

The 14th Amendment Clarified

[Notice: *This item is intended to read after you read both the [Citizenship](#) and [Constitution](#) treatises on this site.*]

In the time since Original Intent's website went on-line, a small minority of people have attempted to argue against the proper meaning and application of the 14th Amendment to the Constitution of the United States of America, as stated on this site. If you have not yet read the Original Intent treatises on these subjects, you should stop now and read the treatises before proceeding further.

Some of the arguments raised against the facts and conclusions provided in the Citizenship treatise are merely mistaken, others are inane; all are misleading. The casual student may at times be swayed away from the truth by the specious arguments of people who may be seen as some form of "authority". These "authorities" may be people such as judges, attorneys, or law school graduates. Make no mistake – such people are not above misrepresenting the facts and conclusions. ***You*** should be the final arbiter as to the true meaning and application of the 14th Amendment. It is the purpose of this piece to clarify the issues so that the casual student will not be led astray by errant facts, specious arguments, or the flowery prose of legal refinement.

History

Most of the significant history of the 14th Amendment appears in the text of Original Intent's citizenship treatise. However, one historical fact is not included because it was presumed during the construction of the treatise that every American knows that the 14th Amendment was created to nullify the holding of the United States Supreme Court in [Dred Scott v. Sandford](#), 19 How. 404 (1856).

Oddly, while the nullification of the Dred Scott decision is universally acknowledged as the reason the 14th Amendment was thought necessary, some ill-informed and/or illogical expositors attempt to use the Dred case as their rationale to turn the true meaning of the Amendment on its head. Fortunately, the words of Chief Justice Taney (author of the Dred decision) are unmistakably clear.

As is so often the case when one is dissembling, those who pervert the meaning and application of the Amendment refuse to even discuss quite a number of relevant facts while twisting and misrepresenting the few quotes upon which they rest their errant and flawed position. Amazingly, some even quote from various court decisions with the intention of destroying their opponent's position, while failing to realize or understand that the quotes actually eviscerate their own position. But such is the consequence for those who oppose the truth.

Let's be clear about one thing – there are many people – with differing motives – who will tell you that the 14th Amendment applies to everyone. Even some decisions of the US Supreme Court, written long after the Court's early 14th Amendment decisions were

rendered, attempt to paint a picture that the Supreme Court justices who lived during the Amendment's ratification were somehow confused about its meaning, but that they [the later justices] know better the true meaning of the Amendment. Such representations are legal poppycock intended to support a court's political agenda. All judges know that one of the primary "rules of construction" (both constitutional and statutory) is that early decisions, made closer to the time of the event, are to be given far greater weight than the views of jurists who may have ruled on the subject many decades after the fact.

We will not quote from the Dred Scott decision in this piece, instead preferring that you read the decision for yourself and then apply the facts, logic, and reason contained below in the sections labeled, "Truth".

The Arguments

Errant Position #1: The term "citizen of the United States" as used in the 14th Amendment, means the same thing in the opening verse of the U.S. Constitution.

Truth: The phrase "Citizen of the United States", as used in the opening of the U.S. Constitution, does not have the same meaning as the term "citizen of the United States", as used in the 14th Amendment.

The phrase "Citizen of the United States", as used in the opening of the U.S. Constitution, is shorthand for "All the Citizens of the 13 independent nations [called "states"] that are a party to this Constitution". This meaning is made unmistakably clear when one reads the words of Chief Justice Taney in the Dred decision. To our knowledge, no rational person has ever contended otherwise.

Chief Justice Taney makes it crystal clear that the phrase "people of the United States", and its pre-Civil War synonym, "Citizen of the United States" (as used in the opening of the U.S. Constitution), have a meaning that is forever fixed. It is forever fixed (according to Taney) because those phrases mean **only** what the men who wrote them, and voted on them, meant them to mean. That is the preeminent rule of constitutional interpretation.

In other words, neither you, nor I, nor the Chief Justice of the US Supreme Court can indulge in revisionist history in order to pretend that the words now mean something new and different than they did the day the author wrote them. Whether we like it or not, those words mean (forever) **only the white citizens of the 13 independent states (and all states admitted to the Union thereafter)**.

