



## Duncan v. Louisiana

### 1. Duncan v. Louisiana, (1968)

**2. Facts:** Duncan was convicted of simple battery, which in Louisiana was a misdemeanor punishable by 2 years imprisonment and a \$300 fine.

**3. Procedural Posture:** Duncan sought trial by jury, but the Louisiana constitution grants jury trials only in capital punishment or hard labor cases, so the trial judge denied the request.

**4. Issue:** Whether the federal constitution guarantees the right to a trial by jury under the 6th amendment, through the 14th amendment in a state criminal trial where a sentence as long as 2 years may be imposed.

**5. Holding:** Yes. The 14th amendment guarantees a right of jury trial in all criminal cases which, were they to be tried in a federal court, would come within the 6th amendment's guarantee.

**6. ¶ Argument:** The 14th amendment makes the jury trial guarantee of the 6th amendment applicable to the states in cases where a sentence as long as 2 years may be imposed.

**7. Δ Argument:** The constitution imposes no duty on a state to guarantee a trial by jury in a state criminal trial, regardless of the severity of the punishment available. If the trial by jury is guaranteed in state criminal cases, it will cast doubt on the integrity of every trial conducted without a jury. Also, if due process is deemed to include trial by jury, then all past interpretations of the 6th amendment in the federal courts (such as a 12-man jury) would then become applicable to states, infringing on their ability to experiment.

**8. Majority Reasoning:** The test for whether a bill of rights right is incorporated to the states by the 14th amendment is whether that right is a "fundamental" right. Although there were prior cases stating in dicta that a right to a trial by jury was not fundamental to a fair trial, those cases are rejected as being wrong. A right to jury trial is granted to criminal defendants in order to prevent oppression by the Government. Although there are other countries that have fair criminal justice systems, but use no juries, ours is not one of them. The supporting framework of our criminal justice system relies upon juries for fairness. It is true that there are some criminal cases that may be tried without a jury, however, this is not one of them.

**9. Concurrence Reasoning:** [Black] expressed that he is glad that selective incorporation has worked since Adamson to incorporate most of the Bill of Rights guarantees. He goes on to restate his arguments in support of total incorporation. Namely that the "privileges and immunities" clause of the 14th amendment serves to totally incorporate the Bill of Rights because "what more precious privilege can there be that the privilege to claim the protections of our great Bill of Rights." He criticizes Harlan's dissent as being too subjective a definition of

due process.

**10. Dissent Reasoning:** [Harlan] stated that the due process clause of the 14th amendment requires that state procedures be “fundamentally fair” in all respects, but it does not require jury trials in criminal cases. The historical evidence demonstrates that the framers of the 14th amendment did not think that they were “incorporating” the bill of rights. The proper analysis should be a “gradual process of judicial inclusion and exclusion” to ascertain those “immutable principles of free government.” It is improper for the majority to simply incorporate the jury trial clause “jot-for-jot” with all of its associated baggage of federal judicial interpretation. Each case must be analyzed to see whether it was a fair one.

**11. Notes:** In Benton v. Maryland, the court held that the “double jeopardy” clause was a “fundamental” ideal and is applicable to the states. Since then, as a result of selective incorporation, almost all criminal process guarantees are applicable to the states. In Wolf v. Colorado the court incorporated only the “core” of the 4th amendment, but not the case law interpreting it in federal courts. However, later in Mapp v. Ohio, the court changed its mind, and incorporation thereafter meant not only incorporating the “core” of the bill of rights guarantee, but applying every detail of the contours of the guarantee as delineated in judicial interpretations (the baggage). In Williams v. Florida, the court held that a 12 man jury was not necessary, because the function of the jury was fairness, and less than 12 men could still be fair. In Apodaca v. Oregon, the court stated that the verdict did not have to be unanimous, for the same reasons. Lastly, in Burch v. Louisiana, the court stated that a 6 man non-unanimous jury was unconstitutional, thus putting a limit on the relaxations of Williams and Apodaca.

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