



### E44 The English Law of Witchcraft: Past, Present, and an Uncertain Future

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After attending this presentation, attendees will have an understanding of the evolution of the law in response to the changing mores of society as demonstrated by the law relating to witchcraft.

This presentation will impact the forensic science community by illustrating the adaptability of law through the actions of the legislature, judiciary, and international law, while retaining the capacity to prosecute harmful practices falling under the rubric of "witchcraft."

While witchcraft has been defined as "the practice of attempting to harm people by supernatural means, but through emotions and thought alone, not through the use of tangible objects," this is a narrow definition.<sup>1</sup> Roman law differentiated benign magic (fertility, finding treasure, divination, etc.) from malign magic (e.g., souring milk, blighting crops, etc.) with satanic magic as a category of malign magic. In pagan societies, where the perception was that most things were imbued with supernatural entities susceptible to entreaties by prayer and sacrifice, this was understandable. The monotheistic religions all preach against the practice of witchcraft. The best known injunction is, "*Thou shall not suffer a witch to live,*" but there are others.<sup>2</sup> The early Church had clear objections to sorcery.<sup>3</sup> In medieval England, both the secular and the ecclesiastical courts tried witchcraft cases. The ecclesiastical courts treated the offence as a variation of heresy, with the degree of intent an important factor in determining guilt and punishment. Repentance led to reconciliation with the Church, with the death penalty being reserved for the unrepentant. The secular courts took a narrower view. Intent was not an issue and the sentence upon conviction was death. There was no "Burning Time" in England. Witches were executed by hanging.

Following the Henrician reforms, the Crown needed to exert control over the spiritual life of the population. One tool was the Witchcraft Act of 1542.<sup>4</sup> This brought the prosecution of witchcraft into statute law. By the end of the 16<sup>th</sup>-century skeptics were beginning to be heard.<sup>5</sup> However, witchcraft prosecutions continued into the 17<sup>th</sup>-century with the last English executions for witchcraft in 1662. All English witchcraft statutes were repealed by the Witchcraft Act of 1735. This replaced the offense of practicing witchcraft with the offense of purporting to practice witchcraft. In short, witchcraft was fraudulent and practicing it was a form of fraud. Toward the end of its life, the Witchcraft Act was used to prosecute mediums and spiritualists, with the last such prosecutions taking place in 1944. These prosecutions resulted from mediums offering to contact the war dead. The Act was repealed by the Fraudulent Mediums Act of 1951 that, in effect, legitimized Spiritualist Churches. That act in turn was repealed in 1993. Protection against fraudulent treasure finders and their ilk is the remit of consumer protection legislation.

The English law has moved from being neutral about witchcraft to being tolerant of it and even to supporting the rights of adherents to practice their religion. In 1977, a Court declined to recognize Wicca as a religion. In 1998, The Human Rights Act incorporated a substantial proportion of the European Convention on Human Rights (ECHR) into English statute law. With some limitations, the ECHR gives the citizens of signatory states the right to freedom of religion. Prisoners, police officers, and naval personnel are now allowed to profess adherence to Wicca and other neo-pagan religions. The Human Tissue Act 2004 exempted the use of human material used as relics in acts of public worship from the licensing provisions the act applies to other lawful uses of human material.

In short, 21<sup>st</sup>-century English law is now silent on specific offenses relating to the practice of witchcraft. Practitioners of witchcraft are not exempt from the general criminal law and some interesting prosecutions have arisen as a result.

#### References:

1. Ember CR, Ember M, editors. *Encyclopaedia of Medical Anthropology*. New York: Kluwer Academic/plenum Publishers; 2004.
2. For example; Exodus 22:18, Deuteronomy 18:10-11, Qu'ran - Sula Falaq 113:4
3. Canon XXIV of the Council of Ancyra (314 C.E. ) mandated 5 years penance for divination or sorcery.
4. An Act Against Conjurations, Witchcraft, Sorcery and Enchantments 33 Hen. VIII c.8
5. For example; Reginald Scot. *The Discoverie of Witchcraft*. 1584

#### Witchcraft, Jurisprudence, Society