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A Comparative View of the Law of Interrogation

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Forty years ago, when the U.S. Supreme Court fashioned the Miranda procedure to safeguard the rights of suspects subject to police interrogation, the procedure and its exclusionary remedy were considered an American novelty. Few countries then required the police to issue preinterrogation warnings, and it was rare for courts to exclude confessions on the grounds of procedural violations. The past forty years have seen significant changes in the criminal justice landscape on the world scene. Today, the concept of preinterrogation warnings is widely accepted, and failure to issue the required warnings in many countries constitutes a ground for exclusion. This article explores the development in the law of interrogation in England, Canada, France, Germany, Russia, and China. The American Miranda procedure is used as a reference point to highlight the similarities and differences between American and other countries' practices.

Keywords: *police interrogation; preinterrogation warnings; England; Canada; France; Germany; Russia; China; United States*

Police interrogation is recognized as an essential and accepted part of law enforcement in all legal cultures. The recognition of the value of confessions, however, has been accompanied by concerns over the factual accuracy of statements and the fairness of the manner in which they are obtained. The police interrogation process has been a subject of controversy in all civilized nations. The central issue is not whether the police should or should not be permitted to interrogate but, rather, how to balance the public interest in crime control against individual interest in freedom from police coercive tactics.

In both common-law and civil-law traditions, it has long been recognized that only voluntary confessions can be admitted as evidence. By the 18th century, British law settled on the voluntariness test as the standard for admitting confessions. As the court, in *King v. Warickshall* (1783), eloquently explained,

> A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the strongest sense of guilt, and therefore it is admitted as proof of the crime to which it refers; but a confession forced from the mind by the flattery of hope, or by the torture of fear, comes in so questionable a shape when it is to be considered as the evidence of guilt, that no credit ought to be given to it; and therefore it is rejected. (p. 235)

On the European continent, despite the early sanction of the use of torture as a means of obtaining confessions in the inquisitorial system, the use of coercion was outlawed in the criminal procedure revolution that swept the European continent in the wake of the French Revolution (Bar, 1916; Esmein, 1913; Merryman, 1985; Mueller & Poole-Griffiths, 1969).

The American courts for a long time followed the common-law voluntariness test in determining confession admissibility. The courts, acting on a case-by-case analysis basis, excluded confessions that were deemed unreliable and untrustworthy. To underscore the importance of voluntariness standard, the U.S. Supreme Court in *Brown v. Mississippi* (1936) afforded the voluntariness test a constitutional status under the Fourteenth Amendment due process clause. In the 1960s, however, the U.S. Supreme Court significantly modified its jurisprudence of confession law. Convinced that the voluntariness test was insufficient to provide necessary protection for suspects, the U.S. Supreme Court in *Miranda v. Arizona* (1966) established the Fifth Amendment as the basis for determining admissibility of confessions. After analyzing various police interrogation tactics, the Court concluded that the process of in-custody interrogation contains "inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." The Court reasoned that "to combat these pressures and to permit full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively apprised of his rights and the exercise of those rights be fully honored." The Court thus fashioned the procedural safeguards that later become known throughout the world as the Miranda warnings.

When the U.S. Supreme Court established the Miranda warnings, the procedure, coupled with its exclusionary remedy, was considered an American novelty. Few countries then required preinterrogation admonitions, and no countries backed up the admonition requirement by a mandatory exclusionary rule. Before the Miranda warnings came into being, England for several decades had required the police to caution an accused of the rights to silence and counsel through the Judges' Rules. But the Judges' Rules were not legally binding on either the police or the courts. They were merely administrative directives to help police administer justice in a fair manner (Berger, 1990; Cho, 1999; Devlin, 1958; Toney, 2002).

The U.S. Supreme Court then seemed to lead the way in expanding the procedural safeguards for suspects. The past 40 years, however, have witnessed significant changes in the criminal justice landscape on the world scene. Most notably, there has been a trend in the direction of setting more restrictive standards for police behavior and granting more rights to suspects at the pretrial stages. This trend is evident especially in Western industrial nations. An examination of the criminal procedure law of major Western nations reveals that almost all of them now require some warnings to suspects prior to interrogation and that many use an exclusionary rule to ensure the police compliance with the warning requirement (Bradley, 1993, 1999; Hatchard, Huber, & Vogler, 1996; Thaman, 2001; Van Den Wyngaert, 1993).

This article examines the law governing police interrogation and confession admissibility in several countries. To highlight the differences and similarities between the American practice and that of other countries, the article uses the American Miranda procedure as a reference point. Comparison will be made, whenever possible, between American Miranda procedure and other countries' comparable procedures. To provide a balanced treatment of countries that belong to different legal cultures, the article includes in its analyses two common-law countries, two civil-law countries, and two countries whose legal systems have recently undergone significant changes. The two common-law countries are England and Canada. The two civil-law countries are France and Germany. And the two other countries are Russia and China.

The Miranda Warnings in the United States

The Miranda decision represented a significant modification of American confession law. The Court in *Miranda* abandoned the traditional voluntariness test and substituted the case-by-case analysis approach with a "bright-line" rule that focuses on whether the police have followed the required procedure. Failure to issue the warnings will, in general, lead to exclusion of the confession regardless of whether it is obtained as a result of police torture or coercion. Consistent with the rationale behind the requirement that the warnings are necessary to combat the inherent coerciveness of in-custody interrogation, the *Miranda* Court requires the police to issue the warnings only when a suspect is taken into police custody and when the police intend to interrogate the suspect (*Miranda v. Arizona*, 1966).

In the years after the *Miranda* decision, the Court has made several rulings to further clarify the meaning of *Miranda*. Since the 1970s, as the Court becomes more conservative, it has made rulings to restrict the effect of *Miranda*. The Court has made it clear in several decisions that *Miranda* is not a constitutional rule itself but only a prophylactic rule fashioned by the Court to protect the suspect's right to remain silent. The Miranda warnings, as explained by the Court, are not themselves rights protected by the Constitution; instead, they are measures to ensure that the right against compulsory self-incrimination is protected (*Michigan v. Tucker*, 1974; *Oregon v. Elstad*, 1985; *United States v. Patane*, 2004).

