

Common Error No. 55 [1]

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55. "When people are accused of serious crimes, they should have no right to remain silent."

The reason why people were allowed to remain silent was that one of the law's principles maintained that no person could be forced to testify against themselves. It is a defendant's choice whether to go into the witness box and face cross-examination; they cannot be forced to. The right to silence is part of that principle, and no jury was allowed to count it against an accused if that right were exercised.

The principle is a serious disincentive to torture. If people cannot be forced to make statements or to give evidence, the authorities have much less reason to use torture to make them incriminate themselves. The police in many countries, including ones where torture is banned, have used bullying, intimidating techniques, and what amounts to psychological warfare to secure 'confessions' of dubious value ? people will do anything to stop the oppression. The right to silence was an important part of protection against that kind of treatment. If people cannot be required to testify against themselves, it throws suspicion on 'confessions' which might have been extracted under duress.

This right to silence has now been modified to allow prosecutors to invite juries to draw inferences about it. In other words, if people choose to remain silent, it may count against them in court. It crucially modifies the presumption of innocence which has been a cornerstone of justice. By remaining silent, an accused could demand that the prosecution must prove their guilt. Now a jury might be asked to hold it against an accused that they did not choose to prove their innocence.

It also increases police powers to subject innocent people to questioning. Even if they have done nothing, a refusal to answer police questions might subsequently be used against them in some future charge laid against them.

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