

LESSON EIGHT

Core Learning Goal: 1

The student will demonstrate an understanding of the historical development and current status of principles, institutions, and processes of political systems.

Expectation: 2

The student will evaluate how the United States government has maintained a balance between protecting rights and maintaining order.

Indicator 1.2.4

The student will evaluate the principle of due process.

Assessment Limits:

- ? *Fifth Amendment due process clause.*
- ? *Fourteenth Amendment due process clause.*
- ? *Procedural due process and **the incorporation of most of the Bill of Rights under the Fourteenth Amendment** are the primary focus; any other use of due process will be included in the item.*

Overview:

In this lesson students will interpret the meaning of the Fourteenth Amendment. Students will then examine four Supreme Court decisions which incorporated the Fourteenth Amendment's due process clause.

Lesson Objectives:

Students will analyze the Fourteenth Amendment.

Students will assess the impact of Supreme Court decisions that used the due process clause of the Fourteenth Amendment to make the Bill of Rights apply to states.

Materials:

Copy of the United States Constitution

Student Handouts: **Supreme Court Case Overviews I-IV**

Useful website:

www.civiced.org (Center for Civic Education)

Procedures:

1. Review the concept that during Reconstruction, African Americans needed protection from states and individuals and that three amendments (13th, 14th, and 15th) were ratified to provide that protection. Discuss why African-Americans needed to be protected. Have students read the provisions of the Fourteenth Amendment. Define each of the provisions and explain its implications.
2. Introduce the idea of incorporation with an example such as “In government class we will be learning about civil rights. This means I will be incorporating (or including) this topic in our study of government.” Review the concept of due process of law. Explain that even though the Fourteenth Amendment said that states could not abridge privileges of citizens or deny due process, each due process right had to be incorporated separately through court decisions.
3. Assign students to groups. Have each group examine a Supreme Court case to identify which right the decision incorporated as a part of the due process clause of the Fourteenth Amendment. Provide each group with one of the handouts **Supreme Court Case Overviews I-IV**. After students have completed the reading and questions, they should present their information to the class.

Assessment of Indicator:

Have students answer this Brief Constructed Response item:

- ? Identify some rights incorporated through the due process clause of the Fourteenth Amendment.
- ? Which of these incorporated rights has had the greatest impact on citizens? Explain.
- ? Include details and examples to support your answer.

Use the Social Studies Rubric to score student responses.

Supreme Court Case Overview I

Gitlow v. New York (1925)

The Issue:

Gitlow was arrested for distributing and writing a pamphlet encouraging people to rise up and overthrow their government and begin a communist revolution. He claimed his rights to free speech and press were being violated because the Fourteenth Amendment said states could not deny a person liberty without due process of law. He argued this amendment extended the rights of free speech and press to the states.

The Court's decision:

The Supreme Court upheld Gitlow's conviction, but ruled in this manner because they said the language of Gitlow's pamphlet was inciting revolution. The court said that the due process clause of the Fourteenth Amendment did apply the First Amendment to the states.

Questions to consider:

1. What was the issue in this case?
2. What did the court decide?
3. Does the court's ruling incorporate a part of the First Amendment into the Fourteenth Amendment and apply it to the states?
4. What is the significance (impact) of the ruling?

Adapted from:

Patrick, John J. The Young Oxford Companion to the Supreme Court of the United States. Oxford University Press. New York. 1998.

Supreme Court Case Overview II

Mapp v. Ohio

The Issue:

The police conducted a search of Ms. Mapp's home without a warrant. During the search they seized illegal objects. She was convicted of possessing illegal objects and sentenced to prison. An appeal was filed on the basis that the Fourth Amendment protected against unreasonable search and seizure and through the Fourteenth Amendment this applied to the states.

The Court's decision:

The court ruled the evidence if illegally obtained could not be used in state trials. Through this ruling, the court had again used the Fourteenth Amendment to apply the Bill of Rights to the states.

Questions to consider:

1. What was the issue in this case?
2. What did the court decide?
3. Does the court's ruling incorporate a part of the Fourth Amendment into the Fourteenth Amendment and apply it to the states?
4. What is the significance (impact) of the ruling?

Adapted from:

Patrick, John J. The Young Oxford Companion to the Supreme Court of the United States. Oxford University Press. New York. 1998.

Supreme Court Case Overview III

Gideon v. Wainwright

The Issue:

After being arrested for burglary, Clarence Gideon asked for a court appointed attorney. He could not afford his own. Gideon's request was denied. He defended himself and was convicted. Gideon appealed his conviction on the grounds he was denied an attorney. The court was faced with deciding if the right to counsel (Sixth Amendment) applies to all felony cases. It had previously only applied in death penalty cases and when there were special circumstances. The court also had to decide if the Fourteenth Amendment meant the right to counsel applied to all state felony cases.

The Court's decision:

The court decided that right to counsel was a fundamental right and therefore must apply to the states under the Fourteenth Amendment. Gideon was given a new trial and found not guilty.

Questions to consider:

1. What was the issue in this case?
2. What did the court decide?
3. Does the court's ruling incorporate a part of the Sixth Amendment into the Fourteenth Amendment and apply it to the states?
4. What is the significance (impact) of the ruling?

Adapted from:

Patrick, John J. The Young Oxford Companion to the Supreme Court of the United States. Oxford University Press. New York. 1998.

Supreme Court Case Overview IV

Griswold v. Connecticut

The Issue:

Estelle Griswold was accused of breaking a Connecticut law making it illegal to provide married couples information about how to use birth control devices. Griswold argued the Connecticut law violated the right to privacy.

The Court's decision:

The Supreme Court ruled the Connecticut law was unconstitutional. The justices interpreted the right to privacy differently. However, the justices agreed that the Bill of Rights protected the right to privacy. In addition, the Fourteenth Amendment extended the right to privacy to protection from the state.

Questions to consider:

1. What was the issue in this case?
2. What did the court decide?
3. Does the court's ruling incorporate a part of the First Amendment into the Fourteenth Amendment and apply it to the states?
4. What is the significance (impact) of the ruling?

Adapted from:

Patrick, John J. The Young Oxford Companion to the Supreme Court of the United States. Oxford University Press. New York. 1998.