

*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. Representatives and Senators shall be chosen in each State according to their respective numbers, excluding Indians not taxed, as follows—viz. Representatives shall be chosen in each State, excluding the Indians not taxed, in proportion to the number of free persons in each State, and the number of three-fifths of all other persons held as slaves in each State, as they shall be numbered in the Census, or other Enumeration, in order to better equalize the number of Representatives in each State. The Congress shall assemble in each year at such place as they may by law determine, and the day of their meeting shall be fixed by the President. The Congress shall have the sole Power of Legislation, except as to the cases mentioned in the preceding Article, and such Cases as the States may refer to the Congress for their consideration. The President shall be chosen for four years, and he shall have the Honor and the Sole Executive Power of the United States. He shall have the Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint and dismiss Ambassadors, Ministers, Consuls, Judges, and all other Officers of the United States, whose Appointments are in his Power; he shall receive such Oaths and Qualifications as the Congress may from time to time require. He shall have the Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment. He shall have the Power to fill up all Vacancies that may happen during the recess of the Senate, by granting Commissions which shall expire at the End of their next Session. The Congress shall have the Power to regulate the Commerce with foreign Nations, to regulate Commerce among the States, and the Commerce with the Indian Tribes; to borrow Money on the Credit of the United States, to issue Bonds, and to regulate the Value thereof; to fix the Standard of Weights and Measures; to coin Money, to regulate the Value thereof, and to make such other Laws as may be necessary and proper to carry into Execution the Powers vested by this Constitution in the Government of the United States, or in any of its Departments, or in any of its Officers, or in any of its Judges. The Congress shall have the Power to declare War, to issue Letters of Marque and Reprisal, and to make Rules concerning Captives on Land and on Sea; but no War shall be declared unless declared by the Congress, except in Cases of Impeachment. They shall have the Power to grant Letters of Marque and Reprisal, and to make Rules concerning Captives on Land and on Sea; but no War shall be declared unless declared by the Congress, except in Cases of Impeachment. They shall have the Power to regulate the Value thereof, and to make such other Laws as may be necessary and proper to carry into Execution the Powers vested by this Constitution in the Government of the United States, or in any of its Departments, or in any of its Officers, or in any of its Judges. The Congress shall have the Power to declare War, to issue Letters of Marque and Reprisal, and to make Rules concerning Captives on Land and on Sea; but no War shall be declared unless declared by the Congress, except in Cases of Impeachment. They shall have the Power to grant Letters of Marque and Reprisal, and to make Rules concerning Captives on Land and on Sea; but no War shall be declared unless declared by the Congress, except in Cases of Impeachment.*

## LAW DAY 2017

# THE 14TH AMENDMENT TRANSFORMING AMERICAN DEMOCRACY



# PLANNING GUIDE

LAW DAY 2017★

*"All persons born or naturalized*

**THE 14TH AMENDMENT**

**TRANSFORMING**

**AMERICAN  
DEMOCRACY**

The 2017 theme provides the opportunity to explore the many ways that the Fourteenth Amendment has reshaped American law and society. Through its citizenship, due process, and equal protection clauses, this transformative amendment advances the rights of all Americans. It also plays a pivotal role in extending the reach of the Bill of Rights to the states. 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.

*in the subject to  
the juris ns of the  
Unite wherein  
they reside. No State shall make or  
enforce any law which shall abridge the  
pr the  
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d or  
property, without due process of law; nor  
deny to any person within its jurisdiction  
the equal protection of the laws."*

# 14TH AMENDMENT OVERVIEW

## The Text and Its Application

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The text of the Fourteenth Amendment is often cited by litigators, civil rights activists, constitutional scholars, and, of course, judges. Here, we take a look at the most cited clauses and offer avenues to explore how they have shaped our constitutional understanding and our everyday experiences. Law Day 2017 gives us a unique opportunity to look at the text of the amendment and explore its origins, evolution, and current application.

## The Citizenship and the Privileges or Immunities Clauses

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*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...*

The first sentence of the Fourteenth Amendment generally confers legal citizenship on all persons born in the United States and indicates that whether natural-born or naturalized, they are citizens of both the United States and the state in which they live. This simple statement transformed a divided nation coming out of the shadow of the Civil War and a legacy of slavery. The second sentence of Section 1 of the amendment, the privileges or immunities clause, prohibits states from infringing rights of U.S. citizens. Since the [Slaughter-House Cases of 1873](#), however, the federal courts have narrowly interpreted these rights.



### Questions to Consider:

- What are the rights and responsibilities of U.S. citizenship?
- Are there different rights for citizens and noncitizens? Should there be?
- How did the Fourteenth Amendment nullify *Dred Scott v. Sandford*?

## The Due Process Clause

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

The due process clause of the Fourteenth Amendment requires state and local governments to administer fair and just legal proceedings. The clause provides a safeguard against arbitrary laws or unjust court proceedings. As courts, judges, and constitutional scholars have studied the clause, two aspects of due process have emerged: procedural and substantive. Procedural due process generally refers to those procedures that guarantee a fair trial before an individual can be deprived of life, liberty, or property, such as the right to a jury, the right to confront witnesses, and the right to a speedy trial. Substantive due process is a principle allowing courts to protect individuals from government interference of certain rights deemed fundamental, such as the right to privacy and the right to marry.

### Questions to Consider:

- What are the key aspects of due process? What makes a legal proceeding fair?
- How can we ensure due process for criminal defendants when courts are underfunded and overburdened?
- What is the difference between substantive and procedural due process?
- How does the Fourteenth Amendment's guarantee of due process differ from that of the Fifth Amendment?

## The Equal Protection Clause

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

The equal protection clause of the Fourteenth Amendment prohibits states from discriminating against individuals or groups and advances constitutional equality.

### Questions to Consider:

- How did the Fourteenth Amendment change our understanding of equality?
- What role did the clause play in the Supreme Court's decision in *Brown v. Board of Education* and subsequent landmark civil rights cases?
- Should the idea of human dignity be a part of equal protection law?

# TIMELINE OF 14TH AMENDMENT HISTORY

Click the dates on each entry for more detail.

