

The Right to be Presumed Innocent

Hamish Stewart

© Springer Science+Business Media Dordrecht 2013

Abstract The presumption of innocence has often been understood as a doctrine that can be explained primarily by instrumental concerns relating to accurate fact-finding in the criminal trial and that has few if any implications outside the trial itself. In this paper, I argue, in contrast, that in a liberal legal order everyone has a right to be presumed innocent simply in virtue of being a person. Every person has a right not to be subjected to criminal punishment unless and until he or she has done something that is criminally wrong. Since disagreements about allegations of criminal wrongdoing are inevitable, the liberal legal order requires a process for determining whether wrongdoing has occurred. In order to preserve the right not to be punished without wrongdoing, the accused person must be presumed innocent throughout this process. The presumption of innocence is therefore as much a basic human right as, for example, the right to bodily integrity or the right to freedom of expression. Specifications of and limitations on the right should therefore be justified not primarily in terms of their instrumental effectiveness in fact-finding or crime control but in terms of the role of the criminal process in a liberal legal order. I consider some implications of this view of the presumption of innocence for the pre-trial process and for substantive criminal law. I argue that the presumption of innocence, understood as a basic human right, should condition the entire pre-trial process; it has, however, minimal implications for the definition of offences.

Keywords Presumption of innocence · Human rights · Kant · Criminal procedure

Introduction

The presumption of innocence has often been understood as a doctrine that can be explained primarily by instrumental concerns relating to accurate fact-finding in the criminal trial and that has few if any implications outside the trial itself. In this paper, I

H. Stewart (✉)

Faculty of Law, University of Toronto, 84 Queen's Park Crescent West, Toronto, ON M5S 2C5,
Canada
e-mail: hamish.stewart@utoronto.ca