

緘默作為不利於被告之證據

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關鍵詞：緘默權、階段緘默、部分緘默、實體證據、彈劾證據

Keywords：Right to Silence, Intermittent Silence, Partial Silence, Material Evidence, Impeachment Evidence.

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摘要

依據我國刑事訴訟法第 95 條第 1 項第 2 款的緘默告知義務可以得出緘默權為立法者所承認的權利。但被告行使緘默權後，法院是否可因被告緘默而予以不利之推斷，我國刑事訴訟法僅在第 156 條第 4 項規定：「被告未經自白，又無證據，不得僅因其拒絕陳述或保持緘默，而推斷其罪行。」我國法似乎認為被告拒絕陳述或保持緘默，不能作為被告不利的證據。但是仔細觀察可以發現，被告緘默不能作為對被告不利證據之要件為「無自白」和「無證據」。是依條文文義解釋，如果被告「有自白」或本案「有證據」，可以進而以自白或證據結合「緘默」進而為對被告不利的評價，應非法所不許，但如此解釋是否妥當？

關於此一爭議，外國立法例應可供借鏡。本文將以英國法、美國法、德國法以及歐洲人權法院裁判為參考，理由在於英國為緘默權的起源地，而美國、德國對本問題有豐富的文獻，至於歐洲人權法院的裁判有超國界性，亦值得參考。

Effect of Accused's Failure to Mention Facts When Questioned or Charged

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Abstract

§ 95 I (2) of the Taiwanese Criminal Procedure Code acknowledges the right to silence. But the problem is, if the accused fails to mention facts when questioned or charged, may the court draw such inferences from the failure? § 156 IV of the Taiwanese Criminal Procedure Code says "Where an accused has made no confession nor has there been any evidence, his guilt shall not be presumed merely because of his refusal to make a statement or remaining silent." It seems that Taiwanese Criminal Procedure Code forbids drawing inferences from the failure. But according to the wording, the conditions of § 156 IV contain "no confession" and "no evidence". Therefore, if the accused confesses or there has been any evidence, the court may combine the silence with the confession or evidences and draw such inferences from the silence. But is it an adequate explanation?

To solve the problem, this article would like to refer to the experience of the United Kingdom, the United States and Germany. Because the right to silence originated in United Kingdom, and there are tons of American and Germany literatures on the subject. The opinions of European Court of Human Rights also deserve to be mentioned because of the transnational Law.