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Lutz Eidam | Michael Lindemann | Andreas Ransiek (eds.)

Interrogation, Confession, and Truth

Comparative Studies in Criminal Procedure

Nomos

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Introduction

Originally, the defendant's interrogation was regarded mainly as an element of her or 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.

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 of Human Rights according to the European Courts.

However, 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.

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 Unites States, the Netherlands, and Germany have discussed these issues from their respective legal backgrounds and experiences in May 2019 at Bielefeld University and have contributed the papers you find in this volume. We were delighted to have you here for such a successful workshop!

Andreas Ransiek
Michael Lindemann
Lutz Eidam

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