AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 8: The New Deal/Great Society Era—Foundations/Scope/Incorporation

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Adamson v. California, 332 U.S. 46 (1947)

Admiral Dewey Adamson was accused of robbing and brutally murdering Stella Blauvelt, an elderly widow. At his trial, Adamson elected not to testify on the ground that, under California law, his previous convictions for burglary could have been admitted into evidence to impeach his credibility. Such evidence was inadmissible if he did not testify. During closing argument, the prosecutor repeatedly emphasized Adamson's refusal to testify as evidence of guilt. Such commentary, if made by a federal prosecutor in a federal case, would have violated the Fifth Amendment's right against self-incrimination. Adamson appealed his death sentence, insisting that the privileges and immunities clause or the due process clause of the Fourteenth Amendment forbade prosecutors from engaging in conduct that violated the Fifth Amendment.

The Supreme Court by a 5–4 vote sustained the conviction. Justice Reed's opinion of the Court maintained that the due process clause of the Fourteenth Amendment did not incorporate the Bill of Rights but protected only those rights that were "implicit in the concept of ordered liberty." Adamson *featured the first of many epic duels between Justices Frankfurter and Black over incorporation. Frankfurter insisted that precedent, text, and history supported his view that due process clause guaranteed state criminal defendants only a fair trial, not every protection guaranteed by the Bill of Rights. Black maintained that text and history supported his contention that the Fourteenth Amendment incorporated every provision in the Bill of Rights, that states were obligated to respect the same fundamental rights as the federal government.*

Four years later, in Rochin v. California *(1952), Frankfurter and Black continued their dispute over incorporation. The issue in* Rochin *was whether state police officers violated the due process clause when they found two undigested morphine capsules after pumping Antonio Richard Rochin's stomach without his consent. The Justices unanimously reversed Rochin's conviction, but did not agree on the proper grounds. Frankfurter insisted that forcing Rochin to vomit "offend[ed] those canons of decency and fairness which express the notions of justice of English-speaking peoples toward those charged with the most heinous offenses." "This is conduct that shocks the conscience," he wrote.*

> *Illegally breaking into the privacy of the petitioner, the struggle to open his mouth and remove what was there, the forcible extraction of his stomach's contents—this course of proceeding by agents of government to obtain evidence is bound to offend even hardened sensibilities. They are methods too close to the rack and the screw to permit of constitutional differentiation.*

Justice Black also voted to reverse the conviction but on the ground that state officers violated the Fifth Amendment prohibition against self-incrimination, a provision Black believed totally incorporated by the due process clause of the Fourteenth Amendment. "[A] person is compelled to be a witness against himself not only when he is compelled to testify," Black wrote, "but also when . . . incriminating evidence is forcibly taken from him by a contrivance of modern science." His concurring opinion scorned the "shock the conscience" standard as "nebulous." In Black's view, "the accordion-like qualities of this philosophy must inevitably imperil all the individual liberty safeguards specifically enumerated in the Bill of Rights.

As you read the arguments in this case and in Duncan v. Louisiana *(1968), note the different uses of historical, textual, doctrinal, prudential, and aspirational arguments in each of the opinions. Did Frankfurter and his allies rely on different principles of constitutional interpretation than Black and his allies or do they reach different conclusions using the same principles of constitutional interpretation? Does one side of the debate clearly have the better of the debate or do different principles of constitutional interpretation support different notions of*

incorporation? You might also consider what explains the differences between Justices Black and Frankfurter. Did they simply have a legal disagreement or do differences in underlying policy preferences explain their legal dispute? If policy preferences matter, what are those policy preferences? Would elected officials likely engage in the same or a different kind of dispute over incorporation?

When thinking about these questions you might note that on occasion Frankfurter employed fundamental fairness to reverse state court convictions that Black voted to sustain.

JUSTICE REED delivered the opinion of the Court.

