SUPREME COURT OF UNITED STATES

William Murphy and John Moody

Vs.

The Waterfront Commission of New York Harbor.

No. 138.

Argued March 5, 1964.

Decided June 15, 1964.

Harold Krieger, New York City, for petitioners.

William P. Sirignano, New York City, for respondent.

Mr. Justice GOLDBERG delivered the opinion of the Court.

We have held today that the Fifth Amendment privilege against self-incrimination must be deemed fully applicable to the States through the Fourteenth Amendment. Malloy v. Hogan, [1964] USSC 133; 378 U.S. 1, 84 S.Ct. 1489. This case presents a related issue: whether one jurisdiction within our federal structure may compel a witness, whom it has immunized from prosecution under its laws, to give testimony which might then be used to convict him of a crime against another such jurisdiction.

Petitioners were subpoenaed to testify at a hearing conducted by the Waterfront Commission of New York Harbor concerning a work stoppage at the Hoboken, New Jersey, piers. After refusing to respond to certain questions about the stoppage on the ground that the answers might tend to incriminated them, petitioners were granted immunity from prosecution under the laws of New Jersey and New York.2 Notwithstanding this grant of immunity, they still refused to respond to the questions on the ground that the answers might tend to incriminate them under federal law, to which the grant of immunity did not purport to extend. Petitioners were thereupon held in civil and criminal contempt of court. The New Jersey Supreme Court reversed the criminal contempt conviction on procedural grounds but, relying on this Court's decisions in Knapp v. Schweitzer, [1958] USSC 148; 357 U.S. 371, 78 S.Ct. 1302, 2 L.Ed.2d 1393; Feldman v. United States, [1944] USSC 111; 322 U.S. 487, 64 S.Ct. 1082, 88 L.Ed. 1408; and United States v. Murdock, [1931] USSC 179; 284 U.S. 141, 52 S.Ct. 63, 76 L.Ed. 210, affirmed the civil contempt judgments on the

merits. The court held that a State may constitutionally compel a witness to give testimony which might be used in a federal prosecution against him.3 39 N.J. 436, 452—458, 189 A.2d 36, 46—49.

Since a grant of immunity is valid only if it is coextensive with the scope of the privilege against self-incrimination, Counselman v. Hitchcock, [1892] USSC 17; 142 U.S. 547, 12 S.Ct. 195, 35 L.Ed. 1110, we must now decide the fundamental constitutional question of whether, absent an immunity provision, one jurisdiction in our federal structure may compel a witness to give testimony which might incriminate him under the laws of another jurisdiction. The answer to this question must depend, of course, on whether such an application of the privilege promotes or defeats its policies and purposes.

I. THE POLICIES OF THE PRIVILEGE.

The privilege against self-incrimination 'registers an important advance in the development of our liberty—'one of the great l ndmarks in man's struggle to make himself civilized." Ullmann v. United States, [1956] USSC 31; 350 U.S. 422, 426[1956] USSC 31; , 76 S.Ct. 497, 500[1956] USSC 31; , 100 L.Ed. 511.4 It reflects many of our fundamental values and most noble aspirations: our unwillingness to subject those suspected of crime to the cruel trilemma of self-accusation, perjury or contempt; our preference for an accusatorial rather than an inquisitorial system of criminal justice; our fear that self-incriminating statements will be elicited by inhumane treatment and abuses; our sense of fair play which dictates 'a fair state-individual balance by requiring the government to leave the individual alone until good cause is shown for disturbing him and by requiring the government in its contest with the individual to shoulder the entire load,' 8 Wigmore, Evidence (McNaughton rev., 1961), 317; our respect for the inviolability of the human personality and of the right of each individual 'to a private enclave where he may lead a private life,' United States v. Grunewald, 2 Cir.[1955] USCA2 510; , 233 F.2d 556, 581—582 (Frank J., dissenting), rev'd [1957] USSC 59; 353 U.S. 391, 77 S.Ct. 963, 1 L.Ed.2d 931; our distruct of self-deprecatory statements; and our realization that the privilege, while sometimes 'a shelter to the guilty,' is often 'a protection to the innocent.' Quinn v. United States, [1955] USSC 56; 349 U.S. 155, 162[1955] USSC 56; , 75 S.Ct. 668, 673[1955] USSC 56; , 99 L.Ed. 964.

Most, if not all, of these policies and purposes are defeated when a witness 'can be whipsawed into incriminating himself under both state and federal law even though' the constitutional privilege against self-incrimination is applicable to each. Cf. Knapp v. Schweitzer, [1958] USSC 148; 357 U.S. 371, 385[1958] USSC 148; , 78 S.Ct. 1302, 1310 (dissenting opinion of MR. JUSTICE BLACK). This has become especially true in our age of 'cooperative federalism,' where the Federal and State Governments are waging a united front against many types of criminal activity.

Respondent contends, however, that we should adhere to the 'established rule' that the constitutional privilege against self-incrimination does not protect a witness in one jurisdiction against being compelled to give testimony which could be used to convict him in another jurisdiction. This 'rule' has three decisional facets: United States v. Murdock, [1931] USSC 179; 284 U.S. 141, 52 S.Ct. 63, held that the Federal Government could compel a witness to give testimony which might incriminate him under state law; Knapp v. Schweitzer, [1958] USSC 148; 357 U.S. 371, 78 S.Ct. 1302, held that a State could compel a witness to give testimony which might incriminate him under

federal law; and Feldman v. United States, [1944] USSC 111; 322 U.S. 487, 64 S.Ct. 1082, held that testimony thus compelled by a State could be introduced into evidence in the federal courts.

Our decision today in Malloy v. Hogan, supra, necessitates a reconsideration of this rule.6 Our review of the pertinent cases in this Court and of their English antecedents reveals that Murdock did not adequately consider the relevant authorities and has been significantly weakened by subsequent decisions of this Court, and, further, that the legal premises underlying Feldman and Knapp have since been rejected.

II. THE EARLY ENGLISH AND AMERICAN CASES.

A. The English Cases Before the Adoption of the Constitution.

In 1749 the Court of Exchequer decided East India Co. v. Campbell, [1749] EngR 83; 1 Ves.Sen. 246, 27 Eng.Rep. 1010. The defendant in that case refused to 'discover' certain information in a proceeding in an English court on the ground that it might subject him to punishment in the courts of India. The court unanimously held that the privilege against self-incrimination protected a witness in an English court from being compelled to give testimony which could be used to convict him in the courts of another jurisdiction. The court stated the rule to be:

'that this court shall not oblige one to discover that, which, if he answers in the affirmative, will subject him to the punishment of a crime * * * and that he is punishable appears from the case of Omichund v. Barker, [1744] EngR 927; (1 Atk. 21.) as a jurisdiction is erected in Calcutta for criminal facts: where he may be sent to government and tried, thought not punishable here; like the case of one who was concerned in a rape in Ireland, and sent over there by the government to be tried, although the court of B.R. here refused to do it * * * for the government may send persons to answer for a crime wherever committed, that he may not involve his country; and to prevent reprisals.' 1 Ves.Sen., at 247, 27 Eng.Rep., at 1011.

In the following year, this rule was applied in a case involving separate systems of court and law located within the same geographic area. The defendant in Brownsword v. Edwards, [1750] EngR 51; 2 Ves.sen. 243, 28 Eng.Rep. 157, refused to 'discover, whether she was lawfully married' to a certain individual, on the ground that if she admitted to the marriage she would be confessing to an act which, although legal under the common law, would render her 'liable to prosecution in ecclesiastical court.' The Lord Chancellor said:

'This appears a very plain case, in which defendant may protect herself from making a discovery of her marriage; and I am afraid, if the court should over-rule such a plea, it would be setting up the oath ex officio; which then the parliament in the time of Charles I. would in vain have taken away, if the party might come into this court for it. The general rule is, that no one is bound to answer so as to subject himself to punishment, whether that punishment arises by the ecclesiastical law of the land.' 2 Ves.sen., at 244 245, 28 Eng.Rep., at 158.

B. The Saline Bank Case.

It was against this background of English case law that this Court in 1828 decided United States v. Saline Bank of Virginia, [1828] USSC 52; 1 Pet. 100, 7 L.Ed. 69. The Government, seeking to

recover certain bank deposits, brought suit in the District Court against the bank and a number of its stockholders. The defendants resisted discovery of 'any matters, whereby they may impeach or accuse themselves of any offence or crime, or be liable by the laws of the commonwealth of Virginia, to penalties and grievous fines * * *.' Id., 1 Pet., at 102. The unanimous opinion of the Court, delivered by Chief Justice Marshall, reads as follows:

'This is a bill in equity for a discovery and relief. The defendants set up a plea in bar, alleging that the discovery would subject them to penalties under the statute of Virginia.

'The Court below decided in favour of the validity of the plea, and dismissed the bill.

'It is apparent that in every step of the suit, the facts required to be discovered in support of this suit would expose the parties to danger. The rule clearly is, that a party is not bound to make any discovery which would expose him to penalties, and this case falls within it.

'The decree of the Court below is therefore affirmed.' Id., 1 Pet., at 104.

This case squarely holds that the privilege against self-incrimination protects a witness in a federal court from being compelled to give testimony which could be used against him in a state court.