## Government under the U.S. Constitution begins:

Madison then proposes amendments, that become the Bill of Rights.

## Fourteenth Amendment:

The Fourteenth Amendment is ratified and becomes part of the Constitution on July 9. Rep. John Bingham is its principal author.

## United States v. Wong Kim Ark

Guarantees birthright national citizenship under the Fourteenth Amendment to all born on American territory.

## Dred Scott v. Sandford:

Blacks could not be citizens of the United States and are categorically excluded from "We the People."

## Trial of Susan B. Anthony:

Charged with unlawfully voting for Congress, Anthony argues women have a constitutional right to vote under the Fourteenth Amendment.

## Gettysburg Address:

President Lincoln offers a vision for a new constitutional order, that will find expression in the Fourteenth Amendment.

## Civil Rights Cases:

Invalidates Civil Rights Act of 1875, sustaining Jim Crow racial segregation in public accommodations.

## Barron v. Baltimore:

Supreme Court rules that first ten amendments do not apply to states, only to the federal government.

## Civil Rights Act to Enforce Fourteenth Amendment:

Nearly century-and-a-half-old federal legislation today provides remedies for deprivation of civil rights "under color of law."

## Lochner v. New York:

The Supreme Court interprets the Fourteenth Amendment to provide a right to contract that thwarts government regulation of business.

[Click here to view a web version of the timeline, which includes external resources.](#)

**Powell v. Alabama:**  
A right to legal counsel in capital cases applies to the states through the Fourteenth Amendment. Supreme Court doctrine selectively “incorporates” the Bill of Rights through the Fourteenth’s due process clause.

**Meyer v. Nebraska:**  
A state law prohibiting teaching foreign languages to young children violates the Fourteenth Amendment’s liberty guarantee, which protects “certain fundamental rights” of individuals.

**Brown v. Board of Education:**  
Racially segregated public schools violate the Fourteenth Amendment’s equal protection clause.

**Civil Rights Act:**  
Congress asserts constitutional powers to enforce civil rights that extend beyond the Fourteenth Amendment.

**Regents of University of California v. Bakke:**  
The use of racial quotas in university admissions does not meet equal protection requirements, but race may be considered as a factor in “properly devised” programs.

**United States v. Virginia:**  
The Virginia Military Institute’s male-only admissions policy violates the equal protection clause.

**Obergefell v. Hodges:**  
The fundamental right to marry extends to same-sex couples and is grounded synergistically on both due process and equal protection clauses under the Fourteenth Amendment.

**Gitlow v. New York:**  
First Amendment freedom of speech and of the press apply to the states via the due process clause of the Fourteenth Amendment.

**Baker v. Carr/ Apportionment Cases:**  
The equal protection clause requires that “Legislators represent people, not trees or acres.”

**Americans with Disabilities Act:**  
Congress passes legislation to provide legal recourse to redress discrimination faced by people with disabilities.

**Loving v. Virginia:**  
Laws prohibiting interracial marriages violate the Fourteenth Amendment. The freedom to marry a person of another race cannot be infringed.

**McDonald v. Chicago:**  
Second Amendment rights are “fully applicable to the States” through the Fourteenth Amendment.

**Truman Issues Executive Order 9981 to Desegregate U.S. Military:**  
Spurred by organized World War II-era civil rights efforts.

# TALKING POINTS

## 14th Amendment at a Glance

Ratified on July 9, 1868, the Fourteenth Amendment is one of three Reconstruction Amendments. The Thirteenth Amendment, abolishing slavery, was ratified in 1865; the Fifteenth Amendment, prohibiting the federal and state governments from denying citizens the right to vote based on that citizen's race, color, or previous condition of servitude, was ratified in 1870.

### The 14th Amendment covers a number of important topics in its different clauses, including:

- U.S. citizenship (providing for birthright citizenship)
- The privileges and immunities of citizens
- Due process (including both substantive and procedural)
- Equal protection under the law
- Enforcement of laws

The Fourteenth Amendment greatly expanded the protection of civil rights to all Americans and is cited in more litigation than any other amendment.<sup>1</sup>

Supreme Court Justice William O. Douglas observed of the amendment: “No patent medicine was ever put to wider and more varied use than the Fourteenth Amendment.”



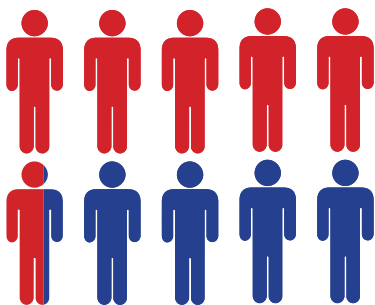
Supreme Court Justice William O. Douglas  
Source: Wikimedia Commons

## Equal Protection

Applying the equal protection clause of the Fourteenth Amendment, courts give laws that classify by race, national origin, and religion the highest level of scrutiny. Laws that impact fundamental rights such as interstate migration, voting, and access to courts also receive strict scrutiny. The following are a few facts and figures relating to equal protection in the United States:<sup>2</sup>

- In the landmark 1954 Supreme Court ruling *Brown v. Board of Education*, that applied the Fourteenth Amendment's equal protection clause, Chief Justice Earl Warren famously wrote, “We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.”
- Congress enacted federal educational and employment anti-discrimination laws to fulfill the promise of “equal protection of law” enshrined in the Fourteenth Amendment.
- Affirmative action programs have helped to reduce, but not eliminate, racial disparities in the number of degrees awarded by higher education institutions.

- In 2015, about 47% of whites had at least a two year college degree. By comparison, about 33% of African American adults had at least a two year college degree, up from 28% in 2007. For Hispanics, that figure grew from 19% to 23% over the same period from 2007 to 2015.<sup>3</sup>
- Despite passage of the Equal Pay Act of 1963, which requires that men and women in the same work place be given equal pay for equal work, the “gender gap” in pay persists. In 2014, a woman working full-time all year in the United States earned 79% of what a man earned in a year. Phrased differently, she earned 79 cents for every dollar that he earned.
- The pay gap is even greater for African American and Latina women, with African American women earning 64 cents and Latina women earning 56 cents for every dollar earned by a white non-Hispanic man.<sup>4</sup>
- Substantial racial inequalities persist in the criminal justice system as well. According to the NAACP:
  - African Americans now constitute nearly 1 million of the total 2.3 million incarcerated population.
  - African Americans are incarcerated at nearly six times the rate of whites.<sup>5</sup>
  - Together, African Americans and Hispanics comprised 58% of all prisoners in 2008, even though African Americans and Hispanics make up approximately one quarter of the U.S. population.<sup>6</sup>



Together, African Americans and Hispanics comprised 58% of all prisoners in 2008.

