

Constitution Class Handout
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Lesson 18

The Civil War Amendments 13, 14, and 15

The End of Slavery

Prior to the Civil War, any federal legislation related to slavery dealt with the importation of slaves. Aspects of slavery inside State lines were considered a State issue.

Article I, Section 9, Clause 1 abolished the **Atlantic slave trade**, and the United States Government intervened militarily to ensure the law prohibiting the importation of slaves was enforced. The Framers of the Constitution believed that in order to ensure the southern States did their part in ratifying the Constitution, while remaining consistent with the concept of the federal government only having authority over external issues, and disputes between the States, they could not abolish slavery nationally through the articles presented by the Constitution. A large number of delegates at the federal convention in 1787 desired the immediate abolition of slavery, but the fear was that the southern States would not only refuse to ratify the Constitution, but that they would refuse to remain a part of the union, eventually succumbing to attacks from Florida and absorbed into the Spanish Empire.

A proposed amendment to abolish slavery during the **American Civil War** finally passed the Senate on April 8, 1864, by a vote of 38 to 6, but the House did not approve it.

When the proposed amendment was reintroduced by Representative Ashley, President Lincoln took an active role in working for its passage through the House by ensuring the amendment was added to the Republican Party platform for the upcoming Presidential elections. Lincoln's efforts, combined with the result of the **War Between the States**, ensured the House passed the bill on January 31, 1865, by a vote of 119 to 56.

The 13th Amendment was ratified into law on December 6, 1865.

Terms:

Atlantic Slave Trade - Started by the Portuguese, but soon dominated by the English, the Atlantic Slave Trade was the sale and exploitation of African slaves by Europeans that occurred in and around the Atlantic Ocean from the 15th century to the 19th century.

War Between the States - The Civil War was fought from 1861 to 1865 after Seven Southern slave States seceded from the United States, forming the Confederate States of America. The "Confederacy" grew to include eleven States. The war was fought between the States that did not declare secession,

known as the "Union" or the "North", and the Confederate States. The war found its origin in the concept of State's Rights, but became largely regarding the issue of slavery after President Abraham Lincoln delivered the Emancipation Proclamation. Over 600,000 Union and Confederate soldiers died, and much of the South's infrastructure was destroyed. After the War, Amendments 13, 14, and 15 were proposed and ratified to abolish slavery in the United States, and to begin the process of protecting the civil rights of the freed slaves.

Questions for Discussion:

1. Why wasn't slavery abolished at the founding of this nation?
2. Why did the House of Representatives not originally approve this amendment?
3. How has the abolition of slavery affected this nation since the ratification of the 13th Amendment?

Resources:

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Citizenship, Civil Rights, and Apportionment

Citizenship Clause

The 14th Amendment to the United States Constitution failed in 1866 after the southern States rejected the proposed amendment. After a second attempt to ratify the amendment, it was adopted on July 9, 1868. The ratification of the 14th Amendment occurred after the federal government began to govern the South through a system of **military districts**. Some historians question the validity of the ratification of the 14th Amendment because it is believed by these historians that the southern States ratified the amendment under duress, and pressure applied by the northern governorships in each of the southern States during the early part of the **Reconstruction Period**.

The first clause of the 14th Amendment is known as "The Citizenship Clause." The clause was intended to ensure the children of the emancipated slaves, as well as the newly freed slaves, would be considered citizens without any room for argument. The clause reads:

"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."

This clause has been misinterpreted to mean all persons born in the United States are automatically citizens, which is not the case. The defining term in this clause that enables the reader to recognize that citizenship needs more than just being born on American soil reads: "subject to the jurisdiction, thereof."

To understand the term **jurisdiction**, one may go to the debates on the congressional record of the 14th Amendment. In those debates, and in articles of that time period written to explain the intent of the

language of the amendment, one finds that “full jurisdiction” was meant to mean “full allegiance to America.” The intention was to protect the nation against persons with divided loyalties.

The writers of the 14th Amendment wished to follow the importance of "full loyalty" as portrayed by the Founding Fathers. As far as the founders were concerned, there could be no divided allegiances. They expected citizens to be fully American.

