

Exploring the Fourteenth Amendment

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Grade level: Grades 9-12

Objectives:

Students will be able to:

1. Describe the various provisions of the Fourteenth Amendment, Section 1.
2. Explain what is meant by due process as stated in the Fourteenth Amendment, Section 1.
3. Explain what is meant by “procedural” and “substantive” due process.
4. Explain what is meant by equal protections of the laws as stated in the Fourteenth Amendment, Section 1.
5. Explain how the Fourteenth Amendment, Section 1, defines citizenship.

Introduction

Amendment XIV, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Arguably, Section 1 of the 14th Amendment has had more impact on law in the United States in the 20th and 21st centuries than any other provision of the United States Constitution. Many constitutional scholars refer to the 14th Amendment as *the Great Amendment*.

There are several reasons for that:

- We cannot have a conversation about the rights guaranteed in the Bill of Rights in 21st century, or really since 1865, without referencing the 14th Amendment.
- Without the 14th Amendment, the Bill of Rights has very little impact in our lives.
- Every time the Supreme Court of the United States is considering the constitutionality of a state law, the 14th Amendment is implicated.
- The Civil Rights Movement did not happen without the 14th Amendment.
- The protection of everyone’s constitutional rights hinge on the language of the 14th Amendment.

This lesson plan explores three concepts, any of which could provide a semester of study:

1. The due process clause of the 14th Amendment.
2. The equal protections clause of the 14th Amendment.
3. How the 14th Amendment defines citizenship.

Note: How the 14th Amendment has become an integral part of almost every constitutional issue in the 20th and 21st century is through the Doctrine of Incorporation. This subject is addressed in an additional lesson, which may be found at <http://missourilawyershelp.org/lesson-plans/> .

Note: An excellent timeline on the 14th Amendment as well as a comprehensive list of primary documents pertaining to it may be found at www.streetlaw.org/Document/1417

Teaching the Due Process Clause of the 14th Amendment

1. Students should have a copy of the 14th Amendment or the 14th Amendment, Section 1 should be on a white board or black board.
2. Ask the students to underline the words that refer to due process:... *nor shall any state deprive any person of life, liberty, or property, without due process of law..*
3. Ask the students what they think due process means. (Due process is a safeguard against the government acting unfairly or arbitrarily; due process means that all governmental bodies must have procedures in place that protect a person's constitutional rights; due process means that governmental bodies cannot make laws which deprive a person of his/her constitutional rights.)
4. Explain that there are two kinds of due process—procedural and substantive due process.
5. Explain that **procedural due process** requires that governments act in a fair way when contemplating taking someone's life, liberty or property.
6. Brainstorm about occasions when life, liberty or property is at risk of being taken. (Accused criminals being fined or sentenced to prison or death; government regulations that restrict how someone may use his/her property; eminent domain—when a governmental body declares it needs someone's property for the public's use.)
7. What are some of the procedural due process safeguards governments must follow:
 - a. Search warrant requirements.(Fourth Amendment)
 - b. Miranda Rights (Fifth and Sixth Amendments).
 - c. Trial by jury (Sixth Amendment).
 - d. Hearings
 - e. Eminent Domain procedures (Fifth Amendment)
8. What is **substantive due process**?
 - a. The Constitution (through the Bill of Rights and the 14th Amendment) prohibits the enacting and enforcing of laws or regulations of any political entity that would substantially interfere with the rights to **life liberty and property**.
 - b. Substantive due process limits the government in that laws must be fair and rational.
 - c. "Substantive due process is based on the idea that some rights are so fundamental that a government must have a 'compelling' or exceedingly important reason to regulate or interfere with them." *We the People: the Citizen and the Constitution*, Level III, page 128.
9. Brainstorm with the students as to what rights are considered fundamental. (Some that the Supreme Court of the United States has found to be fundamental are: all the rights found in the First Amendment (speech, press, religion, assembly and petition); most of the rights found in the Fourth, Fifth and Sixth Amendments; right to vote; right to marry and have children.)
10. Brainstorm with the students as to why the Court found these to be "fundamental" rights.
11. What happens when laws or regulations are found to violate substantive due process? They are declared unconstitutional by the Court.
12. Brainstorm with the students as to what laws or regulations may not violate substantive due process even though they may interfere with someone's life. (Speed limit laws, requirement to have a driver's license, laws that prevent a landowner from causing pollution.)

Teaching the Equal Protection Process Clause of the 14th Amendment

1. Students should have a copy of the 14th Amendment or the 14th Amendment, Section 1 should be on a white board or black board.
2. Ask the students to underline the words that refer to equal protection: ... *nor shall any state ... deny to any person within its jurisdiction the equal protection of the laws.*
3. Ask the students what they think this phrase means. (“Equal protection, like due process, is a constitutional guarantee of fair treatment for all persons regardless of sex, race, national origin, religion or political views. It is rooted in the Declaration of Independence that ‘all Men are created equal.’” *We the People: the Citizen and the Constitution*, Level III, page 132.)
4. Brainstorm with the students about groups that, at times, have not had equal protection of the laws in the United States. (African-Americans, women, same-sex couples)
5. Discuss how the equal protection clause was the legal basis in *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954). For excellent teaching resources on this case, go to http://landmarkcases.org/en/landmark/cases/brown_v_board_of_education or to <https://www.oyez.org/cases/1940-1955/347us483> .
6. The most comprehensive use of the 14th Amendment perhaps was the passage of the Civil Rights Act of 1964 and subsequent cases related to that act. For a lesson plan on this act, go to <http://missourilawyershelp.org/lesson-plans/> .