To maintain a proper balance between protection against self-incrimination and society's interest in crime control, the Court has carved exceptions out of *Miranda* exclusion policy. *Harris v. New York* (1971) was the first such case. The Court in *Harris* held that although statements obtained in violation of *Miranda* cannot be used in the prosecution's case-in-chief, they can be used for impeachment purpose. The Court has also declined to apply the "fruit of poisonous tree" doctrine to *Miranda* violations. Although statements obtained in violation of *Miranda* must be excluded, evidence found as a result of unwarned statements does not need to be excluded (*Michigan v. Tucker*, 1974; *United States v. Patane*, 2004). In *New York v. Quarles* (1984), the Court created the pubic safety exception, which permits the police to interrogate a suspect without the warnings if there is evidence indicating that immediate interrogation is necessary for the interest of protecting public safety.

The Court in its subsequent decisions has clarified various issues surrounding the implementation of Miranda warnings. The *Miranda* Court established a general rule that once a suspect indicates that he or she does not wish to be interrogated, the police must cease all questioning. With respect to whether the police may make multiple attempts to obtain a waiver from a suspect, the Court in subsequent decisions makes a distinction between the situation when a suspect asserts his or her right to silence and the situation when he or she requests to consult with a lawyer. If a suspect asserts only his or her right to silence, the police may resume questioning after a substantial period so long as they give new warnings prior to interrogation (*Michigan v. Mosley*, 1975). But if a suspect invokes his or her right to counsel, the police cannot attempt to question him or her again until counsel has been made available to him or her (*Edwards v. Arizona*, 1981).

Commentators critical of the Court's restrictive approach point out that the restrictions imposed on *Miranda* have encouraged and provided ways for the police to circumvent the warning requirement. Because of the rulings that unwarned statements can be used for impeachment purpose and that the doctrine of the fruit of poisonous tree does not apply to Miranda

violations, many police departments routinely interrogate suspects without issuing Miranda warnings. The reasoning behind the practice is that although the unwarned statements must be excluded, the police nonetheless can use the physical evidence obtained as a result of the unlawful interrogation, and the prosecution may also use the statements for impeachment, which may deter defendants from testifying (Leo, 1996; Malone, 1986; Thaman, 2001; Thomas & Leo, 2002).

Various restrictions placed on *Miranda* notwithstanding, the Court has made it clear that it has no intention to overrule *Miranda*. As the Court observed in *Dickerson v. United States* (2000), the Miranda warnings "have become part of our national culture" (p. 443), and it would not overrule *Miranda*. The Court in *Dickerson* struck down a law passed by Congress intended to return American confession law to the pre-*Miranda* voluntariness standard. The *Dickerson* decision seems to demonstrate that despite the *Miranda* Court's initial call for the legislature to develop alternative solutions to problems at the police interrogation, it seems unlikely that any process other than Miranda warnings would satisfy the constitutional standards set by the Court.

The Court has not only affirmed *Miranda* in principle, but it has also demonstrated its willingness to strike down police tactics designed to circumvent *Miranda*. The Court in a recent decision, *Missouri v. Seibert* (2004), outlawed an interrogation technique that permitted the police to have a "midstream" delivery of the Miranda warnings. The challenged technique called for giving no warnings of the rights to silence and counsel until interrogation had produced a confession. The police then would issue the warnings and lead the suspect to cover the same ground a second time. Concluding that this question-first tactic "effectively threatens to thwart *Miranda*'s purpose of reducing the risk that a coerced confession would be admitted" (p. 617), the Court struck down the interrogation technique and excluded the defendant's postwarning statements (see Table 1).

Advisement of Rights in England and Canada

England

Police interrogation in England currently is regulated by the Police and Criminal Evidence Act (PACE) and the Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers (Code C). Under the regulatory regime of PACE and Code C, the police are required to caution suspects of the right to silence and the right to counsel prior to interrogation. In contrast to the American practice that the police are not obligated to issue the Miranda warnings unless they intend to question a suspect in custody, British law requires the police to caution a suspect as soon as there are reasonable grounds to believe that the suspect has committed an offense, regardless of whether the suspect is taken into police custody. Apart from the rights to silence and counsel, once a suspect is arrested, the police must also inform him or her of his or her right to have his or her family members or relatives notified about the detention and the location of the detention.

The warning requirement notwithstanding, British law maintains a flexible approach. To properly balance the individual's interest to be informed of his or her rights prior to interrogation and society's interest in crime control, the law permits police to delay notification if reasonable grounds exist to believe that permitting a suspect to exercise the right of

Table 1
The Rights to Silence and Counsel in the United States and Six Other Countries

	Right to Silence	Police Obligation to Inform of the Right to Silence	Right to Counsel	Police Obligation to Inform of the Right to Counsel
United States	Yes	Yes, after a suspect is taken into custody and when the police intend to question the suspect	Yes	Yes, after a suspect is taken into custody and when the police intend to question the suspect
England	Yes	Yes, when there are reasonable grounds to believe a suspect has committed an offense	Yes	Yes, when there are reasonable grounds to believe a suspect has committed an offense
Canada	Yes	Yes, on arrest or detention	Yes	Yes, on arrest or detention
France	Yes	No	Yes, but not until after the first 20 hours of detention	Yes, at the outset of the detention
Germany	Yes	Yes, when there is concrete evidence indicating a suspect is likely to have been involved in a crime	Yes	Yes, when there is concrete evidence indicating a suspect is likely to have been involved in a crime
Russia	Yes	Yes, when there is evidence to believe a suspect has committed a crime	Yes	Yes, when there is evidence to believe a suspect has committed a crime
China	No	N/A	Yes, but not until after the completion of the first police interrogation	Yes, when the right arises after the completion of the first police interrogation

notification or the right to counsel may adversely affect the police investigation. For instance, PACE provides that if a suspect has committed serious arrestable offenses, the police, with the approval of an officer of the rank of superintendent or higher, can delay the exercise of the right of notification for up to 36 hours. The exercise of the right to counsel can be delayed by the same procedure if there are reasonable grounds for believing that the exercise of the right will lead to interference with or harm to evidence connected with a serious arrestable offense or the alerting of other suspects.

In comparison with American law, British law seems to attach more emphasis on ensuring that a suspect receives counsel when he or she asks for it. The law requires that Duty Solicitor schemes, which should be in operation 24 hours a day, be established throughout England and Wales. Code C also requires the police to keep a record of all interviews with

suspects. At the end of interrogation, the person being interviewed must be shown the record and given an opportunity to comment on it. Code E further requires that interviews conducted in police stations must be tape-recorded. In practice, the police are advised to interview a suspect at the police station whenever possible. The station house interrogation is preferable for the reason that it enables the suspect to obtain legal representation and allows the police to tape-record the interview. Failure to comply with the recording requirements may lead to exclusion of the confession obtained if the record-keeping deficiencies make it hard for the police to establish the reliability of the confession (Feldman, 1990; Hatchard, 1996).

