



Five Sections, Not a Poster

WisdomForge Booklet — Adult

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About This Book

You already know *Brown* as a name. That is not the same as knowing the Fourteenth Amendment. The 14th is five sections, proposed by the 39th Congress in 1866, declared ratified on 9 July 1868, certified by Secretary of State William Seward on 28 July. Section 1 is the paragraph later lawsuits live inside. Sections 2 through 5 are Reconstruction machinery: House seats, an office bar, the war's debts, and a grant of power to Congress. A civic life that recites only equal protection is living inside a poster.

This booklet assumes you vote, serve on a jury or might, hire or are hired, sit through school-board and city-council meetings, and read news claims about “the 14th.” Practice items are aimed at those rooms. They are not pastoral advice and not legal advice. They will not tell you how to vote, how to instruct a jury, or how to write an HR policy. They will tell you which sentence you are actually using. You will be in rooms where the 14th is already a weapon. State the sentences first. Name the fight. If you conclude, conclude as a person who has quoted.

The civic chain through this pack is Magna Carta → Declaration → Constitution → Federalist → here. Gettysburg sits inside the last link as a speech. Federalist 54 sits as the brief for a fraction this amendment repealed as a rule of chairs. *Dred Scott* sits as the citizenship holding Section 1 replaces. Foner's “second founding” is a claim to test against five sections, not a hymn.

Date discipline is part of honesty. Jacob Howard's Senate speech of **23 May 1866** (Congressional Globe 2764–66) introduces privileges or immunities and lists the first eight amendments. His remarks of **30 May 1866** (Globe 2890) explain the jurisdiction qualifier — families of ambassadors and foreign ministers. Collapsing those days is how a cable-news brief becomes a founding myth. If you take nothing else from this booklet into a public argument, take the two dates. They are cheap to remember and expensive to mix.

Each chapter is an essay with a Big Idea, numbered Practice, and a Reflect. Chapter 1 keeps the Research Prompt as a primary-source protocol: Avalon 54 against Archives Section 2. Section 3, the color-blind versus antisubordination debate, and the live birthright fight are shown. They are not recruited to a caucus. If a chapter feels like a school worksheet, it failed. If it tells you which caucus to join, it failed.

Chapter 1: Seats, Bodies, and the Unused Penalty



Illustration for Chapter 1

If you work in a newsroom, a campaign, or a family argument, you have heard two compressions of this chapter. One: “they counted slaves as three-fifths of a person.” Two: “the 14th gave Black men the vote.” Both are useful as slogans. Neither survives the clauses.

Article I, Section 2, Clause 3 of the original Constitution apportioned House seats and direct taxes by adding free persons, including indentured servants, excluding Indians not taxed, plus “three fifths of all other Persons.” That is a census rule for power in Congress. It is not a metaphysical grade. The Constitution booklet already killed the cartoon. What remains is uglier: the essay that sold the cartoon’s arithmetic as theory.

Federalist 54, Madison by modern consensus, *New York Packet*, 12 February 1788, is on the Avalon Project. Madison puts a Southern speaker on stage, then accepts the reasoning. Enslaved people “partake of both these qualities: being considered by our laws, in some respects, as persons, and in other respects as property.” Mixed character is “in fact their true character.” The compromising expedient “regards the SLAVE as divested of two fifths of the MAN.” Northerners who wanted them out of the count were cutting Southern seats. Southerners who wanted them in as whole persons wanted more seats. 54 sells the bargain to New York. A civic chain that skips this essay to keep Publius admirable is doing the villein-omission again.

The Thirteenth Amendment (1865) abolished slavery, “except as a punishment for crime whereof the party shall have been duly convicted.” After abolition there were no “other Persons” left to fraction. Count the freed people as whole persons and deny them the vote, and a former slave state *gains* House seats. Section 2 is the attempted brake. National Archives, first sentence:

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.

The fraction is gone as a rule of chairs. That is the landing the Federalist unit promised. The second sentence is a penalty, not a franchise. If the vote is denied or abridged for adult male citizens twenty-one and over, except rebellion or other crime, the state’s basis of representation shrinks in proportion. The Fifteenth Amendment (1870) is the racial suffrage rule. After Redemption the Section 2 penalty was not used. If you hear a candidate praise “the 14th’s voting rights,” you now have a fact-check: name the 15th, name the unused penalty, then decide whether the candidate is compressing or lying.

The whole of Section 2, once, as a block:

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding

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

Leftovers still in the answer, which a grown reader is expected to name in public without flinching:

- Indians not taxed (repeated from Article I; 1924 Indian Citizenship Act is afterlife). - Male inhabitants, twenty-one (19th and 26th change practice; they do not rewrite this sentence). - “Or other crime” (felon disenfranchisement, still live).

Person for the count; citizen for the penalty. The architecture later chapters will treat as person-versus-citizen starts here.

Felon disenfranchisement is the leftover most likely to walk into an adult room as a live fight. Section 2’s “or other crime” is a door. Later litigation is later litigation. This chapter will not tell you how to vote on a restoration bill. It will tell you the door is in the 1868 sentence, not invented by a modern legislature from nothing. The 19th and 26th are the same kind of fact: later amendments changed who votes; they did not silently edit Section 2. Adults who speak as if the 1868 sentence now says “persons, eighteen, any sex” are paraphrasing practice as parchment.

Two misuses to refuse in adult rooms. White-supremacist recycling of 54 as a truth about Black people. Progressive recycling of Section 2 as proof that 1868 finished the work. *Plessy* is later in this booklet. Repeal of the fraction is a constitutional fact. Keeping is history.

