

What does “Equal Protection” mean?

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NJ Student Learning Standards for Social Studies (2020)

- 6.1.8.CivicsPI.3.b: Evaluate the effectiveness of the fundamental principles of the Constitution (i.e., consent of the governed, rule of law, federalism, limited government, separation of powers, checks and balances, and individual rights) in establishing a federal government that allows for growth and change over time.
- 6.1.8.CivicsPI.3.c: Distinguish the powers and responsibilities of citizens, political parties, interest groups, and the media in a variety of governmental and nongovernmental contexts.
- 6.1.8.HistoryCC.5.f: Analyze the economic impact of Reconstruction on the South from different perspectives.
- 6.1.8.HistoryUP.5.a: Analyze the effectiveness of the 13th, 14th, and 15th Amendments to the United States Constitution from multiple perspectives.
- 6.3.8.CivicsDP.1: Identify an issue of inequality, develop multiple solutions, and communicate the best one to an appropriate government body.

Equal Protection Clause

14th Amendment:

“nor deny to any person within its jurisdiction the equal protection of the laws.”

Ratified 1868

Impact of the 14th Amendment

- The 14th Amendment attempted to end discrimination by requiring equal treatment of all persons.
- It marked a significant shift in the way the Constitution was applied: Prior to its enactment, the individual protections offered by the Bill of Rights were enforceable only against the federal government. The 14th Amendment expanded these rights to state action also.

...But initially it was not enforced

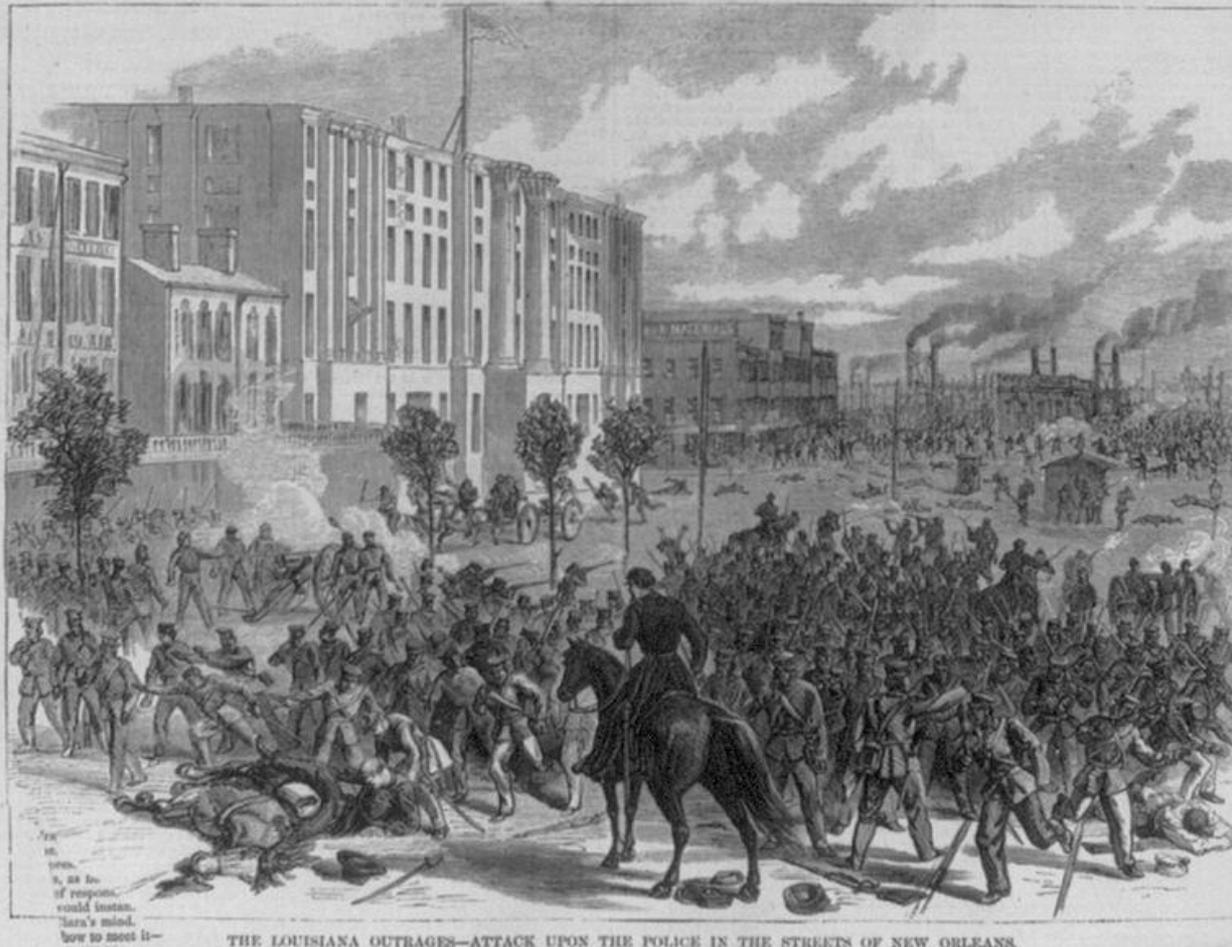
- Many states ignored the 14th Amendment and denied African Americans their legal rights.
- State legislatures began to pass laws limiting the freedom of the former slaves—“Black Codes”.
- Members of the Ku Klux Klan and other anti-abolitionist groups terrorized black citizens, often with the support of the police.

