

When his case went to the Supreme Court, the Court ruled that the Double Jeopardy Clause was binding on the states and that his conviction for larceny violated that clause. His conviction for larceny was overturned.

D. What Is Meant by the Right Against Self-Incrimination?

As seen from Lesson Five, the right against self-incrimination has a long history. Today it means that a person cannot be forced to incriminate himself by giving evidence that would prove his/her own guilt. It is a right which deals with the giving of testimony about one's actions. For example, it would not be a violation of the Self-incrimination Clause if a person were forced to stand up to have his/her height judged, give a hair sample, or exhibit a part of the body which may be covered with clothing, or the like. But it would be a violation of the Self-incrimination Clause if a person were forced to testify about the details of a crime he or she may have committed.

Like most of the other rights given in the first eight amendments to the Constitution, today the privilege against self-incrimination is binding on the states as well as on the federal government. The Supreme Court announced that it was binding on the states in *Malloy v. Hogan*.¹ In this case, the defendant, Malloy, was arrested during a gambling raid in Hartford, Connecticut, in 1959. He pleaded guilty to a misdemeanor (a crime not as serious as a felony) of pool selling (a type of gambling). He was sentenced to one year in prison and fined \$500.

Some months later, Malloy was ordered to appear and testify before a referee² who was conducting an inquiry into gambling activities. When he was asked questions about his conviction, he refused to answer on the grounds it might incriminate him (he took the Fifth). He was held in contempt of court and sentenced to prison. When he applied for a writ of habeas corpus (a procedure in which a person alleges he is being illegally held in prison), the Superior Court in Connecticut refused to release him, as did the Connecticut Supreme Court of Errors.³

The Supreme Court of the United States then held that the right against self-incrimination applied to the states, and Malloy could not be imprisoned for refusing to answer the incriminating questions.

The right against self-incrimination means that a defendant does not have to testify at all during a trial. It is the government or prosecution which must prove a person guilty beyond a reasonable doubt. Moreover, a confession which is coerced or beaten out of a person cannot be used to convict him. Thus, in *Brown v. Mississippi* (Lesson One, Case 1), the convictions of the defendants were reversed because their confessions were coerced.

1. 378 U.S. 1 (1964)

2. A person to whom a legal matter is referred for investigation and report or for settlement. In this case, the referee was appointed by the Superior Court in Hartford County, Connecticut.

3. The Connecticut Supreme Court of Errors was the highest court in the state of Connecticut. The name has now been changed to the Supreme Court.