C. Subsequent Development of the English Rule.

In 1851, the English Court of Chancery decided King of the Two Sicilies v. Willcox, [1851] EngR 134; 1 Sim.(N.S.) 301, 61 Eng.Rep. 116, a case which this Court in United States v. Murdock, [1931] USSC 179; 284 U.S. 141, 52 S.Ct. 63, erroneously cited as representing the settled 'English rule' that a witness is not protected 'against disclosing offenses in violation of the laws of another country.' Id., 284 U.S., at 149, 52 S.Ct., at 65. Defendants in that case resisted discovery of information, which, they asserted, might subject them to prosecution under the laws of Sicily. In denying their claim, the Vice Chancellor said:

'The rule relied on by the defendants, is one which exists merely by virtue of our own municipal law, and must, I think, have reference, exclusively, to matters penal by that law: to matters as to which, if disclosed, the judge would be able to say, as matter of law, whether it could or could not entail penal consequences.' 1 Sim. (N.S.), at 329, 61 Eng.Rep., at 128.

Two reasons were given in support of this statement: (1) 'The impossibility of knowing, as matter of law, to what cases the objection, when resting on the danger of incurring penal consequences in a foreign country, may extend * * *,' id., at 331, 61 Eng.Rep., at 128; and (2) the fact that 'in such a case, in order to make the disclosure dangerous to the party who objects, it is essential that he should first quit the protection of our laws, and wilfully go within the jurisdiction of the laws he has violated,'7 ibid. 61 Eng.Rep., at 128.

Within a few years, the pertinent part of King of the Two Sicilies was specifically overruled by the Court of Chancery Appeal in United States of America v. McRae, L.R., 3 Ch.App. 79 (1867), a case not mentioned by this Court in United States v. Murdock, supra. In McRae, the United States sued

in an English court for an accounting and payment of moneys allegedly received by the defendant as agent for the Confederate States during the Civil War. The defendant refused to answer questions on the ground that to do so would subject him to penalties under the laws of the United States. The United States argued that the 'protection from answering applies only where a person might expose himself to the peril of a penal proceeding in this country (England), and not to the case where the liability to penalty or forfeiture is incurred by the breach of the laws of a foreign country (the United States).' L.R., 3 Ch.App., at 83—84. The United States relied on King of the Two Sicilies v. Willcox, supra. The Lord Chancellor sustained the claim of privilege and limited King of the Two Sicilies to its facts. He said:

'I quite agree in the general principles stated by Lord Cranworth, and in their application to the particular case before him. * * * (The defendants there) did not furnish the least information what the foreign law was upon the subject, though it was necessary for the Judge to know this with certainty before he could say whether the acts done by the persons who objected to answer had rendered them amenable to punishment by that law or not. * * * (Moreover,) it was doubtful whether the Defendants would ever be within the reach of a prosecution, and their being so depended on their voluntary return to (Sicily).' L.R., 3 Ch.App., at 84—87.

In refusing to follow King of the Two Sicilies beyond its particular facts, the court said:

'But in giving judgment Lord Cranworth went beyond the particular case, and expressed his opinion that the rule upon which the Defendants relied to protect them from answering was one which existed merely by virtue of our own municipal law, and which must have reference exclusively to matters penal by that law. It was unnecessary to lay down so broad a proposition to support the judgment which he pronounced * * *. What would have been Lord Cranworth's opinion upon (the present) state of circumstances it is impossible for me to conjecture; but it is very different from that which was before his mind in that case, and I cannot feel that there is any judgment of his which ought to influence my decision upon the present occasion.' Id., at 85.

The court then concluded that under the circumstances it could not 'distinguish the case in principle from one where a witness is protected from answering any question which has a tendency to expose him to forfeiture for a breach of our own municipal law.' Id., at 87. This decision, not King of the Two § cilies, represents the settled 'English rule' regarding self-incrimination under foreign law. See Heriz v. Riera, [1840] EngR 1081; 11 Sim. 318, 59 Eng.Rep. 896.

III. THE RECENT SUPREME COURT CASES.

In 1896, in Brown v. Walker, [1896] USSC 83; 161 U.S. 591, 16 S.Ct. 644, 40 L.Ed. 819 this Court, for the first time, sustained the constitutionality of a federal immunity statute. Appellant in that case argued, inter alia, that:

'while the witness is granted immunity from prosecution by the Federal government, he does not obtain such immunity against prosecution in the state courts.' Id., 161 U.S., at 606, 16 S.Ct., at 650.

The Court construed the applicable statute, however, to prevent prosecutions either in state or federal courts.

Shortly thereafter, the Court decided Jack v. Kansas, [1905] USSC 173; 199 U.S. 372, 26 S.Ct. 73, 50 L.Ed. 234, in which the state court had held plaintiff in error in contempt for his refusal to answer certain questions on the ground that they would subject him to possible incrimination under federal law. In re ecting plaintiff's claim, this Court said that the Fifth Amendment 'has no application in a proceeding like this,' and hence 'the sole question in the case' is whether 'the denial of his claim of right to refuse to answer the questions was in violation of the 14th Amendment to the Constitution * * *.' Id., 199 U.S., at 380, 26 S.Ct., at 75. The Court stated that it did 'not believe that in such case there is any real danger of a Federal prosecution, or that such evidence would be availed of by the government for such purpose.' Id., 199 U.S., at 382, 26 S.Ct., at 76. Then, without citing any authority, the Court added the following cryptic dictum: 'We think the legal immunity is in regard to a prosecution in the same jurisdiction, and when that is fully given it is enough.' Ibid.

That this dictum related solely to the 'legal immunity' under the Due Process Clause of the Fourteenth Amendment is apparent from the fact that it was regarded, five weeks later in Ballmann v. Fagin, [1906] USSC 3; 200 U.S. 186, 26 S.Ct. 212, 50 L.Ed. 433, as wholly inapplicable to cases decided under the Self-Incrimination Clause of the Fifth Amendment.9 Ballmann had been held in contempt of a federal court for refusing to answer certain questions before a federal grand jury. He claimed that his answers might expose him 'to the criminal law of the state in which the grand jury was sitting.' Id., 200 U.S., at 195, 26 S.Ct., at 213. Justice Holmes, writing for a Court which included the author of Jack v. Kansas, supra, squarely held that '(a)ccording to United States v. Saline Bank, [1828] USSC 52; 1 Pet. 100, 7 L.Ed. 69, he was exonerated from disclosures which would have exposed him to the penalties of the state law. See Jack v. Kansas (decided this term)[1905] USSC 173; , 199 U.S. 372, 50 L.ed. 224, 26 Sup.Ct.Rep. 73.' 200 U.S., at 195, 26 S.Ct., at 213.

A few months after Ballmann, the Court decided Hale v. Henkel, [1906] USSC 54; 201 U.S. 43, 26 S.Ct. 370, 50 L.Ed. 652. Appellant had been held in contempt of a federal court for refusing to answer certain questions and produce certain documents. His refusal was based in part on the argument that the federal immunity statute did not protect him from state prosecution. The Government argued, on the authority of Brown v. Walker, supra, that the statute did protect him from state prosecution. The Government assumed that it was settled that a valid federal immunity statute would have to protect against state prosecution. It never suggested, therefore, that immunity from federal prosecution was all that was required. Appellant similarly assumed, without argument, that the Constitution required immunity from state conviction as a condition of requiring incriminating testimony in a federal court. Thus the critical constitutional issue—whether the Fifth Amendment protects a federal witness from incriminating himself under state law—was not briefed or argued in Hale v. Henkel. Nor was its resolution necessary to the decision of the case, for the Court could have decided the relevant point on the authority of Brown v. Walker, supra, which had held that a similar federal immunity statute protected against state prosecution. Nevertheless, the Court went on to say:

'The question has been fully considered in England, and the conclusion reached (by the courts of that country) that the only danger to be considered is one arising within the same jurisdiction and under the same sovereignty. Queen v. Boyes, [1861] EngR 626; 1 Best & S. 311; King of the Two Sicilies v. Willcox, 7 State Trials (N.S.), 1049, 1068; State v. March, 1 Jones (N.C.), 526; State v. Thomas, 98 N.C. 599, 4 S.E. 518. * * *

'The case of United States v. Saline Bank, [1828] USSC 52; 1 Pet. 100, 7 L.ed. 69, is not in conflict with this. That was a bill for discovery, filed by the United States against the cashier of the Saline Bank, in the district court of the Virginia district, who pleaded that the emission of certain unlawful bills took place w thin the state of Virginia, by the law whereof penalties were inflicted for such emissions. It was held that defendants were not bound to answer and subject them(selves) to those penalties. It is sufficient to say that the prosecution was under a state law which imposed the penalty, and that the Federal court was simply administering the state law, and no question arose as to a prosecution under another jurisdiction.' 201 U.S., at 69, 26 S.Ct., at 376.

This dictum, subsequently relied on in United States v. Murdock, supra, was not well founded.

The settled English rule was exactly the opposite of that stated by the Court. The most recent authoritative announcement of the English rule had been that made in 1867 in United States of America v. McRae, supra, where the Court of Chancery Appeals held that where there is a real danger of prosecution in a foreign country, the case could not be distinguished 'in principle from one where a witness is protected from answering any question which has a tendency to expose him to forfeiture for a breach of our own municipal law.' Supra, at 63. The dictum from King of the Two Sicilies cited by the Court in Hale v. Henkel had been rejected in McRae. Moreover, the two factors relied on by the English court in King of the Two Sicilies were wholly inapplicable to federal-state problems in this country. The first—'The impossibility of knowing, as matter of law, to what cases the (danger of incrimination) may extend * * *,' supra, at 60—has no force in our country where the federal and state courts take judicial notice of each other's law. The second—that 'in order to make the disclosure dangerous to the party who objects, it is essential that he should first quit the protection of our laws, and wilfully go within the jurisdiction of the laws he has violated,' supra at 60—61—is equally inapplicable in our country where the witness is generally within 'the jurisdiction' of the State under whose law he claims danger of incrimination, and where, if he is not, the State may demand his extradition. The second case relied on in Hale v. Henkel, supra The Queen v. Boyes, supra—was irrelevant to the issue there presented. The Queen v. Boyes did not involve different jurisdictions or systems of law. In merely held that the danger of prosecution 'must be real and appreciable * * * not a danger of an imaginary and unsubstantial character * * *.' It in no way suggested that the danger of prosecution under foreign law could be ignored if it was 'real and appreciable.'