## Due Process

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Due process ensures that individuals are not deprived of their rights without the benefit of certain fundamental procedural protections.

- The due process clause of the Fourteenth Amendment is the source of an array of constitutional rights, including many of our most cherished.
- Due process includes procedural protections, such as notice and a hearing before termination of entitlements, for example, publicly funded medical insurance.
- It protects against state infringement individual rights listed in the Bill of Rights, including freedom of speech, free exercise of religion, the right to bear arms, and freedom from unreasonable searches and seizures.
- It includes fundamental rights that are not specifically enumerated elsewhere in the U.S. Constitution, including the right to marry, the right to use contraception, and the right to abortion.<sup>7</sup>

- The language of the due process clause of the Fourteenth Amendment echoes that of the Fifth Amendment. The Fifth Amendment, however, applies only against the federal government.
- In *Lawrence v. Texas*, a 2003 Supreme Court decision overturning a Texas law criminalizing consensual sexual activity between same sex couples, Justice Anthony Kennedy observed: “Had those who drew and ratified the due process clauses of the Fifth Amendment or the Fourteenth Amendment known the components of liberty in its manifold possibilities, they might have been more specific. They did not presume to have this insight. They knew times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress. As the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom.”



Source: Wikimedia Commons

## Incorporation

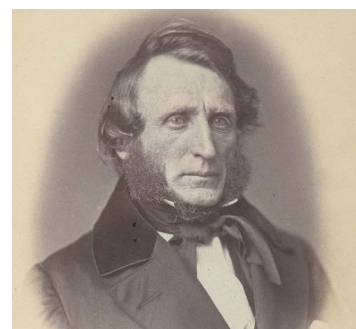
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The doctrine of incorporation is the process by which courts have applied portions of the U.S. Bill of Rights to the states. For more than a century after its ratification, the Bill of Rights was enforced strictly against the federal government. With the incorporation doctrine, recognized by the courts starting in the late 19th century, most provisions of the Bill of Rights have been found to apply not only to the federal government, but also to state and local governments. Under the incorporation doctrine, most provisions of the Bill of Rights now also apply to state and local governments.

- Among the rights that have been found to be enforceable against states and local governments are freedom of speech and religion, the right to bear arms, the right against being forced to quarter soldiers, freedom from unreasonable searches and seizures, other criminal procedural rights (such as the right to counsel, right to a jury trial, right against self-incrimination), the right to a civil jury trial, and the right against cruel and unusual punishments. These rights are incorporated from the first eight amendments of the Bill of Rights.
- Ohio Congressman John Bingham, drafter of the principle language of the Fourteenth Amendment, observed, “Privileges and immunities of citizens of the United States

... are chiefly defined in the first eight amendments to the Constitution of the United States... These eight articles... never were limitations upon the power of the states until made so by the Fourteenth Amendment.”

- Over the years, the Supreme Court has granted corporations, by virtue of their legal status of personhood, most of the constitutional rights possessed by natural persons, including the due process right in the Fourteenth Amendment. For example, the U.S. Supreme Court has ruled that an excessive fine against a corporation violates its Fourteenth Amendment rights.

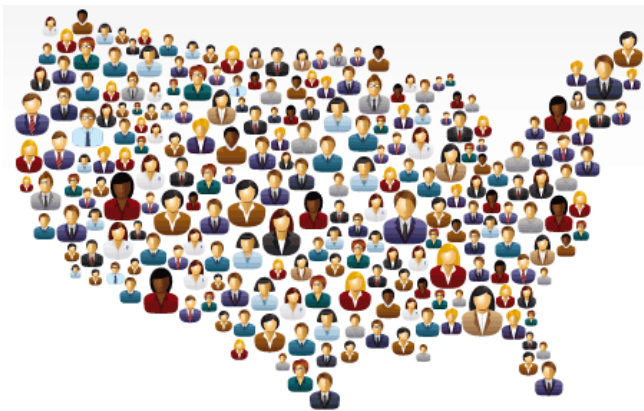


Congressman John Bingham  
Source: Wikimedia Commons

## Citizenship

Section 1 of the Fourteenth Amendment provides: “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.”

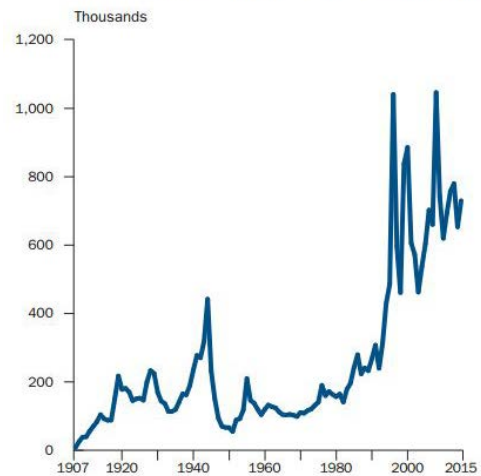
- The number of births in the United States in 2014 was 3,988,076, according to the Center for Disease Control and Prevention.<sup>8</sup>
- The naturalization process confers U.S. citizenship upon foreign citizens or nationals who have fulfilled the requirements established by Congress in the Immigration and Nationality Act (INA). After naturalization, foreign born citizens enjoy nearly all of the same benefits, rights, and responsibilities that the Constitution gives to native born U.S. citizens, including the right to vote.
- In 2014, a total of 653,416 persons were naturalized.
- The leading countries of birth of new citizens were Mexico (94,889), India (37,854), the Philippines (34,591), and the People’s Republic of China (30,284).
- The largest number of persons naturalizing lived in California (140,234), Florida (79,637), and New York (77,717).<sup>9</sup>



