

Mind-Body Dualism in Criminal Procedure

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A well-known principle, which emphasizes the importance of human rights and fundamental procedural guarantees in modern criminal procedure, commands that the accused should not only be the object, but also the subject of the procedure. Distancing myself from treating this demand as a moral limitation of penal power, I interpret it, rather, as the principal effect of a procedural dispositive, characterised by the process of dissecting the accused person into body and subjectivity, evidence and restriction of lawful examination.

The contradictory unity of the accused, who appears as both object and subject, is reflected in the antithetical nature of criminal procedure, which emerges, for example, in the opposition between its primary purposes, the twofold function of the evidential burden and the investigating judge's ambiguous position. Based on the reciprocal connection between the structure of criminal procedure and the nature of the subject appearing in it, I study the defendant's mind through a systematic reinterpretation of elemental procedural guarantees. An examination of the privilege against self-incrimination and the right to privacy reveals, firstly, that the boundary between the mental and corporeal aspect of the accused is bridgeable. Secondly, in liberal criminal procedure, the mind-body dualism represents a broader phenomenon, by which the accused subjectivity traverses into a specific legal subject area. Recognizing the accused's subjectivity as an assembly of legal guarantees, as a specific legal reality, which in the context of criminal procedure separates itself from material reality, leads to the conclusion that guilt cannot be the mental property of the defendant. Therefore, the same body has to be inhabited by a different subject – the perpetrator, the criminal – who materializes as a negation of the defendant's presumed innocence.

Key words: subject-object division, accused, perpetrator, criminal procedure, dispositive, privilege against self-incrimination, right to privacy

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