Black codes



- detailed when, where and how formerly enslaved people could work
 - kept Black citizens in indentured servitude

Violence



On July 30, 1866, a peaceful demonstration of mostly black Freedmen was set upon by a mob of white rioters, many of whom had been soldiers of the recently defeated Confederate States of America, leading to a full-scale massacre in New Orleans.

Enforcement Acts

- In response to the violence by the Ku Klux Klan and other anti-abolition groups, Congress passed a series of Enforcement Acts in 1870 and 1871 (also known as the Force Acts) to empower the president to use military force to protect African Americans.
- Nine South Carolina counties were placed under martial law in October 1871. There were more than 5,000 indictments and 1,250 convictions throughout the South.
- However, the Supreme Court struck down various sections of the acts as unconstitutional.

Civil Rights Act of 1875

- In 1875, Congress enacted a Civil Rights Act that would have clarified the scope of the 14th Amendment's equal protection clause
- It required equal protection by forbidding discrimination in hotels, trains, and other public spaces

The Civil Rights Act of 1875 was struck down by the U.S. Supreme Court in 1883

The US Supreme Court ruled that the Civil Rights act of 1875 unconstitutional, not authorized by the 13th or 14th Amendments of the Constitution. The ruling read in part:

"The XIVth Amendment is prohibitory upon the States only, and the legislation authorized to be adopted by Congress for enforcing it is not direct legislation on the matters respecting which the States are prohibited from making or enforcing certain laws, or doing certain acts, but it is corrective legislation, such as may be necessary or proper for counteracting and redressing the effect of such laws or acts."

Dissent by Justice Harlan

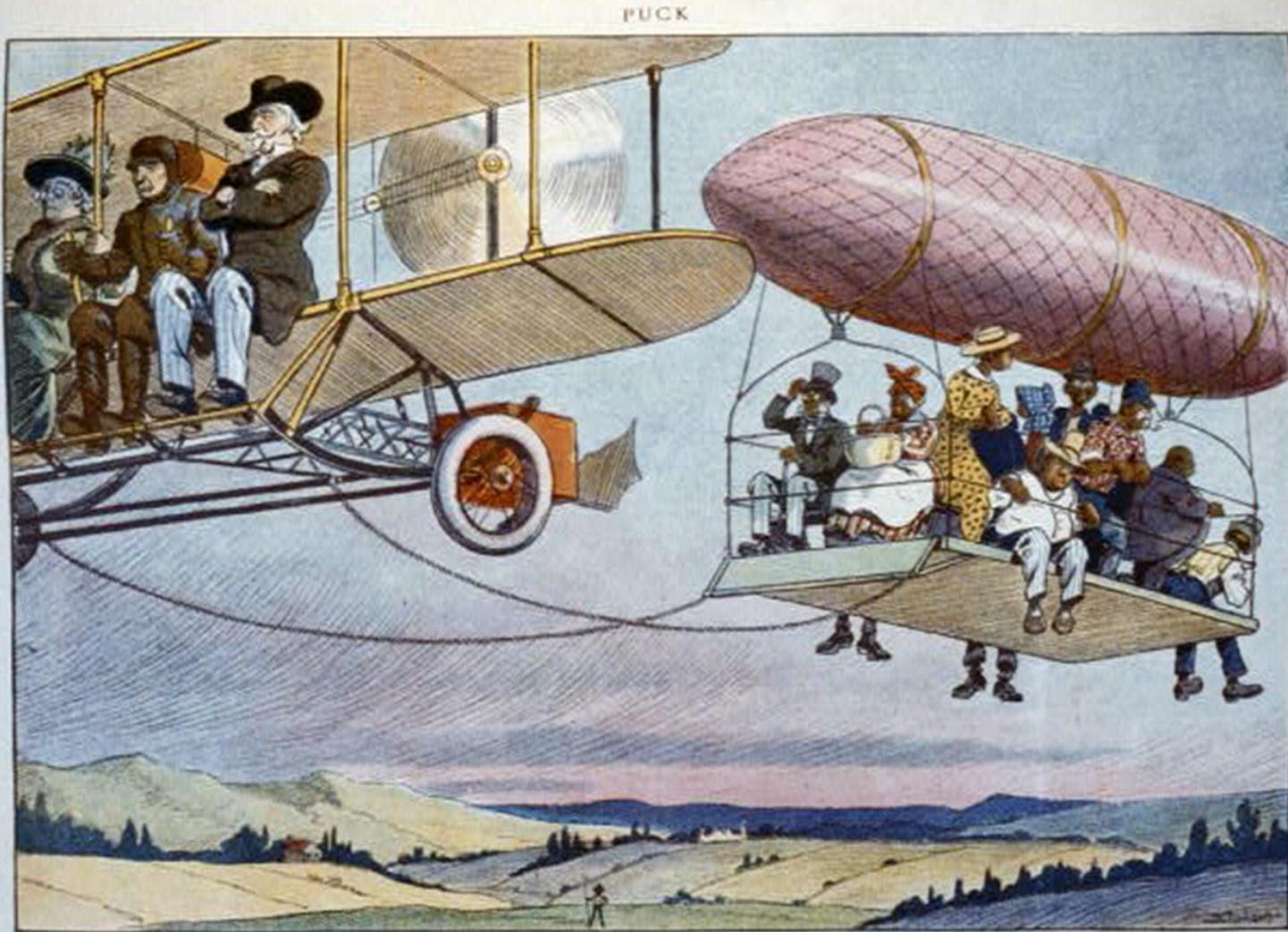
"Whereas it is essential to just government we recognize the equality of all men before the law, and hold that it is the duty of government in its dealings with the people to mete out equal and exact justice to all, of whatever nativity, race, color, or persuasion, religious or political; and it being the appropriate object of legislation to enact great fundamental principles into law; I am of opinion that such discrimination is a badge of servitude, the imposition of which congress may prevent under its power, through appropriate legislation, to enforce the thirteenth Amendment; and consequently, without reference to its enlarged power under the fourteenth Amendment, the act of March 1, 1875, is not, in my judgment, repugnant to the constitution."

