hang. . . . Accordingly, we hold that the consideration of hung counts has no place in the issue-preclusion analysis." [175]

SELF-INCRIMINATION

Development and Scope

The source of the Self-Incrimination Clause was the maxim "*nemo tenetur seipsum accusare*," that "no man is bound to accuse himself." The maxim is but one aspect of two different systems of law enforcement which competed in England for acceptance; the accusatorial and the inquisitorial. In the accusatorial system, which predated the reign of Henry II and was expanded and extended by him, first the community and then the state by grand and petit juries proceeded against alleged wrongdoers through the examination of others, and in the early years through examination of the defendant as well. The inquisitorial system, which developed in the ecclesiastical courts, compelled the alleged wrongdoer to affirm his culpability through the use of the oath *ex officio*. Under this system, a presiding official had the power to compel a witness to take an oath to tell the truth to the full extent of his knowledge as to all matters about which he would be questioned; before administration of the oath the person was not advised of the nature of the charges against him, or whether he was accused of crime, and was also not informed of the nature of the questions to be asked.[176]

The use of this oath in Star Chamber proceedings, especially to root out political heresies, combined with opposition to the ecclesiastical use of the oath *ex officio*, led over time to general acceptance of the principle that a person could not be required to accuse himself under oath before an official tribunal looking into criminal activity, or before a magistrate investigating an accusation against him with or without oath, or under oath in a court of equity or a court of common law.[177] The precedents in the colonies are few in number, but following the Revolution six states had embodied the

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[175] 557 U.S. ___, No. 08–67, slip op. at 10–11.

[176] Maguire, *Attack of the Common Lawyers on the Oath Ex Officio as Administered in the Ecclesiastical Courts in England*, in Essays in History and Political Theory in Honor of Charles Howard McIlwain 199 (C. Wittke ed., 1936).

[177] The traditional historical account is 8 J. Wigmore, A Treatise on the Anglo-American System of Evidence § 2250 (J. McNaughton rev. 1961), but more recent historical studies have indicated that Dean Wigmore was too grudging of the privilege. Leonard Levy, Origins of the Fifth Amendment: The Right Against Self-Incrimination (1968); Morgan, *The Privilege Against Self-Incrimination*, 34 Minn. L. Rev. 1 (1949).