Source: slge.org

- The privileges or immunities clause of the Fourteenth Amendment was substantially limited in impact by a 5-4 decision of the U.S. Supreme Court in the Slaughter-House Cases of 1873.
- The cases gave a very narrow reading as to what rights were protected by the privileges or immunities clause. As a result, the clause has remained virtually dormant for more than 130 years. But in 2010, it became the basis for the fifth and deciding vote in the Supreme Court case of *McDonald v. Chicago*, regarding application of the Second Amendment of the United States Constitution to the states.
- American history professor David W. Blight, director of the Gilder Lehrman Center for the Study of Slavery, Resistance, and Abolition at Yale University has observed, “Among all the enactments of Reconstruction, none embody the lasting significance or the heart of the [Civil War] conflict better than section one of the Fourteenth Amendment. It ought to be embraced as a holy writ that binds our national community, that fortifies even the very idea of America born of this second founding.”

Persons Naturalized: Fiscal Years 1907 to 2015



Source: U.S. Department of Homeland Security

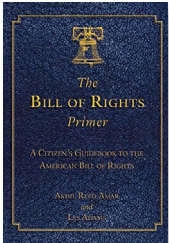
## Endnotes

1. Library of Congress  
<https://www.loc.gov/rr/program/bib/ourdocs/14thamendment.html>
2. Legal Information Institute, Cornell University Law School
3. Huffington Post  
[http://www.huffingtonpost.com/entry/college-degree-gap\\_us\\_568d8d7ee4b0a2b6fb6e8e12](http://www.huffingtonpost.com/entry/college-degree-gap_us_568d8d7ee4b0a2b6fb6e8e12)
4. Census Bureau, Educational Attainment in the United States: 2015  
<http://www.census.gov/content/dam/Census/library/publications/2016/demo/p20-578.pdf>
5. White House, Your Right to Equal Pay: Understand the Basics  
<https://www.whitehouse.gov/issues/equal-pay#top>
6. NAACP Criminal Justice Fact Sheet  
<http://www.naacp.org/criminal-justice-fact-sheet/>
7. Nathan S. Chapman and Kenji Yoshino, The Fourteenth Amendment Due Process Clause  
<https://constitutioncenter.org/interactive-constitution/amendments/amendment-xiv/common-interpretation-due-process-clause-of-the-fourteenth-amendment/clause/12>
8. Center for Disease Control and Prevention, National Center for Health Statistics  
<http://www.cdc.gov/nchs/fastats/births.htm>
9. Department of Homeland Security, Annual Flow Report  
[https://www.dhs.gov/sites/default/files/publications/Naturalization%20Flow%20Report\\_2014\\_508.pdf](https://www.dhs.gov/sites/default/files/publications/Naturalization%20Flow%20Report_2014_508.pdf)

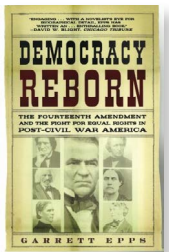


# SUGGESTED RESOURCES

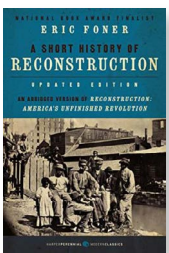
## Non-Fiction Books



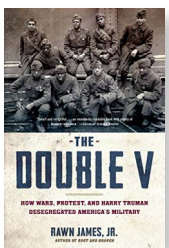
**Akhil Reed Amar and Les Adams**  
*The Bill of Rights Primer: A Citizen's Guidebook to the American Bill of Rights.* Presents an accessible overview of the Bill of Rights. Emphasizes not only its creation following the ratification of the original U.S. Constitution, but its subsequent “reconstruction” through the Fourteenth Amendment.



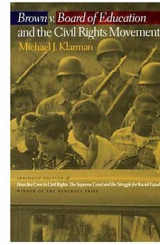
**Garrett Epps**  
*Democracy Reborn: The Fourteenth Amendment and the Fight for Equal Rights in Post-Civil War America.* Tells how our Constitution was transformed by the Reconstruction-era “Second Founders” from a charter of limited government to one that incorporates “nineteenth century values of equality, openness, and rule of law for all.” Focuses on the historical role of the 39th Congress (1865–1867).



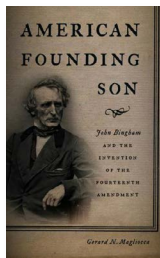
**Eric Foner**  
*A Short History of Reconstruction, Updated Edition.* Presents a brief history of the momentous period in our nation's history from 1863 to 1877, focusing on the struggle to transform enslaved people into free laborers and equal citizens. The author emphasizes that “blacks were active agents in the making of Reconstruction.”



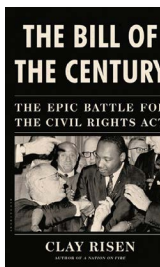
**Rawm James**  
*The Double V: How Wars, Protest, and Harry Truman Desegregated America's Military.* Relates the story of African Americans in the U.S. military since the Revolutionary War, culminating in Harry Truman's Executive Order 9981, issued in 1948. The book title refers to the civil rights effort during World War II to achieve victory abroad and racial equality at home.



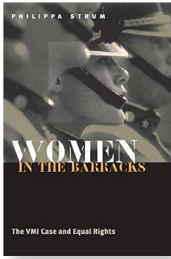
**Michael Klarman**  
*Brown v. Board of Education and the Civil Rights Movement.* Examines *Brown v. Board of Education*, the landmark 1954 case in which the Supreme Court held that racially segregated public schools violated the equal protection clause of the Fourteenth Amendment. Argues that *Brown's* early impact did more to mobilize southern white opposition than to foster meaningful change in civil rights, but that resulting violence transformed public opinion and led to landmark 1960s legislation.



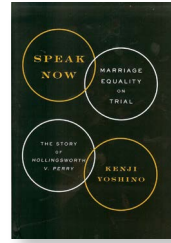
**Gerard Magliocca**  
*American Founding Son: John Bingham and the Invention of the Fourteenth Amendment.* Offers a biography of antislavery lawyer and Ohio Congressman John Bingham, who Justice Hugo Black termed “the Madison of the . . . Fourteenth Amendment.” Argues that Bingham, a pivotal figure in the post-Civil War period, deserves recognition as one of our country's constitutional founders, a “son” to the earlier “fathers.”