Teaching about Citizenship and the Fourteenth Amendment

1. Students should have a copy of the 14th Amendment or the 14th Amendment, Section 1 should be on a white board or black board.
2. Ask the students to underline the words that refer to 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 State wherein they reside.*
3. Provide a little background on this clause:

The United States Constitution did not define citizenship, but there are some references to citizenship. However, in 1790, Congress passed the first of the Naturalization Acts, which basically declared all free white males to be citizens. (Since that time, citizenship barriers based on race, ethnicity and gender have been declared unconstitutional.)

The turning point in American history for defining citizenship came with the Dred Scott decision in 1857 and the subsequent passage of the 14th Amendment, which defined citizenship in the United States. In the Dred Scott case [*Dred Scott v. Sandford*, 60 U.S. 393 (1857)], Justice Roger Taney declared that persons of “negro” origin could not be citizens. The authors of the 14th Amendment directly addressed this holding with this language: *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.* (emphasis provided)
4. Have students individually, in pairs or groups read through the United States Constitution for some references to citizenship. [Citizenship requirements are mentioned in the qualifications for representatives (Article I, Section 2.2), senators (Article 1, Section 3.3), and the president (Article II, Section 1.5). The framers also gave Congress the power to

establish naturalization requirements (Article I, Section 8.4), but basically left the matter of citizenship qualifications up to the states.]

5. Brainstorm with the students about why who is an American citizen is still at issue today.
6. Provide some additional background information on the issue:
 - a. *All persons born...in the United States* is not an entirely simple concept. *Jus soli* (law of the soil) provides that anyone born in the United States is a U.S. Citizen. *Jus sanguine* (law of the blood) refers to how a person is a United States citizen even if he/she is born outside of the United States:
 - A child is also a citizen if he or she was born abroad and both parents are United States citizens at least one of whom resided at some time in the United States or a United States possession.
 - If only one parent is a US citizen, that parent must have been physically present in the US or possession at least five years prior to the child's birth, at least two of which were after the age of 14.
 - b. One of the controversies related to the *jus soli* theory of has to do with children born in the United States to illegal immigrants and leads to some **very difficult questions**. Explore this controversy with the students: Should illegal immigrants be allowed to stay in the United States because they are the parents of an American citizen? On the other hand, should an American citizen be deported because the parents are not legally in the country? Or should the child be allowed to remain in the United States while the parents are deported?
7. Examine how the 14th Amendment provides protection of the laws to anyone here in the United States, including illegal aliens. In *Wong Wing v. United States* (1896), the court declared that illegal aliens enjoy all of the protections afforded a person accused of a crime pursuant to the 4th, 5th, 6th and 8th Amendments. In *Plyler v. Doe* (1982), the court declared a Texas statute unconstitutional that prevented the children of illegal aliens from attending public schools. The majority opinions in both cases provide an excellent insight to the meaning of the 14th Amendment. These cases may be found at supct.law.cornell.edu/supct/index.html.
8. The Supreme Court of the United State declared it cruel and unusual punishment to strip a person of his/her citizenship as a punishment for military desertion. *See Trop v. Dulles*, 356 U.S. 86 (1958). Chief Justice Earl Warren wrote the opinion and what he has to say about the importance of citizenship would be excellent Law Day reading. The case may be found at supct.law.cornell.edu/supct/index.html.
9. Discuss requirements for becoming a naturalized citizen:
 - a. Be at least 18 years old.
 - b. Have been lawfully admitted to the United States.
 - c. Have resided as a permanent resident in the United States for at least 5 years or 3 years if you meet all eligibility requirements to file as a spouse of a U.S. citizen
 - d. Have demonstrated continuous permanent residence
 - e. Have demonstrated physical presence
 - f. Demonstrate good moral character

- g. Show an attachment to the U.S. Constitution
- h. Be able to read, write, speak, and understand basic English
- i. Demonstrate a knowledge of U.S. civics (history and government)
- j. Take the oath of allegiance to the United States

Do all of these seem reasonable? Why or why not?

Grade Level Expectations (DESE approved 4.16):

Theme 1-History Continuity and Change	E. Analyze the causes and consequences of a specific issue tied to government as well as the challenges and opportunities faced by those trying to address the problem.
Theme 1-Government Systems and Principles	A. Analyze laws, policies, and processes to determine how governmental systems affect individuals and groups in society.
Theme 4-Government in Action	A. Trace the changing power relationships between branches of the United States government over time. B. Analyze changing ideas regarding an “active judiciary,” and an “active executive branch” in United States government over time.
Theme 3-Structure of Government	C. Analyze the unique roles and responsibilities of the three branches of government to determine how they function and interact.