Thus, the au horities relied on by the Court in Hale v. Henkel provided no support for the conclusion that under the Fifth Amendment 'the only danger to be considered is one arising within the same jurisdiction and under the same sovereignty.' Nor was its attempt to distinguish Chief Justice Marshall's opinion in United States v. Saline Bank of Virginia, supra, more successful. The Court's reading of Saline Bank suggests that the state, rather than the federal, privilege against self-incrimination applies to federal courts when they are administering state substantive law. The most reasonable reading of that case, however, and the one which was plainly accepted by Justice Holmes in Ballmann v. Fagin, supra, is that the privilege against self-incrimination precludes a federal court from requiring an answer to a question which might incriminate the witness under state law.11 This reading is especially compelling in light of the English antecedents of the Saline Bank case. See East India Co. v. Campbell, discussed, supra, at 58; and Brownsword v. Edwards, discussed, supra, at 58—59.

The weakness of the Hale v. Henkel dictum was immediately recognized both by lower federal courts12 and by this Court itself. In Vajtauer v. Commissioner of Immigration, [1927] USSC 21; 273 U.S. 103, 47 S.Ct. 302, 71 L.Ed. 560, decided in 1927 by a unanimous Court, appellant refused to answer certain questions put to him in a deportation proceeding on the ground that they 'might have tended to incriminate him under the Illinois Syndicalism Law * * *.' Id., 273 U.S., at 112, 47 S.Ct., at 306. Instead of deciding the issue on the authority of the Hale v. Henkel dictum, the Court held that the privilege had been waived. The Court then said:

'This conclusion makes it unnecessary for us to consider the extent to which the Fifth Amendment guarantees immunity from self-incrimination under state statutes, or whether this case is to be controlled by Hale v. Henkel, [1906] USSC 54; 201 U.S. 43, 26 S.Ct. 370, 50 L.Ed. 652; Brown v. Walker, [1896] USSC 83; 161 U.S. 591, 608[1896] USSC 83; , 16 S.Ct. 644, 40 L.Ed. 819. Compare United States v. Saline Bank, [1828] USSC 52; 1 Pet. 100, 7 L.Ed. 69; Ballmann v. Fagin, [1906] USSC 3; 200 U.S. 186, 195[1906] USSC 3; , 26 S.Ct. 212, 50 L.Ed. 433.' 273 U.S., at 113, 47 S.Ct., at 306.

In a subsequent case, decided in 1933, this Court said that the question—whether 'one under examination in a federal tribunal could not refuse to answer on account of probable incrimination under state law'—was 'specifically reserved in Vajtauer v. Commr. of Immigration,' and was not 'definitely settled' until 1931. United States v. Murdock, [1933] USSC 167; 290 U.S. 389, 396[1933] USSC 167; , 54 S.Ct. 223, 226[1933] USSC 167; , 78 L.Ed. 381.

In 1931, the Court decided United States v. Murdock, [1931] USSC 179; 284 U.S. 141, 52 S.Ct. 63, 76 L.Ed. 210, the case principally relied on by respondent here. Appellee had been indicted for failing to supply certain information to federal revenue agents. He claimed that his refusal had been justified because it rested on the fear of federal and state incrimination. The Government argued that the record supported only a claim of state, not federal, incrimination, and that the Fifth Amendment does not protect against a claim of state incrimination. Appellee did not respond to the latter argument, but instead rested his entire case on the claim that his refusals had in each instance been based on federal as well as state incrimination. In support of its constitutional argument, the Government cited the same two English cases erroneously relied on in the Hale v. Henkel dictum King of the Two Sicilies v. Willcox, supra, which had been overruled, and The Queen v. Boyes, supra, which was wholly inapposite. An examination of the briefs and summary of argument indicates that neither the Government nor the appellee informed the Court that King of the Two Sicilies had been overruled by United States of America v. McRae, supra.

This Court decided that appellee's refusal to answer rested solely on a fear of state prosecution, and then concluded, in one brief paragraph, that such a fear did not justify a refusal to answer questions put by federal officers.

The Court gave three reasons for this conclusion. The first was that:

'Investigations for federal purposes may not be prevented by matters depending upon state law. Constitution, art. 6, cl. 2.' 284 U.S., at 149, 52 S.Ct., at 64.

This argument, however, begs the critical question. No one would suggest that state law could prevent a proper federal investigation; the Court had already held that the Federal Government

could, under the Supremacy Clause, grant immunity from state prosecution, and that, accordingly, state law could not prevent a proper federal investigation. The critical issue was whether the Federal Government, without granting immunity from state prosecution, could compel testimony which would incriminate under state law. The Court's first 'reason' was not responsive to this issue.

The second reason given by the Court was that:

'The English rule of evidence against compulsory self-incrimination, on which historically that contained in the Fifth Amendment rests, does not protect witnesses against disclosing offenses in violation of the laws of another country. King of the Two Sicilies v. Willcox, 7 St.Tr.(N.S.) 1050, 1068; Queen v. Boyes, [1861] EngR 626; 1 B. & S. 311, 330.' 284 U.S., at 149, 52 S.Ct., at 64.

As has been demonstrated, the cases cited were in one instance overruled and in the other inapposite, and the English rule was the opposite from that stated in this Court's opinion: The rule did 'protect witnesses against disclosing offenses in violation of the laws of another country.' United States of America v. McRae, supra.

The third reason given by the Court in Murdock was that:

'This court has held that immunity against state prosecution is not essential to the validity of federal statutes declaring that a witness shall not be excused from giving evidence on the ground that it will incriminate him, and also that the lack of state power to give witnesses protection against federal prosecution does not defeat a state immunity statute. The princip e established is that full and complete immunity against prosecution by the government compelling the witness to answer is equivalent to the protection furnished by the rule against compulsory self-incrimination. Counselman v. Hitchcock, [1892] USSC 17; 142 U.S. 547, 12 S.Ct. 195, 35 L.Ed. 1110; Brown v. Walker, [1896] USSC 83; 161 U.S. 591, 606[1896] USSC 83; , 16 S.Ct. 644, 40 L.Ed. 819; Jack v. Kansas, [1905] USSC 173; 199 U.S. 372, 381[1905] USSC 173; , 26 S.Ct. 73, 50 L.Ed. 234. Hale v. Henkel, [1906] USSC 54; 201 U.S. 43, 68[1906] USSC 54; , 26 S.Ct. 370, 50 L.Ed. 652.'

This argument—that the rule in question had already been 'established' by the past decisions of the Court—is not accurate. The first case cited by the Court—Counselman v. Hitchcock—said nothing about the problem of incrimination under the law of another sovereign. The second case—Brown v. Walker—merely held that the federal immunity statute there involved did protect against state prosecution. The third case—Jack v. Kansas—held that the Due Process Clause of the Fourteenth Amendment did not prevent a State from compelling an answer to a question which presented no 'real danger of a Federal prosecution.' 199 U.S., at 382, 26 S.Ct., at 76. The final case—Hale v. Henkel—contained dictum in support of the rule announced which was without real authority and which had been questioned by a unanimous Court in Vajtauer v. Commissioner of Immigration, supra. Moreover, the Court subsequently said, in no uncertain terms, that the rule announced in Murdock had not been previously 'established' by the decisions of the Court. When Murdock appealed his subsequent conviction on the ground inter alia, that an instruction on willfulness should have been given, the Court affirmed the Court of Appeals' reversal of his conviction and said that:

'Not until this court pronounced judgment in United States v. Murdock, [1931] USSC 179; 284 U.S. 141, 52 S.Ct. 63, 76 L.Ed. 210, had it been definitely settled that one under examination in a federal tribunal could not refuse to answer on account of probable incrimination under state law. The question was involved but not decided in Ballmann v. Fagin, [1906] USSC 3; 200 U.S. 186,

195[1906] USSC 3; , 26 S.Ct. 212, 51 L.Ed. 433, and specifically reserved in Vajtauer v. Commr. of Immigration, [1927] USSC 21; 273 U.S. 103, 113[1927] USSC 21; , 47 S.Ct. 302, 71 L.Ed. 560.' United States v. Murdock, [1933] USSC 167; 290 U.S. 389, 396[1933] USSC 167; , 54 S.Ct. 223, 226.

Thus, neither the reasoning nor the authority relied on by the Court in United States v. Murdock, [1931] USSC 179; 284 U.S. 141, 52 S.Ct. 63, supports its conclusion that the Fifth Amendment permits the Federal Government to compel answers to questions which might incriminate under state law.

In 1944 the Court, in Feldman v. United States, [1944] USSC 111; 322 U.S. 487, 64 S.Ct. 1082, was confronted with the situation where evidence compelled by a State under a grant of state immunity was 'availed of by the (Federal) Government' and introduced in a federal prosecution. Jack v. Kansas, 199 U.S., at 382, 26 S.Ct., at 76. This was the situation which the Court had earlier said it did 'not believe' would occur. Ibid. Nevertheless, the Court, in a 4-to-3 decision, upheld this practice, but did so on the authority of a principle which is no longer accepted by this Court. The Feldman reasoning was essentially as follows:

(T)he Fourth and Fifth Amendments intertwined as they are, (express) supplementing phases of the same constitutional purpose * * *.' 322 U.S. 489—490, 64 S.Ct., at 1083.

'(O)ne of the settled principles of our Constitution has been that these Amendments protect only against invasion of civil liberties by the (Federal) Government whose conduct they alone limit.' Id., 322 U.S., at 490, 64 S.Ct., at 1083.

