- PACE provides adequate protections therefore ‘the rule cannot...’ be supported by an argument referring to torture. No one supposes that in present-day England a permission to question an accused person... would result in ill-treatment from him.’ (Glanville Williams).

- BUT: A v Home Secretary [2005] UKHL 71: evidence procured by torture. Counter-productive: pressure to obtain confessions would reduce if silence could be used as evidence

- Glanville Williams – ‘if dangerous criminals cannot be questioned before a magistrate or judge, the frustrated police may resort to illegal questioning and brutal ‘third degree’ methods in order to obtain convictions’.

DEBATE ABOUT REFORM

Inference: a conclusion reached based on evidence and reasoning.
- Criminal Law Revision Committee, June 1972: Recommended inferences to be drawn from silence. However this has not been enacted in England and Wales.
- Phillips Commissions recommended no alteration of the right.
- R v Alladice (1988) 87 Cr App R 380, LJ Lord Lane – ‘The balance of fairness between prosecution and defence cannot be maintained unless proper comment is permitted on the D’s silence in such circumstances. It is high time that such comment should be permitted...’

CJPO act was produced to stop ‘ambush offences’. Ambush offences... usually in the crown court. 93% of hearings are heard in the magistrates court and 7% heard in the crown, so 7% in the crown court. 20% of these 7% was an ‘ambushed offence’. D says nothing on arrest or in detention and the prosecution present their case, and now the D gives their evidence and they bring up something, which they withheld previously usually for alibis. It was putting pressure on the crown to test the alibis as soon as possible. 1911 with judge’s rules brought in the caution.
S.34 puts a ‘middle bit in’ “but it may harm your defence if you do not mention when questioned something which you then later rely on in court”. Was called the ‘new caution’.
Did that middle bit effect the use of Article 6?

Cowan: test said that it violates Article 6, the CA looked at s.34 and said mere silence is not enough. The Crown must bring other evidence is needed for a successful conviction. Silence cannot be the only factor, otherwise they will not be found guilty.

Burden of proof still remains on the D, unless they come up with their own defence e.g. insanity.

They must know at the time of the interview.

CA case said that you should also look at the characteristics of the D, their age, their experience in the police station, mental capacity, legal advice, vulnerability etc ...

It is viewed that a solicitor advising a client to say ‘no comment’ is bad practice and is viewed as poor legal advice.