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The Spirit of the Fifth Amendment Privilege- A Study in Judicial Method - Ullman v. United States

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The Spirit Of The Fifth Amendment Privilege — A Study In Judicial Method

Ullmann v. United States[1]

William Ludwig Ullmann, ex-Treasury Department official, at the command of a subpoena appeared before a duly consituted Southern District of New York grand jury that was investigating membership and activities of the Communist Party. Ullmann refused to answer pertinent questions, asserting instead, his privilege against self-incrimination. The United States Attorney, deeming Ullmann's testimony vital to the public need, countered with a new Congress-bestowed weapon, sub-section (c) of the Immunity Act of 1954.[2] With the approval of the Attorney General of the United States application was made to the Federal District Court for an order to compel Ullmann to answer. By the terms of the new Act,[3] immunity from

[1] 350 U. S. 422 (1956).

[2] Pub. Law 600, 83rd Cong., 68 Stat. 745, 18 U. S. C. A. Sec. 3486 (1956). For an informative discussion of the climate of opinion prior to the passage of the Act see Boudin, *The Immunity Bill*, 42 Georgetown L. J. 497 (1954). It is apparent that popular clamor, spurred by such shibboleths as "Fifth Amendment Communist", had engendered suggestions that the privilege be modified, restricted or even abrogated to aid in the investigation of subversive activity. The Congressional response was the Immunity Act of 1954. Congress is not inexperienced in drafting immunity statutes. More than twenty such statutes have been passed as adjuncts to Federal economic regulations to assist in obtaining information helpful in operating the agencies created by such regulations. For a tabulation of some of these statutes see Shapiro v. United States, 335 U. S. 1, 6 (1948).

[3] *Ibid:*

"(c) Whenever in the judgment of a United States attorney the testimony of any witness, or the production of books, papers, or other evidence by any witness, in any case or proceeding before any grand jury or court of the United States involving any interference with or

prosecution concerning any transaction, matter or thing relating to the compelled testimony and from use of the testimony itself as evidence in a criminal proceeding in any court become consideration for the forfeiture of the Fifth Amendment privilege.[4] Ullmann vehemently contested the application; in so doing he attacked the constitutionality of the Immunity statute and further urged that if the statute should be held good, the district court should exercise discretion and deny the application.

The court ordered Ullmann to answer the grand jury's questions; in the same breath they upheld the Immunity Act. After an abortive appeal from the court order, Ullmann once again refused to testify. He was convicted of contempt and his conviction was affirmed by the Second Circuit Court of Appeals. The Supreme Court of the United States granted certiorari;[5] and, after due reflection upon sub-section (c), reaffirmed with a new wrinkle the doc-

endangering of, or any plans or attempts to interfere with or endanger, the national security or defense of the United States by treason, sabotage, espionage, sedition, seditious conspiracy, violations of chapter 115 of title 18 of the United States Code, violations of the Internal Security Act of 1950 (64 stat. 987), violations of the Atomic Energy Act of 1946 (60 Stat. 755), as amended, violations of sections 212(a)(27), (28), (29) or 241(a)(6), (7) or 313(a) of the Immigration and Nationality Act (66 Stat. 182-186; 204-206; 240-241), and conspiracies involving any of the foregoing, is necessary to the public interest, he, upon the approval of the Attorney General shall make application to the court that the witness shall be instructed to testify or produce evidence subject to the provisions of this section, and upon order of the court such witness shall not be excused from testifying or from producting books, papers, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except prosecution described in subsection (d) hereof) against him in any court.

"(d) No witness shall be exempt under the provision of this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section."

[4] Compare Heike v. United States, 227 U. S. 131, 141-142 (1913). In this case there is an interesting interplay between the so-called "exchange" and "pardon" theories of immunity statutes. A distinction is made between amnesty, or group immunity, and the Fifth Amendment privilege. Congress may grant a "pardon" equivalent to a general amnesty, Brown v. Walker, 161 U. S. 591 (1896). But this "exchange" of amnesty is coterminous with the privilege. For an able comment on the legal principles involved see Dixon, *The Fifth Amendment and Federal Immunity Statutes*, 22 Geo. Wash. L. Rev. 447 and 554 (1954). For a discussion of the "immunity bath" problem and Congressional intent regarding the scope and purpose of the new Act see Note, *Immunity For Witnesses Before Congressional Committees; The Scope of Section 3486*, 29 St. Johns L. Rev. 153, 155 (1954).