**Clay Risen**  
*The Bill of the Century: The Epic Battle for the Civil Rights Act.* Tells how the Civil Rights Act of 1964, which banned racial segregation in public accommodations and the workplace, was enacted into law. The author emphasizes that a “cast of thousands” actually made the law possible, involving grass-root efforts by labor, religious, and civil rights organizations, as well as legislators.



**Philippa Strum**  
***Women in the Barracks: The VMI Case and Equal Rights.*** Examines *United States v. Virginia*, in which the Supreme Court ruled in 1996 that the publicly funded Virginia Military Institute's male-only admissions policy violated the equal protection clause of the Fourteenth Amendment. Traces the case's cultural history to VMI's founding and to changing notions of gender equality.



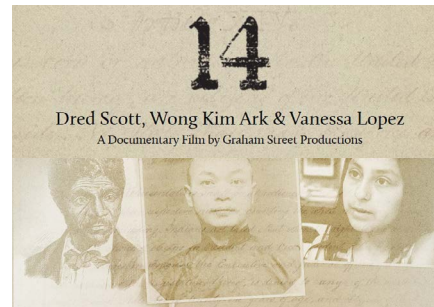
**Kenji Yoshino**  
***Speak Now: Marriage Equality on Trial: The Story of Hollingsworth v. Perry.*** Integrates the author's personal story with insightful legal analysis of the federal trial that challenged Proposition 8, which had banned same-sex marriage in California. The author argues that the trial represented a watershed moment in our nation's history—it led to the Supreme Court's 2015 Fourteenth Amendment ruling on the right to marry in *Obergefell v. Hodges*.

## Documentaries

### **14: Dred Scott, Wong Kim Ark & Vanessa Lopez (2015)**

This documentary is told through the lives of three ordinary and extraordinary American families who changed history by their challenge to the status quo. The documentary explores the recurring question about who has the right to be an American citizen.

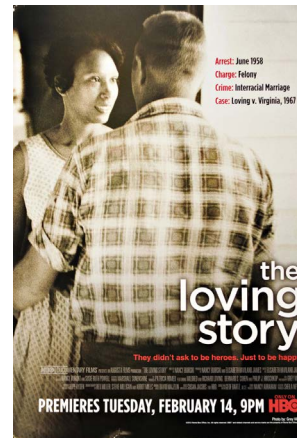
<http://14themovie.com/>



### ***The Loving Story* (2012)**

This documentary tells the story of Richard and Mildred Loving who are the namesake of the landmark 1967 Supreme Court case that struck down the anti-miscegenation laws still on the books in 16 states some 13 years after school segregation was deemed unconstitutional. Through the Loving story, the film examines the history and the current state of interracial marriage in the United States.

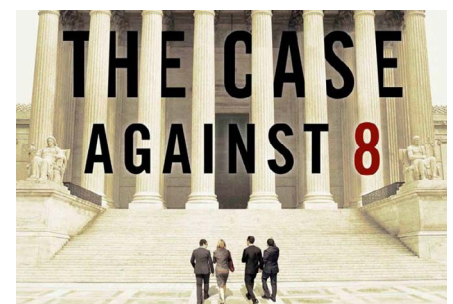
<http://lovingfilm.com/>



### ***The Case Against 8* (2014)**

A behind-the-scenes look inside the historic case to overturn California's ban on same-sex marriage. The high-profile trial first makes headlines with the unlikely pairing of Ted Olson and David Boies, political foes who last faced off as opposing attorneys in *Bush v. Gore*. Five years in the making, this is the story of how they took the first federal marriage equality lawsuit to the U.S. Supreme Court.

<http://thecaseagainst8.com/about.html>



## Multimedia

### [Backstory with the American History Guys, “Balancing Acts: Claiming Rights in America” \(2015\)](#)

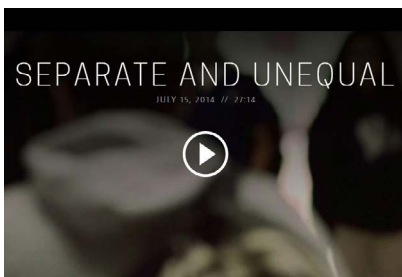
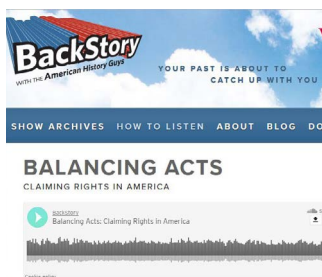
This podcast explores America’s long history of struggles over rights, including how Americans have claimed, framed, and changed their rights over time. (52 minutes)

<http://backstoryradio.org/shows/balancing-acts-2/>

### [Frontline, “Separate but Unequal”](#)

This episode examines school segregation sixty years after *Brown v. Board of Education*. The video is accompanied by several articles on the topic of segregation in American schools. (27 minutes)

<http://www.pbs.org/wgbh/frontline/film/separate-and-unequal/>



### [National Constitution Center, “The History and Legacy of the 14th Amendment”](#)

Filmed for the 150th anniversary of the Reconstruction Amendment, the National Constitution Center hosts two panels to discuss the history and enduring relevance of the Fourteenth Amendment. Panelists include: Allen Guelzo of Gettysburg College, Gerard Magliocca of Indiana University, and Theodore Shaw of the University of North Carolina, with moderator Elizabeth Wydra, president of the Constitutional Accountability Center. (60 minutes)

<http://constitutioncenter.org/experience/programs-initiatives/past-programs/the-history-and-legacy-of-the-14th-amendment>



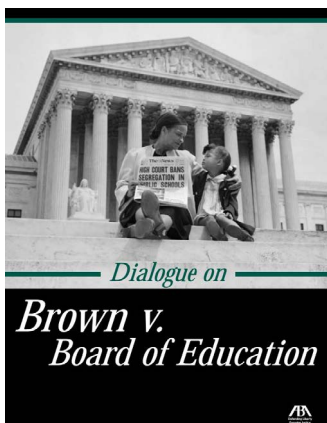
## Educational Resources for Teaching Middle and High School Students

### American Bar Association Division for Public Education

#### [Dialogue on Brown v. Board of Education](#)

At the heart of *Brown v. Board of Education* was the desire to ensure equal protection of the laws for all Americans. This Dialogue asks students to reflect on what has been required—and what has been achieved—in pursuit of this goal in our nation’s schools.

