

Reconstruction Amendments Reading Packet

After the Civil War, Congress required that the southern states approve the Thirteenth, Fourteenth, and Fifteenth Amendments as a condition of their re-entry into the union.

The Thirteenth Amendment (1865) ended slavery throughout the U.S. and banned it forever. It was this amendment, not Lincoln's Emancipation Proclamation that put an end to slavery in the entire Union.

Congress hoped to make protection of blacks' civil rights permanent through the Fourteenth Amendment (1868) to the Constitution. The Fourteenth Amendment was a significant alteration of the practice of federalism. It dramatically limited the powers of states. In Section I of the Fourteenth Amendment reads: "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." Its clauses are known respectively as the Privileges and Immunities Clause; the Due Process Clause; and the Equal Protection Clause. The meaning of each of these clauses has been debated since the amendment's ratification.

The Fifteenth Amendment (1870) protected the rights of blacks to vote.

For a time after the passage of these amendments, African-Americans voted in large numbers despite coercion, fraud, and intimidation. Beginning in the 1890s, attempts to disenfranchise African-American voters became formalized through the adoption of voting requirements such as literacy tests, property qualifications, and, later, poll taxes. These measures deprived large numbers of black citizens of their right to vote.

The Supreme Court initially interpreted the Fourteenth Amendment narrowly. It held in the Slaughterhouse Cases that the amendment's Due Process Clause applied the same limits to state governments that the Fifth Amendment's Due Process Clause imposed on the national government. The "privileges and immunities" of citizens, the Court also held, were limited to matters involving national citizenship.

Like all constitutional provisions and amendments, the significance of the Reconstruction amendments has not been limited to the time of their ratification.

During World War I, anti-war protestors used the Thirteenth Amendment to argue against the military draft. It has been invoked by some in contemporary times to argue against state laws that require individuals and small business to work against their will. (For example: does a Muslim wedding photographer have the right to refuse to photograph a gay wedding? Or, does a gay couple have the right to force a Muslim photographer to photograph their wedding?)

The significance of the Fourteenth Amendment over the last one hundred years cannot be overstated. The first time the Court was asked to decide if it meant that Bill of Rights protections applied to the states, it said no. Beginning in 1925 with *Gitlow v. New York*, the Court decided that it did some of the time. The Court began to use the Fourteenth Amendment to selectively incorporate (or apply) some sections of the Bill of Rights to state governments.

Though the idea may have surprised many people in 1868, over time many began to view the national government, and not state governments, as the primary protector of their rights. Further, as the definition of “rights” began to be changed by those in power during the Progressive Era, this new role for the federal government set the stage for a dramatic increase in its size, scope, and power.

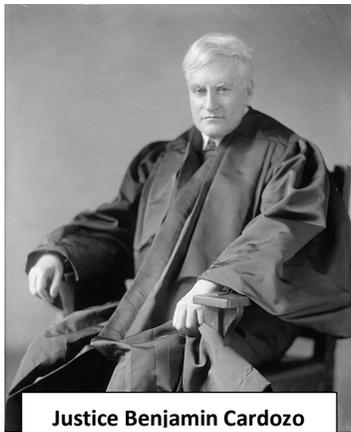


The [Bill of Rights](#) originally applied only to the national government. Given the concerns about centralized power shared by Federalist and Anti-Federalists alike, this is no surprise. Federalist arguments for strong national power always presupposed strong power in states as well. Tellingly, all the states who proposed any amendments at all suggested the principle of the [Tenth Amendment](#): if the [Constitution](#) does not give the national government a certain power, that power is kept by the states and the people. The idea that a distant national government knew better than the people of each individual state what kinds of laws that state should have would have been puzzling to most people during the Founding era and for the first century of the [republic](#).

Not long after the amendment was ratified, its [Due Process](#) Clause became the subject of scrutiny. What did it mean for a state to deprive a citizen of life, [liberty](#), or [property](#) without due process of law? What was “liberty”? What was “due process”?

The Supreme Court would begin to tackle these questions. In the case of *U.S. v. Cruikshank* (1876), the Court held that the [First Amendment](#) right to freely assemble and the [Second Amendment](#) right to keep and bear arms did not apply to state governments. States could limit these rights without violating the [Fourteenth Amendment](#).

Over the next seventy-five years, the Court’s use of the Fourteenth Amendment increased. It used the Due Process clause to strike down many state laws and to incorporate parts of the Bill of Rights.



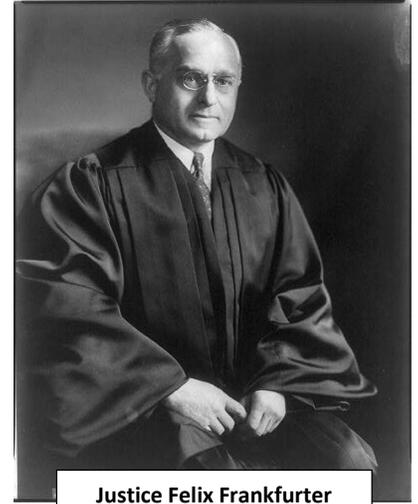
Justice Benjamin Cardozo

In the process of using its power to bring the states under the provisions of the Bill of Rights, several Supreme Court justices wondered how far incorporation should go. In 1937, [Justice](#) Benjamin Cardozo wrote that the Court was “selectively incorporating” rights it considered “so rooted in the traditions and conscience of our people as to be ranked as fundamental.” These fundamental rights, Cardozo added, included only those “implicit in the concept of ordered liberty.”

