

## Criminal justice in Japan

日本の刑事司法

Forced to confess

屈打成招

Suspects in Japanese police cells are far too vulnerable to abuse

日本监狱里的政治嫌犯极其脆弱，易受欺凌

ON THE face of it Japan's system of criminal justice looks as if its gets a lot right. Crime rates are lower in Japan than almost anywhere else—the murder rate is less than a tenth of America's. Those arrested for minor wrongdoing are treated with exceptional leniency. Less than one in 20 Japanese deemed to have committed a penal offence go to prison, compared with one in three of those arrested in America, where the average jail term is much longer. In Japan the emphasis is on rehabilitation, especially of young offenders. The rates of recidivism are admirably low, partly because the state is adept at involving families in reforming those who stray.

日本の刑事司法体系表面看来是挺公正的。日本的犯罪率比大多数国家都要低得多——谋杀率连美国的十分之一都不到。那些由于轻微违法行为而入狱的人通常会得到特殊的宽大处理。犯了刑事罪的人中只有不到二十分之一的会进监狱，而这个比例在美国则是三分之一，且刑期也比日本长得多。日本注重的是对罪犯，尤其是对年轻罪犯的改造。惯犯的比例也是极其的低，部分原因在于日本在改造这些迷失自我的人时善于融入家庭的力量。

Yet the state's benign paternalism has a dark side. The chief reason the system looks good is that Japan is a remarkably safe society. And where once police worked

closely with local communities to solve crimes, now they struggle to catch criminals. The system relies on confessions, which form the basis of nine-tenths of criminal prosecutions. Many confessions are extracted under duress. Some of those who admit guilt are plainly innocent, as recent exonerations have shown. The extraordinary lack of safeguards for suspects in Japanese interrogation cells is a stain on the whole system, failing victims as well as those wrongly convicted.

但日本家长式作风有利有弊。日本司法体系看起来运作良好，主要是由于日本是一个非常安全的社会。曾经，为了破案警民密切合作，而现在，警方想要抓住罪犯却困难重重。日本司法体系的根基依赖于招供——90%的刑事起诉案件即是如此。很多人是在胁迫之下承认了罪行。最近的无罪声明显示，在承认罪行的人中，有些明显是无辜的。日本审讯室中的嫌疑犯极其缺乏安全保障，这是日本司法体系的一个污点，也让受害者以及那些蒙冤者失望至极。

Say you did it, even if you didn't

欲加之罪 何患无辞

In a country more inclined than the West to think of itself as a big family collective, admission of guilt is often seen as the first step to readmission into society. It is also the surest route to a conviction. Prosecutors and police are thus under immense pressure to make suspects talk, and have powerful tools to encourage them to do so.

相比西方国家，日本社会更像一个集体式的大家庭，在这个国家里，承认犯罪通常被视为洗心革面重回社会的第一步。同时这也意味着定罪。日本检方和警方因此不得不在巨大的社会压力下逼嫌犯招供，而他们也有这个本事。

Common criminal suspects may be held in detention for 23 days without charge. Many have only minimal contact with a lawyer. Few interrogations are recorded, and then not in their entirety, so there is not much to stop interrogators piling in. Physical torture is rare, but sleep deprivation, which is just as effective, is common. So are various other forms of psychological coercion. Some interrogators use moral blackmail ( "Think of the shame you are bringing on your family" ). A few, if they are convinced that the suspect is guilty, simply fabricate a confession and press the suspect into signing it.

如果不经控告，一般嫌犯可能会被拘留 23 天。许多嫌犯与律师取得联系的机会微乎其微。审讯一般都不会被记录下来，即便记录也非全部，因此阻止审讯员介入，无太多可为。身体上折磨少有，而与之同效力的剥夺睡眠却十分见。因此形成了多种心理逼供。一些审讯员用精神压迫进行逼供(“比如，想想你给你家人带来的耻辱”。如果他们确信犯罪嫌疑人有罪，一些审讯员甚至会捏造一份认罪书然后逼迫嫌犯签字画押。

In a court system without an adversarial approach to establish innocence and guilt, judges too rarely question whether confessions really are voluntary. Yet time and again innocent people have been shown to confess to crimes in the hope of a more lenient sentence—or simply to make the interrogation stop. In October a mother convicted of killing her daughter for the insurance money was released after a crime reconstruction proved her innocence. Last year Iwao Hakamada was freed after 46 years on death row when a judge declared that his conviction was unsafe (among other things, he appears to have been tortured at the time of his arrest. One lawyer estimates that a tenth of all convictions leading to prison are based on

false confessions. It is impossible to know the true figure, but when 99.8% of prosecutions end in a guilty verdict, it is clear that the scales of justice are out of balance.

在没有抗辩制度确认无罪或有罪的法庭中，法官很少质疑被告人悔罪是否出于自愿。然而屡次无辜者曾被指示：供出罪行便有希望获得较轻处罚——或者仅仅只为终止审问。十月，一位曾被指控为谋保险金而杀死自己女儿的母亲，在案卷重审后得意无罪释放。去年，经历了46年死囚生涯的Iwao Hakamada也被释放，因为法官宣布证据不足，不能认定他有罪(从其他方面，他似乎在被抓捕期间已经备受折磨。据一位律师估计，所有获罪入狱的罪犯中有十分之一是基于一不实的供认。虽不可能了解这背后的真实数据，但是99.8%的起诉案件最后都是认定犯罪嫌疑人有罪。由此可见，司法公正已明显荡然无存。

As a step towards restoring due process, all interrogations should be filmed from start to finish. Suspects should have ready access to defence counsel, to whom prosecutors should also disclose all evidence. Interrogations should be much shorter; suspects should be properly rested. Investigators who fabricate evidence should be put in the dock themselves. Prosecution cases should rely more on detective work, and less on self-incrimination. Such reforms would not improve conditions in Japan's psychologically brutal prisons (see article). But they would give the innocent a better chance of keeping their liberty.

为了进一步恢复法定诉讼程序，应将审讯从始至终都拍摄下来并记录在案。嫌犯应有权诉诸于辩护律师，检察官也应向其辩护律师公开所有证据。此外，还应缩短审讯时间、妥善安置嫌犯。对于编造供词的审讯员也应使其接受讯。起诉案件的处理应当更多地依赖于侦察工作，而非自我控告。这样的改革并不能改善日本监狱中心理逼供的残忍状况(见文章)。

是他们将会为无辜者提供一个更好的机会以维系自由。