[http://www.americanbar.org/content/dam/aba/administrative/public\\_education/resources/brownvboard.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/public_education/resources/brownvboard.authcheckdam.pdf)



#### [Moot-Appellate Court: State-Appointed Counsel](#)

In this lesson, students participate in a moot appellate court argument dealing with the fictional case of *Lee Richardson v. Lincoln*. The fact pattern involves a challenge to a state law that restricts when counsel is appointed for criminal defendants. This moot court experience will provide students with an understanding of how the courts review the constitutionality of legislation and the Sixth and Fourteenth Amendments.

[http://www.americanbar.org/groups/public\\_education/resources/lesson-plans/high-school/due-process/moot-appellate-court--state-appointed-counsel.html](http://www.americanbar.org/groups/public_education/resources/lesson-plans/high-school/due-process/moot-appellate-court--state-appointed-counsel.html)



#### High School Lesson Moot Supreme Court Challenge: When Must a State Appoint Counsel

**Overview**  
Students will participate in a moot appellate court argument dealing with the fictional case of *Lee Richardson v. Lincoln*. The fact pattern involves a challenge to a state law that restricts when counsel is appointed for criminal defendants. This moot court experience will provide students with an understanding of how the adversarial court system works, how the courts review the constitutionality of legislation, and the Sixth and Fourteenth Amendments.

#### Objectives of Mock Trials

- Through participation in the mock trials, students gain
- an insider’s perspective on courtroom procedures;
  - a first-hand understanding of the appointment of counsel and the constitutional and ethical issues associated with it;
  - critical analysis of problems;
  - strategic thinking skills;
  - questioning skills;
  - listening skills;
  - oral presentation and extemporaneous argument skills;
  - preparation and organizational skills.

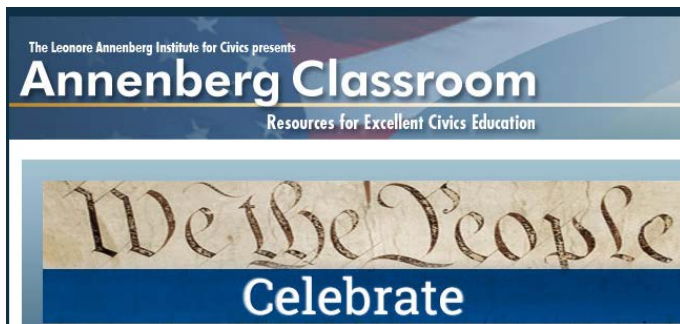
**Preparation**  
Download the Moot Supreme Court Argument, *Lee Richardson v. Lincoln* State and Historical Cases and Supporting Documents handouts at [www.lawday.org](http://www.lawday.org).

## Annenberg Classroom

### [A Conversation on the 14th Amendment](#)

Supreme Court Justice Ruth Bader Ginsburg discusses with students the importance of the 14th Amendment and how it came to embody and protect the principles of “We the People.” (42 minutes)

<http://www.annenbergclassroom.org/page/conversation-14th-amendment>



### [Korematsu and Civil Liberties](#)

This video explores the landmark case *Korematsu v. United States* (1944) concerning the constitutionality of presidential executive order 9066 during World War II that gave the U.S. military power to ban thousands of American citizens of Japanese ancestry from areas considered important to national security. (27 minutes)

<http://www.annenbergclassroom.org/page/korematsu-civil-liberties>

### [Search & Seizure: Mapp v. Ohio](#)

This video explores the Fourth Amendment case in which the Court ruled that evidence illegally obtained by police is not admissible in state courts. The 1961 case redefined the rights of the accused. The majority opinion incorporated the Fourth Amendment's protection of privacy using the due process clause of the Fourteenth Amendment. (25 minutes)

<http://www.annenbergclassroom.org/page/search-and-seizure-mapp-v-ohio>

## Other Resources

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### PBS

#### [Constitution USA with Peter Sagal, "Episode III: Created Equal \(Equality\)"](#)

Video segments from the program can be used for classroom use and middle and high school student guides are available to help frame the issues and discussion questions for students as they learn how the changes created by the Fourteenth Amendment established new notions of citizenship, equal protection, due process, and personal liberty, altering the relationship between the federal government and the states.

<http://www.pbs.org/tpt/constitution-usa-peter-sagal/classroom/episode-3-equality/>



### National Constitution Center

#### [Interactive Constitution](#)

As part of the NCC's Interactive Constitution project, leading constitutional experts interact with each other, through written responses, to explore the Fourteenth Amendment. Three sets of experts find common ground on the amendment's equal protection, due process and enforcement clauses and also explore Matters of Debate on each subject.

<http://constitutioncenter.org/interactive-constitution/amendments/amendment-xiv>



# MIDDLE SCHOOL LESSON PLAN

## APPLYING DUE PROCESS

Students will be asked to consider what it means to have due process under the law as they work in small groups to examine the application of due process in various scenarios.

### Materials (linked online)

- [“Applying due process” PowerPoint presentation](#)
- [“Requirements of Due Process” Handout](#)
- [Due Process Scenarios Handout](#)

**Grades:** 6–8

**Time:** 50–75 minutes

### Procedure

#### Ask students:

**Have you heard the term “due process”? What do you think it means?**

Encourage students to share their thoughts about what “due process” might mean. Highlight notions of “following fair rules” if students offer them as definitions.

#### Share a formal definition of “due process” with students:

**Due process (noun):**

- (1) An orderly way of doing things;
- (2) Steps taken to ensure an outcome that results from the fair treatment of parties involved;
- (3) Rule that a legal case must be done in a way that protects the rights of all of the people involved.

