



The Fourteenth Amendment has reshaped American law and society. By defining U.S. citizenship and through its due process and equal protection clauses, this transformative amendment advanced the rights of all Americans. It also played a pivotal role in limiting the states from abridging freedoms guaranteed in the Bill of Rights. Ratified during Reconstruction a century and a half ago, the Fourteenth Amendment serves as the cornerstone of landmark civil rights legislation, the foundation for numerous federal court decisions protecting fundamental rights, and a source of inspiration for all those who advocate for equal justice under law.

Join us over the next several days (weeks) as we dig deeper into the historic background, key clauses, civic principles, rights and protections associated with this year's Law Day theme, **The Fourteenth Amendment: Transforming American Democracy.**

*Next installment: **The 14<sup>th</sup> Amendment: Background Information/Historic Context***

# ***The 14<sup>th</sup> Amendment: Background Information/Historic Context***

Following the end of the Civil War, three amendments were added to the Constitution over a five year span: the Thirteenth, Fourteenth and Fifteenth Amendments. Together, these additions are referred to as the Civil War Amendments or Reconstruction Amendments. The Thirteenth Amendment effectively ended slavery and the Fifteenth prohibited the states from denying the vote to males based on race, color, or previous condition of servitude.

The Fourteenth Amendment was the most complex of the three. It was passed by Congress in June 1866 and ratified by the states in 1868. The Fourteenth Amendment defined United States citizenship, declaring all persons born or naturalized in the United States to be both national and state citizens, and attempted to guarantee equal civil and legal rights to all people (including former slaves).

Frequently cited portions of the amendment include:

## **Citizenship**

“All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States...”

## **Due Process**

“...nor shall any State deprive any person of life, liberty or property without due process of law...”

## **Equal Protection**

“...nor deny to any person within its jurisdiction the equal protection of the laws.”

Despite the promise of equality in these words, the reality of equal rights under the law was quickly undermined by various state laws and federal court decisions over the course of the 19th century. The Fourteenth Amendment has done much to positively change American democracy but the transformation didn't happen overnight.

**Read recent news reports, in-print or online, for news involving local legal proceedings involving questions of citizenship, due process or equal protection - living examples of rights under the Fourteenth Amendment.**

***Next: The 14<sup>th</sup> Amendment: Plessy v. Ferguson and Separate But Equal***



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## ***The 14<sup>th</sup> Amendment: Plessy v. Ferguson and Separate But Equal***

The promised protection of rights under the Fourteenth Amendment didn't last long. With the end of Reconstruction, state and local governments started enacting laws effectively reducing African Americans to second-class citizens.

State and federal courts upheld the power of the state and local governments to pass such laws despite the equal protection clause. One significant example is that of the ***Plessy V. Ferguson*** (1896) decision in which the Supreme Court established the "separate but equal" doctrine.

Here's a very brief overview: In 1890, a law entitled the "Separate Car Act" was passed in the state of Louisiana. This law required separate railway cars for black and white train passengers. In 1892, Homer Plessy (a man who was seven-eighths Caucasian and one-eighth African American) took a seat in a "whites only" car. When asked to move to the car reserved for blacks, he refused and was arrested. The alleged purpose of the Louisiana statute was to preserve public peace and good order and to promote the comfort of the people. In the first case, ***Homer Plessy v. The State of Louisiana***, Plessy lost and was required to pay a small fine. The judge in this case was John Howard Ferguson whose name would later be on the Supreme Court case in this matter. The Court was asked to determine if the Louisiana law was constitutional, and the majority decision upheld the lower court's decision and determined that a state law which "implies merely a legal distinction" between whites and blacks did not conflict with the 13<sup>th</sup> and 14<sup>th</sup> Amendments.

The result of the Court's ruling in the Plessy case set the stage for segregation and discrimination laws that flourished for decades. Ironically, the 14<sup>th</sup> Amendment was cited in the decision that would overturn Plessy, negate the Jim Crow laws, and push for equal justice under law.

