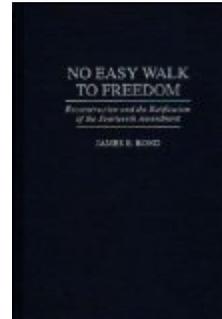


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James E. Bond. *No Easy Walk to Freedom: Reconstruction and the Ratification of the Fourteenth Amendment*. Westport, Conn.: Praeger, 1997. x + 295 pp. \$65.00 (cloth), ISBN 978-0-275-95703-2.

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Since its ratification in 1868, the Fourteenth Amendment has continued to elicit partisan discussion. At the center of this debate is the belief that the amendment incorporates the Bill of Rights to shield American citizens from the often-discriminatory legislation of the states. This contention, first argued in the 1873 *Slaughterhouse Cases*, has, since *Palko v. Connecticut* (1937) and later Supreme Court decisions, been recognized as a mainstay of modern American law.

James E. Bond, dean and professor at Seattle University's School of Law, comes down foursquare against "incorporation" in *No Easy Walk to Freedom*. Examining ratification debates in the eleven former Confederate states, Bond utilizes committee reports, governors' messages, and newspaper editorials to come to an unequivocal conclusion: "There is not one shred of evidence—not one—which supports the theory that the [Fourteenth's] due process clause incorporated the guarantees of the Bill of Rights" (p. 252). Indeed, no one, white or black, understood at the time of ratification that the proposed amendment promised such a course.

The work is less historical than polemical. Bond's adherence to "original intent" buttresses his primary motive in writing this volume—to denounce twentieth-century jurisprudence affirming incorporation, and to praise the virtues of those who share his reasoning. For example, lamenting that "the [Supreme] Court has undermined the federal structure by fastening the Bill of Rights upon the states" (p. 252), the author excoriates the Warren bench for its inclusive social agenda. "The states," Bond assures us, "once praised as laboratories for social and political experimentation, now exercise only such discretion as the national government permits" (p. 268). Bond details

(and certainly recognizes) the sad tale of the unfulfilled Fourteenth in the late-nineteenth and early-twentieth centuries—its legacy of racial segregation, lynchings and debt peonage—yet in the end he curiously accepts such debasement in the name of states' rights.

But in the end, Bond is hopeful. Someday soon the notion of legislative centralization, "more congenial to the mind of twentieth-century liberals, who believe in government by judges," may be replaced by a re-emergent federalism, "more congenial to the mind of the nineteenth-century Americans, who still believed in a ... government of the people, by the people, for the people" (p. 262). The opinions of conservative Justice Clarence Thomas are cited extensively to suggest that the shift is perhaps at hand.

Other problems occur. The story loses narrative continuity, as the ratification debates for each state are treated distinctly and repetitively in separate chapters. Numerous sources are neglected, including northern- and border-state ratification discussions as well as congressional conceptions of the amendment's nature. Moreover, Bond brusquely dismisses ratification rhetoric that supported incorporation as being "wretched hyperbole" (p. 254). Finally, conservative groups that favor incorporation today—including corporate interests and gun-rights advocates—are left off the chopping block, while liberal institutions, such as the Congressional Black Caucus, the National Organization for Women and the Gay and Lesbian Task Force, are notably singled out.

This book, in short, may trouble many. Doubtless it will not put the incorporation issue to rest. For every adherent to original intent, there are those who accept the American Constitution's status as "a living document,"

open to divergent interpretation over time. Their stance may best be summed up in the words of Justice Oliver Wendell Holmes, Jr., who in *Missouri v. Holland* (1920) opined that:

When we are dealing with words that are also a constituent act, like the Constitution of the United States, we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters.... [Law] must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago.

The struggle for African-American rights without question was “no easy walk to freedom.” Yet that walk, one cannot fail to acknowledge, might have been far longer (and far more treacherous) had not the national government intervened as it did during the mid-nineteenth and mid-twentieth centuries.

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