

Obligation or Right? A Historical Comparison of the Criminal Confession System between China and the USA

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Abstract

Confessions, as a type of criminal evidence, have played an important role in improving the detection and conviction of crimes. In 2012, Chinese lawmakers revised China's Criminal Procedure Law and added the defendant's privilege against self-incrimination. This reform with Western-inspired features has led to a heated controversy over the appropriate criminal confession system in China. The traditional Chinese system focuses on the obligation to confess and reward for confession, while the newly imported confession system from the United States focuses on the right to remain silent. To determine the appropriate policy, a thorough comparative analysis of the two confession systems from a historical and cultural perspective seems to be crucial. Specifically, comparative analysis and historical reviewing methods have been utilized in this study to explore the differences in the criminal confession systems between Chinese and the US contexts and thus to propose the future direction for improving the Chinese confession system. By tracing the origin of these two confession systems, this article examines the underlying criminal justice cultures that contribute to the diverse confession systems in detail. Given the changeable cultural influence along the historical river, this article then reviews the evolutional path of the "leniency to those who confess" in China and the "right to silence" in the United States, providing the specific provisions and implementation of two confession systems in various eras. Based on such complete knowledge of the specific cultural traditions and the resulting confession systems with which social and political contexts are involved, this study finally concludes the implications for developing the Chinese criminal confession system, especially from a localized perspective.

Keywords

Leniency to Those Who Confess, Right to Silence, Historical Comparison,

1. Introduction

Confession is the voluntary admission of committing a crime by a suspect or defendant. Confessions obtained through illegal ways, such as coercion, force, and inducement, may lead to wrongful convictions; while the lack of confessions can result in the criminals being released, which, like a snake in the grass, threatens public safety and social stability. China, a populous country in the world, always encourages the suspect or accused to confess with the reward of a lenient punishment, the so-called rule of “leniency to those who confess” (tan bai cong kuan). This rule was originally proposed as a criminal policy and existed in the various rules and regulations for over one thousand years until 2011 when it was provided by the Chinese Criminal Law (CCL, 2011) to guide criminal interrogations. It is recognized as the prevailing rule of the Chinese confession system. As reported, before December 2019, prosecutors had applied the leniency system [imposing lenient punishments on those who admitted guilt and accepted punishments] in approximately 83.1% of criminal cases in China (Zhang, 2020).

Nevertheless, a shift has taken place since 2012 when the Chinese Criminal Procedure Law (CCPL, 2012), following the global trail of human rights safeguarding, added a provision for defendants’ privilege against self-incrimination. It was considered an essential part of China’s judicial reform, which, although a crucial strategy for modernizing China’s legal system, was defined as Western-inspired and resulted in a gap between the legal system and social life (Liu, 2011). The question was thus raised whether such a newly introduced system could “contribute to better governance of China, from a localized perspective” (Chen, 2018: p. 1). More specifically, is the right to silence from Western countries suitable for China? Should the Chinese traditional confession system, “leniency to those who confess” or the obligation to confession system, based on traditional Chinese legal culture be abolished? What is the proper policy for the Chinese confession system?

Exploration of these questions is significant and cannot be ignored by comparative researchers. Though prior studies have discussed whether the Chinese “leniency to those who confess” should be substituted by the “right to silence” from the West, especially from the United States (Bai, 2012; Du, 2004; Liang, 2012), they rarely explore the two confession systems from a cultural perspective or specifically examine their appearance from a historical perspective. Given any criminal justice system cannot be understood perfectly once independent from the cultural and historical context, which, at any given time, necessarily tends to reflect the power structure and the prevailing social values (McConville, 2017), this paper focuses on comparing the two criminal confession systems from a cultural and historical perspective, especially pay attention to the struggle be-

tween the individual right and public order maintenance. It is organized as follows: the first section documents the origins of the two confession systems and reveals the traditional criminal justice cultures behind the confession systems in China and the United States. This is followed by an analysis of the trajectory of the American confession system dominated by the “right to silence”. The paper then focuses on the evolution of the Chinese confession system dominated by “leniency to those who confess”, which is provided as a comparison with that of the United States. The last section demonstrates the conclusion.

2. Differences in Criminal Justice Cultures

Different confession systems present different criminal justice perspectives resulting from different cultural characteristics. In China, Confucianism which emphasized public interests and social harmony is regarded as the dominant legal cultural value, while in the United States, strong individualism and liberalism originating from the Enlightenment shaped the individualistic justice system, such as the “right to silence”. This article thus starts from the birth of these two confession systems to examine the different criminal justice cultures involved.

2.1. Criminal Justice Culture in the United States

The origin of the privilege against self-incrimination is always puzzling. Some subjected its source to the old legal maxim “*Nemo tenetur seipsum accusare*” (nobody shall be compelled to accuse himself) (Helmholz, 1997; Lamberigts, 2016; Macnair, 1990), while more shreds of evidence connected its head with the struggles between the Common Law courts and the ecclesiastical courts in England (Levy, 1997). Notwithstanding, the self-consciousness awareness, admittedly, constituted a good core for the privilege against self-incrimination. It arises from the cultural values shift in European countries during the 14th to 17th century when Western humanism favored the individual instinct by emphasizing the values of intellectual freedom and individual expression. Unfriending the church’s control of the spirit, Renaissance humanists insisted that it was a human-centered rather than a god-centered world. Thus, their concept of humanism focused on “*people*,” including people’s liberation from instincts and people’s pursuit of happiness, goodness, and beauty. Many thoughts of Renaissance humanism originated from the classical Greek philosophies, such as the Hedonism proposed by Aristippus of Cyrene (435-356 BC) and Epicurus (341-270 BC), which stressed that “*pleasure is the highest good*” and the greatest good was to seek modest and sustainable pleasure featured with the peace and freedom from fear and the absence of pain (Tim, 2021).