**Research cases recently decided by the Supreme Court. As a class, discuss how these decisions may be establishing a new set of rules or procedures. Write a short news brief about this.**

***Next: The 14<sup>th</sup> Amendment: Equal Protection and Brown v. Board (1954)***



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## ***The 14<sup>th</sup> Amendment: Equal Protection & Brown v. Board (1954)***

Following the Court's ruling in the *Plessy v. Ferguson* case, segregation of public facilities and services including restaurants, hotels, hospitals, buses/trains and schools based solely on race was allowed by states if the facilities were "equal." These state and local laws, known collectively as Jim Crow laws, enforced racial segregation.

The National Association for the Advancement of Colored People (NAACP) was founded in 1909 to help fight for civil rights and challenge the Jim Crow laws. It struggled for decades to fight for equal treatment under the law. In 1954, ***Brown v. Board of Education of Topeka*** became a transformative Supreme Court case and overturned the "separate but equal" doctrine established in the *Plessy* ruling.

Here's a quick summary: Linda Brown was a seven-year old African American girl who lived five blocks from a local elementary school. She was denied enrollment in that school and was required to attend a school 21 blocks across town which was exclusively for students of color. Her father sued the board of education to allow her to attend the school closest to their home. Their suit was ultimately combined with other similar cases involving black students also denied access to certain public schools because of race and was heard by the Supreme Court.

The Court was asked to decide if segregation of students in public education based solely on race violates the **equal protection clause** of the Fourteenth Amendment. The Court ruled unanimously that education was perhaps the most vital function of state and local governments, and racial segregation of any kind deprived African Americans of equal protection under the Fourteenth Amendment.

Chief Justice Warren wrote, "*Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law, for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group...Any language contrary to this finding is rejected. We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal.*"

For many the *Brown v. Board* (1954) decision signaled the start of the civil rights movement of the 1950s and 1960s and the continued fight for equal justice under the law.

**In print or online look for news about groups or individuals seeking equal treatment. Share your findings as a class. Compare and contrast with Linda Brown, et.al.**

***Next installment: The 14<sup>th</sup> Amendment: Procedural Due Process and Goss v. Lopez***



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## ***The 14<sup>th</sup> Amendment: Procedural Due Process and Goss v. Lopez***

The due process clause of the Fourteenth Amendment echoes words in the Fifth Amendment, which only restricts the federal government, and in so doing incorporated the same protections at the state level. There are two forms of due process, procedural and substantive. **Procedural due process** is the idea that requires government officials to follow *fair procedures* before depriving a person of life, liberty, or property. **Substantive due process** is the idea that the *content or substance* of a law must be fair, not just its procedures. One Supreme Court case example involving procedural due process is **Goss v. Lopez** (1975).

Here is a brief description: Eight high school students and one middle school girl in Columbus, Ohio, were given 10-day suspensions for a variety of disruptive or disobedient behavior. One of them, Dwight Lopez was suspended for damaging school property during a lunchroom commotion. Lopez claimed he was not involved and was simply an innocent bystander. There was no hearing either before or shortly after the suspensions and Ohio law did not require it. Their principal's actions were challenged, and a federal court found that the students' rights had been violated. The case was then appealed to the Supreme Court.

Attorneys for Lopez and others argued that students have a legitimate property right in their education, which is protected by the due process clause. This right cannot be taken away without appropriate procedural hearings.

In a 5-to-4 decision, the Court ruled for the students, explaining that once the state provides an education for all of its citizens, it cannot deprive them of it without ensuring due process protections. The Court found that students facing suspension should at a minimum be given notice and afforded some kind of hearing. However, the Court also agreed with the District Court indicating, "*Students whose presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school. In such cases, the necessary notice and rudimentary hearing should follow as soon as practicable...*"

**Research the policies and procedures for dealing with misconduct at your school and read the newspaper, in-print or online, to search for current examples of balancing individual rights and the safety of persons or property.**

***Next installment: The 14<sup>th</sup> Amendment: Substantive Due Process and Pierce v. Society of Sisters***



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## ***The 14<sup>th</sup> Amendment: Substantive Due Process and Pierce v. Society of Sisters***

In 1922, Oregon voters passed The Compulsory Education Act which required children between eight and sixteen years of age to attend public school in the district where the children resided. However, the statute was soon challenged by the Society of Sisters of the Holy Names of Jesus and Mary, an order of Catholic nuns, and a private military school.