Despite the defeat of the Confederacy in the American Civil War, the emancipated slaves were not receiving the rights and privileges of American citizens as they should have been. The former slaves were present in the United States legally, and because they were here legally they were "*subject to the jurisdiction thereof*," but they were still not receiving any assurance of **equal protection under the law**.

The Civil Rights Act of 1866 was created in the hopes of correcting the problem. Some of the language in the Civil Rights Act of 1866 states, "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. ... All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

The definition of "persons within the jurisdiction of the United States" in that act was all persons at the time of its passage, born in the United States, including all slaves and their offspring, but not having any allegiances to any foreign government.

Michigan Senator Jacob Howard, one of two principal authors of Section 1 of the 14th Amendment (Citizenship Clause), noted that its provision, "subject to the jurisdiction thereof," excluded American Indians who had tribal nationalities, and "persons born in the United States who are foreigners, aliens, who belong to the families of ambassadors or foreign ministers."

Senator Howard's responses to questions regarding the language he used in the Citizenship Clause were recorded in *The Congressional Globe*, which are the recorded transcripts of the debates over the 14th Amendment by the 139th Congress:

Mr. HOWARD: "I now move to take up House joint resolution No. 127."

The motion was agreed to; and the Senate, as in Committee of the Whole, resumed the consideration of the joint resolution (H.R. No. 127) proposing an amendment to the Constitution of the United States.

"The 1st Amendment is to section one, declaring that all persons born in the United States and Subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. I do not propose to say anything on that subject except that the question of citizenship has been fully discussed in this body as not to need any further elucidation, in my opinion. This amendment which I have offered is simply declaratory of what I regard as the law of the land already, that every person born within the limits of the United States, and subject to their jurisdiction, is by virtue of **natural law** and national law a citizen of the United States. This will not, of course, 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 will include every other class of persons. It settles the great question of citizenship and removes all doubt as to what persons are or are not citizens of the United States. This has long been a great desideratum in the jurisprudence and legislation of this country."

Senator Howard even went out of his way to indicate that children born on American soil of foreign citizens are not included.

Clearly, the framers of the 14th Amendment had no intention of freely giving away American citizenship to just anyone simply because they may have been born on American soil.

The second author of the Citizenship Clause, Illinois Senator Lyman Trumbull, added that "subject to the jurisdiction of the United States" meant "not owing allegiance to anybody else."

The full quote by Senator Trumbull:

"The provision is, that 'all persons born in the United States, and subject to the jurisdiction thereof, are citizens.' That means 'subject to the complete jurisdiction thereof.' What do we mean by 'complete jurisdiction thereof?' Not owing allegiance to anybody else. That is what it means."

Trumbull continues, "Can you sue a Navajo Indian in court? Are they in any sense subject to the complete jurisdiction of the United States? By no means. We make treaties with them, and therefore they are not subject to our jurisdiction. If they were, we wouldn't make treaties with them...It is only those persons who come completely within our jurisdiction, who are subject to our laws, that we think of making citizens; and there can be no objection to the proposition that such persons should be citizens."

Senator Howard concurred with what Mr. Trumbull had to say:

"I concur entirely with the honorable Senator from Illinois [Trumbull], in holding that the word 'jurisdiction,' as here employed, ought to be construed so as to imply a full and complete jurisdiction on the part of the United States, whether exercised by Congress, by the executive, or by the judicial department; that is to say, the same jurisdiction in extent and quality as applies to every citizen of the United States now."

Based on these explanations by the writers of the clause, then, it is understood that the intention was for those who are not born to American citizens to have no birthright to citizenship just because they simply were born inside the borders of this country.

The courts have interpreted the Citizenship Clause to mean other things, but we must remember that the Constitution cannot be changed by the courts. Changes to the Constitution can only be made by amendment (Article V.).

It was through the progressive actions of the Lincoln administration in the American Civil War, and the actions of the courts to incorporate the Bill of Rights to the States, that America ceased to be "**The United States Are,**" and became a more nationalistic "**The United States Is.**"

Privileges and Immunities Clause

The next clause, "*No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States,*" was expected to protect the newly emancipated slaves from local legislation that may treat them differently. This clause was a direct response to the **Black Codes**, laws passed in the States that were designed to limit the former slaves from obtaining all of the freedoms they thought they had been guaranteed.