'And so while evidence secured through unreasonable search and seizure by federal officials is inadmissible in a federal prosecution, Weeks v. United States, supra [1913] USSC 86; (232 U.S. 383, 34 S.Ct. 341, 58 L.Ed. 652); * * * incriminating documents so secured by state officials without participation by federal officials but turned over for their use are admissible in a federal prosecution. Burdeau v. McDowell, 256 U.S. 465, 41 S.Ct. 574, 65 L.Ed. 1048.' 322 U.S., at 492, 64 S.Ct., at 1084.

The Court concluded, therefore, by analogy to the then extant search and seizure rule, that evidence compelled by a state grant of immunity could be used by the Federal Government. But the legal foundation upon which that 4-to-3 decision rested no longer stands. Evidence illegally seized by state officials may not now be received in federal courts. In Elkins v. United States, [1960] USSC 116; 364 U.S. 206, 80 S.Ct. 1437, 4 L.Ed.2d 1669, the Court held, over the dissent of the writer of the Feldman decision, that 'evidence obtained by state officers during a search which, if conducted by federal officers, would have violated the defendant's immunity from unreasonable searches and seizures under the Fourth Amendment is inadmissible over the defendant's timely objection in a federal criminal trial.' 364 U.S., at 223, 80 S.Ct., at 1447. Thus, since the fundamental assumption underlying Feldman is no longer valid, the constitutional question there decided must now be regarded as an open one.

The relevant cases decided by this Court since Feldman fall into two categories. Those involving a federal immunity statute exemplified by Adams v. Maryland, [1954] USSC 14; 347 U.S. 179, 74 S.Ct. 442, 98 L.Ed. 608—in which the Court suggested that the Fifth Amendment bars use by the States of evidence obtained by the Federal Government under the threat of contempt. And those

involving a state immunity statute—exemplified by Knapp v. Schweitzer, [1958] USSC 148; 357 U.S. 371, 78 S.Ct. 1302—where the Court, applying a rule today rejected, held the Fifth Amendment inapplicable to the States.

In Adams v. Maryland, supra, petitioner had testified before a United States Senate Committee investigating crime, and his testimony had later been used to convict him of a state crime. A federal statute at that time provided that no testimony given by a witness in congressional inquiries 'shall be used as evidence in any criminal proceeding against him in any court * * *.' 62 Stat. 833. The State questioned the application of the statute to petitioner's testimony and the constitutionality of the statute if construed to apply to state courts. The Court, in an opinion joined by seven members, made the following significant statement: 'a witness does not need any statute to protect him from the use of self-incriminating testimony he is compelled to give over his objection. The Fifth Amendment takes care of that without a statute.' 347 U.S., at 181, 74 S.Ct., at 445.15 This statement suggests that any testimony elicited under threat of contempt by a government to whom the constitutional privilege against self-incrimination is applicable (at the time of that decision it was deemed applicable only to the Federal Government) may not constitutionally be admitted into evidence against him in any criminal trial conducted by a government to whom the privilege is also applicable. This statement, read in light of today's decision in Malloy v. Hogan, [1964] USSC 133; 378 U.S. 1, 84 S.Ct. 1489, draws into question the continuing authority of the statements to the contrary in United States v. Murdock, [1931] USSC 179; 284 U.S. 141, 52 S.Ct. 63, and Feldman v. United States, supra.

Knapp v. Schweitzer, [1958] USSC 148; 357 U.S. 371, 78 S.Ct. 1302, involved a state contempt conviction for a witness' refusal to answer questions, under a grant of state immunity, on the ground that his answers might subject him to prosecution under federal law. Petitioner claimed that 'the Fifth Amendment gives him the privilege, which he can assert against either a State or the National Government, against giving testimony that might tend to implicate him in a violation' of federal law. Id., 357 U.S. at 374, 78 S.Ct., at 1305. The Court, applying the rule then in existence, denied petitioner's claim and declared that:

'It is plain that the (Fifth Amendment) can no more be thought of as restricting action by the States than as restricting the conduct of private citizens. The sole although deeply valuable—purpose of the Fifth Amendment privilege against self-incrimination is the security of the individual against the exertion of the power of the Federal Government to compel incriminating testimony with a view to enabling that same Government to convict a man out of his own mouth.' Id., 357 U.S., at 380, 78 S.Ct., at 1308.

The Court has today rejected that rule, and with it, all the earlier cases resting on that rule.

The foregoing makes it clear that there is no continuing legal vitality to, or historical justification for, the rule that one jurisdiction within our federal structure may compel a witness to give testimony which could be used to convict him of a crime in another jurisdiction.

IV. CONCLUSIONS.

In light of the history, policies and purposes of the privilege against self-incrimination, we now accept as correct the construction given the privilege by the English courts17 and by Chief Justice

Marshall and Justice Holmes. See United States v. Saline Bank of Virginia, supra; Ballmann v. Fagin, supra. We reject—as unsupported by history or policy—the deviation from that construction only recently adopted by this Court in United States v. Murdock, supra, and Feldman v. United States, supra. We hold that the constitutional privilege against self-incrimination protects a state witness against incrimination under federal as well as state law and a federal witness against incrimination under state as well as federal law.

We must now decide what effect this holding has on existing state immunity legislation. In Counselman v. Hitchcock, [1892] USSC 17; 142 U.S. 547, 12 S.Ct. 195, this Court considered a federal statute which provided that no 'evidence obtained from a party or witness by means of a judicial proceeding * * * shall be given in evidence, or in any manner used against him * * * in any court of the United States * * *.' Id., 142 U.S., at 560, 12 S.Ct., at 197. Notwithstanding this statute, appellant, claiming his privilege against self-incrimination, refused to answer certain questions before a federal grand jury. The Court said 'that legislation cannot abridge a constitutional privilege, and that it cannot replace or supply one, at least unless it is so broad as to have the same extent in scope and effect.' Id., 142 U.S., at 585, 12 S.Ct., at 206. Applying this principle to the facts of that case, the Court upheld appellant's refusal to answer on the ground that the statute:

'could not, and would not, prevent the use of his testimony to search out other testimony to be used in evidence against him or his property, in a crim nal proceeding in such court. * * *' id., 142 U.S., at 564, 12 S.Ct., at 198,

that it:

'could not prevent the obtaining and the use of witnesses and evidence which should be attributable directly to the testimony he might give under compulsion, and on which he might be convicted, when otherwise, and if he had refused to answer, he could not possibly have been convicted. * * *' ibid.,

and that it:

'affords no protection against that use of compelled testimony which consists in gaining therefrom a knowledge of the details of a crime, and of sources of information which may supply other means of convicting the witness or party.' Id., 142 U.S., at 586, 12 S.Ct., at 206.

Applying the holding of that case to our holdings today that the privilege against self-incrimination protects a state witness against federal prosecution, supra, at 77—78, and that 'the same standards must determine whether (a witness') silence in either a federal or state proceeding is justified,' Malloy v. Hogan, 378 U.S., at 11, 84 S.Ct., at 1495, we hold the constitutional rule to be that a state witness may not be compelled to give testimony which may be incriminating under federal law unless the compelled testimony and its fruits cannot be used in any manner by federal officials in connection with a criminal prosecution against him. We conclude, moreover, that in order to implement this constitutional rule and accommodate the interests of the State and Federal Governments in investigating and prosecuting crime, the Federal Government must be prohibited from making any such use of compelled testimony and its fruits.18 This exclusionary rule, while permitting the States to secure information necessary for effective law enforcement, leaves the witness and the Federal Government in substantially the same position as if the witness had claimed his privilege in the absence of a state grant of immunity.

It follows that petitioners here may now be compelled to answer the questions propounded to them. At the time they refused to answer, however, petitioners had a reasonable fear, based on this Court's decision in Feldman v. United States, supra, that the federal authorities might use the answers against them in connection with a federal prosecution. We have now overruled Feldman and held that the Federal Government may make no such use of the answers. Fairness dictates that petitioners should now be afforded an opportunity, in light of this development, to answer the questions. Cf. Raley v. Ohio, [1959] USSC 115; 360 U.S. 423, 79 S.Ct. 1257, 3 L.Ed.2d 1344. Accordingly, the judgment of the New Jersey courts ordering petitioners to answer the questions may remain undisturbed. But the judgment of contempt is vacated and the cause remanded to the New Jersey Supreme Court for proceedings not inconsistent with this opinion.

It is so ordered.

Judgment sustained in part and vacated in part and cause remanded with directions.

Mr. Justice BLACK concurs in the judgment and opinion of the Court for the reasons stated in that opinion and for the reasons stated in Feldman v. United States, [1944] USSC 111; 322 U.S. 487, 494[1944] USSC 111; , 64 S.Ct. 1082, 1085[1944] USSC 111; , 88 L.Ed. 1408 (dissenting opinion), as well as Adamson v. California, [1947] USSC 106; 332 U.S. 46, 68[1947] USSC 106; , 67 S.Ct. 1672, 1683, 91 L.Ed. 1903 (dissenting opinion); Speiser v. Randall, [1958] USSC 154; 357 U.S. 513, 529[1958] USSC 154; , 78 S.Ct. 1332, 1344, 2 L.Ed.2d 1460 (concurring opinion); Bartkus v. Illinois, [1959] USSC 91; 359 U.S. 121, 150[1959] USSC 91; , 79 S.Ct. 676, 695[1959] USSC 91; , 3 L.Ed.2d 684 (dissenting opinion); and Abbate v. United States, [1959] USSC 50; 359 U.S. 187, 201[1959] USSC 50; , 79 S.Ct. 666, 674[1959] USSC 50; , 3 L.Ed.2d 729 (dissenting opinion).

