The Bill of Rights Does Not Apply to the States

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Let's be clear in the intention here. The issue in question is: ***what was the original intention and meaning of the first ten amendments known as the Bill of Rights?***

It's also important I make clear another important ***a priori fact:*** the only understanding of these amendments, the constitution and, indeed, *any language written or spoken*, ***is the understanding of the original intent and meaning***, period. It is a fallacy, it is wrong, and when used as a bludgeon, it is a fraud and an offense, for anyone to suggest there can be any other acceptable or efficacious outcome on the receiving end of human language. *It is the very essence of human language* and the very meaning and intention of its origin and development in the human species that ***language follows apprehension and concept***, it simply is not the other way around. ***Concepts begin in the mind*** and then language is used to convey or record them and as such, language is always inferior to the original concepts for which that language was employed.

For whatever reason, be it time, change or laziness, if the words are not clear and unambiguous the recipient is not at liberty to interject interpretation, ***language is not interpreted***, but the recipient must seek out either more clarity from the source or, in the case of historical language, evidence from other sources and contexts to eliminate ambiguity, misunderstanding and lack of clarity. This fact, while misunderstood and misused probably for as long as humans have been using language, is immutable. ***It is an intrinsic, immutable attribute of the very existence of language in humans itself.*** I don't know how to say it any clearer but if you still do not accept that language is not to be interpreted then feel free to entertain my standing challenge, $1000 to anyone who can precisely identify the object to which I refer by the phrase, *my white chair*. I'm sure you'll agree you are not at liberty to interpret for yourself to what precise chair I refer, at least not in any way that is going to earn you the $1000. I hope the point is finally made!

A couple of other foundational points:

- There is a well-established principle in philosophy and law called the Plain Meaning Principle or Rule which states, basically that without expository evidence otherwise, where words are clear and unambiguous, the plain and commonly understood meaning should be followed. In other words, the words mean what they say, and one is not at liberty to interject externalities plainly not evident.

- There is another well-established principle of Law which states that when searching for understanding of any legal document, or say a statute, that where the language is ambiguous the correct reading is always toward more freedom and liberty rather than to infer the opposite. The principle is, with a Law, for example, that if the Law specifies a restriction, that restriction will be spelled out specifically and unambiguously and adding restrictions into a reading or interpretation (interpretation we already know is wrong anyway) that are not plainly evident is incorrect.

Take the 2nd Amendment for example, the liberal bunk today would have us believe the genius of the founding fathers specifically did NOT include their own understanding of the passage of time and the ingenuity and inventiveness of humans such that they were simply intellectually unable to craft an amendment with the understanding of the term "arm" as that term might be applied against new technologies and inventions. Our Founding Fathers were just too stupid to realize that just one day, we might have "arms" unlike anything like the muskets of their day! If you believe this, really, you just need to stop voting, realize you're an idiot, and just focus on holding down your job, paying your bills and trying to enjoy some of your life. Either that or realize that public education really isn't a good thing, just hold your tongue and opinion (the original meaning of which was

grounded in "judgement" not assholes, by the way,) and focus on re-educating yourself before offering your opinion on matters. You know, probably much like you'd do before arguing with your Doctor!

So, was the Bill of Rights intended to apply to the States?

The Short answer is NO. And it's offensive really that anyone would think otherwise. Decades of indoctrination have really done its work, but here are some links and resources to real scholarship on the subject and references directly from the people who were involved, the people who actually knew what they were doing.

The 10th Amendment Center eBook: The 14th Amendment and the Incorporation Doctrine

The short but concise Introduction of the ebook is imperative as a backdrop to the modern 14th malfeasant interpretation,

> *Today, most Americans rely on the federal courts to sort out controversial and divisive matters, believing that federal judges rise above the inclinations of mere politicians. But in reality, judges are well-connected lawyers, selected through a political appointment process.*
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> *This is particularly true of Supreme Court justices.*
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> *They generally represent one of two law schools, subscribe to courtly precedents, and believe mostly in federal supremacy. And despite slight differences between them in legal theory, all uphold a uniform belief in a principle known as the "incorporation doctrine" – a creed they claim was established upon ratification of the 14th Amendment.*
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> *Gaining a complete grasp on the 14th Amendment is one of the more mind-boggling and complicated aspects of constitutional interpretation. It is also one of the most important, and anybody embarking on a thorough study of history will likely formulate contempt toward the impulses of modern judicial orthodoxy.*

