**Incorporation of the Bill of Rights: Do the first 10 Amendments apply to the states?**

**Starting at the Beginning…**

❖ The first ten amendments to the U.S. Constitution are called the Bill of Rights

❖ The Bill of Rights was passed by the first Congress in 1791. The Bill of Rights was added during the ratification because\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

❖ The Bill of Rights as originally proposed by Congress and ratified by the states \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The wording prevented those rights from being applied to the states.

❖ It was the passage of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in 1868 that created a formal framework for extending certain aspects of the Bill of Rights to apply to the states.

❖ **Incorporation:**

❖ **Selective Incorporation:** As U.S. entered 20th century, Supreme Court slowly began to inform state governments that they must abide by most guarantees contained in the first 8 amendments to the federal Constitution. Hence, the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has decided on a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ which provisions of the Bill of Rights \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_to the states.

Under the incorporation doctrine, most provisions of the Bill of Rights now also apply to the state and local governments, by virtue of the due process clause of the 14th Amendment.

The doctrine of incorporation has profoundly influenced the character of American Federalism, that is the relationship between the federal and state governments.

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**🡆 Beginnings of the Incorporation Debate:**

❖ ***Barron v. Baltimore***(1833) was the first case in which the U.S. Supreme Court considered \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ the Bill of Rights. Chief Justice Marshall found the limitations on government articulated in the Fifth Amendment were specifically intended to limit the powers of the national government.

❖ Citing the intent of the framers and the development of the Bill of Rights as an exclusive check on the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_government, Marshall argued that the Supreme Court had no jurisdiction in this case since the Fifth Amendment was \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ applicable to the states.

❖ ***Gitlow v. New York*** (1925) ruled that the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to the Constitution had extended the reach of certain provisions of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ -- specifically the provisions protecting freedom of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and freedom of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ -- to the governments of the individual states.

**Other cases tested the various clauses of the 14th Amendment and their application of the Bill of Rights to the states. Some were successful, some were not.**

The Slaughterhouse cases (1873)

*Hurtado v. California* (1884)

*Chicago, Burlington & Quincy Railroad v. Chicago* (1897)

*Twining v. New Jersey* (1908)

*Palko v. Connecticut* (1937)

* Many of the provisions of the First Amendment were applied to the states in the 1930s and 1940s.
* Most of the procedural protections provided to criminal defendants were not enforced against the states until the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the 1960s which focused on the rights of those accused of crimes, brought state standards in line with federal requirements.

**The Ninth Amendment:** its wording indicates that it "is not a source of rights as such; it is simply a rule about how to read the Constitution”.

**The Tenth Amendment:** its wording, it is a reservation of powers to the states and to the people.

**Current Status of the Bill of Rights: What’s been incorporated, what has not?**

⬥ **1st Amendment:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ by 1947; started in 1925 with *Gitlow v. New York* and seven other court cases from 1925 to 1947.

⬥ **2nd Amendment:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in 2010 with decision in *McDonald v. Chicago*.

⬥ **3rd Amendment:** No Supreme Court decision on incorporation; U.S. Court of Appeals for 2nd circuit found to be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in 1982 with decision in *Engblom v. Carey*. It is the least cited sections of the U.S. Constitution.

⬥ **4th Amendment:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ by 1964 with decision in *Mapp v. Ohio* and two other court cases from 1961-1964.

⬥ **5th Amendment: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** in the 1960s with decisions in *Benton v. Maryland* and *Malloy v. Hogan* except for clause guaranteeing criminal prosecution on grand jury indictment.

⬥ **6th Amendment:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ by 1968; started with *In Re Oliver* in 1948 and six other Supreme Court cases from 1948 to 1968 including *Gideon v. Wainwright*.

⬥ **7th Amendment:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Right to trial by jury in civil cases.

⬥ **8th Amendment:** “cruel and unusual punishments” clause \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in 1962 with decision in *Robinson v. California*; no Supreme Court ruling on incorporation of “excessive fines and bail” protections.

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❖ The theory of selective incorporation in concept has emerged the victor; but, for all practical purposes and with only a few exceptions, total nationalization of the Bill of Rights has prevailed.

❖ As a result, present reading of the Constitution now ensures that the basic civil liberties of U.S. citizens are uniformly protected against infringement by any government entity- federal, state, or local.