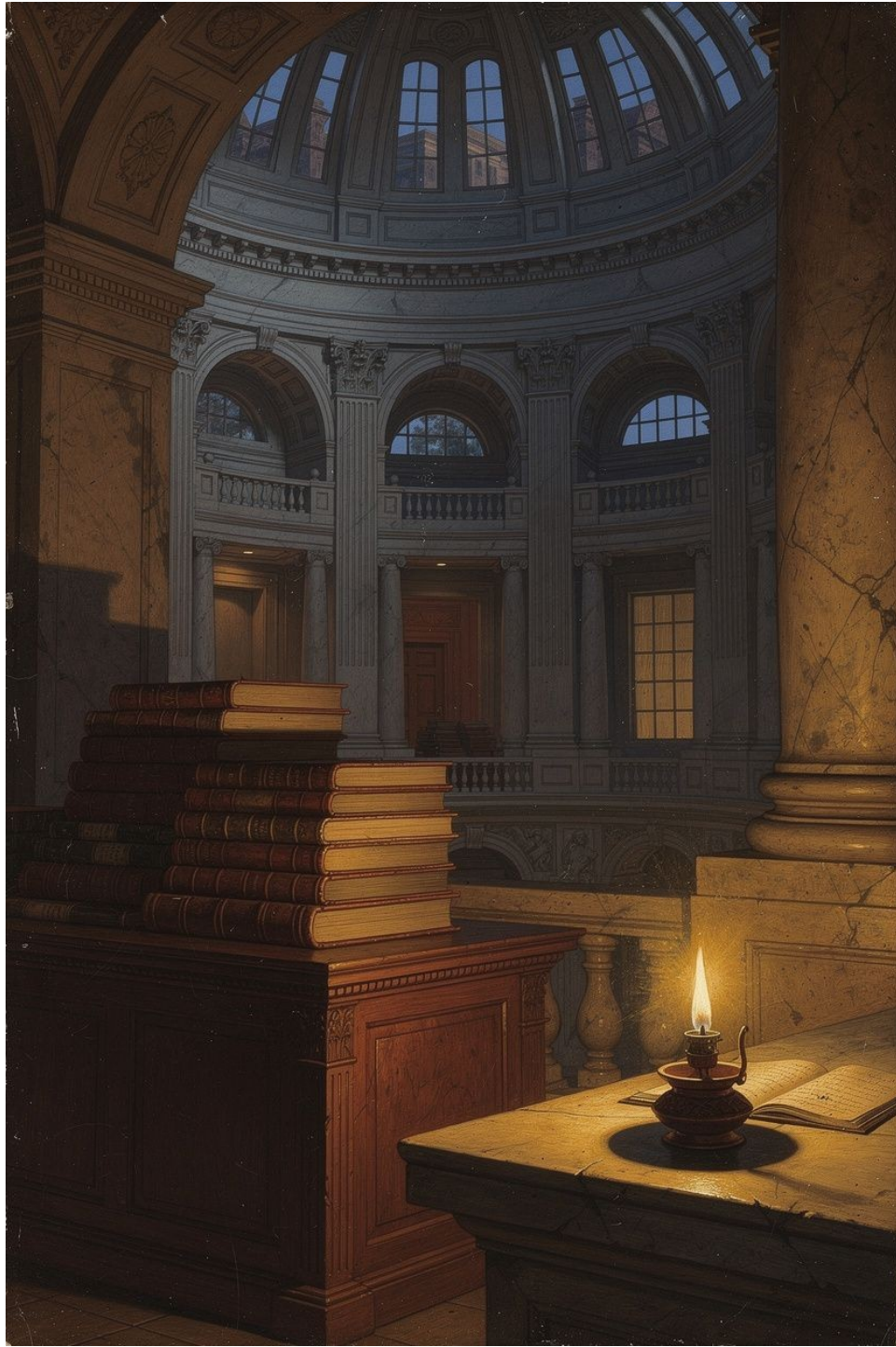




After the Fraction

WisdomForge Booklet — Ages 15–18

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About This Book

If you already walked the civic chain — Magna Carta, the Declaration, the Constitution, the Federalist Papers — you met a problem the 1787 text did not solve. Article I counted “three fifths of all other Persons” for House seats and direct taxes. Federalist 54 did not apologize for that arithmetic. It theorized it. This booklet is the later instrument that changed the seats rule, wrote national citizenship into the Constitution, and aimed due process and equal protection at the states.

The Fourteenth Amendment was proposed by the 39th Congress in 1866 and declared ratified on 9 July 1868. Secretary of State William Seward certified it on 28 July. It has five sections. Later civics often recites only the fourth clause of Section 1. That recitation is a poster. The amendment is an operating document: membership, privileges of citizens, process before the state takes life or liberty or property, equal protection of the laws, a new census rule, an office bar, a war-debt settlement, and a grant of power to Congress.

Gettysburg belongs inside this story as a speech. It is not a sixth founding charter. *Dred Scott v. Sandford* (1857) belongs as the citizenship holding Section 1 replaces. Incorporation, *Plessy, Brown*, and the live fights over color-blind versus antistatist readings belong as afterlife — labeled as afterlife.

Each chapter is an essay. You will meet floor speeches on two different May days in 1866, because they do different work. 23 May is Jacob Howard introducing privileges or immunities and listing the first eight amendments. 30 May is Howard on the jurisdiction qualifier — ambassador and foreign-minister families. Mixing those dates is how a research file becomes a rumor.

Practice items are protocols with a deliverable: a facing-page map, a holding brief, a clause checklist against the National Archives text. One chapter ends in a Research Prompt. The other five end in a Reflect. None of this is legal advice, and none of it grades your household.

Chapter 1: Landing on Federalist 54



Illustration for Chapter 1

You do not start this booklet at equal protection. You start where the Federalist unit pointed: at a census rule that treated enslaved people as a mixed quantity, and at the later sentence that repealed that quantity as a rule of chairs.

