

## 14th Amendment at a Glance

Ratified on July 9, 1868, the Fourteenth Amendment is one of three Reconstruction Amendments. The Thirteenth Amendment, abolishing slavery, was ratified in 1865; the Fifteenth Amendment, prohibiting the federal and state governments from denying citizens the right to vote based on that citizen's race, color, or previous condition of servitude, was ratified in 1870.

### The 14th Amendment covers a number of important topics in its different clauses, including:

- U.S. citizenship (providing for birthright citizenship)
- The privileges and immunities of citizens
- Due process (including both substantive and procedural)
- Equal protection under the law
- Enforcement of laws

The Fourteenth Amendment greatly expanded the protection of civil rights to all Americans and is cited in more litigation than any other amendment.<sup>1</sup>

Supreme Court Justice William O. Douglas observed of the amendment: “No patent medicine was ever put to wider and more varied use than the Fourteenth Amendment.”



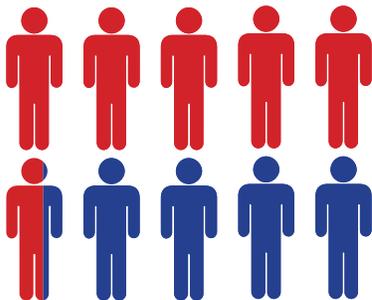
Supreme Court Justice William O. Douglas  
Source: Wikimedia Commons

## Equal Protection

Applying the equal protection clause of the Fourteenth Amendment, courts give laws that classify by race, national origin, and religion the highest level of scrutiny. Laws that impact fundamental rights such as interstate migration, voting, and access to courts also receive strict scrutiny. The following are a few facts and figures relating to equal protection in the United States:<sup>2</sup>

- In the landmark 1954 Supreme Court ruling *Brown v. Board of Education*, that applied the Fourteenth Amendment's equal protection clause, Chief Justice Earl Warren famously wrote, “We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.”
- Congress enacted federal educational and employment anti-discrimination laws to fulfill the promise of “equal protection of law” enshrined in the Fourteenth Amendment.
- Affirmative action programs have helped to reduce, but not eliminate, racial disparities in the number of degrees awarded by higher education institutions.

- In 2015, about 47% of whites had at least a two year college degree. By comparison, about 33% of African American adults had at least a two year college degree, up from 28% in 2007. For Hispanics, that figure grew from 19% to 23% over the same period from 2007 to 2015.<sup>3</sup>
- Despite passage of the Equal Pay Act of 1963, which requires that men and women in the same work place be given equal pay for equal work, the “gender gap” in pay persists. In 2014, a woman working full-time all year in the United States earned 79% of what a man earned in a year. Phrased differently, she earned 79 cents for every dollar that he earned.
- The pay gap is even greater for African American and Latina women, with African American women earning 64 cents and Latina women earning 56 cents for every dollar earned by a white non-Hispanic man.<sup>4</sup>
- Substantial racial inequalities persist in the criminal justice system as well. According to the NAACP:
  - African Americans now constitute nearly 1 million of the total 2.3 million incarcerated population.
  - African Americans are incarcerated at nearly six times the rate of whites.<sup>5</sup>
  - Together, African Americans and Hispanics comprised 58% of all prisoners in 2008, even though African Americans and Hispanics make up approximately one quarter of the U.S. population.<sup>6</sup>



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## Due Process

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Due process ensures that individuals are not deprived of their rights without the benefit of certain fundamental procedural protections.

- The due process clause of the Fourteenth Amendment is the source of an array of constitutional rights, including many of our most cherished.
- Due process includes procedural protections, such as notice and a hearing before termination of entitlements, for example, publicly funded medical insurance.
- It protects against state infringement individual rights listed in the Bill of Rights, including freedom of speech, free exercise of religion, the right to bear arms, and freedom from unreasonable searches and seizures.
- It includes fundamental rights that are not specifically enumerated elsewhere in the U.S. Constitution, including the right to marry, the right to use contraception, and the right to abortion.<sup>7</sup>

- The language of the due process clause of the Fourteenth Amendment echoes that of the Fifth Amendment. The Fifth Amendment, however, applies only against the federal government.
- In *Lawrence v. Texas*, a 2003 Supreme Court decision overturning a Texas law criminalizing consensual sexual activity between same sex couples, Justice Anthony Kennedy observed: “Had those who drew and ratified the due process clauses of the Fifth Amendment or the Fourteenth Amendment known the components of liberty in its manifold possibilities, they might have been more specific. They did not presume to have this insight. They knew times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress. As the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom.”



Source: Wikimedia Commons

## Incorporation

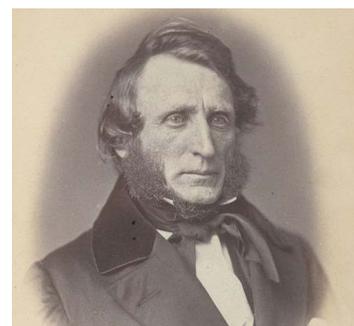
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The doctrine of incorporation is the process by which courts have applied portions of the U.S. Bill of Rights to the states. For more than a century after its ratification, the Bill of Rights was enforced strictly against the federal government. With the incorporation doctrine, recognized by the courts starting in the late 19th century, most provisions of the Bill of Rights have been found to apply not only to the federal government, but also to state and local governments. Under the incorporation doctrine, most provisions of the Bill of Rights now also apply to state and local governments.

