

Incorporation, Due Process and State Action

Terms:

Incorporation (Selective and Total)	State Action
Due Process (procedural)	Substantive Due Process
Fundamental Rights	Liberty Interests
Strict Scrutiny	Ordinary Scrutiny
Intermediate (Heightened) Scrutiny	Penumbral Rights

Assigned Cases:

Barron v. Baltimore; *Slaughterhouse Cases*; *Palko v. CT*; *Adamson v. CA*; *Griswold v. CT*; *Duncan v. LA*; *Civil Rights Cases*; *Shelley v. Kramer*.

Questions for Reading Assigned Cases:

Barron v. Baltimore, the *Slaughterhouse Cases*, *Palko v. CT*, *Adamson v. CA*, and *Duncan v. LA* all concern the question of which rights apply against the federal government, and which rights apply against the states. How does this tradition evolve? How important is the incorporation of these other rights within the 14th Amendment? Do the arguments for incorporation convince you?

In *Griswold v. CT*, the Supreme Court declared that the Constitution contained a right to privacy. This decision is often criticized as either “substantive due process” or “judicial activism.” Do the opinions of Justices Douglas and Goldberg convince you of the case for a right to privacy? Why or why not?

The *Civil Rights Cases* and *Shelley v. Kramer* both concern the limits of the 14th Amendment. Why is it important that constitutional rights only apply against government? Should the 14th Amendment have extended to private persons? What of the 13th Amendment?