Similar to the Miranda procedure, British law provides that once a suspect requests counsel, the police cannot continue to question him or her until he or she has consulted with a lawyer. To fully protect the rights of the suspect, British law contains specific provisions as to when the caution on the rights to silence and counsel must be repeated. Initially, the police must caution a suspect as soon as there are reasonable grounds to believe that the person has committed an offense. After the initial caution, the caution must be repeated when the person is arrested or charged. It is further required that the suspect must be reminded of the caution after every break during the course of interrogation.

At the common law, a suspect has no obligation to answer police questions, and a defendant may also refuse to testify at trial (*Rice v. Connolly*, 1966). PACE has codified these common-law rules. It had long been recognized in both American and British laws that the courts should not draw adverse inferences from a defendant's refusal to answer police questions or to testify at trial. The protection against adverse inferences seems secure in the United States because of its constitutional anchor on the Fifth Amendment privilege against self-incrimination. The U.S. Supreme Court explains that the prosecution may not call attention to the fact that the defendant exercised the right to remain silent because such comments would make assertion of the Fifth Amendment "costly" and such comments constitute constitutionally impermissible compulsion (*Griffin v. California*, 1965, p. 614). To fully protect the exercise of the Fifth Amendment right, the Court further held that at the defendant's request, the trial court must instruct the jury not to draw adverse inferences from the defendant's failure to take the stand (*Carter v. Kentucky*, 1981).

Until 1995, British law similarly prohibited the courts from drawing adverse inferences from a person's silence. The long-standing common-law rule, however, was changed by the Criminal Justice and Public Order Act 1994 (CJPOA). In the early 1990s, the Conservative government launched a major assault on the right to silence, attacking it as providing an unfair shield for professional criminals (see Berger, 2000; Feldman, 1999; Leng, 1993). In the ensuing debate, despite the recommendation by the Royal Commission of Criminal Justice that it would be improper to draw adverse inferences from a refusal to answer questions or testify, Parliament passed the CJPOA, which allows adverse inferences to be drawn against the accused under certain circumstances. The CJPOA permits a court or jury to draw adverse inferences from a suspect's failure to answer police questions and his or her refusal to testify at trial. It also permits the court or jury to draw adverse inferences from a suspect's failure to mention a fact at the police questioning that he or she later intends to use in his or her defense at trial.

Under the CJPOA, a defendant's failure to answer police questions may work to his or her disadvantage at trial. If the defendant remains silent at the police interrogation and fails

to mention certain facts, when he or she tries to use the facts in his or her defense at trial, the prosecution may invite the jury to draw adverse inferences from the defendant's failure to reveal such facts at the stage of police investigation. Similarly, if the defendant during the police questioning fails to offer satisfactory explanations for his or her presence at the crime scene or for physical evidence found on him or her, the prosecution can also invite the jury to draw adverse inferences from the defendant's unsatisfactory explanations (Cho, 1999; Toney, 2002).

Because the court now is permitted to draw adverse inferences from a suspect's failure to answer police questions, to prevent a suspect from unwisely exercising the right to silence, the law requires the police to warn the suspect of the consequences of exercising the right. The police are required to inform a suspect that he or she does not have to say anything, but that it may harm his or her defense if he or she fails to mention certain facts on which he or she intends to rely in court (see Beckman, 1995). Because a suspect may risk adverse inferences for his or her unsatisfactory explanations when answering police questions, the law also requires the police to specifically inform a suspect of the offense of which he or she is suspected. The permission of adverse inferences from a suspect's exercise of the right to silence undoubtedly complicates the suspect's situation at the police interrogation. It seems that now it is more important for a suspect to receive legal representation when being questioned, for only a lawyer may properly weigh the risk and benefit of exercising the right to silence in the face of police interrogation (Berger, 2000; Blair, 2003; Toney, 2002).

At the common law, involuntary confessions were subject to exclusion on the ground of unreliability. The common law otherwise followed a policy of relevancy, permitting admission of evidence so long as it was relevant. The common law knows no notion of excluding probative evidence to accomplish the goal of deterring police illegality. As a British court famously stated, "It matters not how you get it; if you steal it even, it would be admissible in evidence" (*Regina v. Leatham,* 1861, p. 501). PACE, however, has ushered in a new era of application of the exclusionary rule in Great Britain.

Within the structure of PACE, improperly obtained evidence may be excluded under either Section 76 or Section 78. Section 76 is a mandatory exclusionary rule. The section, incorporating the common-law rule, prohibits admission of involuntary confessions. Under the section, the courts are obligated to exclude a confession that was or might have been obtained by "oppression or in consequence of anything said or done by the police which is likely to render the confession unreliable." The section imposes a burden on the prosecution to prove beyond reasonable doubt that confessions were not obtained in such fashion. It is worthy of note, however, that even when a confession must be wholly or partly excluded, Section 76 does not require exclusion of "any facts discovered as a result of the confession." The exclusionary remedy in Section 76 reaches only the confession, and it does not reach evidence found as a result of the illegally obtained confession.

Section 78 is a discretionary exclusionary rule. Unlike Section 76 that applies only to confessions, Section 78 applies to confessions and physical evidence alike. The section grants the courts the discretion to exclude any evidence that, if admitted, would have "adverse effect on the fairness of the proceedings." The courts are to consider "all the circumstances, including the circumstances in which the evidence was obtained" to determine whether admission of the evidence would result in an adverse effect on the fairness of the

proceedings. Unlike the mandatory exclusion regime established by the U.S. Supreme Court in the Miranda procedure, in the structure of PACE a breach of provisions of PACE or Code C would not automatically lead to exclusion. Despite the discretionary nature of the exclusionary rule, the decisions of the courts since the enactment of PACE seem to indicate that the courts have exercised the fairness-based discretion with an expected degree of vigor. In quite a number of cases, the courts excluded confessions obtained as a result of police breach of PACE provisions (Berger, 1990; Cho, 1999; Feldman, 1999).