#### Ask students:

**Did you know that our Constitution mentions due process?**

Students might identify the Fifth Amendment in the Bill of Rights or the Fourteenth Amendment. Use the accompanying Power Point presentation, or other copies of the Constitution that are available, to highlight both of these mentions. Remind students that the Constitution was written in 1787. The Fifth Amendment was included in the Bill of Rights and ratified in 1789. For this lesson, students will focus on the Fourteenth Amendment. Explain to students that the Fourteenth Amendment became part of the Constitution in 1868, after the Civil War. It is the Constitution’s longest amendment, with five sections and over 400 words.

#### Share the first section of the Fourteenth Amendment with students:

**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.

#### Discuss the text with students:

**What guarantees are included in Section 1 of the Fourteenth Amendment?**

Encourage students to read the text of the Fourteenth Amendment, clause by clause, and discuss what each clause means. Students should identify that Section 1 promises citizenship to anyone born in the United States; the “privileges and immunities,” or benefits of national citizenship; due process of the law; and equal protection of the laws.

**According to the Fourteenth Amendment, what can’t a state government do to someone without due process of law?**

The government can’t take away a person’s life, their freedom, or their property or possessions.

**Do you think it is important to have an “orderly way of doing things” when it comes to legal procedures or court proceedings? Why?**

Encourage students to share their thoughts about why it might be important to have established rules in place during court or other proceedings. Explain the importance of applying a fixed set of rules to obtaining fair and consistent results.

**What types of legal rights do you think due process provides to people?**

Students might identify a variety of rights, including the right to a lawyer, the right to a fair trial, the right to a jury, the right to know what you’re being charged with, and the right to see evidence and cross-examine witnesses.

**Do you think that due process might apply to situations outside of court, or legal proceedings?**

Students might identify situations at school, after school, in the community, or on sports teams where due process might be applied.

#### Ask students:

**Let’s think about the rules our legal system has in place to meet the requirements of due process. Can you think of what some of these might be?**

Allow students to brainstorm what they think are requirements that the legal system has in place to ensure due process.

## Share and review the “Requirements of Due Process in Court” Handout:

Explain that these requirements for due process were developed by a judge named Henry Friendly in 1975. He tried to identify the elements of due process in court that made proceedings fair to people involved so that everyone could understand what was necessary. Discuss the requirements with students as you review the list. Discuss any words that might be confusing. Emphasize that the requirements make the process fair to everyone involved.

### As a party in court, you are entitled to the following 8 requirements for due process:

- (1) An unbiased judge and jury.
- (2) An opportunity to have a lawyer with you.
- (3) Notice of the charges being filed against you and why.
- (4) An opportunity to present reasons why the charges against you should not be filed.
- (5) The right to present evidence and the right to know what evidence the opposing party has against you.
- (6) The right to call witnesses and the right to cross-examine, or question, the witnesses that the other party might call against you.
- (7) A decision in your case that is based only on the evidence that has been presented during the case.
- (8) A decision in your case that is written down and explained and includes clear explanations of any facts of your case.

*Adapted from Judge Henry Friendly, “Some Kind of Hearing,” 1975.*

### Divide students into three groups:

Explain to students that they will be looking at scenarios (to the right) to determine if due process is being followed or if they think the people in the situation are being treated fairly. Distribute the “Due Process Scenarios” handout to students. Each group will be asked to read and answer questions about a different scenario. After groups have discussed their questions, they will present their scenarios and answers to the class.

### Ask each group to answer the following questions about their scenario:

- What happened in your scenario?
- What facts are missing that you wish you knew?
- Based on the facts that you have, were the requirements for due process violated? What was unfair about the scenario?
- What could each of the characters have done differently to make the scenario more fair or to ensure due process?

### Wrap-Up

**What do you think the government, or courts, need to provide to help ensure that everyone’s due process rights are protected?**

The government needs to make sure that people are getting a fair trial and that procedures are being followed.

**What steps can you take to ensure that your due process rights are protected?**

Allow students to offer ideas about how they might stay informed of their rights or help others to learn.

## Scenarios

### Scenario 1

Mrs. Jasper, the science teacher, finds several beakers broken on the floor of the science classroom. She makes all of the students in the science class remain following class and tells them someone must confess to breaking the beakers in order for everyone to leave. She asks each student to write a note telling her what they know about the broken beakers. Three students each write notes that say “I saw Ann break the beakers.” One of the students, Michelle, was angry with Ann after they had argued earlier in the week. Mrs. Jasper reads the three notes and tells Ann to go with her to the school office.

Students might identify several aspects of this scenario as violating due process. In particular, Ann was not offered an opportunity to tell her story or to confront the evidence against her before being accused of something that she might not have done.

### Scenario 2

The park manager in City Village discovers the statue in Town Square Park covered with graffiti. He reviews security footage from the previous night and sees what appears to be a young man wearing a baseball cap spray painting the statue. William, a local middle schooler who wears baseball caps and walks through the park to and from school each day, is walking past the statue, on his way home, when the park manager stops him and starts talking to him. The park manager asks William if he knows anything about the vandalized statue. William tells the park manager that he is not comfortable with the ranger’s questions and asks if he can go home to his parents. The park manager tells William that he thinks William vandalized the statue and will report it to the local police.

Students might identify a variety of ways in which characters in this scenario violate due process. Students might suggest that the park ranger should have reported the graffiti to police first, rather than accusing anyone of vandalism. William is not offered an opportunity to call his parents, share his perspective, or see the video evidence against him.

### Scenario 3

Reggie is accused of cheating on a math test, while Reggie’s friend, Robin, is accused of helping him. There is a policy at Reggie and Robin’s school that anyone caught cheating or helping someone to cheat on a test will be suspended for three days. After some questioning by Ms. Smith, the math teacher, both Reggie and Robin admit to cheating on the math test. Ms. Smith fills out a report about the incident and submits it to the school office. Based on the report, Reggie is suspended for cheating, while Robin is not.

Students should identify that Robin’s punishment in this scenario is not consistent with the school policy.

