

Historical Treatment of Evidence in Criminal Proceedings

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Abstract: The historical treatment of evidence in criminal proceedings is an essential study for understanding the evolution of criminal justice systems and the legal changes related to the collection and evaluation of evidence. Over the centuries, the concept of evidence has gone through various phases, reflecting the philosophy, culture, and societal structures of the respective periods. From the early practices of using evidence such as torture and arbitrarily collected data, to the development of contemporary rules and standards for collecting and evaluating evidence, the criminal process has undergone profound transformation. This historical treatment offers important insights into the relationship between principles of justice, human rights, and judicial practices that have shaped modern justice. Evidence and procedures for collecting it have become more structured, grounded in fundamental individual rights, considering the accused's liberty, dignity, and equality. This study also examines the impact of legal and philosophical developments on how evidence has been used to ensure a fair judicial process.

The key theme of "The Historical Treatment of Evidence in Criminal Proceedings" focuses on the evolution of the use and evaluation of evidence in criminal trials, as well as the changes that have occurred over time in relation to legal norms and judicial practices. This key theme may include the following core aspects:

1. **Evolution of the Concept of Evidence:** How has its meaning and usage changed over different historical periods in criminal proceedings?
2. **Changes in Methods of Collecting and Evaluating Evidence:** Have the techniques and tools for collecting evidence evolved from arbitrary methods (such as torture) to more structured and fair practice
3. **Advancements in Human Rights Protection:** How has the development of human rights impacted the treatment of evidence and the protection of the accused in criminal proceedings?
4. **Legal Reform:** Have reforms contributed to the creation of standards for the collection and use of evidence in a modern justice system?

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Introduction

The history of evidence in criminal proceedings is a crucial element in understanding the development of the criminal justice system. Throughout history, the concept of evidence has undergone various phases, reflecting the philosophy and culture of different eras:

1. Period of Divine Justice (Antiquity and the Middle Ages)

- **Evidence as an Act of Divinity:** In early societies, evidence was often based on religious rites and divine

proof (ordeal), such as enduring physical suffering or the "judgment of God."

- **Subjective Basis:** Guilt or innocence was often determined by divine intervention or belief in supernatural powers, rather than material evidence or fact-based testimony.

2. Canon Law and Feudal Justice (Late Middle Ages)

- In this system, the importance of evidence and testimony grew. With the development of canon law and feudal systems, sworn witness testimony began to gain prominence in the criminal process.

- **Torture as an Investigation Tool:** Torture was frequently used to extract evidence, considered a means to discover the "truth." Torture as an investigative tool is closely linked to serious violations of human rights, including abuse of individuals in investigative contexts.

i. **Torture** is the use of physical or psychological violence to inflict unbearable pain and suffering on an individual, with the goal of extracting information, punishing, or intimidating a person. Torture is prohibited in most international legislation, including the United Nations Convention Against Torture, which aims to ban the practice in all forms.

ii. **Investigation Tools** refer to methods used by authorities to uncover information about a crime, including questioning and interactions with suspects. However, the use of torture as an investigative tool is banned and punishable, as it is contrary to international law and human rights standards. Torture can produce false or inaccurate information, making its use ineffective and harmful to the justice system.

3. Development of Roman Law and Modern Codifications (Renaissance)

- During this period, the influence of Roman law introduced principles of a more rational system for evaluating evidence.
- **Rationalization of Evidence:** Rationalizing criminal evidence is the process of analyzing and reasoning the evidence collected during investigations and trials to assess whether it is legal, credible, and valid to support a judicial decision. This process is crucial for ensuring justice and avoiding errors or abuses in criminal prosecution.

With the shift from an accusatorial to an inquisitorial system, courts began using documentary evidence, written testimonies, and expert opinions.

Liberalization of Criminal Procedure: The liberalization of criminal procedure refers to the adaptation of the criminal justice system to ensure greater rights for the accused and individuals facing criminal proceedings.

4. Modern Law and Contemporary Codifications

- In contemporary law, evidence must be legal, collected, and presented in accordance with the law.

The Principle of Legality of Evidence:

1. The **Principle of Legality of Evidence** is one of the fundamental principles of the criminal justice system, guaranteeing that any evidence used in a criminal trial must be collected and used in accordance with the law. This principle ensures that evidence is legal, admissible, and respects individual rights, preventing the use of illegal evidence obtained through violations of human rights, such as torture, threats, or any form of violence.

