



Whole Persons: The Fourteenth Amendment

WisdomForge Booklet — Ages 11–14

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About This Book

The Fourteenth Amendment is the Constitution answering itself. Proposed by the 39th Congress in 1866 and declared ratified on 9 July 1868, it has five sections. Section 1 is the paragraph later America lives inside: citizenship, privileges or immunities, due process, equal protection. Sections 2 through 5 are Reconstruction machinery — seats in the House, a bar on office, the war's debts, and a grant of power to Congress.

This booklet is the next link in a civic chain you may already know: Magna Carta, the Declaration of Independence, the Constitution, the Federalist Papers. Gettysburg sits *inside* this link. It is not a sixth founding document. A speech over graves is not an amendment with an enforcement clause.

The essays that sold the original Constitution included Federalist 54, which defended counting enslaved people as three-fifths for seats and taxes. After a war, Section 2 of the Fourteenth repealed that seats rule and counted “the whole number of persons,” still excluding “Indians not taxed.” Section 1 wrote formerly excluded people into citizenship by birth. Whether the country kept those sentences is American history after 1868. That they were written is the first fact.

You will read real clauses, one honest sentence on *Dred Scott v. Sandford* (1857), Lincoln's Bliss text beside Section 1, and the difference between writing a rule and keeping it. *Plessy* (1896) emptied equal protection. *Brown* (1954) recovered it for public schools. The story does not end in 1954.

Each chapter has a narrative, a Big Idea, things to try, three Talk About It questions, and a question to carry. None of this is a caucus. The job is to state the sentences.

If you already read the elementary booklet, this one adds the texts that band omitted: Federalist 54's mixed-character line, one honest sentence on *Dred Scott*, Section 3 named, *Slaughter-House* as the privileges wreck, and the ratification pressure of 1867. The high booklet will add incorporation history, *Boerne's* fight over who defines the right, and the color-blind versus antisubordination debate without picking your family's side.

Chapter 1: The Answer to Three-Fifths



Illustration for Chapter 1

The original Constitution's apportionment clause counted "three fifths of all other Persons" when handing out House seats and direct taxes. That was Article I, Section 2. It was seats and taxes — not a metaphysical grade of 60 percent human. Constitution pack teaching already killed that cartoon. The uglier text is the brief written for the clause.

Federalist 54 — Madison by modern consensus, published in the *New York Packet* on 12 February 1788 — defended the arithmetic. The essay says enslaved people “partake of both these qualities: being considered by our laws, in some respects, as persons, and in other respects as property.” It calls that mixed character “in fact their true character.” Then the line you should hear once, slowly: 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 it to keep Publius admirable fails the same test as skipping villeins in Magna Carta.

The Thirteenth Amendment (1865) abolished slavery, with a crime exception that has its own afterlife. 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. The Fourteenth’s Section 2 is the attempted answer.

First sentence: Representatives shall be apportioned by “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.

The whole of Section 2, which you should see once as a block, not as a slogan:

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.

Three facts in that paragraph, none optional: the fraction is gone; many Native people are still out of the count; the penalty is for denying the vote to adult *male* citizens, except rebellion or crime — and it is a penalty, not a grant.

Second sentence: if the vote is denied or abridged for adult **male** citizens twenty-one and over, except for rebellion or **other crime**, that state’s basis of representation shall be reduced in proportion. It is a counting penalty. 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.

Name what the answer still excludes: Indians not taxed; male inhabitants, twenty-one; the crime exception. The Nineteenth and Twenty-Sixth Amendments later change sex suffrage and voting age. They do not rewrite Section 2's sentence. The Indian Citizenship Act (1924) is afterlife, not erasure of the 1868 clause.

This chapter is the landing the Federalist unit pointed toward. Speech comes later. Equal protection comes later. Seats first.

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. Gettysburg is the speech (Chapter 3). This chapter is the seats-and-bodies answer.