Article I, Section 2, Clause 3 of the original Constitution said:

Representatives and direct Taxes shall be apportioned among the several States... according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.

That sentence is seats and taxes. It is not a metaphysical grade of sixty percent human. If you walk out of this chapter with only the cartoon, you have failed the same test the Constitution booklet already set. The uglier text is the brief written to sell the clause.

Federalist 54 — Madison by modern scholarly consensus, published in the *New York Packet* on 12 February 1788 — defends the fraction. Madison ventriloquizes “one of our Southern brethren,” then accepts the reasoning as reconciling him to the convention’s scale. Read the essay’s own words, not a paraphrase that makes Publius look merely practical:

Enslaved people “partake of both these qualities: being considered by our laws, in some respects, as persons, and in other respects as property.” The Constitution “views them in the mixed character of persons and of property. This is in fact their true character.” The compromising expedient “regards the SLAVE as divested of two fifths of the MAN.”

Northerners who wanted enslaved people *out* of the count were shrinking Southern seats, not performing abolition. Southerners who wanted them *in* as full persons wanted more seats, not equality. 54 sells that bargain to New York. Skipping the essay to keep Publius admirable fails the same honesty test as skipping villeins in Magna Carta.

The Thirteenth Amendment (1865) abolished slavery, “except as a punishment for crime whereof the party shall have been duly convicted.” Once there were no “other Persons” to fraction, a Southern state would have *gained* House seats by counting formerly enslaved people as whole persons while denying them the vote. Section 2 of the Fourteenth is the attempted brake.

First sentence of Section 2, National Archives text:

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.

Three-fifths is gone as a rule of chairs. Madison’s “divested of two fifths of the MAN” is repealed as arithmetic. That is the landing. Say it in those terms before you reach Gettysburg, citizenship, or *Brown*.

The second sentence is the penalty, not a grant. If the right to vote at elections named in the clause is denied or abridged for adult **male** inhabitants twenty-one and over who are citizens, except for rebellion or **other crime**, that state's basis of representation shall be reduced in proportion. It is a counting threat. It is not a right to vote. The Fifteenth Amendment (1870) is the racial suffrage rule. After Redemption the Section 2 penalty was not enforced. Design and failure belong in the same sitting.

Name what the answer still excludes, because an answer that hides its leftovers is a mascot:

1. **Indians not taxed.** The phrase is older; it is in Article I. Repeating it in 1868 is a choice. The Indian Citizenship Act (1924) is afterlife, not erasure of the 1868 clause. 2. **Male inhabitants, twenty-one.** Women are not in the penalty. The Nineteenth Amendment (1920) is the sex suffrage rule; the Twenty-Sixth (1971) changes voting age. Neither rewrites Section 2's sentence. 3. **"Or other crime."** The felon-disenfranchisement door. Still litigated. Not a side note.

Person for counting, citizen for the penalty: the person/citizen split that later chapters will treat as architecture is already here. Section 2 counts persons. It penalizes denial of the vote to male *citizens*.

The civic chain is honest only if it does not stop at Publius. Magna Carta omitted villeins. The Declaration said "all men" while slavery lasted. Article I wrote the fraction. Federalist 54 theorized mixed personhood as true. The Fourteenth is the document that answers those clauses in the Constitution's own operating rules. Speech comes in Chapter 3. Seats come first.

Weaponization cuts both ways. Later white-supremacist readings that treat 54 as a truth about Black people are a misuse of an 1788 brief. Later dismissals that treat Section 2 as having finished the work in 1868 are a different misuse. *Plessy v. Ferguson* (1896) is in Chapter 5. Repealing the fraction is a constitutional fact. Keeping the new sentences is history after 1868.

A serious scholarly fight sits on this landing, and you should hear it without being asked to pick a team. One reading treats Section 2 as a second founding of the House: the war's dead are counted into representation, and the mixed-character theory of 1788 is constitutionally retired as a rule of power. Another reading treats Section 2 as a Republican partisan device that tried to stop a Southern seat-gain without granting Black suffrage in the 14th itself — hence the 15th two years later, and hence the unused penalty. Both readings can quote the same paragraph. Neither reading is licensed to turn "three-fifths meant 60% human" back into a teaching sentence.

Sequence is not decoration. The 13th had to exist first, or there would still have been “other Persons” to fraction. The 14th’s Section 2 had to exist next, or abolition would have *increased* the House power of states that kept Black men from the polls. The 15th had to exist after that, because a penalty is not a right. If you cannot state that order, you are not done with the landing.

See Section 2 as a block once, not as a slogan. National Archives:

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.

A smaller scholarly fight sits inside 54 itself. Modern consensus assigns the essay to Madison. The voice inside the essay is a Southern speaker Madison ventriloquizes and then accepts. That literary fact matters for how you quote. “Madison said enslaved people are property” is sloppy. “Madison published an essay that treats mixed character as their true character, and that sells the fraction to New York” is accurate. Constitution pack teaching already killed the sixty-percent-human cartoon. This chapter refuses the opposite cartoon: that 54 was only a joke at Southern expense. He accepts the reasoning. Avalon is the check.

| 1787 rule | 1868 rule | |-----|-----| | Free persons + three-fifths of “all other Persons”; Indians not taxed out | Whole number of persons; Indians not taxed still out | | Briefed in Federalist 54 as mixed character “in fact their true character” | Fraction gone; vote penalty designed, later unused | | Seats and direct taxes | Seats (the tax companion falls with the fraction) |

Big Idea

Section 2 repeals the *seats* fraction. It does not, by itself, give the vote, and it does not finish the work of keeping the new sentences. “Three-fifths meant 60% human” is a cartoon that hides both the clause and 54’s mixed-character theory. “The Fourteenth gave Black men the vote” is a different falsehood that hides the Fifteenth and the unused penalty. Read Avalon’s 54, then the Archives text of Section 2, then what Section 2 still leaves out. The landing is arithmetic plus leftovers.