Renaissance humanism promoted the subsequent European Reformation movement during the 16th century, contributing to self-consciousness breaking through asceticism’s shackles. After the Reformation, the ex-officio oath procedure (Helmholz, 1997) in the England Star Chamber and High Commission court, demanding the accused to truthfully answer the questions even though

they did not know what they were being accused of, was strongly challenged and opposed. Believing that the ex-officio oath seriously violated the people's instinct of self-preservation and no forced torture on one's conscience, the British Puritans declared that no one had to swear an oath against oneself, and the Common Law courts even issue writs to prohibit such oaths (Williams, 2006). Subsequently, the United Kingdom enacted a series of statutory laws against forced swearing. In 1568, Justice Dale of the Common Law Court of Appeal put forward a clear slogan: "*No one shall be forced to provide evidence against himself,*" the earliest classic summary of the privilege against self-incrimination.

Though previous humanists contributed to fighting against the church's abuses and liberating people's instincts, they were still religious. They were not suspicious of God until the Enlightenment period, when Enlightenment thinkers, such as Thomas Hobbes (1588-1679), John Locke (1632-1704), and Jean-Jacques Rousseau (1712-1778), emphasized democracy, individual liberty, human dignity, freedom and equality, the sacred and inviolable human rights, and the eradication of religious authority (Israel, 2009). Influenced by Enlightenment thoughts, the privilege became established in the law by the iconic case of Lilburne in England. In 1637, John Lilburne, charged with selling seditious books, was compelled by the Star Chamber to abide by the ex-officio oath procedure. Still, he refused, stating that he feared that his answer might hurt himself (Foxley, 2004). Though Lilburne failed in this trial, the Parliament supported his calling for establishing the privilege against self-incrimination in 1641 by abolishing the Star Chamber and the High Commission Court and banning the later use of the ex-officio oath procedure in criminal cases (Pittman, 1935). Since then, the privilege has been established in England and subsequently absorbed by the United States.

The European people's values of liberty and freedom have significantly influenced those of America, firstly through colonization. In the early 17th century, some European populations, striving for material success or escaping political and religious oppression, immigrated to North America (the New World) and spontaneously formed some immigrant groups based on specific political and religious beliefs organized by private companies specializing in immigration development (He, 2011). These immigrants, including some English-trained lawyers, brought a strong awareness of liberty, individual rights and freedom, and some progressive legal values into the North American colonies, which inevitably affected America's legal evolution trajectory. Even by 1776, every territory could see some legal professionals with an English common law background (Del Duca & Lévassieur, 2010). The *Massachusetts Body of Liberties (1641)* was the first legal code in colonized America established by European colonists, containing the privilege against self-incrimination: "*No man shall be forced by torture to confess any crime against himself.*"

The Enlightenment ideas influenced the Americans also through the revolution. With the intensification of contradictions between the North American colonized and European colonizers, the North American people began to revolt. The

prominent political and ideological figures during the American Revolution played an essential role in introducing Enlightenment ideas into the New World (Ferguson, 1997). For example, Benjamin Franklin (1706-1790) visited Europe many times and brought the latest ideas back to Philadelphia (Atiyah, 2006); Thomas Jefferson (1743-1826) followed European thoughts closely and later incorporated Enlightenment ideals into the United States Declaration of Independence in 1776 (Commager, 1975); while James Madison (1751-1836) incorporated these ideals into the United States Constitution in 1787 (Ball, 2017). With the perfect absorption of the Enlightenment ideas in the United States, seven states of the United States [Virginia (June 1776), Pennsylvania (September 1776), Maryland (November 1776), North Carolina (December 1776), Vermont (July 1777), Massachusetts (March 1780) and New Hampshire (1784)] have inserted the privilege against self-incrimination into their Constitutions or Bills of Rights (Poore, 1878). More significantly, the Fifth Amendment 1791 formally stipulated the privilege against self-incrimination: “*No person shall be compelled in any criminal case, to be a witness against himself.*”

In a word, to meet the demand of the population born and growing within the individualism concentration, the United States stressed more the individualistic justice systems, like the “right to silence”.

2.2. Criminal Justice Culture in China

Just like the privilege against self-incrimination has a puzzling origin, the Chinese “leniency to those who confess” also has an uncertain origin. The most ancient document about it may be the Shang Shu-Kang Gao in the West Zhou Dynasty (c. 1046-771 BC), a compilation of ancient Chinese history, which has the statement that offenders who have voluntarily surrendered shall not be sentenced to the capital penalty even though they have committed the most severe crimes (ji dao ji jue gu; shi nai bu ke sha) (Li & Jin, 2010). However, the statement was more regarded as the origin of “voluntary surrender” (zi shou) in modern Chinese laws (Yang, 2015), which was different from but always mixed with the “voluntary confession” (tan bai) contained in the “leniency to those who confess” (Rickett, 1971). More documents date the voluntary confession’s prototype back to the Tang Dynasty (618-907) when the voluntary confession system appeared as an extension and refinement of the voluntary surrender system. According to the Tang Law Commentary (tang lv shu yi), instead of voluntarily surrendering before the authority discovered crimes, offenders who voluntarily confessed all about the offenses after being reported, interrogated, or arrested for other crimes shall still be eligible for a lenient or mitigated punishment (Zeng, 2009). As one of the most famous Confucian Classics laws (jing yi lv fa), the Tang Law Commentary was a masterpiece indicating the accomplished legislation of Confucianism in Imperial China. Its confession provisions part extensively demonstrated the cogitation of Confucianism.

