



---

3-2021

## Japanese Criminal Justice: A Comparative Legal History Perspective

Koji Fujimoto

*Faculty of Humanities and Social Sciences, Iwate University*

Follow this and additional works at: <https://gensoken.toyo.ac.jp/japanese-society-and-culture>



Part of the [Criminal Procedure Commons](#), [Criminology and Criminal Justice Commons](#), and the [Legal History Commons](#)

---

### Recommended Citation

Fujimoto, Koji (2021) "Japanese Criminal Justice: A Comparative Legal History Perspective," *Japanese Society and Culture*: Vol. 3 , Article 6.

DOI: 10.52882/2434-1738-0306

Available at: <https://gensoken.toyo.ac.jp/japanese-society-and-culture/vol3/iss1/6>

This Article is brought to you for free and open access by Institute of Social Sciences. It has been accepted for inclusion in Japanese Society and Culture by an authorized editor of Institute of Social Sciences.

[Received 30 September 2020 / Revised 30 October 2020 / Accepted 30 November 2020]

## Japanese Criminal Justice: A Comparative Legal History Perspective

Koji Fujimoto<sup>1</sup>

### Abstract

The Carlos Ghosn case has focused the world's attention on Japan's criminal justice system. In particular, the system has been subject to intense criticism, condemning its reliance on confessions in investigation, and for proof of guilt. The investigative approach of using physical restraints on suspects and defendants to coerce confessions is critically referred to as "hostage justice". While the Japanese Ministry of Justice and the Public Prosecutor's Office have responded to such criticisms by arguing for the uniqueness of the legal system, the problematic nature of this aspect of Japanese criminal justice cannot be denied, as noted by past false convictions and other evidence. The aim of this study is to examine why there are such features from a comparative legal history perspective.

Although there have been various examinations of these characteristics of Japanese criminal justice, there has been little mention of its history. When compared to the German history of the abolition of torture, and the move away from reliance on confessions in the German criminal justice system, the historical factor in Japan becomes clear. When torture was abolished in Germany, people looked for alternative means of proof, and, after many twists and turns, arrived at the principle of free evaluation of evidence. Japan saw no such struggle, however, and there is little consideration of alternative means of proof to confessions. These are the key findings of this study. In conclusion, "torture" in a sense has not yet been abolished in Japan.

*Keywords: Criminal Justice, Japanese Criminal Procedure, Carlos Ghosn, Confession Coercion, Abolition of Torture, Hostage Justice, Comparative Legal History, Reception of Criminal Law, Poena Extraordinaria, Principle of Free Evaluation of Evidence*

### Introduction

The dramatic sequence of events from the arrest and detention of the former Nissan Motor Co. chairman Carlos Ghosn to his indictment, bail, and escape from custody has generated much interest in and critical thinking on Japan's criminal justice system. The Ministry of Justice and Public Prosecutor's Office responded sensitively to the criticism hurled at them by Ghosn and the rest of the world. Responding to Ghosn's January 8, 2020 press conference<sup>2</sup>, which included criticisms of Japanese criminal justice, the Ministry of Justice—in the name of the Minister of Justice<sup>3</sup>—and the Tokyo District Public

---

<sup>1</sup> Associate Professor in the Faculty of Humanities and Social Sciences of Iwate University

<sup>2</sup> E.g., CNN "Fugitive ex-Nissan boss Carlos Ghosn blasts Japanese justice. It was escape or 'die in Japan'," retrieved Oct. 29, 2020 from <https://edition.cnn.com/2020/01/08/business/carlos-ghosn-press-conference/index.html>

<sup>3</sup> Comment by MORI Masako, Minister of Justice on Defendant Carlos Ghosn, retrieved Oct. 29, 2020 from [http://www.moj.go.jp/EN/kokusai/m\\_kokusai03\\_00001.html](http://www.moj.go.jp/EN/kokusai/m_kokusai03_00001.html)

Prosecutor's Office—in the name of the Deputy Public Prosecutor<sup>4</sup>—issued comments the next day condemning Ghosn's act of fleeing the country while out on bail. Without stopping, he also insisted on the injustice of the criminal justice system and legitimacy of the Japanese system, which he made clear in his opinion statement. The next day, the Minister of Justice issued a separate comment on this to refute the key criticisms, claiming that Mr. Ghosn's comments “have been propagating both within Japan and internationally false information on Japan's legal system and its practice<sup>5</sup>.”

A main topic of discussion was whether Japan's criminal justice system amounted to “hostage justice.” “I felt I was a hostage,” Ghosn said of his situation while under arrest and detention. The Justice Minister, understanding that it constituted a criticism of hostage justice, replied: “Japan's criminal justice system sets out appropriate procedures and is administered properly to clarify the truth in cases while guaranteeing basic individual human rights.”

