

Lesson 7: Extending the Rights of Citizenship Part I: Introduction to the Fourteenth Amendment and Due Process

Abstract: The Fourteenth Amendment was added to the Constitution as part of the Reconstruction Amendments at the end of the Civil War. It granted former slaves the rights of citizenship and thereby nullified the Dred Scott decision. Although all five sections of the amendment are important historically, the Supreme Court used its power of judicial review to extend the rights of citizenship. The Fourteenth Amendment has significantly affected ideas of freedom and equality in the United States since its ratification. The Due Process Clause has been used to extend many of the individual rights contained in the Bill of Rights to actions by state and local governments. In this lesson, students engage in a textual analysis of the Fourteenth Amendment and revisit selective incorporation through the Due Process Clause.

Content Expectations: C2.1.4; C2.2.5; C3.1.5; C3.2.1; C3.2.4; C3.4.3; C3.4.4; C3.4.5; C5.3.1; C5.3.8; C6.1.5

Common Core State Standards for Literacy in History and Social Studies: RH.9-10.1, 2, 4, and 10; WHST.9-10. 9 and 10

Key Concepts:

- constitutional supremacy
- dual sovereignty
- due process
- governmental (state) action
- independent judiciary
- individual rights
- judicial review
- precedent
- rule of law

Teacher Note: The Fourteenth Amendment is addressed in two separate lessons. This lesson provides an introduction to the Fourteenth Amendment and addresses the Due Process Clause of the Fourteenth Amendment. The Equal Protection Clause and the issue of affirmative action are addressed in the subsequent lesson.

Lesson Sequence:

1. Begin the lesson by displaying the “**Quotation**” document, containing a quote from retired Associate Justice David Souter located in the *Supplemental Materials (Unit 5, Lesson 7)*. Read the quote aloud to the class and use the following questions to help students explore what he means:
 - What does he mean by “provision?” Guide students to recognize that by provision, Justice Souter means “part of the Constitution.”
 - The word structural can mean “organizational” in terms of how the government is organized. It also can mean “essential or fundamental,” meaning in terms of importance. Which do you think he might mean? Why?

- What does Justice Souter mean by “original framing?” Guide students to recognize that he means that the Constitution and Bill of Rights but prior to any other amendments.

Teacher Note: This step is intended to be a brief introduction (anticipatory set). Do not spend too much time here.

2. Introduce the class to the Fourteenth Amendment. Begin by explaining that the Fourteenth Amendment was added to the Constitution as part of the Reconstruction Amendments at the end of the Civil War. Review with the class that the Thirteenth Amendment banned slavery and Fifteenth Amendment granted voting rights to former slaves (men only). The Fourteenth Amendment dealt with a number of subjects.

Distribute to the students the handout, “**Important Sections of the Fourteenth Amendment**” located in the *Supplemental Materials (Unit 5, Lesson 7)*. Instruct the students to review the text of the Fourteenth Amendment. As they read, students should use the left side of the column to summarize the gist of each section.

Allow the students 5 - 7 minutes to read and summarize the amendment sections and then have them compare their notes with a partner. Allow students 3-5 minutes to share their answers.

3. Debrief the Fourteenth Amendment with the class by displaying “**Fourteenth Amendment - Debrief**” located in the *Supplemental Materials (Unit 5, Lesson 7)*. Discuss the meaning of the sections shown on the handout, one clause at a time, by having students share their summaries of each clause. This will provide time for students to correct any misinformation on their own handouts. For each section, discuss with the class why the clause is important and how it changed the Constitution from the original intent. Instruct students to take notes on the right-hand side of their handout during the discussion. Use the following information to discuss Section 1:
 - **Clause 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.*
 - **Summary:**
 - You can be a US citizen by birth or naturalization.
 - If you are a citizen, you are a citizen of both the state you live in and the nation.
 - **Importance:**
 - This made former slaves citizens. This nullified the Dred Scott decision.
 - This was to unify the nation following the Civil War. Previously, people saw themselves as citizens of states instead of citizens of the country. State citizenship was more important than national citizenship.
 - **Clause 2:** *No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;*
 - **Summary:** The government cannot take away our rights as citizens.
 - **Importance:** As citizens of the US, people have certain rights (outside of the Bill of Rights). Some of the rights that follow national citizenship (although not listed in the clause), include the right to vote for federal office holders, protection on the high seas, and the right to pass freely from state to state.
 - **Clause 3:** *nor shall any state deprive any person of life, liberty, or property, without due process of law;*