Canada

In most common-law nations, including England, the law governing police behavior does not acquire a constitutional status. The scope of police authority in these nations is defined by statutes and the common law. For a long time, Canada followed the same practice. In recent years, Canada, inspired by the American example, elevated the law governing police behavior into a constitutional requirement. The Canadian Constitution when enacted in 1867, contained no bill of rights. To redress the increasing dissatisfaction with the absence of a codified instrument to guarantee people's right to freedoms, the Federal Parliament in 1960 enacted the Canadian Bill of Rights. The Bill of Rights, however, was not enacted as a constitutional amendment but only an ordinary act of the Federal Parliament. Although the Bill of Rights was intended to ensure fair treatment of individuals caught up in the criminal process, it contains no mechanism to deal with evidence obtained in violation of its provisions. The lack of constitutional status and the absence of exclusionary remedy made the Bill of Rights an ineffective instrument in regulating police behavior and protecting people's freedoms (Roach, 2002; Stribopoulos, 1999).

The adoption of Canadian Charter of Rights and Freedoms in 1982 marked a high point in the history of Canadian criminal procedure. The charter elevated constraints on police powers into a constitutional requirement. The influence of the American Bill of Rights is evident in the charter, for it includes provisions that heavily draw on the U.S. Bill of Rights. For instance, similar to the U.S. due process clauses, the charter contains a provision stating that "everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." The charter provides for the rights against unreasonable searches and seizures and arbitrary detention and the right to counsel on arrest or detention. Also included in the charter are rights to a speedy trial and presumed innocence, the right not to be compelled as a witness against oneself, and the right to a jury trial.

The charter contains several provisions pertaining to the conduct of police interrogation. In comparison to American law, Canadian law has a more stringent requirement with respect to issuance of warnings. The charter requires the police to warn a suspect of his or her right to counsel on arrest or detention rather than, as required by American law, prior to custodial interrogation. Like English law, Canadian law focuses more on making sure that suspects actually receive assistance of counsel when they ask for it. The police are required to inform suspects not only of the right to counsel but also of the availability of free counsel for those who cannot afford a lawyer and the service of duty counsel who may provide temporary legal advice regardless of suspects' financial status. To facilitate suspects' exercise of the right to counsel, most provinces in Canada have established toll-free

telephone numbers to allow detained suspects to contact duty counsel on a 24-hour basis. Although the Canadian Supreme Court has refused to mandate the establishment of duty counsel services, in provinces where such services are available, the police are required to inform detainees of the services, including their toll-free telephone numbers (Roach, 1999).

In Canada, as in America and England, once a suspect asks to speak to a lawyer, the police must refrain from attempting to elicit evidence from him or her until he or she has a reasonable opportunity to retain counsel. Evidence obtained in violation of the holding-off requirement is subject to exclusion. The scope of the right to counsel in Canada, however, is narrower than that in the United States. A suspect has the right to consult with a lawyer in confidence and privacy, but he or she does not have the right to have the lawyer present during a police interrogation. Moreover, Canadian law encourages the police to persuade a counseled suspect to confess. As observed by the Canadian Supreme Court, "Short of denying the suspect the right to choose or depriving him of an operating mind, the police are encouraged to persuade a counseled suspect to confess" (*R. v. Hebert*, 1990, p. 178.).

The charter recognizes the right to silence but does not specify whether the police are obligated to inform a suspect of the right. In practice, the police do customarily inform a suspect of the right to silence. The Canadian Supreme Court has held that the right to silence contained in the charter implies that the police should inform a suspect of the right. The Court has ruled that the police may not coax incriminating statements from a suspect who has asserted his or her right to silence and that confessions obtained in such fashion are subject to exclusion. The Court, however, does not prohibit the police from resuming questioning after a suspect is afforded an opportunity to consult with a lawyer. The position taken by the Court is that the police may resume questioning even though a suspect or his or her counsel indicates a desire not to talk. But the police cannot use torture or physical abuse to compel a suspect to make statements (*R. v. Burlingham,* 1995).

To ensure that the proclaimed rights in the charter are not hollow promises, the charter contains an explicit provision addressing how to deal with unconstitutionally obtained evidence. The exclusionary rule contained in the charter is discretionary in nature. The charter provides that where

> a court finds that evidence was obtained in a manner that infringed or denied any of the rights or freedoms guaranteed by this charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute. (Sec. 24(2))

Under the discretionary exclusionary rule, violation of charter provisions would not lead to automatic exclusion. Subsequent to the passage of the charter, the Canadian Supreme Court has made several rulings with regard to the factors that might be considered by the courts when making exclusionary decisions. The Court mentions three general categories of circumstances that the courts should consider: the circumstances that may affect the fairness of the trial, the circumstances relating to the seriousness of the violation, and the circumstances relating to the effect of excluding the evidence on the reputation of the administration of justice (*R. v. Black*, 1989; *R. v. Burlingham*, 1995; *R. v. Collins*, 1987; *R. v. Genest*, 1988).

Despite the discretionary nature of the exclusionary rule, the courts tend to subject violation of charter provisions governing police interrogation to stricter scrutiny. The

Canadian Supreme Court justifies the stricter scrutiny of confession evidence on the ground that admission of confessions obtained in violation of charter provisions tends to strike at one of the fundamental tenets of a fair trial, namely, the right against self-incrimination (*R. v. Collins*, 1987). As a result of the strict scrutiny, although violation of charter provisions would not automatically lead to exclusion, the courts do in many cases exclude confessions obtained in violation of suspects' rights to counsel and silence (Bradley, 1993; Roach, 1999; Stribopoulos, 1999).

Preinterrogation Admonition in France and Germany

France

In comparison with other Western nations, France is known for its long-standing practice of placing society's interest in crime control ahead of an individual's interest in personal liberty. In France, an individual being processed in the criminal justice system enjoys what is termed as the "rights of defense." Although the scope of the rights is not precisely defined, the rights at the minimum include the right to receive notice of the proof against him or her and the right to counsel (Frase, 1990; Tomlinson, 1983). Traditionally, the rights of defense do not attach until a case reaches the stage of inquiry by an examining magistrate. Suspects at the police investigation stage thus enjoy many fewer protections than are afforded by the rights of defense.

The French police are empowered to conduct three types of inquiries: (a) the preliminary inquiry, which includes identity checks and *garde à vue*; (b) the flagrant offense inquiry; and (c) the inquiry under a rogatory commission. The inquiry under a rogatory commission is conducted under the direction of an examining magistrate. At this stage, the rights of defense attach. The exercise of broad police powers therefore is mainly seen in the police conduct of the preliminary inquiry and the flagrant offense inquiry.

