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The Right Against Coercion: A Normative Conception Restricts Police Deception

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Introduction

Custodial police interrogations are an important instrument of police work and, by extension, the maintenance of law and order in American society.[1] A custodial interrogation is "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way" (*Miranda v. Arizona*, 1966). A primary purpose of interrogations is to elicit incriminating evidence from a suspect to support the government's case against him. The United States Supreme Court has ruled that the Fifth Amendment's Self-incrimination Clause and the 14th Amendment's Due Process Clause render coerced confessions inadmissible at trial, resulting in a right against coercion. The Court conceptualizes that right with the voluntariness standard: Interrogations that induce involuntary confessions violate the right against coercion. This thesis first argues for a normative conception of the right against coercion, then demonstrates that police's deceptive presentation of manufactured evidence often violates that normative conception.[2]

Part 1 of my thesis establishes my principled account of the right against coercion. **(1.1)** I begin by summarizing the relevant case law to frame the Court's present position on acceptable interrogation tactics as they relate to the right against coercion. **(1.2)** I next argue that the right against coercion is a peripheral constitutional right that possesses the same authority as other peripheral rights, such as the right to free association. (**1.3**) I then identify problems with the Supreme Court's use of the voluntariness standard to determine when confessions are coerced. **(1.4)** I contend that the right against coercion is vague because of the Supreme Court's failure to

[1] For the rest of this thesis, I will use the term "interrogation" as a shorthand reference to "custodial interrogations."

[2] When I refer to the right against coercion in general terms, I shall use the more general terms "detainee" or "detained person." I use those terms instead of "suspect" or "arrestee" because there are some instances where a person may be detained without having been formally arrested or named a suspect. However, when referring to specific cases, I may occasionally use terms other than "detainee" or "detained person" if they are true of those cases.

clearly define it and because of the lack of philosophical consensus on the concept of coercion. **(1.5)** Next, I closely examine the Supreme Court's language in and the social context of important cases concerning the right against coercion. From my analysis, I argue that despite its stated adherence to the voluntariness standard the Supreme Court has actually interpreted the right against coercion normatively: *according to society's evolving standards of decency*. **(1.6)** I then briefly summarize the Hart-Dworkin debate on the related roles of legal principles and judicial discretion in the resolution of vagueness in the law. I agree with Dworkin that normative principles are an appropriate clarificatory resource within the law. (1.7) Since the right against coercion is vague, I propose an explicit, principled standard for the Supreme Court to follow whenever it adjudicates cases surrounding the right against coercion. The principled standard fits prior decisions while also allowing for appropriate interpretational flexibility as societal norms of decency evolve. **(1.8)** I conclude by entertaining and replying to potential originalist objections to my approach towards constitutional interpretation.

Part 2 my thesis, the Deceptive Presentation of Manufactured Evidence, scrutinizes the interrogation method of deceptively presenting manufactured evidence through the lens of my principled account of the right against coercion. **(2.1)** I first establish that deception, both in general and in interrogations, can influence people in a manner that is core to all conceptions of coercion. **(2.2)** Next, I survey state criminal laws on coercion and its subtype, extortion. I find that states whose cumulative populations constitute the majority of the United States define the crimes of coercion or extortion to include threats facilitated by police's deceptive presentation of manufactured evidence. Since popularly elected officials create criminal laws, and such laws implicitly condemn the conduct they prohibit, my findings suggest the public believes that deceptively presenting manufactured evidence is an unacceptable method to influence people.

(2.3) I then survey state criminal laws on forcible sexual conduct. I again find that the laws of states who represent the majority of the country's population prohibit deception as a means to induce someone to engage in sexual conduct. I argue that my finding demonstrates the public believes deception is an unacceptable way to induce a person to do something they have a constitutional right not to do.

I conclude by briefly discussing various issues and approaches my thesis did not thoroughly address.

Part 1: What is the Right Against Coercion?

1.1: The Right Against Coercion Exists

The Supreme Court has continually chipped away at police tactics whenever it has found that they tended to produce involuntary, or compelled, statements. The primary question before the Court was not whether compelled testimony or confessions were admissible, since their inadmissibility had been established. Instead, the Court charged itself with determining what conditions produced involuntary statements. *Bram v. United States* (1897) was an early case where the Court articulated a version of the voluntariness standard. *Brown v. Mississippi* (1936) excluded confessions compelled by physical force. *Chambers v. Florida* (1940) extended the prohibitions of *Brown* to psychological torture. *Rochin v. California* (1952) found that any evidence obtained by police conduct that "shocks the conscience" is inadmissible in court. Most famously, *Miranda v. Arizona* (1966) held that a suspect's statements are inadmissible in court if police did not first remind them of their rights. Finally, *Frazier v. Cupp* (1969) stopped short of proscribing deceptive interrogation tactics.

I will now briefly summarize the facts and holdings of *Bram*, *Wan*, *Brown*, *Chambers*, *Rochin*, *Miranda,* and *Frazier*, and identify what elements of each case informed the Court's judgment.[3]

Bram v. United States (1897)

In *Bram*, the Herbert Fuller cargo ship was heading from Boston to South America when the captain, his wife, and the second officer were found murdered, apparently with an ax. The crew detained and interrogated a sailor, Charley Brown, who eventually claimed that he saw first officer John Bram commit the crime. The crew detained Bram until the ship arrived in Halifax,

[3] I will focus on the elements of the cases that relate to the legal status of coercion.

where a detective forced Bram to strip and interrogated him. The detective promised Bram that his confession would reduce the charges against him; Bram ultimately confessed.

Because *Bram* was a federal case, the Court based its decision on the Fifth Amendment's common law roots that previous state and federal cases had previously determined required a "general rule" that "a confession must be voluntary." The Court ruled that a "confession can never be received in evidence where the prisoner has been influenced by any threat or promise; for the law cannot measure the force of the influence used, or decide upon its effect upon the mind of the prisoner." Since the Court determined that part of the reason Bram confessed was that the detective suggested that his confession would lessen the charges against him, it overturned Bram's conviction and ordered a new trial be held without the use of Bram's confession.

Wan v. United States (1924)

Wan concerned a man convicted for the murder of three Chinese men in Washington, D.C. A witness stated that he saw New York City resident Wan with the three victims the night of the murder. Though not formally arresting him, the police took Wan into custody in NY and boarded him in a hotel room in Washington, D.C. There, while Wan suffered from a severe flare-up of a chronic stomach condition, police continually questioned him for eight days, "[r]egardless of Wan's wishes and protest, his condition of health, or the hour." They provided Wan the counsel of neither a lawyer nor friend. Against Wan's will, they took him to the scene of the crime where they persistently questioned him and implied he was responsible, while at various points suggesting that if Wan did not confess, they would charge his brother with the crime. After eight days, Wan signed a confession. Only then did police formally arrest him, whereupon they interrogated him for three more days.

He was "in constant pain all of this time and had been unable to eat for days." A court convicted Wan and a jury sentenced him to death by hanging in part because of the confession he signed.

The Court of Appeals of the District of Columbia ruled that Wan's confession was voluntary under law because "it was not induced by a promise or a threat." The Supreme Court agreed that it was not induced by a promise or threat, but held that a confession is voluntary "if, and only if, it was, in fact voluntarily made," thereby changing the standard for voluntariness. The Court found that Wan's confession was not voluntary and therefore should have been excluded from the jury under the Fifth Amendment's Self-incrimination clause. It further affirmed that evidence obtained by coercive interrogations are inadmissible "whatever may have been the character of the compulsion." The Court overturned Wan's conviction.

Brown v. Mississippi (1936)

In the case of *Brown*, a Mississippi jury convicted three black men for the murder of Raymond Stewart, a white Mississippian farmer, based on confessions extracted under physically coercive circumstances. A mob of white men (including a deputy sheriff) initially confronted the defendant Ellington at his home and brought him to the scene of the crime. The group suspended Ellington from a tree, whipped him, and promised to continue if he did not provide a satisfactory statement of guilt. After repeated denials, the mob released Ellington—only to return a day or two later, seize him yet again, whereupon the deputy whipped him until he finally agreed to confess on the deputy's terms. Ellington implicated the other two defendants, Brown and Shields, so all three were brought to the police station. There, the savage beatings continued until all the men confessed "in all particulars of detail so as to conform to the demands of their torturers," who warned that any subsequent changes to the men's stories would guarantee future beatings.

The Court held that the Constitution prohibits "[c]oercing the supposed state's criminals into confessions and using such confessions so coerced from them" in trials. There is a fundamental right not to be coerced into confessing, and whenever that right is violated, the Court "will refuse to sanction such violations and will apply the corrective." Since the right not to be forced to confess is a "principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental" (*Snyder v. Massachusetts*, 1933), physical coercion represents a violation of the due process guaranteed by the 14th Amendment.

Chambers v. Florida (1940)

Chambers concerned four black men accused of murdering Robert Darsey, an elderly white Floridian man. When news initially spread that Darsey had been murdered, the Broward County Sheriff warrantlessly arrested nearly forty Black men and boys in the small town of Pompano where the crime had occurred and held them at the Broward County jail in Fort Lauderdale. Police then transferred the group to the Dade County jail in Miami. For five days, police vigorously questioned the prisoners, denying them correspondence with counsel and friends, but it was to no avail. During the subsequent two days police focused their efforts on the four petitioners, keeping them awake for extended periods, eating fresh food and coffee in front of them, all the while questioning them incessantly. Eventually, the four petitioners confessed.

The Court overturned the petitioners' convictions. For the Court, the most salient question was whether the confessions were coerced. Finding that they were, the Court held that they were inadmissible for the same reason were the confessions in *Brown*: "Just as our decision in *Brown v. Mississippi* was based upon the fact that the confessions were the result of compulsion, so, in the present case, the admitted practices were…" Whereas the Court in *Brown* understood coercion as an act specifically involving physical violence, *Chambers* expanded it to

potentially include psychological manipulation. Though the record reflected that the officers never physically harmed the suspects, "repeated inquisitions of prisoners without friends or counselors present, and under circumstances calculated to inspire terror" are compulsory and therefore violate the Due Process Clause of the 14th Amendment.

Rochin v. California (1952)

In *Rochin*, police raided the apartment of the petitioner, Rochin, based on information that he was selling narcotics. When police spotted pill capsules near Rochin, he proceeded to swallow them. Police unsuccessfully attempted to manually remove the pills from Rochin's mouth, after which the "officers took petitioner to a hospital, where an emetic was forced into his stomach against his will. He vomited two capsules which were found to contain morphine." Rochin was prosecuted and convicted under California state law for an offense having to do with possession of the morphine capsules.

The Court overturned the petitioner's conviction on the same constitutional grounds on which it overturned the convictions in *Brown* and *Chambers*. Forcing Rochin to emit the incriminating evidence did not differ in principle from forcing a suspect to produce a verbal confession. Both violate due process because they "offend the community's sense of fair play and decency"; it would be unreasonable to hold that "police cannot extract by force what is in [a suspect's] mind but can extract what is in his stomach."

Miranda v. Arizona (1966)

In *Miranda*, police suspected Ernesto Miranda, a career criminal, of the kidnapping and rape of a young woman. They arrested Miranda, brought him in for questioning, and after two hours of interrogation, extracted a written confession. Miranda never asked for an attorney nor did police advise him of his right to one. A jury convicted Miranda for the kidnapping and rape.

Two years before *Miranda*, in *Malloy v. Hogan* (1964) the Supreme Court incorporated the Fifth Amendment's privilege against self-incrimination to apply to the states.[4] *Miranda* was the first case in which the substance of the Self-incrimination Clause was in question in a non-federal case. The Court held that the "*incommunicado*" custodial environment is inherently coercive, and so statements elicited under such circumstances could not be affirmed to be voluntary: "No amount of circumstantial evidence that the person may have been aware of this right will suffice." Therefore, the Court reasoned, police are required to inform the imminently interrogated individual of his right to an attorney (the "Miranda warning"). Any statements made in lieu of such action are inadmissible. The Court thus overturned Miranda's conviction because it relied on inadmissible evidence. To this day, police are required to read suspects their Miranda warnings. Some states, like California and Vermont, have adopted amendments to their constitutions that provide even more protections to the accused than does *Miranda* (Crossley, 1986, p. 1721).

Frazier v. Cupp (1969)

The relevant portion of *Frazier* concerned the admissibility of a confession the petitioner (Frazier) made that aided his conviction. In 1965, police arrested Frazier under suspicion of murder and brought him in for questioning. After asking some initial basic questions, police read him a "somewhat abbreviated description of his constitutional rights."[5] The officer questioning Frazier then lied, stating that Frazier's cousin (Rawls) had confessed to his and Frazier's role in the murder. The officer then suggested a sympathetic story: that the victim's homosexual

[4] The incorporation of the Fifth Amendment Self-incrimination Clause was a mere formality. In *Malloy*, the Court noted that the 14th Amendment Due Process standard previously applied in state criminal cases (e.g., *Brown v. Mississippi*) is "the same standard" as the Fifth Amendment Self-incrimination standard that controlled previous federal cases (e.g., *Wan v. United States*).