That is not a racist statement; that is a historical legal reality. Sometimes a historical legal reality may bruise our modern conscience and sensibilities, but the fact that we may feel bruised and angry does not change what the men who wrote the document meant when they wrote the words.

Because the phrase "Citizen of the United States", as used in the opening of the US Constitution, has a fixed meaning for all time, it obviously can never be used to mean people of African decent brought here for the purpose of slavery, or their posterity; so says the US Supreme Court. [see Dred].

A constitutional amendment may change a mechanism or methodology of a constitution, but it can never change the meaning the framers had in mind when they wrote the document. Those who wish to dishonestly apply the 14th Amendment to people concerning whom it was never intended, will try to persuade you that even though the phrase “Citizen of the United States”, as used in the opening of the US Constitution, has a fixed and permanent meaning for all time, the 14th Amendment somehow changed what the Founding Fathers meant when they wrote that phrase. That proposition is obviously absurd and can only be promoted by people who are either ill-informed or dishonest.

Since the term “citizen of the United States”, as used in the 14th Amendment, quite clearly does embrace people of African decent, brought here for the purpose of slavery, and their posterity, this “citizen of the United States” must be a new and different term, separate and distinct from that used in the opening stanza of the US Constitution. And it is!

- Citizen of the United States (as used in opening of the US Constitution):

Any free white male who was a citizen of any of the original 13 states, and any free white male who is a citizen of any state thereafter admitted to the Union.

- citizen of the United States (as used in the Amendment):

Any person born in any state of the Union who was held in the bondage of slavery or involuntary servitude, and under the provisions of the Constitution of such state (at that time), not a citizen thereof.

In short, the 14th Amendment created another [new] class of citizen. This new type of citizen was **not** created by the well-settled and long existing rules and tradition of international law as relating to citizenship, such as is the case for men who gained their state citizenship by birth upon the land. This new class of citizen gained his citizenship by the citizens of the “original class of citizenship” agreeing to establish a new class of citizenship and gifting that new class of citizenship (by the Amendment) to a certain designated “class of persons” who, at that time, were without any form of citizenship.

Errant Position #2: Sections 1983, 1985, and 1986 of Title 42 of the United States Code prove that the 14th Amendment applies to all Americans.

Truth: People who make this argument are not only wrong, but none too bright. Their pet theory can only pretend validity if §1983, 1985, and 1986 exist in a vacuum, which of course, they don't.

Sections 1983, 1985, and 1986 are within Chapter 21, which is succinctly entitled “Civil Rights”. As the California Supreme plainly stated:

“A ‘civil right’ is considered a right given and protected by law, and a person’s enjoyment thereof is regulated entirely by the law that creates it.”
82 CA 369, 373, 255, P 760.

As all Americans should know, our “inalienable rights” are not “given by law”, but according to the organic law of the United States, i.e. the Declaration of Independence, are given by God and are not subject to interference by the government.

Since Americans claiming the original class of citizenship have “inalienable rights”, what rights have 14th Amendment citizens? The answer is as clear as it is unfortunate: mere civil rights.

Proponents of this erroneous argument begin at §1983. They conveniently forget that chapter 21 begins with §1981. Isn't it odd that the proponents of this erroneous argument happen to skip the first three sections [1981, 1981a & 1982] of the Civil Rights chapter? Not really, because if they directed your attention to the beginning sections of the chapter, their argument would immediately collapse.

42 USC **1981(a)**: All **persons** within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property **as is enjoyed by white citizens....**

Clearly “persons” are being distinguished from “white citizens”. That is because the term “person” as used in §1981 is the same “person” as in the 14th Amendment, who is the same “person” as in the Civil Rights Act of 1866, the Enforcement Act, and the Freedman's Bureau Act, all of which deal exclusively with one “class of person”, which is – *Any person born in any state of the Union who was held in the bondage of slavery or involuntary servitude, and under the provisions of the Constitution of such state is not a citizen thereof.*

It is also crystal clear that §1981 gives “persons” that which “white citizens” already had/have. Certainly Congress didn't write §1981 to give “white citizens” what they already had before §1981 was ever conceived!