The preliminary inquiry may be invoked by the police without the authority from a prosecutor or a judge. In conducting the inquiry, the police generally cannot use compulsion and must rely on involved individuals' cooperation. For instance, the police may examine material evidence with the consent of the involved person or take statements of witnesses who come to the police of their own free will. An exception to the no-compulsion rule is that the police are authorized to use compulsion to conduct identity checks and to carry out investigation under garde à vue. The law provides that the police have the power to detain a person for the purpose of identity check if reasonable grounds exist to believe that the person is planning or has recently attempted or committed a serious offense. Anyone who fails to give proof of identity may be detained for up to 4 hours. Limited protections are given to the detained person. The police are required to inform the person that he or she has the right to notify his or her family and the chief state prosecutor of his or her detention. If the detained person is a juvenile, he or she is entitled to legal advice.

Under garde à vue, which literally means "keep in sight," the police may use force to take suspects, individuals found at the scene of the crime, or anyone who may furnish information regarding the commission of the offense to a police station for interrogation. A person taken into police custody may be detained for up to 24 hours. With approval of the prosecutor, the duration of detention may be increased to a maximum of 48 hours. In cases

of drug offenses and terrorism, the detention may be further extended to 96 hours. During the detention, the police may extensively question a detained person.

The French Code of Criminal Procedure defines flagrant offenses as offenses that are in the process of being committed or that have just been committed. The law grants the police broad powers in conducting flagrant offense inquiry. For instance, the police have the powers, without judicial approval, to make arrests, conduct searches, detain suspects, and subject suspects or any persons that the police believe may provide useful information to garde à vue.

Before the reforms of 1993, persons detained under garde à vue had very limited procedural protections. A person subjected to garde à vue was not entitled to legal assistance, nor was he or she allowed to contact his or her family or any outside persons. Garde à vue was designed to subject a suspect to *incommunicado* police interrogation (Tomlinson, 1983; West, Desdevises, Fenet, Gaurier, & Heussaff, 1992). A revision of the Code of Criminal Procedure in 1993 grants certain rights to individuals subjected to garde à vue. Under the revised law, a person detained has the right to notify a relative by telephone of his or her detention and of any other measures taken against him or her by the police. The police no longer have the power to prevent a suspect from having outside contacts. If it is necessary to question a person incommunicado, the police must seek permission from a prosecutor. The police are required at the outset of the detention to inform a suspect of his or her rights, which include the right to have his or her family members or employer notified, the right to be examined without delay by a doctor designated by the prosecutor, and the right to seek legal advice after 20 hours of detention. The person must also be informed of the allowable duration of the detention.

The right to counsel granted to suspects at the police investigatory stage is limited. A suspect does not have the right to counsel immediately after his or her detention. The right in ordinary cases does not attach until the expiration of the first 20 hours of detention. If a case involves organized crime, drug rings, and extortion, the right to counsel does not arise until after 36 hours of detention. In cases involving terrorism and drug smuggling, the exercise of the right to counsel may be delayed until after 72 hours of detention. Apart from the delayed attachment of the right, a suspect is permitted to consult with a lawyer for only up to 30 minutes, and he or she has no right to have counsel present during a police interrogation.

French law recognizes the right to remain silent, but the controversy remains as to whether a suspect should be informed of the right. Until 1993, a distinction was made between police inquiry and inquiry conducted by an examining magistrate. At the police inquiry, the police had no obligation to inform a suspect of the right to silence. But when the case reached the stage of inquiry by examining magistrate, prior to interrogation the magistrate did have the obligation to inform the suspect that he or she was free to make no declaration whatsoever. The reforms of 1993 beat a retreat with respect to the magistrate's obligation to inform. The revised law omitted the words requiring the examining magistrate to inform of the right to silence prior to interrogation. With the change, a suspect has no right to be informed of the right to silence at either the police inquiry or the inquiry conducted by an examining magistrate (Vogler, 1996).

Traditionally, the operation of the exclusionary rule in France was closely associated with the attachment of the rights of defense. The exclusionary rule applied with full force at the inquiry conducted by an examining magistrate, but not at the police inquiry. The courts in general were lax in controlling police behavior. At garde à vue, detainees

were often kept incommunicado and relentlessly questioned by the police to the point of exhaustion. The courts nonetheless showed little interest in reviewing the police tactics. The courts declined to apply the exclusionary remedy even in cases of clear police violation of procedural rules. Despite legal commentators' calls to use the exclusionary rule for violation of the Code of Criminal Procedure, the Court of Cassation consistently limited relief for violation of code provisions to criminal and civil actions against the police (Pakter, 1983; Tomlinson, 1983).

Since the reforms of 1993, the courts seem to have demonstrated more willingness to expand the application of the exclusionary rule. French law has long recognized the principle that involuntary confessions cannot be used as valid evidence. More recently, the courts have indicated that violation of procedural rules related to obtaining confessions may also lead to exclusion. For instance, the Court of Cassation has excluded confessions obtained at garde à vue because of the police violation of the maximum detention limit and because of the police failure to issue required warnings. The lower courts have also excluded confessions for the police failure to grant appropriate access to counsel after 20 hours of detention (Frase, 1990, 1999; Van Kessel, 1998).

Germany

In comparison with French law, German law affords more protections to suspects at the stage of police investigation. In Germany, a significant transition point at the police investigation is the change of a person's status from an individual under investigation to an "accused person." The police are permitted to informally question suspects or witnesses before commencing a formal interrogation. At the informal questioning, the police do not need to issue any warnings. But once there is concrete evidence indicating that a suspect is likely to have been involved in a crime, the suspect becomes an accused person, and he or she must be informed of several rights. The German Code of Criminal Procedure (CCP) requires the police to inform the person of the offense of which he or she is accused and his or her rights to silence and counsel. The person must also be given an opportunity to explain away any suspicion against him or her and be informed that he or she has the right to demand the police and the prosecutor to take exonerating evidence (CCP, Sec. 136).

In Germany, once a person is informed of his or her rights, he or she may consult with an attorney at any time. This forms a sharp contrast to the French practice that the police are not obligated to inform a suspect of his or her right to silence and that they may deny a suspect of the right to counsel in the first 20 hours of detention. Similar to British and Canadian laws, German law imposes a more stringent requirement as to the issuance of the warnings. The police are required to inform a person of his or her rights as soon as the person becomes an accused person, regardless of whether he or she is taken into police custody.