[5] Note that this event occurred before *Miranda*, so none of its reasoning nor rules controlled.

advances might have instigated the fight that led to the murder. Frazier began to tell his story but became reluctant again, saying "I think I had better get a lawyer before I talk any more. I am going to get into trouble more than I am in now." The officer replied that Frazier was already in the worst trouble possible, implying that further incriminating statements could not worsen his position. Frazier then gave a full confession and signed a written one.

After his conviction, Frazier sued to have a new trial. One of the grounds on which he sued was that his confession was involuntary and therefore inadmissible. The case made its way to the Supreme Court, which agreed with the trial court's judgment that Frazier's confession was voluntary. The Court noted that the "questioning was of short duration, and petitioner was a mature individual of normal intelligence." While it considered the police's dishonesty relevant to the question of whether Frazier's confession was voluntary, it ruled that, given the "totality of the circumstances," Frazier's confession was voluntary and therefore admissible.[6] Since none of Frazier's other arguments succeeded, the Court upheld his conviction.

In *Bram*, *Wan*, *Brown*, *Chambers*, *Rochin*, *Miranda*, and *Frazier*, the Court confirmed its commitment to the inadmissibility of evidence (whether physical or testimonial) obtained by coercive means. No subsequent ruling has undermined this firmly established principle. It follows, then, that the Court ought to proscribe, in one way or another, any police interrogation tactic that obtains evidence coercively. It is therefore up for argument what kinds of police interrogation tactics might be coercive. Any argument that proves as much ought to expand the Court's understanding of coercion while simultaneously extending its remedies and prophylactics to address these newly identified cases of coercion.

[6] The "totality of the circumstances" test first appeared in *Fikes v. Alabama* (1957).

1.2: The Right Against Coercion is a Peripheral Right

I will now argue that the Supreme Court's holding that there exists a right against coercion in interrogations has the same or sufficiently similar authority as clauses within the Constitution itself.

Nothing in the text of the US Constitution explicitly provides a right to association, nor was such a right understood to exist for the first 169 years after the ratification of the Constitution. The Supreme Court first identified a right to association in *NAACP v. Alabama* (1958). Writing for the majority, Justice John Harlan II held that the right of free association is necessary to secure citizens' rights to free speech and assembly. Citizens could assert this right against the states, since the right to free speech and assembly were incorporated through the 14th Amendment's Due Process Clause (*Gitlow v. New York*, 1925; *Stromberg v. California*, 1931; *DeJonge v. Oregon*, 1937). The Supreme Court has affirmed the right to association in numerous cases, including as recently as 2018.[7] (*Mine Workers v. Illinois Bar Assn*., 1967; *Boy Scouts of America v. Dale*, 2000; *Janus* v. *AFSCME*, 2018). The Court offered its most explicit and forceful assertion of that right in *Roberts v. U.S. Jaycees* (1984): "The Constitution guarantees freedom of association of this kind as an indispensable means of preserving other individual liberties."

When the Court considers cases concerning the right to free association, it no longer evaluates whether that right exists. Instead, it considers the nature, extent, and limitations of that right as specific controversies bring such questions into focus. This is clearly illustrated in *Boy Scouts of America v. Dale* (2000). In that case, upon learning that Dale was gay, the Boy Scouts of America removed him from a leadership position in a New Jersey troop because

[7] Interestingly, *Janus* confirmed that there is a corollary negative right ("freedom *from* association").

homosexuality was "inconsistent with its values." Dale sued on the grounds that his termination violated a New Jersey statute that prohibits discrimination based on sexuality in public accommodations. The Court held that the application of the New Jersey law to force the Boy Scouts to include Dale violated the organization's right to expressive association. While noting that the right to free association, the Court held that since Dale was openly gay his forced inclusion would substantially affect the "group's ability to advocate public or private viewpoints."

The salient point to take away from *Boy Scouts* for the purposes of this thesis is not the specific facts of the case or the doctrines the Court has developed to determine what to do when one right (of the state to make laws concerning public accommodations) conflicts with another (of individuals to freely associate). Instead, the reader should take note that the Court assumed that a fundamental right to free association exists, then reasoned with that fixed assumption. It did not consider whether that right exists at all, or whether that right's status ought to be demoted. It is settled law that there is a fundamental right to free association.

Likewise, it is settled law that there is a right against coercion in police interrogations. As I previously discussed, the Court is no longer considering whether that right exists—just as it is no longer considering whether a right to free association exists. But a further similarity exists: The right against coercion, like the right to free association, is a peripheral right.[8] The Ninth Amendment states: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." It is this constitutional text which forms the basis for peripheral rights—rights which are not explicitly mentioned in the Constitution, but which are practically necessary to secure some explicit right or which logically flow from the

[8] This kind of right is sometimes referred to as "unenumerated," "penumbral" or "implicit."

text. As I noted earlier, the right to free association is such a right because it secures the First Amendment rights to free speech and assembly. The right against coercion is of the same kind: It secures the 5th Amendment right against self-incrimination and the 14th Amendment right to due process. These kinds of rights have the same or sufficiently similar authority as rights explicitly stated in the Constitution and its amendments. They are firm doctrines of constitutional law, and the Court should (and does) treat them as such.

1.3: Problems with the Supreme Court's Voluntariness Standard

The Supreme Court has ruled that it is unconstitutional for police to coerce detainees. Any evidence obtained via coercion is inadmissible in court. I have dubbed this the right against coercion. The Court's explicit position is that coercion occurs when detainees confess involuntarily due to the actions of interrogators. While this definition reflects a common intuition about coercion—that it constricts a person's agency—it is unsatisfactory because it is indeterminate, overinclusive, and underinclusive. I shall address these three flaws in the order I mentioned them.

The Supreme Court's definition of "voluntary" concerns the mental state of the confessor. In *Culombe v. Connecticut* (1961), *Schneckloth v. Bustamonte* (1973), and *Arizona v. Fulminante* (1991), the Court affirmed that:

> *The ultimate test remains that which has been the only clearly established test in Anglo-American courts for two hundred years: the test of voluntariness. Is the confession the product of an essentially free and unconstrained choice by its maker? If it is, if he has willed to confess, it may be used against him. If it is not, if his will has been overborne*

and his capacity for self-determination critically impaired, the use of his confession offends due process.

It is hard to discern what would qualify as "an essentially free and unconstrained choice." Background conditions always shape what kinds of actions are available to a person; no action is entirely free, and no action is entirely unfree. Even in those instances where one is as essentially *unfree* as a person could be, there still exists a choice. When a gunman asks for "your money or your life," a choice between options still exists, if only nominally. No one would dispute that the gunman has coerced you if you *decide* to hand over your money, even though doing so may be an exercise of will.[9] Philosopher G.A. Cohen has pointed out that when we say someone is forced to do something (*i.e.,* does so involuntarily), we do not literally mean they have no alternative—just no acceptable alternative. It would seem, then, that we must take "involuntariness" in this legal sense to depend on the perceived *acceptability*, not availability, of alternatives.

But that is something entirely indeterminate. All would likely agree that giving up one's life is not an acceptable alternative to handing over one's money, but is suffering significant reputational harm? How substantial must that reputational harm be, in what proportion to the monetary loss must it be? And what extent does it matter how the would-be involuntary actor assesses their alternatives—need their assessments be accurate? To determine involuntariness, all these kinds of questions must be asked. It would seem, then, that framing coercion in terms of involuntariness obscures, rather than clarifies, the right against coercion. That may explain why many state courts, while applying the same voluntariness standard, have arrived at such different judgments about similar cases (Primus, 2015, p.12; Stone, 1997, p. 102).

[9] Coerced confessions are not typically involuntary in the way that removing one's hand from a hot stove is automatic, so we may set aside the straightforward reflexive sense in which a reflexive action is involuntary.

Even if we set aside the problem that voluntariness is indeterminate, that standard cannot provide the conceptual justification for separating all the coercive and non-coercive cases that are legally and intuitively distinct; it is overinclusive. I shall illustrate this with a hypothetical scenario:

Imagine police have pulled over a man, Bob, for a traffic violation. Upon running Bob's license plate, they find that by driving at that time of night, Bob has violated the conditions of his parole. According to his parole conditions, the police should arrest him and search his vehicle and person. They read Bob his rights and take him to the police station where they notice he is shifting uncomfortably, so police begin to suspect he is hiding drugs in his underwear (he is). They ask Bob to produce the drugs, truthfully informing him that if he does not, they will X-ray him and obtain the drugs anyway, and he will receive an additional charge for not cooperating. In that scenario, Bob likely does not want to produce the drugs; however, if he does not cooperate, he knows he will suffer a worse fate. If Bob is of sound mind, he perceives no acceptable alternative: He must produce the drugs because to conceal them is plainly contrary to reason. Under a strict reading of the Court's explicit definition of coercion as the elicitation of involuntary action, the police have coerced him. But clearly, no court would make that finding, and most people will intuitively agree that coercion did not transpire.

The inadequacy of the voluntariness standard is further revealed by the story of Bob when we compare it to cases where the Court deemed certain practices, like the use of physical force, *presumptively* coercive. In *Brown vs. Mississippi*, the Court held that confessions obtained by violence are inadmissible. In such cases, no evaluation of the circumstances of the interrogation is necessary beyond the finding that the police used violence. According to the Court's explicit involuntariness standard, the justification for a designation of presumptive

coercion is that the tactic is so liable to cause involuntary statements that it should be prophylactically prohibited to secure the right against coercion.

However, there is nothing about the tactics it has deemed presumptively coercive that makes them obviously more coercive if we assume the Court follows its stated unidimensional involuntariness standard. Consider the hypothetical in the previous section of a man, Bob, who is induced to provide the drugs hidden on his person. Compare it to the kinds of interrogations the Court has prohibited, like the physical beating of Brown. The difference between these cases is not the degree to which Bob and Brown felt they had an acceptable choice. Both Bob and Brown, if they are of sound mind, are equally bound to cooperate because of the police's actions. Something else must explain why these cases are legally and intuitively distinct such that Bob's right against coercion is secure but Brown's was not.

It might be thought that the distinction lies in the legality of the means used. Thus if police physically assault someone until they confess, like in *Brown v. Mississippi*, it is overdetermined that coercion has occurred because it is illegal to assault someone. Yet there are cases where the Court has admitted the possibility that a confession could be coerced even if every tactic the police used to elicit that confession, when considered individually, was legal. That was the case in *Frazier v. Cupp* (1969): The Court determined that police's deception and manipulation of Frazier, which led him to confess, was not coercive because Frazier was a man of normal intelligence. But whether Frazier was a man of normal intelligence is irrelevant to our question, since police are permitted to interrogate people of below average intelligence. In that case, the Court treated coercion as a phenomenon that could emerge from a combination of individually legal actions.

Now imagine the counterfactual that the Court suggests: All the facts are the same but Frazier is mentally handicapped and consequently the Court rules that, given the totality of the circumstances, his confession was coerced. In that plausible scenario, the Court's definition still contains the flaw of one-dimensionality illustrated by the example of Bob, and it cannot be rescued by claiming its definition only additionally requires that police violated an existing statute. Thus, there must be something other than involuntariness that guides the Court's determination of what is coercive and what is not.[10]

The Court's definition of interrogative coercion as the elicitation of involuntary statements from detainees is also underinclusive: It only counts successful instances where an involuntary statement was in fact extracted. This is more of a conceptual issue than a practical one: Police interrogations are for the purpose of eliciting statements; if police believe the tactics they use are likely to render those statements inadmissible, they are unlikely to use them. But consider the following example:

> *A man is detained and brought in for questioning under suspicion that he committed a crime. He is read his Miranda rights. Police repeatedly assault the man and deny him food and water to extract information, yet he does not divulge any information*.

It is strange to think that just because the man does not make any self-incriminating statements, the police have not violated his Fifth and Fourteenth Amendment right not to be coerced. The police's conduct is surely prohibited by other laws, but it also violates the man's right against coercion. The determination of whether that kind of rights violation occurred should not be contingent upon whether police succeeded in their coercive attempts. In addition, we do not treat

[10] I will later argue, with much more specificity, that the Court is primarily concerned with the normative acceptability of the methods that are used to bring about a confession.

other rights in this way. For instance, there exists a legal right not to be raped. Suppose a man physically strikes a woman, restrains her, and tries to remove her clothing in a clear attempt to rape her, but she successfully breaks free and avoids being raped. As a matter of law and common sense, all would agree that the perpetrator is not *only* guilty of assault and kidnapping—he is also guilty of attempted rape. Just as only charging the perpetrator with assault and kidnapping does not adequately capture the scope of his illegal behavior, neither does charging the interrogating officers in the italicized example above only with assault. A completed rights violation and an attempted rights violation ought to be, and generally are, prohibited for the same reasons. The punishments meted out to a rapist versus an attempted rapist might differ because the extent of the victim's right to retribution depends on the harm they experienced, but that says nothing of the wrongness of the perpetrator's actions. Just as attempted rape is wrong because rape is wrong, if coercion is prohibited by law, so is attempted coercion for the very same legal reasons.