Mr. Justice HARLAN, whom Mr. Justice CLARK joins, concurring in the judgment.

Unless I wholly misapprehend the Court's opinion, its holding that testimony compelled in a state proceeding over a witness' claim that such testimony will incriminate him may not be used against the witness in a federal criminal prosecution rests on constitutional grounds. On that basis, the contrary conclusion of Feldman v. United States, [1944] USSC 111; 322 U.S. 487, 64 S.Ct. 1082, 88 L.Ed. 1408, is overruled.

I believe that the constitutional holding of Feldman was correct, and would not overrule it. To the extent, however, that the decision in that case may have rested also on a refusal to exercise this Court's 'supervisory power' over the administration of justice in federal courts, I think that it can no longer be considered good law, in light of this Court's subsequent decision in Elkins v. United States, [1960] USSC 116; 364 U.S. 206, 80 S.Ct. 1437, 4 L.Ed.2d 1669. In Elkins, this Court, exercising its supervisory power, did away with the 'silver platter' doctrine and prohibited the use of evidence unconstitutionally seized by state authorities in a federal criminal trial involving the person suffering such a seizure. I believe that a similar supervisory rule of exclusion should follow in a case of the kind now before us, and solely on that basis concur in this judgment.

I.

The Court's constitutional conclusions are thought by it to follow from what it terms the 'policies' of the privilege against self-incrimination and a re-examination of various cases in this Court,

particularly in the context of early English law. Almost entirely absent from the statement of 'policies' is any reference to the particular problem of this case; at best, the statement suggests the set of values which are on one side of the issue. The discussion of precedent is scarcely more helpful. It intertwines decisions of this Court with decisions in English courts, which perhaps follow a different rule,1 and casts doubt for one reason or another on every American case which does not accord with the result now reached. When the skein is untangled, however, and the line of cases is spread out, two facts clearly emerge:

(1) With two early and somewhat doubtful exceptions, this Court has consistently rejected the proposition that the danger of incrimination in the court of another jurisdiction is a sufficient basis for invoking a privilege against self-incrimination;

(2) Without any exception, in every case involving an immunity statute in which the Court has treated the question now before us, it has rejected the present majority's views.

The first of the two exceptional cases is United States v. Saline Bank of Virginia, [1828] USSC 52; 1 Pet. 100, 7 L.Ed. 69, decided in 1828; the entire opinion in that case is quoted in the majority opinion, ante, pp. 59-60. It is not clear whether that case has any bearing on the privilege against self-incrimination at all.2 The second case is Ballmann v. Fagin, [1906] USSC 3; 200 U.S. 186, 26 S.Ct. 212, 50 L.Ed. 433, decided in 1906. The statement that the appellant 'was exonerated from disclosures which would have exposed him to the penalties of the state law,' id., 200 U.S., at 195, 26 S.Ct., at 213, was at best an alternative holding and probably not even that.3 Ballmann had based his refusal to testify before the Grand Jury solely on the possibility of incrimination under state law, id., 200 U.S., at 193—194, 26 S.Ct., at 213. Nevertheless, before considering the effect of state incrimination at all, the Court pointed out that the facts showed a likelihood of incrimination under federal law. Id., 200 U.S., at 195, 26 S.Ct. at 213. The Court then proceeded to say:

'Not impossibly Ballmann took this aspect of the matter for granted, as one which would be perceived by the court without his disagreeably emphasizing his own fears. But he did cal attention to another less likely to be known. As we have said, he set forth that there were many proceedings on foot against him as party to a 'bucket shop,' and so subject to the criminal law of the state in which the grand jury was sitting. According to United States v. Saline Bank, [1828] USSC 52; 1 Pet. 100, 7 L.Ed. 69, he was exonerated from disclosures which would have exposed him to the penalties of the state law. See Jack v. Kansas (decided this term)[1905] USSC 173; , 199 U.S. 372, 50 L.Ed. 234, 26 Sup.Ct.Rep. 73. One way or the other we are of opinion that Ballmann could not be required to produce his cash book if he set up that it would tend to criminate him.' Id., 200 U.S., at 195—196, 26 S.Ct., at 213.

Since the Jack case which the Court cited immediately after referring to Saline Bank had been decided just a few weeks before Ballmann and was contrary to Saline Bank, it is plain that the Court was not approving and applying the latter case. The explanation for the Court's inclusion of this ambiguous and inconclusive discussion of state incrimination is surely the fact that Ballmann had failed to set up the claim of fe eral incrimination on which the Court relied.

Neither of these two cases, therefore, 'squarely holds,' ante, p. 60; see ante, p. 65, that a danger of incrimination under state law relieves a witness from testifying before federal authorities. More to the point, whatever force these two cases provide for the majority's position is wholly vitiated by subsequent cases, which are flatly contradictory to that position.

In Jack v. Kansas, [1905] USSC 173; 199 U.S. 372, 26 S.Ct. 73, 50 L.Ed. 234, decided in 1905, the Court considered a Kansas immunity statute. The witness had refused to testify on the ground that his testimony might incriminate him under federal law. The Court upheld his commitment for contempt over his claim that the immunity granted by the state statute was not 'broad enough,' id., 199 U.S., at 380, 26 S.Ct., at 75, and that his imprisonment therefore violated the Fourteenth Amendment. The Court said:

'We think the legal immunity is in regard to a prosecution in the same jurisdiction, and when that is fully given it is enough.' Id., 199 U.S., at 382, 26 S.Ct., at 76.

The present majority characterizes this statement as 'cryptic dictum,' ante, p. 65. But, I submit, there is nothing cryptic about it. Nor is it dictum. The Court assumed for purposes of that case that the Fourteenth Amendment required that a state statute 'give sufficient immunity from prosecution or punishment,' id., 199 U.S., at 380, 26 S.Ct., at 75, and it is evident from the opinion that the Court regarded the remoteness of a danger of prosecution in the courts of another jurisdiction, including the federal courts, as a basis for holding generally, and not merely on the facts of the case before it, that a state immunity statute need not protect against such danger. See id., 199 U.S., at 381 382, 26 S.Ct., at 75—76.

The next case is Hale v. Henkel, [1906] USSC 54; 201 U.S. 43, 26 S.Ct. 370, decided one year later, shortly after Ballmann. The Court there rejected the appellant's argument that the federal immunity statute to be valid had to confer immunity from punishment under state law. It said:

'The further suggestion that the statute offers no immunity from prosecution in the state courts was also fully considered in Brown v. Walker and held to be no answer. The converse of this was also decided in Jack v. Kansas, [1905] USSC 173; 199 U.S. 372, ante, 73[1905] USSC 173; , 26 Sup.Ct.Rep. 73, (50 L.Ed. 234), namely, that the fact that an immunity granted to a witness under a state statute would not prevent a prosecution of such witness for a violation of a Federal statute did not invalidate such statute under the 14th Amendment. It was held both by this court and by the supreme court of Kansas that the possibility that information given by the witness might be used under the Federal act did not operate as a reason for permitting the witness to refuse to answer, and that a danger so unsubstantial and remote did not impair the legal immunity. Indeed, if the argument were a sound one it might be carried still further and held to apply not only to state prosecutions within the same jurisdiction, but to prosecutions under the criminal laws of other states to which the witness might have subjected himself. The question has been fully considered in England, and the conclusion reached (by the courts of that country) that the only danger to be considered is one arising within the same jurisdiction and under the same sovereignty. * * *' 201 U.S., at 68—69, 26 S.Ct., at 376.4

In Vajtauer v. Commissioner of Immigration, [1927] USSC 21; 273 U.S. 103, 47 S.Ct. 302, 71 L.Ed. 560, which did not involve an immunity statute, the Court found it unnecessary to consider the question, extensively argued by the parties, whether 'the Fifth Amendment guarantees immunity from self-incrimination under state statutes * * *,' id., 273 U.S., at 113, 47 S.Ct., at 306; the Court indicated that it did not necessarily regard Hale and Brown, supra, as conclusive of that question, ibid. Cf. United States v. Murdock, [1933] USSC 167; 290 U.S. 389, 396[1933] USSC 167; , 54 S.Ct. 223, 226. Any doubts on this score, however, were settled in 1931, in United States v. Murdock, [1931] USSC 179; 284 U.S. 141, 52 S.Ct. 63. The Court there held unmistakably that an

individual could not avoid testifying in federal proceedings on the ground that his testimony might incriminate him under state law.

'This court has held that immunity against state prosecution is not essential to the validity of federal statutes declaring that a witness shall not be excused from giving evidence on the ground that it will incriminate him, and also that the lack of state power to give witnesses protection against federal prosecution does not defeat a state immunity statute.

The principle established is that full and complete immunity against prosecution by the government compelling the witness to answer is equivalent to the protection furnished by the rule against compulsory self-incrimination.' Id., 284 U.S., at 149, 52 S.Ct., at 65.

The Court has not until now deviated from that definitive ruling. In later proceedings in the Murdock case, the Court said it was 'definitely settled that one under examination in a federal tribunal could not refuse to answer on account of probable incrimination under state law.' [1933] USSC 167; 290 U.S. 389, 396[1933] USSC 167; , 54 S.Ct. 223, 226. The Court adhered to this view in Feldman, supra, where it established an equivalent rule allowing the use in a federal court of testimony given in a state court. The general principle was said to be one of 'separateness in the operation of state and federal criminal laws and state and federal immunity provisions.' 322 U.S., at 493—494, 64 S.Ct., at 1085.5

In Adams v. Maryland, [1954] USSC 14; 347 U.S. 179, 74 S.Ct. 442, 98 L.Ed. 608, the Court held that a federal immunity statute,6 the language of which 'could be no plainer,' id., 347 U.S., at 181, 74 S.Ct., at 444, prohibited the use in a state criminal trial of testimony given before a Senate Committee. Quite obviously, the remark in Adams that the Fifth Amendment protects a witness 'from the use of self-incriminating testimony he is compelled to give over his objection,' ibid., does not even remotely suggest 'that any testimony elicited under threat of contempt by a government to whom the constitutional privilege against self-incrimination is applicable * * * may not constitutionally be admitted into evidence against him in any criminal trial conducted by a government to whom the privilege is also applicable,' ante, p. 76.