At different stages of the criminal process, a suspect may be questioned by a judge, a prosecutor, or a police officer. The suspect must be informed of his or her rights when he or she is questioned for the first time by each actor. Once a person expresses his or her desire to seek counsel, the police must make reasonable efforts to assist him or her to find a lawyer who is willing to represent him or her. The scope of the right to counsel, however, differs depending on whether he or she is questioned by a police officer or by a judge or a prosecutor. If the suspect is questioned by a judge or a prosecutor, the person has the right

to consult with an attorney prior to interrogation and also the right to have counsel present during the interrogation. But if a person is questioned by a police officer, he or she has only the right to consult with an attorney prior to interrogation and does not have the right to have counsel present during the interrogation.

Unlike American law, German law does not contain a strict rule requiring the police to cease questioning after a suspect requests counsel. In certain circumstances, the police may continue to question a suspect even after a request for counsel is made. For instance, if a suspect is given a chance to retain counsel but fails to do so, it is not a violation of his or her right for the police to encourage him or her to talk without the assistance of a lawyer. Given that, the police are not permitted to prevent a suspect from seeking legal assistance. Police interference with a suspect's effort to seek legal advice may lead to exclusion of the confession obtained (Weigend, 1999).

There is in general no mandatory exclusionary rule in Germany. Section 136a, however, is an exception. Section 136a was added to the German CCP in 1950, shortly after the end of the World War II. It was added in reaction to the judicial system created under the Nazi regime (Pakter, 1983). The section mandates exclusion of confessions obtained by mistreatment, exhaustion, bodily invasion, administration of drugs, torture, deception, hypnosis, illegal compulsion or threat, and illegal promises or measures that may interfere with a person's mental ability. Police recourse to prohibited methods will lead to exclusion, even if the police can show that the statements were voluntarily made by the suspect (Cho, 2001; Weigend, 1999).

Apart from the Section 136a violation, the operation of the exclusionary rule is discretionary in nature. The courts, on a case-by-case basis, may decide to exclude evidence for violation of provisions of the CCP, such as police failure to issue required warnings or police violation of a suspect's right to counsel. The inquisitorial system, both historically and at the present, attaches great importance to finding the objective truth (Ehrmann, 1976; Van Kessel, 1992; Zweigert & Kötz, 1987). As a matter of principle, the courts consider all relevant evidence to accomplish the goal of ascertaining the truth. The courts nevertheless are more willing to exclude confessions obtained in violation of the procedural requirements of CCP. The courts justify the exclusion on the ground that the employment of methods that depart from prescribed procedures may discredit the reliability of the evidence obtained, which, in turn, may compromise the goal of finding the objective truth (Shanks, 1983).

An omission of informing a suspect of his rights would not lead to automatic exclusion. But German courts in recent years have excluded evidence on that ground. In a 1992 decision, a German Federal Court of Appeals, citing *Miranda v. Arizona* (1966) and the practices of neighboring countries, held that confessions obtained by the police without issuing the required warnings may not be used as evidence (Bundesgerichtshof, 1992, p. 222). The decision, however, does not suggest a mandatory exclusionary rule for failure to inform. The court observed that despite the police failure to issue the warnings, if it could be shown that the suspect was in fact aware of his or her rights, the lack of warnings would not necessarily lead to exclusion. Along this line of reasoning, the Federal Court of Appeals in several cases, after considering all surrounding circumstances, excluded confessions because of interrogators' failure to inform suspects of the rights to silence and counsel (Cho, 2001; Huber, 1996; Weigend, 1999).

Progress in Russia and China

Russia

Since the end of the communist rule, Russia has made great efforts to transform its old way of administering criminal justice. The Soviet system of criminal justice was widely criticized as oppressive and as a political tool of the Communist Party. Since the demise of the Soviet Union, the Russian Federation has made great progress in establishing democratic procedures based on the rule of law. Currently, the criminal justice administration in Russia is governed by three fundamental instruments: the Constitution of 1993, the Criminal Code of 1997, and the Code of Criminal Procedure of 2002.

The Constitution of the Russian Federation contains several articles connected to the criminal justice system. The constitution guarantees the right to freedom and personal inviolability and inviolability of private residence. It recognizes a presumption of innocence, the protection against double jeopardy, and the privilege against self-incrimination. The constitution requires judicial authorization to conduct a search or seizure or to arrest and detain an individual. It also provides for the right to counsel. After the adoption of the constitution and before the enactment of the new criminal procedure code, the Soviet-era Code of Criminal Procedure remained in force to the extent that its provisions were not contrary to the constitution or newly enacted laws. The practice had created a confusing asymmetry between the rights guaranteed by the constitution and the operation of the criminal justice system under the old Soviet procedural law. The new Code of Criminal Procedure, which came into effect in 2002, finally aligned the rules of criminal procedure with the rights guaranteed by the constitution.

The Russian Constitution and the Code of Criminal Procedure afford important rights to suspects at the stage of police investigation. Most notable among them are the right to counsel and the protection against self-incrimination. Article 48 of the Russian Constitution specifies that any person detained, taken into custody, or accused of committing a crime shall have the right to receive assistance of a lawyer from the moment of detention, confinement in custody, or facing charges accordingly. Building on the constitutional provision, the Code of Criminal Procedure provides that a suspect has the right to avail himself or herself of the advice of counsel and to have a private and confidential visit from a lawyer before the first interrogation. In enumerated serious cases, a suspect with financial difficulty has the right to request the assistance of counsel free of charge. The Code of Criminal Procedure also provides that a suspect has the right to be informed of the offense of which he or she is suspected and the right to give or refuse to give explanations concerning the suspicion against him or her. Moreover, the police are required to notify one of the suspect's close relatives no later than 12 hours after detention (Code of Criminal Procedure, Art. 49).