Practice

1. Facing-page map. On the left, copy Article I's three-fifths clause from a reliable Constitution text. On the right, copy Section 2's first sentence from the National Archives Amendment XIV page. Underline every word that changed. Circle every word that did not (start with "Indians not taxed"). Deliverable: one annotated pair, no commentary longer than four lines. 2. Five-claim brief, one sentence each, labeled (a)–(e): what three-fifths measured; what 54 claimed about mixed character; what Section 2 repealed; what the penalty was; whether the penalty was used after Redemption. Deliverable: five sentences you could read into a recorder without notes. 3. Attack-and-defense protocol. Write a 150-word argument that Section 2 is "really" a voting-rights clause. Then write a 150-word demolition that uses the Fifteenth Amendment's actual text and the unused-penalty fact. Deliverable: both paragraphs, neither allowed to call the other stupid. 4. Exclusion inventory. List Indians not taxed; male/21; crime exception; then one later amendment or statute that changed practice without rewriting Section 2's sentence (19th, 26th, or Indian Citizenship Act). Deliverable: a four-row table.

Research Prompt

Open Federalist 54 at the Avalon Project (Yale). Open Amendment XIV, Section 2, at the National Archives. Quote 54's "divested of two fifths of the MAN" line with enough surrounding sentences to show it is not a meme. Quote Section 2's first sentence in full. In 300–400 words, 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. Check your quotations against those two pages. If a model or a study guide paraphrases either text, reject the paraphrase until the words match.

Chapter 2: Four Clauses, Spoken



Illustration for Chapter 2

Section 1 is one paragraph. Later America recites the last clause and calls the recital “the 14th.” That is how a five-section instrument becomes a slogan. Read the paragraph the way a Reconstruction senator had to hear it: four jobs, in order, against the states.

National Archives text of 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.

Clause one is membership. Two sources only: birth and naturalization. Two citizenships: of the United States, and of the State wherein they reside. National citizenship is no longer a gift a state may withhold. Taney's holding in *Dred Scott* is not argued with. It is replaced. The qualifier — “and subject to the jurisdiction thereof” — is real. It is not a trapdoor that empties the sentence. You will meet Howard's 30 May explanation in Chapter 4. Do not steal that date for this chapter's privileges speech.

Clause two is privileges or immunities of **citizens**. Not persons. John Bingham in the House, 1866, said 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. Jacob Howard, Senate, **23 May 1866** (Congressional Globe 2764–66), introducing the amendment while William Pitt Fessenden was ill, treated the clause as the load-bearing beam. He read Bushrod Washington's circuit opinion in *Corfield v. Coryell* (1823) on “fundamental” privileges, then added a list the original Bill of Rights had aimed at Congress, not at the states:

To these privileges and immunities, whatever they may be... 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... the right to keep and to bear arms... the right to be exempted from the quartering of soldiers... the right to be exempt from unreasonable searches and seizures... 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.

Howard's next move on 23 May is as important as the list. Those guarantees, he said, “stand simply as a bill of rights in the Constitution, without power on the part of Congress to give them full effect; while at the same time the States are not restrained from violating the principles embraced in them except by their own local constitutions.” The “great object of the first section” is “to restrain the power of the States and compel them at all times to respect these great fundamental guarantees.” Section 5, he said, 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.”

Historians disagree how widely those floor views were shared among ratifiers. No one in Congress explicitly contradicted Howard’s first-eight claim; few said much at all. Speeches are evidence. They are not the amendment. Charles Fairman later argued from state practice and a thin ratification record that 1868 did not silently incorporate the Bill of Rights. Akhil Amar, Kurt Lash, and Michael Kent Curtis argue the opposite from Bingham, Howard, and abolitionist constitutionalism. A sitting that declares the debate settled has recruited you.

Clause three is due process. Subject: **person**, not only citizen. The Fifth Amendment already bound the federal government with the same phrase. *Barron v. Baltimore* (1833) held that the Bill of Rights did not bind the states. Reconstruction’s answer is this sentence: the states are now under the same words. Procedural core: notice, a hearing, a course of law rather than a decree. What later Courts packed into “liberty” — *Lochner*, *Griswold*, *Roe*, *Obergefell*, *Dobbs* — is afterlife. Teach the clause first.

Clause four is equal protection. Again: **person**. Again: the states. Occasion: Black Codes and a Civil Rights Act of 1866 that a later Congress could repeal. Grammar: the protection of the laws may not be denied. Equal protection does not mean identical treatment in all things. Classification is how law works. How much justification, for which classifications, is doctrine. The sentence is shorter than the doctrine.

A model or a study sheet that says “the 14th Amendment guarantees equal rights” has dropped citizenship, privileges or immunities, due process, person versus citizen, and the fact that Section 1 restrains *states*. Require all four clauses, in order, against the Archives text. Do not ask whether the 14th is “about race” or “about equality.” Ask it to state the sentences.

Privileges or immunities is the clause later doctrine skipped, which is why students skip it. Five years after ratification, Justice Miller in the *Slaughter-House Cases*, 83 U.S. 36 (1873), confined “privileges or immunities of citizens of the United States” to a thin national list: coming to the seat of government, access to seaports, protection on the high seas, assembly and petition as against the national government, habeas corpus, use of navigable waters, treaty rights, becoming a citizen of another state by bona fide residence. Ordinary civil rights, he said, remained with the states. Field’s dissent called that reading, if it were all the clause did, “a vain and idle enactment, which accomplished nothing, and most unnecessarily excited Congress and the people on its passage.” Later America argued about guns, speech, and criminal procedure through “liberty” instead of through “privileges or

immunities.” That path is a historical accident of *Slaughter-House*, not a reading of Bingham’s preferred clause. Name the wreck. Do not pretend the clause was never written.

Miller’s own words on the federal balance are the holding language you should be able to find again:

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.

That is the 5–4 majority’s theory of the clause: additional limitations, not a general federal civil code. On equal protection he went further, and you should hear the sentence later Courts had to climb out of:

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. It is so clearly a provision for that race and that emergency, that a strong case would be necessary for its application to any other.