It might be replied that requiring the detainee's acquiescence for a constitutional rights violation is sensible because his cooperation serves as proof that what the police did actually was coercive. That is, if he does not cooperate, it shows that he had a choice not to, and therefore could not be said to have been coerced. But detainees frequently cooperate because of persuasive tactics that clearly fall short of coercion; obviously, a detective can truthfully and persuasively convince a detained suspect to confess without coercing him. To preserve the Court's definition, it might be argued that part of what justifies the determination that some particular statement was made involuntarily is the tactics the police used. But here is where the indeterminacy problem shows its face again: The tactics the police use and the voluntariness of the statements those tactics elicit are situationally dependent. No tactic always leads to involuntary statements, and

there is no way to determine whether a particular statement was actually involuntary. Therefore, the Court's involuntariness standard excludes a great number of obvious instances of violations of the right against coercion just because a detainee withstood the attempted coercion.

1.4: The Right Against Coercion is Vague

In this section, I will briefly discuss the importance of clarity and the undesirability of vagueness in law. I then argue that the right against coercion is a case of vagueness because of the flaws in the Court's definition, and because very little philosophical consensus on coercion exists.

Clarity is one of the chief norms of the rule of law: the "number of principles of a formal and procedural character, addressing the way in which a community is governed…concern[ing] the generality, clarity, publicity, stability, and prospectivity of the norms that govern a society." These principles need not have any substantive element; that is, they do not entail the content of the laws be of any kind. Instead, they concern the process of how, within a political community, proposed rules become valid laws. Legal philosopher Lon Fuller wrote that "the desideratum of clarity represents one of the most essential ingredients of legality" is a "proposition…scarcely subject to challenge" (1967, p. 13). I imagine the reader, like Fuller suggests, is unlikely to challenge the importance of clarity and the undesirability of vagueness, so I will not dedicate space to defending that position. But I should just quickly remark that vagueness is hostile to the rule of law because laws are intended to be followed, and they cannot be effectively followed if it is not clear what they mean. The Court's definition of coercion as a statement induced involuntarily by the conduct of interrogators is vague because it is indeterminate, overinclusive, and underinclusive.

Considering the problems with the Court's definition of coercion, it is tempting to turn to philosophy to resolve the issue: If coercion is legally vague, perhaps it is not philosophically vague. I will now briefly summarize the most influential philosophical conceptions of coercion. We will see that there is not a philosophical consensus on coercion, and thus a clear philosophical definition of coercion that might stand in for a legal definition does not exist. The Stanford Encyclopedia of Philosophy's entry on coercion directed me towards primary sources that I examined (Anderson, 2023).

One of the earliest definitions of coercion comes from Aquinas. He first introduces the idea of necessity as "that which must be." He then separates necessity into different categories. There is a "natural necessity," such as that it is "necessary for the three angles of a triangle to be equal to two right angles." Naturally necessary propositions are true because they are contained within the very concept of something. Then there is a "necessity of end," which is anything that is required to accomplish something else; for instance, "a horse is necessary for a journey." The kind of necessity relevant to this thesis is "necessity of coercion": "a thing must be, when someone is forced by some agent, so that he is not able to do the contrary." Necessities created by coercion are "repugnant to the will" because they inhibit a person's ability to act in furtherance of their inclinations. By contrast, natural necessities have nothing to do with will, and necessities of end are instrumental towards the accomplishment of the will's inclinations. Coercion, according to Aquinas, is when one person's actions force another person to do something against the inclinations of his will. Coercion does not occur, however, when mere threats are wielded; coercion requires that one inflict consequences (Aquinas, 1952, I Q82 A1).

Hobbes and Locke, in contrast to Aquinas, approach the subject of coercion only to determine its relationship to and justified use by the state. They are less concerned with defining

precisely what coercion is. Hobbes's bleak view of human nature, implied by his assertion that humans in the state of nature are at a state of "war of every man against every man," makes it desirable and necessary that a state with coercive power exists to ensure people fulfill their agreements (Hobbes, 1909, p. 127). That power, in Hobbes view, is rightly near limitless, since even the most wicked governments afford people a better alternative than the horrors of the state of nature. Locke's somewhat more optimistic assessment of human nature informs his view that people would not "put a force into the magistrate's hand to execute his unlimited will arbitrarily upon them," especially since wrongful force wielded by a unified government is more dangerous than that wielded by individual men in the state of nature. The government requires coercive authority to enforce property rights, but it only does so validly when that authority ultimately derives from the set of arrangements flowing from the consent of the governed and that the coercive act does not conflict with natural rights. One such right is that people are entitled to the fruits of their labor if "there is enough, and as good, left in common for others" (Locke, 1971, Section 27). Hobbes and Locke have the same kinds of things to say about coercion, with the exception that Locke identifies a greater need for constraints on the state's coercive power.

Mill takes coercion to encompass a much broader set of practices than do Hobbes and Locke. In *On Liberty*, Mill writes that "compulsion and control" may take the form of "physical force…*or the moral coercion of public opinion* [emphasis added]" (2001, p. 13). Consequent social approbation for doing or not doing something constitutes a kind of coercion. Neither kind of coercion, he argues, could ever be justified on the grounds that it benefits the recipient of that coercion; coercion is only permissible for the purpose of protecting oneself and others. For instance, on Mill's view it would be wrong to coerce someone not to engage in homosexual activity only because it is bad for the gay person himself. Mill's view is rooted in the

embracement of individuality as a utilitarian instrument of positive social change. Though customs and traditions usually reflect people's observations about what kinds of behaviors are beneficial or harmful, "mankind are imperfect" so there should be "different experiments of living" so long as those behaviors do not pose a specific risk of direct and assignable harm to others (2001, p. 53).

Only in the 20th century did philosophers begin a robust attempt to set out the necessary and sufficient conditions of coercion. Hobbes, Locke, Mill, and others all gesture at what they take the concept to mean, but none do so explicitly and robustly. Instead, they discuss the term in the context of its application and justifications. Aquinas, to his credit, does attempt to define coercion, but his definition falls short of satisfactory rigor much like the Supreme Court's.

Austrian jurist Hans Kelsen, like his predecessors, connects coercive actions by the state. For Kelsen, the crucial element is that force is either used or sincerely threatened to compel an individual to do something "against the will of the individual" (1967, p. 34). British philosopher J.R. Lucas takes a similar stance, that a "man is being coerced when either force is being used against him or his behavior is being determined by the threat of force" (1966, p. 53). Kelsen and Lucas differ only slightly in that Kelsen requires that it be a matter of fact that force will be used on the coercee if he does not cooperate (Anderson, 2023). Both Kelsen and Lucas continue the "single, continuous thread" that coercion concerns "the ability of some agents to implement and enforce decisions about the activities of others." Mill apparently stands alone in thinking that something like diffuse social disapprobation properly counts as coercion.

20th century philosopher Robert Nozick provides the most influential account of coercion (Anderson, 2023). His account is negative in that it defines coercion in terms of what it prevents

one from doing rather than what it forces one to do. According to Nozick (1969, as cited in Anderson, 2023), P coerces Q if and only if:

1. *P aims to keep Q from choosing to perform action A;*
2. *P communicates a claim to Q;*
3. *P's claim indicates that if Q performs A, then P will bring about some consequence that would make Q's A-ing less desirable to Q than Q's not A-ing;*
4. *P's claim is credible to Q;*
5. *Q does not do A;*
6. *Part of Q's reason for not doing A is to lessen the likelihood that P will bring about the consequence announced in (3).*

Perhaps the most distinctive elements of Nozick's account are that it only includes instances where Q acquiesces, and it excludes instances where P uses direct force to make Q not do something. In other words, coercion must succeed, and it only involves the wielding of threats (Anderson, 2023). Put more concretely, Nozick would not say that a police officer has coerced a suspect into immobility by handcuffing him, since the impact on the coercee is achieved via direct force. By contrast, if a police officer (P) were to communicate to a suspect (Q) that should he attempt to flee (A), the officer will shoot him—and consequently the suspect submits.

Much more has been said about the topic of coercion. Can conditional offers be coercive? When judging whether something is properly an offer, do we use a moralized baseline? These questions would require addressing if this were a thesis on the philosophy of coercion, but it is

not. My purpose has been to briefly review the literature to show that no philosophical consensus exists on coercion, and thus philosophy is not equipped to provide clarification.[11]

As the case law currently stands, one's right against coercion is violated whenever police make him confess involuntarily, or whenever police use some tactic that the Court previously deemed presumptively coercive because of that tactic's alleged liability to cause involuntary confessions. But I have shown that the voluntariness standard has major conceptual issues and that no clear definition emerges from philosophy. Thus, neither the Supreme Court nor philosophy has a clear definition of coercion, the kind of definition that judges could use to justify their determinations of what police interrogation tactics are coercive or not. In sum: There is a right against coercion, but what that means in practical terms is unclear.

1.5: Normative Elements of the Right Against Coercion

When dealing with vague constitutional rules, statutes, and precedent, the Supreme Court often looks to societal attitudes. The Eighth Amendment prohibits "cruel and unusual punishments," but it does not contain a footnote that lists cruel and unusual punishments on one side and merciful and frequent punishments on the other. In *Trop v. Dulles* (1958), the Supreme Court found that denationalization was a cruel or unusual punishment. The principle guiding its judgment was that "the evolving standards of decency that mark the progress of a maturing society" restrict the kinds of punishments that the government may mete out. The right against coercion and what might be formulated as the "right not to be subjected to cruel or unusual punishments" have similar conceptual status for interpretational purposes. Both are rights; both

[11] The thought did cross my mind to develop and defend my own definition of coercion. But the idea was overwhelmed by my concern that it would be inappropriate to oppose my own esoteric definition—even if it was correct—-onto the legal definition. I discuss this concern in more depth in the conclusion.

are legally and philosophically controversial; and courts must apply them to concrete cases. But when it comes to cruel and unusual punishment, the Court has endorsed the "evolving standards of decency" principle as its guide. By contrast, the Court maintains the right against coercion within the conceptually flawed and inconsistent voluntariness standard.

In this section, I will argue that, despite its stated adherence to the voluntariness standard, the Supreme Court has actually interpreted the right against coercion according to evolving standards of decency that apply to government action. To do this, I re-examine a select group of important Supreme Court cases concerning the right against coercion. I identify relevant social, political, and moral factors in these cases. I show that in all of those cases, the Supreme Court not only considered the voluntariness of confessions, but also the normative aspects of the methods used to elicit those confessions.

The first case I shall analyze is *Brown v. Mississippi* (1936). It is important to contextualize that case within the political and moral climate of the time. Prior to *Brown*, police regularly used physical force to obtain confessions from suspects. In 1929, in response to Progressive pressure, President Hoover established the Wickersham Commission and charged it with recommending changes to policing to make it more effective and humane (Leo, 1992, p. 38). It found that police misconduct was rampant: Throughout the country, police departments used the "third degree" (physical coercion) on suspects (Wickersham Commission, n.d.). Physical coercion began to decline due to the surrounding social disapproval.

Brown was the case where the Supreme Court enshrined the new norm that the third degree is unacceptable. In that case, the question was not whether the relevant confessions were involuntary because of police violence: The State of Mississippi, which sought to uphold its conviction, admitted that they were. The salient legal question was whether it is a violation of

14th Amendment Due Process liberty to admit confessions coerced in that manner. Mississippi argued that the fact of involuntariness was insufficient to compel the exclusion of the confessions because the involuntariness standard applied only on the federal level. The Supreme Court took the view that the method of the coercion—physical torture—was what constituted a 14th Amendment violation: "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." It would seem, then, that the Court removed the question from the realm of voluntariness and placed it into the context of our sense of justice and thus moral norms.

Later in the opinion, the Court cites *Fisher v. State of Mississippi* (1926), a somewhat obscure Mississippi State Supreme Court case, to support its claim that admitting coerced confessions violates due process liberty:

> *Coercing the supposed state's criminals into confessions and using such confessions so coerced from them against them in trials has been the curse of all countries…The Constitution recognized the evils that lay behind these practices, and prohibited them in this country…wherever the court is clearly satisfied that such violations exist, it will refuse to sanction such violations and will apply the corrective.*

Upon review of *Fisher*, it is abundantly clear that the Mississippi Supreme Court meant "coercion" in the sense of "involuntariness," and not to imply any particular *method* of inducing that involuntary state. The United States Supreme Court's reliance on *Fisher* thus contradicts its prior framing of the issue: It first says that Due Process violation lies in the *method* of coercion, but then cites a case where the mere fact of coercion (in the sense of involuntariness) was the Due Process violation, to justify its interpretation of Due Process.

