1897), the U.S. Supreme Court ruled that the Due Process Clause prevents state and local governments from taking property without just compensation. In other words, the Court ruled that the Due Process Clause incorporates the Just Compensation Clause and applies it to limit state and local governments.

The Process of Selective Incorporation

The process of incorporation did not happen overnight. Those who advocated for total incorporation of the Bill of Rights, like Justice Hugo Black, had to wait a long time. However, over the course of the twentieth century, the vast majority of the freedoms were incorporated. Dean Erwin Chemerinsky has explained that “from a practical perspective, the total incorporationists largely succeeded in their objective because, one by one, the Supreme Court found almost all of the provisions to be incorporated.”

In 1925, the Supreme Court determined that the freedom of speech should be incorporated. This means that the Court believed that freedom of speech was an essential part of the right to “liberty” that government officials could not take away without “due process of law.” The other four freedoms in the First Amendment—religion, press, assembly, and petition—were incorporated in the years from 1925 to 1947.

In 1932, the U.S. Supreme Court ruled in Powell v. Alabama that state court defendants facing the death penalty had the right to an attorney. The case involved the so-called Scottsboro Boys, African American youths falsely accused of raping two white women. The Scottsboro Boys were rushed to trial before an all-white jury without adequate opportunity to speak to an attorney of choice or present a meaningful defense. The Supreme Court found such to be a denial of due process:

In the light of the facts outlined in the forepart of this opinion—the ignorance and illiteracy of the defendants, their youth, the circumstances of public hostility, the imprisonment and the close surveillance of the defendants by the military forces, the fact that their friends and families were all in other states and communication with them necessarily difficult, and above all that they stood in deadly peril of their lives—we think the failure of the trial court to give them reasonable time and opportunity to secure counsel was a clear denial of due process.

The Due Process Clause of the Fourteenth Amendment became the vehicle through which the vast majority of the individual freedoms in the Bill of Rights were extended to the states. This process came to be known as “selective incorporation,” because the Supreme Court incorporated freedoms in the Bill of Rights one freedom at a time over decades and decades.

Because the Fourteenth Amendment led to the expansion of individual liberties to state and local governments, it has been called a “second Bill of Rights.”

The 1960s featured a time when the Supreme Court was led by Chief Justice Earl Warren. The Court engaged in what some have called a criminal procedure revolution. In Mapp v. Ohio (1961), the U.S. Supreme Court determined that the exclusionary rule applied in state criminal court prosecutions because of the Fourteenth Amendment’s Due Process Clause. Under the exclusionary rule, evidence seized in violation of the Constitution is subject to suppression and cannot be used at trial against the defendant. For many years, the exclusionary rule operated in federal courts but not in state courts. The Court in Mapp changed that, finding that police officers in Cleveland, Ohio, violated the Fourth Amendment when they engaged in a roving search of Dollree Mapp’s home, finding allegedly obscene books and pictures.

“Since the Fourth Amendment’s right of privacy has been declared enforceable against the States through the Due Process Clause of the Fourteenth, it is enforceable against them by the same sanction of exclusion as is
used against the Federal Government,” wrote the Court.

In another famous case, the Court incorporated the right to counsel in *Gideon v. Wainwright* (1963). Clarence Earl Gideon, convicted of theft in a Florida pool hall, contended that he had a right to a court-appointed attorney. Florida law did not allow defendants facing criminal charges in state court to receive court-appointed attorneys.

“The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours,” wrote Justice Black for the Court. “From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law.”

**Recent Incorporation Decision**

A recent debate over incorporation concerned the Second Amendment right to keep and bear arms. In 2008, the U.S. Supreme Court ruled in *District of Columbia v. Heller* (2008) that the Second Amendment protects an individual, rather than a collective right, to bear arms. However, because the case arose out of the District of Columbia, the Supreme Court did not decide the incorporation question.

Two years later, the U.S. Supreme Court ruled 5-4 in *McDonald v. City of Chicago* (2010) that the Second Amendment applied to state and local governments. The Court invalidated a Chicago city ordinance that banned handgun. Justice Samuel A. Alito Jr. wrote for the majority: “In sum, it is clear that the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty.”

There are still a few provisions in the Bill of Rights that have not been incorporated. These include the Third Amendment right to not have troops quartered in private homes, the Fifth Amendment right to a grand jury, the Seventh Amendment right to a jury trial in civil cases, and the Excessive Fines Clause of the Eighth Amendment.

While not all rights have been incorporated, the Fourteenth Amendment has had a profound impact on American jurisprudence. It breathed new life into American constitutional law by extending the vast majority of the freedoms in the Bill of Rights to limit the actions of state and local governments.

David L. Hudson Jr. is a First Amendment expert and law professor who serves as First Amendment Ombudsman for the Newseum Institute’s First Amendment Center. He has written numerous articles and books, including *Let the Students Speak: A History of the Fight for Free Expression in American Schools* (Beacon Press, 2011).