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

A young reader can now say, without the 60%-human cartoon and without a redemption play: the essays defending the Constitution also defended counting enslaved people as three-fifths for power in Congress; after the war the Constitution counted whole persons; that was seats, not a right to vote. If you cannot say those three clauses, you are not done with Chapter 1.

| Then (Art. I §2) | After XIV §2 | |-----|-----| | Free persons + 3/5 of "all other Persons"; Indians not taxed excluded | Whole number of persons; Indians not taxed still excluded | | Bargain sold in Federalist 54 | Fraction gone; vote penalty designed, later unused | | Seats and taxes | Seats (direct-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. "The Fourteenth gave Black men the vote" is a different falsehood. Read 54's mixed-character claim, then Section 2's first sentence, then what Section 2 still leaves out. Person for counting, citizen for the penalty: the person/citizen split is already in the architecture. The 13th had to exist first, or there would still have been "other Persons" to fraction. Sequence is not a nicety. It is the logic of the landing.

Try This

1. Copy Article I's three-fifths clause and Section 2's first sentence onto facing pages. Underline what changed. Circle what did not (Indians not taxed). 2. Write five sentences: (a) what three-fifths measured, (b) what 54 claimed about mixed character, (c) what Section 2 repealed, (d) what the penalty was, (e) whether the penalty was used. 3. With a partner, argue for one minute that Section 2 is a voting-rights clause. Then switch and tear that claim down using the Fifteenth Amendment.

Talk About It

1. Why would a state want formerly enslaved people counted as whole persons *and* kept from voting? 2. Is "excluding Indians not taxed" a leftover phrase or a choice in 1868? 3. If a counting penalty is never enforced, is it still part of the Constitution?

What does it mean to repeal a fraction and leave a theory of mixed personhood in the country's memory?

Chapter 2: Section 1 Aloud



Illustration for Chapter 2

Learn this paragraph. Do not paraphrase it into “equal rights.”

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.

Four clauses, four jobs.

Citizenship. Birth or naturalization, plus “subject to the jurisdiction thereof,” makes you a citizen of the nation and of your state. National citizenship is no longer a gift a state may withhold. This sentence overrides *Dred Scott*’s citizenship holding (Chapter 4). Senator Jacob Howard, Senate floor, 23 May 1866, said the qualifier excluded children of ambassadors and foreign ministers, and members of Indian tribes not taxed. The qualifier is real. It is not a trapdoor that empties the clause.

Privileges or immunities. This clause applies to **citizens**. Bingham and Howard presented it as the load-bearing beam: national privileges, including (Howard said) the personal rights in the first eight amendments, protected against the states. Five years after ratification, the Supreme Court read it almost out of existence in the *Slaughter-House Cases* (1873). “Dead letter” describes doctrine. The clause is still in the text.

Due process. Person, not only citizen. A state may not take life, liberty, or property without due process of law. The Fifth Amendment already bound the federal government with the same phrase. Section 1 binds the states. The core is a lawful course — notice, hearing, law rather than decree. What later Courts packed into “liberty” is afterlife, not a paraphrase of 1868.

Equal protection. Person again. A state may not deny the equal protection of the laws. It does not mean identical treatment in all things. It means the state must justify classifying people. How much justification, for which classifications, is doctrine. The sentence is shorter.

John Bingham of Ohio drafted Section 1. He said it 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. Howard explained the Senate. Thaddeus Stevens drove the House. Andrew Johnson opposed. None of them is the amendment. The National Archives text wins.

The four clauses bind **states**. The Bill of Rights (1791) first bound the national government. *Barron v. Baltimore* (1833) said so. Incorporation — later Courts applying most of the first eight amendments to the states through due process — is afterlife (high booklet). A sitting that opens with “the 14th is the Bill of Rights” has dropped citizenship, privileges as written, equal protection as a separate clause, and Sections 2–5.

Integrity check, the one Harry wrote for the classroom: a model (or a classmate) 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 National 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 students skip because later doctrine skipped it. Congress wrote a protection for citizens against the states; the Court soon read it very narrowly. Ordinary civil rights, Miller said in 1873, remained with the states. 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. Young band: one sentence is enough. Do not lose the sentence.