Key elements of the principle of legality of evidence:

i. **Collection of Evidence According to the Law:** Every piece of evidence used in a criminal trial must be gathered and administered according to the procedures set forth by law. For example, evidence collected through violence or torture is illegal and cannot be used in trial, even if it may indicate the defendant's guilt.

ii. **Respecting Legal Procedures:** The law often specifies the methods and rules for collecting evidence. For instance, some jurisdictions may require a judge or competent authority to approve a warrant for evidence collection, as well as proper authorization for the arrest or detention of an individual. Any deviation from these procedures may result in the inadmissibility of the evidence in court.

iii. **Prohibition of Illegally Obtained Evidence:** Evidence collected in violation of human rights, such as through torture or threats, is illegal and cannot be used in judicial proceedings, regardless of its value for uncovering a crime. This principle is a safeguard for protecting individual rights and maintaining the integrity of the justice system.

iv. **Rights of the Defense and Transparency:** The principle of legality of evidence also includes the right of individuals to be informed and to have the opportunity to challenge the evidence used against them. This is a vital element for ensuring a fair and equal process, where the accused can effectively defend themselves.

v. **Judicial Control of Legality of Evidence:** The judge or competent authority has the responsibility to assess the legality of every piece of evidence used in criminal proceedings. This judicial control is essential to ensure that the evidence used is legal and that any illegal evidence is excluded from the process.

Importance of the Principle of Legality of Evidence:

i. **Protection of Human Rights:** The principle of legality of evidence is closely linked to the protection of individual rights. It helps prevent abuse and violence during evidence collection and ensures that criminal proceedings are straightforward and respect the dignity of individuals.

ii. **Ensuring Justice and Credibility of the Justice System:** When evidence is collected and used in accordance with the law, criminal proceedings are more trustworthy and just. This principle contributes to strengthening public trust in the justice system, ensuring that everyone is judged equally and fairly.

iii. **Prevention of Judicial Errors:** The principle of legality of evidence helps avoid judicial errors by ensuring that evidence is collected and evaluated according to legal norms and rules. The use of illegal evidence can lead to wrongful convictions and possible errors in the judicial system.

iv. **Protection of the Integrity of the Criminal Process:** This principle ensures that all evidence used in criminal proceedings is reliable and lawful, preserving the integrity of the justice system and ensuring that no one is convicted based on illegal or false evidence.

2. **BALANCE BETWEEN RIGHTS AND JUSTICE:** The modern criminal process emphasizes the protection of individual rights, excluding evidence obtained unlawfully.

- The balance between rights and justice is one of the most complex and important issues in any legal system, especially when it comes to criminal justice. This balance seeks to maintain harmony between protecting individual rights and ensuring a fair and effective justice system, capable of prosecuting and punishing those who break the law. Essentially, this balance requires respect for the fundamental

rights of individuals while ensuring that the state has the capacity to pursue and punish crimes in an organized and secure society.

i. **Human Rights in the Criminal Process:** One of the core principles in any criminal justice system is the respect for human rights. These rights are guaranteed by international instruments such as the European Convention on Human Rights (ECHR) and the Universal Declaration of Human Rights, as well as by the constitutions of most states. Some of these rights include:

- **The right to defense:** Defendants have the right to have an attorney and to present a defense throughout the process.
- **The right to a fair and speedy trial:** Everyone has the right to be tried within a reasonable time and by an independent court.
- **The right to be free from torture or inhuman treatment:** No evidence obtained through torture or violations of human rights can be used.

- **The right to be presumed innocent until proven guilty:** The presumption of innocence is fundamental in every legal system.

ii. **Justice and the Need for Punishment:** On the other hand, criminal justice aims to prevent criminal actions and protect public order and safety. To achieve this, the state needs effective mechanisms to prosecute and punish those who violate the law. This may include:

- **Investigations and criminal prosecutions:** Authorities must have the ability to conduct investigations without undue delay to uncover crimes and secure evidence leading to a fair trial.
- **Punishment and sentencing of the guilty:** During the criminal process, the state must punish criminals fairly and proportionally, using measures that send the message that crime will not go unpunished, while not violating the rights of the accused.
- **Crime prevention:** The justice system also plays a role in crime prevention and maintaining public order and safety, often requiring sentences and other measures that encourage respect for the law.

iii. **Balance Between Rights and Justice:** The balance between these two elements is complicated and requires great care, as the state must protect individual rights while ensuring a fair and equal process, and at the same time prevent and punish crime. Some key aspects to consider in this balancing act include:

- **Use of legal evidence:** As mentioned earlier, all evidence must be gathered and used in accordance with the law. If evidence is unlawful, such as that obtained
- through torture, it cannot be used, regardless of its potential to help convict offenders.
- **Proportionality of punishment:** The punishment for a crime must be appropriate and proportional to the nature of the crime. The use of excessive punishments, such as the death penalty or severe sentences for minor offenses, could violate human rights and create an unfair justice system.