[5] 349 U. S. 951 (1955).

trine of the sixty year old 5-4 decision of *Brown v. Walker.*[6] Justice Frankfurter, speaking for the Court, *held,* that subsection (c) of the Immunity Act of 1954, relating to compulsory immunity before a grand jury, was sufficient in scope to supplant the privilege against self-incrimination and, furthermore, not absolutely forbidden by the Fifth Amendment.[7] Using the broad sword of judicial power to accept Congressional determination of the need for stringent methods to protect the nation, the court severed the contemporary Gordian knot of sedition and the Fifth Amendment privilege, but not without vigorous protestations from their own ranks. The sharply contrasting opinions of Justices Frankfurter and Douglas revisit a galaxy of history to support divergent views of the privilege against self-incrimination. In a sense there pervades in these opinions a tremor of a conflict of a far wider and deeper kind, a conflict between two colossi of American jurisprudence, *judicial relativism*[8] and *judicial absolutism.*[9] The clash becomes manifest in the application of Mr. Justice Frankfurter's *balancing-the-interests* technique[10] (in relating forfeiture of the privilege to the Immunity Act) versus the *shield of absolute silence* approach[11] to the same problem so resourcefully adopted by Mr. Justice Douglas.

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[6] *Supra,* n. 4.

[7] *Supra,* n. 1. Mr. Justice Frankfurter wrote the opinion of the Court, in which 5 Justices concurred. Mr. Justice Reed concurred separately (*conc. op.* 439), excepting to the statement that no constitutional guarantee enjoys preference. Mr. Justice Douglas, with whom Mr. Justice Black concurred, dissented (*dis. op.* 440).

[8] Mr. Justice Holmes is the fountainhead of this approach to interpreting the Constitution. Compare his intellectual diamonds:

> "All rights tend to declare themselves absolute to their logical extreme. Yet all in fact are limited by the neighborhood of principles of policy which are other than those on which the particular right is founded, and which become strong enough to hold their own when a certain point is reached."
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> Hudson Water Co. v. McCarter, 209 U. S. 349, 355 (1908).
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> "Many laws which would be vain to ask the court to overthrow could be shown, easily enough, to transgress a scholastic interpretation of one or another of the great guarantees in the Bill of Rights. They more or less limit the liberty of the individual, or they diminish property to a certain extent."
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> Noble State Bank v. Haskell, 219 U. S. 104, 110 (1911).

[9] This philosophy is an offshoot of natural law, which presupposes a body of higher laws, basic and unchangeable. Compare the Ciceronian approach "that the true law was universal and unalterable and could not be abolished by any legislation; it was valid for all nations and for all times." See MULLER, THE USES OF THE PAST (Mentor ed., 1954) 201-202.

[10] *Cf.* his concurring opinion in Dennis v. United States, 341 U. S. 494, 517 (1951).

[11] *Cf.* Mr. Justice Field, dissenting in Brown v. Walker, *supra,* n. 4, *dis. op.* 628.

Justice Frankfurter approached the controversial clause of the Fifth Amendment with zealous regard for its history[12] and due reverence for its place in the development of our liberty — " 'one of the great landmarks in man's struggle to make himself civilized'."[13] The Justice, mindful that the soil in which the Bill of Rights grew was not a soil of arid pedantry,[14] observed:

> "As no constitutional guarantee enjoys preference, so none should suffer subordination or deletion[15] . . . To view a particular provision of the Bill of Rights with disfavor inevitably results in a constricted application of it. This is to disrespect the Constitution."[16]

But to immunize witnesses is not to disrespect their privilege. Long ago, in *Brown v. Walker*,[17] a representative of

