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## Griswold: The Fifth Amendment Today

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THE FIFTH AMENDMENT TODAY. By *Erwin N. Griswold*. Cambridge: Harvard University Press. 1955. Pp. vi, 82. \$2.

This slim volume by the Dean of the Harvard Law School perhaps owes its importance more to the prominence of its author than to the originality of the ideas and legal materials presented. As an authoritative expression of a point of view in defense of the continued use of the Fifth Amendment by the individual in today's America, it is an important book. It is in large measure more valuable to the layman than to the lawyer. It attempts, as to the "self-incrimination" clause of the Fifth Amendment, to ease some of the anxieties created in the popular mind by its repeated use before congressional committees by witnesses being interrogated concerning their associations with the communist movement. Dean Griswold vigorously defends the proper use of this clause of the amendment on both moral and legal grounds. He finds justification for its use where the witness may indeed be guilty of no crime but fears that his testimony might lead to a prosecution. The author notes the quandary in which a witness and his counsel must be placed by the waiver doctrine of *Rogers v. United States* [340 U.S. 367, 71 S.Ct. 438 (1951)] when confronted with seemingly innocuous questions. As a practical justification, he points out the somewhat desperate situation in which loose committee procedures, the glare of television lights, and the tenor of the times may place a witness. He stresses, from the historical viewpoint, the importance of the Fifth Amendment in its entirety as a verbal symbol of the cherished American tradition of scrupulous (even over-scrupulous) regard for the rights of the individual.

In addition to examining the past and present position of the self-incrimination clause in its legal and moral aspect, Dean Griswold presents, in the second of the three lectures of which the book consists, an analysis and evaluation of the concept of due process which is written into the Fifth Amendment. In this and in the other two sections of the book, he notes the danger which the improper use of the congressional investigating power presents to our concept of ordered liberty.

The author's arguments are not always indisputable, but their net effect as a legal and moral rationale of the continuing importance of the Fifth Amendment to the American tradition of liberty can hardly be contradicted. It may be hoped that the restatement of principles from such a distinguished source will serve to temper a recent tendency toward hasty condemnation of users of the Fifth Amendment privilege within as well as without the legal profession.

*George S. Flint, S.Ed.*