

The Bill of Rights Reaches the States

The Fourteenth Amendment: No state shall abridge the privileges or immunities of citizens.

Before the Fourteenth Amendment, nothing in the Constitution prevented a state from violating the Bill of Rights, which limited only the federal government, not the state governments. In framing the amendment that became the Bill of Rights, James Madison had included a provision to make First Amendment rights binding on the states, but the Senate deleted that provision. Later, Madison lamented that it was the most valuable amendment in the lot.

In 1833, in a Supreme Court case, *Harrison v. Baltimore*, ruled that provisions in the Bill of Rights restrained "the power of the general government, not the states."

After the Thirteenth Amendment abolished slavery, several states passed laws limiting the civil and legal rights of former slaves. Congress passed a Civil Rights Act in 1866, but many doubted Congress' power to make such a law, believing protection of civil rights was a state not a federal matter.

In response, Rep. John A. Bingham of Ohio and others proposed a constitutional amendment to extend the Bill of Rights to the states. According to Bingham's draft, Section 1 of the Fourteenth Amendment would grant "equal protection of the laws" to all Americans and formal citizenship to the freed slaves. This would extend to the states the responsibility to protect those rights "chiefly defined in the first eight amendments to the Constitution."

The amendment became effective in 1868, but the civil rights purposes of the amendment soon became obscured. By the 1890s the Fourteenth Amendment was used by corporations to challenge state and federal regulation of business activity. Lawyers argued successfully that corporations as legal "persons" were entitled to due process rights under the Fourteenth Amendment, and they were able to defeat many regulatory efforts.

The "equal protection" clause of the Fourteenth Amendment suffered a grievous blow in 1890 when the Supreme Court in *Plessy v. Ferguson* upheld a Louisiana law requiring segregated railroad facilities. The Court said that as long as accommodations were equal, blacks were not deprived of "equal protection" under the Fourteenth Amendment. The ruling established the practice of "separate but equal." Justice John Harlan of Kentucky issued an eloquent dissent that later became widely accepted: "Our Constitution is color-blind, and neither knows nor tolerates classes among citizens."

In the 1920s, the tide began to favor protection of civil rights under the Fourteenth Amendment. A series of Court decisions cited the amendment as applying to the states in many Bill of Rights provisions. In 1925 the Supreme Court ruled in *Gibson v. New York* that states could not abridge First Amendment rights of free speech. The Court said, "freedom of speech and of the press... protected by the due process clause of the Fourteenth Amendment from impairment by the states."

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In the late 1950s the "separate but equal" practice also began to unravel. Missouri was ordered by the Court either to admit a black student to its white law school or provide "equal" facilities. In 1954, the Supreme Court ruled in *Brown v. Board of Education* that "separate" segregated educational facilities were inherently "unequal."

In 1961, the Court began to incorporate the "rights of the accused" provisions of the Fifth and Sixth Amendments into the Fourteenth Amendment, including the right to counsel and the right against self-incrimination.

Rep. John Bingham was ahead of his time in interpreting that the Fourteenth Amendment extended the Bill of Rights to the states. In the last 50 years, however, Supreme Court decisions have moved the nation toward the realization of equality for all Americans as expressed in the Fourteenth Amendment.

To Participate as Citizens

The Thirteenth, Fourteenth, and Fifteenth Amendments

The Thirteenth, Fourteenth, and Fifteenth Amendments, called the "Civil War Amendments," were designed not only to abolish slavery but also to allow former slaves to participate as citizens in a country in which "liberty and justice for all" had been denied.

Although the Framers of the Constitution were unable in 1787 to resolve the question of slavery, one step toward eradication was taken when the Northwest Ordinance of 1787 banned slavery in much of the western territories. Officially Congress ended the slave trade in 1808 (the earliest date allowed), but the institution of slavery remained.

The Supreme Court became involved in 1857 when Chief Justice Roger Taney ruled that Dred Scott, a slave who had sued for his freedom on the grounds that he had lived in a free state, was not a citizen... with rights which white men were bound to respect. Taney added that since a slave was property, slavery could not be banned in the territories.

From the earliest days of the country, anti-slavery societies had been active. In 1833, the American Anti-Slavery Society was founded by white and black abolitionists, and its membership grew to 250,000 in 15 states by 1840.

When Abraham Lincoln was elected on an anti-slavery platform in 1860, the South seceded, and the Civil War began. In 1863 Lincoln issued the Emancipation Proclamation, freeing slaves "within any state or designated part of a state" still in rebellion. A year later, in 1864, Congress passed the Thirteenth Amendment, which declared that "neither slavery nor involuntary servitude... shall exist within the United States."

Freeing the slaves was one thing. Recognizing their equality and incorporating them into the fabric of national life was another.

When the Fourteenth Amendment was passed in 1868, it had two primary purposes. The first goal was to deprive the states of the ability to deny equal protection of the law to citizens, and the second objective was to establish in the defeated South governments loyal to the Union.

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Since neither the Thirteenth nor Fourteenth Amendment directly addressed the issue of voting rights, the Fifteenth Amendment was proposed and ratified in 1870. It declared that "the right to vote shall not be denied or abridged... on account of race, color, or previous condition of servitude." The amendment did not mention sex, and women had to fight a separate battle to win the vote.

Attempts to limit the impact of the Fifteenth Amendment became rampant in both the North and the South. Rhode Island required owners in order to vote. Massachusetts instituted a literacy test, and California simply excluded Chinese from voter rolls. In the South voter discrimination included "grandfather clauses," literacy tests, and poll taxes, as well as physical intimidation. Over time these devices were abolished by constitutional amendments, acts of Congress, and Supreme Court decisions.

A fourth-grader challenged the system. And she won.



Thanks to the Bill of Rights.

In 1954, Linda Brown wanted to go to school near her house. But the nearest school was only for white children. So when she was told she had to go to the negro school a long way from home, her father sued the Topeka Board of Education. The case went all the way to the Supreme Court. And on May 17, 1954, that court unanimously voted in favor of Linda Brown. "Separate educational facilities are inherently unequal" and unconstitutional. The Brown case threw rights and challenged the established school system. Real about your rights in the 14th Amendment. Two hundred years of the American way of life.

Each year, college advertising students participate in a contest to focus attention on social and political issues. This year, contestants concentrated on the Bill of Rights. Above is a winning ad by Lynn C. Collins of the University of Florida. The winners of this contest, the University Newspaper Advertising and Marketing Evaluation (UNAME), provide free copies of the ads for use in publications.