- Summary: Government cannot take away life, freedom or property without following a fair process.
 - Importance: Before the government can execute a person (capital punishment), take away one's freedom (put in jail), or take away a person's private property (including money through fines), it must have established certain steps to ensure fairness. For example, a police officer cannot just throw someone in jail on a whim. There are certain safeguards that must be followed before a person ends up in jail.
 - Clause 4: *nor deny to any person within its jurisdiction the equal protection of the laws.*
 - Summary: Governments should apply the laws equally for all people.
 - Importance: This guarantees that a government must treat an individual or group of individuals the same as it treats other individuals or groups in like circumstances.
4. Have students engage in a brief turn and talk for 2-3 minutes in which they discuss one or more of the following questions:
- Which clause from Section 1 was most controversial at the time the Fourteenth Amendment was adopted (1868)? Why?
 - What might be the immediate impact of having established national citizenship?
 - Which clause from Section 1 do you think would lead to the biggest changes in American society? Why?
 - Which changes suggested by the Amendment could happen immediately? Which ones would take time? Why?
 - Which clause from Section 1 is most important to you?
5. Complete the debriefing of the Fourteenth Amendment by discussing Sections 2 and 5 with the class. Be sure to highlight the following as students take notes on their handout.
- Section 2: *Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed...*
 - Summary: Representation in the House of Representatives will be based on the total number of people living in each state, including both black and white people (but not Native Americans who do not pay taxes)
 - Importance: This resulted in a constitutional change to Article I, Section 2, Clause 3, otherwise known as the Three-Fifths Compromise. Blacks were no longer considered 3/5 of a person for voting purposes; they were now equal to whites for representation purposes.
 - Section 5: *The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.*
 - Summary: Congress has the power to make laws to enforce this amendment.
 - Importance: The section added to Congress' power to pass laws to combat discrimination such as the Civil Rights Act of 1964; the Voting Rights Act of 1965, Americans with Disabilities Act, 1990, as well as federal hate crimes legislation.

Use page 2 of the "**Fourteenth Amendment - Debrief**" located in the *Supplemental Materials (Unit 5, Lesson 7)* to help guide the discussion.

6. Complete the discussion of the Fourteenth Amendment by asking students to think about why the Fourteenth Amendment was needed. Under the Tenth Amendment, if the federal government does not have a specific power, it belongs to the states or the people. The Fourteenth Amendment provided a limit on states' power. Push students to think about the fact that Congress needs a grant of power in the Constitution in order to act. Remind students that these grants of power are either expressed (Article 1, Section 8) or implied (through the Necessary and Proper Clause/Elastic Clause and some other direct grant of power such as the Commerce Clause).
7. Explain to students that although many people thought the second clause of Section 1 (privileges and immunities clause) was the heart of the Amendment, within five years of the amendment's ratification this clause was rendered useless by the Supreme Court in a series of cases referred to as the Slaughter-House Cases. At the time of ratification, the citizenship clause was important to recognize the citizenship of former slaves. However, over time it has become clear that the real power of the Fourteenth Amendment lies in the Due Process and Equal Protection Clauses.
8. Display the overhead "**Due Process Clauses**" in the *Supplemental Materials (Unit 5, Lesson 7)*. Review the definition of due process. Have students read the Fifth and Fourteenth Amendments' clauses on due process. Then have students turn and talk with a partner comparing the two clauses. How are they similar? How are they different? Discuss with the class, making sure they notice that the meaning of both clauses is identical, but that the Fourteenth Amendment specifically applied to states. Before the Fourteenth Amendment was ratified, individuals were only protected from due process violations by the federal government.