A literary note you can use when someone says “Madison called slaves property”: the Southern voice is ventriloquized, then accepted. Sloppy quotation helps every faction. Accurate quotation helps no faction in particular. Avalon is the check.

Sequence for an adult who will hear “the Founders” and “Reconstruction” used as clubs in the same week: 1787 writes the fraction; 1788 theorizes mixed personhood as true; 1865 abolishes slavery with a crime exception; 1868 counts whole persons and designs a penalty; 1870 forbids racial denial of the vote; after Redemption the penalty sleeps. If a speaker skips from 1787 to *Brown*, they have skipped the landing this booklet exists to make. If a speaker treats 1868 as having finished the work, they have skipped Redemption. Both skips are common in adult rooms. Both are refusals of the civic chain.

Thirteenth, for the sequence, not as a substitute figure:

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Fifteenth:

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Keep the set unmixed when you speak in public. “The 14th gave the vote” is the mix. “The 15th finished the work” skips grandfather clauses, *Giles v. Harris* (1903), and the Voting Rights Act of 1965. An adult who will not mix the set is already doing more civic work than a fluent slogan.

| Then | After XIV §2 | |-----|-----| | Free persons + 3/5 of “all other Persons”;
Indians not taxed excluded | Whole number of persons; Indians not taxed still excluded | |
Mixed-character theory sold in 54 | Fraction gone; vote penalty designed and later unused | |
| Seats and taxes | Seats |

Big Idea

Section 2 repeals the seats fraction. It does not grant the vote. It does not erase 54 as a description of 1788 law. It still excludes Indians not taxed from the count and still writes male/21 and crime into the penalty. An adult civic claim about “what the 14th did for voting” that cannot name the 15th and the unused penalty is not ready for a public meeting.

Practice

1. News-claim audit. Find one recent headline, tweet, or campaign mailer that treats the 14th as a voting-rights amendment. Paste the claim. Under it, paste Section 2’s first sentence and the 15th’s sentence. Write four lines: what the claim got right, what it dropped, what a correction would sound like without sneering. Deliverable: the paste-plus-four-lines. This is source hygiene, not a take. 2. Census arithmetic, grown. Using a hypothetical state of 1,000,000 persons, 200,000 of them adult male citizens denied the vote, compute in a notebook what Section 2 says should happen to the basis of representation — then note that after Redemption the penalty was not run. Deliverable: the arithmetic and the historical sentence. Do not analogize to a live election administration fight. 3. Jury-adjacent language. If you were seated as a juror in a case that mentioned “three-fifths,” write the one-sentence correction you would keep to yourself unless asked: seats and taxes, not a grade of humanity; 54’s mixed character as the uglier brief; Section 2 as repeal of the chairs rule.

Deliverable: one sentence. No speech from the box. 4. Leftover inventory for a school-board packet (as a voter reading the packet, not as a pupil). One page that lists Indians not taxed; male/21; crime exception; 19th; 26th; 1924 Act — each with “in the 1868 sentence?” yes/no. Deliverable: the page.

Research Prompt

Open Federalist 54 at the Avalon Project. Open Amendment XIV, Section 2, at the National Archives. Quote 54’s “divested of two fifths of the MAN” line with surrounding sentences. Quote Section 2’s first sentence in full. In 300–400 words, as a citizen checking two primary pages against a public claim, state what changed as a rule of House seats and what did not. Do not ask whether Madison was “a racist.” Do not ask whether the 14th “redeemed” 1787. If a model paraphrases either page, reject the paraphrase until the words match.

Chapter 2: Section 1 as a Working Paragraph



Illustration for Chapter 2

Adults meet the 14th through later cases: a speech ordinance, a search, a hiring statute, a marriage case, an admissions case. Those cases ride clauses. They are not the paragraph. Before you use “due process” in a letter to the editor, hear the four jobs in order.

National Archives, 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.

Membership. Privileges of **citizens**. Process for **persons**. Equal protection for **persons**. Bound: the **states**. A one-line summary that says “equal rights” has dropped the rest, including the state-action line that still decides whether a private wrong is a constitutional case.

John Bingham, House, 1866: Section 1 would protect “the privileges and immunities of all the citizens of the Republic and the inborn rights of every person within its jurisdiction” against the states. That is a floor speech. Keep it labeled.

Jacob Howard, Senate, **23 May 1866**, Globe 2764–66 — not the jurisdiction day — treated privileges or immunities as the beam. He read *Corfield v. Coryell* (Bushrod Washington, 1823) on fundamental privileges. Washington’s list, which Howard put into the Senate record:

We feel no hesitation in confining these expressions to those privileges and immunities which are, in their nature, fundamental; which belong, of right, to the citizens of all free governments... Protection by the government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety... The right of a citizen of one state to pass through, or to reside in any other state... to claim the benefit of the writ of habeas corpus; to institute and maintain actions of any kind in the courts of the state; to take, hold and dispose of property... and an exemption from higher taxes or impositions than are paid by the other citizens of the state... to which may be added, the elective franchise, as regulated and established by the laws or constitution of the state in which it is to be exercised.

Howard then added the personal rights in the first eight amendments. Hear the list as a list, because later incorporation did this work through another clause:

To these privileges and immunities, whatever they may be—for they are not and cannot be fully defined in their entire extent and precise nature—to these should be added the personal rights guaranteed and secured by the first eight amendments of the Constitution; such as the freedom of speech and of the press; the right of the

people peaceably to assemble and petition the Government for a redress of grievances; a right appertaining to each and all of the people; the right to keep and to bear arms; the right to be exempted from the quartering of soldiers in a house without consent of the owner; the right to be exempt from unreasonable searches and seizures, and from any search or seizure except by virtue of a warrant issued upon a formal oath or affidavit; the right of an accused person to be informed of the nature of the accusation against him, and his right to be tried by an impartial jury of the vicinage; and also the right to be secure against excessive bail and against cruel and unusual punishments.

