

dom of will or self-control essential to make his confession voluntary within the meaning of the law.”²⁸⁰ Subsequent cases followed essentially the same line of thought.²⁸¹

Then, language in the 1897 case of *Bram v. United States* opened the door to eventually extending the doctrinal basis for analyzing the admissibility of a confession beyond the common-law test that focused on voluntariness as an indicator of the confession’s trustworthiness as evidence. “In criminal trials, in the courts of the United States, wherever a question arises whether a confession is incompetent because not voluntary, the issue is controlled by that portion of the Fifth Amendment to the Constitution of the United States, commanding that no person ‘shall be compelled in any criminal case to be a witness against himself.’”²⁸² However, though this approach²⁸³ and the case itself were subsequently approved in several cases,²⁸⁴ the Court would still hold in 1912 that a confession should not be excluded merely because the authorities had not warned a suspect of his right to remain silent,²⁸⁵ and more than once later opinions could doubt “whether involuntary confessions are excluded from federal criminal trials on the ground of a violation of the Fifth Amendment’s protection against self-incrimination, or from a rule that forced confessions are untrustworthy. . . .”²⁸⁶ One reason for this was that the Self-Incrimination Clause had not yet been made applicable to the states, thereby requiring that the admissibility of confessions in state courts be determined under due process standards developed from common-law principles. It was only after the Court extended the Self-Incrimination Clause to the states that a divided Court reaffirmed and extended the 1897 *Bram* ruling and imposed on both federal and state trial courts new rules

²⁸⁰ *Hopt v. Utah*, 110 U.S. 574, 584–85 (1884). Utah at this time was a territory and subject to direct federal judicial supervision.

²⁸¹ *Pierce v. United States*, 160 U.S. 335 (1896); *Sparf and Hansen v. United States*, 156 U.S. 51 (1895). In *Wilson v. United States*, 162 U.S. 613 (1896), failure to provide counsel or to warn the suspect of his right to remain silent was held to have no effect on the admissibility of a confession but was only to be considered in assessing its credibility.

²⁸² *Bram v. United States*, 168 U.S. 532, 542 (1897).

²⁸³ *Ziang Sun Wan v. United States*, 266 U.S. 1, 14–15 (1924). This case first held that the circumstances of detention and interrogation were relevant and perhaps controlling on the question of admissibility of a confession.

²⁸⁴ *Burdeau v. McDowell*, 256 U.S. 465, 475 (1921); *Powers v. United States*, 223 U.S. 303, 313 (1912); *Shotwell Mfg. Co. v. United States*, 371 U.S. 342, 347 (1963).

²⁸⁵ *Powers v. United States*, 223 U.S. 303 (1912).

²⁸⁶ *United States v. Carignan*, 342 U.S. 36, 41 (1951). See also *McNabb v. United States*, 318 U.S. 332, 346 (1943); *Brown v. Mississippi*, 297 U.S. 278, 285 (1936); *Stein v. New York*, 346 U.S. 156, 191 n.35 (1953).