

AMERICAN CONSTITUTIONALISM  
VOLUME II: RIGHTS AND LIBERTIES  
Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 8: The New Deal/Great Society Era—Criminal Justice/Interrogations and Investigations

---

**Brown v. Mississippi, 297 U.S. 278 (1936)**

---

*Raymond Stewart died on March 30, 1934. On April 4, Ed Brown and two other men were indicted for his murder. Brown's trial began on April 5. The state's evidence consisted entirely of their confessions, obtained as described in the opinion below. On April 6, Brown and his codefendants were found guilty and sentenced to death. After the Supreme Court of Mississippi ruled that the confessions were voluntary, Brown appealed to the Supreme Court of the United States.*

*The Supreme Court unanimously overturned Brown's conviction. Chief Justice Hughes declared that the "revolting" means by which police extracted the confessions in this case violated the due process clause. To what extent was Brown a straightforward application of principles of due process established in such Republican Era cases as Moore v. Dempsey (1923)? Does the case come out differently if racial issues were not involved?*

*Brown v. Mississippi was one of several cases in which the Supreme Court during the 1930s and 1940s reversed state court decisions in which confessions were obviously coerced. Almost all of these cases were from the South and, in most, the defendant was a person of color. Chambers v. Florida (1939) declared unconstitutional a week-long interrogation of prisoners with a potential lynch mob waiting outside the jail. Justice Black's unanimous opinion asserted,*

*For five days petitioners were subjected to interrogations culminating in Saturday's . . . all night examination. Over a period of five days they steadily refused to confess and disclaimed any guilt. The very circumstances surrounding their confinement and their questioning without any formal charges having been brought, were such as to fill petitioners with terror and frightful misgivings. . . . [T]he haunting fear of mob violence was around them in an atmosphere charged with excitement and public indignation. From virtually the moment of their arrest until their eventual confessions, they never knew just when any one would be called back to the fourth floor room, and there, surrounded by his accusers and others, interrogated by men who held their very lives—so far as these ignorant petitioners could know—in the balance. The rejection of petitioner Woodward's first 'confession,' given in the early hours of Sunday morning, because it was found wanting, demonstrates the relentless tenacity which 'broke' petitioners' will and rendered them helpless to resist their accusers further. To permit human lives to be forfeited upon confessions thus obtained would make of the constitutional requirement of due process of law a meaningless symbol.*

*Ashcraft v. Tennessee (1944) presented a more complex situation. The defendant was an affluent white citizen and the evidence of physical force was contested. Nevertheless, a 6–3 judicial majority found evidence that a confession was unconstitutionally coerced. Justice Black's opinion asserted.*

*Our conclusion is that if Ashcraft made a confession it was not voluntary but compelled. We reach this conclusion from facts which are not in dispute at all. Ashcraft, a citizen of excellent reputation, was taken into custody by police officers. Ten days' examination of the Ashcrafts' maid, and of several others, in jail where they were held, had revealed nothing whatever against Ashcraft. Inquiries among his neighbors and business associates likewise had failed to unearth one single tangible clue pointing to his guilt. For thirty-six hours after Ashcraft's seizure during*

*which period he was held incommunicado, without sleep or rest, relays of officers, experienced investigators, and highly trained lawyers questioned him without respite. . . .*

*We think a situation such as that here shown by uncontradicted evidence is so inherently coercive that its very existence is irreconcilable with the possession of mental freedom by a lone suspect against whom its full coercive force is brought to bear. It is inconceivable that any court of justice in the land, conducted as our courts are, open to the public, would permit prosecutors serving in relays to keep a defendant witness under continuous cross examination for thirty-six hours without rest or sleep in an effort to extract a 'voluntary' confession. Nor can we, consistently with Constitutional due process of law, hold voluntary a confession where prosecutors do the same thing away from the restraining influences of a public trial in an open court room.*

*Justice Black's opinion in Chambers ended with a very famous flourish. "Under our constitutional system," he wrote, "courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are non-conforming victims of prejudice and public excitement." To what extent do such cases as Brown v. Mississippi illustrate Black's point? To what extent are they largely symbolic victories that, while saving the lives of a handful of persons, did little to ameliorate the conditions of racist criminal justice in the South?*

CHIEF JUSTICE HUGHES delivered the opinion of the Court

...  
The opinion of the state court did not set forth the evidence as to the circumstances in which the confessions were procured. That the evidence established that they were procured by coercion was not questioned. . . . There is no dispute as to the facts upon this point, and as they are clearly and adequately stated in the dissenting opinion of Judge Griffith (with whom Judge Anderson concurred), showing both the extreme brutality of the measures to extort the confessions and the participation of the state authorities, we quote this part of his opinion in full, as follows . . . .