The Society of Sisters of the Holy Names of Jesus and Mary, an Oregon corporation, facilitated care for orphans and educated young boys in a private school setting. The Society of Sisters and the Hill Military Academy separately sued Walter Pierce, the governor of Oregon and other Oregon government officials challenging the statute.

The schools won their case before a three-judge panel of the District Court of the United States for the district of Oregon, which granted an injunction against the Act. The defendants appealed their case directly to the Supreme Court.

In ***Pierce v. Society of Sisters*** (1925), the Court was asked to decide if The Compulsory Education Act violated the liberty of parents to direct the education of their children. The Court deliberated for about 10 weeks before issuing their unanimous decision upholding the lower court's ruling, determining the Oregon law arbitrarily set private schools 'off limits' violating the liberty protected by due process of the Fourteenth Amendment.

The opinion, written by Justice McReynolds, stated in part, "*...the fundamental liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only.*"

Because the ruling involved a challenge to the content or substance of the Oregon law depriving the parent's liberty to choose how their children were educated and by whom, ***Pierce v. Society of Sisters*** was a **substantive due process** case.

**Look for modern examples of due process -  
the protection of one's life, liberty or property  
without due process of laws -  
in news reports in-print or online.**

***Next installment: The 14<sup>th</sup> Amendment:  
Citizenship and U.S. v. Wong Kim Ark***



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## **The 14<sup>th</sup> Amendment: Citizenship and U.S. v. Wong Kim Ark**

The Fourteenth Amendment, ratified in 1868, granted citizenship to “all persons born or naturalized in the United States” which included former slaves who had just been freed after the Civil War. The Chinese Exclusion Act, which blocked nearly all immigration from China, was enacted in 1882.

Wong Kim Ark was born in San Francisco, in 1873 to Chinese parents who never obtained United States citizenship and returned to China in 1890. Wong travelled to China to visit his parents on two separate occasions. In 1890, Wong was allowed to return based on his status as a native-born citizen. Four years later however, he was denied reentry on the grounds that he was not a U.S. citizen. Wong Kim Ark sued to reenter the country and the district court found that he was a citizen and therefore exempt from the Exclusion Act. The U.S. government appealed the district court ruling directly to the United States Supreme Court.

In **U.S. v. Wong Kim Ark**, the Court was asked to determine whether Wong’s birth in San Francisco to parents, who were not citizens of the United States, was enough to make him a citizen. Citing the 14<sup>th</sup> Amendment in its 6-2 decision, the Court held that a child born in the United States to parents of foreign decent is a citizen unless the parents are foreign diplomats, or the child was born to parents who are nationals of an enemy nation that is engaged in a hostile occupation of U.S. lands. Wong Kim Ark was then allowed reentry into the United States.

**Look through the newspaper, print or online, for articles involving questions of citizenship and immigration. Select one and discuss how the issue might be decided based on the citizenship clause of the Fourteenth Amendment.**

The 14<sup>th</sup> Amendment was crafted to help bring together a divided nation after the Civil War. Subsequent rulings citing its key clauses including citizenship, due process and equal protection continue to transform our American democracy.

Perhaps one day we will fully realize the promised protections of the 14<sup>th</sup> Amendment as described by Justice Harlan’s dissent in the *Plessy v. Ferguson* case, “... which established universal freedom, gave citizenship to all born or naturalized in the United States and residing here, obliterated the race line from our systems of governments, national and state, and placed our free institutions upon the broad and sure foundation of the equality of all men before the law...”



For more civic education resources from the NYS Bar Association’s Law, Youth and Citizenship Program go to their website at [www.nysba.org/lychome](http://www.nysba.org/lychome).

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