Chambers v. California (1940) further muddies the waters concerning what controls the Supreme Court's rulings. Like *Brown, Chambers* was a 14th Amendment Due Process case, but unlike in *Brown,* the Court *explicitly stated that its decision hinged on the presence of coercion in terms of an involuntary confession*. The Court held that "[c]onfessions of murder procured by repeated inquisitions of prisoners without friends or counselors present, and under circumstances calculated to inspire terror" are involuntary. Further confusing things, the Court strangely frames its decision as entirely parallel to *Brown,* the only difference being the particular method found to be coercive: "Just as our decision in *Brown v. Mississippi* was based upon the fact that the confessions were the result of compulsion, so, in the present case, the admitted practices were such as to justify the statement that 'The undisputed facts showed that compulsion was applied.'"

Despite its more explicit adherence to the voluntariness standard, the Supreme Court's decision in *Chambers* is couched in moral language. The Court quotes the section of the *Brown* opinion that refers to interrogation methods as "revolting to the sense of justice" and asserts that it applies just as much to the circumstances of its case. And in the final paragraph of the majority's opinion, the Court opines: "Under our constitutional system, 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 nonconforming victims of prejudice and public excitement." The Court shows a special concern for the racial elements of the case, noting that the interrogators were white state officials while the suspects were "ignorant young colored tenant farmers." That concern was not merely linked to its estimation that the confessions were actually involuntary.

Rochin v. California (1952) concerned the method police used to extract *physical* evidence from a suspect, not a verbal confession. In that way, the case differs from other ones I

have discussed in this thesis. But an important feature of *Rochin* is that it justifies my contention that the decisions in *Brown* and *Chambers* had a lot to do with the societal acceptability of the methods used. In *Rochin,* the Court draws no distinction between constitutional restrictions on the methods police may use to obtain verbal evidence or physical evidence. Both are controlled by the "community's sense of fair play and decency," and no method in either context may be used if it "shocks the conscience." The Court *explicitly* states that these limitations on police conduct flow directly from its holding in *Brown* that the Due Process Clause of the 14th Amendment prohibits "convictions…brought about by methods that offend 'a sense of justice.'"

After *Brown, Chambers, Rochin,* and similar cases, both federal and local police accumulated knowledge through practice and study of the most effective ways to elicit confessions from suspects without violence and without doing anything *obviously* illegal. Sensing the changing moral and legal landscape and eager to seize on the gap in the interrogation market once filled by physical coercion and psychological torture, in the 1950s former Chicago police officer John Reid developed the "Reid Technique" for interrogations. Soon, Reid founded Reid and Associates, Inc., a consulting firm that "trains more interrogators than any other company in the world." Among its clients are "police forces, private security companies, the military, the F.B.I., the C.I.A., and the Secret Service." Its namesake technique "has influenced nearly every aspect of modern police interrogations, from the setup of the interview room to the behavior of detectives" (Starr, 2013)

The Reid technique consists of both subtle and overt psychological manipulation by the interrogator who is not restrained by a commitment to the truth. The interrogator should unequivocally insist on the suspect's guilt, presenting whatever evidence—fabricated or not—he deems appropriate for convincing the suspect that he is certain of his guilt. If the suspect

attempts to deny the accusations, the interrogator should interrupt the suspect so that he cannot do so. And the interrogator should frame the suspect's alleged offense as not so bad—perhaps even morally justified under the circumstances—in addition to de-emphasizing the likelihood that punishment will result from cooperation (Orlando, n.d.).

Miranda v. Arizona (1966) was a Fifth Amendment Self-incrimination case that established the rule that detainees must be read their criminal rights ("Miranda rights") prior to an interrogation. The Court's reasoning was that "adequate protective devices" must be "employed to dispel the compulsion inherent in custodial surroundings," or else "no statement obtained from the defendant can truly be the product of his free choice." The Court in *Miranda*, like it did in every other case, maintained that voluntariness is the sense in which it understood the right against coercion. Nonetheless, the Court's scrutiny of the Reid Technique reveals the role of evolving normative standards of decency in its decision in *Miranda*. The Court asserts that the third degree, though typically associated with physical violence, is in the modern setting instantiated by Reid tactics which are "equally destructive of human dignity." Citing the principle that "the privilege is the respect a government…must accord to the dignity and integrity of its citizens," *Miranda* expands the list of circumstances that run contrary to that principle to include *incommunicado* interrogation generally, requiring that neither the physical violence characteristic of *Brown* nor the psychological torture of *Chambers* be present.

The Supreme Court's normative considerations in *Brown*, *Chambers*, *Rochin*, and *Miranda* on what violates the right against coercion all reflect observance of the broad principle that the government must treat people with a certain level of decency. That the meaning of "decency" evolves according to social attitudes is revealed by the social context of the decisions as well as the content of the decisions themselves. As society grew more concerned with police

treatment of detained people, the standards of decency evolved to prohibit more types of police interrogation conduct. First *Brown* prohibited the use of violence; then *Chambers* did the same for psychological torture; *Rochin* confirmed the Court's concern with the community's moral standards; and *Miranda* recognized that an *incommunicado* interrogation alone is indecent. The standards of decency could stop evolving, or even devolve if societal attitudes become less sympathetic to criminal rights. But that they evolve according to the Court's perception of those standards is no longer in question.

I have now shown that the Court observes evolving standards of decency when adjudicating cases concerning the right against coercion while incongruently framing its approach in terms of voluntariness. In the next section, I briefly summarize the Hart-Dworkin debate on the authority of principles in law before concluding that Dworkin's approach provides a method wherein principles provide an appropriate clarificatory role in the gray areas of the law.

1.6: Dworkin: Normative Principles Clarify Vagueness

In this section, I shall briefly summarize the Hart-Dworkin debate on how judges deal with hard legal cases. Hart's position is that in hard cases, when legal rules conflict or are otherwise inconclusive, judges act as legislators by finishing the law "with all the creative freedom of an architect" (Finnis, 2011, p. 28). I argue that Dworkin's response—that judges are bound by principles in all cases and are therefore not so free as the positivist imagines—is the better one.

Perhaps the most famous example of a vague law is H.L.A. Hart's hypothetical rule that "no vehicles are allowed in the park."[12] There are "standard instance[s] in which no doubts are

[12] Hart, a legal positivist, believes that the sum of the law is all valid legal rules in addition to necessary judicial resolutions to cases where the rules do not dictate a particular decision.

felt about its application," such as when it comes to cars: If "vehicle" refers to anything, it refers to cars. It is those gray area cases—"bicycles, roller skates, toy automobiles"—that begin to cause problems (Hart, 1958, p. 607).[13] Hart calls these "debatable cases" the inevitable penumbra of the law, a necessary consequence of the fact that formalist logic can tell us what category of thing a thing is *if* we take a particular interpretation, but it "is silent on how to classify particulars" (1958, p. 610). While penumbral cases are inevitable, they can be minimized by clearly written laws because the size of the penumbra tracks with the vagueness of the law.

When there is vagueness in the content of the law—"when the content of the relevant body of laws plus the facts of a case fail to determine a unique legal outcome in situations in which one is required"—fair-minded judges resolve the controversy in a manner acceptable to the political community (Soames, 2012, p. 11). For Hart, that requires reference to the social aims of the law in question. In the "no vehicles in the park" example, that would involve the consideration of why the law came to exist in the first place: If the purpose was to reduce noise in the park, then for the purposes of that law, bicycles are almost certainly permitted. Ultimately, though, it is the judge's prerogative to pick which social aims are the salient ones and thus how they apply to the particular case in front of them. A judge, then, "must legislate and so exercise a creative choice between alternatives." Only from that point on is it the law that bicycles are permitted—a judge does not "discover" that the law always permitted bicycles (Hart, 1958, p. 612).

By distinguishing rules, policies, and principles, Dworkin provides an alternative to Hart's view that judges act like legislators when they decide hard cases. Judges are also bound to

[13] Hart's "no vehicles in the park" example plays a role in a debate between Hart and Fuller on whether laws have a core literal meaning regardless of their underlying purposes. My thesis does not address that debate. I am focused on the subsequent debate between Hart and Dworkin on judicial discretion.

consider principles, which Dworkin defines as "a standard that is to be observed, not because it will advance or secure an economic, political, or social situation deemed desirable, but because it is a requirement of justice or fairness or some other dimension of morality" (1967, p. 23).[14] Principles, unlike rules, are not all-or-nothing: They hold weight whether the legal rules clearly dictate a result in some case or not. Sometimes, a principle may be determinative of a conclusion; other times, it is not. But whenever they are triggered by a topical case, judges must consider them. Consequently, judges faced with hard cases are constrained in a way that legislators are not (Dworkin, 1967, p. 26).

Dworkin illustrates this point by distinguishing between different types of discretion: weak and strong. In regular conversation, Dworkin takes people to mean "discretion" in one of two weak senses. The first weak sense refers to situations where a person exercises judgment, often in contrast to making a decision based solely on mechanically applied rules. This type of discretion involves the exercise of subjectivity, where there may not be clear-cut criteria for determining the outcome. To illustrate this first sense, Dworkin provides the example of a sergeant who is instructed by his lieutenant to select his five most experienced men. The sergeant has discretion to choose which individuals he considers to be the most experienced, but his choices are still bound by the type of individuals he is meant to select—in this case, experienced men. The second weak sense of discretion is used to describe situations where a person has final say over a particular subject matter. An example of this second sense of discretion is a second base umpire who has final say over whether a runner has reached second base before the ball. In this case, the umpire's decision is final, but he still must use the appropriate criteria to decide whether the runner is out or safe (Dworkin, 1967, p. 32).

[14] Dworkin also distinguishes policies from principles, but himself notes that nothing in his argument depends on that distinction. For purposes of concision, I shall proceed without making that distinction.

For Dworkin, the legal principles that bind judges in hard cases function like the criteria that bind the sergeant and the second base umpire. The sergeant must pick men based on the criterium of experience, and the second base umpire must base his call on whether the runner reached second base before the ball. Likewise, in a hard case a judge must base his decision not only in rules, but in the relevant principles of law. A judge does not, as Hart suggests, decide which principles exist "by fiats of the will" (1958, p. 626). A judge is thus bound by principle in the same way he is bound by rules; all that is meant is that a judge "must follow it if it applies, and that if he does not, he will on that account have made a mistake" (Dworkin, 1967, p. 36).

Dworkin uses *Riggs v. Palmer*, a 1889 New York state civil court case, to illustrate how and that principles bind judges in the United States. The case concerned whether a man, Elmer Palmer, should receive an inheritance he obtained upon murdering his grandfather. Criminal statutes clearly forbade Palmer's conduct, but no statute dictated that actions such as Palmer's invalidate one's entitlement to a will. If *Riggs* is a hard case, it is because it strikes us as wrong that Palmer should obtain an inheritance under those circumstances. But that is not a valid consideration for a positivist like Hart: The mechanical application of legal rules furnishes the conclusion that Palmer should receive his will, so there is no need for the kind of judicial discretion required in the "No vehicles in the park" example. Nonetheless, the Court of Appeals of New York ruled against Palmer, citing the common law principle that "No man shall profit from his wrong." Despite the straightforward availability of a formalist, rules-only decision, the court was bound by a principle that inclined it, ultimately determinatively, towards *clarifying that the rule of law to prohibit inheritances obtained through wrongful means*.

The important point about *Riggs* is not the outcome. What *is* important is that any judge presiding over that case who would decline to recognize and weigh the principle "No man shall

profit from his wrong" has not done his job properly (Dworkin, 1967, p. 36). Though judges have final say over a case, and no one can force judges to consider principles, those principles oblige him like the principles that oblige an umpire who exercises discretion to determine whether taunting has occurred. Principles are an important element of the law that judges must and do consider in relevant cases, whether rules conflict. Thus, United States judges are not mere automatons who apply the law unless the law is silent, at which point they gain conscious status to *make* the law; instead, they interpret pre-existing principles that bind them in all cases. Those principles become especially useful in the gray areas of the law.

1.7: A Practical, Principled Clarification of the Right Against Coercion

The right against coercion is one such gray area, owing in part to the controversial nature of the concept of coercion as well as the flaws in the Court's account of that right. But just as the New York Court of Appeals in *Riggs* looked to the binding principles latent in the law decide the case, so can the Supreme Court regarding the right against coercion. That principle in *Riggs* was "No man shall profit from his wrong": The Court of Appeals named the principle, identified its source, and made it clear that it should factor into future cases of that kind. The next time a coercion case comes before the Supreme Court, it should do something similar: 1) Acknowledge that standards of decency have guided its decisions on what interrogation methods are permissible, independent of those methods' effect on voluntariness; and 2) formulate that into an explicit action-guiding standard for future Courts to consider.

To accomplish 1), the Court should essentially argue what I previously argued: They should identify the flaws of the voluntariness standard, show how it has not controlled all its

decisions, and identify the role of standards of decency in its decisions. I suggest the Court accomplish 2) by issuing a statement to the effect of:

> *1) The right against coercion prohibits interrogation methods that are repulsive to society's standards of decency; 2) and it prohibits interrogations that, given the totality of the circumstances, impair a person's ability to make a reasoned choice in such a way that it is repulsive to society's standards of decency* (Bator & Vorenberg, 1966, p. 73).