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We shall assume, but without any intention thereby of ruling upon the issue, that state permission by law to the court, counsel and jury to comment upon and consider the failure of defendant 'to explain or to deny by his testimony any evidence or facts in the case against him' would infringe defendant's privilege against self-incrimination under the Fifth Amendment if this were a trial in a court of the United States under a similar law. Such an assumption does not determine appellant's rights under the Fourteenth Amendment. It is settled law that the clause of the Fifth Amendment, protecting a person against being compelled to be a witness against himself, is not made effective by the Fourteenth Amendment as a protection against state action on the ground that freedom from testimonial compulsion is a right of national citizenship, or because it is a personal privilege or immunity secured by the Federal Constitution as one of the rights of man that are listed in the Bill of Rights.

. . . The *Twining* case . . . disposed of the contention that freedom from testimonial compulsion, being specifically granted by the Bill of Rights, is a federal privilege or immunity that is protected by the Fourteenth Amendment against state invasion. This Court held that the inclusion in the Bill of Rights of this protection against the power of the national government did not make the privilege a federal privilege or immunity secured to citizens by the Constitution against state action. . . . This reading of the Federal Constitution has heretofore found favor with the majority of this Court as a natural and logical interpretation. It accords with the constitutional doctrine of federalism by leaving to the states the responsibility of dealing with the privileges and immunities of their citizens except those inherent in national citizenship. . . .

. . . The due process clause of the Fourteenth Amendment [also] does not draw all the rights of the federal Bill of Rights under its protection. That contention was made and rejected in *Palko v. Connecticut* (1937) . . . . *Palko* held that such provisions of the Bill of Rights as were 'implicit in the concept of ordered liberty,' . . . became secure from state interference by the clause. But it held nothing more.

Specifically, the due process clause does not protect, by virtue of its mere existence the accused's freedom from giving testimony by compulsion in state trials that is secured to him against federal interference by the Fifth Amendment. . . . For a state to require testimony from an accused is not necessarily a breach of a state's obligation to give a fair trial. . . . The due process clause forbids compulsion to testify by fear of hurt, torture or exhaustion. . . . [O]ur inquiry is directed, not at the broad question of the constitutionality of compulsory testimony from the accused under the due process clause, but to the constitutionality of the provision of the California law that permits comment upon his failure to testify.

. . . The California law . . . authorizes comment by court and counsel upon the 'failure of the defendant to explain or to deny by his testimony any evidence or facts in the case against him.' This does not involve any presumption, rebuttable or irrebuttable, either of guilt or of the truth of any fact, that is offered in evidence. It allows inferences to be drawn from proven facts. Because of this clause, the court can direct the jury's attention to whatever evidence there may be that a defendant could deny and the prosecution can argue as to inferences that may be drawn from the accused's failure to testify. There is here no lack of power in the trial court to adjudge and no denial of a hearing. California has prescribed a method for advising the jury in the search for truth. However sound may be the legislative conclusion that an accused should not be compelled in any criminal case to be a witness against himself, we see no reason why comment should not be made upon his silence. It seems quite natural that when a defendant

has opportunity to deny or explain facts and determines not to do so, the prosecution should bring out the strength of the evidence by commenting upon defendant's failure to explain or deny it. . .

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It is true that if comment were forbidden, an accused in this situation could remain silent and avoid evidence of former crimes and comment upon his failure to testify. We are of the view, however, that a state may control such a situation in accordance with its own ideas of the most efficient administration of criminal justice. The purpose of due process is not to protect an accused against a proper conviction but against an unfair conviction. When evidence is before a jury that threatens conviction, it does not seem unfair to require him to choose between leaving the adverse evidence unexplained and subjecting himself to impeachment through disclosure of former crimes. . . .