Confucianism was proposed by the Chinese philosopher Confucius (551-479 BC) when Hedonism was presented in the West and has become the single do-

minant thought since the Han Dynasty (202 BC-220 AD) (Rainey, 2010). Confucius associated Ren with a good person, arguing that “focus your mind/heart solely on Ren, and you will be entire without evil” (Rainey, 2010: p. 35). He referred Ren to be “benevolence,” “humanity,” “love,” “altruism,” and “goodness” (Hall & Ames, 1997), and clarified it from both the individual and collective perspectives. He defined Ren as a person’s moral attitude opposite self-interest and self-pursuing possessions and profits. Thus, people are required to overcome greed and self-centeredness to achieve Ren. Simultaneously, Ren, seen from the angle of the ancient Chinese character’s shape, resembles a figure of two persons staying together, which implies the other interpretation of Ren by Confucius, that is, to maintain a good relationship with others and “love all the persons” (Qin, 2008).

Then, how is Ren practiced in social and political contexts? It will turn to Li, often transferred as “ritual,” referring to the traditional customs, virtues, ethics, and norms. It is “a moral action where one party shows respect for the other” to guarantee “a proper, civilized society” (Rainey, 2010: p. 36). Specifically, Li is consistently demonstrated by duties resulting from people’s moral attitude Ren, which have different forms in different circles, such as the duty of filial piety for a child in his family and the responsibility of loyalty for a person to his superiors (Rainey, 2010). People restrained their selfishness and greed by Li in practice and then attained Ren. Ren could shape one’s Li as an internal moral attitude, while Li, as the external moral action, can animate one’s Ren. If they work together well, then both individuals and society could benefit. As for the voluntary confession system, an old Chinese said that it is never too late to mend (zhī cuò néng gǎi, shàn mò dà yān), which means it is always a good thing for people to mend no matter how late it is. Everyone, including the offenders, should be treated with Ren if they would like to mend their destructive behaviors. Offenders who break down rituals can still be forgiven if they feel guilty and are willing to fix it. Making a truthful confession reflects a signal of repentance in moral attitudes. However, if the offenders refuse to confess truthfully, they will be judged as evil persons with no repentance and be sentenced to severe punishment.

Confucius’s ideology of Ren and Li provided a foundation for his ideas on a good society, including the “gentleman” (jun zi) (Rainey, 2010: p. 42) and the good government. Confucius argued that a “gentleman” should be equipped with Ren and Li to be the model of all ordinary people. A good government should be governed by morality rather than force, that is, morality preceding the punishments (de zhu xing fu). If a government applied laws, powers, and punishments to people, people would never generate a sense of shame, for such laws and penalties teach no about virtues; while applying moral virtues and rituals to educate people, people would possibly create a sense of shame and behave themselves. Influenced by the ideology of “a good government”, the Chinese government always awards offenders who have repented and voluntarily confessed their wrongdoing to a lenient or mitigated punishment, insisting that the offenders’ repentance is more effective than any other curing method for

their rehabilitation. By applying Ren and Li, the government can rehabilitate offenders as good persons and peace the victims' emotions, thus accomplishing the ultimate objective of harmony (Glenn, 2014; Zeng, 2009).

By tracing the origins, this article unearthed the behind cultures promoting the occurrence and establishment of the “right to silence” and the “leniency to those who confess.” In the United States, people place more emphasis on the individualistic justice culture, which is dominated by human rights and individual freedom; while in China, people stress the relational justice culture paying more attention to public interest and harmonious relationships, which require more compliance with obligations. However, the cultures were not static. According to Hayek (1981: pp. 155-158), culture was neither a natural production inherited by genes, nor an artificial production designed by reason or intelligence, but the “*learned rules of conduct*”. In other words, the culture was rooted in and changeable with social practices, while practices were always historical. Thus, perfectly understanding the confession systems in two countries requires a more thorough examination of their specific appearances in different historical stages, that is, an examination of how these two confession systems have evolved under the changeable cultural contexts produced by specific social and historical practices. This is what the article will demonstrate in the following two parts.

3. Evolution Path of “Right to Silence” in the United States

As the crucial characteristic of the United States' confession system, the privilege against self-incrimination lies at the heart of the ideology of a fair criminal procedure (Jackson, 2009). Since its establishment in 1776, the United States has seen three revolutions of the “right to silence,” including the early American interrogation laws, the rise of rationality, and the Miranda revolution (Thomas III & Leo, 2012). All these evolutions were closely related to social, economic, and cultural contexts. Given that the United States is a common law country characterized by “*stare decisis*,” this article will examine the evolution path of the American confession system mainly through typical cases.

3.1. 1791-the 1860s: The Early American Interrogation Laws

During the early years, the United States government, alerted by history, mainly safeguarded the people's liberty, freedom, and individual rights by resisting and eliminating power abuse. The most direct evidence was tens of Amendments to the United States Constitution (2023) issued and validated by the United States Congress since 1789, combined into the so-called Bill of Rights. Given that judges were always suspicious of the vulnerable suspects' confessions to those in power, the Fifth Amendment in 1791 formally stipulated the privilege against self-incrimination that “*No person shall be compelled in any criminal case, to be a witness against himself*,” aiming to guarantee the rights of the accused and defend against the judicial arbitrariness and involuntary confession extortion such as torture (Skinnider & Gordon, 2001).