The betrayal thesis (Curtis, Amar, Lash) treats that narrowing — 1873, as Northern will faded — as not innocent. The narrow-but-defensible thesis notes that the butchers were a poor vehicle and that Miller was protecting state police power. Both can be true as descriptions of 1873. Neither rewrites Howard’s 23 May list. Revival is not one program: *Saenz v. Roe* (1999) used the clause for the right to travel and to be treated as a citizen in a new state; Thomas’s *McDonald* concurrence would have carried the Second Amendment here; Barnett and others want unenumerated economic liberty. Those revivals are not the same. “Everyone agrees *Slaughter-House* was wrong” has not read the splits.

Big Idea

Section 1 is four clauses with two subjects. Citizens get privileges or immunities. Persons get due process and equal protection. Everyone born or naturalized, subject to jurisdiction, gets national and state citizenship. A recitation that begins and ends with “equal protection” has dropped three-quarters of the paragraph and all of Sections 2–5. Howard’s 23 May speech is the best single piece of legislative history for the first-eight theory. It is still a speech.

Practice

1. Clause checklist against the Archives. Number 1–4. For each clause write: who it covers (person or citizen), whom it binds (states), and one word the clause does *not* say (vote, Bill of Rights, school, race). Deliverable: four lines. 2. Howard 23 May extract. Copy the “first eight amendments” sentence from a reliable transcript (National Constitution Center excerpt of the Globe is enough). Underline every right he names. Star any right later Courts incorporated through due process instead of through this clause. Deliverable: marked extract plus a three-sentence note on the vehicle swap. 3. Miller versus Field, 200 words. Quote Miller’s doubt that equal protection would reach “any action of a State not directed by way of discrimination against the negroes as a class.” Quote Field’s “vain and idle enactment.” State the holding of *Slaughter-House* without turning Miller into a cartoon or Field into a saint. The butchers were white New Orleans tradesmen attacking a health monopoly. The holding still gutted the clause for everyone, including people not in that courtroom. 4. Integrity protocol. Take any one-sentence summary of “what the 14th does” from a website, a model, or a review book. Mark every clause it dropped. Rewrite it to four clauses, in order, then stop. Do not add your preferred case.

Reflect

If Bingham and Howard said the first eight amendments should bind the states, and the Court later bound most of them through a different clause, what exactly did 1868 enact: a speech, a sentence, or a later docket? How would you tell the difference without picking a team?

Chapter 3: A Speech Is Not an Instrument



Illustration for Chapter 3

The temptation is marble. A two-minute address over graves feels like the better 14th: short, oral, dedicated to a proposition. The amendment is long, technical, and ugly in places. Teachers assign the speech. Students remember the speech as the law. WisdomForge's lock

is the opposite of that swap. Gettysburg lives inside this pack. It is not the next figure, and it is not Section 1.

Lincoln spoke on 19 November 1863 at the dedication of the Soldiers' National Cemetery, Gettysburg, Pennsylvania, four and a half months after the battle. Edward Everett gave the two-hour oration. Lincoln gave remarks of about two minutes. Everett wrote him the next day that he would be glad if he "came as near to the central idea of the occasion, in two hours, as you did in two minutes." Lincoln did not dash the speech off on a train. That story is false. Five copies in his hand survive. The **Bliss copy** (1864) is the last known copy he wrote, the only one he signed and dated, the text on the Lincoln Memorial. Martin Johnson and Douglas Wilson are the scholars for how it was written. Read Bliss, not a recitation-contest version.

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.

What the speech is: a claim about the Declaration in the middle of the war. 1776 as "four score and seven years ago." Equality as a *proposition* the nation is dedicated to. The war as a test of endurance. The living as having unfinished work. A "new birth of freedom." Garry Wills argued in *Lincoln at Gettysburg* (1992) that the speech remade America by putting the Declaration at the center of the constitutional story. That is a thesis about afterlife. It is not a statute.

What the speech is not: law. It does not create citizenship, due process, or equal protection. It does not repeal three-fifths. It does not bind the states. It has no enforcement clause. Lincoln is dead before the 14th is drafted. The Reconstruction Congress, not the cemetery, writes the clauses.

		Bliss text, 19 Nov 1863		Amendment XIV, ratified 9 July 1868	
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		Status		Remarks over graves	
		Supreme law once ratified (Art. VI)			
		Equality		A proposition	
		Citizenship, privileges, due process, equal protection as rules			
		Three-fifths		Not mentioned	
		Section 2 repeals the seats fraction			
		<i>Dred Scott</i>		Not named	
		Section 1 sentence 1 overrules the citizenship holding			
		Enforcement		None	
		Section 5			

The chain this chapter is for is not a Lincoln hagiography. *Dred Scott* holding (1857) → Gettysburg proposition (1863) → Section 1 sentence (1868) → Section 2's repeal of three-fifths (the Federalist 54 landing). Ugly parts stay named: Taney's citizenship holding; Section 2's remaining exclusions; the century in which the sentence was not kept.

If someone says "Gettysburg is the 14th," the reply is mechanical. One is a speech over graves. One is an amendment with five sections and an enforcement clause. Read both. Do not swap them. Which clause of the 14th do you think the Bliss text enacted?

A second scholarly fight belongs here, kept short. Wills's afterlife thesis is one pole: the speech did constitutional work by changing what Americans thought the Founding was. Legal historians who resist that pole insist that no amount of cadence repeals a clause; only Article V does. You can admire the speech and still refuse to let it eat Section 2. You can think Wills overclaims and still refuse to treat the address as empty ceremony. The integrity test is Bliss versus Archives, not your taste in marble.

Gabor Boritt's *The Gettysburg Gospel* (2006) is useful as a check on afterlife: how the speech was received, forgotten, and later canonized is a history of memory, not a history of ratification. Martin P. Johnson's *Writing the Gettysburg Address* (2013) is the check on composition. Neither book writes Section 1. If a documentary tells you the speech "became" the 14th, you now have a method: open Bliss, open the Archives, ask which clause was enacted. The method is rude to marble and loyal to the instrument.

