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Analysis

Japan Needs a Real Right to Silence

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Introduction

Japanese police claim that a T-shirt is dangerous if it says "I refuse to be interrogated" (*torishirabe o kyohi shimasu*). This, anyway, is what police in Osaka said when they took such a shirt from a middle-aged man and stored it with other "dangerous items" (*kikenbutsu*) in the police station where he was being interrogated. The suspect was given the shirt by defense lawyer Matsumoto Ado, who said she hoped it would help her client while he was enduring interrogations that are allowed to continue after the right to silence has been invoked. The suspect believes it helped. "When I wore it," he said, "I was able to remain resolutely silent" (*Asahi Shimbun*, 2024f).

Police say the T-shirt had to be confiscated because of the "psychological influence" it could have on other criminal suspects, but what they really fear is the threat posed to their interrogation practices by the Right Against Interrogation Society (RAIS, *torishirabe kyohiken o jitsugen suru kai*), an organization founded by defense lawyers in 2024, which has distributed the shirts throughout the country in an effort to raise awareness of the reality that Japan's right to silence is as empty as a book of blank pages (see RAIS at https://rais2024.jp/). Prosecutors fear RAIS too, with some believing it could turn Japan into a "paradise for criminals" (*hanzaisha no tengoku*) (*Sankei Shimbun*, 2025). For them, "the right to silence is a cancer" (Sasaki, 2000), and if an offender does not talk, "the truth of the case will never become clear," the offender will escape punishment, and crime will proliferate (Johnson, 2002: 243; *Asahi Shimbun*, 2025d).

Members and supporters of RAIS believe the right to silence includes a right to refuse interrogation (Maeda, 2025). Their belief reflects a principle taken for granted in other developed democracies, that if you exercise your right to silence, questioning by your interrogators must cease. However, in this respect, suspects in Japan are like Alice in Wonderland, where common sense is turned upside down. In another recent case, a suspect followed the advice of his RAIS attorney, invoked his right to silence, and refused to leave his jail cell. As documented in a video taken by police (*Asahi Shimbun*, 2025c), he was strapped into a wheelchair and pushed to the interrogation room by his keepers. The man went on to file a lawsuit against the Japanese state for violating his dignity by "treating him like a thing" (*Asahi Shimbun*, 2025a).

I have been studying Japanese criminal justice for more than 30 years, and I have written many works that recognize its strengths, including a low rate of incarceration (Johnson and Shiroshita, forthcoming), and prosecution practices that tend to be cautious about using the criminal sanction (Johnson, 2002; Johnson, 2022). However, there are also serious problems in Japanese criminal justice, and one of the most important is the so-called duty to endure interrogation (*torishirabe no junin gimu*), a legal doctrine that requires suspects who are being interrogated to submit to questioning even after they have invoked their right to silence. This duty has no sound basis in law. Judges have created and maintained it through interpretations that are friendly to law enforcement and indifferent to the rights of suspects and defendants (Takano, 2021: 118–163).

The duty to endure interrogation often results in interrogations that are long, coercive, and manipulative, and in dossiers (*kyōjutsu chōsho*) composed by police and prosecutors that fail to reflect the truth. Occasionally, a problematic interrogation is publicized, and investigators are rebuked for their wrongdoing. This is good so far as it goes, but it misplaces the main responsibility for this pernicious doctrine. In Japanese criminal justice, judges have the last word, and they have turned clear language in the Constitution and the Code of Criminal Procedure into a precept that allows police and prosecutors to overbear the will of criminal suspects (Johnson, 2025a; Johnson, 2025b). The most critical misjudgment is their refusal to let suspects refuse to be interrogated. In case after case, this judge-made doctrine functions as a broad "yes you may" to police and prosecutors who want to make suspects talk.