The first portion of this standard allows us to preserve our moral and legal intuitions that coercion is not just about involuntariness. Of course, some degree of influence is still stipulated in that it is the very intention of an interrogation method that it should influence a detained person. But the standard explains why Brown's right against coercion was violated while the right of the hypothetical man, Bob, was not. The method used to interrogate Brown—physical violence—is repulsive to societal standards of decency. By contrast, the police interrogation of Bob relied on honest, dignified tactics. Although both Brown and Bob's cooperative actions might be equally involuntary, we would only say that Brown was coerced.

Furthermore, the latter portion of the standard preserves the totality of circumstances test, such as its application in *Frazier v. Cupp.* That case did not find that coercion occurred, but it implied that if the detainee were mentally deficient, the totality of the circumstances would lead to the conclusion that he was coerced. In that counterfactual scenario, none of the tactics police used, when considered individually, likely violated societal standards of decency. However, the case may still be made that given the totality of the circumstances, the man's ability to make a reasoned choice was impaired in a manner that violates society's sense of decency, and thus a rights violation occurred. The two-pronged definition allows the Court to continue to prohibit

certain indecent tactics (i.e., ones that it has labeled "presumptively coercive") while still leaving room for individual cases where the indecency only emerges from the culmination of multiple, individually permissible tactics and conditions.

The definition I have suggested still contains vagueness. Individuals will disagree about what methods are indecent, what methods society in general believes are indecent, and what constitutes an unfair impairment of a person's ability to make a reasoned choice. It is the very nature of contested concepts like "fairness," "justice," and "decency" that they are contested. But this approach eliminates unnecessary vagueness: vagueness within the voluntariness standard itself and the vagueness that emerges from the voluntariness standard's discordance with legal decisions and our common intuitions. My definition fits within and clarifies the existing case law on the right against coercion, and it makes explicit the principles that judges are bound to consider in cases and controversies that come before them.

1.8: Response to Originalist Objections

Originalist theories of constitutional interpretation are hostile to the approach I have suggested to define the right against coercion. In this section, I briefly describe originalism and its predominant theories, then offer my response.

Originalism is a broad term for methods of constitutional interpretation that privileges what people at the time of the Constitution's framing thought the words meant. Its earliest articulation was probably in jurist Robert Bork's 1971 article "Neutral Principles and Some First Amendment Problems." In that article, he argued that the Constitution set forth neutral principles whose meanings emerge from the Framers' intent. When judges do not apply those principles neutrally, they instead choose between "competing gratifications," a job that is reserved for the

legislative branch (Bork, 1971, p. 14). In response to devastating critiques towards the Borkian school of original intent, the New Originalism movement, or Original Public Meaning (OPM), emerged. Original public meaning is "what a reasonable person, fluent in English and knowing the salient, publicly available facts about its drafting, would have taken it to mean at the time of its adoption" (Fallon, 2021, p. 2). Late Supreme Court Justice Antonin Scalia is the most famous expounder of OPM and is thought to have resuscitated the originalist project.

OPM poses a problem for the main argument of this paper. Few, if any, people at the time of the framing thought or would have thought that the 5th Amendment's Self-incrimination clause restrained the government from questioning a suspect before reminding him of his 6th Amendment rights. The right against coercion developed across the Supreme Court cases I summarized in a previous section, but it did so in the face of staunch opposition from originalist-minded justices. For instance, Justice White, joined by Justices Harlan and Stewart, dissented in *Miranda*. For these justices, it is crucial that prior to this string of cases, the "privilege against self-incrimination did not bear at all on the use of extra-legal confessions." They argue that the doctrine that "extra-legal confessions" should be thrown out has a distinct history that is not controlled by the 5th Amendment; the majority merged the 5th Amendment concern with the 14th Amendment. Further, they contend that the majority's interpretation departs from the plain text of the 5th Amendment (that a person shall not be compelled "in any criminal case to be a witness against himself"). The common law roots of the privilege against self-incrimination suggest the practices it was originally understood to prohibit were narrower. If a defendant made incriminating statements under duress prior to the trial, the prosecution would threaten to invoke them if the defendant did not answer the questions asked of him at trial. Clearly, that

understanding of the privilege does not suggest anything like the Miranda prophylactic is appropriate.

Of course, the right against coercion, which emanates from the 5th and 14th Amendments, has substantial precedent—illustrating this fact was the very purpose of Section I. But originalist justices view the *Miranda* cases with disdain, even if they respect it as settled law by refusing to overturn it. In *Dickserson v. United States* (2000), the Court struck down a federal statute intended to overturn *Miranda's* requirements. Scalia, dissenting, wrote that *Miranda* was a "milestone of judicial overreaching"; that it prevents the admission of "foolish," not only compelled, confessions. While it is true that the Court respects the precedent of *Miranda* and the cases leading up to it (and is only more likely to do so as these decisions gains pedigree with age), it is reasonable to conclude that originalist justices would invoke originalist theory to prevent the further expansion of the right against coercion—the kind of expansion this thesis soon proposes. According to Bork: "There are times when we cannot recover the transgressions of the past, when the best we can do is say to the Court, 'Go and sin no more'" (1990, p. 157). So, I must mount a response to OPM, which I shall now begin.

Jurist Ronald Dworkin argues the OPM approach "ignores a distinction philosophers have made but lawyers have not yet appreciated" (1977, p. 134). That distinction is between a concept (e.g., *just* compensation) and its particular conception (*e.g.*, fair market value). Taking the OPM approach is akin to the following: *Your grandfather instructs you to always conduct business honorably. When he dies, you investigate examples of behavior people generally considered honorable during his lifetime.*

That would be unreasonable, Dworkin says, because what your grandfather meant was not "Do what people thought was honorable during my life"; what he really meant was "Do what

is in fact honorable" (Moyers & Dworkin, 1987). That might require that you behave in such a way that your grandfather and his contemporaries would not have believed is honorable, since arguments that persuade you might not have persuaded them, and because you may become aware of facts bearing on your judgment that were not available to them. Dworkin contends that this essentially is what the Framers intended and wrote when they laid out vague concepts, declining to specify their conceptions. It is for the Court to decide what conception is most fitting. The plain wording of constitutional clauses supports that approach: the Fifth Amendment does not require compensation that people thought was just in 1789; it requires compensation that is, in fact, just.

Since judges are not philosophers, and it would be inappropriate to impose an obscure conception of justness that did not comport with common understanding, a judge's determination of what is just must come from societal values. To define the right against coercion, a similarly contested concept, requires that judges consider what people commonly understand coercion to mean.

Another commonly cited issue with OPM is that scholars cannot ascertain that meaning—because it does not exist. There were 55 delegates and five writers at the Constitutional Convention, and each subsequent constitutional amendment involved hundred more participants (Meet the framers of the Constitution, n.d.). The Constitution and its amendments emerged from the debates of opinionated, disagreeable men. Each of their viewpoints undoubtedly influenced what they believed the concepts entailed and what people were likely to understand them to mean. Harvard Law Professor Richard Fallon remarks on the importance of *who* is speaking when interpreting any proposition. When ascertaining the

meaning of a statement, one might need to know certain facts about the speaker to arrive at a rational judgment of what meaning they actually intend to convey (Fallon, 2021, p. 24).

It might be replied, says Fallon, that public officials intended to communicate the text impartially, and let the public arrive at a reasonable understanding given the text and the surrounding relevant facts. If that were the case, then "the speakers substantially vanish from view." But Fallon argues that the dissemination of the 14th Amendment suggests this reply is factually wrong. For example, the 14th Amendment functioned "partly as a campaign document": During the 1866 campaign, "members of Congress with different views and preferences" made "divergent claims about [the Equal Protection Clause's] meaning" (Fallon, 2021, p. 25). The identity of individual expounders directly affected the meaning they conveyed, and thus the meaning their respective audiences would adopt.

Finally, a straightforward inference casts doubt on the claim that originalism of any kind is the proper method of constitutional interpretation. The Framers of the initial Constitution were learned statesmen of the Enlightenment, a period that emphasized the production of new ideas and the critical re-examination of old ones. It would be surprising if men of this profile by and large believed their (or their contemporary public's) ideas about the proper instantiation of broad moral concepts—ones that they *intentionally* did not disambiguate—ought to be fixed permanently in time.[15]

In this section, I briefly summarized originalism, explained how it contradicts my thesis, and provided reasons to think originalism is not the proper method of constitutional interpretation. I pointed out that originalism seems to miss the philosophical distinction between

[15] It might still be argued that even if the Framers did not favor what we now call "originalism," it is still the most fitting method of constitutional interpretation.

concepts and their conceptions, and that it relies on an original meaning that there is good reason to think did not, or could not, exist.

Part 2: Deceptive Presentation of Manufactured Evidence Violates My Principled Account

2.1: Deception as Influence

My extensive analysis of the right against coercion provides the necessary legal and philosophical justification for my seminal claim: that the deceptive presentation of manufactured evidence violates the right against coercion. I had to first establish that there even is a right against coercion before I could analyze it; I needed to demonstrate the problems with that right to have a pretext for suggesting some kind of revision; and identifying the principle shaping that right required that I justify the role of principles in law. Now that I have done that, I can finally argue that the standard I previously articulated prohibits police from deceptively presenting manufactured evidence to elicit confessions from detained people in interrogations. It is prohibited by the first portion of that standard: *The right against coercion prohibits interrogation methods that are repulsive to society's standards of decency*.[16]

There are several supporting claims I must make to justify this larger claim: a) I need to illustrate that deception in general can influence a person's behavior in the way that coercion entails. b) I must prove that the deceptive presentation of manufactured evidence in an interrogation can influence a person's behavior in that way. c) I need to show that deception of this kind violates current societal standards of decency. If I can prove a), b), and c), then it follows that the deceptive presentation of manufactured evidence violates the right against coercion and should therefore be added to the list of prohibited police interrogation methods. I will begin by defending claims a) and b).

The aforementioned condition: *In every case of coercion, an agent attempts to influence another agent so that the influenced agent is more likely to take a course of action that, absent*

[16] Common examples of deceptive presentation of manufactured evidence include fake polygraph tests and false claims of evidence tying a detainee to a crime scene.

the influence, the influenced agent is less likely to take. (Moving forward, I shall refer to this as the "influence standard.") Virtually every definition of coercion contains that condition, including all the ones I surveyed previously. Definitions of coercion differ in other ways, but not in that way: It is a *sine non qua* of coercion.

The reason I need only defend such a minimal condition of coercion is that I have identified the right against coercion being primarily about a right against certain methods of interrogation: the real issue is the means the police use to conduct an interrogation. I have carved out the above condition because it is entailed by the very nature of an interrogation. Police would have no reason to conduct an interrogation if they believed the subject of that interrogation was as or more likely to confess absent the interrogation.

I shall begin by defending the first claim: Deception can meet the influence standard. Two hypothetical scenarios demonstrate how deception can meet that condition.

Example 1: Imagine you and I are dear friends out to dinner, and the waiter brings us a free dessert as a token of appreciation for our frequent patronage. I immediately identify that the luscious cheesecake is the chef's specialty and my absolute favorite dessert. Knowing you have a severe peanut allergy, and confident that only the full slice would satiate my sweet tooth, I decide to insist on my certainty that the dessert contains crushed peanuts. I have just seen the chef leave for the night, so I know there is no way you could be certain I am mistaken. Because of my deception, you falsely believe there is a high probability that eating the dessert will *jeopardize your safety.*

In this case, I influenced you (by means of deceptive claims about the dessert) so that you would take a course of action (i.e., abstain from dessert) that, if I had not deceived you, you

would have been less likely to prefer to take. (If I had said nothing, you would have been more likely to prefer to eat the pie than not eat it.)

Example 2: My friend and I are inside a Recreational Vehicle (RV) that we use to cook methamphetamine. My brother-in-law, a DEA agent, stands outside the RV while he waits for permission from his superior to search the vehicle. I know that if he searches the vehicle, he will find evidence that incriminates me. I call my corrupt lawyer and ask him to place a phone call to my brother-in-law, falsely claim that she is a police officer, and falsely tell my brother-in-law that his wife has been in a terrible accident. I do this because I suspect my brother-in-law will leave the scene to meet his wife at the hospital, and that is exactly what happens (Gilligan, 2010).[17]

In this case, I influenced you,[18] via a deceptive phone call about your wife, so that you would take a course of action (i.e., leave the scene) that, if I had not deceived you, you would have been less likely to take. (You likely would have had no reason to leave the scene if I had not orchestrated the deceptive phone call.)

These two examples establish that deception can accomplish the behavior-orienting element of coercion. This is important because the principle-based standard I provided for determining whether a method of interrogation or a particular interrogation scenario includes some portion of influence; it is not merely a decency standard, but a decency of *interrogation methods* standard. There are actions police could take during an interrogation that violate societal standards of decency but are not connected to the interrogation.[19] For coercion, there must be

[17] This is example is adapted from the TV show *Breaking Bad*.