Jim Crow laws

- State governments that had been part of the Confederacy tried to limit the voting rights of black citizens and prevent contact between black and white citizens in public places.
- The effort to protect the rights of blacks under Reconstruction was largely crushed by a series of oppressive laws and tactics called “Jim Crow”* and the black codes that denied African Americans the right to vote, hold jobs, get an education or even use the same public facilities as whites.
- Those who attempted to defy Jim Crow laws often faced arrest, fines, jail sentences, violence and death.

*“Jim Crow” was a pejorative term for African Americans from a white minstrel show.

Jim Crow



FOR THE SUNNY SOUTH.
AN AIRSHIP WITH A "JIM CROW" TRAILER.

Congress did not pass another
civil rights bill for almost a
century...

Affirmative Action

- In 1961, President John F. Kennedy issued executive order 10925, which created the Committee on Equal Employment Opportunity and mandated that federally funded projects take "affirmative action" to insure that hiring and employment practices were free of racial bias.
- Focusing in particular on education and jobs, affirmative action policies required that active measures be taken to ensure that blacks and other minorities enjoyed the same opportunities for promotions, salary increases, career advancement, school admissions, scholarships, and financial aid that had been the nearly exclusive province of whites.
- From the outset, affirmative action was envisioned as a temporary remedy that would end once there was a "level playing field" for all Americans.

Civil Rights Act 1964

- Signed into law by President Lyndon Johnson on July 2, 1964
- Prohibited discrimination based on race, color, religion, sex, or national origin in public places, provided for the integration of schools and other public facilities, and made employment discrimination illegal
- Powers given to enforce the act were initially weak, but were supplemented during later years
- Congress asserted its authority to legislate under its power to regulate under interstate commerce and its duty to guarantee all citizens equal protection of the laws under the Fourteenth Amendment

Levels of Scrutiny

Strict scrutiny

Classifications based on race, national origin, religion or status as an alien are subject to more rigorous scrutiny

Intermediate scrutiny

Classifications based on gender or illegitimacy

Rational basis

All other laws that create classifications—including wealth, disability and age, are presumed Constitutional and must only show that the law has a rational relation

What do you think?

What level of judicial scrutiny do you think should apply in the following situations?

- Rejecting an 85-pound woman from admission to the firefighters' academy.
- Requiring drivers over age 75 or male drivers under 25 to take an annual driver's exam.
- Disqualifying a female student in a public high school from participating on the boy's wrestling team.
- Allowing businesses in state enterprise zones to charge lower sales taxes.
- Barring the children of illegal aliens from public schools.

What does “equal protection of the laws” mean?

- The government must treat every person, no matter what race, ethnicity or beliefs, equally
- Does this include treatment by non-governmental actors (private individuals)?
- Does this require equality of results or equality of opportunity?
- Does equal mean “the same”?
- Are we all the same?
- Are we all equal?

Impact of the 14th Amendment

- The 14th Amendment is cited in more court cases than any other, often in matters seeking to end discrimination against individuals based on race, religion, gender, sexual orientation, and other statuses.
- Its long history of litigation traces the struggle for civil and legal rights for all Americans.