Judicial responsibility

In some respects, the law-on-the-books about the right to silence in Japan is "strikingly similar" to laws in the United States and other developed democracies (Foote, 1991: 416). The most fundamental principle is found in Article 38 of the

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Constitution, which states that "No person shall be compelled to testify against himself." The imperative could not be clearer. There is also plain language in the Code of Criminal Procedure (CCP) (Foote, 1991: 426). Article 198 states that "In the case of the interrogation . . . the suspect shall, in advance, be notified that he/she is not required to make a statement against his/her will." Similarly, Article 319 of the CCP states that "Confession under compulsion, torture, threat, after unduly prolonged detention or when there is doubt about it being voluntary may not be admitted as evidence."[1]

But if Japanese law gives suspects and defendants a right to remain silent, the judge-made "duty to endure interrogation" hollows it out. Of course, there is often a gap between what the law says and how it is interpreted and enforced. In the United States, for example, speed limits seldom mean what they say, and the right to trial by jury has been all but swallowed by plea bargaining (Edwards, 2006). However, in Japan there is an immense gulf between the right to silence in law and the right to silence in reality. The elevated language of the law books has been turned into an empty pretense by giving judicial permission to police and prosecutors who would bulldoze suspects into submission (Takano, 2021; Nishi, 2025).[2] These judicial interpretations, similar to many others in the jurisprudence of Japanese criminal justice, are highly enabling of the interests of law enforcement and disabling of the rights of suspects and defendants (Miyazawa, 1992). Indeed, the duty to endure interrogation may well be the most striking illustration of the longstanding tendency of Japan's judiciary to show great deference to police and prosecutors. From restrictions on bail and the right to counsel to rules about hearsay and the disclosure of evidence to the defense, judges in Japan have created numerous loopholes and legal fictions that narrow the legal protections for individuals while expanding the authority of police and prosecutors to "make crime" through their investigations (Miyazawa, 1992; Foote, 2010).

The most frequently cited justification for the duty to endure interrogation is a decision made by Japan's Supreme Court in 1999, the central subject of which is the right of suspects to communicate with defense counsel during an investigation. While ruling on that issue, Japan's highest court said suspects have no right to refuse questioning, and it also claimed this conclusion is so "obvious" that no explanation is needed. In the Court's words:

> The appellant argues that since Article 38, paragraph 1 of the Constitution provides for the right against self-incrimination, suspects who are arrested or detained are under no obligation to endure interrogation, and therefore, the qualifying proviso of Article 198, paragraph 1 of the Code of Criminal Procedure is unconstitutional, if it provides for the duty of the suspect to endure interrogation; if the suspect chooses to do so, the interrogation has to be suspended any time, and therefore, interrogation of the suspect cannot serve as a ground for restricting the right to consult and communicate with the defense counsel. However, the interpretation that the suspect in custody has a duty to be present for interrogation and to stay for interrogation does not necessarily mean that the suspect is deprived of the right against self-incrimination. This is obvious, and thus, the appellant's argument in this respect is without premise and cannot be accepted . . . [B]y what means the prohibition against forcing a statement of self-incrimination should be effectively guaranteed is basically left to the legislative policy, based upon the actual practice of investigation and other matters (Supreme Court of Japan, 1999).

Instead of breathing life into the right to silence, as courts in other developed democracies have done (see below), Japan's Supreme Court throttled it and then passed the buck for the legicide by stating that this is a matter for the Diet to decide. The Court's decision is vacuous, and so are other decisions that hold that suspects have a duty to endure interrogation (Takano, 2021: 118–163).

Interrogation abuses

With few exceptions, judicial decisions about interrogation in Japan are exercises in abstraction that pay little attention to the realities of human interaction in the closed and secretive space of the interrogation room. Their expansive interpretations of the duty to endure interrogation enable and encourage coercive, deceptive, and denigrating practices that lead to false confessions, wrongful charges, and violations of human dignity, as a spate of recent cases show (*Asahi Shimbun*, 2024e).

The most remarkable case involves attorney Eguchi Yamato, who was arrested and charged in 2018 and subsequently convicted of inducing a client to make false statements about a car accident (he was given a suspended sentence of imprisonment, which made him ineligible to practice law). Eguchi then filed a civil lawsuit, and in 2024 the Tokyo District Court ordered the national government to pay him 1.1 million yen (US $6,700) in compensation for interrogations he endured for 56 hours over the course of 21 days (Kanno, 2024). Yet the same court dismissed Eguchi's claim that the prosecution had acted illegally by continuing to interrogate him after he had invoked his right to silence. Underlying this conclusion is the view that criminal investigations would be hindered if interrogation must cease as soon as a suspect invokes the right to silence. In other words, Japanese courts interpret the right to silence to mean merely the ability to assert the right, without guaranteeing an environment where one can readily remain silent.