Those guarantees, he said, stood as a bill of rights without power in Congress to give them full effect, while states were restrained only by their own constitutions. “The great object of the first section of this amendment is, therefore, to restrain the power of the States and compel them at all times to respect these great fundamental guarantees.” Section 5, on his account, is the “direct affirmative delegation of power to Congress to carry out all the principles of all these guarantees, a power not found in the Constitution.”

Fairman later said the ratification record does not show that the country understood itself to be incorporating the Bill of Rights. Amar, Lash, and Curtis say Bingham and Howard are the public meaning. You do not have to pick a winner to refuse the dinner-table compression “the 14th is the Bill of Rights.” 1791 bound the federal government (*Barron v. Baltimore*, 1833). 1868 wrote four clauses. Later Courts carried most of the first eight against the states through due process after *Slaughter-House* closed this door. Wanting is not the text. Doctrine is not the amendment.

An adult collision: you hear a radio host say the Warren Court “invented” the Bill of Rights against the states in the 1960s. Speech and press were already moving in the 1920s–40s. Criminal procedure is the 1960s cluster. The Second Amendment is 2010. The grand-jury and civil-jury clauses are still out. Pacing is part of honesty. Another collision: you hear that if a right is not in the first eight amendments, the 14th does not cover it. Citizenship and equal protection are not in the Bill of Rights. They are Section 1.

Slaughter-House Cases, 83 U.S. 36 (1873). Louisiana’s slaughterhouse monopoly. White New Orleans butchers. Justice Miller, 5–4, held that privileges or immunities of citizens of the United States are a thin national set. He pointed, quoting *Crandall v. Nevada*, to the right

to come to the seat of government to assert any claim he may have upon that government, to transact any business he may have with it, to seek its protection, to share its offices, to engage in administering its functions. He has the right of free access to its seaports, through which all operations of foreign commerce are

conducted, to the subtreasuries, land offices, and courts of justice in the several States.

Plus protection on the high seas, assembly and petition as against the national government, habeas corpus, navigable waters, treaty rights, becoming a citizen of another state by bona fide residence. Then:

But it is useless to pursue this branch of the inquiry, since we are of opinion that the rights claimed by these plaintiffs in error, if they have any existence, are not privileges and immunities of citizens of the United States within the meaning of the clause of the fourteenth amendment under consideration.

On the federal balance:

Under the pressure of all the excited feeling growing out of the war, our statemen have still believed that the existence of the State with powers for domestic and local government, including the regulation of civil rights—the rights of person and of property—was essential to the perfect working of our complex form of government, though they have thought proper to impose additional limitations on the States, and to confer additional power on that of the Nation.

On equal protection, the sentence later Courts had to climb:

We doubt very much whether any action of a State not directed by way of discrimination against the negroes as a class, or on account of their race, will ever be held to come within the purview of this provision.

Field, dissenting, on what that reading would make of the clause:

If this inhibition has no reference to privileges and immunities of this character, but only refers, as held by the majority of the court in their opinion, to such privileges and immunities as were before its adoption specially designated in the Constitution or necessarily implied as belonging to citizens of the United States, it was a vain and idle enactment, which accomplished nothing, and most unnecessarily excited Congress and the people on its passage.

Betrayal thesis: 1873, Northern will fading, *Cruikshank* coming. Narrow-but-defensible: poor vehicle, police power. Revival is not one program (Saenz; Thomas in *McDonald*; Barnett's economic liberty). An adult who says "everyone knows *Slaughter-House* was wrong" has not read the revival literature's splits. An adult who says "skip privileges or immunities, it's dead" has described doctrine as if it were the parchment.

Due process in this paragraph is the Fifth Amendment aimed at the states. Equal protection is not “identical treatment in all things.” Classification is how law works. How much justification, for which classifications, is later doctrine. Occasion of the paragraph: Black Codes and a Civil Rights Act a later Congress could repeal. Grammar: person and citizen. Dropping either half is a brief.

Big Idea

Section 1 is a working paragraph with two subjects and one target (the states). Privileges or immunities is still in the text after Miller gutted it as doctrine. Howard’s 23 May list is the best single piece of legislative history for a first-eight theory. It remains a speech. If your public claim about “the 14th” cannot survive a four-clause checklist against the Archives, do not send the claim.

Practice

1. Four-clause filter for a news item. Take any article that says what “the 14th guarantees.” Number the four clauses. Check which ones the article used. Rewrite the lede so it does not drop membership, privileges, process, or protection — and so it still names the states. Deliverable: old lede, new lede, checklist. 2. Holding card, Miller. In 120 words, state *Slaughter-House’s* actual dispute (butchers, monopoly, health statute) and the privileges holding. Quote either the “useless to pursue” sentence or the “civil rights... essential” sentence. Deliverable: the card. No cartoon racist; no Field-as-saint. 3. Hiring versus the clause. You are reading an HR policy at a private firm. Write six lines distinguishing: (a) what Section 1 binds (states); (b) what Title VII and other statutes bind (private employers, on their own terms); (c) why calling a private dress code “unconstitutional under the 14th” is usually a category error. Deliverable: the six lines. Not legal advice — category hygiene. 4. School-board packet, state action. A public school is a state actor. A private club usually is not. Using *The Civil Rights Cases* (1883) and *Shelley v. Kraemer* (1948) as named markers, write a 150-word note a board member could use to ask “is this a 14th claim or a statute claim?” without pretending to be counsel. Deliverable: the note.