In Knapp v. Schweitzer, [1958] USSC 148; 357 U.S. 371, 78 S.Ct. 1302, 2 L.Ed.2d 1393, the Court again upheld the validity of state immunity statutes against the charge that they did not, as they could not, confer immunity from federal prosecution. The Court adhered to its position in Knapp, supra, in 1959, in Mills v. Louisiana, [1959] USSC 139; 360 U.S. 230, 79 S.Ct. 980, 3 L.Ed.2d 1193.

This, then, is the 'history' mustered by the Court in support of overruling the sound constitutional doctrine lying at the core of Feldman.

II.

Part I of this opinion shows, I believe, that the Court's analysis of prior cases hardly furnishes an adequate basis for a new departure in constitutional law. Even if the Court's analysis were sound, however, it would not support reversal of the Feldman rule on constitutional grounds.

If the Court were correct in asserting that the 'separate sovereignty' theory of self-incrimination

should be discarded, that would, as the Court says, lead to the conclusion that 'a state witness (is protected) against incrimination under federal as well as state law and a federal witness against incrimination under state as well as federal law.' Ante, p. 78. However, dealing strictly with the situation presented by this case, that conclusion does not in turn lead to a constitutional rule that the testimony of a state witness (or evidence to which his testimony leads) who is compelled to testify in state proceedings may not be used against him in a federal prosecution. Protection which the Due Process Clause affords against the States is quite obviously not any basis for a constitutional rule regulating the conduct of federal authorities in federal proceedings.

The Court avoids this problem by mixing together the Fifth Amendment and the Fourteenth and talking about 'the constitutional privilege against self-incrimination,' ante, pp. 77-78. Such an approach, which deals with 'constitutional' rights at large, unrelated either to particular provisions of the Constitution or to relevant differences between the States and the Federal Government warns of the dangers for our federalism to which the 'incorporation' theory of the Fourteenth Amendment leads. See my dissenting opinion in Malloy v. Hogan, 378 U.S. 14, 84 S.Ct. 1497.

The Court's reasons for overruling Feldman thus rest on an entirely new conception of the Fifth Amendment, namely that it applies to federal use of state-compelled incriminating testimony. The opinion, however, contains nothing at all to contradict the traditional, well-understood conception of the Fifth Amendment, to which, therefore, I continue to adhere:

'The sole—although deeply valuable—purpose of the Fifth Amendment privilege against self-incrimination is the security of the individual gainst the exertion of the power of the Federal Government to compel incriminating testimony with a view to enabling that same Government to convict a man out of his own mouth.' Knapp v. Schweitzer, supra, 357 U.S., at 380, 78 S.Ct., at 1308.

It is no service to our constitutional liberties to encumber the particular provisions which safeguard them with a gloss for which neither the text nor history provides any support.

Accordingly, I cannot accept the majority's conclusion that a rule prohibiting federal authorities from using in aid of a federal prosecution incriminating testimony compelled in state proceedings is constitutionally required.

III.

I would, however, adopt such a rule in the exercise of our supervisory power over the administration of federal criminal justice. See McNabb v. United States, [1943] USSC 120; 318 U.S. 332, 340—341[1943] USSC 120; , 63 S.Ct. 608, 612—613[1943] USSC 120; , 87 L.Ed. 819. The rule seems to me to follow from the Court's rejection, in the exercise of its supervisory power, of the 'silver platter' doctrine as applied to the use in federal courts of evidence unconstitutionally seized by state officers. Elkins v. United States, [1960] USSC 116; 364 U.S. 206, 80 S.Ct. 1437.

Since I reject the majority's argument that the 'separate sovereignty' theory of self-incrimination is historically unfounded, I do not base my conclusion on the holding in Malloy, ante, that due process prohibits a State from compelling a witness to testify. My conclusion is based rather on the ground that such a rule is protective of the values which the federal privilege against self-incrimination

expresses, without in any way interfering with the independent action of the States and the Federal Government in their respective spheres. Increasing interaction between the State and Federal Governments speaks strongly against permitting federal officials to make prosecutorial use of testimony which a State has compelled when that same testimony could not constitutionally have been compelled by the Federal Government and then used against the witness. Prohibiting such use in no way limits federal power to investigate and prosecute for federal crime, which power will be as full after a State has completed an investigation as before.7 This adjustment between state investigations of local crime and federal prosecutions for federal crime seems particularly desirable in view of the increasing, productive cooperation between federal and state authorities in the prevention of crime. By insulating intergovernmental cooperation from the danger of any encroachment on the federal privilege against self-incrimination, such a rule in the long run will probably make joint programs for crime prevention more effective.

On this basis, I concur in the judgment of the Court.

Mr. Justice WHITE, with whom Mr. Justice STEWART joins, concurring.

The Court holds that the constitutional privilege against self incrimination is nullified 'when a witness 'can be whipsawed into incriminating himself under both state and federal law even though' the constitutional privilege against self-incrimination is applicable to each.' Ante, p. 55. Whether viewed as an exercise of this Court's supervisory power over the conduct of federal law enforcement officials or a constitutional rule necessary for meaningful enforcement of the privilege, this holding requires that compelled incriminating testimony given in a state proceeding not be used in any manner by federal officials in connection with a federal criminal prosecution. Since these petitioners declined to answer in the belief that their very testimony as well as evidence derived from it could be used by federal authorities in a criminal prosecution against them, they should be afforded an opportunity to purge themselves of the civil contempt convictions by answering the questions. Cf. Raley v. Ohio, [1959] USSC 115; 360 U.S. 423, 79 S.Ct. 1257, 3 L.Ed.2d 1344.

In reaching its result the Court does not accept the far-reaching and in my view wholly unnecessary constitutional principle that the privilege requires not only complete protection against any use of compelled testimony in any manner in other jurisdictions but also absolute immunity in these jurisdictions from any prosecution pertaining to any of the testimony given. The rule which the Court does not adopt finds only illusory support in a dictum of this Court and, as I shall show, affords no more protection against compelled incrimination than does the rule forbidding federal officials access to statements made in exchange for a grant of state immunity. But such a rule would invalidate the immunity statutes of the 50 States since the States are without authority to confer immunity from federal prosecutions, and would thereby cut deeply and significantly into traditional and important areas of state authority and responsibility in our federal system. It would not only require widespread federal immunization from prosecution in federal investigatory proceedings of persons who violate state criminal laws, regardless of the wishes or needs of local law enforcement officials, but would also deny the States the power to obtain information necessary for state law enforcement and state legislation. That rule, read in conjunction with the holding in Malloy v. Hogan, [1964] USSC 133; 378 U.S. 1, 84 S.Ct. 1489 that an assertion of the privilege is all but conclusive, would mean that testimony in state investigatory proceedings, and in trials also, is on a voluntary basis only. The Federal Government would become the only law enforcement agency with effective power to compel testimony in exchange for immunity from prosecution under federal and state law. These considerations warrant some elaboration.

I.

Among the necessary and most important of the powers of the States as well as the Federal Government to assure the effective functioning of government in an ordered society is the broad power to compel residents to testify in court or before grand juries or agencies. See Blair v. United States, [1919] USSC 162; 250 U.S. 273, 39 S.Ct. 468, 63 L.Ed. 979.1 Such testimony constitutes one of the Government's primary sources of information. The privilege against self-incrimination, safeguarding a complex of significant values, represents a broad exception to governmental power to compel the testimony of the citizenry. The privilege can be claimed in any proceeding, be it criminal or civil, administrative or judicial, investigatory or adjudicatory. McCarthy v. Arndstein, [1924] USSC 161; 266 U.S. 34, 40[1924] USSC 161; , 45 S.Ct. 16, 17[1924] USSC 161; , 69 L.Ed. 158; United States v. Saline Bank, [1828] USSC 52; 1 Pet. 100, 7 L.Ed. 69, and it protects any disclosures which the witness may reasonably apprehend could be used in a criminal prosecution or which could lead to other evidence that might be so used. Mason v. United States, [1917] USSC 132; 244 U.S. 362, 37 S.Ct. 621, 61 L.Ed. 1198; Hoffman v. United States, [1951] USSC 64; 341 U.S. 479, 71 S.Ct. 814, 95 L.Ed. 1118. Because of the importance of testimony, especially in the discovery of ertain crimes for which evidence would not otherwise be available, and the breadth of the privilege, Congress has enacted over 40 immunity statutes and every State, without exception, has one or more immunity acts pertaining to certain offenses or legislative investigations.2 Such statutes have for more than a century been resorted to for the investigation of many offenses, chiefly those whose proof and punishment were otherwise impracticable, such as political bribery, extortion, gambling, consumer frauds, liquor violations, commercial larceny, and various forms of racketeering. This Court, in dealing with federal immunity acts, has on numerous occasions characterized such statutes as absolutely essential to the enforcement of various federal regulatory acts. In Brown v. Walker, [1896] USSC 83; 161 U.S. 591, 16 S.Ct. 644, 40 L.Ed. 819, the case in which the Court first upheld a congressional immunity act over objection that the witness' right to remain silent was inviolate, the Court said: '(If) witnesses standing in Brown's position were at liberty to set up an immunity from testifying, the enforcement of the interstate commerce law or other analogous acts, wherein it is for the interest of both parties to conceal their misdoings, would become impossible.' [1896] USSC 83; 161 U.S. 591, at 610[1896] USSC 83; , 16 S.Ct. 644, at 652. Again in Hale v. Henkel, [1906] USSC 54; 201 U.S. 43, 26 S.Ct. 370, 50 L.Ed. 652, the Court noted the highly significant role played by immunity acts in the enforcement of federal legislation:

'As the combination or conspiracies provided against by the Sherman antitrust act can ordinarily be proved only by the testimony of parties thereto, in the person of their agents or employees, the privilege claimed would practically nullify the whole act of Congress. Of what use would it be for the legislature to declare these combinations unlawful if the judicial power may close the door of access to every available source of information upon the subject?' Id., 201 U.S. at 70, 26 S.Ct., at 377.

