

■ = events which uphold original intent and strict construction

■ = events which upend original intent and strict construction

Jeffersonianism-Jacksonianism at bay:

ORIGINAL INTENT, STRICT CONSTRUCTION DISMANTLED PIECEMEAL

POLICE POWERS & INTRASTATE COMMERCE

1789 Congress revises Madison's draft of the 1st Amendment in the U.S. Bill of Rights to restrain only the federal government, not the states. Thus Connecticut had an established church until 1817, and Massachusetts until 1833, without violating the 1st Amendment.

1908 *Muller v. Oregon*

The Supreme Court upholds an Oregon law limiting women's workday to 10 hours. States' right to exercise their police power hinges on gender (i.e., women, being physically weaker than men, have less freedom of contract than *Lochner v. New York* [1905] gave men). The Court can decide when to follow the Constitution's original intent to reserve police powers to the states. This is "sociological jurisprudence."

1833 *Barron v. Baltimore*

The original intent of the Bill of Rights to restrain the federal government but not the states receives formal recognition.

1824 *Gibbons v. Ogden*

The commerce clause permits federal regulation of interstate navigation as well as of the interstate flow of goods, but not of strictly intrastate commerce.

1937 *Palko v. Connecticut*

The 14th Amendment has "absorbed" and made binding on the states those "privileges and immunities" of the Bill of Rights that in the Supreme Court's judgment are "fundamental" and "implicit in the concept of ordered liberty."

1937 *National Labor Relations Board v. Friedman-Harry Marks Clothing Company*

Because they buy and sell across state lines, the federal government can restrain even small local manufacturers' resistance to unionization, trumping state police powers on labor issues.

1925 *Gitlow v. New York*

The 14th Amendment forbids states as well as Congress to abridge 1st Amendment guarantees of free speech and press. Courts can decide when states' exercise of their police powers crosses that line.

1903 *Champion v. Ames*

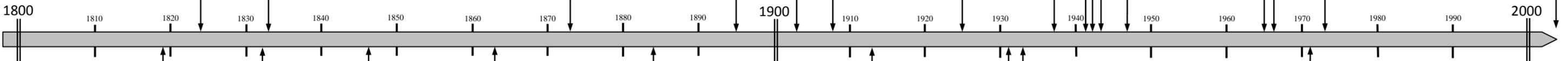
The 10th Amendment reserved police powers to the states, but the Supreme Court finds implied in the commerce clause a federal police power to prohibit as well as regulate interstate commerce.

1895 *U.S. v. E.C. Knight Company*

The federal government cannot prohibit monopolies of manufacturing of goods which may enter interstate commerce, because in federalism, control of manufacturing is a state police power.

1873 *Slaughterhouse Cases*

The 14th Amendment intended to overturn the *Dred Scott* decision and constitutionalize the 1866 Civil Rights Act in defense of freed Southern blacks, but not otherwise to trench on state police powers.



1819 *McCulloch v. Maryland*

The Supreme Court constitutionalizes federal chartering of a national bank, overriding the Constitution's original intent against it.

1832

Andrew Jackson's refusal to extend the charter of the 2nd Bank of the U.S. reaffirms the Constitution's original intent against federal chartering of national banks.

1846

The Independent Treasury Act divorces federal funds from fractional-reserve banking by withdrawing them from state banks and placing them in 7 "subtreasuries" nationwide, which would receive and pay out only specie or hard-money equivalents, reaffirming the Constitution's original intent against federal involvement with unbacked "bills of credit."

1863

The National Banking Act (1) gives federal charters to fractional-reserve banks to (2) issue more national bank notes than they have gold to redeem them (functionally unbacked "bills of credit"), both against the Constitution's original intent.

1884 *Julliard v. Greenman*

The Supreme Court constitutionalizes federal emission of legal-tender paper money (i.e., "bills of credit" unbacked by specie) any time "[in] accord with the usage of sovereign governments," overriding the Constitution's original intent and clearing the way to finance a future welfare state via fiat money inflation. (In 1888, Edward Bellamy's utopian socialist novel *Looking Backward* charms many young "progressives.")

1913

The Federal Reserve Act charters a national fractional-reserve banking system to provide an "elastic" money supply to smooth out "business cycles," but its price controls on interest rates in fact aggravate economy-wide booms and busts instead.

From 1928 to 1933 gold flows into the U.S. Treasury. Under a freely-functioning gold standard the money supply would grow. But deflation occurs instead because the Federal Reserve artificially shrinks the money supply to discourage stock market speculation, paralyzing the gold standard's operation and prolonging and worsening the Depression.

1933

FDR ends redeemability of the dollar in gold in the U.S. This does not (as hoped) raise prices in the short run, but does prompt banks to inflate in the long run.

1971

Nixon ends redeemability of the dollar in gold in international trade, removing gold's last restraint on Federal Reserve inflation. Free trade theory assumes the gold standard will balance imports and exports. No dollar redeemability in gold to settle international trade accounts, while keeping it as the world reserve currency, lets the U.S. buy from other nations *without selling* to them, paying in fiat money. That "globalization" means permanent ("structural") trade imbalances. Industries shift from America to elsewhere to cut wages and production costs. No longer disciplined by the gold standard, such *consumption without production* (seen in ballooning trade deficits) "deindustrializes" the U.S.

1943 *West Virginia State Board of Education v. Barnette*

The 14th Amendment vests in federal courts the final say on whether state laws infringe on religious freedom protected by the 1st Amendment, despite any constitutional right of the democratic branch to set state policy on the subject.

1942 *Wickard v. Filburn*

To regulate commodity prices, Congress under the commerce clause can regulate their intrastate consumption by their producers, who otherwise would have bought them in interstate commerce.

1941 *U.S. v. Darby*

To enforce federal public policy (maximum hours and minimum wage laws), Congress can supersede state police powers over intrastate manufacturing by banning nonconforming goods from interstate commerce.

1947 *Everson v. Board of Education of Ewing Township*

The 14th Amendment empowers the Supreme Court to decide when state education policies "breach" the "high and impregnable" "wall" of church-state separation under the 1st Amendment's establishment clause.

1965 *Griswold v. Connecticut*

The Supreme Court overturns a state law barring use of contraceptives, inferring a general "right of privacy" from "penumbras, formed by emanations" of rights in Amendments 3, 4, 5, and 9; and from subjective non-constitutional natural law sources "older than the Bill of Rights," based on the "traditions and collective conscience of our people."

1966 *Miranda v. Arizona*

The voluntariness test under the 14th Amendment's due process clause insufficiently protects suspected criminals during state interrogation, which must inform them of their right to a lawyer or run afoul of the 5th Amendment's rule against self-incrimination and render any confession inadmissible in court.

1973 *Roe v. Wade*

The 14th Amendment's due process clause prohibits states from interfering in any way with abortion of an unborn child for any reason during the first trimester, although many states had anti-abortion laws in effect from before the 14th Amendment's 1868 adoption until 1973.

2003 *Lawrence v. Texas*

The 14th Amendment's due process clause invalidates Texas' anti-sodomy law because it denies liberty to homosexuals in their private sex lives, nor can society mandate a moral code even though 32 of 37 states had anti-sodomy laws in 1868.

MONEY & BANKING