The piece is mainly about the malfeasance of the 14th and how its misuse has expanded federal power, which is incredibly difficult for an intelligent person to understand as the very core meaning of the term "***federal***" comes from "***confederation***," which, officially, we are still supposed to be today. And, while and we continue to refer to the Leviathan central government as our federal government, the dark fact is that we have a National government today and have lost all effective elements of our original federalism but in ceremony! Some of the best and key parts of the piece are quoted and summarized below,

> *First, it is important to understand the limitations enumerated in the federal Bill of Rights weren't originally intended to act as prohibitions against the states. A careful reading of the preamble to the Bill of Rights makes it clear the amendments were added because the states sought to limit the scope of federal authority.*
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> *Madison's original proposal for a Bill of Rights clearly indicates it was intended to limit the powers of Congress and the federal judiciary. The bulk of the amendments, including those relating to freedom of the press, freedom of speech and the right to keep and bear arms were originally to be inserted in Article 1 Sec. 9 between clauses 3 & 4. These are the limitations on Congress. They were only placed in a different document to avoid littering the original text of the Constitutions with insertions.*

This proposal, to expressly limit the states, was rejected.

In 1830, a suit against the state of Maryland alleged that the Fifth Amendment right to due process extended to inhibit the state governments as well. In Barron v. Baltimore (1833) the John Marshall Court held that the amendments did no such thing – they only limited the federal government. *Marshall's reasoning beautifully captures the intended structure of the American political system.*

> *"The constitution was ordained and established by the people of the United States for themselves, for their own government, and not for the government of the individual states. Each state established a constitution for itself, and in that constitution, provided such limitations and restrictions on the powers of its particular government, as its judgment dictated. The people of the United States framed such a government for the United States as they supposed best adapted to their situation and best calculated to promote their interests. The powers they conferred on this government were to be exercised by itself; and the limitations on power, if expressed in general terms, are naturally, and, we think, necessarily, applicable to the government created by the instrument. They are limitations of power granted in*
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> *the instrument itself; not of distinct governments, framed by different persons and for different purposes. "If these propositions be correct, the fifth amendment must be understood as restraining the power of the general government, not as applicable to the states. In their several constitutions, they have imposed such restrictions on their respective governments, as their own wisdom suggested; such as they deemed most proper for themselves. It is a subject on which they judge exclusively, and with which others interfere no further than they are supposed to have a common interest."*

This opinion remained unchallenged for almost 100 years.

In his groundbreaking work on the subject, ***Government by Judiciary: the Transformation of the Fourteenth Amendment****, historian and constitutional scholar Raoul Berger summed it up like this:*

> *If there was a concealed intention to go beyond the Civil Rights Act, it was not ratified because, first, ratification requires disclosure of material facts, whereas there was no disclosure that the Amendment was meant to uproot, for example, traditional State judicial procedures and practices; and, second, a surrender of recognized rights may not be presumed but must be proved.[5]*

In court cases following on the heels of the ratification of the 14th Amendment, the federal courts continued to hold that the Bill of Rights did not apply to state action, and federal opinions failed to mention the amendment at all.

…

While most legal scholars accept it as an undeniable truth, application of the Bill of Rights to the states through the 14th Amendment was not always an accepted doctrine. In fact, the federal judiciary did not claim the amendment had this effect until ***more than 55 years after ratification****.*

In the pivotal ***Slaughter-House Cases of the 1870s, the Supreme Court specifically rejected the notion that the text applied the Bill of Rights to the state authorities:***

> *"Was it the purpose of the fourteenth amendment, by the simple declaration that no State should make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, to transfer the security and protection of all the civil rights which we have mentioned, from the States to the Federal government? And where it is declared that Congress Shall have the power to enforce that article, was it intended to bring within the power of Congress the entire domain of civil rights heretofore belonging exclusively to the States? We are convinced that no such results were intended by the Congress which proposed these amendments, nor by the legislatures of the States which ratified them. " [8]*

This was the only persuasion held by the federal judiciary for the next several decades. In fact, this understanding was affirmed in 1922 case of Prudential Insurance Company of America v. Cheek , which concerned New York's ability to restrict freedom of speech. In this case, the majority opinion repeated this concept:

> *"But, as we have stated, neither the Fourteenth Amendment nor any other provision of the Constitution of the United States imposes upon the states any restrictions about 'freedom of speech' or the 'liberty of silence'; nor, we may add, does it confer any right of privacy upon either persons or corporations." [9]*

It was only in 1925 that the federal judiciary inexplicably discovered that Section 1 of the 14th Amendment effected incorporation.

