



Clanking Chains: Introduction: Painful Truths; The 1st & 14th Amendments: 1925 Supreme Court Applies the Bill of Rights to the States

The Clanking Chains

The battle, sir, is not to the strong alone; it is to the vigilant, the active, the brave. Besides, sir, we have no election. If we were base enough to desire it, it is now too late to retire from the contest. There is no retreat but in submission and slavery! Our chains are forged! Their clanking may be heard on the plains of Boston! The war is inevitable-- and let it come! I repeat it, sir, let it come.

—Patrick Henry, 1775

I. Introduction

This subject will be a very difficult study. To quote Mr. Henry again:

It is natural to man to indulge in the illusions of hope. We are apt to shut our eyes against a painful truth, and listen to the song of that siren till she transforms us into beasts. Is this the part of wise men, engaged in a great and arduous struggle for liberty? Are we disposed to be of the numbers of those who, having eyes, see not, and, having ears, hear not, the things which so nearly concern their temporal salvation? For my part, whatever anguish of spirit it may cost, I am willing to know the whole truth, to know the worst, and to provide for it.

Patrick Henry, 1775

We are about to encounter some “painful truths” that will tempt us to close our eyes and cover our ears to avoid “anguish of spirit.” But unless we know the “whole truth” and “know the worst” we cannot effectively “provide for it.”

The United States of America is a client nation but it is in a rapid descent toward self-destruction. Its decline can be traced to the inculcation of the doctrines of demons over the course of a full century so that today over half the population has been conformed to the dark side of morality.

Our country is in much the same straits culturally as was Judah in the seventh century B.C. In an effort to warn the Jews that their apostasy would earn for them national destruction in the form of invasion by a predator nation, God sent them the Prophet Jeremiah. Details about the circumstances Jeremiah faced during his ministry are provided by:

Feinberg, Charles L. *Jeremiah: A Commentary.* (Grand Rapids: Zondervan Publishing House, 1982), 3:

Jeremiah's ministry was carried on in a chaotic era politically, socially, morally, and spiritually. The glorious days of reformation under Hezekiah in the eighth century were eclipsed by the long, ungodly reign of Manasseh. Jeremiah did not hide his hatred for the religious apostasy and social injustices of Manasseh. In this spiritual declension priests and prophets alike were implicated.

When Jeremiah began to preach, the godly Josiah had begun his reforms to wipe out idolatry from his kingdom. The content of the prophet's preaching confirms his full support of Josiah's reforms and calls for a truly repentant return to the Lord. Tragically, the people of Judah had already become so ungodly that they were no longer responsive to calls to return to God. But in grace the Lord continued to plead with Judah through Jeremiah. From the beginning of his ministry, Jeremiah never deviated from the position that Judah and Jerusalem were to be destroyed by a nation from the north and the people carried into captivity.



With Jehoiakim's rule (608 B.C.), Jeremiah began public ministry. In the famous temple address, he indicated that only faithfulness to God could guarantee the nation's security; otherwise the temple would be destroyed. He aroused bitter opposition to himself and his message from all segments of the nation, including his own family. Sad and despairing because of the rejection of his message, yet he loved, prayed for, and agonized over his people.

Except for the sadness and despair, Jeremiah's attitude must be our attitude as we supply the spiritual defense for our client nation. We must have faith in Jeremiah's message that "only faithfulness to God can guarantee our national security."

By learning the whole truth and knowing the worst, we must not only prepare ourselves but also be willing to prepare others. Our only authorized offensive weapon is the gospel of Jesus Christ. Otherwise we must be a wise as serpents but harmless as doves; speak the truth in humility; claim no principles as your own but identify them with the phrase, "The Bible says ..."

It will also help to be conversant about the development of the laws of divine establishment in colonial America, the thinking of our Founding Fathers, and what they intended the foundational documents to mean to the generations that followed. We begin our study with an examination of the First Amendment.

II. The First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

—The Constitution
Amendment I

- 1- The wording of this amendment is crystal clear and one would think needs very little "interpretation." However, after around 150 years of clarity to those who composed, ratified, and lived under it, a series of twentieth-century Supreme Courts invented a different view of its meaning and then imposed it upon a willing, gullible, and apathetic population.
- 2- Why there was not an incessant hue and cry from all branches of Christendom indicates that apostasy was rife in the land. This means that not only were pastors unprepared but unwilling to take a stand for truth and the sheep assigned to their care and instruction were thus led astray by the "philosophical propaganda and deceitful lies" of evil men.
- 3- The first assault was so subtle that it was ignored for almost a century. Buried in the Fourteenth Amendment lurks one word that has turned American jurisprudence on its head and has led to the destruction of our Anglo-Saxon culture, our Judeo-Christian ethic, and our Western-European heritage:

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 in which 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.