In Eguchi's case, silence was a major achievement. Throughout his interrogations, he meditated like a monk while being berated by prosecutor Kawamura Masashi. Among other contemptuous comments, Kawamura called Eguchi "a baby" (*okochama*), "a brat" (*gaki*), and "a pain in the ass" (*uttōshii*). He wondered, "How the hell did you ever become a lawyer?" and he upbraided Eguchi for having received poor grades in science in middle school (the prosecutor somehow obtained Eguchi's transcript). Eguchi's

[1] For an English translation of Japan's Code of Criminal Procedure, see https://www.japaneselawtranslation.go.jp/en/laws/view/2056/en. For an insightful account of the history of the right to silence in Japan and analysis of its justifications and limits, see Foote (1991).

[2] Litigation against the Japanese government brought by the Kadokawa Hostage Justice Unconstitutionality Lawsuit Legal Defense Team (https://proof-of-humanity.jp/lawsuit/) states that "judicial interpretations and operations" are the root cause of "hostage justice," which is what many critics call a criminal justice system that uses pretrial detention to coerce confessions (Takano, 2021; Human Rights Watch, 2023; *Shūkan Ekonomisuto*, 2025).

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silence made Kawamura furious. Among other outbursts, the prosecutor exclaimed, "What the hell is this? Is this how you're exercising your right to silence? And what is this right to silence you're asserting? I don't get it. I mean, you don't even know, do you?" (Eguchi Yamato Interrogations, 2018; *Asahi Shimbun*, 2024a).

In 2024, Eguchi's attorneys released a video of some of the interrogation sessions, which sparked public outrage and calls for reform (https://www.youtube.com/watch?v=XArMxYdhk_U). However, in February 2025, the Tokyo High Court upheld the lower court's decision (*Japan Times*, 2025a), finding that prosecutors abused their authority by impugning Eguchi's character, while holding that suspects must endure interrogation even after they have invoked their right to silence (Sim, 2025). According to the High Court, the fact of 56 hours does not, in itself, exceed what is socially acceptable, because the longest interrogation sessions lasted only a few hours, and because there were breaks between each session. One prominent attorney called the quality of this judgment "terrible" because of its empty reasoning (author's correspondence with Nishi Yoshiyuki, February 7, 2025), and other attorneys have been similarly critical (author's interviews, May 2025). As of this writing in August 2025, Eguchi's case is on appeal at the Supreme Court, and the online platform Call4 has raised nearly 2 million yen (US $13,000) from more than 100 supporters to help fund his litigation.

In another highly publicized case, an employee of the Pressance Corporation was pressured by special prosecutors (*tokusōbu*) in Osaka to provide false testimony against his boss, chief executive Yamagishi Shinobu, who filed suit against prosecutors after he was acquitted of embezzlement in 2021, and who then wrote a book about his experiences (Yamagishi, 2023). In an unprecedented act, the Osaka High Court responded to prosecutors' decisions not to charge any of their colleagues with criminal misconduct by using the "analogical institution of prosecution procedure" (*fushinpan seikyū tetsuzuki*) to charge prosecutor Tabuchi Daisuke with "assault and cruelty by a specialized public employee," for berating the subordinate with shouts, table-pounding, and other intimidating acts that were calculated to obtain incriminating statements against Yamagishi—and that were captured on video (Osaka High Court, August 8, 2024).[3] Prosecutor Tabuchi presently works for the High Public Prosecutors Office in Tokyo, and his own criminal trial is scheduled to begin in late 2025. In March 2025, the Osaka District Court rejected Yamagishi's lawsuit for civil damages while criticizing prosecutors for using "significantly inappropriate interrogation methods" in his case (*Japan Times*, 2025b).

In a separate white-collar crime case that was investigated by special prosecutors (*tokusōbu*) in Tokyo, a company president sued the national government for coercing his confession. A video recording of the interrogation shows a prosecutor telling the suspect, "You are an antisocial force because you ignore and despise the Prosecutors Office" (*Asahi Shimbun*, 2024d). Suspects in Japan who refuse to confess or who otherwise resist the authority of police or prosecutors are often treated with similar harshness (Johnson, 2002: 199–201 and 243–275).