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JUSTICE FRANKFURTER, concurring

Less than ten years ago, Justice Cardozo announced as settled constitutional law that while the Fifth Amendment, "which is not directed to the states, but solely to the federal government," provides that no person shall be compelled in any criminal case to be a witness against himself, the process of law assured by the Fourteenth Amendment does not require such immunity from self-crimination: "in prosecutions by a state, the exemption will fail if the state elects to end it." *Palko v. Connecticut*. . . . The matter no longer called for discussion; a reference to *Twining v. New Jersey* (1908) . . . decided thirty years before the *Palko* case, sufficed.

Decisions of this Court do not have equal intrinsic authority. The *Twining* case shows the judicial process at its best—comprehensive briefs and powerful arguments on both sides, followed by long deliberation, resulting in an opinion by Justice Moody which at once gained and has ever since retained recognition as one of the outstanding opinions in the history of the Court. After enjoying unquestioned prestige for forty years, the *Twining* case should not now be diluted, even unwittingly, either in its judicial philosophy or in its particulars. . . .

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The point is made that a defendant who has a vulnerable record would, by taking the stand, subject himself to having his credibility impeached thereby. . . . Accordingly, under California law, he is confronted with the dilemma, whether to testify and perchance have his bad record prejudice him in the minds of the jury, or to subject himself to the unfavorable inference which the jury might draw from his silence. And so, it is argued, if he chooses the latter alternative, the jury ought not to be allowed to attribute his silence to a consciousness of guilt when it might be due merely to a desire to escape damaging cross-examination.

This does not create an issue different from that settled in the *Twining* case. Only a technical rule of law would exclude from consideration that which is relevant, as a matter of fair reasoning, to the solution of a problem. Sensible and just-minded men, in important affairs of life, deem it significant that a man remains silent when confronted with serious and responsible evidence against himself which it is within his power to contradict. The notion that to allow jurors to do that which sensible and right-minded men do every day violates the "immutable principles of justice" as conceived by a civilized society is to trivialize the importance of "due process.". . .

For historical reasons a limited immunity from the common duty to testify was written into the Federal Bill of Rights, and I am prepared to agree that, as part of that immunity, comment on the failure of an accused to take the witness stand is forbidden in federal prosecutions. . . . But to suggest that such a limitation can be drawn out of "due process" in its protection of ultimate decency in a civilized society is to suggest that the Due Process Clause fastened fetters of unreason upon the States. . . .

Between the incorporation of the Fourteenth Amendment into the Constitution and the beginning of the present membership of the Court—a period of seventy years—the scope of that Amendment was passed upon by forty-three judges. Of all these judges, only one, who may respectfully be called an eccentric exception, ever indicated the belief that the Fourteenth Amendment was a shorthand summary of the first eight Amendments theretofore limiting only the Federal Government,

and that due process incorporated those eight Amendments as restrictions upon the powers of the States. Among these judges were not only those who would have to be included among the greatest in the history of the Court, but—it is especially relevant to note—they included those whose services in the cause of human rights and the spirit of freedom are the most conspicuous in our history. It is not invidious to single out Miller, Davis, Bradley, Waite, Matthews, Gray, Fuller, Holmes, Brandeis, Stone and Cardozo (to speak only of the dead) as judges who were alert in safeguarding and promoting the interests of liberty and human dignity through law. But they were also judges mindful of the relation of our federal system to a progressively democratic society and therefore duly regardful of the scope of authority that was left to the States even after the Civil War. And so they did not find that the Fourteenth Amendment, concerned as it was with matters fundamental to the pursuit of justice, fastened upon the States procedural arrangements which, in the language of Justice Cardozo, only those who are "narrow or provincial" would deem essential to "a fair and enlightened system of justice." . . . To suggest that it is inconsistent with a truly free society to begin prosecutions without an indictment, to try petty civil cases without the paraphernalia of a common law jury, to take into consideration that one who has full opportunity to make a defense remains silent is, in de Tocqueville's phrase, to confound the familiar with the necessary.