Reflect

If Congress in 1866 thought privileges or immunities would carry the first eight amendments, and the Court in 1873 said ordinary civil rights remain with the states, what are you doing when you treat incorporation as “what the 14th is”? Recovering a wreck, inventing a docket, or both — and how would you know?

Chapter 3: Speech Over Graves, Instrument in the Code



Illustration for Chapter 3

Adults who like the Gettysburg Address often like it more than the amendment. The speech is short. The amendment names Indians not taxed and refuses to pay for slaves. Marble is

easier than machinery. The lock in this pack is not hostility to the speech. It is a refusal to let a cemetery oration enact Article V.

Lincoln, 19 November 1863, Soldiers' National Cemetery. Everett's two hours; Lincoln's two minutes. Everett's next-day letter is the contemporary measure. Five holograph copies. Bliss (1864) is signed and dated, the Memorial text. He did not dash it off on a train. Johnson and Wilson are the composition scholars; Boritt is the memory scholar. Wills (*Lincoln at Gettysburg*, 1992) is a thesis: the speech remade America by centering the Declaration. Thesis, not statute.

Bliss text, entire, because adults skip the middle after the first sentence as often as anyone:

Four score and seven years ago our fathers brought forth on this continent, a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal.

Now we are engaged in a great civil war, testing whether that nation, or any nation so conceived and so dedicated, can long endure. We are met on a great battle-field of that war. We have come to dedicate a portion of that field, as a final resting place for those who here gave their lives that that nation might live. It is altogether fitting and proper that we should do this.

But, in a larger sense, we can not dedicate — we can not consecrate — we can not hallow — this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note, nor long remember what we say here, but it can never forget what they did here. It is for us the living, rather, to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us — that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion — that we here highly resolve that these dead shall not have died in vain — that this nation, under God, shall have a new birth of freedom — and that government of the people, by the people, for the people, shall not perish from the earth.

A proposition is not a rule. "Government of the people, by the people, for the people" is not equal protection, not due process, not citizenship, and not a repeal of three-fifths. Lincoln is dead before Bingham drafts. The Reconstruction Congress writes the clauses.

| | Speech, 1863 | Amendment, 1868 | |--|-----|-----| | What it is | Remarks
over graves | Five sections, Art. VI once ratified | | Equality | A proposition the nation is
dedicated to | Operating rules against the states | | Three-fifths | Absent | Section 2 repeals
the seats fraction | | *Dred Scott* | Unnamed | Sentence 1 of Section 1 replaces the
citizenship holding | | Enforcement | None | Section 5 |

If a politician says “Lincoln wrote the 14th at Gettysburg,” the adult reply is not a sneer. It is a table. Which clause did Bliss enact? The honest answer is none. Wills may still be right about afterlife — about what Americans later thought the Founding was. Afterlife is not ratification.

The chain for this sitting: Taney 1857 → Bliss 1863 → Section 1 1868 → Section 2 versus Federalist 54. Ugly parts stay in: Taney’s holding; Section 2’s leftovers; the century of not-keeping.

Adult rooms also run a softer swap: using “of the people, by the people, for the people” as a mood that makes Sections 2–5 optional. Mood is not enforcement. Everett’s two-hour oration is forgotten because Lincoln was better at cadence. The amendment is remembered as equal protection because later Courts were better at docket than at Reconstruction. Your job, if you speak in public about either text, is not to be better at cadence. It is to refuse the swap.

A third compression: “Gettysburg repealed three-fifths.” A speech cannot repeal a clause. Section 2 can. If you are the person in the room who says that, you will sound pedantic. Pedantry is the adult virtue this chapter is for. The civic chain paid for the landing. Do not spend it on marble.

Big Idea

Gettysburg is a claim about the Declaration in wartime. The 14th is an instrument with five sections and an enforcement clause. Promoting the speech into a charter hides the leftovers the speech never had to name. Demoting the speech into empty ceremony hides why later Americans thought equality was the country’s proposition. Read both. Swap neither.

Practice

1. Public-rhetoric audit. Find a speech, op-ed, or sermon that treats Gettysburg as if it were constitutional text. Quote one sentence. Next to it, quote either Bliss’s last sentence or Section 1 sentence 1, whichever the speaker actually needed. One paragraph on the swap. Deliverable: quote, counter-quote, paragraph. No pile-on. 2. Unfinished-work test. “Unfinished work” in Bliss; five sections in 1868; Redemption after. In 150 words, as a voter, distinguish unfinished feeling from unenforced sentences. Deliverable: the 150 words. 3. Memorial versus code. You are at a civic ceremony that recites Gettysburg. Write the two sentences you would *not* say into a microphone, and the one sentence you might say later in the car: the 14th is the attempt, five years later, to write the proposition into operating rules. Deliverable: three sentences. 4. Wills labeled. 100 words stating Wills’s remaking thesis. 80 words stating the Article V counter. Do not award the palm. Deliverable: both.

Reflect

If the living are dedicated to unfinished work, and the work later includes unused penalties and emptied clauses, what kind of dedication is still available to an adult who will not lie about either the speech or the code?

Chapter 4: Jurisdiction, the 1866 Act, and Wong Kim Ark



Illustration for Chapter 4

Taney held that people of African descent, enslaved or free, could not be citizens of the United States within the meaning of the Constitution, and so could not sue in federal court.