And only recently the Court declared that immunity statutes have 'become part of our constitutional fabric * * * included '* * * in virtually all of the major regulatory enactments of the Federal Government," and 'the States * * * have passed numerous statutes compelling testimony in exchange for immunity in the form either of complete amnesty or of prohibition of the use of the compelled testimony.' Ullmann v. United States, 350 U.S. 422, 438, 76 S.Ct. 497, 506, 100 L.Ed. 511.

These state statutes play at least an equally important role in compelling testimony necessary for enforcement of state criminal laws. After all, the States still bear primary responsibility in this country for the administration of the criminal law; most crimes, particularly those for which immunity acts have proved most useful and necessary, are matters of local concern; federal preemption of areas of crime control traditionally reserved to the States has been relatively unknown and this area has been said to be at the core of the continuing viability of the States in our federal system. See Abbate v. United States, 359 U.S. 187, 195, 79 S.Ct. 666, 671, 3 L.Ed.2d 729; Screws v. United States, 325 U.S. 91, 109, 65 S.Ct. 1031, 1039, 89 L.Ed. 1495; United States v. Cruikshank, 92 U.S. 542, 553 554, 23 L.Ed. 588; Unite States v. Ah Hung, 243 F. 762 (D.C.E.D.N.Y.). Cf. 18 U.S.C. § 5001, 18 U.S.C. § 659.3

Whenever access to important testimony is barred by possible state prosecution, the State can, at its option, remove the impediment by a grant of immunity; but if the witness is faced with prosecution by the Federal Government, the State is wholly powerless to extend immunity from prosecution under federal law in order to compel the testimony. Almost invariably answers incriminating under state law can be claimed to be incriminating under federal law. Given the extensive sweep of a host of federal statutes, such as the income tax laws, securities regulation, laws regulating use of the mails and other communication media for an illegal purpose, and regulating fraudulent trade practices, and given the very limited discretion, if any, in the trial judge to scrutinize the witness' claim of privilege. Malloy v. Hogan, supra, investigations conducted by the State into matters of corruption and misconduct will obviously be thwarted if immunity from prosecution under federal law was a constitutionally required condition to testimonial compulsion in state proceedings. Wherever the witness, for reasons known only to him, wished not to respond to orderly inquiry, the flow of information to the State would be wholly impeded. Every witness would be free to block vitally important state proceedings.

It is not without significance that there were two ostensibly inconsistent lines of cases in this Court regarding the external reach of the privileges in respect to the laws of another jurisdiction. In the cases involving refusals to answer questions in a federal grand jury or discovery proceedings on the ground of incrimination under state law, absent any immunity statute, the Court suggested that the Fifth Amendment privilege protected such answers, United States v. Saline Bank, [1828] USSC 52; 1 Pet. 100, 7 L.Ed. 69; Ballmann v. Fagin, [1906] USSC 3; 200 U.S. 186, 26 S.Ct. 212, 50 L.Ed. 433, while in the cases involving refusals to answer after immunity was conferred, the Court indicated that immunity in regard to a prosecution in the jurisdiction conducting the inquiry satisfied the privilege. Brown v. Walker, [1896] USSC 83; 161 U.S. 591, 16 S.Ct. 644; Jack v. Kansas, [1905] USSC 173; 199 U.S. 372, 26 S.Ct. 73, 50 L.Ed. 234; Hale v. Henkel, [1906] USSC 54; 201 U.S. 43, 26 S.Ct. 370. Cf. United States v. Murdock, [1931] USSC 179; 284 U.S. 141, 52 S.Ct. 63, 76 L.Ed. 210. The decision in Ballmann that a witness in a federal grand jury proceeding could not be compelled to make disclosures incriminating under very similar federal and state criminal statutes was announced by members of the same Court and within a very short time of the decisions in Jack and Hale, holding that immunity nder the laws of one sovereign was sufficient. The basis for these latter holdings, as well as Knapp v. Schweitzer, [1958] USSC 148; 357 U.S. 371, 78 S.Ct. 1302, 2 L.Ed.2d 1393, upholding a state contempt conviction for a refusal to answer after a grant of state immunity, was not a niggardly view of the privilege against self-incrimination but 'the historic distribution of power as between Nation and States in our federal system.' [1958] USSC 148; 357 U.S. 371, at 375[1958] USSC 148; , 78 S.Ct. 1302, at 1305. As the concurring and dissenting members of the Court in Knapp pointed out, the dilemma posed to our federal system by federally incriminating testimony compelled in a state proceeding was not really necessary but for the prior

decision in Feldman v. United States, [1944] USSC 111; 322 U.S. 487, 64 S.Ct. 1082, 88 L.Ed. 1408, which upheld the Federal Government's use of incriminatory testimony compelled in a state proceeding. Although Feldman was questioned, no one suggested in Knapp that the solution to the problem lay in forbidding the State to ask questions incriminating under federal law.

To answer that the underlying policy of the privilege subordinates the law enforcement function to the privilege of an individual will not do. For where there is only one government involved, be it state or federal, not only is the danger of prosecution more imminent and indeed the likely purpose of the investigation to facilitate prosecution and conviction, but that authority has the choice of exchanging immunity for the needed testimony. To transform possible federal prosecution into a source of absolute protected silence on the part of a state witness would leave no such choice to the States. Only the Federal Government would retain such an option.

Nor will it do to say that the Congress could reinstate state power by authorizing state officials to confer absolute immunity from federal prosecutions. Congress has established highly complicated procedures, requiring the approval of the Attorney General, before a limited group of federal officials may grant immunity from federal prosecutions. E.g., 18 U.S.C. § 3486,4 18 U.S.C. § 1406. The decision to grant immunity is based upon the importance of the testimony to federal law enforcement interest, a matter within the competence of federal officials to assay. These procedures would create insurmountable obstacles if the requests for approval were to come from innumerable local officials of the 50 States. Obviously federal officials could not properly evaluate the extent of the State's need for the testimony on a case-by-case basis. Further, the scope of the immunity conferred wholly depends on the testimony given, a matter of considerable difficulty to determine after, no less than before, the question is answered, the time when federal approval would be necessary, Heike v. United States, [1913] USSC 37; 227 U.S. 131, 33 S.Ct. 226, 57 L.Ed. 450; Lumber Products Ass'n v. United States, 144 F.2d 546 (C.A.9th Cir.), and a matter whose determination requires intimate familiarity with both the nature and details of the investigation and the background of the witness. Finally, it is very doubtful that Congress would, if it had the power to, authorize one State to confer immunity on persons subject to prosecution under the criminal laws of another State.

II.

Neither the conflict between state and federal interests nor the consequent enthronement of federal agencies as the only law enforcement authorities with effective power to compel testimony is necessary to give full effect to a privilege against self-incrimination whose external reach embraces federal as well as state law. The approach need not and, in light of the above considerations, should not be in terms of the State's power to compel the testimony rather than the use to which such testimony can be put. It is unquestioned that an immunity statute, to be valid, must be coextensive with the privilege which it displaces, but it need not be broader. Counselman v. Hitchcock, [1892] USSC 17; 142 U.S. 547, 12 S.Ct. 195, 35 L.Ed. 1110; Brown v. Walker, [1896] USSC 83; 161 U.S. 591, 16 S.Ct. 644; Hale v. Henkel, [1906] USSC 54; 201 U.S. 43, 26 S.Ct. 370. If the compelled incriminating testimony in a state proceeding cannot be put to any use whatsoever by federal officials, quite obviously the witness' privilege against self-incrimination is not infringed. For the privilege does not convey an absolute right to remain silent. It protects a witness from being compelled to furnish evidence that could result in his being subjected to a criminal sanction, Hoffman v. United States, [1951] USSC 64; 341 U.S. 479, 71 S.Ct. 814; Mason v. United States, [1917] USSC 132; 244 U.S. 362, 37 S.Ct. 621, if, but only if, after the disclosure the witness will be in greater danger of prosecution and conviction. Rogers v. United States, 340 U.S. 367, 71 S.Ct.

438, 95 L.Ed. 344; United States v. Gernie, [1958] USCA2 372; 252 F.2d 664 (C.A.2d Cir.). When federal officials are barred not only from introducing the testimony into evidence in a federal prosecution but also from introducing any evidence derived from such testimony, the disclosure has in no way contributed to the danger or likelihood of a federal prosecution. This approach secures the protections of the privilege against self-incrimination for all defendants without impairing local law-enforcement and investigatory activities. It, of course, forecloses the use of state-compelled testimony in any manner by federal prosecutors, but the privilege in my view commands that the Federal Government should not have the benefit of compelled incriminatory testimony. Both the Federal Government and the witness are in exactly the same position as if the witness had remained silent.5 And state immunity statutes remain constitutional and state law enforcement agencies viable.