In Hokkaido, a mother was interrogated on suspicion of illegally confining her son, who died the day after she was arrested. In a civil suit seeking damages for being pressured to falsely confess (the mother was not charged), a video of her interrogation shows a police officer saying, "Was your son an unwanted child? Then you never should have had him. Is that all the resolve you had to raise him?" (*Asahi Shimbun*, 2024a).

In the case of Kimura Ryuji, who was charged with attempted murder and other crimes in the bombing attack against former Prime Minister Kishida Fumio, the Wakayama District Prosecutors Office disciplined one of its own prosecutors for maliciously questioning the suspect after he invoked his right to silence. Among other disparaging statements that seemed calculated to provoke Kimura into talking, the prosecutor said "recluses" from society (*hikikomori*) might be "better off dead" since there would be "no negative impact on society" (*Asahi Shimbun*, 2024c). At Kimura's criminal trial in early 2025, prosecutors sought a 15-year sentence, and the Wakayama District Court imposed a sentence of 10 years.

Countless other cases of abuse have occurred because of the duty to endure interrogation,[4] but I close this section by describing a cousin of this duty that I have observed at criminal trials (Johnson, 2013). In 2011, when I was doing research about Japan's new lay judge system, which took effect in 2009, I was astonished to watch a Chief Judge in the Tokyo District Court permit prosecutors to continue questioning a defendant named Ino Kazuo during a homicide trial in which the defendant had made it abundantly clear that he would not answer any questions. This spectacle—a prosecutor asking incriminating questions to a resolutely silent defendant in front of a panel of three judges and six lay judges—made a mockery of the right to silence. In the end, the defendant was convicted and sentenced to death, but on appeal his sentence was reduced to life imprisonment.[5] The lesson from this case is both telling and troubling. If you try to exercise your right to silence in Japan, prosecutors can still try to run you over, and judges might give them a green light.

In all of these cases, the questioning occurred while the questioners were being watched. Ino was grilled in open court, and in the other cases, the interrogations were recorded on video. This raises a disquieting question. If police and prosecutors engage in high-pressure interrogations when they are being observed, is there reasonable grounds to believe that their behavior is acceptable in the 98% of criminal cases in which there is no legal duty to electronically record interrogations?

We also need to ask *why* police and prosecutors in Japan engage in abusive interrogations. According to former prosecutor Ichikawa Hiroshi, who has written about his

[3] For more on the court-initiated process of "analogical prosecution," see Johnson, 2002: 223. For more on the democratic oversight of decisions not to charge in Japan, see Johnson, 2022.

[4] For a collection of video and audio-recorded interrogations in other problematic cases, see Innocence Project Japan at https://innocenceprojectjapan.org/hostage-justice/database/investigation-recordings.

[5] For more on Ino Kazuo's case, see the Japan Innocence and Death Penalty Information Center at https://www.jiadep.org/Ino_Kazuo.html.

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own interrogation misconduct (Ichikawa, 2012), there are many reasons (*Asahi Shimbun*, 2024c).[6] Confession is considered "the king of evidence" in Japanese criminal justice. It is easier for prosecutors to charge a suspect if the suspect talks. Police and prosecutors in supervisory positions pressure their subordinates to make suspects talk. Investigators want to find the truth and rehabilitate offenders. Legal education and training are deficient. Moreover, interrogators get angry because they believe silence and denial are cowardly. There is some truth in all of these explanations, but behind them lies a fundamental cause that is often overlooked. Police and prosecutors engage in abusive interrogations because judges have given them permission to make suspects talk.[7]

Other countries

The right to silence is better respected in other developed democracies (Sano, Nakazawa, Takano, and Cho, 2024). In the United States (US), the Supreme Court's *Miranda* decision of 1966 embedded the right to silence in the Constitution and provided a roadmap to ensure compliance with the Court's mandate. According to this ruling, if a suspect invokes the right to silence at any time, the interrogation must stop, and statements taken thereafter cannot be used as evidence. As the US Supreme Court explained,

> Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. Without the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked (Miranda v. Arizona, 384 U.S. 436).