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On February 19, 1942, President Franklin Roosevelt issued Executive Order 9066, which led to the removal of 120,000 Japanese Americans, most of them American citizens, from their homes and communities. They were resettled among ten designated internment camps, including the Heart Mountain Relocation Center near Cody, Wyoming. Sam Mihara was a young boy in 1942, when his family moved to Heart Mountain. They lived there in a one-room (20 feet by 20 feet) barrack for three years.

Q: What steps did your family take to report to the camp?

Adults had to register their family, including all relatives, which was essential for determining who went to which of the ten designated camps. We were put under house arrest at night with a curfew between 8:00 p.m. and 6:00 a.m. There was an invisible barrier with streets identified as boundary circles circling Japantown that were patrolled to make certain we were contained in a “ghetto.” Bank accounts were frozen. This forced the sale of possessions and homes to quickly gather funds for the ordered move. We had a short time to pack and report to buses that took us to our first camp, which were horse racetracks converted to barracks. We were told to pack and place anything we could not carry on the sidewalk for government moving vans to pick up and store during our absence. The worst aspect of the move was not knowing where we were going and what would happen to us when we got there.

Q: What was your family’s living situation inside the camp?

Once we arrived by train, we piled onto the backs of Army trucks and were taken through the main gate and deposited in front of our barrack. We stepped inside the assigned room, which was 20 feet by 20 feet square. Inside, there were four Army cots lined wall-to-wall with little room for furniture. In the corner was a coal-fired stove, a single lightbulb in the ceiling, and nothing else. This was our home for our family of four for three years. The winters were absolutely horrible—minus 28 degrees that first winter in northern Wyoming. Compared to the moderate California climate, that was a brutal awakening. The toilets were embarrassing—18 toilets in two rows with no partitions, all serving 600 people, or one-half a block of prisoners. The food was not good at the start—bread, potatoes, pickled vegetables, and powdered milk. We loved fresh veggies, rice, and sometimes fresh poultry. So we grew our own vegetables and had a small poultry farm. The schools were empty rooms and there were not enough certified teachers. We made school furniture and the government hired white teachers who lived with us inside the camp.

Q: What was the basic set-up of the camp? How was the camp governed?

The camp stood on sagebrush-covered land which was cleared and made flat to build the 500 barracks. There were 30 blocks, each with 24 barracks. Each barrack had 6 rooms. For every half-block, there was a mess hall, men’s and women’s toilets, and a laundry room. There was a high school, which was not finished when we arrived but was completed within one year. There were plans to build two elementary schools, but the local residents in Cody objected since they did not have new schools. So we had to convert several barracks into elementary schools, making living conditions even more concentrated. A hospital was made up of several barracks tied together with a common corridor. The hospital staff was very limited, since there were not enough professional medical personnel within the camp ranks. The camp was governed by very few outside civilians—some 130 personnel. In the camp, we had a city head, a council, block representatives, and a police and fire department all staffed with members of the camp.

Q: How did the internment experience shape the rest of your life?

When I left camp, my parents suffered financially, and I knew that I had to become trained in a field that I enjoyed and provided a stable income. I went to the University of California Berkeley and UCLA and became an engineer. I worked for the Boeing Company, designing airplanes and rockets. During retirement, I was approached about sharing my camp experiences and I soon discovered that I enjoyed a new career—teaching others about what happened firsthand. I now speak all over the country to law firms, and many others.

Q: What do you think teachers and students can learn from your story?

My experience is an example for future leaders of our country that such events are unconstitutional. Some people believe this should happen again, possibly to Muslims and Latinos. I try to teach through describing my experience that it could happen again to anyone but should never happen again.
WHAT’S ONLINE?

Download Classroom Resources—
All of the lessons, handouts, and more from this issue are available in one location. Go get them!

Dive Deeper—
Find links to articles and teaching resources related to the Fourteenth Amendment.

Learn More about Sam Mihara’s Story—
See photos of the Heart Mountain Relocation Center where Sam’s family lived from 1942 until 1945. Learn more about how the Fourteenth Amendment figured into legal challenges to the internment policies that were implemented under Executive Order 9066.

Link to new resources from the ABA Division for Public Education:

Understanding Executive Orders
One site devoted to executive orders— their construction, legal status, legal challenges—and how to discuss them in the classroom.
http://ambar.org/executiveorders

ABA Teacher Portal
Have you been looking for one place to find lesson plans for teaching about law? Maybe you’ve been reading Insights for years and want all of the teaching ideas in one place. It’s here!
http://ambar.org/teachlaw

Mark Your Calendar
May 1, 2017 • Law Day
Download the Law Day planning guide, a Dialogue discussion guide, and continue your conversation about the Fourteenth Amendment.
www.lawday.org

Connect with Us!
Drop us a line, nominate someone to be “profiled” in a future issue, or connect with the ABA Division for Public Education on social media.

www.insightsmagazine.org

www.ambar.org/teachlaw

www.lawday.org
Coming in the next issue

Global Migration & Law

Pulling from the headlines, Insights will look at the increasing numbers of “stateless” persons, which the United Nations has identified as a human rights crisis; the current global refugee crisis, including how new types of migration are challenging international human rights laws; and “crimmigration,” where both legal and illegal immigration protocols intersect with criminal justice.