Even by the mid-20th century, when the incorporation doctrine was fully embraced by the federal judiciary, some justices remained consistent concerning the original intent of the 14th Amendment. In a dissent to the 1938 case of Connecticut General Life Insurance Company v. Johnson , Supreme Court Justice Hugo Black wrote the following:

> *"The states did not adopt the Amendment with knowledge of its sweeping meaning under its present construction. No section of the Amendment gave notice to the people that, if adopted, it would subject every state law . . . affecting [judicial processes] . . . to censorship of the United States courts. No word in all this Amendment gave any hint that its adoption would deprive the states of their long recognized power to regulate [judicial processes]." [10]*

In the 1959 case of Bartkus v. Illinois , Supreme Court Justice Felix Frankfurter correctly explained:

> *"We have held from the beginning and uniformly that the Due Process Clause of the Fourteenth Amendment does not apply to the States any of the provisions of the first eight amendments as such. The relevant historical materials have been canvassed by this Court and by legal scholars. These materials demonstrate conclusively that Congress and the members of the legislatures of the ratifying States did not contemplate that the Fourteenth Amendment was a short-hand incorporation of the first eight amendments making them applicable as explicit restrictions upon the States." [11]*

The rest of the piece is also highly informative and continues on to discuss the impact this malfeasance of interpretation has had on destroying our federalism and shifting power from the states to the central Leviathan!

Was the Bill of Rights Meant to Apply to the States?

Was the Bill of Rights originally intended to apply to the state governments?

Some people argue that it was. They concoct some interesting arguments based on "rules of construction" or approach it through various philosophies of rights and liberty they attribute to the founders. ***But there simply exists no founding era evidence that Congress or the state ratifiers intended for the protections included in the Bill of Rights to bind state governments. In fact, doing so would essentially create a federal veto over state laws, a massive expansion of central government authority – the exact opposite of the stated purpose of including a bill of rights.***

Most people have never read the preamble to the Bill of Rights. In fact, a lot of people don't even know it includes one. The preamble makes the purpose of the Bill of Rights very clear.

> *THE Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution.*

The words "its powers" clearly refer back to the Constitution. The Bill of Rights was intended to "prevent misconstruction or abuse" of the Constitution's powers ***as exercised through "the government" – the federal government. Notice the word government is not plural.*** *The Bill of Rights makes no mention of state governments. I****n fact, the state ratifying conventions had no intention of restricting their state's own powers.*** *They already had state constitutions to do that job.*

Chief Justice John Marshall was an unapologetic advocate for national power, but he explains the limits of the Bill of Rights beautifully in his opinion in Barron v. Baltimore.

> *The constitution was ordained and established by the people of the United States for themselves, for their own government, and not for the government of the individual states. Each state established a constitution for itself, and in that constitution, provided such limitations and restrictions on the powers of its particular government, as its judgment dictated. The people of the United States framed such a government for the United States as they supposed best adapted to their situation and best calculated to promote their interests. The powers they conferred on this government were to be exercised by itself; and the limitations on power, if expressed in general terms, are naturally, and, we think, necessarily, applicable to the government created by the instrument. They are limitations of power granted in the instrument itself; not of distinct governments, framed by different persons and for different purposes.*
> *…*

Interestingly, when James Madison introduced the Bill of Rights to Congress, he proposed that the equal right of conscience, freedom of the press and the right to a trial by jury should also apply to the states.

> *I wish also, in revising the constitution, we may throw into that section, which interdicts the abuse of certain powers in the state legislatures, some other provisions of equal if not greater importance than those already made. The words, "No state shall pass any bill of attainder, ex post facto law, &c." were wise and proper restrictions in the constitution. I think there is more danger of those powers being abused by the state governments than by the government of the United States. The same may be said of other powers which they possess, if not controuled by the general principle, that laws are unconstitutional which infringe the rights of the community. I should therefore wish to extend this interdiction, and add, as I have stated in the 5th resolution, that no*

state shall violate the equal right of conscience, freedom of the press, or trial by jury in criminal cases; because it is proper that every government should be disarmed of powers which trench upon those particular rights.

Congress explicitly rejected applying those particular amendments to the states, making it abundantly clear that the Bill of Rights was only intended to limit federal power.

