

tice Powell,⁴³ and Justice Rehnquist,⁴⁴ have not only rejected incorporation, but have also argued that, if the same standards are to apply, the standards previously developed for the Federal Government would have to be diluted in order to give the states more leeway in the operation of their criminal justice systems.⁴⁵ The latter result seems to have been reached for application of the jury trial guarantee of the Sixth Amendment.⁴⁶

⁴¹ *Williams v. Florida*, 399 U.S. 78, 143–45 (1970) (concurring in part and dissenting in part); *Duncan v. Louisiana*, 391 U.S. 145, 173–83 (1968) (Justices Harlan and Stewart dissenting). *But see* *Apodaca v. Oregon*, 406 U.S. 404, 414 (1972) (dissenting). *See also* *Crist v. Bretz*, 437 U.S. 28 (1978) (Justice Stewart writing opinion of the Court).

⁴² *Bloom v. Illinois*, 391 U.S. 194, 211 (1968) (concurring).

⁴³ *Johnson v. Louisiana*, 406 U.S. 356, 366 (1972) (concurring); *Crist v. Bretz*, 437 U.S. 28, 52–53 (1978) (dissenting, joined by Chief Justice Burger and Justice Rehnquist). *But see* *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 780 n.16 (1978) (rejecting theory in First Amendment context in opinion for the Court, joined by Chief Justice Burger).

⁴⁴ *Buckley v. Valeo*, 424 U.S. 1, 290 (1976) (concurring in part and dissenting in part); *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 822 (1978) (dissenting). *See also* *Crist v. Bretz*, 437 U.S. 28, 52–53 (1978) (joining Justice Powell's dissent). Justice Jackson also apparently held this view. *Beauharnais v. Illinois*, 343 U.S. 250, 288 (1952) (dissenting).

⁴⁵ *E.g.*, *Williams v. Florida*, 399 U.S. 78, 129–38 (1970) (Justice Harlan concurring in part and dissenting in part); *Bloom v. Illinois*, 391 U.S. 194, 213–215 (1968) (Justice Fortas concurring). *But see* *Williams v. Florida*, 399 U.S. at 106–08 (Justice Black concurring in part and dissenting in part).

⁴⁶ *Williams v. Florida*, 399 U.S. 78 (1970); *Apodaca v. Oregon*, 406 U.S. 404 (1972). *But cf.* *Ballew v. Georgia*, 435 U.S. 223 (1978).