# HIGH SCHOOL LESSON PLAN

## THE FOURTEENTH AMENDMENT: DEFINITIONS OF EQUALITY

In this three-part lesson, students will learn about the equal protection clause of the Fourteenth Amendment by analyzing the majority and dissenting Supreme Court opinions in *Plessy v. Ferguson*. While working in small groups, students will review the Court's opinion in *Plessy* and Justice Harlan's dissent. Discussion questions will encourage students to think about the purpose of the Fourteenth Amendment when it was drafted, the different ways the law can ensure "equality," and how the Supreme Court has interpreted the equal protection clause of the Fourteenth Amendment over time.

### Materials (linked online)

- [Fourteenth Amendment Handout](#)
- [Plessy Majority Handout](#)
- [Plessy Dissent Handout](#)
- [Facilitator Answer Key](#)

All handouts and a facilitator answer key for handouts can be found at [lawday.org](http://lawday.org)



### Part 1: Looking at the Fourteenth Amendment

- 1. Ask students to share what they currently know about the Fourteenth Amendment.** Why was it created? What was going on in the country in 1868?

**Note:** Students should be familiar with Section 1 of the Fourteenth Amendment before beginning this lesson. Depending on the class's former knowledge, you may want to emphasize that unlike the Bill of Rights, which were written to protect individuals from the federal government, the Fourteenth Amendment was written to protect individuals against actions of state governments in the aftermath of the Civil War.

- 2. Background on Fourteenth Amendment:** The Fourteenth Amendment was written, along with the other Reconstruction Amendments, to provide legal and political rights to former slaves and freedmen in the aftermath of the Civil War. The Thirteenth Amendment was ratified in 1865, the Fourteenth was ratified in 1868, and the Fifteenth was ratified in 1870.

- 3. Distribute the Fourteenth Amendment handout to students:** This includes text of Section 1 of the amendment.

- 4. Give students a few moments to complete the handout and then ask students to share the clauses that they identified.** Inform students that while Section 1 of the Fourteenth Amendment includes many important concepts including the privileges or immunities, citizenship, due process, and equal protection clauses. The Supreme Court cases that they will examine next focuses on the equal protection clause and how it has been interpreted by the Court.

## Part 2: Plessy v. Ferguson

### 1. Introduce students to the case:

While the Fourteenth Amendment stated that all individuals must be guaranteed equal protection of the law, racial segregation remained custom in many areas throughout the country. Passage by Congress of the Civil Rights Act of 1875, which barred racial discrimination in public accommodations, provides evidence of the continued presence of segregation.

The law lasted until 1883, when the Supreme Court of the United States declared the statute unconstitutional for regulating what the justices considered private companies, such as streetcars and entertainment facilities. The Supreme Court's 1883 ruling in the Civil Rights cases spurred states to enact segregation laws. Between 1887 and 1892, Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Maryland, North Carolina, Kentucky, Tennessee, and Virginia refused equal access to African Americans on public accommodations and transportation. These laws forced blacks to sit in the back of the bus, on separate cars in trains, and in the balcony at theaters, for example.

### 2. Organize students into small groups:

Distribute the two versions of the *Plessy v. Ferguson* case study. Half of the groups will examine the majority opinion and the other half will concentrate on the dissent. Each group will work together to answer a set of questions about the case.

### 3. Reassemble the whole class:

Ask each group to report on various aspects of the case, the majority, and dissenting opinions. After students have reviewed both the majority and dissenting opinions, they should discuss the following three questions:

1. Both the majority opinion and the dissent stated that the Fourteenth Amendment intended to establish absolute equality for the races before law. How did justices in the majority and the justice in the minority interpret equal protection under the law, in relation to segregation, differently?

*The majority ruled that the law can only provide civil and political equality under the law and it cannot and should not try to change the social structure between the two races. Justice Harlan, in comparison, wrote that any legally sanctioned segregation or discrimination based on race has no place in the United States. Segregation perpetuates the idea of one race being inferior or unequal to the other.*

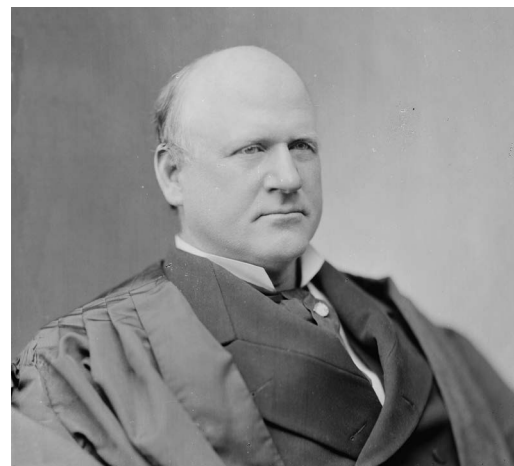
2. What might have changed in the United States if Harlan's reasoning represented the majority opinion of the justices?  
*Segregation sanctioned under law would not have had such a vast reach into so many areas of society.*
3. What does this case show about the Court as a decision-making institution and its impact on American life?

## Part 3: Addressing Inequality

1. Display the following excerpt from the majority in *Obergefell v. Hodges* (2015), written by Justice Kennedy.

The nature of injustice is that we may not always see it in our own times. The generations that wrote and ratified the Bill of Rights and the Fourteenth Amendment did not presume to know the extent of freedom in all of its dimensions, and so they entrusted to further generations a charter protecting the right of all persons to enjoy liberty as we learn its meaning... in interpreting the Equal Protection Clause, the Court has recognized that new insights and societal understandings can reveal unjustified inequality within our most fundamental institutions that once passed unnoticed and unchallenged...

2. Ask students to reflect on this quote and to think back on the origins of the Fourteenth Amendment. What specific injustice was the Fourteenth Amendment written to address?
3. Ask students if they believe there are still unjust inequalities in our country today? What are they? Should they be addressed through legislation, the courts, or in other ways?
4. Distribute stick-it notes to students and ask them to write down an unjustified inequality that is currently not protected by federal law.
5. Project a timeline across a classroom wall that is marked by increments of ten years.
6. Ask students to place their stick-it notes along the timeline based on when they think the issue will be addressed either through the Court or through the legislature. Discuss the completed timeline as a class. What are the similarities or surprises?



*The Great Dissenter: Justice John Marshall Harlan*