The short answer to the suggestion that the provision of the Fourteenth Amendment, which ordains "nor shall any State deprive any person of life, liberty, or property, without due process of law," was a way of saying that every State must thereafter initiate prosecutions through indictment by a grand jury, must have a trial by a jury of twelve in criminal cases, and must have trial by such a jury in common law suits where the amount in controversy exceeds twenty dollars, is that it is a strange way of saying it. It would be extraordinarily strange for a Constitution to convey such specific commands in such a roundabout and inexplicit way. After all, an amendment to the Constitution should be read in a "'sense most obvious to the common understanding at the time of its adoption.' . . . For it was for public adoption that it was proposed." Those reading the English language with the meaning which it ordinarily conveys, those conversant with the political and legal history of the concept of due process, those sensitive to the relations of the States to the central government as well as the relation of some of the provisions of the Bill of Rights to the process of justice, would hardly recognize the Fourteenth Amendment as a cover for the various explicit provisions of the first eight Amendments. Some of these are enduring reflections of experience with human nature, while some express the restricted views of Eighteenth-Century England regarding the best methods for the ascertainment of facts. The notion that the Fourteenth Amendment was a covert way of imposing upon the States all the rules which it seemed important to Eighteenth Century statesmen to write into the Federal Amendments, was rejected by judges who were themselves witnesses of the process by which the Fourteenth Amendment became part of the Constitution. . . . Remarks of a particular proponent of the Amendment, no matter how influential, are not to be deemed part of the Amendment. What was submitted for ratification was his proposal, not his speech. Thus, at the time of the ratification of the Fourteenth Amendment the constitutions of nearly half of the ratifying States did not have the rigorous requirements of the Fifth Amendment for instituting criminal proceedings through a grand jury. It could hardly have occurred to these States that by ratifying the Amendment they uprooted their established methods for prosecuting crime and fastened upon themselves a new prosecutorial system.

If all that is meant is that due process contains within itself certain minimal standards which are "of the very essence of a scheme of ordered liberty,". . . putting upon this Court the duty of applying these standards from time to time, then we have merely arrived at the insight which our predecessors long ago expressed. We are called upon to apply to the difficult issues of our own day the wisdom afforded by the great opinions in this field. . . . This guidance bids us to be duly mindful of the heritage of the past, with its great lessons of how liberties are won and how they are lost. As judges charged with the delicate task of subjecting the government of a continent to the Rule of Law we must be particularly mindful that it is "a *constitution* we are expounding," so that it should not be imprisoned in what are merely legal forms even though they have the sanction of the Eighteenth Century.

It may not be amiss to restate the pervasive function of the Fourteenth Amendment in exacting from the States observance of basic liberties. . . . The Amendment neither comprehends the specific

provisions by which the founders deemed it appropriate to restrict the federal government nor is it confined to them. The Due Process Clause of the Fourteenth Amendment has an independent potency, precisely as does the Due Process Clause of the Fifth Amendment in relation to the Federal Government. It ought not to require argument to reject the notion that due process of law meant one thing in the Fifth Amendment and another in the Fourteenth. The Fifth Amendment specifically prohibits prosecution of an "infamous crime" except upon indictment; it forbids double jeopardy; it bars compelling a person to be a witness against himself in any criminal case; it precludes deprivation of "life, liberty, or property, without due process of law . . . ." Are Madison and his contemporaries in the framing of the Bill of Rights to be charged with writing into it a meaningless clause? To consider "due process of law" as merely a shorthand statement of other specific clauses in the same amendment is to attribute to the authors and proponents of this Amendment ignorance of, or indifference to, a historic conception which was one of the great instruments in the arsenal of constitutional freedom which the Bill of Rights was to protect and strengthen.

