courts,[13] the right of women to practice law,[14] legal proceedings for the punishment of felonies commenced by indictment instead of information,[15] the privilege of voting for presidential electors,[16] and the exemption from self-incrimination[17] are not privileges and immunities of citizens of the United States.

In *Colgate v. Harvey*,[18] decided in 1935, however, the Court departed from this strict construction of privileges and immunities of United States citizenship as distinct from privileges and immunities of state citizenship, in holding that a Vermont statute, taxing incomes received by its residents from loans made outside the state, while exempting altogether income received from loans made within the state, abridged the privileges and immunities of United States citizenship. This decision seemed to be the entering wedge to a broader interpretation of the privileges and immunities clause,[19] as indeed it was. Therefore in view of its closely analogical applicability, the Court, in the instant case, was impelled expressly to overrule *Colgate v. Harvey*.[20] The Court has returned to its former line of reasoning in cases involving the scope of the privileges and immunities clause, and that constitutional clause is again reduced to its former insignificance as a factor limiting state governmental action.

J. W. F.

CONSTITUTIONAL LAW—FOURTEENTH AMENDMENT—DUE PROCESS—CONFESSIONS EXTRACTED BY DURESS—[United States].—Petitioners, four young negroes, were convicted of murder on the evidence of their own confessions and sentenced to be hanged. Prior to the trial, they had been arrested without warrant and held for five days, in fear of mob violence, without friends or counsel. During this time they were subjected to intermittent examination and protracted cross-questioning, each alone in the presence of several white men. These examinations culminated in an all night questioning during which petitioners twice confessed, the first time failing to satisfy the prosecuting attorney. Petitioners contend that confessions obtained under these circumstances are the product of duress and that consequently the use of them in court violates due process. On the state supreme court's refusal to disturb the jury's verdict of "no duress," this appeal is brought to the Supreme Court. *Found*, that these undisputed facts as disclosed by the record show that compulsion was applied. *Held*, that conviction on confessions so obtained violates due process.[1]

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13. Walker v. Sauvinet (1875) 92 U. S. 90.
14. Bradwell v. Illinois (1873) 16 Wall. 130; In re Lockwood (1894) 154 U. S. 116.
15. Maxwell v. Dow (1900) 176 U. S. 581.
16. McPherson v. Blacker (1892) 146 U. S. 1.
17. Twining v. New Jersey (1908) 211 U. S. 78.
18. 296 U. S. 404.
19. See Comment (1936) 1 Mo. L. Rev. 187; Note (1936) 45 Yale L. J. 926; Comment (1936) 36 Col. L. Rev. 669.
20. (1935) 296 U. S. 404.

1. Chambers v. Florida (1940) 60 S. Ct. 472.

The Constitutional guarantee protecting civil liberties against invasion by the state governments is the Fourteenth Amendment.[2] While that Amendment does not require any particular form of procedure such as is assured by the federal Bill of Rights,[3] it does guarantee those "fundamental principles of liberty and justice which lie at the base of all our civil and political institutions."[4] What rights are fundamental is determined by examining the history of the law of the land.[5] One of these rights is freedom from being convicted solely on a confession obtained by torture.[6] The Court in the instant case holds that use of a confession obtained by duress, even though the duress falls short of torture, violates the historic purpose of due process.[7]

The reason for banning confessions obtained by torture or duress is their unreliability.[8] However, evidence obtained through prolonged examination is not necessarily unreliable.[9] The threat of mob violence renders a confession invalid only in so far as the confessor is in actual fear of it.[10] Consequently the unreliability of confessions made under the circumstances of the instant case is not inevitable, but must be determined by a careful examination of the evidence. Once the confession is established to be unreliable, conviction on it is thereby shown to be a failure of due process, since such conviction is tantamount to conviction on no evidence at all.[11] The instant case can be placed under that rule.

2. In the first eight Amendments, called the Bill of Rights, lies the Constitutional guarantee against federal violation of civil liberties. However, these Amendments do not apply to the states (Barron v. Baltimore (1833) 7 Pet. 243), nor are they, as such, rendered operative against the states by the Fourteenth Amendment (Palko v. Connecticut (1937) 302 U. S. 319).