Big Idea

A proposition is not a rule. Gettysburg claims that the nation is dedicated to equality. The Fourteenth writes membership, process, and protection into the Constitution's operating language, and even then writing is not keeping. Promoting the speech into a charter is the marble version of skipping villeins: a beautiful text hiding the machinery, including leftovers the speech never had to name.

Practice

1. Dual transcription. Copy the last sentence of Bliss. Copy Section 1's first sentence from the Archives. Draw one arrow from "proposition" to "rule" and write, in twelve words or fewer, what a speech cannot do that an amendment can. Deliverable: the two sentences plus the twelve-word line. 2. Clause audit. For each of Section 1's four clauses, answer: does Bliss enact this? The only honest answers are no, or "only as a later thesis about afterlife." Deliverable: four answers. 3. Paraphrase trap. Take a popular one-line version of Gettysburg ("government of/by/for the people" used as if it were equal protection). Set it next to Bliss and next to Section 1. Mark what the one-liner stole from each. Deliverable: a three-column note. 4. Wills as thesis, not gospel. In 120 words, state Wills's claim that the speech remade the constitutional story. In 80 words, state the counter: a speech cannot repeal Article I. Do not decide the fight. Label both.

Reflect

If the living are "dedicated here to the unfinished work," and five years later Congress writes five sections, what is the unfinished work: a feeling about equality, or a set of enforceable sentences? How would you keep both without letting either one lie about the other?

Chapter 4: What Taney Held, What Section 1 Replaced



Illustration for Chapter 4

Dred Scott v. Sandford, 60 U.S. 393 (1857), is not “the Court liked slavery.” It is a citizenship holding and a territorial holding. Dred Scott, enslaved, sued for freedom after residence in

free territory. Chief Justice Roger Taney, writing for the Court, held among other things that people of African descent, enslaved or free, could not be citizens of the United States within the meaning of the Constitution, and therefore could not sue in federal court; and that Congress could not ban slavery in the territories (the Missouri Compromise held unconstitutional).

The citizenship holding is the one Section 1's first sentence overrules. If you cannot state Taney's claim, you cannot state what Bingham wrote over it. McLean and Curtis dissented. Curtis's citizenship discussion is the dissent later lawyers treated as the sounder constitutional law. Field, in *Slaughter-House*, would quote that split. You need the holding first.

Section 1, sentence 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.

Two sources. Two citizenships. The qualifier is real.

Do not copy a common misdate. **23 May 1866** is Howard introducing privileges or immunities and the first eight amendments (Chapter 2). **30 May 1866** is Howard on the Senate floor explaining the jurisdiction line (Congressional Globe 2890). He offered language that persons born in the United States, subject to the jurisdiction thereof, are citizens. He said the amendment 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. Those named exclusions — diplomatic households, and, in the surrounding Reconstruction conversation, members of Indian tribes not taxed — are the classes Congress pointed at. Invading armies are the traditional common-law companion. The qualifier is not a secret modern trapdoor. It is also not nothing.

This was not an accident of drafting. The Civil Rights Act of 1866, §1 — passed over Johnson's veto — had already declared:

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...

Congress put a statute into the Constitution on purpose because a later majority could repeal a statute. That is the opposite of a loophole. Occasion was the freed people and *Dred Scott*. Grammar is persons born or naturalized, subject to jurisdiction. Both are true. Dropping either is half the amendment.

United States v. Wong Kim Ark, 169 U.S. 649 (1898), is the Gilded Age test of whether the sentence was a “loophole.” A child born in San Francisco to Chinese parents who were not diplomats was held a citizen. The Chinese Exclusion Acts could not unwrite a constitutional sentence. The Court treated the clause as the common-law rule of *jus soli*, with traditional exceptions (diplomats, invading armies). The 1898 Court did not have a modern unlawful-presence category in front of it. That is a fact about the case, not a trump card for either twenty-first-century brief.

The live fight about “complete jurisdiction,” temporary sojourn, and unlawful presence is a scholarly and political debate (Harry’s 7.5). It is not a paraphrase of 1868. A sitting that declares the fight over has been recruited. A sitting that treats 1866–68 as sleepwalking has been recruited the other way. Do not ask whether birthright citizenship is “good policy.” State the 1866 Act, Howard’s 30 May exclusions, and *Wong Kim Ark*’s holding. Then, if you argue, label the argument as an argument.

Citizenship is not the vote. Section 2 of this same amendment proves the drafters knew the difference. Abolition is not citizenship: the 13th makes a person not-a-slave; this sentence says what the person is. “Congress can repeal it by statute” is the fear that produced the amendment.

Field’s dissent in *Slaughter-House* is useful here even though the case is about butchers, because he states what the first clause did to Taney more sharply than many later civics summaries:

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.

That is holding-adjacent dissent, not vibes. National citizenship no longer waits on a state’s constitution. State citizenship follows residence. Dual membership is the architecture.

Yick Wo v. Hopkins, 118 U.S. 356 (1886), is the cousin you should file under grammar, not under a claim that race dropped out. San Francisco laundry ordinances, applied to Chinese operators, were held to violate equal protection. The clause said person. The Court applied it to persons who were not the freed people of 1866. Occasion remains race and *Dred Scott*. Grammar remains person. A sitting that uses *Yick Wo* to erase 1866 is cheating. A sitting that refuses *Yick Wo* because the plaintiffs were not Black is cheating the other way.

The 7.5 fight stays labeled. Some scholars (Eastman and others) argue that “subject to the jurisdiction thereof” requires complete political allegiance, so children of persons here unlawfully, or here temporarily, are out. The long majority of immigration-law teaching, State Department historical practice, and *Wong Kim Ark*’s “every child born in the United States” line argue that only the traditional exceptions apply. A future statute cannot repeal a constitutional sentence. An amendment could. An executive proclamation cannot. Stop there. Policy is not this chapter’s job.

