

U.S. Government Federalism and the 14th Amendment

2015 is the 147th anniversary of the 14th Amendment. Ratified in 1868, it guarantees equal treatment under the law to all persons in the United States. Initially the 14th amendment was interpreted to apply only to Federal Law, but starting in the 1920s, the courts began to apply the 14th amendment to state laws as well. This was largely due to a new understanding of the Supremacy Clause, which is the provision in Article Six, Clause 2 of the United States Constitution that establishes the United States Constitution, federal statutes, and treaties as "the supreme law of the land."

.Here is a look at some famous Court decisions that show the progression of the 14th Amendment from Reconstruction to the era of affirmative action.

Brown v. Board of Education (17 May 1954) —It is impossible to mention victories of the Civil Rights Movement without pointing to *Brown v. Board of Education*. Following the Court's ruling in 1896 of *Plessy v. Ferguson*, segregation of public schools based solely on race was allowed by states if the facilities were "equal." *Brown* overturned that decision. Regardless of the "equality" of facilities, the Court ruled that separate is inherently unequal. Thus public school segregation based on race was found in violation of the 14th Amendment's Equal Protection

Gideon v. Wainwright (18 Mar 1963) — Prior to 1962, indigent Americans were not always guaranteed access to legal counsel despite the Sixth Amendment. Gideon, a Florida resident, was charged in Florida state court for breaking and entering into a poolroom with the intent to commit a crime. Due to his poverty, Gideon asked the Florida court to appoint an attorney for him. The court declined to do this and pointed to state law which said that the only time indigent defendants could be appointed an attorney was when charged with a capital offense. Left with no other choice, Gideon represented himself in trial and lost. He filed a petition of habeas corpus to the Florida Supreme Court, arguing that he had a constitutional right to be represented with an attorney, but the Florida Supreme Court did not grant him any relief. A unanimous United States Supreme Court said that state courts are required under the 14th Amendment to provide counsel in criminal cases to represent defendants who are unable to afford to pay their own attorneys, guaranteeing the Sixth Amendment's similar federal guarantees.

Griswold v. Connecticut (07 Jun 1965) —You know when you're walking down the street at night with lights in front of you and behind you, and you get that really dark shadow? In the scientific community, that shadow is known as an "umbra." Flanking that dark shadow on the ground are two or more, half-shadows, not quite as dark, but darker than the well-lit sidewalk around you. Those shadows are known as "penumbras" and were used to explain the most controversial issue of arguably the most controversial Supreme Court case in the 20th century. Estelle Griswold was the director of a Planned Parenthood clinic in Connecticut when she was arrested for violating a state statute that prohibited counseling and prescription of birth control to married couples. The question before the Supreme Court was whether the Constitution protected the right of married couples to privately engage in counseling regarding contraceptive use and procurement. Justice Douglas articulated that although not explicit, the penumbras of the Bill of Rights contained a fundamental "right to privacy" that was protected by the 14th Amendment's

Due Process Clause. *Griswold's* "right to privacy" has been applied to many other controversial decisions such as *Eisenstadt* and *Roe v. Wade*. It remains at the core of substantive due process debate today.

***Loving v. Virginia* (12 Jun 1967)** —By 1967, 16 states had still not repealed their anti-misogyny laws that forbid interracial marriages. Mildred and Richard Loving were residents of one such state, Virginia, who had fallen in love and wanted to get married. Under Virginia's laws, however, Richard, a white man, could not marry Mildred, a woman of African-American and Native American descent. The two travelled to Washington D.C. where they could be married, but they were arrested state law which prohibited inter-racial marriage. Because their offense was a criminal conviction, after being found guilty, they were given a prison sentence of one year. The trial judge suspended the sentence for 25 years on the condition that the couple leave Virginia. On Appeal, the Supreme Court of Appeals of Virginia ruled that the state had an interest in preserving the "racial integrity" of its constituents and that because the punishment applied equally to both races, the statute did not violate the Equal Protection Clause of the 14th Amendment. The United States Supreme Court in a unanimous decision reversed the Virginia Court's ruling and held that the Equal Protection Clause required strict scrutiny to apply to all race based classifications. Furthermore, the Court concluded that the law was rooted in invidious racial discrimination, making it impossible to satisfy a compelling government interest. The *Loving* decision still stands as a milestone in the Civil Rights Movement.