

Unit III, District Question #1- June 2014

What are the basic purposes of the Fourteenth Amendment?

- *How are the questions left unresolved at the Philadelphia Convention addressed in the Fourteenth Amendment?*
- *How are the due process and equal protection clauses of the Fourteenth Amendment related to principles of limited government?*

P1. According to Justice William O. Douglas: “no patent medicine was ever put to wider and more varied use than the 14th Amendment.” That statement is true. The 14th amendment’s drafters’ intention for the amendment was to address the problems that slavery created prior to, during, and after the Civil War.

P2. The first words of Section 1 fill a space left figuratively blank by the Framers in Philadelphia: those words define citizenship as belonging to anyone born or naturalized in the United States. By these words, the Amendment overruled the Supreme Court’s decision in 1857 in *Dred Scott v. Sanford*. The definition is followed by the “privileges and immunities” clause, but with the decision in the *Slaughterhouse Cases* in 1873, that clause has never had much significance. The words that have had a much greater effect on our history are found in the “due process” and equal protection clauses.

P3. The basis purpose of the due process clause is to prohibit any state from depriving any *person*, not just citizens, of life liberty, or property without due process of law. Thus, the clause fills another constitutional blank space, because it limits the power of the states just as, in 1791, the 5th Amendment’s due process clause limited the power of the federal government. The due process clause insists that state governments apply the same standards in all of their actions; therefore, one’s natural rights are protected if government acts arbitrarily or unreasonably. In other words, we are due an established process from our government. The very least we are due is notice and a hearing before facing deprivations of our natural rights. For example, in 1932 in *Powell v. Alabama* the Supreme Court held that the right to counsel in death penalty trials was required of the states.

P4. Section 1 also contains the Equal Protection Clause. Once again, the clause fills a blank space. There is no other mention of equality in the Constitution. The purpose of the equal protection clause was the elimination of unreasonable racial discrimination on the part of government. It was intended to put an end to state discriminatory practices that had been in effect since the founding of the republic. Thus, it limits the ways in which the states can treat their residents. In other words, a law must have a good reason for treating one person differently from another. Exceptions include age restrictions for driving and alcohol consumption. This clause is especially important when dealing with laws that are suspect: those that pertain to race, alienage, or gender.

P5. Since the 1960s, however the Equal Protection Clause has had an enormous impact even outside the realm of equality. For example, affirmative action policies have provided job opportunities and educational access not only for minorities, but also for women. More recently, affirmative action has been challenged in the Supreme Court in the case *Fisher v. Texas*. Although the Court sent the case back to the lower court for review, the court still did not strike down use of race in undergraduate admissions decisions. Michigan's constitutional amendment banning affirmative action programs in the state were reviewed by the U.S. Supreme Court in *Schuette v. Coalition to Defend Affirmative Action* (2014), in which the Court held that under the Constitution, state constitutions can ban affirmative action policies through the referendum process.

P6. The Equal Protection Clause also protects access to the ballot and voting power. For example, in 1944 in *Smith v. Allwright*, the equal protection clause was used by the Supreme Court to eliminate primaries that were limited to only white voters. Except where the Constitution provides otherwise, as with respect to apportionment of presidential electors and senators among states, the equal protection clause prohibits most electoral schemes that give one person's vote more weight than another's.

P7. In the final section, Section 5, Congress, not the states, was given the power to enforce the 14th Amendment's provisions. The new basis for justice came as a result of restricting or limiting the power of government. Thus the system of federalism agreed to at the convention was changed. The doctrine of states' rights suffered a mighty blow; however, it wasn't until 1966 that the Supreme Court began giving life to this section. In a voting rights case, *Katzenbach v. Morgan*, the Court held that Section 5 authorizes Congress to do whatever it thinks is necessary and proper to enforce the rights guaranteed by the 14th Amendment, even if doing so supersedes state regulations.

P8. In conclusion, as a result of the limits placed on government action found in the due process and equal protection clauses of the 14th Amendment, we, as a nation, have matured. The 14th Amendment filled some of the blank spaces left in the Constitution. The clauses, along with the amending provision in Article V, have helped the Constitution evolve, adapt and change with our changing times.

P9. Thank you for your time. We are now eager to respond to your questions.

- Be familiar with Justice William O. Douglas and his judicial philosophies, and the way he interpreted the law during his tenure.
- **YOU ABSOLUTELY MUST READ AND MEMORIZE FIVE SECTIONS OF THE FOURTEENTH AMENDMENT AND UNDERSTAND THE CONTENT THOROUGHLY IN ORDER TO INTELLIGENTLY DISCUSS THIS QUESTION AMONG COUNTLESS OTHERS.**
- The Fourteenth Amendment is discussed or in the least brought up in any Unit Three discussion.
- Does the Fourteenth Amendment leave room for different interpretations of fundamental rights for citizens?
- Understand and be able to create a position on the reasons the drafters of the Fourteenth Amendment had for amending the Constitution.

P2 and P3

- How is due process related to the principle of limited government? How is it related to the principle of majority rule?
- Understand the differences between the 5th Amendment's due process clause and the 14th Amendment's due process clause.
- Understand that the 14th amendment is the first part of the Constitution to outline the concept of American citizenship.
 - The modern criteria for citizenship
 - Different types and interpretations of citizenship
 - **COURT CASE: Dred Scott v. Sanford (1857)**
- How did slavery encourage different interpretations of the Constitution and the nature of the union?
- Examine the original Constitution. Do you think it is a pro-slavery document or an anti-slavery document? Cite evidence for your response.
- **COURT CASE: The Slaughterhouse Cases of 1873**
 - What happened in these cases? What is the significance of them with the Fourteenth Amendment?
 - Know the details of the case. And remember this question: Do citizens, under the Privileges and Immunities Clause, be allowed to own slaughterhouses freely?
 - **COURT CASE: Powell v. Alabama (1932)**
 - What are the details of the case?
 - Do you support the death penalty? Be specific with your argument and use details of the case.

P4 and P5

- What are the differences between equality of condition and equal protection of the laws?
- Does inequality of condition undermine the ideal of equality of rights? Explain your response.
- Assess your views on the constitutionality (or unconstitutionality thereof) of affirmative action policies.

- **COURT CASE: Schuette v. Coalition to Defend Affirmative Action (2014)**
- Assess the rulings and the details concerning the case, including the majority, concurring and dissenting opinions. Draw from those opinions to form your own in order to be able to discuss the topic fluently.
- What was the impact that this particular court case had on voting rights in the United States?
- Do you support affirmative action programs? Why or why not?
- Also assess the impact of the Equal Protection Clause to the civil rights movement.
- Is one branch of government more capable of identifying fundamental rights than the other branches? Explain.
- What kinds of controversies might arise in determining whether certain rights are fundamental rights?
- Is equal protection of the law more important than our right to due process of law? Use court case examples and detailed reasoning for your answer.

P6

- List amendments in the Constitution that pertain to suffrage rights and explain with historical context the impact of each amendment.
- Analyse the changes over time concerning the right to vote, specifically in the latter half of the 19th century and the 20th century.
 - **COURT CASE: Smith v. Allwright (1944)**
 - Assess the ruling of the court of the details of the case, including the majority, concurring and dissenting arguments.

P7

- Relook at the 14th Amendment. What sections of the 14th Amendment added to or subtracted from the federal government's power to enforce the law?
- How did the 14th Amendment change the American's principle of federalism? Be specific in your answer.
 - **COURT CASE: Katzenbach v. Morgan (1966)**
 - What was the impact of this case? Please review the ruling and the opinions on both sides.