

THE INCORPORATION DOCTRINE

SWKT: The application of the Bill of Rights is continuously interpreted by the courts. The doctrine of selective incorporation has imposed on state regulation of civil rights and liberties.

What happens if a state passes a law violating one of the rights protected by the federal Bill of Rights and the state's constitution does not prohibit this abridgment of freedom? In 1833, the answer to that question was "nothing." The Bill of Rights, said the Court in *Barron v. Baltimore*, restrained only the national government, not states and cities.

An opening toward a different answer was provided by the Fourteenth Amendment, one of the three "Civil War amendments," which was ratified in 1868. The Fourteenth Amendment declares,

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.

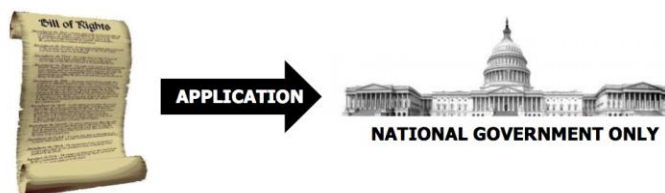
In 1925, in *Gitlow v. New York*, however, the Court relied on the Fourteenth Amendment to rule that a state government must respect some First Amendment rights. Specifically, the Court said that freedoms of speech and press "were fundamental personal rights and liberties protected by the due process clause of the Fourteenth Amendment from impairment by the states." In effect, the Court interpreted the Fourteenth Amendment to say that states could not abridge the freedoms of expression protected by the First Amendment.

This decision began the development of the incorporation doctrine, the legal concept under which the Supreme Court has nationalized the Bill of Rights by making most of its provisions applicable to the states through the Fourteenth Amendment. In *Gitlow*, the Supreme Court held only parts of the First Amendment to be binding on the states. Gradually, and especially during the 1960s, the Court applied most of the Bill of Rights to the states.

Recently, the doctrine of selective incorporation has imposed on state regulation of civil rights and liberties as represented by *McDonald v. Chicago* (2010), which ruled the Second Amendment's right to keep and bear arms for self-defense in one's home is applicable to the states through the Fourteenth Amendment.

Many of the decisions that nationalized provisions of the Bill of Rights were controversial. Nevertheless, today the Bill of Rights guarantees individual freedoms against infringement by state and local governments as well as by the national government. Only the Third and Seventh Amendments, and the grand jury requirement of the Fifth Amendment have not been incorporated.

THEN (ORIGINALLY)



NOW (STARTING IN 1925 W/ *GITLOW* v. *NEW YORK*)