Big Idea

Taney denied national citizenship to people of African descent. Section 1’s first sentence replaces him. The Civil Rights Act of 1866 shows the rule was written on purpose. Howard’s **30 May** Globe 2890 line names diplomatic households; it does not belong on 23 May. *Wong Kim Ark* holds the child of domiciled non-diplomat Chinese parents to be a citizen. Analogies from that holding are arguments. The sentence is shorter than the briefs.

Practice

1. Holding card. One index card, two sides. Side A: Taney’s citizenship holding in one sentence you could defend as accurate. Side B: Section 1 sentence 1 copied from the Archives. Deliverable: the card. No adjectives. 2. Date discipline. Write two dated lines. 23 May 1866: one sentence on what Howard was doing (privileges / first eight). 30 May 1866: one sentence on what Howard was doing (jurisdiction / diplomatic families). If you cannot keep the dates apart, you are repeating the common misdate that hangs ambassador exclusions on 23 May. Deliverable: the two lines. 3. Statute beside Constitution. Copy CRA 1866 §1’s citizenship sentence (Field quotes it in *Slaughter-House*; use that or the Statutes at Large). Set it beside Section 1 sentence 1. Mark what the amendment adds (naturalization; “subject to the jurisdiction”; dual citizenship of nation and state) and what the statute already tried to do. Deliverable: a marked pair. 4. *Wong Kim Ark* in three facts. (1) Where born. (2) Parents’ status as the Court saw it. (3) Holding. Then one sentence that begins “This case does not, by itself, decide...” and names a modern hypothetical without answering it. Deliverable: four sentences.

Reflect

Occasion is not grammar, and grammar is not a license to forget occasion. If you had to teach this chapter without asking anyone whether birthright citizenship is “good,” what three primary texts would you put on the table, in what order, and why that order?

Chapter 5: Process, Protection, and What the Court Did



Illustration for Chapter 5

Due process and equal protection are the clauses later dockets live inside. They are still two clauses. They still say **person**. They still bind **states**. Mixing them with incorporation, and

mixing incorporation with “the 14th is the Bill of Rights,” is how Reconstruction disappears behind the Warren Court.

Due process: “nor shall any State deprive any person of life, liberty, or property, without due process of law.” Magna Carta’s “law of the land” is the ancestor. Colonial charters and state constitutions used the idea. The Fifth Amendment (1791) bound Congress. 1787 has no due-process clause. 1868 aims the phrase at the states after *Barron*.

Procedural due process is the core: notice, a hearing, an impartial decision-maker, a course of law rather than a decree. If the state takes your liberty, it has to do it *through* law, not around it. The words include the taking. “Due process means they can’t take my stuff” is missing “without due process of law.”

Substantive due process is the later docket: the claim that some liberties the state may not take even with perfect procedures. *Lochner v. New York* (1905). *Meyer v. Nebraska* (1923) and *Pierce v. Society of Sisters* (1925). *Griswold v. Connecticut* (1965). *Roe v. Wade* (1973). *Washington v. Glucksberg* (1997). *Obergefell v. Hodges* (2015). *Dobbs v. Jackson Women’s Health Organization* (2022). Those cases disagree with each other about what “liberty” includes. They are not a paraphrase of 1868. Original meaning versus later use is a real scholarly fight (Harry 7.2). *Dobbs* claims history. Critics claim a stacked history. WisdomForge does not award the palm. It labels afterlife as afterlife. Do not recruit the clause to a caucus.

This clause is also the hook for **incorporation** after *Slaughter-House* closed the privileges door. Incorporation is not a fifth clause of Section 1. It is doctrine. *United States v. Cruikshank* (1876) still treated the first eight amendments as not binding the states. *Gitlow v. New York* (1925) assumed First Amendment speech applied against the states through due process. Then a list, case by case: press, assembly, free exercise, establishment, the Fourth, counsel, jury, the Second Amendment in *McDonald v. Chicago* (2010), excessive fines in *Timbs* (2019), unanimous jury in *Ramos* (2020). This is **selective** incorporation. Justice Black’s total-incorporation dissent in *Adamson v. California* (1947) never commanded a majority. Rights still out: the Fifth Amendment’s grand-jury clause; the Seventh Amendment’s civil jury. “The Bill of Rights applies to the states” is approximately true and precisely false.

Equal protection: “nor deny to any person within its jurisdiction the equal protection of the laws.” Bingham wanted “equal laws and equal and exact justice... for any person, no matter whence he comes, or how poor, how weak, how simple — no matter how friendless.” Floor speech. The clause is the clause.

The Court emptied it in *Plessy v. Ferguson*, 163 U.S. 537 (1896). Homer Plessy, classified as Black under Louisiana law, sat in a white railway car. Justice Brown upheld separate-but-equal cars. The 14th, the majority said, enforced civil and political equality, not social equality. Segregation did not stamp a badge of inferiority unless the colored race chose to read it that way.

Harlan dissented. Quote the sentence everyone knows, then keep the Chinese-exclusion passage in the room, because emerging readers are old enough to hear both:

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.

And:

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-exclusion sentence is also Harlan. Do not baptize the whole dissent as twenty-first-century morality. The majority opinion is the holding. Harlan is the dissent later lawyers used.

Brown v. Board of Education, 347 U.S. 483 (1954), refused to apply *Plessy* to public schools. Unanimous. Warren. The holding language to keep, not a movie version:

We conclude that, in the field of public education, the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.

The opinion leans on social science (footnote 11) more than on 1868 floor speeches. Originalists still fight about whether *Brown* is originalist (McConnell yes; Berger no; Balkin as text-and-principle; Scalia would not overrule *Brown*). The sitting is the disagreement. *Brown II* (1955): "all deliberate speed." Deliberate won. *Loving v. Virginia* (1967) is marriage. *Milliken v. Bradley* (1974) is the limit of remedy across city-suburb lines. The clause recovered in *Brown* was not a wand.