[12] That historically, the Fifth Amendment is to be liberally construed and not to be dwindled into atrophy, see Counselman v. Hitchcock, 142 U. S. 547 (1892) and Hoffman v. United States, 341 U. S. 479, 486 (1951). In the sixteenth century, the privilege was little more than an idea coined in the Latin maxim, *nemo tenetur se ipsum accusare*. See Griswold, *The Fifth Amendment; An Old and Good Friend*, 40 A. B. A. J. 502 (1954). However as early as 1650, it had become firmly embedded in the common law of England. See Quinn v. United States, 349 U. S. 155, 161 (1955). In England, the privilege remained a mere rule of evidence; in America it was elevated to the dignity of a Constitutional right. Glickstein v. United States, 222 U. S. 139, 141 (1911). That historically the Fifth Amendment privilege was designed to prevent attempts by the state to promote orthodoxy in faith and politics by using the power of the criminal code, see Dixon, *supra*, n. 4, 447. *Cf.* also Boudin, *supra*, n. 2, 502. A recent and extra-ordinary campaign by both government and press has created the false impression, even among many who should be better informed, that assertion of this particular constitutional right is an admission of guilt. For a cogent refutation of this argument see Griswold, *ibid.* That fear of waiving the privilege is a real one, *cf.* Rogers v. United States, 340 U. S. 367, 373 (1951) "[W]here criminating facts have been voluntarily revealed, the privilege cannot be invoked to avoid disclosure of the details."

[13] GRISWOLD, THE FIFTH AMENDMENT TODAY (1955) 7, quoted in Ullmann v. United States, 350 U. S. 422, 426 (1956).

[14] *Supra*, n. 10, 521.

[15] *Supra*, n. 13, 428. Justice Reed took issue with this clause (*conc. op.* 439). Query, does this choice bit of dictum toll the death knell of the "preferred freedoms" approach? For an insight into the "preferred freedoms" philosophy see Mr. Justice Stone in U. S. v. Carolene Products Co., 304 U. S. 144, 152, n. 4 (1938). See also Murdock v. Pennsylvania, 319 U. S. 105, 115 (1943), Thomas v. Collins, 323 U. S. 516, 530 (1945), and Kovacs v. Cooper, 336 U. S. 77, 88 (1949), noted 10 Md. L. Rev. 355 (1949).

[16] *Ibid.*

[17] 161 U. S. 591 (1896). In this case Brown, an auditor for a railroad company, was subpoenaed to appear before a grand jury investigating violations of the Interstate Commerce Act. He invoked the privilege against self-incrimination, and on order to show cause by the district court, he was adjudged in contempt. Brown, after a dismissal of a petition for a writ of habeas corpus, appealed, urging that the 1893 immunity statute coupled with the Interstate Commerce Act was unconstitutional, since it failed to provide an immunity equivalent to absolute silence. The Supreme Court (5-4) held otherwise. *Ibid*, 610.

the immunity type statute containing twofold protection like the present Act — forbidding prosecution springing from the testimony and use of the testimony itself — survived the test of constitutionality by the narrowest of margins. *Brown v. Walker* held, *inter alia*, that the Fifth Amendment privilege does not shield one's reputation through an absolute right of silence;[18] and that the statutory interdiction against prosecution relating to any transaction, matter or thing disclosed through compelled testimony applied to State as well as Federal courts. But Brown, unlike Ullmann, was engaged in financial chicanery. Ullmann was believed to be a Communist. Here, then, was the core of Mr. Justice Frankfurter's logical problem — is an immunity statute that is valid if directed toward economic malpractitioners just as good if its focus is turned against political subversives?

After dismissing a suggestion that the district judge must exercise discretion in granting the testimony-compelling order by placing the Court's imprimatur on District Judge Weinfeld's apposite contrary finding,[19] Justice Frankfurter continued his exposition of judicial relativism in philosophic overtones not unlike his concurring opinion in *Dennis v. United States*.[20]

On one hand there is national security, which is not a seductive cliche,[21] but the most pervasive aspect of all

[18] Justice Brown, in Brown v. Walker, *ibid*, 605-606, observed:

"A person who commits a criminal act is bound to contemplate the consequences of exposure to his good name and reputation, and ought not to call upon the courts to protect that which he has himself esteemed to be of such little value. . . . The design of the constitutional privilege is not to aid the witness in vindicating his character but to protect him against being compelled to furnish evidence to convict him of a criminal charge."

Cf. also Hale v. Henkel, 201 U. S. 43, 67 (1906).

[19] "Certainly, it [the legislative history] contains nothing that requires the court to reject the construction which statutory language clearly requires. Especially is this so where the construction contended for purports to raise a serious constitutional question as to the role of the judiciary under the doctrine of separation of powers."

