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## 14<sup>th</sup> Amendment

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How it applies. . .

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## 14<sup>th</sup> Amendment

- “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.”
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“No State shall make or enforce any law which shall abridge the *privileges or immunities* of citizens of the United States”

■ **Privileges and Immunities Clause**

- Citizens born or naturalized of US and the State.
  - States may not make or enforce any law which abridges privileges or immunities of citizens of the US.
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“nor shall any State deprive any person of life, liberty, or property, without *due process* of law”

■ **Due Process Clause**

- Fairness of laws and government actions.
  - The due process clause contains two parts.
    - First, life, liberty, or property must be involved to challenge state action denying it.
    - Second, once the Court makes a determination that a person's life or liberty, for example, is at stake, it must then decide if the state has denied it without due process of law.
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“nor deny to any person within its jurisdiction the *equal protection* of the laws.”

- **Equal Protection Clause**

- A uniquely American concept that arose out of slavery and its aftermath, the 14th Amendment's equal protection clause was to protect the political rights of newly freed slaves in the South.
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The entire Amendment, ratified in 1868. . .

- Re-defined citizenship in U.S.
  - Everyone born in U.S a citizen
  - No state may deprive citizens of privileges of citizenship or due process of law
  - Enfranchised all males citizens, black and white
  - Would decrease representation if state not enfranchise blacks
  - Declared that no person who held office in Confederacy could hold office in United States government
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## Due Process in Constitution

### 5<sup>th</sup> Amendment:

- states “No *person* shall be. . .deprived of life, liberty, or property, without due process of law.” ***Applies to federal government only.***

### 14<sup>th</sup> Amendment:

- states “No *state* shall. . .deprive any person of life, liberty, or property, without due process of law.” ***Applies to state governments.***

## Creates procedural and substantive due process

### Procedural (5<sup>th</sup> Amendment)

- rights of the accused an example
- constitutional limits on power of government
- designed to protect individuals
- meant to protect people against arbitrary or lawless punishments or penalties
- “the idea that government must follow fair and generally accepted procedures in its actions against individuals.
- English in roots--> Colonists had due process in charters (*MA Body of Liberties* 1641); early nation had due process in *Northwest Ordinance of 1787* which regulated new territories; loosely the “law of the land.”

### Substantive (14<sup>th</sup> Amendment)

- Individual rights reinforced and extended by Supreme Courts in the 20<sup>th</sup> Century. Referred to as the ***incorporation doctrine—applied rights to states***. Deals with most fundamental rights of individuals.
  - Religion
  - Life
  - Property
  - Equality
  - Participation in private organizations of choice.
  - Government may not regulate these unless they demonstrate that they cannot achieve a legitimate public purpose (compelling interest) by any other means.

## Incorporation doctrine controversial

### Critics say:



- ❑ distorts original intent of due process, which is procedural.
- ❑ Interferes with legislative prerogative.
- ❑ Suppresses states' rights
- ❑ Tool of activists courts

### Proponents say:



- ❑ Needed to protect individual rights against states
- ❑ Madisonian intent to limit power of any government that infringes upon inherent rights and liberties of people.
- ❑ Applies individual liberties more evenly across the United States. Otherwise liberties would be more dependent upon the state one lives in.

## Some Landmark 14<sup>th</sup> Amendment Cases to consider for this project

### *Brown v. Board of Education*, 1954

- Separate is not equal
- Overturned *Plessy v. Ferguson*, 1896 that said separate was equal.
- Most important case in history in terms of desegregation of society by law (de jure). We still have a long ways to go in terms of de facto desegregation.



Specifically for this case—

*Romer v. Evans*, 1996

The result of a Colorado Initiative—the Court had to answer the question: Does *Amendment 2* of Colorado's State Constitution, forbidding the extension of official protections to those who suffer discrimination due to their sexual orientation, violate the Fourteenth Amendment's Equal Protection Clause?

Yes. In a 6-to-3 decision, the Court held that Amendment 2 of the Colorado State Constitution violated the equal protection clause. This means that equal protection status can be afforded to gay individuals.