Influenced by the colonial tradition, most American states, when implementing the privilege against self-incrimination, still relied on the monographs and precedents of England laws (Thomas III & Leo, 2012). Among them, William Hawkins' Pleas of the Crown (the sixth edition), published in 1787, was one English treatise affecting the American confession system the most during the 19th century, claiming that confession obtained "*either by the flattery of hope, or by the impressions of fear, however slightly the emotions may be implanted*" should be banned, "*for the law will not suffer a prisoner to be made the deluded instrument of his own conviction*" (Hawkins & Leach, 1787). This claim was called the Hawkins-Leach dictum, which has affected the United States confession system for about one century. For example, one digest of laws relative to the New York Justices of the Peace published in 1815 insisted on excluding any confession extorted with "*promise of favor, menace, or undue terror*" during the examination (Dunlap, 1815). Then an 1839 Vermont case "*State v. Phelps*" (1839) held that confessions could never be admitted as evidence if the defendant has been affected by any threat or promise. As a golden norm, the Hawkins-Leach dictum proved its continuing power in 1897 when the court finally reversed the conviction of Bram's murder, considering the wrongly admitted involuntary confessions of the defendant in the case of *Bram v. United States* (1897). During those years, investigators, concerned about being examined for power abuse and generating any false confessions, have excluded many confessions that may be involuntary (Oliver, 2007).

However, voluntary and credible (or reliable) confessions made in the early American trials were always admissible (Thomas III & Leo, 2012), for they did not violate the Hawkins-Leach dictum. Perhaps due to the lack of widespread and efficacious warning rule in the United States, the fact was that many accused had answered questions before trial and testified at practice throughout the 19th century (Jackson & Summers, 2012). In England, William Dickinson (1813) proclaimed "*the duty of the magistrate... to give him [prisoner] a reasonable caution, that he is not required to criminate himself.*" However, very few American states have accepted the England caution rule. By 1842, only three states, New York (1829), Missouri (1835), and Arkansas (1838), stipulated provisions requiring magistrates to warn the accused of their privilege when engaging in the investigation.¹ Even the Parliament did not propose the warning rule until 1848. Since the 1850s, the police began to bear the warning obligation with the regular occurring of police interrogations in New York City (Oliver, 2007). However, there was little evidence that suggested they had given warnings (Thomas III & Leo, 2012). Even though the accused generally give confessions, and their voluntary admissions were always accepted by the court, the early American government was committed to resisting coerced confession and torture by standardizing and legalizing the confession collection methods, which was the initial development of the right to silence in the United States.

¹See the Revised Statutes of New York. (1829). Vol. 2, part IV, Ch. II, § 15; the Revised Statutes of Missouri. (1835). Art. II, § 15; the Revised Statutes of Arkansas. (1838). C. 45, § 33.

3.2. The 1860s-1940s: The Rationalist Theory and “Third Degree”

The American courts' attitude toward the confession issue became more practical and rational since the end of the Civil War when there was a dramatic increase in population, immigration, and crime rates (Thomas III & Leo, 2012). Since the middle of the 19th century, the population of almost every city has grown substantially, which triggered more crimes and conflicts. Simultaneously, considerable numbers of immigrants flooded into America from the end of the 19th century to the early 20th century, leading to more conflicts partly because they were perceived by Americans as the “*other*” and somewhat because immigrants of that time brought some organizational crimes with them (Hatton & Williamson, 1998; Nugent, 1992). In addition to the factors mentioned above, racial prejudice and the damaged legal and social order in the United States since the end of the Civil War also contributed to the significantly increasing Americans' fear of crime (Thomas III & Leo, 2012: p. 116). As stated by Friedman (1986: p. 589), one “*vexed and difficult subject*” during the 19th century was the crime rate, and “*violent crime, particularly in the cities, becomes less tolerable in an interdependent, industrial society.*”

The more dangerous cities, the increasing crime rate, and the indifference to people's rights and lives drove people to solve crime problems eagerly and quickly. The government viewed it as necessary to emphasize crime control rather than power restriction, and the confession system was thus changed to meet the nation's demands (Packer, 1964). More judges started to recognize the utility of admitting confessions in convicting the offenders and safeguarding the public from crime and deviation. For example, the Supreme Judicial Court of Massachusetts stated in the case *Commonwealth v. Preece* (1885) that persuading the defendant to tell the truth would not be decided as an inducement for a confession. Also, in the 1896 case of *Wilson v. United States* (1896), judges admitted the accused's confessions, although the accused was not warned that he need not answer, or the statement might be utilized against him, and this was related to the credibility of what the accused said.

In 1904, the celebrated law professor Wigmore published his treatise on evidence law and cited many cases where confession obtained through exhortation had been admitted (Wigmore, 1904). Since then, the Hawkins-Leach dictum that excluded confessions obtained by methods that may influence the accused's voluntariness was despised and declined. Wigmore's text became prevalent and gradually influenced the American courts' attitudes toward admission. For example, in 1929, the Oregon Court expressed that “*society is at war with crime*” in *State v. Green* (1929). Then in 1934, the Wisconsin Supreme Court was further required to consider the national interests when deciding the reliability of a confession in the case of *Pollack v. State* (1934). In the second edition of Wigmore's treatise on evidence published in 1923, he cited about 50 cases to prove that the confession obtained through the exhortation could be admissible (Wigmore, 1923).

However, the sense of crime control went so far away that the government al-

lowed the “third-degree” interrogation methods, such as force and coercion, to be used to obtain confessions of suspects whom the police believed guilty and dangerous (Thomas III & Leo, 2012). The fearful Americans even condemned the effectiveness and necessity of the “third degree” by stating that the police had to do it. It was the price society shall pay for its stability and security.