A construction which gives to due process no independent function but turns it into a summary of the specific provisions of the Bill of Rights would, as has been noted, tear up by the roots much of the fabric of law in the several States, and would deprive the States of opportunity for reforms in legal process designed for extending the area of freedom. It would assume that no other abuses would reveal themselves in the course of time than those which had become manifest in 1791. Such a view not only disregards the historic meaning of "due process." It leads inevitably to a warped construction of specific provisions of the Bill of Rights to bring within their scope conduct clearly condemned by due process but not easily fitting into the pigeon-holes of the specific provisions. It seems pretty late in the day to suggest that a phrase so laden with historic meaning should be given an improvised content consisting of some but not all of the provisions of the first eight Amendments, selected on an undefined basis, with improvisation of content for the provisions so selected.

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JUSTICE MURPHY, with whom JUSTICE RUTLEDGE concurs, dissenting.

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I agree that the specific guarantees of the Bill of Rights should be carried over intact into the first section of the Fourteenth Amendment. But I am not prepared to say that the latter is entirely and necessarily limited by the Bill of Rights. Occasions may arise where a proceeding falls so far short of conforming to fundamental standards of procedure as to warrant constitutional condemnation in terms of a lack of due process despite the absence of a specific provision in the Bill of Rights.

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JUSTICE BLACK, dissenting.

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This decision reasserts a constitutional theory spelled out in *Twining v. New Jersey* (1908) that this Court is endowed by the Constitution with boundless power under "natural law" periodically to expand and contract constitutional standards to conform to the Court's conception of what at a particular time constitutes "civilized decency" and "fundamental liberty and justice." . . . Invoking this *Twining* rule, the Court concludes that although comment upon testimony in a federal court would violate the Fifth Amendment, identical comment in a state court does not violate today's fashion in civilized decency and fundamentals and is therefore not prohibited by the Federal Constitution as amended.

. . . I think that decision and the "natural law" theory of the Constitution upon which it relies degrade the constitutional safeguards of the Bill of Rights and simultaneously appropriate for this Court a broad power which we are not authorized by the Constitution to exercise. Furthermore, the *Twining* decision rested on previous cases and broad hypotheses which have been undercut by intervening decisions of this Court. . . .

The first ten amendments were proposed and adopted largely because of fear that Government might unduly interfere with prized individual liberties. The people wanted and demanded a Bill of Rights written into their Constitution. The amendments embodying the Bill of Rights were intended to curb all branches of the Federal Government in the fields touched by the amendments—Legislative, Executive, and Judicial. The Fifth, Sixth, and Eighth Amendments were pointedly aimed at confining exercise of power by courts and judges within precise boundaries, particularly in the procedure used for the trial of criminal cases. . . .

But these limitations were not expressly imposed upon state court action. In 1833, *Barron* ***v.*** *Baltimore*. . . was decided by this Court. It specifically held inapplicable to the states that provision of the Fifth Amendment which declares: "nor shall private property be taken for public use, without just compensation." In deciding the particular point raised, the Court there said that it could not hold that the first eight amendments applied to the states. This was the controlling constitutional rule when the Fourteenth Amendment was proposed in 1866.

My study of the historical events that culminated in the Fourteenth Amendment, and the expressions of those who sponsored and favored, as well as those who opposed its submission and passage, persuades me that one of the chief objects that the provisions of the Amendment's first section, separately, and as a whole, were intended to accomplish was to make the Bill of Rights, applicable to the states. . . . With full knowledge of the import of the *Barron* decision, the framers and backers of the Fourteenth Amendment proclaimed its purpose to be to overturn the constitutional rule that case had announced. This historical purpose has never received full consideration or exposition in any opinion of this Court interpreting the Amendment.

In construing other constitutional provisions, this Court has almost uniformly followed the precept . . . that "It is never to be forgotten that, in the construction of the language of the Constitution . . . , as indeed in all other instances where construction becomes necessary, we are to place ourselves as nearly as possible in the condition of the men who framed that instrument."