However, the Ghosn case is not the first time Japan's criminal justice system has been criticized for hostage justice. On December 31, 2019, prior to Mr. Ghosn's press conference, Rupert Wingfield-Hayes from the BBC's Tokyo bureau noted that the word hostage justice “is a term few outside Japan will have heard of until now.” He further pointed out the length of pre-indictment detention and pressure to elicit confessions therein, as well as problems in the operation of bail in Japan, referring to former prosecutor Nobuo Gohara's words<sup>6</sup>. Japan has repeatedly received recommendations for improvement from the United Nations Human Rights Committee<sup>7</sup>.

Of course, this point is strongly recognized by attorneys and legal scholars of criminal procedures in Japan, and has been the subject of continued criticism. The Japan Federation of Bar Associations (JFBA) has vigorously argued the need for reform whenever the Covenant on the United Nations Human Rights Committee has made recommendations. Already in 1985, Hirano Ryuichi, a leading postwar legal scholar of Japanese criminal law, pointed out the problems with the operation of suspects based on compulsory interrogation by the investigative authorities and the associated bias toward confessions in the law of evidence<sup>8</sup>.

Certainly, many of Japan's grossly false convictions have resulted from errors in judgment based on the false confessions of the accused. In this regard, it makes no sense to argue that the Japanese Constitution and Code of Criminal Procedure prohibit coerced confessions and convictions based on confessions alone, as seen in the abovementioned comments by the Minister of Justice and in her contribution to the Wall Street Journal web edition on January 14, 2020<sup>9</sup>. This is because this system was already in place at the time of the wrongful convictions mentioned above. Despite the continuous

---

<sup>4</sup> Comment by the Deputy Chief of Tokyo District Public Prosecutors Office on Defendant Carlos Ghosn Bichara's Press Conference. Retrieved Oct. 29, 2020 from [http://www.kensatsu.go.jp/kakuchou/tokyo/page1000001\\_00016.PDF](http://www.kensatsu.go.jp/kakuchou/tokyo/page1000001_00016.PDF)

<sup>5</sup> Comment by MORI Masako, Minister of Justice on Defendant Carlos Ghosn (2), retrieved Oct. 29, 2020 from [http://www.moj.go.jp/EN/kokusai/m\\_kokusai03\\_00002.html](http://www.moj.go.jp/EN/kokusai/m_kokusai03_00002.html)

<sup>6</sup> BBC “Carlos Ghosn and Japan's ‘hostage justice’ system,” retrieved Oct. 29, 2020 from <https://www.bbc.com/news/world-asia-47113189>

<sup>7</sup> E.g., United Nations Human Rights Committee, follow-up lettersII in 6th Periodic Cycle, retrieved Oct. 29, 2020 from [http://ccprcentre.org/files/documents/INT\\_CCPR\\_FUS\\_JPN\\_28396\\_E.pdf](http://ccprcentre.org/files/documents/INT_CCPR_FUS_JPN_28396_E.pdf)

<sup>8</sup> Hirano, Ryuichi, ‘Genko Keiji Soshō no Shindan (Diagnosis of Current Criminal Procedure)’, in Hiraba, Yasuharu (ed.), Dando Shigimitsu Hakase Koki Shukuga Ronbunshū [Festschrift for the 70th Birthday of Dr. Shigimitsu Dando]. Tokyo: Yuhikaku, 4, 1985, pp.407–23.

<sup>9</sup> esponse by MORI Masako, Minister of Justice, to the articles of the Wall Street Journal, retrieved Oct. 29, 2020 from <http://www.moj.go.jp/EN/hisho/kouhou/20200115.html>

criticism, it has been difficult for the Japanese criminal justice system to reject or modify these features or “differences” in the Minister of Justice’s words. Mr. Ghosn’s escape and the resulting international public attention on Japanese criminal justice were the inevitable results.

Why then are these characteristics evident in contemporary Japan, 140 years after the introduction of the Western-style criminal justice system<sup>10</sup>?

In this regard, Nobuhisa Ishizuka, executive director of the Center for Japanese Legal Studies and a lecturer at Columbia Law School, wrote the following in the *New York Times* on January 16, 2020:

Western concepts of justice are deeply rooted in the principles of individual liberty, checks on official power and the rule of law. In the West, these ideals are embraced and believed to be universal. The Japanese concept of justice, in contrast, is rooted in regulating individual conduct according to norms that define the relationship of the individual to society. And these norms are defined by a history that predates Western legal concepts by thousands of years.

