

ISSN 1758-8413

Current Criminal Law

online

SALLY RAMAGE®

www.sallyramage.net

Contents -

Volume 1 Issue 2 December 2008

The right to silence in France, Germany, US and the UK

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The right to silence in France, Germany, US and the UK

Sally Ramage

The right to silence: UK, France, Germany and the US

The privilege can be traced to the 12th century and became more developed in the following centuries. The Latin term '*nemo tenetur prodere seipsum*' remains in use. It was applied on the Continent before the age of Codification. It was applied in English ecclesiastical courts also. It served as a guarantee that men and women would not be required to become the source of their own public prosecution and it was also a check on over-zealous officials.

In late medieval England anyone whose beliefs or practices deviated noticeably from the norm was liable to be described as a "lollard" or "lollar" and the word "lollard" became known as a general term of abuse in those times when the Church was seen as a well ordered body, staffed at its highest levels by decent and competent clergymen who saw that the ecclesiastical machinery ticked over in broad accordance with canon law. As feudal anarchy raged and as jurisdictional rivalries between ecclesiastical and royal courts provided contention, laws were passed including the Lollardy Act when lawyers were second only to clergymen as figures of hate. The legal privileges of sanctuary and benefit of clergy which were contingent upon the sacred status of the Church's property and personnel were a perpetual source of friction. Both canon and common lawyers were equally hostile to anything which threatened to subvert the established order of

the Church and State. The Magna Carta¹ was as dear to the lawyers as to the clergy and the clergy once a year reminded their congregations of the charter's contents, which were binding under pain of excommunication.

Professional rivalries among lawyers were matched by similar rivalries between different branches of the clergy through problems arising out of attempts at reform. Since at least the 12th century, medieval reformers have scented corruption in the Church's vast landed wealth, which, in itself, and in its effect upon clerical lifestyles, struck them as starkly contrasted with the poverty and simplicity of Christ and his apostles recorded in the gospels. From this seedbed of dissent developed Lollardy. Fourteenth century England was devoid of the inquisitors' manuals and the special inquisitors commissioned to combat heresy. So was Germany and southern France.

Much of the historical importance of Lollardy consists of the fact that it was the first time that the English ecclesiastical authorities had to grapple with the problem of heresy as anything other than that it was the inconsequential aberration of an eccentric academic, Wyclif. . Wyclif was at Oxford University where he aired his radical views on property and ownership in a course of lectures which were almost immediately circulated in manuscript as '*De civili domino*'. These lectures were notable chiefly for their bold contention that clergymen should not own property and it was not possible to

¹ The text of the Magna Carta mostly deal with specific grievances rather than with general principles of Law. Some of these grievances are self-explanatory and others can be understood in the context of the feudal society in which the King's barons held lands 'in fee' from the King, for an oath of loyalty and obedience. Feudal custom allowed the king to make certain other extractions from his barons. There was much scope for extortion and abuse in this system, aggravated by the inability to obtain redress. The Magna Carta provided the means of obtaining a fair hearing of complaints, not only against the King but against lesser feudal lords. The first clause concedes the freedom of the Church and confirm its right to elect its own dignitaries without royal interference. Clause 38 states "no official shall place a man on trial on his own unsupported statement, without producing credible witnesses to the truth of it."

question something as fundamental as ecclesiastical property without inviting instant and bitter hostility at the highest level. The Benedictines were the wealthiest of the religious orders. They lobbied for papal sanctions against Wyclif and produced a massive defence of the status quo in the form of the '*Defensio ecclesiasticae potestatis*'....



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