—The Constitution
Amendment XIV: Section I

- 4- The subtle word is "State." The Bill of Rights was designed to insure that the federal government did not infringe on the inalienable rights of the people. It placed restraints on the federal government *by* the states. Ratification of this Amendment planted the seed for applying the Bill of Rights *to* the states.



5- Although this concept was rejected by the Supreme Courts and Congresses following its adoption in 1868, the Supreme Court in session in 1925 picked up on it in a case called *Gitlow v. People*, 268 U.S. 652 (1925).

6- This decision contained the following interpretation:

For present purposes, we may and do assume that freedom of speech and of the press which are protected by the First Amendment from abridgment by Congress are among the fundamental personal rights and "liberties" protected by the due process clause of the Fourteenth Amendment from impairment by the States.

http://www2.law.cornell.edu/cgi-bin/foliocgi.exe/historic/query=?jump!3A27268+u!2Es+666!27/doc/{t13738}/hit_headings/words=4/pageitems={body}?

7- This decision gave the federal government the power to impose the protections of the Bill of Rights upon the 48 states. But the Bill of Rights was imposed upon the federal government *by* the states.

8- With this decision, the Bill of Rights was turned upside down. Now the federal government through the Supreme Court and lesser courts used the Bill of Rights to control the states. This is a power never delegated to the United States as is made clear by the Tenth Amendment:

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.

*The Constitution,
Amendment X*

9- When the First and Fourteenth Amendments are examined together it becomes evident that the passage of the Fourteenth allowed the intent of the First to become altered.

10- The Bill of Rights was designed to delineate, proclaim, and confirm that mankind enjoys certain freedoms by right of birth. These are “natural laws” imputed at physical birth by “nature’s God” and are thus “inalienable.”

11- The people of the states desired to insure that the new United States government could not in any way assume the power to limit, infringe, or deny these rights to the people or to the states.

12- It is important to realize that the constitutions of the various states also contained these protections. Consequently it was natural for the states to insure that the new government had no power to trump, override, or circumvent the protections already codified in the state documents.

13- The closing paragraph of the Declaration of Independence contains this statement, “... these United Colonies are, and of Right ought to be Free and Independent States.”

14- In order to maintain that freedom and independence, the Constitution was so structured that it limited the new federal government to only those powers expressly defined, granted, and enumerated by its various articles. The Bill of Rights was designed to profess and proclaim the “natural rights” of the people and to prohibit their violation by the new federal government. The Tenth Amendment was designed to virtually lock these things in so there could be no misunderstanding.

15- The Fourteenth Amendment was ratified in 1868 following the War between the States. Its intent included “forbidding states to abridge citizenship rights except by due process of law” (*Encyclopaedia Britannica*, 1976, *Micropaedia*, 3:106).



- 16- Several Supreme Court cases over the next 75 years supported the original intent of this amendment which was to make former slaves citizens of the several states. Section 1 contains the statement, “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.”
- 17- In other words, once a citizen they came under the protections provided by the Constitution and Bill of Rights which limited the power of the federal government and prevented it from abridging their rights as citizens.
- 18- A series of Court cases in the 1940s changed the entire dynamic of the Constitution and turned the Bill of Rights on its head, allowing the federal courts to apply its prohibitions to the states:

As a result of separating the wording from its intent, in *Cantwell v. Connecticut* (1940), *Everson v. Board of Education* (1947), and other decisions, the Court substituted a totally revised and foreign interpretation for the Fourteenth Amendment. In those decisions, the Court declared that the purpose of the Fourteenth Amendment was to limit the States not just on racial civil rights issues, but on the numerous items contained within the Bill of Rights.

Under this reshaped purpose for the Fourteenth, the First Amendment would now limit every State and community, and no longer just the federal government as originally intended. This process of individually subjugating issues from within the Bill of Rights to the jurisdiction of federal courts is now described by the Court as “selective incorporation.” (Barton, *Original Intent*, 198.)