The Due Process Clause of the 14th Amendment prohibits state and local governments from depriving persons of the proper due process of law. The right to a fair trial was to be extended to all persons, including the emancipated slaves.

Due Process Clause and Equal Protection Clause

The Due Process Clause, and the Equal Protection clause, have been the subject of debate since the language written by Congressman John Bingham, the principal author of the later part of Section 1 of the 14th Amendment, was first penned. Bingham believed the federal government should use all national tools available to ensure the southern States behaved as instructed. Bingham repeatedly stated his belief that the Fourteenth Amendment would enforce the Bill of Rights against the States, but the majority of the members of Congress present did not concur with his muddled and inconsistent argument.

Author Raoul Berger, in his book *Government by Judiciary*, discussed whether the 14th Amendment should be construed to enforce the Bill of Rights against the States. Relying on the analysis of Professor Charles Fairman in his published article, *Does the Fourteenth Amendment Incorporate the Bill of Rights?*, Berger concluded that Bingham was a "muddled" thinker whose views should be discounted. Berger agreed with Fairman that the framers of the 14th Amendment did not intend it to enforce the Bill of Rights against the States. Berger rejected even selective incorporation, arguing that the Amendment's framers did not intend that any of the first eight amendments should be made applicable to the States through the 14th Amendment.

Antislavery activists largely supported Bingham's conclusion that that Bill of Rights must be applied to the States, and such application must be enforced by the federal government. Though the Bill of Rights was originally intended by the Founding Fathers not to apply to the States, and with less than a century since the American Revolution and the writing of the Constitution behind them, Bingham's supporters contended that local jurisdiction over cases regarding an individual's rights could no longer be allowed because the southern States could not be trusted to be fair to the newly emancipated slaves.

Bingham's call for an incorporation of the Bill of Rights to the States established the concept that all people's rights are supposed to be protected by the federal government. The Founding Fathers did not apply the Bill of Rights to the States from the beginning because giving that kind of power to a potentially tyrannical federal government carries with it many pitfalls. As the quote by Gerald Ford goes, "A government big enough to give you everything you want is a government big enough to take from you everything you have." Nonetheless, despite the dangers of a central government dictating to the States regarding their laws regarding individual rights, because of the mistreatment of the former slaves by the Southern States, the Privileges and Immunities Clause, the Due Process Clause and the Equal Protection Clause, have been commonly interpreted to mean that the Bill of Rights is applicable to the States.

Since the **Incorporation of the Bill of Rights** did not take hold as a result of the 14th Amendment, as the statists that supported Bingham's position had desired, the federal courts stepped in and took pursuit. Pursuing a **nationalist** agenda, the courts disregarded the original intent of the Framers of the Constitution, as well as the conclusions of the Congress regarding the 14th Amendment, and began to selectively incorporate the Bill of Rights to the States, beginning with the Slaughterhouse Cases just five years after the ratification of the 14th Amendment in 1868. A five to four vote by the high court interpreted the Privileges and Immunities Clause as the authority to enforce The Bill of Rights against the States. Subsequent cases also used the 14th Amendment as an authority for incorporation.

The courts, through this process of incorporating The Bill of Rights to the States, have changed the Constitution through unconstitutional means, and against **original intent**. As originally intended, all provisions in the U.S. Constitution apply to the federal government, unless otherwise noted. The Bill of

Rights was originally intended to apply only to the federal government, and if we are to remain in line with the original intent of the Founding Fathers, State sovereignty must remain protected by that original intent.

The attitude of the southern States, and their refusal to treat the former slaves fairly led to a perceived need for clarification and enforcement by the federal government, which led to the passage of the Civil Rights Act of 1866, and eventually to the Civil Rights Movement of the 1960s.

A **separate but equal** doctrine existed for more than fifty years, despite numerous attempts to ensure blacks enjoyed full rights and privileges of citizenship.

In modern politics, laws continue to test the limits of the Equal Protection Clause. While the clause was intended to make sure that everyone is treated equally under the law, politicians supporting the Affordable Care Act have handed out exemptions to members of Congress, and some individuals or corporations, allowing those that receive the exemptions to be treated differently under the law.