3. Rogers v. Peck (1905) 199 U. S. 425.

4. Hebert v. Louisiana (1926) 272 U. S. 312, 316. E. g.: notice of charge and adequacy of hearing (Snyder v. Massachusetts (1934) 291 U. S. 97); impartial tribunal (Tumey v. Ohio (1927) 273 U. S. 510); orderly course of procedure (Moore v. Dempsey (1923) 261 U. S. 86); exclusion of evidence known by the State to be perjured (Mooney v. Holohan (1935) 294 U. S. 103); representation by counsel (Powell v. Alabama (1932) 287 U. S. 45). However, freedom from self-crimination is not one of these (Twining v. New Jersey (1908) 211 U. S. 78). Nor is right to indictment by grand jury (Hurtado v. California (1884) 110 U. S. 516); right to appeal (Ohio ex rel. Bryant v. Akron Metropolitan Park District (1930) 281 U. S. 74); right of review (McKane v. Durston (1894) 153 U. S. 684).

5. Hurtado v. California (1884) 110 U. S. 516, 538; Twining v. New Jersey (1908) 211 U. S. 78, 114; Tumey v. Ohio (1927) 273 U. S. 510; Powell v. Alabama (1932) 287 U. S. 45; Brown v. Mississippi (1936) 297 U. S. 278; and instant case. Local citations in the Hurtado and Twining cases are to Mr. Justice Harlan's dissents which are equally illustrative of this process.

6. Brown v. Mississippi (1936) 297 U. S. 278. For the distinction between the confession-rule and the privilege against self-crimination, see 2 Wigmore, *Evidence* (2d ed. 1923) 142, sec. 823; 4 Wigmore, op. cit. supra, 879, sec. 2266.

7. Chambers v. Florida (1940) 60 S. Ct. 472.

8. 2 Wigmore op. cit. supra note 6, 139, 159, secs. 822, 833, et seq.

9. Wharton, *Criminal Evidence* (11th ed. 1935) sec. 612.

10. Id. at sec. 615.

11. Brown v. Mississippi (1936) 297 U. S. 278. Thus there is failure of due process in conviction on evidence known by the state to be perjured

The Supreme Court may grant *certiorari* to a state court when some fundamental Constitutional right has been denied in a state proceeding.[12] In general, determinations of fact made by a state court will be considered final.[13] However, there are two exceptions to this. The Court will review the findings of fact of a state court "(1) where a Federal right has been denied as the result of a finding shown by the record to be without evidence to support it, and (2) where a conclusion of law as to a Federal right and findings of fact are so intermingled as to make it necessary, in order to pass upon the Federal question, to analyze the fact."[14] Thus in determining whether equal protection has been violated by trying a negro before a jury on which no one of his race might serve, the Court has examined the record and reversed the case because, contrary to the state court's finding, the evidence showed administrative acts calculated to exclude negroes from the panel.[15] This practice of reviewing the state's findings of fact has been opposed as infringing state sovereignty, delaying justice, and unduly burdening the Court.[16] However, the importance and comparative rarity of the cases indulging this practice reflect the Court's saving discretion in the matter. The instant case illustrates the extent of this right to review the facts.[17] Although the Court has stated in unmistakable terms that it will examine facts if that is necessary in determining whether a federal right has been denied in substance or effect,[18] the instant case is one of the very few, if, indeed, it is not unique in that respect, in which the Court has carried this rule to its logical conclusion by reversing the findings of fact of a state jury. Even here the finding which was reversed partakes of the

(Mooney v. Holohan (1935) 294 U. S. 103), conviction on arbitrary presumption against accused in lease of lands to aliens (Morrison v. California (1934) 291 U. S. 82), conviction for syndicalism without evidence of criminal purpose (Fiske v. Kansas (1927) 274 U. S. 380). For several theories to explain the holding in the Brown case, see Comment (1936) 36 Col. L. Rev. 832, at 833. There it is suggested that such confession extracted by torture lacks probative value or that the use of torture in itself vitiates the whole legal process as to the defendant, etc.

12. (1911) 36 Stat. 1156, c. 231, sec. 237, (1928) 28 U. S. C. A. sec. 344, (1939 Supp.) 28 U. S. C. A. sec. 344.