Studies show that *Miranda* is less protective in practice than it appears to be on paper, because subsequent court decisions have weakened it, because American police convince about three-quarters of suspects to waive their right to silence, and because the *Miranda* rules legitimate deceptive and manipulative interrogation practices (Weisselberg, 2008; Leo, 2008; Kassin, 2022). Nonetheless, there is a huge gap between the meaning of the right to silence in American criminal justice and the much narrower meaning that judges have constructed in Japan.

In the United Kingdom, suspects must endure interrogation during police custody, but this ordinarily ends within 24 hours of arrest. In Japan, by contrast, suspects who deny guilt can be interrogated for dozens or hundreds of hours over the course of 10–20 days or more (Human Rights Watch, 2023; Aronson and Johnson, 2020). Suspects in the United Kingdom (UK) may also have defense counsel present at interrogation, which typically occurs only once for 2 hours or less. If police try to persuade a reluctant suspect to speak, defense counsel can stop the interrogation. More fundamentally, interrogation in the UK has undergone a remarkable paradigm shift in recent years, with the new approach reconceptualizing interrogation as a process of information gathering rather than adversarial confrontation (Kassin, 2022: 357). On the contrary, if a suspect fails to disclose relevant information during interrogation, the judge and jury are allowed to make adverse inferences, which means exercising the right to silence can be costly for criminal suspects. Adverse inferences are legally forbidden in Japan, but in practice, they are often made when suspects remain silent. Overall, the right to silence in the UK is much broader and better protected than the right to silence in Japan (Mazzone, 2016).

In Germany, suspects have the right "not to make any statement" (Article 1355 of the German Code of Criminal Procedure), and if they exercise it, the interrogation must be stopped or significantly restrained. Defense lawyers are also allowed to attend interrogations, and they routinely advise their clients not to make any statements. Many German judges say that they have never heard a case in which a suspect's statements were induced after the right to remain silent was invoked (Sano, Nakazawa, Takano, and Cho, 2024). More broadly, German criminal justice reflects a robust commitment to individual dignity, with strong safeguards for the right to silence (Mazzone, 2016: 331–335).

In France, protections for the right to silence are not as strong as in Germany, and investigators used to be given almost unfettered access to suspects who were believed to have useful information. In recent years, however, decisions by the European Court of Human Rights recognizing the rights of suspects and defendants have prompted extensive reforms in French criminal procedure. Most notably, the right to silence and the right to assistance of counsel have been so significantly strengthened that some analysts conclude the traditional French approach "has been overhauled" (Mazzone, 2016: 330). When the accused is examined under oath by an investigating judge (*juge d'instruction*), which is a crucial part of the French criminal process, "Questioning may only proceed with the consent of the accused, and such consent is only valid if it is given in the presence of the lawyer for the accused" (Mazzone, 2016: 329).

In Canada, the Supreme Court permits investigators to continue questioning a suspect who expressly invokes the right to silence (*R. v. Singh*, 2007 SCC 48), and such questioning does not violate the Canadian Charter of Rights and Freedoms unless it leads to an involuntary confession (*R. v. Oickle*, 2000 SCC 38). In this respect, Canadian law does not distinguish between suspects who simply sit in silence and those who explicitly invoke their right to silence. Both may be

[6] Ichikawa's own abusive interrogations are described in his book, *Kenji Shikkaku* (*Prosecutor Disqualified*) (Ichikawa, 2012).

[7] We also can ask why judges grant such broad authority to police and prosecutors to interrogate. Daniel Foote's (1991) seminal study of confessions and the right to silence in Japan identifies several causes and motivations, including the primacy of "truth" in Japanese criminal procedure (475), beliefs about the evidentiary function of confessions (471), the need to prove "subjective intent" for most crimes (472), the "great trust" that courts place in prosecutors (482), the rehabilitative value of confessions (484), a lack of awareness about the right to silence among the general public (468), and distinctively Japanese sensibilities about personal autonomy and trust in authority (486). As Foote (2010) has argued elsewhere, there is also the reality that many criminal court judges in Japan have a pronounced, pro-law enforcement lean (for similar views, see Kitani, 2013, and Ibusuki and Johnson, 2025). For an argument by a former prosecutor defending the duty to endure interrogation and attempting to explain "why suspects tell the truth to investigators," see Jō, 2022.