Bingham wanted to reverse *Barron*. Wanting is evidence. It is not the same as the text being the Bill of Rights, and it is not the same as what the Court did in 1873. Speeches are evidence. They are not the amendment.

Clause	Who it names	Who it binds	-----	-----	-----	Citizenship
Persons born or naturalized, subject to jurisdiction	Defines membership	Privileges or immunities	Citizens of the United States	States	Due process	Persons States
Equal protection	Persons	States				

Big Idea

If you cannot say the four clauses in order, you have the slogan, not Section 1. Citizen and person are different words on purpose. State and nation are different targets on purpose. The Bill of Rights is a different list from a different year. Privileges or immunities is the clause later Courts refused to use; due process and equal protection became the workhorses. Knowing that path is how you stop thinking the Fourteenth is the Warren Court. The Reconstruction instrument came first. The docket came later.

Try This

1. Recite Section 1 against a printed Archives text. Mark every word a paraphrase drops.
2. Make four cards. On the back, write one modern news story that might claim that clause. Check whether the story actually matches the words.
3. Diagram “citizen” vs “person” vs “state.” Give one example that fits each circle and one that does not.
4. Time yourself: say the four jobs in order in under fifteen seconds. Then unpack *one* job for a minute without using the word “rights” as a blob.

Talk About It

1. Why might Bingham put privileges on *citizens* and due process on *persons*? 2. What is lost when a textbook says “the 14th guarantees equal rights” and stops? 3. If Howard’s speech and the Court’s later reading disagree, which one is “the amendment”?

Which of the four clauses does your school’s hallway poster actually quote?

Chapter 3: Speech and Instrument



Illustration for Chapter 3

On 19 November 1863, four and a half months after the battle, Lincoln spoke at the dedication of the Soldiers' National Cemetery at Gettysburg. Edward Everett gave the two-hour oration. Lincoln spoke about two minutes. Everett wrote him the next day: "I should

be glad, if I could flatter myself that I 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 usual classroom text: last known copy he wrote, the only one he signed and dated, the text on the Lincoln Memorial.

The Bliss opening: “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.” Equality is a *proposition* the nation is dedicated to. The war tests whether such a nation can endure. The living have unfinished work.

The middle of the Bliss text, which classrooms often skip after the first sentence:

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.

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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.

Then the close: “that government of the people, by the people, for the people, shall not perish from the earth.” He was wrong that the world would little note the words. He was right that the dead had done a work the living had not finished. The Fourteenth is one attempt — five years later, after Lincoln is dead — to write the unfinished work into operating rules.

Garry Wills argued 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.

Hear the first sentence of Section 1 after the Bliss close. What changed from a claim to a rule? Citizenship by birth. Privileges. Due process. Equal protection. Enforcement in Section 5. Repeal of the seats fraction in Section 2. Lincoln is dead before the Reconstruction Congress drafts those clauses. Treating Gettysburg as the Fourteenth is the marble version

of skipping villeins: a beautiful text hiding the operating rules, including Section 2's remaining exclusions.

		Gettysburg Address		Fourteenth Amendment			-- ----- -----		
What		Remarks, ~2 minutes, 19 Nov 1863		Five-section amendment, ratified 9 July 1868					
	Status		Speech over graves		Supreme law (Art. VI) once ratified			Equality	
A	proposition		Rules: citizenship, privileges, due process, equal protection			Three-fifths			
Does not mention it		\$2 repeals the seats fraction			Enforcement		None		\$5

Read both. Do not swap them. Do not ask whether Lincoln “meant” the Fourteenth. Ask which clause of the Fourteenth the Bliss text enacted. (None.)

The Declaration’s proposition travels: 1776 “all men are created equal” → 1863 “dedicated to the proposition” → 1868 Section 1’s rules. That is a thread, not a magic. The Declaration did not repeal three-fifths. Gettysburg did not repeal three-fifths. Section 2 did. A class that recites the speech and never reaches Section 2 has performed marble.

Lincoln’s “new birth of freedom” and “unfinished work” are charges to the living. Reconstruction Republicans, not the cemetery, wrote the clauses. Several of them were racist by any later standard and still wrote a citizenship rule Taney had denied. Several wanted more than the amendment delivered. The text is the text. Hagiography of Lincoln and demonology of Congress are both ways of not reading.