He also held that Congress could not ban slavery in the territories. The first holding is the one Section 1 sentence 1 replaces. McLean and Curtis dissented. Adults who reduce the case to “the Court liked slavery” cannot state what Bingham overwrote.

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.

Two sources of citizenship. National citizenship no longer a state gift. Dual membership: nation and state of residence.

30 May 1866, Globe 2890 — not 23 May — is Howard on the qualifier. He treated the citizenship sentence as declaratory of law already, and said it would not include persons born in the United States “who are foreigners, aliens, who belong to the families of ambassadors or foreign ministers accredited to the government of the United States,” but would include every other class of person. Diplomatic households. Indian tribes not taxed in the surrounding Reconstruction conversation. Invading armies as the common-law companion. The qualifier is real. It is not a trapdoor designed in 1868 to empty the clause for twenty-first-century hypotheticals. It is also not empty.

Not an accident. Civil Rights Act of 1866, §1, passed over Johnson’s veto, Field quoting it in *Slaughter-House*:

That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, 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...

A later Congress could repeal that statute. The Joint Committee put the core into the Constitution. Occasion: freed people and *Dred Scott*. Grammar: persons. Both true.

Field again, on what the first clause did:

The first clause of the fourteenth amendment changes this whole subject, and removes it from the region of discussion and doubt. It recognizes in express terms, if it does not create, citizens of the United States, and it makes their citizenship dependent upon the place of their birth, or the fact of their adoption, and not upon the constitution or

laws of any State or the condition of their ancestry. A citizen of a State is now only a citizen of the United States residing in that State.

Wong Kim Ark, 169 U.S. 649 (1898): child born in San Francisco to Chinese parents, not diplomats, held a citizen. Exclusion acts could not unwrite the sentence. *Jus soli* with traditional exceptions. The 1898 Court did not have a modern unlawful-presence category in front of it. Fact about the case; not a trump for either brief.

Live fight (Harry 7.5), labeled and not settled here: “complete jurisdiction” and allegiance theories versus the traditional-exceptions reading that has been the long majority of immigration-law teaching and historical State Department practice. 8 U.S.C. § 1401 restates the clause. A statute cannot repeal a constitutional sentence. An amendment could. An executive proclamation cannot. Do not ask this booklet whether birthright citizenship is good policy. Ask it to put the 1866 Act, Howard’s 30 May exclusions, and *Wong Kim Ark* on the table. Then, if you argue, label the argument.

Yick Wo v. Hopkins (1886) applies equal protection to Chinese laundrymen. Grammar doing work beyond the occasion. Do not use it to erase 1866. Do not refuse it because the plaintiffs were not the freed people.

Citizenship is not the vote. Section 2 proves the drafters knew.

An adult who works near immigration news will be asked to treat 1868 as if it were a blog post about present entries. Refuse the genre. Put three objects on the table: the 1866 Act’s “not subject to any foreign power, excluding Indians not taxed”; Howard’s 30 May diplomatic-household exclusion; *Wong Kim Ark*’s child of domiciled non-diplomat Chinese parents. Then say what your extra claim is — temporary sojourn, unlawful presence, “complete jurisdiction” — and that it is a claim. People who dislike the present rule need 1868 to have been confused. People who like the present rule need 1868 to have settled every hypothetical. The clause is shorter than both briefs.

8 U.S.C. § 1401 currently restates the clause as statute. That restatement is not the amendment. It can be rewritten by Congress. The sentence in Section 1 cannot, short of Article V. An executive proclamation cannot do Article V’s work. Those are institutional facts, not a policy win. This booklet will not tell you which policy to want. It will tell you when a speaker has stopped quoting.

Big Idea

Taney is replaced, not debated, by sentence 1. The 1866 Act shows purpose. Howard’s **30 May** line names diplomatic families; do not hang it on 23 May. *Wong Kim Ark* holds a specific child to be a citizen. Analogies are arguments. Policy is not a holding.

Practice

1. Date card, two sides. 23 May: privileges, first eight. 30 May: jurisdiction, ambassadors and foreign ministers. If you mix them in a letter to the editor, you are repeating a research-file error this pack was written to stop. Deliverable: the card. 2. News versus *Wong Kim Ark*. Take one current claim about birthright citizenship. Write: (a) what *Wong Kim Ark* actually held; (b) what the claim needs that the holding does not supply; (c) whether the claim admits it is an argument. Deliverable: three labeled sentences. No caucus. 3. Statute-into-Constitution. Set CRA 1866 §1's citizenship sentence beside Section 1 sentence 1. Mark what the amendment adds (naturalization; jurisdiction phrasing; dual citizenship). One paragraph on why a veto-override statute was not enough. Deliverable: marked pair plus paragraph. 4. Jury instruction hygiene (imagined, not filed). If a closing argument says "the 14th made everyone a citizen," list the dropped pieces: qualifier, naturalization, dual citizenship, Howard's exclusions, *Dred Scott* as the thing replaced. Deliverable: the list. You would not stand up. You would notice.

Reflect

Occasion is not grammar. Grammar is not a license to forget occasion. As a voter who will hear this clause used as a weapon in both directions, which three texts would you insist on seeing before you trusted anyone's "original meaning" brief — and in what order?

Chapter 5: Liberty Dockets and Equal Protection After Plessy



Illustration for Chapter 5

Due process and equal protection are where adult civic life actually collides with the 14th: a licensing hearing, a school assignment, a search, a marriage statute, an admissions policy, a

news segment about “what the Court did to liberty.” They remain two clauses. They say person. They bind states.

