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Confessions and Interrogation

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Herbert Packer (1925–1972) constructed two models of criminal justice. The due process model stated that individual rights, including those of criminal suspects, are so important that every effort should be made to ensure their primacy. The state does this by limiting governmental power, requiring procedural formality, and applying laws equally and with a higher standard of proof of legal guilt, rather than factual guilt. The crime control model, in contrast, stressed the importance of suppressing criminal conduct and truth-finding through efficient and informal methods; the principle of presumed guilt; and tolerance, and in some cases, a preference of, extrajudicial fact-finding procedures.

Throughout American history, the U.S. Supreme Court has struggled to achieve a balance between protecting the rights of the individual and protecting the public's safety. Due to its overwhelming concern for individual rights, the Court has required numerous procedural safeguards to ensure that conviction of the innocent is less likely than acquittal of the guilty, which is evident in the laws on interrogation and confessions.

Law on Criminal Confessions

Following the common law tradition, a confession is admissible in American courts only if it represents a voluntary acknowledgment of guilt. Since 1936, the Supreme Court has prohibited the use of involuntary confessions because of their violation of the due process of law. The Court's interpretation of the word "voluntary," nevertheless, has evolved over time. In early Supreme Court decisions, such as *Hopt v. Utah* (110 U.S. 574, 1883) and *Brown v. Mississippi* (297 U.S. 278, 1936), involuntariness was interpreted as unreliability. The Court reasoned that a confession obtained by threats or physical torture or induced by promises or rewards was inherently untrustworthy. In later Court decisions, it replaced the reliability test with the rational choice test. This required that a defendant's confession be the product of free and rational choice. It should not be the product of police intimidation, coercion, deception, use of excessively lengthy interrogation, or other procedural violations. *McNabb v. United States* (318 U.S. 332, 1943) provided the example of unnecessary delay in bringing a suspect to a federal judge.

The 1966 *Miranda v. Arizona* (384 U.S. 436) decision changed the landscape of police interrogations in the United States. Police across the nation were henceforth required to read warnings to criminal suspects under their custody. These were that (1) they have the right to remain silent, (2) anything they say can and will be used against them in a court of law, (3) they have the right to an attorney during questioning, and (4) if they cannot afford an attorney, one will be provided to them at no cost. Statements made during police interrogation without proof of warnings, or the person's waiver, cannot be admitted into evidence and used against the suspect. The *Miranda* ruling instigated the due process test for confessions by requiring the suspect actively to waive the rights of the constitutional protections voluntarily, knowingly, and intelligently before police interrogation can start.

In determining whether a confession was voluntary, the Court focused on the use of physical torture or coercion in earlier times. In later cases, the totality of the circumstances surrounding interrogation and confessions was the focus of inquiry. The totality of circumstances involves the length of the questioning; interrogation techniques and conditions (for example, depriving the suspect of sleep, food or rest and psychological intimidation); the suspect's age, mental state, and physical condition; and the suspect's general demeanor and history.

Empirical Evidence

Studies have found that the majority of criminal offenders understand the meaning of *Miranda* warnings, yet an overwhelming 80 to 90 percent of [p. 240 ↓] suspects continue to talk to police after the warnings, and at least 50 percent make incriminating statements during police interrogation. Worse yet, studies concluded that false confessions (for instance, admitting to a crime one did not commit or overstating one's involvement in a crime) occur regularly in the United States.

Theoretical models such as the Reid model of confession, a decision-making model, psychoanalytic models, an interaction process model, and a cognitivebehavioral model attempt to explain the unexpectedly high rate of confession in the post-*Miranda* era by looking into suspects' emotional, psychological, cognitive, and social reactions to police interrogations in a confined and inherently coercive setting.

The primary goal of obtaining a criminal confession is for its probative value in the United States. Studies on the importance of confessions in securing convictions for those cases that proceed to trial in major American cities have yielded wide discrepancies, with an average estimate that one in four cases use confessions to convict. In addition, confession evidence bears a great importance in affecting jurors' decision making. Jurors more heavily weigh confession evidence than any other probative evidence, including eyewitness testimony.

Studies also reveal that the likelihood of confession depends largely on suspects' characteristics. For example, some studies have shown that those who are younger, female, white, under the influence of drugs, or with no prior experience with police interrogation were more likely to confess than others. In terms of the characteristics of the offense, suspects of sexual offenses were most likely to confess, followed by suspects for property offenses. Suspects of violent offenses were least likely to confess. In addition, suspects confess more readily to less serious offenses than to more serious ones. Contextual characteristics involving the case process also affect confession rates. Specifically, suspects with legal representation were less likely to confess, though a substantial number of suspects with legal representation did confess. Interrogation techniques and conditions also affect confession rates significantly. In the cross-national and cross-cultural contexts, particular legal structure (for example, institutional barriers, such as lengthy judicial proceedings, predictability of legal outcomes, or punitive legal sanctions) and legal culture (for instance, communitarian values or restorative justice) may also affect confession rates.

Beyond the United States

Even though the debate among legal scholars and practitioners in the past few decades about confessions and police interrogation has shifted from physical torture to psychological deceit and coercion in the United States, police brutality and torture practices have never ceased. They are also common practices in other parts of the world.

While confessions are primarily preferred for their probative value in the United States and other Western developed nations such as the United Kingdom, their correctional or

restorative value may be more important in other parts of the world. Representing the crime control model, the Japanese criminal justice system has yielded an exceptionally high confession rate of over 90 percent. This high rate may be explained by the Japanese legal structure, which allows the police excessive power in pretrial detention and interrogation. Thus, criminal suspects may be detained for up to twenty-three days before an indictment is initiated. There is also a lack of procedural guarantees, since suspects cannot refuse to be questioned by the police in Japan. However, Japan's communitarian culture of shame and integration may play a larger role in the high confession rate. Compared with their American counterparts, Japanese suspects are much more submissive and contrite. Besides confessing to officials, Japanese offenders, or their families, also approach victims to make redress and seek forgiveness. Japan's criminal justice system is so extremely lenient in imposing sanctions that most criminals are released into the community immediately after conviction without official supervision. The overwhelming concern with crime control and the deep-seated cultural roots of communitarianism in Japan allow its criminal justice system to focus on the processes of confession, repentance, forgiveness, and community control and integration.

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Embedded similarly in communitarian culture, China has a somewhat different approach to confessions and interrogation. Physical torture in extracting confessions was legal during the dynastic period and remains a prevalent practice in current times. The restorative aspect of confession, repentance and forgiveness, is less emphasized. In China, confession and its legal benefits are codified in both the substantive and procedural criminal law. Nevertheless, with the rapidly changing social and economic conditions in China, confession rates have shown a decreasing trend in the past ten years.

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See also

- [Apology and Pardon](#)

- [Communitarianism](#)
- [Consensual Penal Resolution](#)
- [Culture, Legal](#)
- [Evidence and Proof, Sociology and Psychology of](#)
- [Penal Court Procedures, Doctrinal Issues in](#)
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Further Readings

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