It is argued that a rule only forbidding use of compelled testimony does not afford absolute protection against the possibility of a federal prosecution based in part on the compelled testimony. It is said that absent any deliberate attempt by federal officers to utilize the testimony the very identification and testimony of the witness in the state proceedings, perhaps in the newspapers, may increase the possibility of a federal p osecution and alternatively that the defendant may not be able to prove that evidence was intentionally and unlawfully derived from his compelled testimony. These are fanciful considerations, hardly sufficient as a basis for a constitutional adjudication working a substantial reallocation of power between state and national governments.

In the absence of any misconduct or collusion by federal officers, whatever increase there is, if any, in the likelihood of federal prosecution following the witness' appearance before a state grand jury or agency results from the inferences drawn from the invocation of the privilege to specific questions on the ground that they are incriminating under federal law and not from the fact the witness has testified in what is frequently an in camera proceeding under a grant of immunity. Whether in camera or not, the testimony itself is hardly reported in newspapers and the transcripts and records of the state proceedings are not part of the files of the Federal Government. Access and use require misconduct and collusion, a matter quite susceptible of proof. But this is quibbling, since the very fact that a witness is called in a state crime investigation is likely to be based upon knowledge, or at least a suspicion based on some information, that the witness is implicated in illegal activities, which knowledge and information are probably available to federal authorities.

The danger that a defendant may not be able to establish that other evidence was obtained through the unlawful use by federal officials of inadmissible compelled testimony is insubstantial. The privilege protects against real dangers, not remote and speculative possibilities. Brown v. Walker, [1896] USSC 83; 161 U.S. 591, 599—600[1896] USSC 83; , 16 S.Ct. 644, 647—648; Heike v. United States, [1913] USSC 37; 227 U.S. 131, 33 S.Ct. 226; Mason v. United States, [1917] USSC 132; 244 U.S. 362, 37 S.Ct. 621. First, one might just as well argue that the Constitution requires absolute immunity from prosecution wherever the Government has obtained an inadmissible confession or other evidence through an illegal search and seizure, an illegal wiretap, illegal detention, and coercion. A coerced confession is as revealing of leads as testimony given in exchange for immunity and indeed is excluded in part because it is compelled incrimination in violation of the privilege. Malloy v. Hogan, 378 U.S., at 7—8, 84 S.Ct., at 1493—1494; Spano v. New York, [1959] USSC 119; 360 U.S. 315, 79 S.Ct. 1202, 3 L.Ed.2d 1265; Bram v. United States, [1897] USSC 209; 168 U.S. 532, 18 S.Ct. 183, 42 L.Ed. 568. In all these situations a defendant must establish that testimony or other evidence is a fruit of the unlawfully obtained evidence, Nardone v. United States, [1939] USSC 151; 308 U.S. 338, 60 S.Ct. 266, 84 L.Ed. 307; Wilson v.

United States, [1955] USCA10 6; 218 F.2d 754 (C.A.10th Cir.); Lotto v. United States, 157 F.2d 623 (C.A.8th Cir.), which proposition would seem a fortiori true where the Government has not engaged in illegal or unconstitutional conduct and where the inadmissible testimony is obtained by a government other than the one bringing the prosecution and for a purpose unrelated to the prosecution. Second, there are no real proof problems in this situation. As in the analogous search and seizure and wiretap cases—where the burden of proof is on the Government once the defendant establishes the unlawful search or wiretap, United States v. Coplon, 185 F.2d 629 (C.A.2d Cir.); United States v. Goldstein, 120 F.2d 485, 48 (C.A.2d Cir.), aff'd[1942] USSC 86; , 316 U.S. 114, 62 S.Ct. 1000, 86 L.Ed. 1312—once a defendant demonstrates that he has testified in a state proceeding in exchange for immunity to matters related to the federal prosecution, the Government can be put to show that its evidence is not tainted by establishing that it had an independent, legitimate source for the disputed evidence. Since the Government has the relevant information within its control, valid prosecutions need not be sacrified and infringement of the privilege through use of compelled testimony, direct or indirect, need not be tolerated. It is carrying a premise of perjury an judicial incompetence to excess to believe that this procedure poses any hazards to the rights of an accused. Third, greater requirements or difficulties of proof by a defendant inhere in the rule of absolute immunity. When a witness testifies under the auspices of an immunity act, the immunity he gets does not secure him from indictment or conviction. Heike v. United States, [1910] USSC 123; 217 U.S. 423, 30 S.Ct. 539, 54 L.Ed. 821. The witness must plead and prove, as an affirmative defense, that he has received immunity and that the instant prosecution is on account of a matter testified to in exchange for immunity, Heike v. United States, [1913] USSC 37; 227 U.S. 131, 33 S.Ct. 226, which may pose considerable difficulties where the relationship between the testimony and the prosecution is not obvious or where the immunity is acquired as a result of testimony before a grand jury or in an in camera administrative proceeding. See Edwards v. United States, [1941] USSC 55; 312 U.S. 473, 61 S.Ct. 669, 85 L.Ed. 957; 131 F.2d 198 (C.A.10th Cir.) (retrial), certiorari denied, 317 U.S. 689, 63 S.Ct. 262, 87 L.Ed. 552; United States v. Lumber Products Ass'n, 42 F.Supp. 910 (D.C.N.D.Cal.), rev'd, sub. nom. Ryan v. United States, 128 F.2d 551 (C.A.9th Cir.); Lumber Products Ass'n v. United States (plea of immunity finally upheld after trial), 144 F.2d 546 (C.A.9th Cir.). Cf. Pandolfo v. Biddle, 8 F.2d 142 (C.A.8th Cir).

Counselman v. Hitchcock, [1892] USSC 17; 142 U.S. 547, 12 S.Ct. 195, does not require that absolute immunity from state prosecution be conferred on a federal witness and the Court has declined on many occasions to so read it, the limitation of the privilege to one sovereign rationale aside, Brown v. Walker, [1896] USSC 83; 161 U.S. 591, 16 S.Ct. 644; Adams v. Maryland, [1954] USSC 14; 347 U.S. 179, 74 S.Ct. 442, 98 L.Ed. 608; Ullmann v. United States, [1956] USSC 31; 350 U.S. 422, 76 S.Ct. 497; Reina v. United States, 364 U.S. 507, 81 S.Ct. 260, 5 L.Ed.2d 249.6 It does not therefore require that absolute immunity from federal prosecution be conferred on a state witness. Counselman, an officer of an interestate railroad, refused to reveal whether he engaged in discriminatory rate practices, a criminal offense, under the Interstate Commerce Act, before a federal grand jury investigating specific violations of that Act. The Court established for the first time that the coverage of the privilege extended to not only a confession of the offense but also disclosures leading to discovery of incriminating evidence, a matter of considerable doubt at the time. See United States v. Brown, 1 Sawy. 531, 536, Fed.Cas.No.14,671; United States v. McCarthy, 18 F. 87, 89 (C.C.S.D.N.Y.); In re Counselman, 44 F. 268 (C.C.N.D.Ill.). It then invalidated the first immunity statute to come before it because '(the statute) could not, and would not, prevent the use of his testimony to search out other testimony to be used in evidence against him or his property, in a criminal proceeding * * *. It could not prevent the obtaining and the use of witnesses and evidence which should be attributable directly to the testimony he might give under

compulsion, and on which he might be convicted, when otherwise, and if he had refused to answer, he could not possibly have been convicted.' [1892] USSC 17; 142 U.S. 547, at 564[1892] USSC 17; , 12 S.Ct. 195, at 198. In a dictum indicating that some immunity statutes are valid, the Court added that 'a statutory enactment, to be valid, must afford absolute immunity against future prosecution for the offense to which the question relates.' Id., 142 U.S., at 586, 12 S.Ct., at 206. Whatever may be the validity of this dictum where the witness is being investigated by a grand jury for the purpose of indictment for a particular offense and where the grand jury proceedings are conducted by the same government attempting to obtain a conviction for the offense—the facts of Counselman—it clearly has no validity, and by its own terms, no applicability, where the inquiry does not concern any federal offense, no less a particular one, and the government seeking the testimony has no purpo e of authority to prosecute for federal crimes.

The Constitution does not require that immunity go so far as to protect against all prosecution to which the testimony relates, including prosecutions of another government, whether or not there is any causal connection between the disclosure and the prosecution or evidence offered at trial. In my view it is possible for a federal prosecution to be based on untainted evidence after a grant of federal immunity in exchange for testimony in a federal criminal investigation. Likewise it is possible that information gathered by a state government which has an important but wholly separate purpose in conducting the investigation and no interest in any federal prosecution will not in any manner be used in subsequent federal proceedings, at least 'while this Court sits' to review invalid convictions. Panhandle Oil Co. v. State of Miss. ex rel. Knox, [1928] USSC 107; 277 U.S. 218, at 223[1928] USSC 107; , 48 S.Ct. 451, at 453[1928] USSC 107; , 72 L.Ed. 857 (Holmes, J., dissenting). It is precisely this possibility of a prosecution based on untainted evidence that we must recognize. For if it is meaningful to say that the Federal Government may not use compelled testimony to convict a witness of a federal crime, then, of course, the Constitution permits the State to compel such testimony.

'The real evil aimed at by the Fifth Amendment's flat prohibition against the compulsion of self-incriminatory testimony was that thought to inhere in using a man's compelled testimony to punish him.' Feldman v. United States, [1944] USSC 111; 322 U.S. 487, 500[1944] USSC 111; , 64 S.Ct. 1082, 1088, (Black, J., dissenting). I believe the State may compel testimony incriminating under federal law, but the Federal Government may not use such testimony or its fruits in a federal criminal proceeding. Immunity must be as broad as, but not harmfully and wastefully broader than, the privilege against self-incrimination.