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## Constitutional Law - Due Process - Use of Habeas Corpus to Allow Federal Court to Review State Court Jury Determination of Voluntariness of Confession

Herbert R. Brown S.Ed.  
*University of Michigan Law School*

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CONSTITUTIONAL LAW—DUE PROCESS—USE OF HABEAS CORPUS TO ALLOW FEDERAL COURT TO REVIEW STATE COURT JURY DETERMINATION OF VOLUNTARINESS OF CONFESSION—The prisoner had been convicted of murder in the state court. He brought a habeas corpus proceeding in federal district court to secure his release from custody on the ground that the conviction was based on a confession which was obtained by physical violence. The confession had been submitted to the jury, which was instructed to consider it only if it found that it was not obtained by duress or fear produced by threats.<sup>1</sup> The district court granted the writ of habeas corpus.<sup>2</sup> On appeal, *held*, affirmed. The district court could determine the facts of the case for itself. Since there was sufficient evidence to support the district court's finding that the confession was coerced, the writ was required to issue notwithstanding the possibility that the jury had rejected the confession and convicted on other evidence. *Cranor v. Gonzales*, (9th Cir. 1955) 226 F. (2d) 83, cert. den. 350 U.S. 935, 76 S.Ct. 307 (1956).

<sup>1</sup> The jury was told (principal case at 85, n. 1) that confessions "not caused by duress or fear produced by threats are to be considered by the jury," but there was no express direction to the jury to disregard the confession if it did not find it to be voluntary. Although the court says that its opinion proceeds on the assumption that these instructions are the same as those given in *Stein v. New York*, 346 U.S. 156, 73 S.Ct. 1077 (1953), actually they are different. There the jury was told "You must find beyond a reasonable doubt that these confessions, or either of them, was a voluntary one before you would have a right to consider either of them." Principal case at 85, n. 1. It is possible, therefore, to make a distinction between the two cases on this ground.

<sup>2</sup> *Giron v. Cranor*, (D.C. Wash. 1953) 116 F. Supp. 92, noted in 42 Geo. L.J. 311 (1954).

It is clear that a state court conviction which is based upon a coerced confession violates the due process clause of the Fourteenth Amendment.<sup>3</sup> Where the undisputed facts show that the confession which was submitted to the jury was coerced, the trial court's verdict will be set aside even if the jury had been instructed not to consider the confession unless it found it voluntary.<sup>4</sup> This is so in spite of the presence in the record of other evidence which would have been sufficient in itself to support a conviction.<sup>5</sup> Before the Supreme Court's decision in *Stein v. New York*,<sup>6</sup> it was clear that even where the circumstances of the confession were in dispute the federal courts had the right to make their own independent examination of the facts to determine whether the confession was voluntary.<sup>7</sup> In the *Stein* case, however, the Court refused to overturn a conviction where a confession had been made under disputed conditions and where the question of whether or not there had been coercion had been left to the jury.<sup>8</sup> Since the principal case reaches a contrary result on similar facts the question arises as to whether it can be reconciled with the *Stein* decision.

The *Stein* case may be viewed as standing only for the proposition that the Supreme Court is limited in the extent to which it may go in making an independent examination of facts established at the trial.<sup>9</sup> Under this interpretation the principal case can be reconciled with *Stein* since it involved not an appeal but a habeas corpus proceeding at which the federal court is entitled, by statute, to reexamine the facts.<sup>10</sup> However, it may be

<sup>3</sup> *Brown v. Mississippi*, 297 U.S. 278, 56 S.Ct. 461 (1936); *Chambers v. Florida*, 309 U.S. 227, 60 S.Ct. 472 (1940).

<sup>4</sup> The principal case should be distinguished from those cases in which the facts are not disputed, such as *Leyra v. Denno*, 347 U.S. 556, 74 S.Ct. 716 (1954), noted in 53 MICH. L. REV. 468 (1955). Instead of classifying the facts as disputed and undisputed, the distinction may be better understood by distinguishing between "basic facts" and the "interpretation of the legal significance of such facts." Basic facts (e.g., that *A* hit *B*) are conclusively decided by the jury whereas the legal significance of such facts (e.g., that *A* coerced *B*) may be subject to an independent examination by the Supreme Court. This distinction was drawn by Justice Frankfurter in *Brown v. Allen*, 344 U.S. 443 at 506-507, 73 S.Ct. 397 (1953).

<sup>5</sup> *Malinski v. New York*, 324 U.S. 401, 65 S.Ct. 781 (1945).

<sup>6</sup> 346 U.S. 156, 73 S.Ct. 1077 (1953).