So how does §1981 affect §1983, 1985 & 1986? Let's start by looking at §1983.

42 USC §1983 – Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any **citizen of the United States** or other person **within the jurisdiction thereof** to the deprivation of any rights, privileges, or immunities secured by the Constitution...

All federal civil rights laws since 1867 have been enacted solely on the constitutional authority of the 14th Amendment. [The Civil Rights Act of 1866 was applicable only to the Southern states that were being held by the Union Army as a defeated foe and therefore no constitutional question existed as to its applicability.]

We have already explained who the 14th Amendment citizen really is, so we will not cover that again. However, who is it that is “within the jurisdiction thereof” as stated in §1983?

The phrase “within the jurisdiction thereof” is taken from the language of section 1 of the 14th Amendment, which states:

All persons born or naturalized in the United States, and ***subject to the jurisdiction thereof***, are citizens of the United States...

Put simply, “jurisdiction” is merely the lawful authority to act. Jurisdiction may arise from geography or subject matter. [See [Federal Jurisdiction](#) within this site.] In the case of the 14th Amendment, the jurisdiction is based on subject matter, not geography.

The issue being addressed in Section 1 of the 14th Amendment is plainly “citizenship”. So where does citizenship come from? [See [Citizenship](#) within this site.] Prior to the ratification of the 14th Amendment, citizenship could ***only*** be obtained at the state level. Any rights, privileges and immunities [main body of the Constitution] obtained under the federal Constitution were based exclusively on one’s status as a citizen of a state of the Union. It is still that way today for Americans who are within that original class of citizenship.

With the ratification of the 14th Amendment, the citizens of the states of the Union agreed to give Congress a hitherto unpossessed power; the power to grant a form of federal citizenship to those “persons” who had been born in any state of the Union, who’d been held in slavery, and under the Constitution of that state could not become a citizen thereof. The states also agreed to consider this new form of citizen as a citizen of a state if the person were to reside within a state.

In other words, §1983 offers its protection to the very same “class of person” as does §1981. In fact, §1981 provides the underlying legal basis, i.e. “[to] enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens”, upon which all other sections of chapter 21 are built. Or phrased another way, every section that comes after §1981 is merely a mechanism to enforce one or more elements of §1981.

Errant Position #3: The 14th Amendment changed the constitutional landscape so that the US Supreme Court’s decision in *Dred Scott v. Sandford* was no longer operative in America.

Truth: Yes, but not in the way the purveyors of this argument would have you believe – and the distinction is significant.

The US Supreme Court ruled that the federal courts had no jurisdiction to even hear the *Dred Scott* matter because there was no issue cognizable under the federal Constitution. The Court ruled that there was no issue cognizable under the federal Constitution because *Dred Scott* and his family were not “Citizens of the United States”, as such phrase was used in the Constitution, and as it was meant by the men who constructed the Constitution.

As previously discussed, no amendment can change what the Founding Fathers meant when they wrote “Citizen of the United States” in the opening of the US Constitution. Therefore, the Amendment could not overturn the underlying Constitutional premise the Court used to reach its determination, which was that black folks (and their posterity) who were brought here for the purpose of slavery could ***never*** be citizens in the sense in which that term is used in the main body of the US Constitution. In other words, the Amendment could not revise history.

What the Amendment did was to “add to” the Constitution by establishing a second “class of citizen” over whom the federal courts would have jurisdiction. However, underlying this seemingly favorable course of action was a pervasive and insidious problem in the making.

Prior to the ratification of the Amendment, for people in the original class of citizenship, their state courts dealt with virtually every matter that was appropriate to be brought before a court, and the federal courts could only hear matters that dealt exclusively with issues in the U.S. Constitution, or federal action in connection with the first 13 amendments. In other words, the line between state and federal authority in the lives of citizens was crystal clear.

Although the 14th Amendment was intended to serve a laudable purpose, the unintended consequence was to radically shift the balance of federalism and blur the lines almost beyond distinction. How did that happen?