Cardozo’s words, unfortunately, give little guidance for determining what rights are fundamental. The most famous debate on incorporation was waged between Justices Hugo Black and Felix Frankfurter. Dissenting in *Adamson v. California* (1947), Black supported “total incorporation,” the idea that every provision of the Bill of Rights applies to the states. The due process clause of the Fourteenth Amendment, Black argued, protects the life, liberty and property of Americans, and the most complete expression of American liberty is found in the Bill of Rights.

Black argued: "The words 'No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States' seem an eminently reasonable way of expressing the idea that henceforth the Bill of Rights shall apply to the states."

But of course, the Fourteenth Amendment does not say that the Bill of Rights would now apply to the states. Its authors could have written that it would, but they did not. And so the debate raged. Justice Frankfurter argued that the Fourteenth Amendment does not require incorporation of any provision of the Bill of Rights. Indeed, the idea that the Due Process Clause meant the Bill of Rights would apply to the states was expressly rejected by the Court early on. Rather, it requires states to honor principles of "fundamental fairness." While these principles might overlap with the Bill of Rights, they are not inevitably connected. In *Rochin v. California* (1952), Frankfurter argued that the Court should indeed apply the Bill of Rights when actions taken by a state "shock the conscience."



Justice Felix Frankfurter

Black retorted that Frankfurter's flexible philosophy "must inevitably imperil all the individual liberty safeguards" found in the Bill of Rights.

Incorporation increased the Supreme Court's power to define rights, and changed the meaning of the Bill of Rights from a series of limits on government power to a set of rights belonging to the individual and guaranteed by the federal government. With incorporation, the Supreme Court became busier and more influential.

The effect of the Fourteenth Amendment may or may not have been anticipated by its authors or the generation that ratified it. Some historians say that the post-Civil War amendments so fundamentally altered the Constitution that the time period was, in effect, a revolution and a new Founding. Looking back over the American history you have studied so far, and your knowledge of constitutional principles as the [Founders](#) understood them, what do you think?

The individual liberty safeguards in the Bill of Rights go beyond a list of rights. Individuals have [natural rights](#) that are not listed in the Bill of Rights. The Ninth and Tenth Amendments make clear that rights and powers not listed remain with the people. One consequence of incorporation has been for the Court to seemingly place more value on those individual rights which are enumerated in the Bill of Rights than those natural rights which are not listed. The Founders had worried that future generations might think that listing some rights would cause people to think that the others were less important. This worry was one reason the Federalists had opposed adding a Bill of Rights to the Constitution. The [Ninth Amendment](#) was among the amendments added in 1791 for that reason.

As the Supreme Court's responsibilities increased along with the legal protections afforded American citizens, the federal government has become larger, especially since 1900. The federal government has expanded in regard to business regulation in the early 1900s, New Deal programs (1930s), military strength during World War II, anti-poverty Great Society programs (1960s), environmental regulation and education (1970s), the war on drugs (1980s), health entitlements (1990s), education (2000s), and a mandate for individuals to buy health insurance in the 2010s.

REVIEW FROM THE READING:

1. The Thirteenth Amendment

- a. Was less powerful than the Emancipation Proclamation in that it banned slavery only in the South.
- b. Unlike the Emancipation Proclamation, had the legal force to ban slavery throughout the U.S.
- c. Unlike the Emancipation Proclamation, banned slavery only for a period of 20 years.
- d. Was less powerful than the Emancipation Proclamation because it banned slavery only in the North.

2. The Fourteenth Amendment

- a. Required states to pass laws that provided for the privileges and immunities of citizens, due process, and equal protection of the laws.
- b. Banned states from passing laws that denied the privileges and immunities of citizens, due process, or equal protection of the laws.
- c. Allowed states to nullify federal laws that denied the privileges and immunities of citizens, due process, or equal protection of the laws.
- d. Banned states from granting citizenship and due process to formerly enslaved people.

3. One of the effects of the Fourteenth Amendment was

- a. It gave black men the right to vote.
- b. After a period of political turmoil, it was a return to the principle of federalism.
- c. It limited the power of the federal government while increasing the power of the states.
- d. It limited the power of states while increasing the power of the federal government.

4. Incorporation

- a. Applied the Bill of Rights to the federal government, ensuring that states kept the powers they had retained under the Tenth Amendment.
- b. Applied the Bill of Rights to the states, making it not only a series of limits on government power, but also a set of rights guaranteed by the federal government.
- c. Mandated that each state pass a Bill of Rights which mirrored that included in the U.S. Constitution.
- d. Mandated that each state abolish its existing Bill of Rights in favor of that included in the U.S. Constitution.

10th Amendment (1791)

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

1. Restate the Tenth Amendment in your own words.

13th Amendment (1865)

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

2. What does the Thirteenth Amendment guarantee in every state?
3. Restate Section 2 in your own words. Describe the relationship between Section 2 of this document and the Tenth Amendment.

14th Amendment (1868)

Section. 1. 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....

Section. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

4. Write this section of the Fourteenth Amendment in your own words.
5. Identify and explain three ways this amendment protects citizens' liberty.
6. In what ways did this amendment change the protections for individual rights, as well as the division between state and federal power enshrined in the Bill of Rights?
7. The Founders believed that the Bill of Rights should apply only to the federal government. Why? Do you agree or disagree with the Founders? Explain.
8. How does Section 5 relate to the meaning of the Tenth Amendment?
9. As a result of incorporation, individuals who are unhappy with how states protect their liberties can bring suit in federal courts. Does it matter whether the state governments or the federal government has the power to protect our rights? Explain, and defend your position.

15th Amendment (1870)

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

10. What does the Fifteenth Amendment guarantee in every state?
11. How does Section 2 relate to the meaning of the Tenth Amendment?