Aside from the theoretical and philosophical considerations raised by the question whether the Bill of Rights is incorporated into the Fourteenth Amendment or whether due process subsumes certain fundamental rights that are named in the Bill of Rights, the principal relevant controversy is whether, once a guarantee or a right set out in the Bill of Rights is held to be a limitation on the states, the same standards that restrict the Federal Government restrict the states. The majority of the Court has consistently held that the standards are identical, whether the Federal Government or a state is involved,[38] and "has rejected the notion that the Fourteenth Amendment applies to the State only a 'watered-down, subjective version of the individual guarantees of the Bill of Rights.'"[39] Those who have argued for the application of a dual-standard test of due process for the Federal Government and the states, most notably Justice Harlan,[40] but including Justice Stewart,[41] Justice Fortas,[42] Jus-

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Confrontation—Pointer v. Texas, 380 U.S. 400 (1965); Douglas v. Alabama, 380 U.S. 415 (1965).

Compulsory process—Washington v. Texas, 388 U.S. 14 (1967).

Counsel—Powell v. Alabama, 287 U.S. 45 (1932); Gideon v. Wainwright, 372 U.S. 335 (1963).

Eighth Amendment—

Cruel and unusual punishment—Louisiana ex rel. Francis v. Resweber, 329 U.S. 459 (1947); Robinson v. California, 370 U.S. 660 (1962).

Provisions not applied are:

Third Amendment—

Quartering troops in homes—No cases.

Fifth Amendment—

Grand Jury indictment—Hurtado v. California, 110 U.S. 516 (1884).

Seventh Amendment—

Jury trial in civil cases in which value of controversy exceeds $20—*Cf.* Adamson v. California, 332 U.S. 46, 64–65 (1947) (Justice Frankfurter concurring). *See* Minneapolis & St. L. R.R. v. Bombolis, 241 U.S. 211 (1916).

Eighth Amendment—

Bail—*But see* Schilb v. Kuebel, 404 U.S. 357, 365 (1971).

Excessive Fines—*But see* Tate v. Short, 401 U.S. 395 (1971) (using equal protection to prevent automatic jailing of indigents when others can pay a fine and avoid jail).

[38] Malloy v. Hogan, 378 U.S. 1, 10–11 (1964); Ker v. California, 374 U.S. 23 (1963); Griffin v. California, 380 U.S. 609 (1965); Baldwin v. New York, 399 U.S. 66 (1970); Williams v. Florida, 399 U.S. 78 (1970); Ballew v. Georgia, 435 U.S. 223 (1978); First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765, 780 n.16 (1978) (specifically the First Amendment speech and press clauses); Crist v. Bretz, 437 U.S. 28 (1978); Burch v. Louisiana, 441 U S. 130 (1979).

[39] Williams v. Florida, 399 U.S. 78, 106–107 (1970) (Justice Black concurring in part and dissenting in part), quoting Malloy v. Hogan, 378 U.S. 1, 10–11 (1964).

[40] Justice Harlan first took this position in Roth v. United States, 354 U.S. 476, 496 (1957) (concurring in part and dissenting in part). *See also* Ker v. California, 374 U.S. 23, 45–46 (1963) (concurring). His various opinions are collected in Williams v. Florida, 399 U.S. 78, 129–33 (1970) (concurring in part and dissenting in part).