Understandably, this sense of normality has been imprinted on the Japanese people. There are many other widely circulated explanations for why this system is based on a combination of a high conviction rate of more than 99% and astonishingly low crime rates in developed countries. However, while these may provide a rational reason for the support for the current criminal justice system, they do not sufficiently explain the establishment of practices away from the intent of this article.

The purpose of this study is to elucidate this point. In other words, I am interested in the background of Japanese criminal justice practice, which has been criticized as hostage justice, and why its uniqueness is emphasized rather than its universality. Based on my research on the history of German criminal law in the early modern and modern times, I present a hypothesis regarding this question from a comparative legal history perspective.

## I. A Comparative Legal History Perspective of the History of Criminal Justice

Regarding the comparative legal history of Japanese criminal justice, one of the most representative discourses in the country is that “Japanese criminal justice is medieval.” In May 2013 at the United Nations Commission Against Torture review panel in Geneva, Switzerland, the Commissioner, Mauritian-born Satyabhoosun Gupt Domah, said that Japanese criminal justice, which was the subject of the review there, was “medieval.” However, this discourse, which has become well known, is not appropriate, as it is based on an inadequate understanding of Western criminal legal history or history itself<sup>11</sup>.

Evident here is a lack of understanding of the history of development, especially since the early modern period of the West. As I discuss in more detail later, there is a tendency in Japan to overemphasize the glorious achievements of Enlightenment modernization in the West and to speak of the preceding period as the “Middle Ages.”

---

<sup>10</sup> Japan’s first modern criminal procedure law, *Chizai Hou*, drafted by Gustave Émile Boissonade de Fontarabie, was enacted in 1880.

<sup>11</sup> See: Fujimoto, Koji, ‘Nihon no Keijisoshō ha Chusei ni Ichizukerarerubekika (Should Japan’s Criminal Justice Be Positioned in the Middle Ages?)’, in Takahashi, Norio (et al.) (eds.), *Keiji Hogaku no Mirai- Nagai En Sensei Koki Shukuga Ronbunshū* [The Future of Criminal Jurisprudence; Festschrift for the 70th Birthday of Dr. Nagai En]. Tokyo: Shinzan Sha, 2017, pp.571–590.

In fact, in the early modern times, inquisitorial proceedings dominated criminal justice in the West, especially in the German region where the investigative and judicial bodies monopolized the initiative of criminal proceedings without discrimination. In its external form, these systems of criminal justice were similar to those in Japan in the Edo period. For the law of evidence, both sides adopted the system of legal proof, which made confession a prerequisite for punishment, and placed torture at the center of the investigation process as a means of hearing the confessions to support it. According to the prevailing view, this situation led to the Enlightenment reforms in Germany, which introduced to the criminal justice system accusatorial proceedings and the principle of free evaluation of the evidence through the introduction of the prosecution system. Reportedly, Japan introduced a modern criminal justice system, which was formed as such, during the Meiji era, and modernized its criminal justice system in the same way.

In this paper, I focus on the difference in the modernization of these two inquisitorial systems, which seem similar. Of course, it is common sense in comparative history that the systems formed in their respective cultural and historical backgrounds differ, even if they seem similar. However, I believe there are significant differences between the two systems characterizing the current Japanese criminal justice system. In this essay, I first focus on the abolition of torture as the primary means of addressing these differences, and then present a hypothesis.

## II. Abolition of torture in Germany

The abolition of torture in the West including in Germany is often described in Japan, such as celebrating the achievements of the “Stars” in Enlightenment, including Cesare Bonesana Beccaria, Christian Thomasius, Joseph Freiherr von Sonnenfers, and enlightened despots like Frederik II and Joseph II, who institutionalized the abolition of torture. This view has also been applied domestically, and the abolition of torture in Japan has almost without exception been linked to an episode of Boissonarde<sup>12</sup>.

The results of the study of legal history, however, offer a different perspective on the abolition of torture. Even before (and after) the abolition of torture in German territorial states, there was a search for a post-torture form of criminal justice and the law of evidence. The abolition of torture posed a fatal problem for criminal justice, as it would make it impossible in principle to impose penalties on defendants who deny their crimes. Various alternatives have been devised to avoid this eventuality.

In Prussia, Frederick II reportedly abolished torture in principle in 1740 and entirely in 1754. However, the decision to abolish torture was not made public for some time because the threat thereof to the accused was considered an alternative to its actual imposition as a means of obtaining a confession. Moreover, there was a strong tendency to be skeptical of Frederick’s measures in practice, and violent torture continued to be used in the field under the guise of “*Examinis Rigorosi*” (examine rigorously). Under such circumstances, Frederick was forced to write in a letter to Voltaire in 1776 that he was “still in favor of the use of torture in the interests of national security<sup>13</sup>.”

