



Interrogation, Confession, and Truth

Comparative Conference on
Criminal Procedure

May 21–22, 2019

May 21: University Main Building, Lecture Hall 5
May 22: Morgenbreede 2–4, 1.01, Campus South

→ www.uni-bielefeld.de/jura

Timetable

■ May 21

17:30 *Welcome*

18:00 Thomas Weigend, Institut für ausländisches und Internationales Strafrecht, Universität zu Köln
The Suspect as a Source of Information

20:00 *Dinner*

■ May 22

09:00 *Good Morning*

09:15 Luis E. Chiesa, Criminal Law Center, University at Buffalo School of Law
Autonomy, Self-Incrimination, and Miranda

Lutz Eidam, Fakultät für Rechtswissenschaft, Universität Bielefeld
Contemporary Problems of the Right to Remain Silent in Germany

Discussion

10:45 *Coffee*

11:15 Christopher Slobogin, Vanderbilt University School of Law, Nashville
The Legality of Trickery During Interrogation

Robert Horselenberg, Faculteit der Rechtsgeleerdheid, Universiteit Maastricht/Dave van Toor, Open Universiteit Heerlen/Fakultät für Rechtswissenschaft, Universität Bielefeld
Interrogation by Undercover Agents: the Mister BIG Method from a Psychological and Legal Point of View

Discussion

12:45 *Lunch*

14:15 Jan H. Crijns/Marieke Dubelaar, Faculteit der Rechtsgeleerdheid, Universiteit Leiden
Ways to Circumvent the Right to Silence in the Netherlands and Implications for its Meaning

Andreas Ransiek, Fakultät für Rechtswissenschaft, Universität Bielefeld
Self-Incrimination Privilege and Interrogation

Richard A. Leo, University of San Francisco School of Law
Police Interrogation, Psychological Coercions and False Confessions in America

Discussion

16:00 *Coffee and good bye*

Contact

Program Team:

Prof. Dr. Lutz Eidam, LL.M.

Prof. Dr. Michael Lindemann

Prof. Dr. Andreas Ransiek, LL.M. (Berkeley)

www.jura.uni-bielefeld.de/ict

If you would like to join us please register at:
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Interrogation

Originally, the defendant's interrogation was regarded mainly as an element of his right to be heard in criminal proceedings. Although this concept is still appealing in theory, the picture has changed in reality.

Nowadays, interrogation follows a different purpose: a confession of the crime shall be obtained.

The purpose of criminal procedure is to convict the guilty and protect the innocent – but the innocent only. Many prosecutors and judges seem to assume that somebody voluntarily confessing a crime clearly must be guilty.

This is not only true for an inquisitorial system of criminal procedure but for the adversarial process, as well. If the defendant confesses in the early stages of criminal proceedings, especially while being interrogated by the police, things are clear before the trial even starts. The cat is out of the bag and the defendant generally stands no chance to successfully revoke her or his admission of the crime.

By interrogating the defendant the truth shall be found. To this end some pressure on the defendant and some trickery if not outright deceptions are deemed appropriate to uncover the true events that took place and constitute the crime. This does not mean that police brutality is generally welcomed. But when it comes to the prevention of terroristic attacks or the rescue of an innocent party, even brutality is not necessarily considered absolutely banned.

Confession

On the other hand, both in Europe and the United States, the privilege against self-incrimination is guaranteed as a basic right of the accused, explicitly guaranteed by the 5th Amendment to the U.S. Constitution and mandated by both the protection of human dignity and by the rule of law of Germany's Basic Law. It is a necessary element of a fair hearing according to the European Court of Human Rights. It is "one of our nation's most cherished principles" as Chief Justice Earl Warren wrote for the majority opinion in *Miranda v. Arizona*.

While it is widely accepted, too, that a defendant's rights should not handcuff the police, it is common opinion that torture to obtain a confession is forbidden in regular criminal proceedings. Any recourse to physical force by the police which has not been made strictly necessary by the person's conduct diminishes human dignity and is a violation of the European Convention on Human Rights according to the European Courts.

But the legal demands are ambiguous when it comes to more subtle means of obtaining a confession. Does slapping a person once or twice constitute torture? Even if the answer is affirmative, we still have to consider what Fred Inbau wrote in 1961:

»I am unalterably opposed to the use of any interrogation technique that is apt to make an innocent person confess. (...) I do approve of such psychological tactics and techniques as trickery and deceit (...) to secure incriminating information from the guilty«

So maybe, as a German law professor wrote in the 1970s, the defendant's choice to remain silent is nothing but an artful "trick" obstructing the truth finding process and the administration of justice.

Truth

Thus, the question is where the line has to be drawn. Is it sufficient to warn defendants that they have a right to remain silent and to have the assistance of a lawyer for their defense? What is the current status of the privilege against self-incrimination? Should a resulting confession be inadmissible if warnings were not given like *Miranda v. Arizona* stipulated in 1966 and the German Federal Criminal Court acknowledged some 25 years later as well? When has someone's will been overborne and governing self-direction is lost, as Justice Felix Frankfurter put it in 1961? When, on the other hand, is truth discovered? More fundamentally:

what is this thing called truth?

Scholars from the United States, the Netherlands, and Germany will deal with these issues from their respective legal backgrounds and experiences. We will present and exchange arguments. We will try to provide an answer to these questions.