'The crime with which these defendants, all ignorant negroes, are charged, was discovered about 1 o'clock p.m. on Friday, March 30, 1934. On that night one Dial, a deputy sheriff, accompanied by others, came to the home of Ellington, one of the defendants, and requested him to accompany them to the house of the deceased, and there a number of white men were gathered, who began to accuse the defendant of the crime. Upon his denial they seized him, and with the participation of the deputy they hanged him by a rope to the limb of a tree, and, having let him down, they hung him again, and when he was let down the second time, and he still protested his innocence, he was tied to a tree and whipped, and, still declining to accede to the demands that he confess, he was finally released, and he returned with some difficulty to his home, suffering intense pain and agony. . . . A day or two thereafter the said deputy, accompanied by another, returned to the home of the said defendant and arrested him, and departed with the prisoner towards the jail in an adjoining county, but went by a route which led into the state of Alabama; and while on the way, in that state, the deputy stopped and again severely whipped the defendant, declaring that he would continue the whipping until he confessed, and the defendant then agreed to confess to such a statement as the deputy would dictate, and he did so, after which he was delivered to jail.

'The other two defendants, Ed Brown and Henry Shields, were also arrested and taken to the same jail. On Sunday night, April 1, 1934, the same deputy, accompanied by a number of white men, one of whom was also an officer, and by the jailer, came to the jail,

and the two last named defendants were made to strip and they were laid over chairs and their backs were cut to pieces with a leather strap with buckles on it, and they were likewise made by the said deputy definitely to understand that the whipping would be continued unless and until they confessed, and not only confessed, but confessed in every matter of detail as demanded by those present; and in this manner the defendants confessed the crime, and, as the whippings progressed and were repeated, they changed or adjusted their confession in all particulars of detail so as to conform to the demands of their torturers. When the confessions had been obtained in the exact form and contents as desired by the mob, they left with the parting admonition and warning that, if the defendants changed their story at any time in any respect from that last stated, the perpetrators of the outrage would administer the same or equally effective treatment.

...

'All this having been accomplished, on the next day, that is, on Monday, April 2, when the defendants had been given time to recuperate somewhat from the tortures to which they had been subjected, the two sheriffs, one of the county where the crime was committed, and the other of the county of the jail in which the prisoners were confined, came to the jail, accompanied by eight other persons, some of them deputies, there to hear the free and voluntary confession of these miserable and abject defendants. The sheriff of the county of the crime admitted that he had heard of the whipping, but averred that he had no personal knowledge of it. He admitted that one of the defendants, when brought before him to confess, was limping and did not sit down, and that this particular defendant then and there stated that he had been strapped so severely that he could not sit down, and, as already stated, the signs of the rope on the neck of another of the defendants were plainly visible to all. Nevertheless the solemn farce of hearing the free and voluntary confessions was gone through with, and these two sheriffs and one other person then present were the three witnesses used in court to establish the so-called confessions, which were received by the court and admitted in evidence over the objections of the defendants duly entered of record as each of the said three witnesses delivered their alleged testimony. . . .

...

The state is free to regulate the procedure of its courts in accordance with its own conceptions of policy, unless in so doing it 'offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.' . . . But the freedom of the state in establishing its policy is the freedom of constitutional government and is limited by the requirement of due process of law. Because a state may dispense with a jury trial, it does not follow that it may substitute trial by ordeal. The rack and torture chamber may not be substituted for the witness stand. . . . And the trial equally is a mere pretense where the state authorities have contrived a conviction resting solely upon confessions obtained by violence. . . . It would be difficult to conceive of methods more revolting to the sense of justice than those taken to procure the confessions of these petitioners, and the use of the confessions thus obtained as the basis for conviction and sentence was a clear denial of due process.