Explain that not all of the rights in the Bill of Rights have been applied to actions by state governments. Instead, the Supreme Court has adopted a selective incorporation approach as defined in the "**Due Process Clauses**" handout.

9. Tell students they are now going to investigate which rights from the Bill of Rights have been made applicable to the states through judicial decisions. Distribute the handout "**The Due Process Clause and Selective Incorporation**" located in *Supplemental Materials (Unit 5, Lesson 7)* to each student. Display the overhead "**Questions for Due Process and Selective Incorporation**" in the *Supplemental Materials (Unit 5, Lesson 7)* to students or provide students with a copy. Divide students into groups of four and have them work on answering the questions on the handout. Allow students about 20 minutes to gather information and answer the questions. Alternatively, this may be assigned as homework.
10. Discuss the "**Questions for Due Process and Selective Incorporation**" in the *Supplemental Materials (Unit 5, Lesson 7)* with the whole class, eliciting students' responses. As you discuss students' answers, share the following with the class:
 - Beginning in the early twentieth century the Supreme Court began to selectively incorporate some of the specific provisions of the Bill of Rights while rejecting the incorporation of others.
 - By 1968, the Court began to view certain provisions of the Bill of Rights as "fundamental to the American scheme of justice" (such as the right to trial by jury in a serious criminal case *Duncan v. Louisiana* 1968).

- Many of the incorporations can be traced to the latter portion of the twentieth century during the Civil Rights Movement; a time of where society was rethinking what was fair and just in the United States.
- Another key change would be the changing of Justices themselves.
 - In 1947, the Court rejected an argument that the Fifth Amendment's right against Self-Incrimination applied to the states through the Fourteenth Amendment (*Adamson v. People of the State of California*, (1947)). However, in one of the most famous dissents in history, Justice Hugo Black argued that the Fourteenth Amendment incorporated all aspects of the Bill of Rights and applied them to the states.
 - Justice Felix Frankfurter, who wrote a concurrence in *Adamson*, disagreed forcefully with Black, arguing that some rights guaranteed by the Fourteenth Amendment may overlap with the guarantees of the Bill of Rights, but are not based directly upon such rights.
 - The Court was hesitant to apply the incorporation doctrine until 1962, when Frankfurter retired from the Court. Following his retirement, most provisions of the Bill of Rights were eventually incorporated to apply to the states.
- Recent changes to the incorporation doctrine include the Second Amendment, which was finally incorporated in 2010 (*McDonald v. Chicago*).

11. Conclude the lesson by having students write an exit slip or an entry in their Citizenship Notebook in response to the following question:

How has Supreme Court used the Due Process Clause of the Fourteenth Amendment to protect individual rights?

Assessment

The exit slip collected in Step 11 can serve as the assessment of student understanding. Answers should include a recognition that the Fourteenth Amendment's Due Process Clause provides a limit on state power (state and local government) through the application of the selective incorporation doctrine.

Reference Section

Content Expectations

- C2.1.4:** Explain challenges and modifications to American constitutional government as a result of significant historical events such as the American Revolution, the Civil War, expansion of suffrage, the Great Depression, and the Civil Rights Movement.
- C2.2.5:** Use examples to investigate why people may agree on constitutional principles and fundamental values in the abstract, yet disagree over their meaning when they are applied to specific situations.
- C3.1.5:** Use case studies or examples to examine tensions between the three branches of government (e.g., powers of purse and impeachment, advise and consent, veto power, and judicial review).
- C3.2.1:** Explain how the principles of enumerated powers, federalism, separation of powers, bicameralism, checks and balances, republicanism, rule of law, individual rights, inalienable rights, separation of church and state, and popular sovereignty serve to limit the power of government.
- C3.2.4:** Explain the role of the Bill of Rights and each of its amendments in restraining the power of government over individuals.
- C5.3.8:** Explain and give examples of the role of the 14th Amendment in extending the protection of individual rights against state action.