If they say “Gettysburg is the 14th,” the reply spine is the table above. One is a speech over graves. One is an amendment with five sections and an enforcement clause. Which clause do you think the Bliss text enacted? If the answer is “equal protection,” they have still swapped a hope for a rule, and they have dropped three other clauses besides.

Big Idea

A speech can dedicate a nation to a proposition. An amendment can write operating rules. Gettysburg is inside this pack because it is the speech the 14th answers, not because it is the 14th. Wills’s thesis is allowed in the room as a thesis. The Bliss text is allowed as a text. Neither is Section 1, 2, or 5. If a class can only remember one Lincoln line and no Bingham sentence, the marble has won.

Try This

1. Read the Bliss text aloud (it is short). Then read Section 1 aloud. Write one paragraph: what can a court enforce? 2. Take a slogan (“Gettysburg is the 14th”). Rewrite it as two true sentences. 3. Annotate the Bliss text: circle “proposition,” “unfinished work,” “the people.” None of those circles is Section 2.

Talk About It

1. Why do teachers assign the speech more often than Section 2? 2. If Wills is right that the speech remade America's story, does that make the speech law? 3. What does "the people" include in 1863, in 1868, and in your classroom?

Which clause of the Fourteenth do you think the Bliss text enacted — and what does your answer reveal?

Chapter 4: Citizenship After Dred Scott



Illustration for Chapter 4

Dred Scott, enslaved, sued for freedom after residence in free territory. In *Dred Scott v. Sandford*, 60 U.S. 393 (1857), Chief Justice Roger Taney writing, the Supreme 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. It also held that Congress could not ban slavery in the territories.

One honest sentence for this band: the Court said Black Americans could not be citizens; after the war the Constitution said they could. Do not reduce the case to “the Court liked slavery.” Taney claimed to be reading 1787. Whether he was right about 1787 is a fight for older readers. That he wrote a rule of racial exclusion into the Constitution’s meaning is not a fight. Section 1’s first sentence does not argue with him. It replaces him.

The Civil Rights Act of 1866 already declared persons born in the United States, not subject to a foreign power, to be citizens (Indians not taxed excepted). Johnson vetoed; Congress overrode. The Joint Committee on Reconstruction concluded that a later majority could repeal a statute. They put the rule in the Constitution.

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 citizenships: national and state. Two sources: birth and naturalization. The qualifier is the one Howard named. *United States v. Wong Kim Ark* (1898) later held that a child born in San Francisco to Chinese parents who were not diplomats was a citizen. The Chinese Exclusion Acts could not unwrite a constitutional sentence. Present fights about the qualifier’s scope are not a paraphrase of 1868. They belong in adult debate, not as a rewrite of Howard.

Citizenship is not the vote. Section 2 of this same amendment proves the drafters knew the difference. Abolition (13th) makes a person not-a-slave. This sentence says what the person is.

“It was meant only for former slaves” confuses occasion with grammar. The occasion was the freed people and *Dred Scott*. The grammar is persons born or naturalized, subject to jurisdiction. Both are true. Dropping either is half the amendment.

“Subject to the jurisdiction means you have to be a citizen already” would make the sentence a circle. Howard named diplomats and tribes. *Wong Kim Ark* is the case. “Congress can repeal it by statute” is why they put it in the Constitution. The 1866 Act was the warning.

The war sits between Taney and Bingham. *Dred Scott* did not cause Fort Sumter by itself. It closed a legal path (Congress banning territorial slavery), inflamed the North, and confirmed to anti-slavery politicians that the Court would not be the instrument of containment. 1860 elects Lincoln. Seven states secede before inauguration. The Emancipation Proclamation (1863) is a war measure. The 13th (December 1865) is

constitutional abolition. Neither writes formerly enslaved people into “We the People.” That is the 14th’s job, after Appomattox, after the Black Codes, after Johnson’s vetoes.