Due process: Magna Carta’s law of the land as ancestor; Fifth Amendment (1791) against the federal government; *Barron* keeping the Bill of Rights off the states; 1868 aiming the phrase at the states. Procedural core: notice, hearing, impartial decision-maker, a course of law. The words include the taking. “They can’t take it” is not the clause. “They can’t take it without due process of law” is.

Substantive due process is afterlife: *Lochner*; *Meyer* and *Pierce*; *Griswold*; *Roe*; *Glucksberg*; *Obergefell*; *Dobbs*. Those cases disagree with each other. *Dobbs* claims history. Critics claim a stacked history. This booklet does not award the palm and does not recruit the clause. Original meaning versus later use (Harry 7.2) is the adult fight: 1868 almost certainly overruled Taney’s citizenship holding, wrote national citizenship, restrained states, gave Congress enforcement power, repealed three-fifths as seats, barred payment for slaves, barred insurrectionists from office unless Congress lifts the bar. 1868 is fought about incorporation, “social” versus civil equality, unenumerated liberty, Section 5’s breadth, and later extensions of “person.” Use is not meaning. Meaning is not “whatever five Justices prefer.”

Incorporation is the workaround after *Slaughter-House* and *Cruikshank*. *Gitlow* (1925) assumes speech against the states through due process. Then a selective list. Black’s total incorporation never commanded a majority. Still out: grand jury; civil jury. “The Bill of Rights applies to the states” is approximately true, precisely false, and a poor substitute for Section 1’s other clauses.

Equal protection emptied: *Plessy*, 163 U.S. 537 (1896). Brown, J.: civil and political equality, not social; inferiority only if the colored race chose to read it that way. Harlan, dissenting — quote the famous sentence and keep the Chinese-exclusion passage in the room, because adult readers have no excuse to launder a dissent:

But in view of the constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law.

There is a race so different from our own that we do not permit those belonging to it to become citizens of the United States. Persons belonging to it are, with few exceptions, absolutely excluded from our country. I allude to the Chinese race. But, by the statute in question, a Chinaman can ride in the same passenger coach with white citizens of the United States, while citizens of the black race in Louisiana... are yet

declared to be criminals, liable to imprisonment, if they ride in a public coach occupied by citizens of the white race.

Color-blind is Harlan's legal claim. The Chinese passage is also Harlan. Majority is the holding.

Brown, 347 U.S. 483 (1954):

We conclude that, in the field of public education, the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal.

Footnote 11, social science, 1868 floor speeches not the engine. McConnell versus Berger versus Balkin versus Scalia-who-would-not-overrule-*Brown*: the sitting is the disagreement. *Brown II*: all deliberate speed. *Loving*: marriage. *Milliken*: city-suburb remedy limits. Not a wand.

State action: *Civil Rights Cases* (1883); *Shelley* (1948); *Morrison* (2000). Private wrongs can be terrible and not be Section 1.

Color-blind versus antisubordination (Harry 7.4), shown, not graded. Color-blind: Reconstruction Amendments disable racial classification whether the motive is oppression or inclusion; *Parents Involved*; *SFFA v. Harvard* (2023); Roberts's "stop discriminating on the basis of race." Antisubordination: occasion is caste; treating caste and remedy as identical misses the point; Fiss; *Grutter* then *SFFA*. 1868 mixed: 1866 Act's racial terms of description then equal civil capacity; Freedmen's Bureau race-conscious in the obvious sense; grammar of person; segregated schools funded in the District. A sitting that declares the record unambiguous is lying. Sex and nationality are cousins, not copies. Do not recruit.

Both readings have a *Plessy* problem: words that can hide caste. The majority claimed not to stamp inferiority — "equal" as a cheat. Color-blind can be a shield for hierarchy if classification is the only thing it sees. Antisubordination can become a theory that never has to quote Section 1's actual words (the word "equity" is not there). An adult who will only quote Harlan's first famous sentence, or who will only quote the Freedmen's Bureau, has chosen a brief. This chapter asks you to put both objects on the table and still maybe conclude as a voter. Concluding is allowed. Skipping the account is not.

"The 14th ended segregation in 1868" fails because *Plessy* is 1896. "Equal protection means the same rules for everything" fails because law classifies. Scrutiny is doctrine, not text.

Between *Plessy* and *Brown* is not destiny. NAACP test cases: *Missouri ex rel. Gaines* (1938), *Sweatt v. Painter* (1950), *McLaurin v. Oklahoma State Regents* (1950) — graduate and professional schools, equality inside the separate system until the system cracked. *Smith v.*

Allwright (1944), white primary. *Shelley*, covenants as state action. Strategy, not fate. *Brown* II's "all deliberate speed" is the adult reminder that a holding is not a school assignment completed the next morning. Little Rock, massive resistance, tokenism, then the 1964 and 1965 Acts — statutes that did work Section 2's penalty never did. Commerce clause carried public accommodations after 1883 closed the 14th door (*Heart of Atlanta Motel*). Two doors, two stories. An adult who says "the 14th did the 1960s" has mixed doors.

Incorporation pacing, for the same adult who will otherwise say "Warren Court": *Near* (press), *DeJonge* (assembly), *Cantwell* (free exercise), *Everson* (establishment), *Wolf* then *Mapp* (Fourth), *Gideon* (counsel), *Duncan* (jury), *McDonald* (2010), *Timbs* (2019), *Ramos* (2020). Total incorporation (Black, *Adamson* dissent, 1947) never had a majority. Frankfurter wanted "fundamental fairness," which might include less than the Bill of Rights and, in theory, more. The Court's list matches nobody's 1868 cleanly. It matches a century of litigation. Using incorporation history only to attack *Miranda*, or only to defend *McDonald*, is a brief. The historical question is the same for both.