3.3. The 1940s-the End of the 20th Century: Miranda Changes the World

In the 1940s, “the third degree” primarily disappeared due to the decreasing crime rate, improved economy, and the occurring scientific interrogation methods (Carte & Carte, 1975). There was a recognition shift that using “third-degree” methods might not be necessary in ordinary cases and might damage the police image. For example, in 1940, Police Lieutenant W. R. Kidd suggested the third degree should “never be used by police” for it may not “produce the truth,” and was concerned that the public may have “shattered” perceptions of the police once they were informed knowledge on the third-degree (Kidd, Nixon, & Reid, 2009). Accordingly, police professionalism reform was raised to push the police to obtain confessions through the due interrogation process (Leo, 2009). Meanwhile, the Court excluded many admissions, holding that the police interrogation procedure violated “due process.” In the famous cases of *Brown v. Mississippi* (1936) and *Blackburn v. Alabama* (1960), the court held that confessions extracted by coerced violence violated the “due process of law” provided in the Fourteenth Amendment (1868) and should be excluded during the conviction. The Fourteenth Amendment requires all US states to provide “due process of law” before they “deprive any person of life, liberty, or property.” According to this provision, a defendant could appeal to the United States Supreme Court, claiming that the confession they admitted was not voluntary due to violating the “due process of law”.

The “due process” revolution also promoted the privilege against self-crimination in the Fifth Amendment finally applied in all the states. In the trial of *Malloy v. Hogan* (1964), the Supreme Court held that the due process clause of the Fourteenth Amendment contained the “privilege against compelled self-incrimination” in the Fifth Amendment. For the Fourteenth Amendment was, of course, binding on all the states in the United States, the privilege stipulated in the Fifth Amendment was thus applicable to all the states in the United States. Since the principle of “privilege against self-incrimination” was applied in all states under the “disguise” of due process, more attention was attracted to the effective implementation of the privilege, which triggered the Miranda rule’s final establishment in the United States in 1966. It can be said that the Miranda rule was established under the significant impact of the “due process” revolution (Bradley, 2016).

On March 13, 1963, Ernesto Miranda, charged with kidnapping and raping an 18-year-old girl, signed a confession after about two hours of interrogation. However, no police informed him of the right to remain silent and counsel be-

fore the interrogation or told him that the court would utilize his confessions against himself. Then in 1966, the case was suited to the US Supreme Court, and Chief Justice Earl Warren held that:

“There can be no doubt that the Fifth Amendment privilege is available outside of criminal court proceedings and serves to protect persons in all settings in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves” and a defendant “must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.”

This landmark case of *Miranda v. Arizona* (1966) guaranteed the implementation validity of the “privilege against compelled self-incrimination” of the Fifth Amendment and “the right to counsel” of the Sixth Amendment. Since then, the right to silence, constituted by the Miranda rule and the Fifth Amendment privilege, was finally established in the United States. It aims to guarantee “voluntary” confessions through resisting coercion, inducement, and reward during the interrogation, warning suspects of the right to silence and counsel and allowing no adverse inference drawn from suspects’ silence.

3.4. 21st Century: The Right to Silence in Modern USA

Although the Miranda rule pushed the protection of defendants’ rights to an extreme, it inevitably has certain disadvantages. For example, the Miranda rule may protect those dangerous criminals who aim to damage public and national security. Thus, since the end of the 20th century, the Miranda warning rule provided some exceptions. The court can still admit the suspect’s confessions as reliable and voluntary even if the police fail to inform the warning rule. The Supreme Court, in the case of *New York v. Quarles* (1984), established one of the exceptions by holding that the Miranda rule must yield in “a situation where concern for public safety must be paramount to adherence to the literal language of the prophylactic rules enunciated in *Miranda*.” Later in the *Pennsylvania v. Muniz* (1990) case, the Supreme Court held that such biographical information as name, address, height, and weight could be admissible even though there was no warning of the Miranda rule and no waiver of the rights.

Given the Miranda rule’s apparent disadvantage that may exclude some dangerous offenders’ voluntary admissions, the US Congress attempted to limit its validity by legislating to admit some voluntary admissions without warning the Miranda rights. Nevertheless, the US Congress’s attempt finally failed. In *Dickerson v. the United States* (2000), the Supreme Court reiterated that the Miranda rule was a constitutional decision that Congress had no authority to pass legislation to replace. It thus, based on “stare decisis,” refused to overthrow the Miranda rule. However, the reiteration has not continued too long. On June 17, 2013, in *Salinas v. Texas’s* (2013) ruling, the US Supreme Court held that “a suspect who stands mute has not done enough to put police on notice that he is re-

lying on his Fifth Amendment privilege” and that one’s “*constitutional right to refuse to answer questions depends on his reasons for doing so, and courts need to know those reasons to evaluate the merits of a Fifth Amendment claim.*” Since then, an individual must explicitly invoke the Fifth Amendment privilege before being arrested; otherwise, selective silence could be utilized in court against them.

The confession system in the U.S. encountered several stages but still concentrated on the right to silence, which was initially applied to a few states and finally applied to the entire country. The right to silence has been the fundamental right of the defendant or the suspect in judicial procedures, and the defendant or suspect has the free will to confess or not. Furthermore, the warning requirement initially implemented in several states was finally developed as the well-known Miranda warning rule performed in the whole United States. Investigators are required to inform the accused of the right to remain silent before the interrogation and no adverse conclusions will result from the defendant’s silence. More importantly, the police are not allowed to induce the accused to confess with interest or a reward. Although the accused or the suspect can still voluntarily and truthfully confess, there is no clear leniency provision for the voluntary confession.

4. Evolution Path of “Leniency to Those Who Confess” in China

In contrast to the American confession system emphasizing the suspects’ “right” to silence, the Chinese confession system emphasizes and persuades the suspects to fulfill the “obligation” to confess with the reward of lenient punishment, which has been fully manifested in the long historical trajectory.