Black Codes — vagrancy laws, apprenticeship, limits on property, testimony, and movement — were a labor caste under another name. Northern Republicans read them as slavery rebuilt. Citizenship on paper was the first answer: you cannot be a caste if the Constitution says you are a citizen of the United States. It was not the last answer. Status is not the streets. Chapter 6 is the gutting. This chapter is the status rule.

Appomattox ended the armies. It did not write formerly enslaved people into “We the People.” Johnson’s Reconstruction policy was faster restoration of Southern governments and weaker national civil-rights statutes. The Joint Committee on Reconstruction — fifteen members of the 39th Congress — concluded that a later majority would repeal a statute. Bingham drafted Section 1. Stevens called the amendment a compromise. Johnson is part of why they stopped trusting the next Congress with the 1866 Act. Sequence without saints: 13th declared ratified December 1865; Congress refuses to seat Southern delegations; Black Codes; Civil Rights Act of 1866, veto, override; June 13, 1866, Congress passes the Fourteenth.

Curtis’s dissent in *Dred Scott* already denied Taney’s citizenship holding. McLean dissented too. Young band does not need a full dissent sitting. It needs this: the Court was not unanimous; the override is still a constitutional sentence, not a commentary on Taney’s character. “The Court liked slavery” is a cartoon. “Taney wrote a racial exclusion into the meaning of citizenship, and Section 1 replaced that holding” is the honest pair.

Big Idea

Birthright citizenship is a constitutional override of *Dred Scott*, placed in the Constitution because the 1866 Act could be repealed. The qualifier is real. The sentence is not an accident. Howard named the exclusions. *Wong Kim Ark* applied the sentence to a child of non-diplomat Chinese parents in 1898. Present policy fights are not a license to pretend the sentence was a drafting error. Occasion was race. Grammar is person. Hold both.

Try This

1. Write Taney’s citizenship holding in one sentence and Section 1’s first sentence in one sentence. Draw an arrow labeled “replaces.” 2. List three things citizenship is *not* (a vote, a personality trait, a state’s gift to snatch). 3. Read Howard’s exclusions. Write whether they match a modern slogan you have heard. If they do not, say so. 4. Journal: “Occasion is not grammar.” Give one example from this chapter and one from ordinary school life (a rule written because of one fight that still covers other cases).

Talk About It

1. Why put a citizenship rule in the Constitution if a statute already said it? 2. What work does “and of the State wherein they reside” do? 3. How is “meant only for former slaves” different from “occasioned by the freed people”?

If a later Congress hates the 1866 Act, what remains — and why did Reconstruction Republicans care?

Chapter 5: Due Process and Equal Protection



Illustration for Chapter 5

Two clauses. Two words: **person**. Two targets: **states**.

Due process: “nor shall any State deprive any person of life, liberty, or property, without due process of law.” The ancestor is Magna Carta’s “law of the land.” The Fifth Amendment

(1791) bound Congress. *Barron* kept the Bill of Rights off the states. Reconstruction's answer is this sentence.

The core is procedure: notice, a hearing, an impartial decision-maker, a course of law rather than a decree. "The government can't take my stuff" is too fast. The words include the taking. They forbid taking *without* due process of law.

Equal protection: "nor deny to any person within its jurisdiction the equal protection of the laws." Occasion: Black Codes after Appomattox, and fear that the 1866 Act would be repealed. 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." That is a floor speech. The clause is shorter. Person, not only citizen: a non-citizen in the jurisdiction has this claim. *Yick Wo v. Hopkins* (1886) is the equal-protection case students meet later; the person/citizen split is already the architecture.

Equal protection does not mean the same rules for everything. Age limits, licenses, and grade levels classify. The question is which classifications the state must specially justify. "Everyone is treated the same" is the cartoon. "The laws' protection may not be denied" is the sentence.

The Court emptied the clause 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, for the majority, upheld separate-but-equal cars. The 14th, the Court 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. That last move is the cheat: the harm is blamed on the people harmed.