In re Ullman, 128 F. Supp. 617, 627 (D. C. S. D. N. Y., 1955). Compare JACKSON, THE SUPREME COURT IN THE AMERICAN SYSTEM OF GOVERNMENT (1955), 12. This finding may be somewhat disconcerting to some of the commentators regarding the security offered by the Act to the witness. However, because of the difference in the language between subsection (c) and subsections (a) and (b), whether or not the holding would apply to the latter provisions is an open question. *Cf.* King, *Immunity for Witnesses: An Inventory of Caveats*, 40 A. B. A. J. 377 (1954). See also *Immunity for Witnesses Before Congressional Committees: The Scope of Section 3486*, 29 St. Johns L. Rev. 153 (1954), and *cf. infra*, n. 41.

[20] 341 U. S. 494 (1951), *conc. op.* 517.

[21] Justice Frankfurter applied this seminal expression to Chief Justice Marshall's famous "absolute" in McCulloch v. Maryland, 4 Wheat. 316, 431 (U. S. 1819), that "the power to tax involves the power to destroy". See

sovereignty — the right of a government to maintain its very existence.[22] On the other hand, careful scrutiny must be given to observe any diminution of the historic civil rights of the individual. But, it must be realized that "no society has ever admitted that it could not sacrifice individual welfare to its own existence".[23] In the instant case, these competing objects of desire do not conflict; there has been no diminution of individual civil rights.[24] The exercise of power by state courts is admittedly restricted by the Immunity Act. But such a restriction, once upheld under the Commerce Clause, can most certainly be sustained by the exigencies of national security.[25]

According to Mr. Justice Douglas, there are no interests to be balanced when dealing with Fifth Amendment privi-

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Graves v. N. Y. ex rel. O'Keefe, 306 U. S. 466 (1939), *conc. op.* 487. See also KONEFSKY, THE CONSTITUTIONAL WORLD OF MR. JUSTICE FRANKFURTER (1949), 69-72.

[22] *Supra*, n. 20, 519. Although it remains undefined in Ullman, national security, considered in the light of Dennis, implies a realization that "Communist doctrines . . . are in the ascendency in powerful nations who cannot be acquitted of unfriendliness to the institutions of this country" (*ibid*, 547), and that the avowed purpose of the Communist Party in America is not to conduct seminars in political theory (*ibid*, 546).

[23] HOLMES, THE COMMON LAW (1949) 43.

[24] Ullman v. United States, 350 U. S. 422, *dis. op.* 440 (1956). Justice Frankfurter's rationale on this point is clearly summarized in the conclusion to the opinion of the Court:

> "We are not dealing with one of the vague, undefinable, admonitory provisions of the Constitution whose scope is inevitably addressed to changing circumstances. The privilege against self-incrimination is a specific provision of which it is peculiarly true that 'a page of history is worth a volume of logic'; *New York Trust Co. v. Eisner*, 256 U. S. 345, 349. For the history of the privilege establishes not only that it is not to be interpreted literally, but also that its sole concern is, as its name indicates, with the danger to a witness forced to give testimony leading to the infliction of 'penalties affixed to the . . . criminal acts'; *Boyd v. United States*, 116 U. S. 616, 634. . . . Immunity displaces the danger. Once the reason for the privilege ceases, the privilege ceases." *Ibid*, 438-9.

Again the essence of the Frankfurterian judicial method is made clear. The problem is not simply to draw an inanimate mechanical conclusion from given premises; as Justice Frankfurter points out, even cybernetics has not yet claimed this field; Rochin v. California, 342 U. S. 165, 171 (1952). Compare also Dewey, *Logical Method and Law*, 10 Cornell L. Q. 17, 23 (1924). The problem is to find statements of general principles and of particular fact which lead to the development of a conclusion. See GARLAN, LEGAL REALISM AND JUSTICE (1941) 39, quoted in CAHILL, JUDICIAL LEGISLATION (1952) 147. If historic principle does not specifically forbid the legislative experiment, it should not be aborted by judicial fiat. A. F. of L. v. American Sash Co., 335 U. S. 538, 553 (1949). The tyranny of absolute concepts must be avoided. Joseph Burstyn, Inc. v. Wilson, 343 U. S. 495, 517-518 (1952).

