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Symposium on Making Sense of the  
Carlos Ghosn Case:  
Comparative Views of Japanese Criminal  
Justice

## Introduction to Symposium on Making Sense of the Carlos Ghosn Case

By Bruce Aronson

This symposium was originally published in Japanese as a [special essay collection](#) in a leading Japanese law journal, *Hanrei Jihō* (判例時報).<sup>[1]</sup> The impetus came from the unprecedented international attention and controversy surrounding Japanese criminal justice as a result of the Carlos Ghosn case that began in late 2018. The prolific commentary on the case was generally divided into two contrasting narratives: the Japanese media portrayed Ghosn as a greedy autocrat, while Western media saw him as the victim of a coup inside Nissan. Similarly, Japanese criminal justice was alternatively seen as either treating Ghosn fairly (like any other suspect) or subjecting him to oppressive “hostage justice.”

Much of the commentary lacked fair international comparisons. This special essay collection was designed to help correct this shortcoming and take advantage of an important “teachable moment” for providing new insight into criminal justice systems both within and outside Japan. Given the broad comparative criminal law implications of the debate arising from the Ghosn case and the U.S.-Asia Law Institute’s

(USALI) ongoing emphasis on thoughtful international comparisons of law as it is actually practiced, we arranged for USALI to publish an English version of this symposium. It contains six essays written from a variety of comparative law perspectives that focus on current fundamental issues in Japanese criminal justice in contrast with their counterparts in other jurisdictions.

The Ghosn case highlighted the many difficulties in making fair comparisons in the field of criminal law. Two of these difficulties apply generally to comparisons with Japan and with other Asian countries: the danger of comparing “my theory with your practice” and the quick resort to cultural generalizations and stereotypes as explanations for complex differences.

Other difficulties relating more specifically to criminal law comparisons include (1) characteristics of criminal justice as a field of study, including a strong domestic orientation and relative neglect of corporate and white-collar crime, (2) different definitions of basic terms such as arrest and conviction, and a lack of common classifications for relevant data, (3) differing assumptions, goals and procedures between civil law and common law systems, and (4) the popular image in many countries of dramatic courtroom trials, which ignores the reality that the overwhelming bulk of criminal cases are uncontested.

We should pay particular attention to the often-overlooked differences between civil and common law systems. Japan is an interesting case study. Its criminal justice system began as an inquisitorial system imported from Germany, in which defense lawyers played a minor role compared to judges and prosecutors. Postwar reforms under US influence resulted in a formal changeover to a more US-style adversarial system, as embodied in Japan’s postwar

constitution, but in many respects assumptions, institutions, and practices of criminal justice have evolved only slowly.

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The resulting tensions are quite significant. Even today, the inquisitorial goal of “finding the truth” and the remorse, rehabilitation, and reintegration of offenders back into society remain important purposes of Japanese criminal justice. One of the results is the lenient disposition of offenders (albeit together with strict investigation) compared to the US, which has been characterized as the “benevolent paternalism” of Japanese criminal justice (see [Foote essay](#)). But if offenders “sharing stories” with prosecutors and police is an important element in achieving these traditional restorative goals, what happens to criminal suspects who do not wish to cooperate and simply wish to assert their rights as defendants? Does a viewpoint that Japan “cannot have two criminal justice systems”<sup>[2]</sup> imply a tradeoff that would permit Japan to limit the individual rights of non-cooperative suspects for the “greater good” of reintegration of offenders into society? Both domestic reformers in Japan and international advocates of human rights would not accept this argument (see [Miyazawa essay](#)),<sup>[3]</sup> and it is doubtful the Japanese public would support any explicit version of such an approach. Even traditionalists in Japan acknowledge that the general trend in Japanese society over the past decade is in the direction of greater emphasis on the protection of individual rights.<sup>[4]</sup>

The significance of these tensions go far beyond Japan. For example, claims from China that its

civil law system is also interested in “finding the truth” are regularly dismissed in the West as an excuse by an authoritarian regime to exercise political control over dissidents. But what do we make of superficially similar arguments in Japan, a democracy that has achieved among the world’s lowest crime rates? Perhaps there is a range of balances between public safety and individual rights of criminal defendants in democratic societies, with Japan representing a relatively strong emphasis on public safety and the US focusing more (at least formally) on the individual rights of defendants. On this spectrum, EU countries might fall somewhere in between, given their own struggles to adapt their inquisitorial civil law systems to ensuring the rights of criminal suspects (see [Vanoverbeke essay](#)).

As noted above, many of the comparisons with Japan to date have suffered from basic problems. Western media have tended to focus on the differences between Japan and the US, with an emphasis on systemic weaknesses in Japanese criminal justice, especially the practice of detaining suspects for extended periods of time and conducting prolonged interrogation without a defense attorney present (often derided as “hostage justice”). In doing so, however, media have often relied upon a highly idealized version of individual rights under the US criminal justice system to criticize a generally effective Japanese system (see [Upham essay](#)).