Apportionment

Section 2 of the 14th Amendment altered the rules for the apportioning of Representatives in the Congress to the States. The enumeration was changed to include all residents, while also calling for a reduction of a State's apportionment if it wrongfully denies any adult male's right to vote.

For fear that the former slaves would support the Republicans, southern Democrats worked feverishly to dissuade blacks from voting. Section 2 addressed this problem by offering to the southern States the opportunity to enfranchise black voters, or lose congressional representation.

Consequences of Insurrection

Section 3 of the 14th Amendment prohibits the election or appointment to any federal or state office of any person who had held any of certain offices and then engaged in insurrection, rebellion or treason. A two-thirds vote by each House of the Congress could override this limitation. The interest was to ban the service of any members of the Confederacy that refused to renounce their participation in the Confederacy.

Public Debt as a Result of the War

Section 4 of the 14th Amendment confirmed the legitimacy of all United States **public debt** appropriated by Congress. The clause also indicated that neither the United States nor any State would pay for the loss of slaves or debts that had been incurred by the Confederacy. This clause was to ensure that all States recognized the validity of the debt appropriated by Congress as a result of the war, while bonds secured by the Confederacy in order to help finance the South's part of the war "went beyond congressional power."

Political battles over the debt ceiling in 2011 and 2013 encouraged some politicians to argue that the "validity of the public debt" clause outlawed a debt ceiling, because placing a limit on federal spending interferes with the duty of the government to pay interest on outstanding bonds and to make payments owed to pensioners (such as Social Security). The clause in the 14th Amendment addressing the validity of the public debt, however, was never intended to be a general clause to be used by future administrations, but a specific clause only addressing the debt accrued as a result of the American Civil War.

Enforcement

The final clause of the 14th Amendment authorizes Congress to “enforce, by appropriate legislation, the provisions of this article.” Federal intrusion upon the States, however, has been a long-time fear by those that support the concept of **State Sovereignty**. The question regarding enforcement was addressed in the *Civil Rights Cases* of 1883, where the opinion of the Supreme Court interpreted Section 5 of the 14th Amendment to mean that "the legislation which Congress is authorized to adopt in this behalf is not general legislation upon the rights of the citizen, but corrective legislation".

In a more recent case, *City of Boerne v. Flores*, 1997, the Supreme Court ruled that Congress's enforcement power according to the last clause of the 14th Amendment is limited to only enacting legislation as a response to a "congruence and proportionality" between the injury to a person's 14th Amendment rights and the means Congress adopted to prevent or remedy that injury.

Court interpretation of the Constitution can be a dangerous practice, and we must remember that any interpretation of the Constitution offered by the courts in a ruling are merely opinions. The final authority regarding the definitions of Constitutional law resides with the people, through their States. Any allowance of the courts to fully define the Constitution at the whims of the judges opens up the opportunity for the courts to change definitions for ideological purposes, resulting in a judicial oligarchy, rather than a **constitutional republic** driven by the consent of the governed, and the self-evident standards of **Natural Law**.

Terms:

Black Codes - Laws put in place in the United States after the Civil War with the effect of limiting the basic human rights and civil liberties of blacks.

Constitutional Republic - Government that adheres to the rule or authority of the principles of a constitution. A representative government that operates under the rule of law.

Equal Protection Under the Law - Laws must treat an individual resident or citizen in the same manner.

Incorporation of the Bill of Rights - The process through court rulings based on the interpretation of the 14th Amendment to apply the Bill of Rights to the States.

Jurisdiction - Full loyalty, a condition in which all foreign allegiances have been released; not owing allegiance to anybody else.

Military Districts - Districts created in the seceded states (not including Tennessee, which had ratified the 14th Amendment and was readmitted to the Union), headed by a military official empowered to appoint and remove state officials.

Nationalist - An advocate of Nationalism.

Natural Law - Unchanging moral principles regarded as a basis for all human conduct; observable law relating to natural existence; birthright law.

Original Intent - Original meaning of the United States Constitution as intended by the framers during the Federal Convention of 1787, and the subsequent State Ratification Conventions.

Public Debt - National debt; the financial obligations of a national government resulting from deficit spending.