For people in the original class of citizenship, the courts of the United States had almost no jurisdiction in their affairs. Opportunity for federal intervention in the lives of the average American was virtually nil. [Ah, the good old days!] By contrast, when the 14th Amendment was ratified, the United States government became the preeminent protector of every “right” of the persons granted citizenship by the Amendment. This meant that the federal government could tell the states how they could and could not deal with “its” citizens. In other words, a state legislature could vote to control this or that within its borders relating to the proper view of life in that state, but the federal government had the right to say, “*That’s fine for **your** citizens [original class], but we won’t permit you to apply that law to **our** citizens [14th Amendment] who may be living in your state*”. This meant that for the first time in history, the United States government could haul a state official into federal court for enforcing a law duly passed by the elected officials of the state for which he worked! While this was a positive tool for protecting the recently freed black slaves from egregious state legislation such as the Black Codes, it flung the door open to federal intervention in the states in a way the Founding Fathers had never intended, nor would have permitted.

Errant Position #4: The US Supreme Court has said that the 14th Amendment was intended to protect all Americans.

Truth: This is a statement that requires a little deeper digging to understand.

One of the cases frequently cited in support of that contention is *Bartemeyer v. Iowa* (1873). The *Bartemeyer* quote offered for that argument is:

"By that portion of the fourteenth amendment by which no State may make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, or take life, liberty, or property, without due process of law, it has now become the fundamental law of this country that life, liberty, and property (which include 'the pursuit of happiness') are sacred rights, which the Constitution of the United States guarantees to its humblest citizen against oppressive legislation, whether national or local, so that he cannot be deprived of them without due process of law."

This statement hardly supports the point of view it is offered to support. Let's look at the court's statement in two parts by breaking the sentence in half.

The first part of the statement is, "*By that portion of the fourteenth amendment by which no State may make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, or take life, liberty, or property, without due process of law...*" We can't imagine why anyone would disagree with that statement – it certainly states exactly what the 14th Amendment was intended to provide for the "persons" to whom it applied.

The second half of the sentence reads, "*...it has now become the fundamental law of this country that life, liberty, and property (which include 'the pursuit of happiness') are sacred rights, which the Constitution of the United States guarantees to **its humblest citizen** against oppressive legislation, whether national or local, so that he cannot be deprived of them without due process of law.*"

We've emphasized the critical words within that sentence. While the Court (and others) might like the general population to presume that the 14th Amendment embraced everyone, the need for legal accuracy compelled the Court to delineate to which citizen it was referring, by referring to 14th Amendment citizens as the nation's "humblest citizens". In *Dred Scott*, the Court referred to recently freed black slaves as:

"the unfortunate race"; "the subject race" [as in "subjugated"]; "inferior class of beings"; "the unhappy race"; "the unhappy black race".

The Court classified the recently freed black slaves by saying, "The Negro race is a separate class of persons" and "The deepest degradation was fixed upon the whole race".

In distinction to these less-than-flattering comments, the Court referred to the white race as "the dominant race", but more importantly held that only white citizens of the states of the Union could be considered "Citizens of the United States" (as such phrase is used in the opening paragraph of the US Constitution).

It should also be noted that the *Bartemeyer* decision was rendered in 1873, when language was used differently than it is today. When the Court used the phrase, "its humblest citizen" it is referring to "the unfortunate race", "the subject race", "inferior class of beings", "the unhappy black race". Because the 14th Amendment had provided the recently freed black slaves with a form of citizenship, the Court could no longer refer to that "separate class of persons" as it had in *Dred*, but needed to find a gentle manner of referring to the new class of citizens. Keeping somewhat in line with the outlook of the Court in *Dred*, which was the dominant perspective of the day, the Court referred to the new black citizens as America's "humblest citizens".

While it is hard to believe today, the most vocal abolitionists of the day did **not** seek "equality" for freed blacks. In fact, they had no intentions of making black citizens equal to white citizens. The very idea was considered ridiculous in that day. [It would be ninety years until the now defunct doctrine of "separate but equal" would be uttered.] The new black citizens were expected to be, and remain, "humble" in the face of white citizens. Even

though black men and women (and certain other minorities) were no longer slaves, the vast majority of white Americans at that time expected the new black citizens to humble themselves at all time before whites. No one in that day seriously considered that ending slavery had anything to do with equality of the races.