- Among the rights that have been found to be enforceable against states and local governments are freedom of speech and religion, the right to bear arms, the right against being forced to quarter soldiers, freedom from unreasonable searches and seizures, other criminal procedural rights (such as the right to counsel, right to a jury trial, right against self-incrimination), the right to a civil jury trial, and the right against cruel and unusual punishments. These rights are incorporated from the first eight amendments of the Bill of Rights.
- Ohio Congressman John Bingham, drafter of the principle language of the Fourteenth Amendment, observed, “Privileges and immunities of citizens of the United States

... are chiefly defined in the first eight amendments to the Constitution of the United States...These eight articles... never were limitations upon the power of the states until made so by the Fourteenth Amendment.”

- Over the years, the Supreme Court has granted corporations, by virtue of their legal status of personhood, most of the constitutional rights possessed by natural persons, including the due process right in the Fourteenth Amendment. For example, the U.S. Supreme Court has ruled that an excessive fine against a corporation violates its Fourteenth Amendment rights.



Congressman John Bingham  
Source: Wikimedia Commons

## Citizenship

Section 1 of the Fourteenth Amendment provides: “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.”

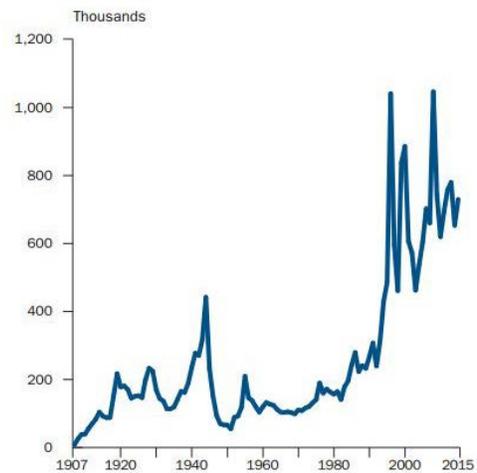
- The number of births in the United States in 2014 was 3,988,076, according to the Center for Disease Control and Prevention.<sup>8</sup>
- The naturalization process confers U.S. citizenship upon foreign citizens or nationals who have fulfilled the requirements established by Congress in the Immigration and Nationality Act (INA). After naturalization, foreign born citizens enjoy nearly all of the same benefits, rights, and responsibilities that the Constitution gives to native born U.S. citizens, including the right to vote.
- In 2014, a total of 653,416 persons were naturalized.
- The leading countries of birth of new citizens were Mexico (94,889), India (37,854), the Philippines (34,591), and the People’s Republic of China (30,284).
- The largest number of persons naturalizing lived in California (140,234), Florida (79,637), and New York (77,717).<sup>9</sup>



Source: slge.org

- The privileges or immunities clause of the Fourteenth Amendment was substantially limited in impact by a 5-4 decision of the U.S. Supreme Court in the Slaughter-House Cases of 1873.
- The cases gave a very narrow reading as to what rights were protected by the privileges or immunities clause. As a result, the clause has remained virtually dormant for more than 130 years. But in 2010, it became the basis for the fifth and deciding vote in the Supreme Court case of *McDonald v. Chicago*, regarding application of the Second Amendment of the United States Constitution to the states.
- American history professor David W. Blight, director of the Gilder Lehrman Center for the Study of Slavery, Resistance, and Abolition at Yale University has observed, “Among all the enactments of Reconstruction, none embody the lasting significance or the heart of the [Civil War] conflict better than section one of the Fourteenth Amendment. It ought to be embraced as a holy writ that binds our national community, that fortifies even the very idea of America born of this second founding.”

Persons Naturalized: Fiscal Years 1907 to 2015



Source: U.S. Department of Homeland Security

## Endnotes

1. Library of Congress  
<https://www.loc.gov/rr/program/bib/ourdocs/14thamendment.html>
2. Legal Information Institute, Cornell University Law School
3. Huffington Post  
[http://www.huffingtonpost.com/entry/college-degree-gap\\_us\\_568d8d7ee4b0a2b6fb6e8e12](http://www.huffingtonpost.com/entry/college-degree-gap_us_568d8d7ee4b0a2b6fb6e8e12)
4. Census Bureau, Educational Attainment in the United States: 2015  
<http://www.census.gov/content/dam/Census/library/publications/2016/demo/p20-578.pdf>
5. White House, Your Right to Equal Pay: Understand the Basics  
<https://www.whitehouse.gov/issues/equal-pay#top>
6. NAACP Criminal Justice Fact Sheet  
<http://www.naacp.org/criminal-justice-fact-sheet/>
7. Nathan S. Chapman and Kenji Yoshino, The Fourteenth Amendment Due Process Clause  
<https://constitutioncenter.org/interactive-constitution/amendments/amendment-xiv/common-interpretation-due-process-clause-of-the-fourteenth-amendment/clause/12>
8. Center for Disease Control and Prevention, National Center for Health Statistics  
<http://www.cdc.gov/nchs/fastats/births.htm>
9. Department of Homeland Security, Annual Flow Report  
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