[25] See Adams v. Maryland, 347 U. S. 179 (1954). The statute in question was the original Section 3486 of title 18 (*ibid*, 180, n. 1). The original purpose of this section, to compel incriminating testimony, was frustrated by the decision in Counselman v. Hitchcock, 142 U. S. 547 (1892). See also United States v. Bryan, 339 U. S. 323, 335-337 (1950).

lege against self-incrimination. For "the critical point is that the Constitution places the right of silence *beyond the reach of government*".[26] "The privilege is limited to criminal matters, but it is as broad as the mischief against which it seeks to guard."[27] What are these mischiefs? Justice Douglas describes three.

First, he says the risk of subsequent prosecution is a very real one.[28] Justice Douglas is undoubtedly correct in concluding that by granting immunity from prosecution relating to any transaction, matter, or thing embraced by the testimony, Congress did not intend to remove certain civil disabilities of being a communist, which are coupled with related criminal penalties. Because of this, Justice Douglas says "that the privilege of silence is exchanged for a partial, undefined, vague immunity. It means that Congress has granted far less than it has taken away."[29] Secondly, the shield of absolute silence safeguards individual conscience and human dignity. Prying open the lips of an accused violates these rights.[30] Thirdly, the privilege was intended to prevent prosecution by indirection, through the force of public opinion.[31] Now, as in the ever widening

[26] Ullmann v. United States, *supra*, n. 24, *dis. op.* 440, 454.

[27] Blatchford, J., in Counselman v. Hitchcock, *supra*, n. 25, 562, quoted in Ullmann v. United States, *dis. op.*, *ibid*, 443.

[28] *Supra*, n. 24, 443. See United States v. Weinburg, 65 F. 2d 394, 396 (2d Cir., 1933). As the court realistically put it: "The actual adjudication of immunity can be made only in a subsequent prosecution of the witness for a crime concerning which he had testified."

[29] *Supra*, n. 24, 445. For a partial list of relevant statutory provisions see fn. 1 to Justice Douglas' opinion.

[30] *Ibid.* Justice Douglas further reasons that penalty or forfeiture, the limits of the Fifth Amendment privilege set in Boyd v. United States, *supra*, n. 24, should include the loss of rights of citizenship. It follows a *fortiori* that property rights should be held in no greater constitutional esteem than personal freedom.

[31] *Ibid*, 449. Justice Douglas' principal spokesman on this point, Judge Peter S. Grosscup, was probably not unmindful of De Tocqueville when, in United States v. James, he wrote:

> "The oppression of crowns and principalities is unquestionably over, but the more frightful oppression of selfish, ruthless, and merciless majorities may yet constitute one of the chapters of future history. In my opinion, the privilege of silence, against a criminal accusation, guarantied by the fifth amendment, was meant to extend to all the consequences of disclosure."

60 F. 257, 265 (D. C. N. D. Ill., 1894). This case followed in the wake of Counselman v. Hitchcock, *supra*, n. 25, and went on to interpret the Fifth Amendment as providing an absolute right of silence. See Dixon, *The Fifth Amendment and Federal Immunity Statutes*, 22 Geo. Wash. L. Rev. 447, 458 (1954). Compare De Tocqueville's analysis:

> "The majority in that country [United States], therefore, exercise a prodigious actual authority, and a power of opinion which is nearly as great; no obstacles exist which can impede or even retard its progress so as to make it heed the complaints of those whom it crushes upon its path."
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> 1 DE TOCQUEVILLE, DEMOCRACY IN AMERICA (Vintage ed., 1955) 266.

past, to stand condemned before infamy, the faceless prosecutor, may be far more terrifying than corporal punishment.[32]

In his reach for the absolute it is not clear whether or not Justice Douglas has sound historical support. For such support, one must look back beyond *Brown v. Walker.*[33] The breadth of the privilege is not entirely clear in *Counselman v. Hitchcock.*[34] In that case a unanimous Court struck down an immunity statute because the immunity extended only to prevent the use of compelled testimony in future prosecution, and not to prevent the use of other evidence that could be acquired as a result of the knowledge obtained from the compelled testimony. It was not decided if complete statutory immunity could be attained. The equally puzzling question of whether the privilege extended to preclude mental as well as physical torture in obtaining a confession (or compelling testimony) leads into an unanswerable play on words. The existence of strong evidence that standing mute was at one time tantamount to a plea of guilty would seem to countervail such an idea.[35] Moreover, in an early day, in *United States v. Aaron Burr,*[36] Chief Justice Marshall felt that the witness should not be compelled to disclose a fact that would evince an "essential part of a crime which is *punishable by the laws*".[37] In his attempt to mathematically equate an immunity statute with a clause of the Fifth Amendment, Justice Douglas seems to offer to a recalcitrant witness something which he never had.[38]

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[32] Justice Douglas refers also to Mr. Justice Field's dissenting statement in Brown v. Walker, 161 U. S. 591, 628, 631 (1896), that it was the purpose of the privilege to protect the accused "from all compulsory testimony which would expose him to infamy and disgrace".