<sup>7</sup> *Watts v. Indiana*, 338 U.S. 49, 69 S.Ct. 1347 (1949); *Turner v. Pennsylvania*, 338 U.S. 62, 69 S.Ct. 1352 (1949); *Harris v. South Carolina*, 338 U.S. 68, 69 S.Ct. 1354 (1949); *Haley v. Ohio*, 332 U.S. 596, 68 S.Ct. 302 (1948); *Ashcraft v. Tennessee*, 322 U.S. 143, 64 S.Ct. 921 (1944); *Ward v. Texas*, 316 U.S. 547, 62 S.Ct. 1139 (1942); *Baumgartner v. United States*, 322 U.S. 665, 64 S.Ct. 1240 (1944). See *Stroble v. California*, 343 U.S. 181, 72 S.Ct. 599 (1952); *Lisenba v. California*, 314 U.S. 219, 62 S.Ct. 280 (1941).

<sup>8</sup> For analyses of the *Stein* case, see 52 MICH. L. REV. 421 (1954); 21 UNIV. CHI. L. REV. 317 (1954); 67 HARV. L. REV. 118 (1953).

<sup>9</sup> The argument is that in *Stein* the Court merely decided that the facts did not justify it in saying that the confession was inherently coerced. Hence the further consideration of what the jury might have done was mere dictum. The case is then viewed simply as one in which the dissenters in previous coerced confessions cases were now in the majority. Compare the dissent of Justice Jackson in *Ashcraft v. Tennessee*, note 7 supra.

<sup>10</sup> 28 U.S.C. (1952) §2243. See *Brown v. Allen*, note 4 supra. Of course the court is permitted to, and probably will, accept the state court's findings in the absence of unusual circumstances.

contended that the *Stein* case went further and held that even if the reviewing court feels that the confession was coerced it can not overturn a jury's verdict where the disputed facts as to coercion were left to the jury under proper instructions, and where there was present in the record other evidence sufficient in itself to support the conviction.<sup>11</sup> The theory behind upholding a conviction under these circumstances is that the jury is assumed to have followed its instructions, disregarded the coerced confession, and convicted the defendant on the basis of the other evidence.<sup>12</sup> This seems to be the more reasonable interpretation of the *Stein* case, because in order to have upheld the jury's verdict in that case the Court must have considered the possibility that the jury found the confession coerced. Under this interpretation the principal case is in conflict with *Stein*. A following of the *Stein* decision would have required the district court, in order to justify granting the writ, to find not only that the confession was coerced, but also that the jury did not disregard the confession and convict on other evidence.<sup>13</sup> The fact that the principal case involved a habeas corpus proceeding does not explain away the court's refusal to follow this course.

If the principal case is followed, the effect will be to limit the *Stein* holding to a curtailment of the Supreme Court's ability to make an independent examination of the facts on appeal. The *Stein* case would no longer stand as authority in support of the New York procedure of submitting the admissibility of confessions to the jury.<sup>14</sup> Hence the principal case may spell the death of the New York procedure. This in itself may be a salutary result. Under the New York procedure it is impossible to determine just what course of action the jury followed in reaching a conviction. Also, as a practical matter, it is probably not possible for jurors to hear a confession, find it inadmissible as evidence, and go on to reach a decision in which the confession does not play some part.<sup>15</sup> Nor does there appear to be any way in which to determine upon what factors the jury actually did base their conviction.<sup>16</sup> Consequently, the result in the prin-

<sup>11</sup> This view is based upon language used by Justice Frankfurter in his dissent in *Stein v. New York*, note 6 *supra*, at 201.

<sup>12</sup> The *Stein* case did not adopt an "other evidence" rule in conflict with *Malinski v. New York*, note 5 *supra*. It did not say that a coerced confession is admissible any time there is sufficient other evidence on which to base a conviction. It said only that the jury may reject a confession and then convict on other evidence.

<sup>13</sup> The court says that to make the accused prove what the jury did would impose upon him the burden of proving something which is almost impossible to establish. Principal case at 89.

<sup>14</sup> For an excellent discussion of the New York jury instruction procedure generally, see 21 *UNIV. CHI. L. REV.* 317 (1945).

<sup>15</sup> This possibility is acknowledged in *Stein v. New York*, note 6 *supra*, at 170-171.

<sup>16</sup> Special verdicts and interrogatories have not been used in criminal cases; nor is it possible to have any post trial inquisition of the jurors. *McDonald v. Pless*, 238 U.S. 264, 35 S.Ct. 783 (1915); *Hyde v. United States*, 225 U.S. 347, 32 S.Ct. 793 (1912).

cipal case seems to be desirable, although it is unfortunate that the opinion did not come to grips with the conflict between it and the *Stein* rule.

*Herbert R. Brown, S.Ed.*