Reconstruction Period - Period following the American Civil War during which the United States government began to rebuild the States that had seceded from the Union to form the Confederacy, lasting from 1865-1877. During Reconstruction, the federal government proposed a number of plans and committed large amount of resources, to the readmittance to the union, and the rebuilding, of the defeated Confederate States.

Separate But Equal - Various laws designed to undermine the 14th Amendment requirement that former slaves be treated equally under the law, contending that the requirement of equality could be met in a manner that kept the races separate. The result of these laws was a generally accepted doctrine of segregation throughout The South.

State Sovereignty - The individual autonomy of the several states; strong local government was considered the key to freedom; a limited government is the essence of liberty.

United States are - These States that are united; a group of sovereign member States in America voluntarily united into a republic.

United States is - Nation of the United States containing a number of States similar to provinces ruled over by a centralized federal government.

Questions for Discussion:

1. How might have the governors of the military districts influenced the ratification of the 14th Amendment?
2. Does the Citizenship Clause have anything to do with Natural Born Citizenship? Why?
3. Why was Congress concerned with the threat of divided allegiance?
4. Did the 14th Amendment eliminate laws like the Black Codes, as intended?
5. How is it that despite the original intent of those that voted for the 14th Amendment that the Bill of Rights not be applied to the States most of the first ten amendments have been applied to the States anyway?
6. What pieces of legislation since the ratification of this amendment have been passed in order to ensure that the Equal Protection Clause is properly enforced?

Resources:

Congressional Globe, 39th Congress (1866) pg. 2890: Senator Jacob Howard States the Intent of the Fourteenth Amendment Published in the Congressional Record, May 30, 1866.

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Voting Rights

The 15th Amendment was designed to protect the voting rights of all citizens, regardless of race, color, or if the voter had previously been a slave or indentured servant. As stated in the amendment, this article applies to both the federal government, and the States.

As the third reconstruction amendment, the 15th Amendment faced another challenge that was unexpected. In some States the requirements were that all voters and candidates must be Christians. As originally written, the amendment would require these States to change their rules regarding the manner of elections. Realizing the ratification of the amendment may depend on the support of the States with Christianity requirements regarding elections, the amendment was revised in a conference committee to remove any reference to holding office or religion and only prohibited discrimination based on race, color or previous condition of servitude.

Democrat Party created militias, like the Ku Klux Klan, continued to try and intimidate black voters and white Republicans. The federal government promised support, assuring that black and Republican voters could both vote, and serve, in confidence. When an all-white mob in the Battle of Liberty Place attempted to take over the interracial government of New Orleans, President Ulysses S. Grant sent in federal troops to restore the elected mayor.

President Rutherford B. Hayes narrowly won the election in 1876. To appease the South after his close election, in the hopes of gaining their support and soothing angry Democrats, President Hayes agreed to withdraw the federal troops who had been occupying the South since the end of the Civil War. The hope was that the southern States were ready to handle their own affairs without a need for any interference from the North.

In the process, President Hayes also overlooked rampant fraud and electoral violence in the Deep South, despite several attempts by Republicans to pass laws protecting the rights of black voters and to punish intimidation. Without the restrictions, voting place violence against blacks and Republicans increased, including instances of murder.

By the 1890s many of the southern States had enacted voter eligibility laws that included literacy tests and poll taxes. Since the black population was normally steeped in poverty, the inability to afford the **poll tax** kept them from voting in elections.

It took nearly a century for the promise of the Fifteenth Amendment to finally take hold. The ratification of the 24th Amendment in 1964, which eliminated poll taxes, and the passage of the Voting Rights Act of 1965, served to ensure that blacks in the South were able to freely register to vote, and vote without any obstacles.

Terms:

Poll Tax - A tax levied on people rather than on property, often as a requirement for voting.

Questions for Discussion:

1. Why was the wording of the Fifteenth Amendment changed to not include discrimination based on religion?
2. Why do you think the Democrat Party played a part in forming the Ku Klux Klan?
3. Why did President Hayes withdraw federal protections against racial discrimination in the South?
4. How did poll taxes enable the Southern Democrats from keeping Blacks from being able to vote without violating the Constitution?
5. Why do you think it took nearly a century for the promise of the Fifteenth Amendment to be realized?

Resources:

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