State action: the clause binds states, not private persons as such. *The Civil Rights Cases* (1883) struck down public-accommodations sections of the 1875 Act. *Shelley v. Kraemer* (1948) held that judicial enforcement of a racial covenant is state action. Private wrongs can be terrible and still not be Section 1 violations. Name the line.

Color-blind versus antistatutory is a live scholarly and political fight (Harry 7.4). Color-blind: the Reconstruction Amendments disable racial classification by the state, whether the motive is oppression or inclusion; Roberts in *Parents Involved* and *SFFA v. Harvard* (2023). Antistatutory: the occasion is caste; a rule that treats a racial caste system and a racial remedy as identical has missed the point; Fiss; *Grutter* then *SFFA*. 1868 as mixed evidence: the 1866 Act used racial terms to describe who had been denied rights, then granted those rights; the Freedmen's Bureau was race-conscious in the obvious sense; the amendment's grammar is person; Congress funded segregated schools in the District. A sitting that declares the record unambiguous is lying. Do not recruit. Show both readings against Section 1. Sex, nationality, and other classifications are cousins, not copies; *Craig v. Boren* is not *SFFA*.

"The 14th ended segregation in 1868" is false because *Plessy* is 1896 and *Brown* is 1954. "Equal protection means everyone is treated the same" is false because classification is how law works. The fight is which kinds need a better reason. You need the sentence, the emptying, the school recovery, and the leftover doctrine — including scrutiny as doctrine, not as text.

Big Idea

Due process is older than 1868 and newly aimed at the states. Equal protection is a state-action rule about the laws' protection, emptied in *Plessy*, recovered for schools in *Brown*, still litigated. Incorporation is afterlife through due process after the privileges wreck. Harlan's "color-blind" sentence does not get to travel without his Chinese-exclusion sentence. 7.4 is a debate, not a verdict on your family.

Practice

1. Fifth versus Fourteenth. Copy the due-process phrase from Amendment V and from Section 1. One column: who is bound. Deliverable: two lines that would stop the claim "the Founders wrote due process in 1787." 2. Holding brief, *Plessy* then *Brown*. For each: year, facts in one sentence, holding in one sentence, what happened to "separate but equal." Deliverable: six sentences. 3. Harlan protocol. Quote "Our constitution is color-blind." Quote the Chinese-race paragraph's first two sentences. Write 120 words on why a high-school reader is asked to keep both in the room. Do not write a sermon. Do not skip the second quote. 4. Incorporation timeline, five dates only: *Barron* 1833, *Slaughter-House* 1873, *Cruikshank* 1876, *Gitlow* 1925, *McDonald* 2010. For each, one clause: what still did not bind

the states, or what just began to. Deliverable: five dated lines. Name one right still not incorporated.

Reflect

If *Plessy* and *Brown* are both readings of the same sentence, what makes one emptying and the other recovery — the 1868 floor, the 1954 Court, the facts of schools, or something you cannot get from the clause alone? How would you answer without pretending the record is simple?

Chapter 6: The Machinery Nobody Recites



Illustration for Chapter 6

Section 1 is famous because later dockets live there. Sections 2 through 5 are why a Reconstruction Congress could pass the amendment, and they are where it does not look like a poster. Skip them and you get *Brown* without Reconstruction. Name them without applause or apology.

Section 2 you already met as the three-fifths landing. Keep it in the machinery list: whole persons; Indians not taxed; male/21 penalty; crime exception; unused after Redemption.

Section 3 is Reconstruction's loyalty clause, not a criminal punishment. National Archives:

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.

It bars office for people who swore to the Constitution and then joined the rebellion. Congress amnestied most of the class in 1872. Later uses — including twenty-first-century ballot cases — are later uses. *Trump v. Anderson* (2024) is about who decides, not about whether the sentence exists. Read the sentence. Do not recruit it to a caucus. Do not skip it to keep the amendment pretty.

Section 4 is the war's financial settlement:

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.

Union debt, including bounties and pensions, shall not be questioned. Confederate debt is void. Claims for lost slave property are void. That last sentence is the amendment refusing to pay enslavers for the 13th. It is a choice about who bears the cost of emancipation. Name it without a hymn.

Section 5: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." Without Section 5, the 14th is a lawsuit. With it, the 14th is also a statute-writing power. The Civil Rights Act of 1866 rode the 13th's enforcement clause, then was rewritten into the 14th so a later Congress could not quietly repeal the citizenship rule. Section 5 is the matching engine.

How broad "appropriate" is, and who defines the underlying right, is the modern fight. Reconstruction Republicans thought McCulloch-broad. *The Civil Rights Cases* (1883) thought

state action, not private innkeepers. *Katzenbach v. Morgan* (1966) is the high-water mark: Congress may prophylactically enforce equal protection, even beyond what the Court itself would strike down. *City of Boerne v. Flores* (1997): enforcement is “remedial”; congruence and proportionality; Congress may not decree the *substance* of the 14th. *United States v. Morrison* (2000) used that test against VAWA’s civil remedy. *Shelby County v. Holder* (2013) is a Fifteenth-Amendment cousin, not a Section 5 case. Students may prefer any of those readings. They may not be told only one existed.

Ratification pressure belongs in the same chapter as the ugly clauses. Most former Confederate states, still under Johnson’s Restoration governments, rejected the amendment in 1866. The Reconstruction Acts of 1867 placed ten former Confederate states under military government, required new constitutions with Black male suffrage, and required ratification of the 14th for readmission. Under those conditions the Southern ratifications arrived in 1868. Ohio and New Jersey purported to withdraw consent. Seward’s July 28 certificate treats the amendment as in force. Military Reconstruction was coercion relative to ordinary Article V. It was also the process that produced Black suffrage and ratification in states whose 1866 legislatures had just passed Black Codes. A sitting that spends itself on “was it really ratified?” has been recruited. A sitting that pretends the Southern votes were free has been recruited the other way.