The voluntary confession system originating from the Tang Dynasty was continued and strengthened during the subsequent dynasties, though no breakthrough was seen. The criminal code of the Song Dynasty (AC 960-1279) (Song Xing Tong), inheriting the Tang Code, stipulated that voluntary surrender referred to both voluntary confessions before and after the authority discovered the crimes, despite the different sentence mitigation levels; the criminal code of the Ming (AC 1368-1644) and Qing (AC 1636-1912) Dynasties slightly supplemented Tang and Song’s provisions on voluntary surrender (including voluntary confession), such as adding limitations on the time of the voluntary confession (Zhou, 2004). During the end of the Qing Dynasty, the Self-Strengthening Movement (c. 1861-1895), also known as the Western Affairs Movement (yang wu yun dong), was in full swing. The catchword “shi yi chang ji yi zhi yi,” raised by Wei Yuan, means learning the West’s advanced technology to resist Western powers’ invasion. It was then developed as the “Chinese essence and Western utility (xi xue zhong yong),” meaning learning Western technology to advance modernization. Though the Movement dramatically promoted the modernization of the Qing Dynasty’s industry and military, little evidence was found on the westernization of the legal statutes, and the Chinese confession system re-

mained dominated by Confucianism (Liu, Zhao, Xiong, & Gong, 2012).

4.1. 1912-1949: The Voluntary Surrender and Voluntary Confession during the Republican Era

Since the Republic of China (ROC)'s founding in 1912, China entered the war era when the regime changed rapidly. Though different governments promulgated them, provisions on voluntary surrender and voluntary confession during that period appeared stable and little altered. Voluntary surrender and voluntary confession systems remained mixed and not independent of each other, and the provision on leniency punishment was still preserved. For example, the Provisional New Criminal Code, mainly compiled under the guidance of a Japanese legal expert Okada Asataro, was promulgated by the Beiyang Government and implemented in 1912 (Yang, 2009). It stipulated that defendants who voluntarily surrender and confess to the authorities before their offense is discovered shall have the original punishment reduced by one degree (Rickett, 1971). Then, the Nationalist Government promulgated the 1928 and 1935 Criminal Code of the ROC, which included similar statements on voluntary surrender and voluntary confession to the 1912 criminal code (Rickett, 1971). Communist-controlled China (1927-1949), established by the Chinese Communist Party (CCP), also stipulated provisions for the confession system. The Regulations on the Punishment of Counterrevolutionaries of the Chinese Soviet Republic promulgated in 1934 stated that those who voluntarily surrendered or confessed shall be entitled to lenient punishment (Thornton, 1974). Regulations of the Border Region governments were no exception. For example, the 1939 "Provisional Regulations on Punishment of Corruption" promulgated by the Shaanxi-Gansu-Ningxia Border Region Government stated that those who had committed the crimes of this regulation but surrendered before being discovered should be entitled to the mitigated or exempted punishment (Shaanxi Provincial Archives Bureau, 2010).

Though requirements for the voluntary surrender and voluntary confession system during the ROC were the same as that in imperial China, the jurisprudence lay in not only the traditional Confucianism but also the idea of the purpose of criminal penalty raised by the German legal scholar Franz Eduard Ritter von Liszt (1851-1919). According to von Liszt (1883), criminal punishment's goal was not for retribution but special prevention, including deterrence, rehabilitation, and societal protection. Liszt's punishment theory coincided with Confucian values and constituted the cultural contexts and theoretical basis that determined the Chinese confession system during the Republic era. For example, Lei Jingtian, a senior general of the People's Liberation Army, pointed out in 1941 that: "*The purpose of punishment is not to retaliate, to make prisoners opposed to the government, but to rehabilitate them to the normal life... For this, we have treated prisoners by implementing tough and leniency policies such as education, probating, and persuasion*" (Han, 2004: p. 379). In addition, the 1942 Criminal Law Draft (Preliminary) also emphasized to application of education and probation, rather than intimidation, revenge, personality damage,

and physical pain, to educate criminals to change their bad habits and train them to be good persons who can get well with the society (Shaanxi Provincial Archives Bureau, 2010).

4.2. 1949-1978: The Early 30 Years' Development of the Voluntary Confession

Since the CCP established the People's Republic of China (PRC) in 1949, voluntary surrender and voluntary confession have become independent. The provision on voluntary confession has been officially independently stipulated in the statutes and regulations. For example, Regulations on the Punishment of Corruption of the People's Republic of China promulgated by the Chinese government on April 21, 1952, provided that thoroughly confessing of guilt after the offense had been discovered was one of the circumstances that can be rewarded with lenient, mitigated, suspended punishment, or exempted from punishment (Li & Xie, 1997). During that time, Criminal policies, consistently demonstrating the social focus, needs, and contexts, were dominant guides for coping with crimes (Yang & Deng, 2000). Under the different criminal policies, the confession system was provided differently.

In the 1950s, due to the unstable regime, the criminal policy of "combining suppression with leniency" inherited from the revolutionary era still worked with "suppression" as the focus. It has played a significant role in combating crimes and maintaining stability, especially in repressing the counter-revolutionaries in the early days (Li & Xie, 1997; Yang & Deng, 2000; Zou & Wang, 2000). The idea of "suppression" was mainly influenced by the policy of severe penalties in the Soviet Union (He, 2002). After the "Great October Socialist Revolution" in Russia, to consolidate the new socialist regime, harsh punishments resorted to external enemies committing destruction and internal personnel engaging the corruption. For instance, in 1918, at a forum on judicial cases concerning corruption and bribery by the Central Committee of the Communist Party of Bolsheviks, Vladimir Lenin emphasized shooting the bribe instead of giving a jokingly weak and lenient sentence (He, 2002). His ideas became the basis for severe penalties applied in Soviet judicial systems. Given the analogous situation that the fierce class struggled during the PRC's early years, the Chinese government quickly acknowledged and absorbed Lenin's thoughts as the guiding ideology to combat hostile forces and counter-revolutionaries (He, 2002).