[33] *Ibid.* The cases following Brown v. Walker are uniform in their position that an immunity statute deprives a witness of the right to refuse to answer. *Cf.* Burdick v. United States, 236 U. S. 79 (1915); Heike v. United States, 227 U. S. 131 (1913); Interstate Commerce Commission v. Baird, 194 U. S. 25 (1904); and Hale v. Henkel, 201 U. S. 43, 67 *et seq.* (1906). It has also been suggested that a witness may not refuse to testify if prosecution for the crime is barred by limitations. Robertson v. Baldwin, 165 U. S. 275, 282 (1897); Hale v. Henkel, *ibid,* 67.

[34] *Supra,* n. 25.

[35] See Morgan, *The Privilege Against Self-Incrimination,* 34 Minn. L. Rev. 1, 19-21 (1949).

[36] In re Willie, 25 F. Cas. 38, No. 14,692e (C. C. D. Va., 1807).

[37] *Ibid,* 40.

[38] The eloquent dissenting opinion seems an unnecessary reminder to the majority of the Court, who display no irreverence for individual liberty. For the majority of the American people, however, it could serve as a resolute reminder not to forget our first principles. In our times, mass communication media serve as actuators to the hydraulic pressure of public opinion. Such pressure is akin to emotion, not reason.

The fear of solving complex social issues which lie in the penumbra of the law[39] through a case by case approach, rather than by fixation to immutable principles, seems to be an atavistic longing for a return to natural law. Society is dynamic. The task of the law is to define relationships between variable points in the social structure.[40] In so doing it must look to the consequences of the activity in question, with due respect for principle and precedent, rather than blind worship at their altar.

The Supreme Court has decisively found that an act granting a witness immunity, in exchange for compelled testimony relating to sedition before a grand jury, is good law. The Court in the Ullmann case expressly reserved ruling on the validity of the perhaps more highly controversial sub-sections (a) and (b) of the Immunity Act that grant immunity for compelled testimony before the Houses of Congress and Congressional Committees.[41]

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[39] See Llewellyn, *The Constitution as an Institution*, 34 Col. L. Rev. 1, 32 (1934).

[40] The competing values of an industrial democratic society grow more complex with time. But the basic problem of government, succinctly stated in the Federalist, remains unchanged:

> "In framing a government which is to be administered by men over men, the great difficulty lies in this; you must first enable the government to control the governed; and in the next place oblige it to control itself."

THE FEDERALIST, No. 51 (Dunne's ed., 1901), 354.

[41] 350 U. S. 440 (1956), Sub-sections (a) and (b) relate to immunity in exchange for compelled testimony before the House of Congress and Congressional committees. Significantly with respect to the district court order it is provided in these sub-sections that "Such an order *may* be issued by a United States district court judge" and that neither House nor any of their Committees shall grant immunity to any witness "without first having notified the Attorney General of the United States of such action and thereafter having secured the *approval* of the United States district court. . . ." (Italics added.) See In re Ullmann, 128 F. Supp. 617 (D. C. S. D. N. Y., 1955). For comment antipathetic to these provisions of the Act see Boudin, *The Immunity Bill*, 42 Georgetown L. J. 497, 511-512 (1954). The Supreme Court has never passed on the constitutionality of a statute giving legislative committees the power to grant immunity. *Ibid*, 506. But, *cf.* Quinn v. United States, 349 U. S. 155, 157 (1955); Emspak v. United States, 349 U. S. 190, 194 (1955), and Bart v. United States, 349 U. S. 219 (1955), allowing witness to claim his privilege by basing refusal to answer questions on "primarily the first amendment, supplemented by the fifth" and further holding that to support contempt convictions there must be a clear ruling on the claim of privilege, and the witness must be clearly and specifically informed that he is being directed to answer, despite his claim of privilege.