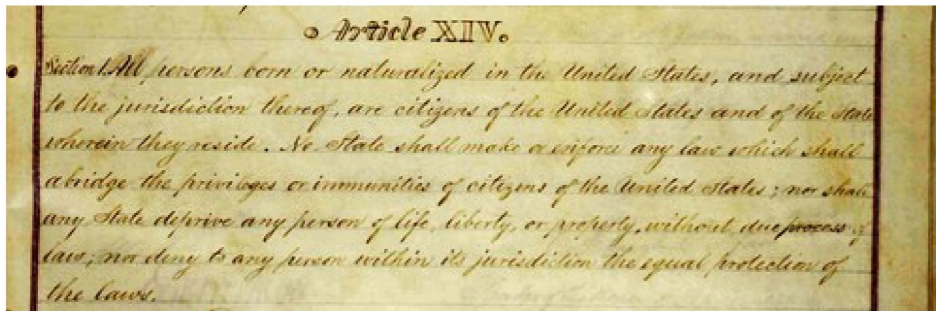


4.10 The Fourteenth Admendment

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Last Modified: Jun 17, 2019

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[Figure 1]

The 14th amendment extended liberties and rights granted by the Bill of Rights to former slaves.

On July 9, 1868, the Fourteenth Amendment to the United States Constitution was adopted. This amendment is considered one of the Reconstruction Amendments because it was intended to help freed slaves while the country was rebuilding after the Civil War. Because of the climate after the war, the Confederate states were highly opposed to this amendment, but they eventually were forced to acknowledge it in order to preserve representation. Citizenship rights and equal protection of the law was its main focus.

Background

The 14th Amendment stated, "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." It gave citizens equal protection under both the state and federal law, overturning the Dred Scott decision.

It eliminated the three-fifths compromise of the 1787 Constitution, whereby slaves had been counted as three-fifths of a free white person, and it reduced the number of House representatives and Electoral College electors for any state that denied suffrage to any adult male inhabitant, black or white.

The amendment also answered the question of debts arising from the Civil War by specifying that all debts incurred by fighting to defeat the Confederacy would be honored. Confederate debts, however, would not: "[N]either the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the

United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.” Thus, claims by former slaveholders requesting compensation for slave property had no standing. Any state that ratified the Fourteenth Amendment would automatically be readmitted. Yet, all former Confederate states refused to ratify the amendment in 1866.

President Johnson called openly for the rejection of the Fourteenth Amendment, a move that drove a further wedge between him and congressional Republicans. In late summer of 1866, he gave a series of speeches, known as the “swing around the circle,” designed to gather support for his mild version of Reconstruction. Johnson felt that ending slavery went far enough; extending the rights and protections of citizenship to freed people, he believed, went much too far.

Johnson continued to believe that blacks were inferior. The president’s “swing around the circle” speeches to gain support for his program and derail the Radical Republicans proved to be a disaster, as hecklers provoked Johnson to make damaging statements. As a result, Johnson’s reputation was damaged.

Amendment XIV

Here are specifics of this amendment:

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. This section was further divided into clauses.

Main Clauses of Section 1 include:

Citizenship Clause

The Citizenship Clause was a rebuttal to the decision in the *Dred Scott v. Sanford* (1857) case that said African Americans were not citizens and they cannot be citizens of the United States. Therefore, they were unable to have any of the privileges or immunity of citizenship. This case was a landmark decision against freedmen because it ruled that Dred Scott was still enslaved even though he was taken into free states by his owner.



[Figure 2]

Section 1 states, "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."

Privileges or Immunities Clause

This clause requires that the citizens of other states must be treated in the same manner as citizens of that state. In other words, just because someone is from a different state does not mean they may be discriminated against.

Due Process Clause

The Due Process Clause states that proper legislation authorization must be applied in order to deprive persons of life, liberty, or property.



[Figure 3]

The Fifth and Fourteenth Amendments to the United States Constitution each contain a due process clause. Due process deals with the administration of justice and thus the due process clause acts as a safeguard from arbitrary denial of life, liberty, or property by the government outside the sanction of law.

Equal Protection Clause

This clause requires that no state shall deny to any person within its jurisdiction "the equal protection of the laws". A main motivation for this clause was to validate the equality provisions contained in the Civil Rights Act of 1866, which guaranteed that all people would have rights equal to those of all citizens.

The first section of The Fourteenth Amendment is frequently litigated and has created the basis for some landmark decisions such as:

Brown v. Board of Education (1954) regarding racial segregation,

Roe v. Wade (1973) regarding abortion,

Bush v. Gore (2000) regarding the 2000 presidential election,

Obergefell v. Hodges (2015) regarding same-sex marriage.



[Figure 4]

Section 2

Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens 21 years of age in such state.

The second section's detail of "rebellion and other crime" has been used as constitutional grounds to disallow felons to vote.

Section 3

No person shall be a senator or representative in Congress, or elector of president and vice president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in

insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4

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

Section 5

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

The Blaine Amendment

During a speech at a veteran's meeting, President Ulysses S. Grant suggested a constitutional amendment to provide free public education and to prohibit public funds for religious schools. To counteract Grant's suggestion, in 1874, James G. Blaine, a representative from Maine, Speaker of the House and 1876 Republican presidential candidate, proposed the following as an amendment:

“

No State shall make any law respecting an establishment of religion or prohibiting the free exercise thereof; and no money raised by taxation in any State for the support of public schools or derived from any public fund therefor, nor any public lands devoted thereto, shall ever be under the control of any religious sect or denomination; nor shall any money so raised or lands so devoted be divided on religious sects or denominations.