Today, we tend to think of “humble” as being akin to “meek”. That is but one definition of “humble”. When the *Bartemeyer* Court used that word, it was applying the meaning more in line with the Court’s dicta in *Dred* concerning the condition of the black race.

According to the 1994 Webster’s II dictionary, humble also means: ***Exhibiting deferential or submissive respect***. The word “humbled” is defined as: ***To make lower in condition or status***. Given the history of blacks in America, considering the words of the Court in *Dred*, and considering the historical reality that even the most ardent abolitionists of the day did not see blacks as being equal to whites, which definition of “humble” do you believe the Court was applying?

In fact, at that time it was the well-recognized purpose of the 14th Amendment to vest the black citizens with only a short list of rudimentary rights. Those rights were:

- 1) To make and enforce contracts
- 2) To sue, be parties, give evidence
- 3) To the full and equal benefit of all laws and proceedings for the security of persons and property.

The harsh historical reality is that if the 14th Amendment had been touted in that day as a means of promoting or establishing equality between the races, it would never have been ratified.

The rights granted by the 14th Amendment are still codified to this very day in Title 42 of the United States Code, at §1981:

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property ***as is enjoyed by white citizens***, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

You will see from the emphasized phrase that §1981 (which codifies the intention and limits of the 14th Amendment) makes it clear that “persons” [“a separate class of person” – *Dred*] are to be treated the same as “white citizens”. The meaning is so clear that it is amazing anyone would contend otherwise.

Errant Position #5: The Due Process of Law commandment in the Fourteenth Amendment is a codification of the “One Law” rule prescribed in Deuteronomy

Truth: There is no historical support for this argument. There is not one single utterance along these lines from the men who drafted or sponsored the 14th Amendment, or from any political commentary during the ratification period.

Errant Position #6: If one does not believe that the 14th Amendment applies to everyone, then such a person is saying that white citizens are left in the same position as was Dred Scott before the adoption of the 14th Amendment.

Truth: This ridiculous argument is a pathetic last-ditch effort by those who are desperate to somehow manipulate people into accepting a false proposition. The position is so clearly errant that it deserves no comment. However, for the sake of thoroughness...

In *Dred*, the Court held that Scott was not a Citizen of the United States (as such phrase is used in the opening of the US Constitution) because he was a member of the black race, whose ancestors had been brought to America for the purpose of being slaves, and no such person, or such person's offspring, could be considered Citizens of the United States. The 14th Amendment was drafted to create a form of citizenship for such persons, and thus [allegedly] rectify their plight. Nothing about *Dred*, or the 14th Amendment, has anything to do with white citizens of a state of the Union.

Errant Position #7: The concurring opinion of Justice Field in *Bartemeyer* should be considered as spelling out the true meaning of the 14th Amendment.

Truth: Justice Field was an activist justice. In other words, he cared little for what the law really said or really meant, but gave great weight to how the law might be bent to serve any social agenda he thought laudable.

It should be noted that Justice Field's opinion is just that – his opinion. It is not the decision of the Court in *Bartemeyer*.

Further, Field is rebelling against the Court's prior decision in The Slaughter-House Cases. In the Slaughter-House Cases, the Court held that the 14th Amendment applied only to those persons who had previously been held in slavery, and did not apply to white state Citizens. Field did not like the Court's decision in Slaughter-House, so in his concurring opinion in *Bartemeyer* he states his alternative view.

Field even goes so far in his concurring opinion as to reveal that his view [that the Amendment should be perverted to cover everyone] does not comport itself with the true meaning of the Amendment. After stating his opinion that everyone should be covered by the Amendment, Field writes, "[The Amendment] *clothes its possessor, or would do so if not shorn of its efficiency by construction, with the right...*"

Construction – *The process, or the art, of determining the sense, real meaning, or proper explanations of obscure or ambiguous terms or provisions...by reasoning in the light derived from extraneous connected circumstances or laws or writings bearing upon the same or connected matter, or by seeking and applying the probable aim and purpose of the provision.* Black's Law Dictionary, 3rd Ed.