Big Idea

Process and protection are state-action rules about persons. Incorporation is afterlife through due process. *Plessy* emptied; *Brown* recovered for schools; the clause is still litigated. Harlan's color-blind sentence does not travel without his Chinese-exclusion sentence. 7.4 is a debate you can have as a voter. It is not a grade of your household.

Practice

1. Holding brief you could explain at a kitchen table: *Plessy* year, facts, holding; *Brown* year, holding language quoted above; what "separate but equal" did in between. Deliverable: six sentences plus the *Brown* quotation. No movie version. 2. School-board, equal protection as a voter. A proposal classifies students (by residence, by program, by anything). Write 120 words asking: is the actor the state? what is the classification? what justification will the board actually state? You are not counsel. You are a person who has read the clause. Deliverable: the 120 words. 3. News, color-blind. Find one piece that quotes Harlan's color-blind sentence and one that treats the 14th as requiring race-conscious remedy. For each, note whether 1868 mixed evidence was mentioned. Deliverable: two notes, four lines each. Do not pick the winner. 4. Jury, due process. List the procedural core (notice, hearing, impartial decision-maker, course of law) and one later liberty case you will *not* smuggle into "what due process meant in 1868" without labeling afterlife. Deliverable: the list plus the labeled case.

Reflect

If *Plessy* and *Brown* are both readings of the same sentence, and *SFFA* is another, what would it take for you to treat "what the 14th requires" as a question about 1868, about 1954,

or about the present Court — and how would you keep those three questions from eating each other in a public meeting?

Chapter 6: Reconstruction Machinery and Who Enforces



Section 1 is famous. Sections 2–5 are why the 39th Congress could pass the thing, and where it refuses to look like a poster. Adult civic life still collides with them: who counts for the House; who is barred from office; whether Confederate memory includes unpaid slave-property claims; whether Congress or the Court defines the right that Section 5 “enforces.”

Section 2: landing already done. Keep it in the machine: whole persons; Indians not taxed; male/21; crime; unused penalty.

Section 3, National Archives — read it, do not recruit it:

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.

Office bar, not a criminal punishment. Oath, then insurrection. Congress lifted most disabilities in 1872. *Trump v. Anderson* (2024) is about who decides, not about whether the sentence exists. A booklet that uses Section 3 as a campaign graphic has left WisdomForge. A booklet that hides Section 3 to keep the amendment pretty has also left.

Section 4: Union debt, including pensions and bounties, shall not be questioned. Confederate debt void. “Any claim for the loss or emancipation of any slave” void. Who bears emancipation’s cost is in the Constitution. Name it without applause.

Section 5: “The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.” Without it, lawsuits. With it, statutes. 1866 Act under the 13th, then rewritten into the 14th. Reconstruction thought McCulloch-broad. *Civil Rights Cases* (1883): state action, not private inns; Harlan dissented. *Katzenbach v. Morgan* (1966): prophylactic enforcement even beyond what the Court would strike. *City of Boerne v. Flores* (1997): remedial; congruence and proportionality; Congress may not decree the substance. *Morrison* (2000): VAWA civil remedy. *Shelby County* (2013) is a 15th cousin. Who decides what equal protection is? Reconstruction Republicans, Brennan, and the Rehnquist Court gave different answers. You may prefer one. You may not be told only one existed.

Ratification: most former Confederate states rejected in 1866. Reconstruction Acts of 1867 — military districts, new constitutions, Black male suffrage, ratification as a condition of seats.

Southern ratifications under those conditions in 1868. Ohio and New Jersey purported to withdraw. Seward's 28 July certificate. Coercion relative to ordinary Article V; also the process that produced Black suffrage and ratification after Black Codes. "Illegitimate" and "holy" are both briefs.

The 1787 Constitution itself was ratified under pressure extra-legal relative to the Articles. Civic documents in this chain are not laboratory consents. They are political facts. WisdomForge's job is to say what the fact was. Georgia's later exclusion and re-admission belong in a footnote, not a speech. *Coleman v. Miller* (1939) and the Article V cases make "can a state rescind?" a political question in practice. An adult sitting that spends itself on "was it really ratified?" has been recruited. An adult sitting that pretends the Southern votes were free has been recruited to a different brief.

Redemption: the Redeemers' word. Memphis, New Orleans, Colfax. *Cruikshank* after Colfax. 1872 Amnesty. 1877. Jim Crow constitutions. Unenforced §2. Writing ≠ keeping. Northern fatigue, Court doctrine, white Southern terror: name all three.

What held: citizenship as status, mostly (*Wong Kim Ark*, 1898, a Chinese-American case). Not nothing. Not equal protection in the streets. Due process became a tool of railroads and *Lochner* before it became a tool of incorporated criminal procedure. The amendment's afterlife split: useful to capital, closed to caste challenge, until a later Court. An adult who only knows the 14th as *Brown* has inherited the recovery without the split. An adult who only knows it as *Lochner* has inherited the split without the recovery. Name both.

Thirteenth (December 1865):

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Fifteenth (February 1870):

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

The 14th is the middle of a set. "The 14th gave the vote" mixes the set. "The 15th finished the work" skips grandfather clauses, *Giles v. Harris* (1903), and the Voting Rights Act of 1965.

Stevens called the amendment a compromise. Bingham said he meant to reverse *Barron*. Johnson opposed. None of them is the amendment. Several were racist by later lights and still wrote the citizenship rule Taney denied. The text is the text.

Foner's second founding: test it against five sections and against Redemption. If it survives as a claim, it survives as a claim, not as a liturgy.