[18] I feel I should acknowledge that in the second example, I am a degree of causation (lawyer) from the actual deception. I do not think an objection on this front is likely; the reader will agree that the important feature is that I orchestrated the act of deception, even if I was not the one who executed it.

[19] I assume here that the goal of an interrogation is for the detained person to cooperate.

some connection between the behavior of the potential coercer's action and the action the potential coercer hopes the potential coercee will (or will not) take—and that connection is that the former action will influence the likelihood of the latter action (or inaction).

Having established that deception can influence behavior in the way coercion orients behavior (the influence standard), I shall now use a real case to show that the deceptive presentation of manufactured evidence can accomplish this. It would not do to only show that deception in general can have this feature; I need to show also that this kind of deception can be instrumental to an interrogation's attempt to orient behavior towards a dispreferred action (*i.e.,* a confession).

In 1973, 18-year-old Peter Reilly of New Canaan, Connecticut found his mother dead in their home. She was nearly decapitated, her legs broken and her body sexually violated post mortem. Police immediately identified Reilly as their prime suspect in part because they reported he appeared emotionally unmoved by the gruesome discovery. Police arrested and questioned Reilly, who declined to exercise his right to remain silent or retain an attorney, adamantly denying any involvement. After a sleepless night at one station, police took him to another where they continued their incessant questioning. They suggested Reilly take a lie detector test. Not knowing that police are allowed to lie and frequently utilize phony lie detector tests to manipulate suspects into confessions, Reilly jumped at the opportunity to clear his name. When police falsely claimed that Reilly "failed" the test, they insisted on its scientific legitimacy, falsely implied they had evidence connecting Reilly to the crime, and offered the possibility that he might have blocked out the memory of the attack. Reilly eventually signed a written confession (later recanted) that served as the basis for his conviction of manslaughter ("Peter A. Reilly Trial," n.d.).

Reilly gained substantial community support after his conviction. Reilly and his lawyers filed an appeal, citing new evidence. Among the evidence was that "Reilly arrived at the scene of the murder only minutes before the police and thus could not have committed the crime" (Leo & Ofshe, 1998, p. 451). The same judge who originally sentenced Reilly overturned his conviction but importantly, she did so only upon the emergence of reasonable doubt—not because of any issues with Reilly's confession. The state never refiled charges. Although neither reasonable doubt nor a coerced confession implies actual innocence, it is widely believed that Reilly is innocent as a matter of fact, not just law (Connery, 2010; Toglia et al., 2019; Spelhaug, n.d.).

The deceptive presentation of manufactured evidence made Reilly more likely to confess. He would have been more likely not to confess if the police had not deceptively presented false evidence. The purpose of the faked lie detector test and the false claim that police had physical evidence tying Reilly to the scene was to make Reilly believe that the police were more certain of his guilt and more likely to convince a jury that he was guilty. Confessing becomes a more attractive option when it appears less likely that not confessing will actually work. (It is commonly known that punishment when one pleads not guilty but is found guilty is worse than the punishment when one pleads guilty, when all is held equal.) It is very likely that confessing became a more attractive option for Reilly because the manufactured evidence made it appear that the alternative was less viable. At the very least, we can state confidently that this was the intended effect of that deception.

In the example I described, one agent (the police) attempted to influence another agent (Reilly) so that the influenced agent was more likely to take a course of action (confessing) that, absent the influence, the influenced agent was less likely to take (the deceptive presentation of manufactured evidence was intended to make Reilly more likely to confess).

I have shown that the deceptive presentation of manufactured evidence in an interrogation can influence behavior in a manner that is consistent with a core element of coercion. In the following two sections, I argue that the deceptive presentation of manufactured evidence is repulsive to societal standards of decency. I justify this claim across two dimensions and draw on state laws as evidence for both. I take this to be a strong form of evidence because popularly elected officials create state laws, so the content of a state's laws reflects public understanding within that state. Furthermore, prohibitory laws imply that the conduct they prohibit is wrong. First, I show that the deceptive presentation of manufactured evidence is prohibited by criminal coercion and extortion statutes from a number of states that collectively represent a majority of the US population.

(In the common vernacular, "extortion" usually refers to the use of threats to obtain some monetary gain or personal satisfaction. However, all the extortion laws I list define extortion in such a way that it may reasonably be read to include the obtainment of a confession (e.g., "against their will," for "something of value," etc.). So if we compare state definitions of "coercion" to those of "extortion from the list I have generated, there is no meaningful difference: The extortion statutes just mention that extortion can be done for personal gain, though it need not be.)

Second, I provide an auxiliary argument that state criminal laws on sex crimes reflect a public understanding that deception is a normatively unacceptable way to induce someone to engage in conduct that they have an unalienable right not to. (Once again, these states represent a majority of the US population.) In both sections, I defend my methodology and respond to anticipated objections.

2.2: State Laws and the Deceptive Presentation of Manufactured Evidence

Every state's laws do not address coercion or extortion in the same manner. Some states provide a context-independent definition. Other states define and prohibit it only in relation to particular laws. But what every state's legal definition has in common is that it includes acts of the following kind: *The implicit or explicit instillment of fear in a person via threats to induce that person to do something they have a legal right not to do, or to not do something they have a legal right to do.* That definition, though universal among the states, still leaves an important question unanswered: What kinds of threats are eligible? No one disputes that threats take the form of *If you do or do not do X, I will do Y*, where Y is something I believe to be undesirable to you. The crime of third-degree coercion in New York has the most expansive list of eligible threats that I could find (NY Penal Law § 135.60). Below I list the threats from that statute that most clearly apply and briefly provide an example where the deceptive presentation of manufactured evidence meets the criteria.

1. Accuse some person of a crime or cause criminal charges to be instituted against him or her (An interrogating officer uses the falsified polygraph results to instill in the detainee the fear that if they do not confess, they will be accused of a worse crime, e.g., first degree murder as opposed to manslaughter.)

2. *Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule* (An interrogating officer uses the falsified polygraph results to instill in the detainee the fear that if they do not confess, the officer will make it known that they were unremorseful, which will harm their reputation.)

3. *Testify or provide information or withhold testimony or information with respect to another's legal claim or defense* (An interrogating officer uses the falsified polygraph results to instill in

the detainee the fear that if they do not confess, the officer will testify that they were initially unremorseful, which would reduce the credibility of any later claim of remorse.)

4. *Perform any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his or her health, safety, business, calling, career, financial condition, reputation or personal relationships* (An interrogating officer uses the falsified polygraph results to instill a fear in the detainee that he will report that the detainee was uncooperative and unremorseful. If an officer were to carry out this threat, it would obviously harm the detainee "with respect to his or her health, safety, business, calling, career, financial condition, reputation" and "personal relationships."

Any state law that, for purposes of criminal law, defines coercion or extortion in one of those four ways is consistent with the notion that the deceptive presentation of manufactured evidence functions coercively. Below, I list state laws that have at least one of those four elements or that contain some other feature that makes it clear the deceptive presentation of manufactured evidence could facilitate some kind of threat that statute prohibits.[20]

State	**Law**	**Description**	**% of US pop.**
Florida	Fla. Stat. § 836.05)	Extortionary threats include to "harm someone's reputation"; or to "expose them to disgrace."	~6.7
Texas	Tex. Penal Code § 1.07)	In the penal code, "coerce" means (among other things) to threaten to "accuse a person of any offense" or to "expose a person to hatred, contempt, or ridicule."	~9.2

[20] Note that I have only included laws that do include caveats such as "unlawfully" or "without lawful authority" because the inclusion of those laws would entail circular reasoning on my part.

New York	N.Y. Penal Law § 135.60	Criminal coercion includes the following types of threats: to ‘accuse some person of a crime or cause criminal charges to be instituted against him or her”; to “expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule”; to “testify or provide information or withhold testimony or information with respect to another's legal claim or defense”; and to “perform any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his or her health, safety, business, calling, career, financial condition, reputation or personal relationships.”	~5.6
California	Cal. Penal Code §§ 518-527	For the purposes of all extortion statutes in California, “extortion” includes threats to “accuse the individual threatened, or a relative of his or her, or a member of his or her family, of a crime; and to “expose, or to impute to him, her, or them a deformity, disgrace, or crime.	~11.6
Ohio	Ohio Rev. Code Ann. § 2905.12	Criminal coercion may be committed via the threat of “calumny.” In the law, “calumny” means “falsely accusing another person of a crime” (Cornell Law School, n.d., Calumny). The statute specifically notes that police, prosecutors, and court officials are not exempt from this division of the crime, nor are any affirmative defenses available for it.	~3.5
Washington	Wash. Rev. Code § 9A.36.070; Wash. Rev. Code § 9A.04.110	Criminally coercive threat include to “accuse any person of a crime or cause criminal charges to be instituted against any person”; to “expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt, or ridicule”; to “reveal any information sought to be concealed	~2.3

		by the person threatened"; and to "testify or provide information or withhold testimony or information with respect to another's legal claim or defense."	
New Jersey	N.J. Rev. Stat. § 2C:13-5	Criminally coercive threats include to "accuse anyone of an offense" and to "testify or provide information or withhold testimony or information with respect to another's legal claim or defense."	~2.7
Massachusetts	Mass. Gen. Laws ch. 265, § 25	A person is guilty of attempted extortion if they instill in someone a fear that they will be accused of a crime if they do not do an act against their will.	~2.1
Nevada	Nev. Rev. Stat. § 205.320	Criminally extortionary threats include to "accuse any person of a crime"; to "publish or connive at publishing any libel"; or to "expose or impute to any person any deformity or disgrace."	~1
Minnesota	Minn. Stat. § 609.27	Criminally coercive threats include "a threat to expose a secret or deformity, publish a defamatory statement, or otherwise to expose any person to disgrace or ridicule"; or to make "a threat to make or cause to be made a criminal charge, whether true or false."	~1.7
Connecticut	Conn. Gen. Stat. § 53a-192	Criminally coercive threats include to "accuse any person of a criminal offense"; or to "expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair any person's credit or business repute."	~1.1
Louisiana	LA Rev Stat § 14:66	Extortionary threats include to "accuse the individual threatened or any member of his family or any other person held dear to him of any crime"; to "expose or impute any deformity or disgrace to the individual threatened or to any member of his family or to any other person held dear to him"; and to "do any other harm."	~1.4

Tennessee	Tenn. Code Ann. § 39-11-106	For the purposes of the penal code, "coercion" includes threats to "expose any person to hatred, contempt or ridicule."	~2.1
Indiana	Ind. Code § 35-45-2-1	Extortionary threats include to "expose the person threatened to hatred, contempt, disgrace, or ridicule."	~2.0
Total			~53.0

These states collectively represent a majority of the US population. There are probably more states with similar statutes, but I stopped once I comfortably surpassed 50 percent. Importantly, the list of states is representative of the political, economic, and cultural diversity of the United States. This is important because it therefore cannot be argued that my proposition imposes a culturally specific conception of coercive conduct onto the entire country.

The reader may correctly point out that several coercion statutes provide that the following is an affirmative defense: "[T]he actor believed the accusation or secret to be true or the proposed official action justified and that his purpose was limited to compelling the other to behave in a way reasonably related to the circumstances which were the subject of the accusation, exposure or proposed official action, as by desisting from further misbehavior, making good a wrong done, or refraining from taking any action or responsibility for which the actor believes the other disqualified" (e.g., NJ Rev Stat § 2C:13-5). This could be viewed to shield police officers from criminal coercion liability so long as they could prove their interrogation tactics were reasonably related towards prosecuting a case. The objection would conclude that the frequent presence of affirmative defense provisions suggests that behavior

which, under ordinary circumstances might be criminally coercive, when done by police does not violate societal standards of decency.