Redemption is the Redeemers’ word for white Democratic restoration. Reconstruction did not fade. It was overthrown. Memphis 1866, New Orleans 1866, Colfax 1873. *Cruikshank* after Colfax: the 14th reaches state action, not private conspirators; the federal government could not prosecute the massacre under the rights the victims claimed. 1872 Amnesty. Compromise of 1877. Jim Crow constitutions: Mississippi 1890, South Carolina 1895, Louisiana 1898. The Section 2 penalty was not enforced as Black voters were stripped by fraud, violence, poll taxes, literacy tests, grandfather clauses, white primaries. Writing the sentence is not keeping it. Northern fatigue, Court doctrine, and white Southern terror all belong in the account. A single-villain sitting is a tract.

What was not fully gutted: the citizenship clause mostly held as a rule of status (*Wong Kim Ark* is 1898 — a Chinese-American case, not a Southern Black case). National citizenship could not be taken by a state. That is not nothing. It is not equal protection in the streets.

The 13th, 14th, and 15th are a set. Stopping at “the 14th gave the vote” flattens the set. Thirteenth, ratified 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.

Abolition, with a crime exception that has its own afterlife (convict leasing, later incarceration debates). The 14th assumes the 13th and tries to say what the freed person is. Section 4 of the 14th refuses to pay for lost slave property. Read them together.

Fifteenth, ratified 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.

This is the racial suffrage rule. The 14th's Section 2 is a counting penalty — not a grant of suffrage, not limited to race (it would also penalize denying white male citizens), and not enforced after Redemption. “The 15th finished the work” skips grandfather clauses, *Giles v. Harris* (1903), and the Voting Rights Act of 1965.

Each Reconstruction amendment has an enforcement clause: Section 2 of the 13th and 15th, Section 5 of the 14th. *The Civil Rights Cases*, *Boerne*, and *Shelby County* are a family of fights about how far Congress may go. Teach the family without merging the rights.

Thaddeus Stevens drove the 14th through the House and called the amendment a compromise. He wanted harsher confiscation than he got. Bingham drafted Section 1 and said he meant to reverse *Barron*. Johnson vetoed the 1866 Act and opposed the amendment. None of them is the amendment. Their fight is why it has five sections, not a poster. Do not turn these men into mascots. Several were racist by any later standard and still wrote a citizenship rule Taney had denied. The text is the text.

Foner called Reconstruction a second founding. Treat that as a claim to test against five sections, not as a hymn.

Big Idea

Sections 2–5 are the Reconstruction instrument: seats, loyalty, debt, enforcement. Ugly clauses named: Indians not taxed; male/21; crime exception; insurrection bar; no payment for slaves. Ratification under the Reconstruction Acts is an ugly fact and a true one. Redemption shows that writing ≠ keeping. Section 3 stays in the text and out of your caucus.

Practice

1. Five-section map. One row per section. Columns: job in eight words; one ugly or contested fact; one thing a poster version drops. Deliverable: the table. 2. Section 3 read-aloud. Copy the sentence through “remove such disability.” Annotate: who is barred; what prior act is required (an oath, then insurrection); who may lift the bar. Write one sentence that begins “This chapter will not...” and refuses a modern recruitment. Deliverable: annotated sentence plus the refusal line. 3. Section 5 timeline. 1866 Act → *Civil Rights Cases* → *Morgan*

→ *Boerne*. Four dates, four clauses on who decides what equal protection is. Deliverable: four dated lines. Do not answer the question for Congress or the Court. 4. Keeping score. List three mechanisms that gutted promise (choose from *Cruikshank*, unenforced §2, 1877, Jim Crow constitutions, *Plessy*) and one mechanism that held (citizenship status / *Wong Kim Ark*). Deliverable: four named items, no montage.

Reflect

If an amendment can be in the Constitution and still unenforced, what does “supreme law” mean in practice — the text, the Court, Congress, or the people who refuse to keep the sentence? How would you describe that gap without turning it into either despair or a pep talk?

For the Grown-Up Reader

This high booklet is for a reader who can hear Federalist 54’s mixed-character line, Taney’s citizenship holding, Miller and Field in *Slaughter-House*, and Harlan’s color-blind sentence with the Chinese-exclusion passage still in the room. It is not a middle booklet with debate paragraphs pasted on. Practice items are source protocols, not leftover young-band worksheets.

Date discipline matters here. Howard, Senate, **23 May 1866** (Globe 2764–66): privileges or immunities; *Corfield*; the first eight amendments; Section 5 as the enforcement engine. Howard, Senate, **30 May 1866** (Globe 2890): jurisdiction; families of ambassadors and foreign ministers. Harry’s 2.1 collapsed those days. This booklet does not.

Primary text: National Archives Amendment XIV; Federalist 54 (Avalon / *New York Packet*, 12 Feb 1788); Bliss Gettysburg; Bingham, House, 1866; Howard as dated above; Civil Rights Act of 1866, §1. Holdings, not vibes: *Dred Scott*, *Slaughter-House* (Miller and Field), *Cruikshank*, *Plessy* (Brown and Harlan), *Brown*, *Wong Kim Ark*, *Gitlow*, *McDonald*, *Boerne*. Section 3, 7.4, and 7.5 are shown as fights. They are not recruited to a caucus.

Secondary touchstones: Eric Foner, *The Second Founding* (2019); Akhil Reed Amar, *America’s Constitution* (2005), Reconstruction chapters; Michael Kent Curtis, *No State Shall Abridge*; Garry Wills, *Lincoln at Gettysburg* (1992) — thesis, not gospel. Fairman versus Amar/Lash/Curtis on incorporation. McConnell versus Berger on *Brown* and original meaning.

The booklet does not ask whether Madison was “a racist,” whether Lincoln “meant” the 14th, or whether birthright citizenship is “good policy.” It asks the reader to state sentences and to keep dates and clauses from collapsing into one another.

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.