Who you are in this machinery, if you are an adult in a republic: you are not the Court. You are not Congress. You are the person who decides whether a public claim about "enforcing the 14th" is standing on Section 5 as Reconstruction understood it, on *Morgan's* prophylactic high-water mark, or on *Boerne's* congruence-and-proportionality leash. You are the person who notices when Section 3 is being used as a campaign sticker. You are the person who can say, without a hymn, that Union debt was protected and slave-property claims were void. You are the person who can say that Southern ratification happened under military Reconstruction, and that pretending otherwise is a different brief from calling the amendment invalid.

None of that is a profession. It is literacy. The amendment survived because it is in the Constitution. Its clauses became the docket of modern constitutional law. Use is not 1868 meaning. 1868 meaning is not what the Court did in 1873. What kept the Fourteenth alive was usefulness — the same afterlife Magna Carta and *The Federalist* had. A Reconstruction instrument became a store of arguments. Its meaning grew through citation, through abandonment, and through recovery. Your job is not to stop that. It is to know which of those three you are doing when you open your mouth.

Big Idea

Machinery is the amendment: seats, loyalty, debt, enforcement. Ugly clauses named. Ratification under military Reconstruction is an ugly fact and a true one. Section 5 is Congress's engine, later fought over by Courts. Section 3 stays in the text and out of your caucus. Keeping is not writing.

Practice

1. Five-section map for a civic-club talk. One row per section: job in eight words; one fact a poster drops; one live adult collision (House count, office, debt memory, statute versus Court). Deliverable: the table. You may not skip §3 or §4. 2. Section 5, who decides. Four dated lines: 1866 Act; *Civil Rights Cases*; *Morgan*; *Boerne*. After the four, one question you would ask a candidate who says "Congress should enforce the 14th" or "the Court says what the 14th means": which of those four are you standing on? Deliverable: four lines plus the question. 3. Redemption without a single villain. Name violence, *Cruikshank*, 1877, and unenforced §2 in four clauses. Then name one thing that held (citizenship status). Deliverable: five clauses. No montage, no tract. 4. Ballot and Section 3. Read Section 3 aloud. Write one sentence on who is barred and who may lift the bar. Write one sentence that begins "I will not use this clause to..." and refuses a modern recruitment. Deliverable: two sentences. Not legal advice; self-limitation.

Reflect

If supreme law can sit in the Constitution unenforced, what is an adult's remaining work — litigation, legislation, local keeping, or honest speech about the gap — and how would you describe that work without a pep talk and without despair?

For the Grown-Up Reader

This adult booklet is written for people who vote, hire, serve, and read news, not for a middle-band leftover. Practice aims at claims you will actually meet: a mailer that says the 14th gave the vote; an HR policy called “unconstitutional”; a school-board classification; a headline about birthright; a dissent quoted as if it were a holding; a Section 3 graphic. None of the protocols is legal, pastoral, or medical advice.

Date discipline: Howard **23 May 1866** (Globe 2764–66) is privileges or immunities and the first eight amendments. Howard **30 May 1866** (Globe 2890) is jurisdiction and diplomatic households. Harry 2.1 collapsed those days. Do not.

Section 3, 7.4 (color-blind versus antistatutory), and 7.5 (birthright today) are shown as fights. They are not recruited. Harlan's color-blind sentence is quoted with the Chinese-exclusion passage in the room. Miller is quoted as Miller; Field as Field.

The booklet does not ask whether Madison was “a racist,” whether Lincoln “meant” the 14th, or whether birthright citizenship is good policy. It asks you to state sentences, keep dates, and refuse posters.

Practice in this band is built for rooms you already inhabit. A mailer. A school-board packet. An HR policy. A jury box you may not speak from. A news claim about birthright or “enforcing the 14th.” If an item still sounds like a worksheet for a fifteen-year-old, it failed this rewrite. If an item tells you how to vote or how to instruct a jury, it failed the no-advice rule.

Quote honesty: Archives XIV; Fed 54 Avalon; Bliss Gettysburg; Bingham 1866; Howard dated to the Globe page that actually holds the sentence; holdings not vibes. No invented sayings. No family names.

If you already read the high booklet, this one is not a reprint. High is source protocols for a reader still in a course of study. Adult is civic literacy for rooms where nobody will grade you except the people who have to live with what you said. The sitting map is the same six beats. The sentences you owe are the same. The Practice is not.

Brown as the original-meaning test (Harry 7.2): Did 1868 public meaning condemn school segregation? McConnell has argued yes from Republican practice and the 1875 Act. Berger argued no. Balkin: right as text-and-principle. Scalia called himself an originalist who would not overrule *Brown*. A curriculum that needs *Brown* to be simply originalist, or simply invented, has recruited the 14th. An adult conversation that needs the same simplicity has done the same. You may have a view. You may not skip the disagreement.

About WisdomForge

WisdomForge turns founding documents and great thinkers into booklets for every age. Each figure or document gets four booklets: ages 5–10, 11–14, 15–18, and adults. The same text, told at the right depth. Because the Fourteenth Amendment is not a costume of equality. It is a five-section instrument, and every generation has to read it again.

Sources

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Holdings (not vibes)

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Quotations are from the sources named. No invented sayings. No family names.

The grown-up reader who wants a next book after Foner and Amar can open Curtis on privileges or immunities, Fairman on incorporation, and McConnell versus Berger on *Brown*. Those are fights. They are not substitutes for the Archives paragraph. Open the paragraph first. Then open 54. Then open Bliss. Then argue. The order is the method, not a taste. Cadence comes last, always, after the clause itself. Always the clause first.

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