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interrogated (Lawrence, Saiter, Eerdmans, and Smalarz, 2024: 370). In some ways, the Canadian rule seems to parallel the duty to endure interrogation in Japan, and as in Japan, suspects in Canada do not have a right to have their attorney attend interrogations. However, suspects in Canada do have a right to speak with an attorney before being questioned, and interrogations in Canada tend to be much shorter than interrogations in Japan. Moreover, while there is no legislation requiring video recording in Canada, it has been encouraged by the appellate courts, and it is common in British Columbia, Manitoba, Ontario, Quebec, and some other parts of the country. For these reasons, Canada's version of the duty to endure interrogation seems significantly less problematic than the Japanese approach.

Because of Japan's colonial influence, the law on the books in South Korea resembles Japanese law in many respects, but judges and lawmakers have breathed much more life into the right to silence than have their counterparts in Japan. Most importantly, confessions obtained after a suspect has invoked the right to remain silent are inadmissible as evidence in South Korean courts, and defense attorneys have the right to attend interrogations. The result is that in law and in practice, suspects in South Korea can refuse to be interrogated (Sano, Nakazawa, Takano, and Cho, 2024).

I have compared Japan to the US, the UK, Germany, France, Canada, and South Korea. There are other countries, of course, and in some of them (China, North Korea, Russia, and the like) the right to silence is even less respected than it is in Japan. However, among developed democracies, Japan seems to stand alone in its insistence that the right to silence must coexist with a duty to endure prolonged interrogation. This dubious distinction helps explain why some foreign governments refuse to extradite persons who are wanted in Japan, as Denmark recently did when it refused to send anti-whaling activist Paul Watson to Japan to be tried for crimes of violence and trespassing (Reuters, 2024). The Danish government feared Watson would not be treated fairly in Japan's criminal justice system (Human Rights Watch, 2023).

Reform

People who are falsely accused often defend themselves with words and emotion. This seems to be human nature, and it is all the more likely if the accuser is an authority and the accusation is serious. Silence is not a natural response, and research shows that remaining silent is especially difficult for people who are innocent (Kassin, 2022). Believing that truth and justice will prevail, the innocent tend to talk, and this is the wellspring of many wrongful charges and convictions (false confessions are the leading cause of wrongful conviction in Japan; see Nishi, 2023: 152). More generally, "the duty to endure interrogation" gives police and prosecutors permission to pressure suspects into submission, regardless of whether they are innocent or not (*Asahi Shimbun*, 2024e).

The right to silence is a hallmark of fair systems of criminal justice. It ought to be a signature trait of Japanese criminal justice too, but judges have rendered it almost impotent by linking it to the duty to endure interrogation, a doctrine they have constructed and enforced, one dubious decision at a time. This needs to change, and three reforms can be recommended.

The first reform would video-record all interrogations, not (as current law mandates) just interrogations in cases that have been initiated by prosecutors or are eligible for lay judge trial, which together comprise less than 3% of all criminal cases in Japan (Ibusuki, 2024; Shihō Tōkei Nempō, 2024: 9).[8] Recording benefits all parties who value accurate fact-finding and informed criminal justice decision-making. It also advances other important goals, such as checking state power, protecting rights, and professionalizing the interrogation process (Leo, 2008: 291–305). In many cases, recording also enables police and prosecutors to process evidence more effectively and efficiently.[9] However, a recording reform would not be enough to cure what ails Japan, as shown by the recent string of cases in which abuses occurred even though the interrogations were being recorded. More fundamentally, at present, when most interrogations are not being recorded, defense lawyers already feel overwhelmed by blue-ray discs of interrogations lasting tens or hundreds of hours. They cannot even review what they already have (author's interviews, May 2025).

Second, defense lawyers should be allowed to attend interrogations (*bengoshi tachiai*), so that a suspect's right to silence can be more meaningfully asserted and protected. This permission is enshrined in European and American law, but it is rarely allowed in Japan. Under present law, the decision is left to the discretion of police and prosecutors, and leaders and policies in both organizations discourage the granting of this approval. Giving defense lawyers legal license to be present in the interrogation room is a necessary step toward realizing a real right to silence in Japan, but this reform is also insufficient because few lawyers have time to attend hours of interrogation every day for days or weeks in a row (see the seven-part series on "attorneys in attendance" in *Asahi Shimbun*, 2023).