The Code of Criminal Procedure prohibits the use of violence, threats, and other illegal actions in conducting the investigation or creation of a threat to the life and health of those participating in the investigation (Art. 146). The Code of Criminal Procedure also prohibits interrogators to lead or deceive an interrogated person (Art. 189). The Code of Criminal Procedure requires interrogators to keep a written record of the interrogation. The record should be shown or read to the person being interrogated at the end of interrogation. The record should be signed by the interrogators and the suspect. Should the suspect refuse to

sign, he or she must be given an opportunity to explain his or her refusal (Arts. 166-167). To protect a suspect from prolonged interrogation, the Code of Criminal Procedure provides that no interrogation shall be conducted for more than 4 hours running and that the interrogated person must be given no less than 1 hour for rest before resumption of interrogation. The Code of Criminal Procedure further provides that the total length of interrogation in the course of 1 day shall not exceed 8 hours (Art. 187).

The protection against self-incrimination is enshrined in two articles of the Russian Constitution. Article 51 states that no one shall be obliged to give incriminating evidence against himself or herself. Article 49 declares that an accused "shall not be obliged to prove his innocence." The Code of Criminal Procedure reiterates the protection that a suspect or an accused is not obliged to prove his or her innocence. The burden of proof lies on the prosecution (Art. 14). The Code of Criminal Procedure does not mention whether a suspect should be advised of the protection against self-incrimination, but the Russian courts seem to have taken a proactive role to ensure the enforcement of the protection. The courts have interpreted the constitution to require that the police inform a suspect of the protection against self-incrimination. To back up the ruling that the notification is constitutionally required, the courts have in several cases excluded statements made by suspects who had not been informed of the protection against self-incrimination (Newcombe, 1999).

The Code of Criminal Procedure incorporates in it a broad exclusionary rule. Article 7(3) provides that "a violation of the rules of this Code by a court, procurator, investigator, inquiry agency, or inquiring officer in the course of criminal proceedings shall cause the evidence obtained to be inadmissible." Article 75(1) similarly provides that "evidence obtained in violation of the requirements of this Code shall be inadmissible." Articles 7(3) and 75(1) declare a general exclusionary rule for violation of code provisions. Article 75(2), on the other hand, provides for an exclusionary rule applicable specifically to confessions. The article calls for exclusion of confessions obtained in the absence of defense counsel unless the suspect acknowledges in court that he or she waived the right to have defense counsel present.

Despite the statutorily guaranteed right to counsel, the right in practice is undercut for several reasons. Government funding for legal services for indigent defendants remains inadequate. The Code of Criminal Procedure provides for free legal services for indigent defendants when they are accused of serious offenses. Lawyers, however, often try to avoid appointment because the government does not always pay them. The scope of the right to counsel provided by the Code of Criminal Procedure is limited. The Code of Criminal Procedure does not guarantee the right of a suspect to have defense counsel present at the police interrogation. A suspect may consult with his or her attorney prior to police interrogation. The presence of defense counsel at the police interrogation is permitted but not mandated. Unlike American law, Russian law contains no provision requiring that the police cease questioning on a suspect's request for counsel (L. Chen, 2004; Newcombe, 1999; Orland, 2002).

A significant deficiency in the Code of Criminal Procedure seems to be the distinction it makes between a person's status as a witness and his or her status as a suspect. The law affords the full range of procedural protections to a suspect. The protections afforded include the right to counsel, the right not to make incriminating statements, and the right to be informed of his or her rights. A witness is not afforded these rights. The law actually imposes on a witness a

legal obligation to testify and reveal information to the police. The problem with the differential treatment of a suspect and a witness is that the law contains no clear guidelines as to how to make the distinction. The decision seems to be left largely to the police. This situation, not surprisingly, results in widespread police abuse. The police often circumvent the warning requirement by simply refusing to treat a person as a suspect. By treating a person as a witness, not only are the police not obligated to grant him or her any procedural protections, but they also may subject the person to the threat of criminal sanction for his or her failure to fulfill his or her obligation to reveal information to the police (Kahn, 2002).

Russia has a long history of police abuse of criminal suspects. Despite the adoption of the constitution and the Code of Criminal Procedure, there has been no shortage of reports of continued police abuse of criminal suspects. As observed by some human rights groups, arbitrary arrest and mistreatment of criminal suspects remain a serious problem. It is still common for the police to use torture to extract confessions. Many suspects do not even attempt to seek the assistance of counsel because they believe that such efforts would be pointless. Police harassment of lawyers is a major source of complaints of Russian lawyers associations. The lawyers associations complain that the police in some cases even resort to beating and arrests to prevent lawyers from providing services to their clients. The lawyers associations accuse the police of often resorting to intimidating tactics as a means to cover up their illegal and sometimes criminal activities at the police investigation (Kahn, 2002; Orland, 2002; U.S. Department of Justice, Bureau of Democracy, Human Rights and Labor, 2002).

The problems notwithstanding, one should not diminish the progress made in the Russian administration of criminal justice. Given Russia's past, it would be naive to expect that the Russian police could break away from their abusive past overnight simply because of the adoption of the constitution and the Code of Criminal Procedure. The constitution and the Code of Criminal Procedure have set Russia on the right path to reform its past oppressive criminal justice system. More time probably is needed for the Russian authority to cultivate a culture of respect for the law in the ranks of the police.

China

In the first 30 years after the founding of the People's Republic, the criminal justice system, like many other aspects of life in China, operated largely in a "lawless" state. Fearing that codified law might restrain the Communist Party's pursuit of revolutionary goals, the Chinese leadership downplayed the role of law. With the adoption of the policy of economic reforms in the late 1970s, the Chinese leadership realized that to ensure proper economic development, it was essential to establish a stable legal system (Keith, 1994; Lee, 1997; Turner, Feinerman, & Guy, 2000). The promulgation of the Criminal Law and the Criminal Procedure Law (CPL) in 1979 marked the beginning of China's legal reconstruction. Despite its substantive and symbolic significance, the first CPL was criticized for not containing sufficient protections for suspects and defendants. The National People's Congress in 1996 substantially amended the law. A noticeable progress made in the amended CPL is the protections afforded to suspects subject to police interrogation.

Under the CPL, there are two forms of police interrogation. First, the police may summon a person who is not in police custody to a police station for interrogation. This form of interrogation is known as summon. Second, the police may interrogate suspects already

in police custody. The CPL contains several procedural safeguards for suspects subjected to police interrogation. To prevent police abuse of summon for interrogation, the CPL prohibits the police from turning summon for interrogation into a de facto detention. The CPL states that the duration of summon for interrogation cannot exceed 12 hours and that the police cannot repeatedly summon a suspect.