What would a fair comparison between the US and Japan reveal?<sup>[5]</sup> Despite significant differences, a broad comparative perspective finds striking similarities between the two countries. In both the US and Japan the overwhelming majority of cases are processed without a contested trial and with suspects coming under significant pressure to plead guilty (see [Johnson essay](#)). Conviction rates for

contested cases are also high in both countries. An apples-to-apples comparison of Japan's widely reported "99% conviction rate" finds that it is by no means unique to Japan. In fact, the US has a similar conviction rate if calculated by the Japanese method, which would count plea bargains as convictions, due to the reality that in both countries very few defendants contest their charges (see [Aronson essay](#)). Similar issues of processing cases and high conviction rates exist to some degree in all advanced democracies, as governments struggle to provide the resources necessary for all suspects to effectively exercise their theoretical rights in criminal cases and as the rate of contested cases continues to decline.

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Reactions to the Ghosn case have been broad and far-reaching. Within Japan some traditionalists have renewed their defense of Japan's arguably successful criminal justice system, while reformers are redoubling their efforts to address the weaknesses in Japanese criminal justice as highlighted by the Ghosn case. There are also a range of "in-between" positions, as many Japanese believe in the basic approach of their criminal justice system, but also seek gradual reform to help address its greatest weaknesses.

Commentary on the Ghosn case questioned basic assumptions and aspects of criminal justice, including its goals, methods of processing cases, pressures on defendants to admit guilt, the rights of criminal defendants, the role of defense attorneys, important procedural issues, and

other matters discussed in these essays. Many of the same issues noted in the Ghosn debate arise in other Asian countries and elsewhere. Although much of the Western commentary on the Ghosn case loudly criticized criminal justice in Japan, a number of the essays in this symposium take the opposite view that the US has more to learn from Japanese criminal justice than Japan has to learn from the US. Of course, our goal is not to attempt to judge which system might be "better"; rather it is to address our failure to take advantage of a wonderful opportunity to learn not only about Japanese criminal justice, but, more importantly, to ask good questions, reflect upon, and consider reforms of our own system of criminal justice.

This symposium is intended to help initiate and contribute to a broader comparative discussion that makes fair and practical comparisons among criminal justice systems. It seeks to thereby shed light on important basic issues, encourage sound comparisons of criminal justice systems, and aid reform of weaknesses in all criminal justice systems.

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*A list of the authors and titles of the original essays in Japanese is available on the website of Hanrei Jiho:*

<http://hanreijiho.co.jp/wordpress/book/%E5%88%A4%E4%BE%8B%E6%99%82%E5%A0%B1-no-2473%E3%80%94%E8%A9%95%E8%AB%96-no-746%E3%80%95/>

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### Notes

[1] Tokushū [Special Collection], “Nichibeīō Keiji Shihō no Hikakuhō Kentō” [Comparative Law Perspective on Criminal Justice in Japan, the US and the EU] 2473 *Hanrei Jiho* 109 (2021).

[2] See Panel Discussion, *Japan’s Criminal Justice System: from a Comparative Law Perspective*, ANCILLARY MEETING TO THE FOURTEENTH UN CONGRESS ON CRIME PREVENTION AND CRIMINAL JUSTICE (Kyoto, Japan, March 7, 2021) (speaker: Sasakura), *video available at* <http://www.un-congress.org/Session/View/ef0678bc-7b8e-437b-af96-10dffcafc810>.

[3] For domestic criticism of criminal justice issues highlighted by the Ghosn case, see “Call to Eliminate Japan’s ‘Hostage Justice’ System by Japanese Legal Professionals: Signed by 1,010 Professionals” (Human Rights Watch, April 10, 2019), *available at* <https://www.hrw.org/news/2019/04/10/call-eliminate-japans-hostage-justice-system-japanese-legal-professionals#>. For international criticism, see HUMAN RIGHTS COUNCIL,

WORKING GROUP ON ARBITRARY DETENTION, OPINION NO. 59/2020 CONCERNING CARLOS GHOSN (JAPAN) (Nov. 20, 2020), *available at* [https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session88/A\\_HRC\\_WGAD\\_2020\\_59\\_Advance\\_Edited\\_Version.pdf](https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session88/A_HRC_WGAD_2020_59_Advance_Edited_Version.pdf).

[4] See *supra* note 2.

[5] For a recent article by two of the contributors to this symposium comparing criminal justice in Japan and the US in light of the issues raised by the Ghosn case, see Bruce E. Aronson and David T. Johnson, *Comparative Reflections on the Carlos Ghosn Case and Japanese Criminal Justice*, 18 THE ASIA-PACIFIC JOURNAL/JAPAN FOCUS 1 (Dec. 15, 2020), *available at* <https://apjpf.org/2020/24/AronsonJohnson.html>.

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