I think that conclusion is unwarranted. If an interrogating officer's behavior violated the relevant criminal coercion statute, it follows that he violated a detainee's privilege against self-incrimination and his peripheral right against coercion. When a confession is coerced, it is typically excluded from evidence. If that excluded confession results in the non-conviction of the confessor, then the greatest harm that could have occurred from the conduct (a procedurally or substantively wrongful conviction) is avoided,[21] so the prosecution of the offending officer serves an insubstantial purpose. Even if the detainee is eventually convicted of the crime to which they confessed despite the exclusion of that confession, 42 U.S.C. § 1983, which allows individuals to sue government officials for violating their civil rights "under color of law," is the "usual method of redress for civil rights violations" (Martinez, 2021). And even still, police officers can raise claims of qualified immunity to shield them from criminal or civil liability. The plaintiff would need to show that a reasonable officer would have known that their conduct violated a well-established constitutional or civil right (Cornell Law School, n.d., Qualified immunity). It would be difficult to show that a reasonable officer would have known that their conduct—conduct which is commonplace in interrogations—violated a civil or constitutional right. All of this suggests that there is little reason to think these affirmative defense provisions were meant to exempt police officers from prosecution, since legal recourse would probably take a different form, and because such a protection would be redundant. I think the most likely purpose of the affirmative defense provisions is to negate criminal liability under such

[21] I use "substantively wrongful" in the sense of a case where a person is convicted of a crime they did not actually commit (e.g., they did not pull the trigger). By "procedurally wrongful," I mean a conviction obtained through a prosecution that violated a person's procedural rights (such as by including evidence that should have been excluded), regardless of whether the person *actually* committed the crime of which they are accused.

circumstances as: *You owe me a substantial debt. Over a long period of time I have repeatedly asked you to pay me that debt, yet you have refused. Finally, I threaten to tell your wife that you have been cheating on her unless you pay me back.*[22]

I will also note that a successful affirmative defense (i.e., one that was actually necessary to negate criminal or civil liability) involves the admission that the facts of the case are such that, absent the affirmative defense, the defendant is guilty of the crime (Cornell Law School, n.d., Affirmative defense). Thus even if we assume the objection's premises are true, it is not the case that the affirmative defense provision for criminal coercion implies that police conduct of this kind is not coercive. Instead, I interpret the provision to acknowledge that there are sometimes sufficiently important counterbalancing interests—bringing criminals to justice—that outweigh the inherent wrongness of coercion (as implied by its criminalization). Recall that my principled standard prohibits interrogation tactics that are repulsive to society's standards of decency. My standard is *not* that interrogation tactics that are repulsive to society's standards of decency are permissible *provided that they are instrumental towards successful prosecution of actual criminals*. Neither my nor the Supreme Court's focus has been that kind of utilitarian calculation; rather, the right against coercion is a rule justified something akin to deontological grounds: There are just certain things police should not do to people under any circumstances. Physical coercion and psychological torture might likewise effectively facilitate the prosecution of actually guilty criminals, but they are nonetheless impermissible. The case law, I have effectively argued, does not depend on the propensity of a tactic to induce false confessions or substantively

[22] The strength of the affirmative defense objection might be clarified by research into legislative debates surrounding the passage of criminal coercion statutes. I did not do this because I believed it would be too time-consuming and tangential.

wrongful convictions, except insofar as the falsity of a confession might serve as evidence that it was involuntary.

2.3: State Sex Crimes Statutes Condemn Deception

I made the case that the public understanding of coercion is consistent with the deceptive presentation of manufactured evidence. This was sufficient to show that the public views that conduct with disfavor. But I shall look to state laws again, now for a different form of evidence. In this section, I wish to focus on the normative acceptability of deception in a more general sense. This matters because although I have shown that the deceptive presentation of manufactured evidence violates societal standards of decency, I have yet to emphasize the relevance of the deception to the normative acceptability of that tactic. If I can show that deception is, in general, an impermissible way to induce a person to forfeit something to which they are entitled, it will only strengthen my argument (though my argument does not depend on it).

I should look, then, for laws that say something about when we think it is within the province of the law to proscribe deceit.[23] There are three criteria these laws must meet: 1) *They prohibit the use of deception to induce someone not to exercise a right*. 2) *They also prohibit the use of physical force or threats to induce someone not to exercise that same right*. 3) *The right in question is fundamental*.

Why 1) is a criterion requires no explanation. As for 2): I only look at laws that also prohibit the use of physical force or threats because those laws illustrate that the methods which

[23] It is legal to lie in most everyday interactions. Most people would agree that I should not be prosecuted for lying that I can still grab the rim of a basketball hoop in a vain attempt to impress my peers. But it is illegal to lie about one's income to the government, to lie in court, and things of that nature.

the Supreme Court has already prohibited occupy a similar moral category as deception. They show that when people think of wrongful ways to induce behavior, they think of deception alongside obviously coercive methods, like violence. It is also appropriate to narrow my scope in this manner so that the scenarios considered are more like the interpersonal environment of an interrogation room. Every state has laws that prohibit false advertising, for example, but to the extent that false advertising deceives people so that they do things they otherwise are unlikely to do, it takes a very different form than deceptive interrogations.

Regarding 3): I have chosen only to discuss laws that prohibit deception in the inducement of the non-exercise of a fundamental right because the right not to incriminate oneself is such a right. If a sufficient portion of the United States (as determined by cumulative population of states) have at least one criminal law that meets these criteria, then my claim that the *deceptive* presentation of *manufactured* evidence to induce confessions violates a national norm of decency is stronger.

My main focus in this section is criminal sexual statutes. All the statutes I provide prohibit the use of deception to induce someone to engage in sexual conduct in which they otherwise would be less likely to participate. Debates about illegal methods of obtaining consent or acquiescence mirror conversations about when a confession is coerced. There are the obvious cases where violence or threats are used, and then there are the more controversial cases, such as those involving deception. People maintain different positions on whether violence and threats occupy a category that is meaningfully distinct from deception, but for both kinds of unacceptable behavior, society's standards have become stringent over time (Anderson, 2003, p. 1466). Finally, under no circumstances is a person ever legally obligated to have sex; likewise, under no circumstances is a person required to incriminate his or herself. Most rights may be

taken away provided that due process is given, but these two rights are distinctive in that they are not such rights.

The reader may be confused as to how this approach could serve my argument that certain deceptive tactics violate the right against coercion. It may seem like the only way state laws could support my argument is if they defined coercion to include the deceptive presentation of manufactured evidence. But recall that my principled standard does not depend on a cohesive definition of coercion: Much of this thesis showed that one exists neither in philosophy nor in constitutional law. Instead, I argued that as a matter of law, coercion is really about the normative acceptability of methods of influence. Consequently, I developed and justified my principled standard that privileges the normativity of methods: *The right against coercion prohibits interrogation methods that are repulsive to society's standards of decency*. When put this way, the relevant inquiry shifts away from defining coercion to include deception. Instead of showing that deception, either philosophically or in the public's imagination, is coercive, I can argue that the use of deception to induce a person to do something they have a fundamental right not to do violates societal standards of decency. And that argument does not require that the right in question be the right not to incriminate oneself.

Having explained the reasoning behind my method, I shall now present my findings:

State	**Criminal code**	**Description**	**% of U.S. pop.**
Florida	Fla. Stat. § 794.011	It is sexual battery if someone induces some to have sex with them under the false pretense that the perpetrator is acting under color of authority.	~6.7
California	Cal. Penal Code § 261	It is rape by fraud if someone induces some to have sex with them under the false pretense that the sexual intercourse	~11.6

		served a professional purpose.	
Illinois	720 ILCS 5/11-1.20	It is criminal sexual assault to have sex with someone who is "unable to give knowing consent," which occurs when the victim "was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose."	~3.7
Georgia	Ga. Code Ann. § 16-5-46	"A person commits the offense of trafficking an individual for sexual servitude when that person knowingly: 1) Subjects an individual to or maintains an individual in sexual servitude..." Sexual servitude may be obtained by coercion or deception.	~3.3
Texas	Tex. Penal Code Ann. §§ 1.07(a)(19)–(a)(19)(A)	Consent to sex is not effective if "induced by…force, threat, or fraud."	~9.2
Pennsylvania	16 Pa. Cons. Stat. § 311	Consent to sex is not effective if "it is induced by force, duress or deception…"	~3.8
New Jersey	2013 N.J. Rev. Stat. § 2C:2-10	Consent to sex is not effective if "it is induced by force, duress or deception…"	~2.7
Alabama	Ala. Code § 13A-2-7(c)(4)	Consent to sex is not effective if "it is induced by force, duress or deception…"	~1.5
Colorado	Colorado General Assembly, n.d., § 18-1-505(3)(d)	Consent to sex is not effective if "it is induced by force, duress or deception…"	~1.8
Delaware	Delaware General Assembly, n.d., § 453(4)	Consent to sex is not effective if "it is induced by force, duress or deception…"	~0.3
Missouri	Missouri General Assembly, 2012, §	Consent to sex is not effective if "it is induced by force, duress or deception…"	~1.8

	566.030		
Maine	ME. REV. STAT. ANN. tit. 17-A, § 109(3)(C)	Consent to sex is not effective if "it is induced by force, duress or deception…"	~0.4
Tennessee	Tenn. Code Ann. §§ 39-13-503(a)–(a)(4)	Consent to sex is not effective if "it is induced by force, duress or deception…"	~2.1
Virginia	VA Code Ann. § 18.2-67.4A(i)	It is sexual battery to have sexual intercourse when consent was obtained by "ruse."	~2.6
Michigan	Mich. Comp. Laws Ann. § 750.520b(l)(f)(v)	It is criminal sexual intercourse "[w]hen the actor, through concealment or by the element of surprise, is able to overcome the victim." Michigan Court of Appeals: "The evidence that the defendant disguised himself, and took advantage of the complainant's misidentification of him as her fiance to induce her to submit to his sexual advances, was sufficient to establish the requisite coercion by concealment" (*People v. Crippen*, 2000).	~3.0%
Total:			~54.5

States whose cumulative populations amount to 54.5% of the US have laws that prohibit deception of some form in the attainment of sexual acquiescence.[24] A person may use a variety of methods: They can highlight their positive qualities and downplay their flaws, make flirtatious remarks, and even provide formal arguments in an effort to persuade. But society by and large, believes it is normatively unacceptable to use deceit, and that is reflected by the fact that it is prohibited by the very same statutes that prohibit the use of force or threats.

[24] Note that states differ in their definitions of "deception," "fraud," "ruse." It is certainly deceptive, and in some sense fraudulent, to lie about one's income, but that does not mean it is fraudulent under the meaning of statute. Some states define "fraud" to refer only to identity fraud.

The purpose of this section was to place the deceptive presentation of manufactured evidence to induce confessions within the context of a general public distaste for the use of deceit to induce the non-exercise of a similarly fundamental right. When that context is provided, the relevance of deception to the normative unfavourability of this tactic is clarified, and my overall argument is strengthened.

Conclusion

In Part I of this thesis, I argued that US Supreme Court doctrine enshrines a constitutional right not to be coerced by police during an interrogation. I conceptualized the right against coercion as a peripheral right that protects the Privilege Against Self-incrimination. I problematized the Court's definition and illustrated the lack of philosophical consensus on the concept of coercion, concluding that the right against coercion, although it undoubtedly exists, is an instance of vagueness in the law. By closely analyzing the language of and social context surrounding important coercion cases, I showed that the Court does not strictly adhere to its stated voluntariness standard, but instead relies on societal standards of decency when determining what interrogation methods are coercive. This results in a normative conception of the right against coercion. Using Dworkin's approach to hard cases, I suggested the Court

articulate a principled standard to clarify the right against coercion moving forward. I then entertained and replied to potential objections from the school of originalism.

Having established the necessary legal and philosophical framework, I argued in Part 2 for the primary conclusion of this thesis: that when police deceptively present manufactured evidence during interrogations, they violate societal standards of decency, and therefore also the right against coercion. To ascertain societal standards of decency relevant to coercion, I researched state criminal laws on coercion and extortion and found that a representative majority of the United States prohibits the kind of behavior-influencing threats that the deceptive presentation of manufactured evidence facilitates. To supplement my evidence further, I then identified similarities between the right not to be coerced and the right to determine one's own sexual activities. I examined state laws regarding criminal sexual conduct; I found that a representative majority of the United States prohibits deceit in the obtainment of sex. I reasoned that if society views deceit as an impermissible way to induce someone to forfeit their bodily autonomy, it is certainly an impermissible method to induce someone to incriminate his or herself.

That is what my thesis argued, but I also want to mention some of the issues I either did not discuss or only briefly mentioned that are relevant to my topic. First, the reader may wonder whether my arguments imply that we ought to prohibit undercover policing, since that tactic involves deception. For some, that is a *reductio ad absurdum*: Banning police deception under *all* circumstances might undermine policing to an unacceptable degree. I think similarly principled arguments could be made regarding undercover policing, but I do not think its prohibition is strictly entailed by my thesis's arguments. Under both statutory and case law on entrapment, police are not permitted to induce a person to commit a crime they otherwise were

unlikely to commit (Cornell Law School, n.d., Entrapment; Sorrells v. United States, 1932; Sherman v. United States, 1958; Jacobson v. United States, 1992). Thus the set of currently legal uses of (deceptive) undercover policing to collect incriminating evidence already excludes those cases we would be most likely to recognize as the use of deception to *induce* behavior. It might still be argued that deception is normatively bad and thus so is undercover policing. Still, one of the important conditions of my argument—that the deceptive presentation of manufactured evidence can induce people to confess when they otherwise are not inclined to—is not met by undercover policing.

It may also seem strange that I did not center my analysis around false confessions, since one of the main concerns surrounding coercive interrogations is that they land innocent people in jail. It is true that when a detainee falsely confesses during an interrogation, there is a good chance the police did something wrong. (By "wrong," I just mean something that is morally bad under ordinary circumstances: violence, threats, deceit, etc.) If police only conducted themselves in accordance with regular moral norms—if they only provided truthful information and good-faith arguments—it is hard to see why anyone would falsely confess. But although a false confession strongly suggests something went wrong during the interrogation, their presence is not required. As I have argued, and I think as the Supreme Court has recognized, whether some interrogation successfully induced any confession (true or false) is not the criteria under which an interrogation tactic is immoral or illegal. If it is wrong or illegal to torture, threaten, or deceive a suspect, that is enough to say that police should not do it. It is not necessary to talk about practical concerns (i.e., false convictions) to argue within the conceptual space of my thesis, though those concerns surely raise the stakes of the conversation.