The CPL requires that prior to interrogation, the police must give the suspect an opportunity to make a statement regarding his or her guilt or innocence. The procedure is designed to prevent the police from proceeding on the premise that the suspect is guilty of the suspected crime. Despite the good intention of the law, research studies indicate that the police often ignore the procedural requirement. Not only do they not allow suspects to make a statement to profess their guilt or innocence, but also the police in many cases apply psychological pressures to make suspects talk. An often-used tactic is telling the suspect that he or she has solid evidence against him or her and that it would be in his or her best interest to confess (Liu, 2001a, 2001b).

In comparison to Russia, China seems to be more cautious in its criminal justice reforms. The Russian Constitution has recognized presumption of innocence and the protection against self-incrimination. Chinese law, by contrast, contains no clear language recognizing either presumption of innocence or the privilege against self-incrimination. Since the implementation of the amended CPL, there has been a heated debate among Chinese scholars as to whether Chinese law has recognized presumption of innocence. The debate centers on a provision in the CPL that states that "without adjudication by the people's court in accordance with the law, nobody shall be determined guilty of a crime" (Art. 12). Some scholars are of the view that the provision signals China's recognition of presumption of innocence. Others, however, argue that the provision states nothing more than that the people's court has the sole authority to determine a person's guilt or innocence (see Lu, 1998; Song & Wu, 1999; Wang, 1996; Yang, 1998; Yue & Chen, 1997b, 1997c).

In contrast to the controversy surrounding presumption of innocence, most Chinese scholars agree that Chinese law does not fully recognize the protection against self-incrimination. The CPL prohibits the use of torture and other illegal methods such as threat, inducement, and deception to obtain evidence. Because of the statutory ban on coerced confessions, it is correct to say that Chinese law recognizes the principle against compulsory self-incrimination. But the privilege against self-incrimination in the modern sense goes beyond mere prohibition against torture. The privilege, as it is understood in Western nations, also contains the right to remain silent. Chinese law, however, does not recognize the right to silence. To the contrary, the CPL imposes on suspects an obligation to tell the truth. The CPL provides that when being interrogated, suspects must truthfully answer the questions asked by interrogators (Art. 93). A reasonable interpretation of the provision is that if a suspect is innocent, he or she certainly can insist on his or her innocence; but if he or she is in fact involved in a crime, he or she is obligated to admit his or her guilt.

The amended CPL made a significant step forward by extending the right to counsel to the stage of police investigation. Under the old CPL, the right to counsel was available only at trial. The right to counsel granted by the amended CPL nonetheless is a limited one. The CPL provides that a suspect has the right to consult with a lawyer only after the completion of the first police interrogation. The CPL contains no requirement that the police should inform suspects of the right. In the first several years after the promulgation of the amended law, few

suspects requested counsel because the right was literally unknown to them. To remedy the situation, the Ministry of Public Security issued a regulation requiring the police to inform suspects of the right to counsel after the completion of the first interrogation.

The CPL prohibits collecting evidence by means of torture and other illegal methods, but it provides no remedy for police violation of the procedural rules. To ensure police compliance with the law, the Supreme People's Court, in an interpretation issued to facilitate the implementation of the CPL, declared an exclusionary rule with respect to illegally obtained evidence. The interpretation seems to draw a distinction between illegally obtained confessions and illegally obtained physical evidence. The interpretation is silent on the treatment of illegally obtained physical evidence, but it explicitly states that if it is determined that testimony of witnesses, statements of victims, and confessions of defendants are obtained by means of torture or other illegal methods such as threat, inducement, or deception, such testimony, statements, and confessions cannot be used as evidence to determine an accused person's guilt.

In comparison to the situation in the first 30 years of the People's Republic, China has made great progress in the past 25 years in establishing a comprehensive legal system. In China's context, however, because of the low regard the Chinese have traditionally held for law (Bodde & Morris, 1967; Zheng, 2000), promulgation of laws alone is not enough to bring the police operation within the purview of the law. The police disregard of the rule of law remains a serious problem. The police leadership still faces the challenge of establishing a culture of respect for the law in the ranks of police.

Apart from educating officers about the importance of enforcing the law within the bounds of law, legal scholars point out that the CPL must also be further revised. They maintain that to fully protect the rights of suspects and defendants in the criminal justice process, it is essential that China formally recognize presumption of innocence and grant suspects and defendants the protection against self-incrimination, including the right to silence. They especially suggest the revision of the CPL provision that requires suspects to tell the truth when being interrogated. In their view, the imposition of such an obligation may have contributed to the problem of police recourse to torture. Because of the lack of concept that a suspect should be presumed innocent, many officers proceed on the premise that a suspect is guilty on arrest. When a suspect refuses to admit guilt, the officers naturally feel justified in resorting to torture to make him or her fulfill his or her obligation to reveal the truth (R. H. Chen, 2000; G. Z. Chen & Song, 2000; Song & Wu, 1999; Yue & Chen, 1997a).

Conclusion

The past several decades have witnessed significant changes in the criminal justice landscape on the world scene. There has been a trend toward setting more restrictive standards for police behavior and providing more rights to suspects and defendants. The trend is evident in the field of interrogation law as well. Forty years ago, when the U.S. Supreme Court fashioned the Miranda procedural protection, few countries required the police to issue preinterrogation warnings. Except for coerced confessions, it was rare for courts to exclude evidence for police failure to follow procedural rules. Today, the concept of preinterrogation warnings

has become widely accepted. In virtually all major Western countries, the police are required to issue some forms of warnings prior to interrogation. Police failure to issue the required warnings in many countries constitutes a ground for exclusion of confessions obtained. It is worthy of note that even in Russia and China, countries that were burdened with the oppressive operation of criminal justice in the past, there have been movements toward setting more restrictive rules for the police and providing more protections for suspects and defendants.

The progress notwithstanding, there are still deficiencies. In some countries, there even appear to be steps backward. The recent modification of British law that permits the courts to draw adverse inferences from a suspect's silence and the French law's elimination of an examining magistrate's obligation to inform a suspect of his or her right to silence appear to be setbacks in the trend toward providing more procedural safeguards to suspects and defendants. In countries such as Russia and China, the government still faces the challenge of bridging the gap between enacted laws and actual police practice. But the general trend toward providing more protections to suspects and defendants seems clear. As the world enters an age of greater interdependence than ever before, and with the development of international human rights law, countries of the world community will undoubtedly continue to make efforts to establish in their respective countries criminal justice systems that are committed to providing fair and equal justice for all.

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