13. Thomas v. Texas (1909) 212 U. S. 278.

14. Northern Pacific Ry. v. North Dakota (1915) 236 U. S. 585, 593.

15. Pierre v. Louisiana (1939) 306 U. S. 354; Norris v. Alabama (1935) 294 U. S. 587; and cases cited in the latter.

16. Nutting, The Supreme Court, the Fourteenth Amendment and State Criminal Cases (1936) 3 U. of Chi. L. Rev. 244, 258 et seq. Mr. Justice McReynolds, dissenting in Moore v. Dempsey (1923) 261 U. S. 86, 102, issued the following caveat: "The fact that petitioners are poor and ignorant and black naturally arouses sympathy; but that does not release us from enforcing principles which are essential to the orderly operation of our federal system."

17. Chambers v. Florida (1940) 60 S. Ct. 472. The Court has reached a view contrary to that of the state supreme court, the state lower court, and even the jury. The state supreme court's holding was, of course, that the jury's verdict of "no duress" was not against the weight of the evidence (Chambers v. State (1939) 136 Fla. 568, 187 So. 156). The lower court's finding of "no duress" was reversed because such was a matter properly for the jury (Chambers v. State (1934) 117 Fla. 642, 158 So. 153).

18. Norris v. Alabama (1935) 294 U. S. 587, at 589.

judicial in that the question whether a confession is voluntary and therefore admissible is customarily for the court and not the jury.[19] Consequently the Court has not been forced to penetrate the aura of sanctity which clothes the findings of "twelve good men and true" when acting within their traditional province. W. P.

CONSTITUTIONAL LAW—INTERSTATE COMMERCE—STATE TAXATION OF—[United States].—Pursuant to an enabling act of the state legislature, New York City levied a tax on all sales within its territorial limits, a sale being defined as any transfer of title or possession. Respondent, a Pennsylvania corporation, engages in the mining and marketing of coal of a certain type, and maintains sales offices in New York City. Its agents solicit orders which are forwarded to respondent in Pennsylvania. If accepted, they are filled and coal is shipped to New York City where delivery is made. Appellant, city comptroller, ordered payment of the sales tax on such deliveries by respondent. The appellate division granted *certiorari* to review the order and, finding that it called for a direct burden on interstate commerce, held it unconstitutional. The decision was affirmed by the court of appeals, and *certiorari* was granted by the Supreme Court of the United States, which *held:* since the tax was not discriminatory and since it did not subject interstate commerce to the possibility of cumulative burdens, being conditioned on a local event, it did not regulate interstate commerce and was not in conflict with the commerce clause.[1]

The foundation hypothesis of classic reasoning about state taxation of interstate commerce has always been Marshall's epigram, "The power to tax involves the power to destroy."[2] If taxation was charged with a potential so dynamic, then *a fortiori* it constituted a regulation. Thus, that all state taxes on interstate commerce were *regulatory* was a foregone conclusion; all that remained for decision was whether a given tax actually *fell on* interstate commerce.[3]

Deciding that question was solely a matter of charting a boundary between the concepts of interstate commerce and intrastate commerce. If the subject taxed was held to lie on the interstate side of the border, the tax was abated;[4] if on the intrastate, the tax was sustained.[5] In more complex cases, where the commerce taxed had a dual aspect, at once interstate and intrastate, the Court adopted the criterion of the directness or indirectness of the burden which a tax laid on interstate commerce. If the tax fell on an interstate phase, the burden was direct and the tax was void;[6] if on an intrastate phase, the burden was indirect and the tax was

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19. 2 Wigmore, op. cit. supra note 6, 216, sec. 861.

1. McGoldrick v. Berwind-White Coal Mining Co. (1940) 60 S. Ct. 388.
2. McCulloch v. Maryland (U. S. 1819) 4 Wheat. 316.
3. Cf. Powell, Indirect Encroachment on Federal Authority by the Taxing Powers of the States (1918) 31 Harv. L. Rev. 320, 320-327.
4. Coe v. Errol (1886) 116 U. S. 517.
5. Hughes Bros. Timber Co. v. Minnesota (1926) 272 U. S. 469.
6. State Tax Commission v. Interstate Natural Gas Co. (1931) 284 U. S. 41.