Finally, the rules established by the clause and the judicial interpretations apply against the states to the same degree that they apply against the Federal Government,[230] and neither sovereign can compel discriminatory admissions that would incriminate the person in the other jurisdiction.[231] There is no "cooperative internationalism" that parallels the cooperative federalism and cooperative prosecution on which application against states is premised, and consequently concern with foreign prosecution is beyond the scope of the Self-Incrimination Clause.[232]

The Power To Compel Testimony and Disclosure

Immunity.—"Immunity statutes, which have historical roots deep in Anglo-American jurisprudence, are not incompatible [with the values of the Self-Incrimination Clause]. Rather they seek a rational accommodation between the imperatives of the privilege and the legitimate demands of government to compel citizens to testify. The existence of these statutes reflects the importance of testimony, and the fact that many offenses are of such a character that the only persons capable of giving useful testimony are those implicated in the crime."[233] Apparently the first immunity statute was enacted

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[230] Malloy v. Hogan, 378 U.S. 1 (1964) (overruling Twining v. New Jersey, 211 U.S. 78 (1908), and Adamson v. California, 332 U.S. 46 (1947)).

[231] Murphy v. Waterfront Comm'n, 378 U.S. 52 (1964), (overruling United States v. Murdock, 284 U.S. 141 (1931) (Federal Government could compel a witness to give testimony that might incriminate him under state law), Knapp v. Schweitzer, 357 U.S. 371 (1958) (state may compel a witness to give testimony that might incriminate him under federal law), and Feldman v. United States, 322 U.S. 487 (1944) (testimony compelled by a state may be introduced into evidence in the federal courts)). *Murphy* held that a state could compel testimony under a grant of immunity but that, because the state could not extend the immunity to federal courts, the Supreme Court would not permit the introduction of evidence into federal courts that had been compelled by a state or that had been discovered because of state compelled testimony. The result was apparently a constitutionally compelled one arising from the Fifth Amendment itself, 378 U.S. at 75–80, rather than one taken pursuant to the Court's supervisory power as Justice Harlan would have preferred. Id. at 80 (concurring). Congress has power to confer immunity in state courts as well as in federal in order to elicit information, Adams v. Maryland, 347 U.S. 179 (1954), but whether Congress must do so or whether the immunity would be conferred simply through the act of compelling the testimony *Murphy* did not say.

Whether testimony could be compelled by either the Federal Government or a state that could incriminate a witness in a foreign jurisdiction is unsettled. *See* Zicarelli v. New Jersey State Comm'n of Investigation, 406 U.S. 472, 480, 481 (1972) (reserving question), but an affirmative answer seems unlikely. *Cf. Murphy*, 378 U.S. at 58–63, 77.

[232] United States v. Balsys, 524 U.S. 666 (1998).

[233] Kastigar v. United States, 406 U.S. 441, 445–46 (1972). It has been held that the Fifth Amendment itself precludes the use as criminal evidence of compelled admissions, Garrity v. New Jersey, 385 U.S. 493 (1967), but this case and dicta in others is unreconciled with the cases that find that one may "waive" though inadvertently the privilege and be required to testify and incriminate oneself. Rogers v. United States, 340 U.S. 367 (1951).