Justice Harlan dissented: "Our Constitution is color-blind." Also Harlan: a passage treating the Chinese as a race "so different." Use the color-blind sentence. Do not baptize the whole dissent as a twenty-first-century HR document. 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: separate educational facilities are inherently unequal. Unanimous; Chief Justice Warren. The opinion leans on social science (footnote 11) more than on 1866 floor speeches. Originalists still fight about whether *Brown* is originalist. The holding is the holding. *Brown II* (1955) said "all deliberate speed." Deliberate won for a while. Little Rock (1957), massive resistance, tokenism, then the Civil Rights Act of 1964 and the Voting Rights Act of 1965 — statutes that did work Section 2's penalty never did.

State action: Section 1 binds states, not private persons as such. Private wrongs can be terrible and still not be Section 1 violations. Name the line. Do not sermonize it.

The Fourteenth is not only about race. Occasion was race. Grammar is person. Later sex and other classifications rode this clause. Occasion and grammar are both true. Dropping either is half the amendment.

Due process is older than 1868 and younger than the hallway myth that “the Founders wrote due process in 1787.” 1787 has no due-process clause. 1791 (Fifth) binds the federal government. 1868 binds the states. A sitting that says “due process comes from the 14th” has dropped the Fifth. A sitting that says due process is only criminal trials has dropped “property” and the civil process of licenses, schools, and hearings.

Walk one thread of the civic chain: Magna Carta’s “law of the land” (chapter 29 in the 1225 reissue) → colonial charters and state constitutions → Fifth Amendment → *Barron* (the Bill of Rights does not bind the states) → Fourteenth Section 1. Locke’s life, liberty, and estate is a cousin, not a quotation. The Fourteenth does not say “estate.” It says “property.” WisdomForge’s Locke booklet is a pointer, not a substitute for Bingham.

Equal protection’s thread is different: Declaration’s proposition → Gettysburg → Section 1’s fourth clause → *Plessy* emptied → *Brown* recovered for schools. Do not mash the due-process thread and the equality thread into one hallway word. They ride the same amendment. They are not the same clause.

Between *Plessy* and *Brown* the NAACP did not wait for destiny. Graduate and professional cases — *Gaines*, *Sweatt*, *McLaurin* — cracked “equal” inside the separate system. *Shelley v. Kraemer* (1948) held that judicial enforcement of a racial covenant is state action. *Brown* leaned on social science more than on 1868 floor speeches. Originalists still fight about whether *Brown* is originalist. The holding is the holding. *Loving v. Virginia* (1967) is marriage. *Milliken* (1974) is the limit of remedy across city-suburb lines. The clause recovered in *Brown* was not a magic wand.

“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. Young band does not need scrutiny doctrine. It needs the sentence, the emptying, and the school recovery.

Big Idea

Due process is *how* the state takes. Equal protection is *whom* the laws protect. *Plessy* shows that writing the sentence in 1868 did not keep it. *Brown* recovered it for schools — not for all of life, not instantly, not without statutes and troops. State action means private cruelty can be real and still not be a Section 1 case. That line has been used to shield injustice and to keep the 14th from nationalizing all of private life. Name the line. Do not pick a sermon.

Try This

1. Pair every later case you have heard (*Brown*, *Loving*) with a clause. If you cannot name the clause, you have a vibe. 2. Write *Plessy* in one honest sentence and *Brown* in one honest sentence. Date both. 3. Sort three school rules into “fair classification” vs “unequal protection.” Defend one sort out loud. 4. Copy Harlan’s “Our Constitution is color-blind.” Then write one sentence on what a dissent is (not a holding) and one sentence on why later lawyers used it anyway.

Talk About It

1. Why did “separate but equal” survive so long if the sentence was already in the Constitution? 2. Is Harlan’s “color-blind” the whole meaning of equal protection, or one dissent’s line? 3. If Section 1 binds states, what happens when private groups do the harm?

The sentence was written in 1868 and not kept. What does that do to the way you read a framed amendment?

Chapter 6: Reconstruction Machinery



Illustration for Chapter 6

Section 1 is the famous paragraph. Sections 2–5 are why a Reconstruction Congress could pass it, and where the amendment does not look like a poster.