Clearly, Field is saying is that his opinion (which he touts as “efficiency”) would clothe everyone with the protections of the 14th Amendment **unless** one actually practices the art of construction. If one practices the art of construction (i.e. seeking out the true intended meaning), then Field’s view of the Amendment is shorn. In short, Field admits that his view is only credible unless or until you look for the true application and meaning of the Amendment, at which time you find that his view isn’t factual, but fanciful.

It is further evidenced that the concurring opinion of Field is merely wishful thinking because the actual holding of the Court in *Bartemeyer* is that the 14th Amendment had no bearing on the case. Despite the fact that the Amendment was irrelevant to the case, three justices, Bradley, Swayne, and Field, wrote concurring opinions that expressed their views on the 14th Amendment. Not surprisingly, all three justices disagreed with the Court’s decision in Slaughter-House.

Considering the fact that the Court’s actual opinion in *Bartemeyer* held that the Amendment had no bearing on the case, it becomes plainly obvious that these justices were pursuing a political and/or social agenda that had nothing to do with the case before them. Accordingly, legal researchers should be aware that these justices were voicing personal political views outside the scope of the case. Their remarks are clearly dicta. Interestingly, the people who tell you that your opinion should be based on this kind of social agenda-dicta will not tell you that dicta has no precedent effect upon future cases.

Dicta – Opinions of judges which do not embody the resolution or determination of the case before the court. Expressions in court’s opinion which go beyond the facts before the court and therefore are individual views of author of opinion and not binding in subsequent cases as legal precedent. Black’s Law Dictionary, 6th Ed.

Why would someone direct you to irrelevant dicta from a case where the Amendment was not an issue, when the Court had already decided the proper application of the Amendment in Slaughter-House? The word “deceit” leaps to mind.

Errant Position #8: The 14th Amendment prevents the states of the Union from infringing upon various rights held by all Americans.

Truth: This argument is flawed on a number of self-evident levels. As has been earlier noted, the 14th Amendment did not vest white citizens with any rights, and only vested the recently freed slaves (i.e. “citizens of the United States”) with very limited rights. The only rights that can be protected by the federal government under the authority of the Amendment are those rights given by the Amendment.

As has been previously covered in this treatise, true American citizens have “inalienable rights”, which come from God, not government. Is it then supposed that somehow, 78 years after our nation was founded, the 14th Amendment suddenly gave us our rights?

Some would say that the 14th Amendment simply prevented the states from infringing on the **privileges and immunities clause** [Article IV, Section 2], and the **due process** provision of the 5th Amendment. This silly theory is also easily debunked.

The federal Constitution is a contract between all the states of Union. In Article IV, Section 2 of the main body of the Constitution, we find the privileges and immunities clause:

The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

This was one of the pivotal sections of the Constitution under review in *Dred*. There was/is no question that no state was at liberty to infringe on this provision, and if a state did so, there was no question that such a violation would raise a “federal Constitutional question” which would be heard by a federal court. In other words, the revisionist history claim that the 14th Amendment was needed to protect white state citizens from state abridgment of the privileges and immunities clause, is baseless and without a shred of merit.

The issue was not that an amendment was needed to protect white state citizens of the day from state abridgment of the privileges and immunities clause; the issue was that the recently freed black slaves needed to be granted some form of citizenship so that they too could enjoy some level of protection from state action.

The **due process** argument is just as vapid and meritless. Every state of the Union had/has a due process clause in their constitutions. Under the federal privileges and immunities clause [main body, not 14th Amendment], the right of due process would be secured to every American citizen traveling throughout the country. That was indeed the purpose of the privileges and immunities clause.

Once again, the problem was not that white citizens were without “due process” as they traveled from state to state, or that the federal government was not Constitutionally authorized to rectify state abridgments of due process rights. It was that the recently freed black slaves were not considered citizens – and therefore the protections of the privileges and immunities clause and due process did not apply to them.

As you can clearly see, white citizens did not need the 14th Amendment. Their protections were quite secure. The 14th Amendment was a grant of a special form of citizenship to the recently freed slaves (and their posterity), and also contained the framework of rights and protections that would be a part of this new type of citizenship.