Another fruitful way of approaching the topic of interrogative deception would be to look at the psychological effects of different kinds of deception. As part of the Reid Technique, police may gaslight, or repeatedly and incessantly lie to, a detained person so that they begin to question the reliability of their own powers of perception, memory, and reasoning (Sussex Publishers, n.d.). Police gaslit Peter Reilly by insisting that his memory was not serving him, and that he must have murdered his mother. A strong argument exists that gaslighting, especially when done under custodial circumstances to a sleep-deprived suspect who does not know that police are permitted to lie, induces involuntary confessions. There are several reasons I did not take that approach: 1) It would have made my thesis much more about psychology than the law or philosophy. 2) It would have required that I work within the Supreme Court's conceptually flawed voluntariness standard. 3) The totality of circumstances test probably provides the apparatus to exclude confessions such as Reilly's.

I also might have taken the separate or possibly complementary approach of arguing that police deception in interrogations undermines the very values our system of government is meant to protect. Political philosopher John Locke, known for his influence on the founding ideas of American government, argues that the purpose of government is to secure the rights of man. He most concisely expresses that view in Chapter IX of the *Second Treatise*: "The great and chief end, therefore, of men uniting into commonwealths, and putting themselves under government, is the preservation of their [lives, liberties and estates]…" (1971, Section 123). Similarly, the "minimal state" that Nozick proposes in *Anarchy, State, and Utopia* is "limited to protecting persons against murder, assault, theft, fraud, and so forth"—straightforward violations of Lockean rights (Nozick, 1974, p. 162). Certainly no one objects to Nozick for suggesting too

expansive a role of government, so at a bare minimum, government must protect its citizens from violations of their basic liberties.

Fraud violates liberty because it is the acquisition of another person's property (in the strict sense) in a manner that is functionally equivalent to theft. All US states criminalize fraud, and most categorize it as theft by deception. A person might commit fraud by making a false insurance claim, thereby obtaining property to which they are not entitled and that, absent their deception, they would not have obtained. To preserve liberty, the government must step in and make right the wrong done by fraud. Of course, the government may take away a person's liberty if their conduct implicitly forfeits it; under these circumstances the forfeiture of liberty must serve the broader goal of protecting liberty. The Constitution enshrines that view in its 5th and 14th Amendments' Due Process clauses, which provide that no person may be "deprived of life, liberty, or property without due process of law." A person may not be sentenced to jail unless they have been duly convicted; a person's home may not be searched unless there was probable cause.

It would be strange, then, if police could induce people to forfeit a core constitutional right—the privilege against self-incrimination—via the same means (deception) that it prohibits citizens from using to induce other citizens or the government to forfeit their property. I cannot lie to an insurance company so that they pay me a large sum of money, nor can I lie to the government about my income so that I pay less in taxes. Yet apparently, the government may lie to citizens so that they forfeit their right not to incriminate themselves. Even if we suppose that the privilege against self-incrimination were a right of which the government could procedurally deprive someone, a detained person under interrogation has not yet been convicted of a crime. Conviction is not necessary for all deprivations of liberty (e.g., a person may be held in jail pre-

trial), but the continuation of such deprivations are contingent upon a conviction and sentence: A person found innocent is released from confinement. The privilege of self-incrimination cannot be temporarily deprived in this way; once a person forfeits it, that incriminating evidence is unretrievable unless excluded.

Finally, another version of my thesis might have made the strictly philosophical argument that deception is normatively equivalent to coercion, even if it does not quite qualify as coercion. On a Kantian view, lying treats people as means only to an end rather than as ends in themselves (Korsgaard, 1986, p. 334). It could even be contended that lying, in some important respect, is worse than physical coercion: At least the violent coercer allows his victim to exercise reason in his choice to acquiesce to demands, whereas the deceiver provides only the illusion of autonomy.[25] I originally intended to argue along those lines, but decided against it because I felt it would inhibit the practical relevance of my thesis. I worried that even if it were true that deception is normatively equivalent to coercion, it would not be appropriate to impose a strictly philosophical conception onto a legal definition. Judges and philosophers have different roles: Judges interpret the law consistent with public understanding, whereas philosophers are more concerned with analytical accuracy. It would therefore undermine the purpose of law if a legal term suddenly took on a new meaning because of a philosophical revelation that had little salience for the majority of people.

[25] I give credit to Professor David Cummiskey for this Kantian point.

References

Anderson, M. J. (2003). Marital immunity, intimate relationships, and improper inferences: A new law on sexual offenses by intimates. *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.439504

Anderson, S. (2023). Coercion. In E. N. Z. U. Nodelman (Ed.), The Stanford Encyclopedia of Philosophy: Stanford University.

Aquinas, Thomas. (1990). *The summa theologica*. Encyclopaedia Britannica.

Arizona v. Fulminante, 499 U.S. 279 (1991).

Bator, P. M., & Vorenberg, J. (1966). Arrest, detention, interrogation and the right to counsel: Basic problems and possible Legislative Solutions. *Columbia Law Review*, *66*(1), 62. https://doi.org/10.2307/1120405

Bork, R. H. (1971). Neutral principles and some First Amendment problems. *Indiana Law Journal*, *47*(1). https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=2720&context=ilj

Bork, R. H. (1990). *The tempting of America*. Free Press.

Boy Scouts of America v. Dale, 530 U.S. 640 (2000).

Brest, P. (1980). The misconceived quest for the original understanding. *Boston University Law Review*, 60(2), 204-238.

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

Connery, D. S. (2010). *Guilty until proven innocent.* Berkley Pub Group.

Cornell Law School. (n.d.). *Affirmative defense*. Legal Information Institute. Retrieved April 1, 2023, from https://www.law.cornell.edu/wex/affirmative_defense

Cornell Law School. (n.d.). Calumny. Legal Information Institute. Retrieved April 1, 2023, from https://www.law.cornell.edu/wex/calumny

Cornell Law School. (n.d.). *Entrapment*. Legal Information Institute. Retrieved April 1, 2023, from https://www.law.cornell.edu/wex/entrapment

Cornell Law School. (n.d.). Qualified immunity. Legal Information Institute. Retrieved April 1, 2023, from https://www.law.cornell.edu/wex/qualified_immunity

Crossley, M. A. (1986). Miranda and the state constitution: state courts take a stand. *Vanderbilt Law Review*, 39(6).

Culombe v. Connecticut, 367 U.S. 568 (1961).

DeJonge v. Oregon, 299 U.S. 353 (1937).

Dworkin, R.M. (1977). *Taking rights seriously*. Duckworth.

Dworkin, R. M. (1967). The model of rules. *The University of Chicago Law Review*, *35*(1), 14–46. https://doi.org/10.2307/1598947

Fallon, R. (2021). The chimerical meaning of original public meaning. *Virginia Law Review*, 107(7). Retrieved from https://www.law.nyu.edu/sites/default/files/Fallon%20.pdf.

Fikes v. Alabama, 352 U.S. 191 (1957).

Finnis, J. M. (2011). *Natural law and natural rights*. Oxford: Clarendon Press.

Frazier v. Cupp, 394 U.S. 731 (1969).

Fuller, L. L. (1964). T*he morality of law* (Vol. 1963.). Yale University Press.

Gilligan, V. (2010, April 25). Sunset. *Breaking Bad*. episode, AMC.

Gitlow v. New York, 268 U.S. 652 (1925).

Hart, H. L. A. (1958). Positivism and the Separation of Law and Morals. *Harvard Law Review*, 71(4), 593–629. https://doi.org/10.2307/1338225

Hobbes, T. (1909). *Hobbes's Leviathan*. Reprinted from the Edition of 1651. With an Essay by the Late W.G. Pogson Smith. Oxford.

Jacobson v. United States, 503 U.S. 540, 548 (1992).

Janus v. AFSCME, 585 U.S. ___ (2018).

Kelsen, H. (1967). *Pure theory of law*. University of California Press.

Korsgaard, C. M. (1986). The right to lie: Kant on dealing with evil. *Philosophy & Public Affairs*, 15(4), 325–349. http://www.jstor.org/stable/2265252

Leo, R. A. (1992). From coercion to deception: The changing nature of police interrogation in America. *Crime, Law and Social Change*, 18(1-2). https://doi.org/10.1007/bf00230624

Leo, R. A., & Ofshe, R. J. (1998). The consequences of false confessions: Deprivations of liberty and miscarriages of justice in the age of psychological interrogation. *The Journal of Criminal Law and Criminology*, *88*(2). https://doi.org/10.2307/1144288

Locke, J. (1971). *Of civil government; Second treatise*. H. Regnery.

Lucas, J. R. (1966). *The principles of politics*. Oxford: Clarendon Press.

Martinez, B. (2021, August 24). *The overlooked barrier to section 1983 claims: State catch-all statutes of limitations*. California Law Review. Retrieved April 1, 2023, from https://californialawreview.org/the-overlooked-barrier-to-section-1983-claims-state catch-all-statutesof%20limitations/

Mill, J. S. (2001). *On liberty*. Batoche Books Limited. http://fs2.american.edu/dfagel/www/liberty.pdf

Mine Workers v. Illinois Bar Assn., 389 U.S. 217 (1967).

Miranda v. Arizona, 384 U.S. 436 (1966).

Moyers, B., & Dworkin, R. M. (1987). Ronald Dworkin: The changing story. other. Retrieved from https://billmoyers.com/content/ronald-dworkin/.

NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958).

National Archives and Records Administration. (n.d.). *Meet the framers of the Constitution*. Retrieved April 1, 2023, from https://www.archives.gov/founding-docs/founding-fathers#:~:text=In%20all%2C%2055%20delegates%20attended,sessions%20in%20a%20sedan%20chair.

Nozick, R. (1974). *Anarchy, state and utopia*. Blackwell.

Nozick, R. (1969). Coercion. In W. S. S. P. M. Morgenbesser (Ed.), *Philosophy, Science, and Method: Essays in Honor of Ernest Nagel* (pp. 440-472). St Martin's Press.

Orlando, J. (n.d.). *Interrogation Techniques*. OLR Research Report. Retrieved April 1, 2023, from https://www.cga.ct.gov/2014/rpt/2014-R-0071.htm

"Peter A. Reilly Trial: 1974 & 1976." *Great American Trials*. Retrieved April 01, 2023 from Encyclopedia.com: https://www.encyclopedia.com/law/law-magazines/peter-Reilly-trial-1974-1976

People v. Crippen, 617 N.W.2d 760, 764 (Mich. Ct. App. 2000).

Primus, E. (2015). The Future of Confession Law: Toward Rules for the Voluntariness Test. *Michigan Law Review* (114), 12. https://doi.org/10.36644/mlr.114.1.future

Riggs v. Palmer, 115 N.Y. 506 (1889)

Roberts v. U.S. Jaycees, 468 U.S. 609 (1984).

Rochin v. California, 342 U.S. 165 (1952).

Schneckloth v. Bustamonte, 412 U.S. 218 (1973).

Sherman v. United States, 356 U.S. 369 (1958).

Soames, S. (2012). *Vagueness and the law*. USCDornSife. Retrieved April 1, 2023, from https://dornsife.usc.edu/assets/sites/678/docs/Selected_Publication/Vagueness_and_the_Law.pdf

Sorrells v. United States, 287 U.S. 435 (1932).

Spelhaug, C. (n.d.). *Peter Reilly*. Retrieved April 1, 2023, from https://www.law.umich.edu/special/exoneration/Pages/casedetailpre1989.aspx?caseid=268

Starr, D. (2013, December 2). *The interview.* The New Yorker. Retrieved April 1, 2023, from https://www.newyorker.com/magazine/2013/12/09/the-interview-7

Stone, G. R. (1977). The Miranda Doctrine in the Burger Court. *The Supreme Court Review*, 1977, 102-103. https://doi.org/10.1086/scr.1977.3109510

Stromberg v. California, 283 U.S. 359 (1931).

Sussex Publishers. (n.d.). Gaslighting. Psychology Today. Retrieved April 1, 2023, from https://www.psychologytoday.com/us/basics/gaslighting

Toglia, M. P., Read, J. D., Ross, D. F., & L., L. R. C. (2019). *Handbook of eyewitness psychology*. Routledge.

42 U.S.C. § 1983 (n.d.). Civil action for deprivation of rights.

Wickersham Commission. Police, Crime, Prohibition, and Law - JRank Articles. (n.d.). Retrieved April 1, 2023, from https://law.jrank.org/pages/11309/Wickersham-Commission.html

Ziang Sung Wan v. United States, 266 U.S. 1 (1924).