Investigation of the cases relied upon in *Twining v. New Jersey* to support the conclusion there reached that neither the Fifth Amendment's prohibition of compelled testimony, nor any of the Bill of Rights, applies to the States, reveals an unexplained departure from this salutary practice. Neither the briefs nor opinions in any of these cases, except *Maxwell v. Dow* . . ., make reference to the legislative and contemporary history for the purpose of demonstrating that those who conceived, shaped, and brought about the adoption of the Fourteenth Amendment intended it to nullify this Court's decision in *Barron v. Baltimore*, . . . and thereby to make the Bill of Rights applicable to the States. In *Maxwell v. Dow* . . . the issue turned on whether the Bill of Rights guarantee of a jury trial was, by the Fourteenth Amendment, extended to trials in state courts. In that case counsel for appellant did cite from the speech of Senator Howard . . . which so emphatically stated the understanding of the framers of the Amendment—the Committee on Reconstruction for which he spoke—that the Bill of Rights was to be made applicable to the states by the Amendment's first section. The Court's opinion . . . acknowledged that counsel had "cited from the speech of one of the Senators," but indicated that it was not advised what other speeches were made in the Senate or in the House. The Court considered, moreover, that "What individual Senators or Representatives may have urged in debate, in regard to the meaning to be given to a proposed constitutional amendment, or bill or resolution, does not furnish a firm ground for its proper construction, nor is it important as explanatory of the grounds upon which the members voted in adopting it." . . .

In the *Twining* case itself, the Court was cited to a then recent book, Guthrie, *Fourteenth Amendment to the Constitution* (1898). A few pages of that work recited some of the legislative background of the Amendment, emphasizing the speech of Senator Howard. But Guthrie did not emphasize the speeches of Congressman Bingham, nor the part he played in the framing and adoption of the first section of the Fourteenth Amendment. Yet Congressman Bingham may, without extravagance, be called the Madison of the first section of the Fourteenth Amendment. In the *Twining* opinion, the Court explicitly declined to give weight to the historical demonstration that the first section of the Amendment was intended to apply to the states the several protections of the Bill of Rights. It held that that question was "no longer open" because of previous decisions of this Court which, however, had not appraised the

historical evidence on that subject. . . . The Court admitted that its action had resulted in giving "much less effect to the Fourteenth Amendment than some of the public men active in framing it" had intended it to have. . . .

. . . In my judgment that history conclusively demonstrates that the language of the first section of the Fourteenth Amendment, taken as a whole, was thought by those responsible for its submission to the people, and by those who opposed its submission, sufficiently explicit to guarantee that thereafter no state could deprive its citizens of the privileges and protections of the Bill of Rights. Whether this Court ever will, or whether it now should, in the light of past decisions, give full effect to what the Amendment was intended to accomplish is not necessarily essential to a decision here. However that may be, our prior decisions, including Twining, do not prevent our carrying out that purpose, at least to the extent of making applicable to the states, not a mere part, as the Court has, but the full protection of the Fifth Amendment's provision against compelling evidence from an accused to convict him of crime. And I further contend that the "natural law" formula which the Court uses to reach its conclusion in this case should be abandoned as an incongruous excrescence on our Constitution. I believe that formula to be itself a violation of our Constitution, in that it subtly conveys to courts, at the expense of legislatures, ultimate power over public policies in fields where no specific provision of the Constitution limits legislative power. . . .

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Later decisions of this Court have completely undermined that phase of the *Twining* doctrine which broadly precluded reliance on the Bill of Rights to determine what is and what is not a "fundamental" right. . . . For despite . . . *Twining*, this Court has now held that the Fourteenth Amendment protects from state invasion the following "fundamental" rights safeguarded by the Bill of Rights: right to counsel in criminal cases, *Powell v. Alabama* . . .; freedom of assembly, *De Jonge v. Oregon* (1937) . . . ; at the very least, certain types of cruel and unusual punishment and former jeopardy, *State of Louisiana ex rel. Francis v. Resweber* (1947) . . . ; the right of an accused in a criminal case to be informed of the charge against him, see *Snyder v. Massachusetts* (1934) . . . ; the right to receive just compensation on account of taking private property for public use, *Chicago, B. & Q. R. Co. v. Chicago* (1897). . . . And the Court has now through the Fourteenth Amendment literally and emphatically applied the First Amendment to the States in its very terms. *Everson v. Board of Education* (1947) . . . .