Section 2 you already met: whole persons; Indians not taxed; a vote penalty for adult male citizens twenty-one, except rebellion or crime; penalty unused after Redemption.

Section 3 bars from office those who swore to the Constitution and then joined the rebellion, unless Congress lifts the bar by two-thirds. It is a loyalty clause, not a criminal punishment. Congress amnestied most of the class in 1872. Later ballot fights are afterlife. This band names the sentence. It does not recruit it to a modern caucus.

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... to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4 says Union debt, including pensions and bounties, shall not be questioned. Confederate debt is void. Claims for the loss or emancipation of any slave are void.

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.

Emancipation's cost is not reimbursed to the enslaver. Name it without applause or apology.

Section 5: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." Courts enforce Section 1. Section 5 is a legislative power. The Civil Rights Act of 1866 was the warning that statutes die. Section 5 is the engine.

Ratification was not a laboratory consent. Most former Confederate states rejected the amendment in 1866. The Reconstruction Acts of 1867 required new constitutions, Black male suffrage, and ratification of the Fourteenth as a condition of regaining congressional seats. South Carolina's vote supplied the 28th of 37 states on 9 July 1868. Seward certified on 28 July. Ohio and New Jersey purported to withdraw. Name the pressure. Do not sermonize it into "invalid" or "holy."

Reconstruction was overthrown, not faded. "Redemption" is the Redeemers' own word for white Democratic restoration in the South, 1867–1877 and after. Memphis (1866) and New Orleans (1866) already showed that Appomattox had not written people into the streets.

Colfax (1873) made the lesson federal: after a massacre of Black Republicans in Louisiana, *United States v. Cruikshank* (1876) held that the 14th reaches state action, not private conspirators, and that the federal government could not prosecute the massacre under the rights the victims claimed. The message to the South was received. The Civil Rights Cases (1883) struck down the public-accommodations sections of the Civil Rights Act of 1875. Private inns and theaters were told they were not the 14th's business. Harlan dissented. The Amnesty Act of 1872 lifted most of Section 3's disabilities — always allowed by two-thirds, and part of the bargain that ended Reconstruction politics in Washington. The Compromise of 1877 withdrew remaining federal troops from Republican Southern statehouses. Home rule. The Section 2 representation penalty was **not enforced** as Black voters were stripped by fraud, violence, poll taxes, literacy tests, grandfather clauses, and white primaries. Then Jim Crow constitutions: Mississippi 1890, South Carolina 1895, Louisiana 1898. A legal caste rebuilt inside "equal protection."

Section 1's sentences stayed in the book. They were read down, unenforced, or turned against the people they were written for. The Court helped. Northern fatigue helped. White Southern terror helped. Name all three. A single-villain sitting is a tract. The citizenship clause mostly held as status. Equal protection in the streets did not. Writing ≠ keeping.

Ugly clauses named, not sermonized: Indians not taxed; male/21; crime exception; insurrection bar; no payment for slaves. A booklet that skips 2–5 to get to *Brown* has a poster.

Sequence, without saints: December 1865, 13th declared ratified, Congress refuses to seat Southern delegations, Joint Committee of Fifteen. Black Codes. Freedmen's Bureau bill and Civil Rights Act of 1866; Johnson vetoes; Congress overrides the Civil Rights Act in April 1866. June 13, 1866, Congress passes the 14th. Reconstruction Acts, 1867: military districts, new constitutions, Black male suffrage in the former Confederacy, ratification as a condition of seats. Bingham wrote Section 1. Stevens called the amendment a compromise. Howard's May 23 speech is the best single piece of legislative history for privileges or immunities. Johnson is part of why Republicans stopped trusting the next Congress with the 1866 Act.

What was not gutted: the citizenship clause mostly held as a rule of status. National citizenship could not be taken by a state. That is not nothing. It is not equal protection in the streets. Due process became a tool of railroads before it became a tool of incorporated criminal procedure. The amendment's afterlife split.