The most important reform will strike at the root of the problem, which is the extraordinary power police and prosecutors have to overbear the will of criminal suspects. To protect against this risk, the Japanese Supreme Court needs to rethink the feeble jurisprudence it has constructed around the duty to endure interrogation (Takano, 2021). "Precedent" notwithstanding, judges should change their minds when there are good reasons to do so, and on this issue, the evidence is clear and abundant—Japan's right to silence is a fiction and a facade. The Japanese Diet can help make the right to silence real by making it clear that Article 38 of the Constitution means what it says: "No person shall be compelled to testify against himself." Ultimately, this means

[8] As explained in the text, police and prosecutors are legally obligated to record interrogations in only a small fraction of all criminal cases, but they also record voluntarily in some other cases. For example, from June 2019 (when obligatory recording began) through 2021, police recorded interrogations in a total of 34,755 cases, and nearly 80% of those cases involved voluntary recording (email to the author from a Japanese journalist, describing portions of the police report, "Keisatsu Torishirabe Rokuon-Rokuga Hōkoku Shiryō," October 24, 2024).

[9] Recording is not a panacea. Seijo University Professor of Law Ibusuki Makoto's study of the unintended consequences of recording interrogations explains how visual images can sometimes mislead legal professionals and lay participants into accepting unreliable confessions (Ibusuki, 2019).

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the right to refuse interrogation needs to be recognized and respected by judges, police, and prosecutors.

These proposals are ambitious, and we ought to be realistic about the politics of reform. Japan's Supreme Court and Diet seem unlikely to significantly strengthen the right to silence anytime soon. If and when it happens, meaningful change will be the result of "the slow, steady boring of hard boards" (Weber, 1919). The Right Against Interrogation Society is leading the movement to do this difficult work, and its membership is growing rapidly (*Asahi Shimbun*, 2025f)—far more rapidly than Japan's "Miranda Association" (*Miranda no Kai*), which never gained much traction after it was founded by attorneys in 1995 (Takano, 2002). Since then, times have changed, scandals have multiplied, and trust in prosecutors has declined (*Asahi Shimbun*, 2024b). In the first year after it was established in 2024, RAIS achieved considerably more success than its leaders anticipated, by influencing case outcomes, and by shaping defense lawyer practice in many jurisdictions (*Sankei Shimbun*, 2025). In the long run, the impacts of this nascent social movement will depend on how many ordinary people demand that judges and politicians make the right to silence real, and on how effectively they organize to accomplish that goal (Steinhoff, 2014). In this sense, "the ultimate battle is for the hearts and minds of the public" (Foote, 2014: 171).

Conclusion

I support RAIS, but I also realize that research about the right to silence in other countries raises challenging questions for the social movement that RAIS is leading. For example, studies show that in the United States, invoking the right to silence or remaining silent during interrogation makes suspects appear guilty to police, prosecutors, judges, and juries. This so-called Miranda penalty means suspects in the US often face a catch-22: "They can choose to waive their constitutional rights and face the risks inherent to speaking with investigators whose singular goal is to incriminate them, or they can remain silent and strengthen investigators' confidence in their guilt" (Lawrence, Saiter, Eerdmans, and Smalarz, 2024: 380). In effect, the Miranda penalty may convert an intended protection into a liability, "putting suspects at risk of evoking suspicion regardless of whether they decide to invoke *Miranda*, and regardless of their factual guilt or innocence" (Lawrence, Saiter, Eerdmans, and Smalarz, 2024: 380).

In Japan, too, lay people and legal professionals often infer guilt from silence (Foote, 1991; Johnson, 2002; Takano, 2021; Human Rights Watch, 2023). Reformers therefore need to ask some hard questions. When is it in a suspect's interest to invoke the right to silence? How should defense lawyers advise their clients? And if the principles espoused in *Miranda* have failed to tame interrogation practices in the United States (Weisselberg, 2008), are they a good model for reform in Japan? RAIS is now confronting these questions even as its members remain confident that the duty to endure interrogation is both harmful and hypocritical (author's interviews, May 2025).

The "duty to endure interrogation" is not natural, necessary, or inevitable. It is a pernicious legal doctrine, made by judges, tolerated by lawmakers, and welcomed by police and prosecutors. Their refusal to change it is not because the task is impossible, it is because they prefer a right to silence that is an empty shell.

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