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The Court's opinion in *Twining*, and the dissent in that case, made it clear that the Court intended to leave the states wholly free to compel confessions, so far as the Federal Constitution is concerned. . . . Yet in a series of cases since *Twining* this Court has held that the Fourteenth Amendment does bar all American courts, state or federal, from convicting people of crime on coerced confessions. *Chambers v. Florida* (1940) . . . ; *Ashcraft v. Tennessee* (1944) . . . , and cases cited. Federal courts cannot do so because of the Fifth Amendment. *Bram v. United States* (1897). . . . And state courts cannot do so because the principles of the Fifth Amendment are made applicable to the States through the Fourteenth by one formula or another. And taking note of these cases, the Court is careful to point out in its decision today that coerced confessions violate the Federal Constitution if secured "by fear of hurt, torture or exhaustion." Nor can a state, according to today's decision, constitutionally compel an accused to testify against himself by "any other type of coercion that falls within the scope of due process." Thus the Court itself destroys or at least drastically curtails the very *Twining* decision it purports to reaffirm.

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The Court in *Twining* evidently was forced to resort for its degradation of the privilege to the fact that Governor Winthrop in trying Mrs. Anne Hutchinson in 1637 was evidently "not aware of any privilege against self-incrimination or conscious of any duty to respect it." . . . . Of course not. Mrs. Hutchinson was tried, if trial it can be called, for holding unorthodox religious views. People with a consuming belief that their religious convictions must be forced on others rarely ever believe that the unorthodox have any rights which should or can be rightfully respected. As a result of her trial and compelled admissions, Mrs. Hutchinson was found guilty of unorthodoxy and banished from Massachusetts. The lamentable experience of Mrs. Hutchinson and others, contributed to the overwhelming sentiment that demanded adoption of a Constitutional Bill of Rights. The founders of this

Government wanted no more such "trials" and punishments as Mrs. Hutchinson had to undergo. They wanted to erect barriers that would bar legislators from passing laws that encroached on the domain of belief, and that would, among other things, strip courts and all public officers of a power to compel people to testify against themselves. . . .

I cannot consider the Bill of Rights to be an outworn 18th Century "strait jacket." . . . Its provisions may be thought outdated abstractions by some. And it is true that they were designed to meet ancient evils. But they are the same kind of human evils that have emerged from century to century wherever excessive power is sought by the few at the expense of the many. In my judgment the people of no nation can lose their liberty so long as a Bill of Rights like ours survives and its basic purposes are conscientiously interpreted, enforced and respected so as to afford continuous protection against old, as well as new, devices and practices which might thwart those purposes. I fear to see the consequences of the Court's practice of substituting its own concepts of decency and fundamental justice for the language of the Bill of Rights as its point of departure in interpreting and enforcing that Bill of Rights. . . .

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The practice has been firmly established, for better or worse, that courts can strike down legislative enactments which violate the Constitution. This process, of course, involves interpretation, and since words can have many meanings, interpretation obviously may result in contraction or extension of the original purpose of a constitutional provision, thereby affecting policy. But to pass upon the constitutionality of statutes by looking to the particular standards enumerated in the Bill of Rights and other parts of the Constitution is one thing; to invalidate statutes because of application of "natural law" deemed to be above and undefined by the Constitution is another. "In the one instance, courts proceeding within clearly marked constitutional boundaries seek to execute policies written into the Constitution; in the other, they roam at will in the limitless area of their own beliefs as to reasonableness and actually select policies, a responsibility which the Constitution entrusts to the legislative representatives of the people." . . . .