"The 14th gave the vote" fails here again. Section 2 penalizes denial. The 15th forbids racial denial. Neither is the 19th. After 1877, fraud, violence, poll taxes, literacy tests, grandfather clauses, and white primaries stripped Black voters while the representation penalty slept.

Teach the design and the failure together. If they say the Fourteenth immediately ended racial hierarchy, the reply is: the sentence was written. *Plessy* is in the story.

The Reconstruction amendments are a set. Keep the first sentences unmixed:

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. — Thirteenth Amendment, Section 1 (National Archives)

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. — Fifteenth Amendment, Section 1 (National Archives)

The 13th's crime exception has its own afterlife; it is not this booklet's caucus. The 13th makes a person not-a-slave. The 14th says what the person is, and what the states may not do. The 15th says the vote shall not be denied on account of race, color, or previous condition of servitude. Stopping at "civil rights amendments" as one blob hides the jobs. A class can recite all three first sentences in a minute. If it cannot, it has the blob.

	Amendment		Year		Job		----- ----- -----		13th		1865		Not-a-slave (crime exception named)			14th		1868		Who the person is; what states may not do; seats; office; debt; enforcement			15th		1870		Racial suffrage rule (not the unused \$2 penalty)	
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Section 4's refusal to pay for slaves belongs beside the 13th. Abolition without compensation to the enslaver is a choice about who bears the cost. Name it. The Union debt clause is the war's financial settlement in the Constitution — pensions and bounties shall not be questioned. Reconstruction was not only moral language. It was seats, offices, money, and enforcement.

Big Idea

The Fourteenth is a Reconstruction instrument with five sections. Section 1 without 2–5 is a hallway quote. The country wrote the sentences under pressure, then failed to keep several of them. Both facts belong in the same chapter. Section 5 is why civil-rights statutes can be *constitutional* enforcement, not only ordinary law. Courts and Congress both claim the amendment. They fight. A class that thinks only the Supreme Court "has" the 14th has dropped half the machine.

Try This

1. Fold paper into five strips. One fact per section. No strip may say only "equality." 2. Timeline: 1866 Act, June 1866 proposal, Reconstruction Acts 1867, 9 July 1868, 1877, 1896,

1954. Caption each date in six words. 3. Write a paragraph that includes the unused vote penalty *and* the 15th Amendment without treating them as the same rule.

Talk About It

1. Does military Reconstruction make the Fourteenth less a Constitution, or does it name how this Constitution actually grew? 2. Who failed the sentences after 1868 — Court, Congress, Northern fatigue, Southern terror — and why is a single villain a tract? 3. Why might a class want to skip Section 4's refusal to pay for slaves?

If you had to teach the Fourteenth without Section 1, what would still be true?

For the Grown-Up Reader

This middle booklet follows Harry's young-band map: four clauses; Section 2 repeals three-fifths; one honest sentence on *Dred Scott*; *Plessy/Brown*; Fed 54's mixed-character line included rather than omitted. Section 3 is named, not recruited. Gettysburg is speech versus instrument.

Primary text: National Archives Amendment XIV; Federalist 54 (Avalon / *New York Packet*, 12 Feb 1788); Bliss Gettysburg; Bingham 1866; Howard, Senate, 23 May 1866; Civil Rights Act of 1866. Cases cited for holdings, not vibes: *Dred Scott*, *Slaughter-House*, *Plessy*, *Brown*, *Wong Kim Ark*, *Cruikshank*, *Shelley*, *Loving*.

Secondary touchstones a parent or teacher can open next: Eric Foner, *The Second Founding* (2019); Akhil Reed Amar, *America's Constitution* (2005), Reconstruction chapters; Garry Wills, *Lincoln at Gettysburg* (1992) — thesis, not gospel; Michael Kent Curtis on privileges or immunities if the *Slaughter-House* sentence raises questions this band left standing.

The booklet does not ask whether Madison was “a racist,” whether Lincoln “meant” the 14th, or whether the 14th is “about race” or “about equality.” It asks students to state sentences. If a dinner-table fight wants a winner on color-blind versus antistatutory, that fight is the high and adult booklets' 7.4 — shown as a debate, not as a grade of the family.

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.
