

Interrogative Criminal Procedure:
China versus the United States

Iris Jin
Comparative Criminal Procedure
Prof. Douglas A. Berman
19 July 2012

China's criminal justice system is vastly different from that of the United States'. Rights fundamental to the American system are limited, or even absent, in the Chinese system. Regarding the investigatory process, for example, criminal suspects in China have no right to refuse interrogation, nor do they enjoy a protected right to remain silent (Belkin 61). Moreover, the suspect does not have a right to consult a lawyer during the interrogation process. Given the dearth of procedural safeguards, it is not surprising that the Chinese legal system is characterized both by "long periods of investigatory detention" as well as a "high rate of confessions" (Belkin 61).

Chinese Criminal Procedure Law (CPL) authorizes the investigative authority – usually the police – to use various compulsory measures during the investigative phase (Belkin 11). One such measure is *ju chuan*, or "compelled appearance," where the suspect is ordered to the police station for up to twelve hours of interrogative questioning (Belkin 11). Nowhere in the CPL is the right to remain silent made explicit. The suspect does not have a protected right to remain silent (Belkin 16). Moreover, during the interrogation, the suspect does not have the right to consult with legal counsel (Belkin 11). The Chinese police may further detain a suspect beyond the initial twelve hour interrogation via another compulsory measure called *ju liu*, or "detention" (Belkin 11). Though certain conditions specified by the CPL must be met before a suspect can be lawfully detained, the "law on the books" is merely an attempt to give "the impression that detention of criminal suspects is less than automatic" (Belkin 11). According to Chinese criminal law experts, however, approximately 90% of suspects are detained during investigation (Belkin 12). The "law on the books" is in stark juxtaposition with the statistic illustrative of the "law on the ground." That is, the investigative authority might not be complying with the legal requirements of detention. Moreover, the CPL does not specify the length of permissible

detention (Belkin 12). Therefore, the ambiguity of the law – law which the police is already disinclined to follow – gives the authorities leeway to detain individuals for a period of time that may not seem in accord with due process of [American] law.

The American legal system, in contrast, provides greater procedural safeguards for the criminal suspect¹. Prior to the suspect's interrogation, the police must inform him of his *Miranda* rights: that he has the right to remain silent and the right to legal counsel. Once the suspect exercises his right to remain silent, the police must cease the interrogation. Similarly, if the suspect invokes his right to consult with an attorney, the interrogation must also cease until the attorney is present. While the American interrogation process is protective of the individual's rights and liberties, China's system allows for greater police discretion at the expense of the individual's rights.

Given the criminal suspect's lack of *Miranda* rights and the broad discretion of the police authority in China, it follows that the criminal justice system is marked by a high rate of confessions. As a criminal suspect is not informed of any right to remain silent, nor can he seek legal counsel before or during the initial interrogation, self-incriminating statements are made quite frequently during the investigative phase (Belkin 16). Although the CPL does forbid confessions obtained through torture or other unlawful means, such unlawfully obtained evidence is not necessarily precluded from trial (Belkin 17). "[T]here is no procedure for the suppression of unlawfully obtained evidence" (Belkin 17). So long as the evidence is reliable, it may be used for prosecutory purposes.

¹ *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

In contrast, the United States adheres to the exclusionary rule, which states that evidence obtained by the state in violation of an individual's constitutional rights must not be used against him². In balancing due process concerns against accuracy in fact-finding, the American legal system would rather guarantee the individual's due process of law. The People's Republic of China, however, prioritizes ascertaining the facts of a crime over the suspect's rights and liberties. Whereas the United States may exclude reliable evidence and thus undermine the accuracy of a criminal trial because of the manner in which the evidence was obtained, China would be less inclined to discard such evidence.

The People's Republic of China's criminal procedural safeguards – or lack thereof – during the interrogation phase illuminates the country's "presumption in favor of restraining the liberty of anyone suspected of a crime... even before criminal charges are filed" (Belkin 61). This contrasts to the American system's own emphasis on the presumption of innocence, where the individual's liberty can be compromised only in connection with a criminal charge. The different aims of the countries' criminal justice system – accuracy versus individual rights – affect the respective implementation of investigatory procedures. China compels interrogation of the criminal suspect and does not bestow the right to remain silent and the right to counsel, and the result is an impressively high rate of confessions. In contrast, the United States' criminal justice system enforces and protects the suspect's constitutional rights, making it less likely that the individual will incriminate himself and thus more able to potentially evade, in a way, the criminal justice system.

² Weeks v. United States, 232 U.S. 383, 34 S. Ct. 341, 58 L. Ed. 652 (1914).

Bibliography

Ira Belkin, *China's Criminal Justice System: A Work in Progress*, 6 *Washington Journal of Modern China* (2000).

Stephen C. Thaman, *Comparative Criminal Procedure* (2d ed. 2008).

Yue Ma, *A Comparative View of the Law of Interrogation*, 26 *Journal of Contemporary Criminal Justice* 36 (2010).