Common Core State Standards for Literacy in History and Social Studies

- RH.9-10.1:** Cite specific textual evidence to support analysis of primary and secondary sources, attending to such features as the date and origin of the information.
- RH.9-10.2:** Determine the central ideas or information of a primary or secondary source; provide an accurate summary of how key events or ideas develop over the course of the text.
- RH.9-10.4:** Determine the meaning of words and phrases as they are used in a text, including vocabulary describing political, social, or economic aspects of history/social studies.
- RH.9-10.10:** By the end of grade 10, read and comprehend history/social studies texts in the grades 9-10 text complexity band independently and proficiently.
- WHST.9-10.9:** Draw evidence from informational texts to support analysis, reflection, and research.
- WHST.9-10.10:** Write routinely over extended time frames (time for reflection and revision) and shorter time frames (a single sitting or a day or two) for a range of discipline-specific tasks, purposes, and audiences.

Instructional Resources

Equipment/Manipulative

Computer with Projector and Internet Access

Student Resource

Chase, Alycia and Jennifer Simone. *Supplemental Materials (Unit 5, Lesson 7)*. Teacher-made materials. Oakland Schools. 2012.

Fourteenth Amendment. U.S. Constitution. Legal Information Institute. Cornell University Law School. 10 Jan. 2013 <<http://www.law.cornell.edu/constitution/amendmentxiv>>.

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Opinion of Justice Souter in *McCreary County v. ACLU of Kentucky* (2005). US Supreme Court Center. Justia.com. 10 Jan. 2013 <<http://supreme.justia.com/cases/federal/us/545/03-1693/opinion.html>>.

Teacher Resource

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Benton v. Maryland, 395 U.S. 784 (1969). Justia.com. US Supreme Court Center. 10 Jan. 2013 <<http://supreme.justia.com/cases/federal/us/395/784/>>.

Cantwell v. Connecticut, 310 U.S. 296 (1940). The Oyez Project. U.S. Supreme Court Media and ITT Chicago-Kent College of Law. 10 Jan. 2013 <http://www.oyez.org/cases/1901-1939/1939/1939_632>.

Chicago, Burlington & Quincy Railroad Co. v. City of Chicago, 166 U.S. 226 (1897). The Oyez Project. U.S. Supreme Court Media and ITT Chicago-Kent College of Law. 10 Jan. 2013 <http://www.oyez.org/cases/1851-1900/1896/1896_129>.

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- Everson v. Board of Education*, 330 U.S. 1 (1947). The Oyez Project. U.S. Supreme Court Media and ITT Chicago-Kent College of Law. 10 Jan. 2013 <http://www.oyez.org/cases/1940-1949/1946/1946_52>.
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- Gideon v. Wainwright*, 372 U.S. 335 (1963). The Oyez Project. U.S. Supreme Court Media and ITT Chicago-Kent College of Law. 10 Jan. 2013 <http://www.oyez.org/cases/1960-1969/1962/1962_155>.
- Gitlow v. New York*, 268 U.S. 652 (1925). The Oyez Project. U.S. Supreme Court Media and ITT Chicago-Kent College of Law. 10 Jan. 2013 <http://www.oyez.org/cases/1901-1939/1922/1922_19/>.
- Hurtado v. California*, 110 U.S. 516 (1884). The Oyez Project. U.S. Supreme Court Media and ITT Chicago-Kent College of Law. 10 Jan. 2013 <http://www.oyez.org/cases/1851-1900/1883/1883_0>.
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- Incorporation Doctrine.* The Free Dictionary. Farlex. 10 Jan. 2013 <<http://legal-dictionary.thefreedictionary.com/Incorporation+Doctrine>>.
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- Klopper v. North Carolina*, 386 U.S. 213 (1967). Justia.com. US Supreme Court Center. 10 Jan. 2013 <<http://supreme.justia.com/cases/federal/us/386/213/>>.
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McDonald v. Chicago, 561 U.S. 3025 (2010). The Oyez Project. U.S. Supreme Court Media and ITT Chicago-Kent College of Law. 10 Jan. 2013 <[http://www.oyez.org/cases/2000-2009/2009_08_1521](http://www.oyez.org/cases/2000-2009/2009/2009_08_1521)>.

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