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# Rethinking the Privilege Against Self-Incrimination

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# Abstract

While recognized in a large number of jurisdictions, the privilege against self-incrimination proves hard to justify. This article attempts to develop a rationale for the privilege which avoids the usual pitfalls. It argues that the most compelling rationale for the privilege is that it serves as a distancing mechanism, allowing defendants to disassociate themselves from prosecutions. The resulting account has implications for the scope of the privilege. First, it suggests that no distinction should be drawn between requirements to speak and requirements to provide the authorities with documents, blood samples and the like. Second, it is argued that recognition of a privilege against self-incrimination implies that we should recognize a privilege against other incrimination which has similar force. Attention is also paid to exceptions to the privilege.

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