Influenced by the criminal policy focusing on "suppression", Chairman Mao first proposed in 1951 the confession policy of "leniency to the majority, severity to the minority; leniency to those who confess, severity to those who resist" (*duoshu congkuan, shaoshu congyan; tanbai congkuan, kangju congyan*) and the "minority" Mao mentioned referred to counter-revolutionaries (Mao, 1977). Five years later, Dong Biwu, one founding father of the PRC, reiterated such confession policy in the Report on the Issues of Eliminating All Counterrevolutionaries (Li & Xie, 1997). More emphasis was placed on the "severity to those who resist" for combating counter-revolutionaries.

With the stabilization of the state regime, the criminal policy centered on “repression” has changed to “combining punishment with leniency,” which requires that counter-revolutionaries be treated equally with the other criminals (Lu & Liu, 2011). In September 1956, Liu Shaoqi, as the representative of the Central Committee of the CCP, made a political report at the 8th National Congress of the CCP, emphasizing imposing the policy of “combining punishment with leniency” to both the counter-revolutionaries and other criminals and stating that anyone who confessed, repented, and had meritorious behaviors should be entitled to a lenient treatment. Luo Ruiqing (1956), the first Minister of Public Security, highlighted the new criminal policy in his “Main Situation and Some Experiences of China’s Anti-Rebellion”. The new criminal policy promoted the criminal confession policy shifted to “leniency to those who confess, severity to those who resist.” Furthermore, “leniency to those who confess” was applied equally to all the offenders, including those counter-revolutionary offenders.

4.3. 1978-1996: Decisions, Notices, and Other Regulations on Voluntary Confession

Since 1979, the focus of the Chinese government has changed. The 3rd Plenary Session of the 11th Central Committee of the CCP held in 1978 switched on the “reform and opening up,” which marked a shift from a planned economy to a market economy. Since then, the Chinese economy has developed rapidly, and more people have been eager to achieve material success with less care of the laws, resulting in a dramatically increasing crime rate (Liu, 2005; Liu & Messner, 2001). The legal system at that time could not meet the development requirement and needed considerable alteration. Hence, the Chinese legislature adopted the first CCL (1979) and the first CCPL in 1979 and added the criminal policy of “combining punishment with leniency” into the New CCL (Lu & Liu, 2011; Yang & Deng, 2000). Article 64 of the 1979 CCPL stipulated that: “*The defendant shall answer the investigatory personnel’s questions truthfully, but he shall have the right to refuse to answer any questions that are irrelevant to the case.*” It established the confession obligation of the defendant, who may refuse to answer questions irrelevant to the case, but must answer questions related to the crime.

To persuade the implementation of the confession obligation, “leniency to those who confess” was provided in a variety of decisions, notices, and regulations. For example, in 1984, the Supreme People’s Court (SPC), the Supreme People’s Procuratorate (SPP), and the Ministry of Public Security (MPS) issued “An Answer to the Current Application of Law on the Handling of Voluntary Surrender and Relevant Issues”, providing that whoever confessed their crimes shall be entitled to the lenient punishments and the magnitude of the leniency shall be determined by the specific circumstances (Li & Xie, 1997). After that, the 1989 “Notice on Corruption, Bribery, Profiteering, and Other Criminals must Voluntarily Surrender or Confession within the Deadline” promulgated by the SPC, and the SPP also stipulated such provisions. Notwithstanding, “severity

to those who resist” remained and mainly subjected to offenders damaging the economic prosperity. According to Deng Xiaoping’s statement in 1989 (Deng, 1989), the government had to distinguish between right and wrong, take facts as basis and laws as criteria, and abide by the rule of “leniency to those who confess, severity to those who resist.”

4.4. 1996-2011: Increased Attention to Human Rights

Since the end of the 20th century, China has achieved significant economic progress under the guidance of the “reform and opening up” policy. The government started to bring attention to human rights. For example, the Chinese government accessed the “International Covenant on Civil and Political Rights” in 1998, promoting a growing recognition of human rights (Human Rights Watch, 2013). Additionally, in 2004, the “State Respects and Safeguards Human Rights” statement was written into the Chinese Constitution. Promoted by such a trend of human rights protection, the criminal confession policy “severity to those who resist” was criticized for deemphasizing human rights (Liu, 2000; Yin, 2000). Despite a vital component of the Chinese confession system during the second half of the 20th century, it has gradually disappeared since the end of the 20th century, which seems to give an illusion that the right to silence can be implemented in China, but it was not the case. Let’s see a funny story. In August 1999, the People’s Procuratorate of Shuncheng District, Fushun City, Liaoning Province, China, launched the “zero statement rule,” which was considered by the public as the first implementation of the “right to silence” in China. However, the Shuncheng Procuratorate denied the saying and emphasized that the rule was provided to push the Procuratorate to minimize reliance on confessions to the least rather than to allow the offender to keep silent (Cui, 2002). Encouraging offenders to make confessions was still a premise on which no offenders could be compelled to make statements. The offender’s confession obligation remained during this period. Like the 1979 CCPL, the CCPL (1996) also includes a provision in Article 93 about offenders’ obligation to answer all questions relevant to the crime. Remaining silent might be judged as a bad confession attitude, that is, should the accused refuse to answer an inquiry relevant to an alleged crime, the judge has the discretion to aggravate the sentence considering their resistance as a bad confession attitude (Chen, 2014).