”

The amendment was defeated in 1875, but it would be used as a model for the "Blaine Amendments" incorporated into 34 state constitutions over the next three decades. These provisions forbid direct government aid to educational institutions that have a religious affiliation.

Debate Activity /Case Study: TRINITY LUTHERAN CHURCH OF COLUMBIA, INC. v. COMER, DIRECTOR, MISSOURI DEPARTMENT OF NATURAL RESOURCES (2017)

The Trinity Lutheran Church Child Learning Center is a Missouri preschool and daycare center. Originally established as a nonprofit organization, the Center later merged with Trinity Lutheran Church and now operates under its auspices on church property. Among the facilities at the Center is a playground, which has a coarse pea gravel surface beneath much of the play equipment. In 2012, the Center sought to replace a large portion of the pea gravel with a pour-in place rubber surface by participating in Missouri's Scrap Tire Program.

The program, run by the State's Department of Natural Resources, offers reimbursement grants to qualifying nonprofit organizations that install playground surfaces made from recycled tires. The Department had a strict and express policy of denying grants to any applicant owned or controlled by a church, sect, or other religious entity. Pursuant to that policy, the Department denied the Center's application. In a letter rejecting that application, the Department explained that under Article I, Section 7 of the Missouri Constitution, the Department could not provide financial assistance directly to a church. The Department ultimately awarded 14 grants as part of the 2012 program. Although the Center ranked fifth out of the 44 applicants, it did not receive a grant because it is a church.

Trinity Lutheran sued in Federal District Court, alleging that the Department's failure to approve its application violated the Free Exercise Clause of the First Amendment. The District Court dismissed the suit. The Free Exercise Clause, the court stated, prohibits the government from outlawing or restricting the exercise of religious practice, but it generally does not prohibit withholding an affirmative benefit on account of religion.

The District Court likened the case before it to *Locke v. Davey*, 540 U. S. 712, where this Court upheld against a free exercise challenge a State's decision not to fund degrees in devotional theology as part of a scholarship program.

The District Court held that the Free Exercise Clause did not require the State to make funds available under the Scrap Tire Program to Trinity Lutheran.

A divided panel of the Eighth Circuit affirmed. The fact that the State could award a scrap tire grant to Trinity Lutheran without running afoul of the Establishment Clause of the Federal Constitution, the court ruled, did not mean that the Free Exercise Clause compelled the State to disregard the broader anti-establishment principle reflected in its own Constitution. Held: The Department's policy violated the rights of Trinity Lutheran under the Free Exercise Clause of the First Amendment by denying the Church an otherwise available public benefit on account of its religious status.

Do you agree or disagree with this Supreme Court decision? Prepare a speech in which you convince your classmates to side with you.

Efforts to Extend the Bill of Rights to the States

Congressman John A. Bingham of Ohio, the primary author of the first section of the 14th amendment, intended that the amendment also nationalize the Federal Bill of Rights by making it binding upon the states. Senator Jacob Howard of Michigan, introducing the amendment, specifically stated that the privileges and immunities clause would extend to the states “the personal rights guaranteed and secured by the first eight amendments.”

Historians disagree on how widely Bingham's and Howard's views were shared at the time in the Congress, or across the country in general. No one in Congress explicitly contradicted their view of the amendment, but only a few members said anything at all about its meaning on this issue.

For many years, the Supreme Court ruled that the Amendment did not extend the Bill of Rights to the states. Beginning in 1897, the Supreme Court has found that various provisions of the Bill of Rights protecting these fundamental liberties must be upheld by the states, even if their state constitutions and laws do not protect them as fully as the Bill of Rights does—or at all. This means there has been a process of selective incorporation of the Bill of Rights into the practices of the states; in other words, the Constitution effectively inserts parts of the Bill of Rights into state laws and constitutions, even though it doesn't do so explicitly. When cases arise to clarify particular issues and procedures, the Supreme Court decides whether state laws violate the Bill of Rights and are therefore unconstitutional.

Impact on Federalism

After the Civil War, the power balance shifted toward the national government, a movement that had begun several decades before with *McCulloch v. Maryland* (1819) and *Gibbons v. Odgen* (1824).

The period between 1819 and the 1860s demonstrated that the national government sought to establish its role within the newly created federal design, which in turn often provoked the states to resist as they sought to protect their interests. With the exception of the Civil War, the Supreme Court settled the power struggles between the states and national government. From a historical perspective, the national supremacy principle introduced during this period did not so much narrow the states' scope of constitutional authority as restrict their encroachment on national powers.

Morton Grodzins, a professor of political science at the University of Chicago, coined the expression "marble-cake federalism" in the 1950s to explain the evolution of federalism in the United States.

Morton Grodzins coined the cake analogy of federalism in the 1950s while conducting research on the evolution of American federalism. Until then most scholars had thought of federalism as a layer cake, but according to Grodzins the 1930s ushered in "marble-cake federalism": "The American form of government is often, but erroneously, symbolized by a three-layer cake. A far more accurate image is the rainbow or marble cake, characterized by an inseparable mingling of differently colored ingredients, the colors appearing in vertical and diagonal strands and unexpected whirls. As colors are mixed in the marble cake, so functions are mixed in the American federal system."

[Figure 5]

Study/Discussion Questions

1. What are the main provisions of the 14th Amendment?
2. What was the purpose of passing the 14th Amendment?
3. Explain the Equal Protection Clause.
4. What was the Blaine Amendment? Why is it important?
5. Use the "Marble Cake" to explain U.S. federalism today.

Sources:

<https://www.law.cornell.edu/constitution/amendmentxiv>