- **The right to defense and the possibility of appeal:** Individuals should have access to proper defense and the possibility to appeal decisions, ensuring that justice is served in a fair manner.

3. **THE PRINCIPLE OF "FREE EVALUATION" OF EVIDENCE:** The judge has the competence to assess the evidence objectively and impartially, based on their personal conviction.

- The principle of "free evaluation" of evidence is one of the fundamental principles of the criminal justice system, granting judges and judicial bodies broad discretion in assessing the evidence presented during the trial. This principle implies that the judge, in accordance with the law, has the right and the opportunity to independently and freely evaluate all the evidence presented during the trial, using their professional and independent reasoning to determine the credibility and relevance of each piece of evidence.

Key Elements of the Principle of Free Evaluation of Evidence:

i. **Evaluation of Evidence without Detailed Pre-set Criteria:**

- The principle of free evaluation grants the judge the possibility of evaluating all the evidence, including witness testimonies, material evidence, expert reports, and any other information presented during the trial, without a detailed legal instruction for each piece of evidence.
- The judge is authorized to assess the quality, quantity, and nature of the evidence and use their reasoning to determine which pieces of evidence are most credible and significant for the case at hand.

ii. **Independent and Conscious Reasoning:**

- This principle is based on the belief that a judge, as an independent professional, is best equipped to evaluate the evidence objectively and fairly, considering all the circumstances of the case and the legal and factual context.
- The evaluation of evidence is done using the judge's legal knowledge, experience, and reasoning, who is responsible for ensuring that the process is fair and impartial.

iii. **Trust in the Independence of the Court:**

- This principle emphasizes the importance of the court's independence and that of the judges. Independence ensures that decisions are made free from external influence and that the evaluation of evidence occurs without pressure or illegal influence from any third party.

iv. **Exclusion of Illegitimate and Illegal Evidence:**

- While the judge has the freedom to evaluate evidence, this does not mean that any evidence can be used. The judge is obligated to exclude evidence obtained through violations of the law, such as evidence obtained through unlawful means (e.g., torture or threats). This principle serves as a protection of individual rights and ensures that the trial process complies with international standards of justice.

Importance and Advantages of the Principle of Free Evaluation of Evidence:

5. Flexibility and Adaptability:

- This principle provides flexibility and the possibility of adapting the evaluation of evidence to the specifics of each case, giving the court the opportunity to evaluate all the facts and circumstances related to the case in more detail. This is especially important when dealing with complex evidence or when evidence is incomplete.

6. Protection of the Rights of the Parties Involved:

- With free evaluation, the court can consider all circumstances that may affect the significance of a particular piece of evidence. For example, if evidence is unstable or unclear, the court may evaluate it as invalid to ensure a fair decision.

7. Improvement of Justice and Prevention of Judicial Errors:

- The principle of free evaluation allows the judge to use their knowledge and experience to analyze evidence in detail, making it easier to avoid judicial errors. This principle also ensures that all aspects of a case are taken into account, and that the process is as fair and balanced as possible.

8. Ensuring the Independence and Impartiality of Decisions:

- This principle guarantees the independence of the court and the impartiality of decision-making. The judge has the opportunity to make impartial decisions without being constrained in the way evidence is evaluated, and without external influence.

Limitations of the Principle of Free Evaluation of Evidence:

However, there are some limitations and criticisms of this principle:

- **Risk of Subjectivity:** The judge may have a subjective evaluation of the evidence, which could lead to inconsistent decisions for similar cases or unfair decisions for specific individuals.
- **Lack of Clear Standards:** Sometimes, this principle can create uncertainty as there are no clear standards for evaluating evidence, which could lead to legal uncertainty or inaccurate decisions.

As mentioned above, the principle of "free evaluation" of evidence is a key component of criminal justice that provides the court with an opportunity to examine and interpret evidence independently and flexibly, based on reasoning and experience. It contributes to ensuring a fair and impartial process, while relying on the belief

that the judge is best equipped to make a fair evaluation of the evidence without unnecessary limitations.

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