Many will agree with this analysis but argue that the 14th Amendment changed all that and incorporated the protections included in Bill of Rights on state governments.

An Easy Guide to the Bill of Rights for Kids

The Bill of Rights, or first ten Amendments of the Constitution, are the undeniable rights ***awarded*** *[This term is incorrect. In principle, we do not hold that we receive, or are awarded, the rights espoused in the Bill of Rights from the document nor the government to which that document pertains. While The Bill of Rights does refer to and describe some (the list is by no means exhaustive) Natural Rights the people receive by nature of their very existence, the reference to these natural rights is merely secondary to the intention to negatively proscribe specific limitations to the Federal government. To suggest they are in any way 'awarded' is a corruption in understanding.] to American citizens. Published over 200 years ago, these rights still hold incredible significance as it pertains to present day society.*

When they were first introduced, the Bill of Rights only extended to matters overseen by the Federal Government. *Trials or instances where the rights were in question did not associate with State governments until the early 1890s.* ***Using the 14th Amendment as its platform, the United States extended the reach of the Bill of Rights to State governments through the incorporation doctrine.***

The 14th Amendment of the United States Constitution provided American citizens with a broad definition of their undeniable rights. The Due Process Clause, perhaps the Amendment's most important subsection, recognizes a series of substantive due process rights including: parental, marriage, and procedural rights. The Due Process Clause enabled State governments to recognize the liberties offered in the Bill of Rights to individuals. It simply forced the Government to respect all legal rights established in the Constitution.

Prior to adoption and subsequent ratification of the 14th Amendment, the Supreme Court consistently held that the Bill of Rights applied specifically to the Federal Government. *Inclusion into State law arose in the early 1890s when a series of Supreme Court questioned the credibility of the first 10 Amendments on a State level.*

Who Killed the 10th Amendment?

…the Bill of Rights was intended to place strict limits on federal power and protect individual and locality from the national government—the 14th Amendment effectively defeated that purpose by placing the power to enforce the Bill of Rights in federal hands, where it was never intended to be.

For example: Voters elect to prohibit local government from sanctioning gay marriage. A U.S. district judge voids voter-approved law for violating the 14th's Equal Protection Clause.

For another example of the endemic usurpation of The People, rendering the original Constitutional scheme obsolete, take the work of the generic jury. With his description of the relationship between jury and people, American scholar of liberty Lysander Spooner conjures evocative imagery.

> *A jury is akin to the "body of the people." Trial by jury is the closest thing to a trial by the whole country. Yet courts in the nation's centralized court system, the Supreme Court included, are in the business of harmonizing law across the nation, rather than allowing communities to live under laws they author, as guaranteed by the 10th Amendment to the Constitution.*
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> *Like juries, states had been entrusted with the power to beat back the federal government and void unconstitutional federal laws.*

National Concealed Carry Reciprocity Bill is a Trojan Horse

https://tenthamendmentcenter.com/2017/08/14/national-concealed-carry-reciprocity-bill-is-a-trojan-horse/

*On its face, this seems like a wonderful idea. But the threshold inquiry should be, "**Does the general government have the authority to enact such a law?**"*

The Bill of Rights was never understood to be applicable against the states. There is absolutely no historical evidence of the Bill of Rights being made enforceable against the states. Even nationalist John Marshall, in the 1833 case Barron v. Baltimore, was forced to admit this when he said that the first ten "amendments contain no expression indicating an intention to apply them to the state governments. This court cannot so apply them."

It was not until 1925, in the case of Gitlow vs New York, that the Supreme Court magically "found" the authority to apply the Bill of Rights against the states supposedly hidden away in the 14th Amendment…

> *The 39th Congress, which proposed this amendment, never even discussed such an "incorporation," and no such premise had been adhered to in the preceding years. But, by 1925 the "progressive" era was in full swing and the Supreme Court was well on its way toward inflicting a complete rewrite of the Constitution onto the states and the American people, thus diminishing the "separation of powers" between the states and the "general" government. T**his made-up doctrine has been the chief mechanism through which a "one-size-fits-all" form of government, with all rights and powers emanating from Washington, D.C., has arisen.***
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> *It was through this very process that "incorporation" of the Bill of Rights has been used to nationalize education standards, to end prayer in school and force Nativity scenes off the lawns of county property, to force states to legalize abortion, strike down state laws concerning same-sex marriage, to create the busing debacle of the sixties and seventies, and on and on.*