Constitutional Law: Fifth Amendment Privilege

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thought, would do much to induce local authorities to pay less attention to pressure groups. This latter thought coincides with the theory that private organizations acting in the capacity of censors are within the reach of the fourteenth amendment, in that they exercise powers similar to the state. These remedies appear to be beyond the grasp of the ordinary dealer in books, however.

CONCLUSION

The conclusion of others that this problem is insolvable and no method of attaining relief is available at this point seems incorrect. However, the suggestions put forth in this article are only suggestions, the ultimate solutions lie elsewhere—in the courage of book dealers and other citizens who in the last instance must demand and defend their rights.

Joseph D. Mintz

Constitutional Law: Fifth Amendment Privilege

Relator was held in contempt of court for refusing to answer, in spite of immunity granted by the State, questions of a Louisiana Grand Jury investigating public bribery. An indictment charging violations of a federal statute arising out of alleged gambling activities was pending against him in a United States District Court. Reversing the conviction, the Louisiana Supreme Court held (4-3), to require answers concerning his gambling activities would violate his privilege against self-incrimination guaranteed by the Fifth Amendment. State v. Dominguez, 228 LA. 284, 82 So. 2d 12 (1955).

Article 1, section 11 of the Louisiana Constitution grants an exemption from compulsory self-incrimination “except as otherwise provided in this constitution . . .” The privilege is denied by Article 19, section 13, in bribery investigations but the compelled testimony “shall not afterwards be used against him in any judicial proceeding . . .” Immunity is also provided for by statutory provisions dealing with the subject matter of public bribery. West's Louisiana Revised Statutes, §§14:121, 15:468.

The questions which relator refused to answer sought to connect him with the bribery of police officers during his operations of lotteries. Such testimony would have been very pertinent to the pending federal prosecution which, of course, could not be prevented by the State-granted immunity.

It is well settled that the fifth amendment is not applicable to the states.

32. LOCKHART & MCCLURE, op. cit. supra, note 5.
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Barron v. Baltimore, 7 Pet. 242 (1833). Nor is its exemption from compulsory self-incrimination incorporated in the Fourteenth Amendment so as to apply to state proceedings. Twining v. New Jersey, 211 U. S. 78 (1908). These views were reaffirmed by a divided Court in Adamson v. California, 322 U. S. 46 (1946). Furthermore, it has been held that the use in a federal prosecution of testimony elicited in a state proceeding under state granted immunity does not violate the Fifth Amendment. Feldman v. United States, 322 U. S. 487 (1943), (but cf. Clark v. State, 68 Fla. 433, 67 So. 135 (1914), state's use of testimony given in federal proceeding unconstitutional under Florida Constitution; Adama v. Maryland, 347 U. S. 179 (1954), federal immunity statute precluded use of testimony in state proceeding).

The problem thus created under our separate federal and state sovereignties, as witnessed by the instant case, is of particular concern in these times of extensive and possibly conjunctive investigations under federal and state auspices. The traditional rule states that possible incrimination under the laws of another jurisdiction does not justify exemption from compulsory self-incrimination. Wigmore, Evidence §2258 (3rd ed. 1940). This view is generally based on an assumption that the danger of prosecution in another jurisdiction is remote. When the danger could be said to be imminent, some courts have allowed the privilege. See 58 Am. Jur., Witnesses §51 (1948).

The federal rule states that possible incrimination under state law is not sufficient reason for invoking the Fifth Amendment. United States v. Murdock, 284 U. S. 141 (1931). [But see United States v. Di Carlo, 102 F. Supp. 597 (N. D. Ohio 1952); United States v. Marcello, 196 F. 2d 437, 442-443 (5th Cir. 1952) (dictum).] As to incrimination under federal law, state courts have differed in their views. In a leading case the denial of a privilege in a state proceeding under a state immunity statute was held to be constitutional under the state and Federal Constitutions, even though federal violations would be revealed by the required testimony. State v. Jack, 69 Kan. 387, 76 Pac. 911 (1904), aff'd sub nom Jack v. Kansas, 199 U. S. 372 (1905). New York courts have followed this majority rule and hold that immunity from state prosecution is all that is required to justify a denial of the state constitution's privilege against self incrimination, possible federal incrimination notwithstanding. Dunham v. Ottinger, 243 N. Y. 423, 438, 154 N. E. 298, 302 (1926); Application of Herlands, 204 Misc. 373 124 N. Y. S. 2d 402 (Sup. Ct. 1953). See also Cabot v. Corcoran, ——— Mass. ———, 123 N. E. 2d 221, 224 (1954) (decided on other grounds); State v. Arnold, Ohio C. P. 124 N. E. 2d 473 (1954) (privilege denied in state investigation of un-American activities). A minority of state courts, including the Louisiana Supreme Court, have sustained a claim of privilege where the evidence sought
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would incriminate the witness in another jurisdiction, either state or federal. People v. Den Vyl, 318 Mich. 645, 29 N. W. 2d 284 (1947); State ex rel Doran v. Doran, 215 La. 151, 39 So. 2d 894 (1949); State ex rel Mitchell v. Kelly, —— Fla. ——, 71 So. 2d 887, 896-97 (1954); 82 A. L. R. 1380, 1383 (1933).

These cases were cited by the majority in the instant case as authority for its decision. Particularly relied on was the Den Vyl case, in which a witness was allowed a privilege against self incrimination in a state proceeding on the grounds that his testimony would incriminate him in a federal prosecution then pending against him. But as was pointed out by the dissents in the instant case, the privilege allowed in the Den Vyl case was that provided by the Michigan Constitution. Similarly in the other cases relied on by the majority, the privilege allowed in each case was the constitutional privilege of the state which was conducting the proceedings. It was never the privilege of the other jurisdiction whose prosecution was feared. These courts have reached their desired results by construing the state's own exemption from compulsory self incrimination to be still in force and its application required because the imminent foreign prosecution made the state's immunity provisions insufficient as a replacement for the privilege. Such reasoning was impossible, however, in the instant case because, as admitted by the majority, the Louisiana privilege as conditionally granted by Article 1, section 11 of the constitution, was non-existent under Article 19, section 13 in cases of bribery investigations.

The majority opinion was perhaps motivated by a sense of fairness and justice which would seem to be lacking in a correct result under these unique facts, but which can not properly be avoided under present law. The only solution to this problem of dual sovereignty would seem to lie in an overruling of the Twining or Feldman decisions, or more probably in federal legislation granting comity to state immunity laws.

Edward H. Coughlin

Labor Law: Constitutionality of Section 301 (a) of Taft-Hartley Act

In an action by a union for construction of a collective bargaining agreement and enforcement of individual employees' alleged rights to unpaid wages under the agreement, held: the action was not within the federal court's jurisdiction as conferred by the L.M.R.A. provision that suits for violation of contracts between an employer and a union representing employees may be brought in federal courts without respect to amount in controversy or citizenship of parties, since the rights sought to be enforced were uniquely personal in nature. Ass'n of Westinghouse S. Emp. v. Westinghouse E. Corp., 348 U. S. 437 (1955).