At length, the House of Representatives adopted 17 proposals; the Senate rejected two and reduced the remainder to twelve, which were accepted by the House and sent on to the states [10] where ten were ratified and the other two did not receive the requisite number of concurring states.[11]

Bill of Rights and the States.—One of the amendments that the Senate refused to accept—declared by Madison to be "the most valuable of the whole list" [12]—read: "The equal rights of conscience, the freedom of speech or of the press, and the right of trial by jury in criminal cases shall not be infringed by any State." [13] In spite of this rejection, the contention that the Bill of Rights—or at least the first eight amendments—was applicable to the states was repeatedly pressed upon the Supreme Court. By a long series of decisions, beginning with the opinion of Chief Justice Marshall in *Barron v. Baltimore*,[14] the argument was consistently rejected. Nevertheless, the enduring vitality of natural law concepts encouraged renewed appeals for judicial protection through application of the Bill of Rights.[15]

The Fourteenth Amendment and Incorporation.—Following the ratification of the Fourteenth Amendment, litigants disadvantaged by state laws and policies first resorted unsuccessfully to the Privileges or Immunities Clause of § 1 for judicial protection.[16] Then, claimants seized upon the Due Process Clause of the Fourteenth Amendment as guaranteeing certain fundamental and essential safeguards, without pressing the point of the applica-

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[10] Debate in the House began on July 21, 1789, and final passage was had on August 24, 1789. 1 ANNALS OF CONGRESS 660–779. The Senate considered the proposals from September 2 to September 9, but no journal was kept. The final version compromised between the House and Senate was adopted September 24 and 25. *See* 2 THE BILL OF RIGHTS: A DOCUMENTARY HISTORY 983–1167 (B. Schwartz ed., 1971).

[11] The two not ratified dealt with the ratio of population to representatives and with compensation of Members of Congress. H. AMES, THE PROPOSED AMENDMENTS TO THE CONSTITUTION 184, 185 (1896). The latter proposal was deemed ratified in 1992 as the 27th Amendment.

[12] 1 ANNALS OF CONGRESS 755 (August 17, 1789).

[13] Id.

[14] 32 U.S. (7 Pet.) 243 (1833). *See also* Livingston's Lessee v. Moore, 32 U.S. (7 Pet.) 469 (1833); Permoli v. Municipality No. 1, 44 U.S. (3 How.) 589, 609 (1845); Fox v. Ohio, 46 U.S. (5 How.) 410 (1847); Smith v. Maryland, 59 U.S. (18 How.) 71 (1855); Withers v. Buckley, 61 U.S. (20 How.) 84 (1858); Pervear v. Massachusetts, 72 U.S. (5 Wall.) 475 (1867); Twitchell v. Commonwealth, 74 U.S. (7 Wall.) 321 (1869).

[15] Thus, Justice Miller for the Court in Loan Ass'n v. Topeka, 87 U.S. (20 Wall.) 655, 662, 663 (1875): "It must be conceded that there are . . . rights in every free government beyond the control of the State . . . There are limitations on [governmental] power which grow out of the essential nature of all free governments. Implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name."

[16] *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1873).