4.5. Since 2011: “Leniency to Those Who Confess” vs. “Privilege against Self-Incrimination”

The new ideological discourses that emerged in the 21st century emphasized relative tolerance and harmony (Hu & Dai, 2014). In October 2006, the Sixth Plenary Session of the 16th Central Committee of the Communist Party formally adopted the “Decision of the Central Committee of the Communist Party of China on Some Important Issues concerning Building A Harmonious Socialist Society”, which emphasized the criminal policy of “combining leniency with rigidity” (Liu, 2008). Then in 2010, the SPC (2010) issued “Some Advice on Im-

plementing the Criminal Policy of Combining Leniency with Rigidity”, stressing the policy’s important role in “*preventing and reducing crimes, eliminating social contradictions and maintaining social harmony and stability to the largest extent*” and the policy’s general requirements of “*be lenient if the crime is not serious in nature and has produced little social harm, the defendant has confessed and shows repentance and lenient punishment is better for social harmony and stability.*” Under this criminal policy, “leniency to those who confess” was encouraged and even officially incorporated into the [CCL \(2011\)](#) (Article 67). To guarantee that defendants know about the leniency provision, the [CCPL \(2012\)](#) (Article 118) requires judicial officers to inform defendants of this rule, providing that: “*when interrogating criminal suspects, investigators shall inform the criminal suspect of the legal provisions allowing for leniency for those who truthfully confess their crimes.*” Such a provision promoted the Chinese “leniency to those who confess” to the next level, where the investigators should warn the defendants of the leniency provision.

In addition to this, the [CCPL \(2012\)](#) presents another breakthrough, that is, formally providing the defendant’s privilege against self-incrimination. Article 50 provided that: “*It shall be strictly prohibited to extort confessions by torture, gather evidence by threat, enticement, deceit, or other illegal means, or force anyone to commit self-incrimination.*” It is the first time that the privilege against self-incrimination appeared in Chinese domestic laws, on which great expectations have been placed. Nevertheless, this breakthrough provision seems to be reduced to a piece of words on paper, and Chinese people may find no effective implementation of the privilege in practice to date.

Since 2012, more detailed provisions on the leniency system have been stipulated. For example, the “[Guiding Opinions of the Supreme People’s Court on Sentencing for Common Crimes](#)” (2013) quantitatively guides the judges on how to sentence the offenders who have confessed. Though it was revised in 2017 and 2021, provisions related to the mitigated sentence subject to confession were not changed. Simultaneously, in 2018, the revised [CCPL \(2018\)](#) provided in the second paragraph of Article 120 that, investigators shall inform suspects of their procedural rights, of the legal provisions about lenient sentences for those who truthfully confess, and of the provisions about the leniency system for pleading guilty and accepting punishment (*renzui renfa congkuan*), which marked the establishment of China’s plea bargaining system and meanwhile strengthened the implementation of the “leniency to those who confess” in China.

In summary, Chinese “leniency to those who confess” has developed from a criminal policy to being officially stipulated in the law that is well implemented in nowadays judicial practice. Despite some challenges, its power and influence have continuously strengthened in the historical trajectory, making it the most distinctive and essential feature of China’s criminal confession system.

5. Conclusion

As one of the most important criminal justice systems, the confession system is

closely related to the defendant's rights and interests. The improvement of the confession system is of high importance in the defendant's, and even the public's, perceived justice of the criminal justice system. Though the confession systems in the world are gradually integrating, there are still distinctions resulting from the cultural features that have represented the different perspectives of criminal justice and the public's different expectations of the criminal justice system. Since the privilege against self-incrimination was provided in China in 2012, controversy over the Chinese traditional confession system and the right to silence from Western countries, especially the United States, has become more intense. As for the confession system in the United States, its characteristic is the privilege against self-incrimination (then developed into the "right to silence"), which stresses that whether to confess depends on the suspect's or the defendant's will, and nobody can be forced into self-incrimination. Regarding the traditional Chinese confession system, it features "leniency to those who confess", which emphasizes the confession obligation and encourages such obligation with the reward of a lenient sentence. Like the "right to silence" has been ingrained in Western countries and Western persons for a long time, "leniency to those who confess" does the same in China as well as in Chinese persons' brains. A comparative analysis of these two from a cultural and historical perspective gives a strong and excellent illustration of the differences in systems and the implications of policy for proper system reform.

Criminal justice cultures gave birth to criminal justice systems, which, in turn, expressed and realized the unique criminal justice cultural values. Confucian ideologies that emphasize harmonious relationships with others have long been the foundation of traditional Chinese criminal justice culture. People born and growing up within such a criminal justice cultural environment view the obligation to confess system or the "leniency to those who confess" as a necessity to building a harmonious society and expect this traditional system to continue functioning. Hence, despite the challenging evolution influenced by the specific social contexts, the "leniency to those who confess" maintains an essential part of the Chinese confession system. Like the evolution path of the "leniency to those who confess" in China, that of the privilege against self-incrimination or the "right to silence" in the United States also encountered several shifts, but it remained and dominated due to its close association with the individualistic justice culture concentrating on individual rights and liberty. However, its power and influence, strong in Western countries dominated by individualistic justice, may be undermined within the Chinese context.

It suggests that caution should be exercised once attempting to substitute the traditional Chinese system of "leniency to those who confess" with the "right to silence" from the West. The Chinese characteristics, especially the local perspectives including the local cultural origins and local historical practice, should be considered when deciding an appropriate direction for the Chinese criminal confession system.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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