---

<sup>12</sup> “One day in April 1875, Boissonard, a legal advisor to the Meiji government, was on his way from his home to give a lecture at the Law School of the Ministry of Justice when he happened to witness the torture at a courtroom he was passing. Surprised by the horrific conditions, Boissonard protested to the officials in tears, and when he returned home that day, immediately wrote a letter to Judicial Lord Oki Takato calling for an end to torture.” Okubo, Yasuo, *Boissonarde*, Iwanami Shinsho, 1977, p.99ff.

<sup>13</sup> Nach Ferdinand Willenbücher, *Die strafrechtsphilosophischen Anschauungen Friedrichs des Grossen*, Breslau 1904, S.55.

After the death of the great king, the abolition of torture in Prussia entered a new phase. Ungehorsamsstrafe (sentence for insubordination) was introduced. This system, which allowed for the use of flogging, caning, etc., for “obstinate and cunning defendants who lied, falsified, stubbornly denied, or kept silent”<sup>14</sup> was since the middle of the 18<sup>th</sup> century already used alongside torture in some territorial states including Hanover to coerce confessions<sup>15</sup>. However, other territorial states, which had the same problems regarding the abolition of torture, introduced it before and after Prussia as Lügenstrafe (sentence for lying) or Verdachtsstrafe (sentence for suspect), and made it possible to impose penalties on defendants who did not confess and should have been acquitted based on the principle of legal proof<sup>16</sup>. Note that the draft of the Bavarian Penal Code of 1813 by Paul Johann Anselm von Feuerbach provided for the replacement of torture with the punishment of disobedience, but this was withdrawn in consultation with the Bavarian Minister of Justice as it was considered an obstacle in the elimination of coerced confessions, which was the original goal of abolishing torture<sup>17</sup>. Alternatively, *absolutio ab instantia* or *instanzenbindung*, the traditional institution posed no penalty but allowed the trial to resume when previously unknown evidence against the accused was found. This was used as a measure against defendants under sufficient suspicion but who refused to confess<sup>18</sup>. Later, this system disappeared as the legal principle of evidence shifted from positive, in which confession is a sufficient condition for punishment, to negative, in which confession is a necessary condition, and then to the principle of free evaluation of evidence. Amid this examination of the realities of the abolition of torture, John H. Langbein of Chicago University proposed a unique new theory. Primarily based on a comparison with Anglo-American law, he argued that the use of *Poena Extraordinaria*, as defined in the *Constitutio Criminalis Carolina* (1532), as *Verdachtsstrafe* in this period brought about a fundamental change, allowing for punishment without confession. He claimed this rendered the abolition of torture possible at that time<sup>19</sup>.

Attempts to re-evaluate the *Poena Extraordinaria*, which has traditionally been considered a symbol of pre-modernism because of its conflict with the principle of *nulla poena sine lege* or *in dubio pro reo*, the main principle of modern criminal law, caused a sensation, and many studies on *Poena Extraordinaria*, *Verdachtsstrafe*, *Ungehorsamsstrafe*, etc. have been conducted since then. As a result, it is fair to say that Langbein’s hypothesis has been put on hold because it is not easy to prove in the study of German criminal legal history, and that many questions remain unanswered in relation to primary sources<sup>20</sup>.

Nonetheless, the following is apparently a historical fact: After torture was “abolished” by the enlightened despots, “punishment without proof of guilt” such as *Ungehorsamsstrafe* or *Verdachtsstrafe* was used as an alternative method of punishment. As such, these alternatives enabled the abolition of torture in Germany.

<sup>14</sup> E.g., Criminal Ordnung vom 11. Dezember 1805, Art. 292.

<sup>15</sup> Nicola Willenberg, Lügen- und Ungehorsamsstrafen - Eine Fortsetzung der Folter? Physische Gewalt im juristischen Diskurs im 18. und 19. Jahrhundert. in; Karsten Altenhain / Nicola Willenberg (Hg.), Die Geschichte der Folter seit ihrer Abschaffung, Göttingen 2011, S.117.

<sup>16</sup> Knapp, Natalie, Die Ungehorsamsstrafe in der Strafprozesspraxis des frühen 19. Jahrhunderts: Eine Untersuchung anhand ausgewählter Staaten, Berlin 2011, S.15.

<sup>17</sup> Blusch, Clemens, Das bayerische Strafverfahrensrecht von 1813. Die Reform des Bayerischen Strafverfahrensrechts am Anfang des 19. Jahrhunderts unter Paul Johann Anselm von Feuerbachs Mitwirkung, Frankfurt a.M. 1997, S.105.

<sup>18</sup> Schmoeckel, Mathias, Humanität und Staatsräson. Die Abschaffung der Folter in Europa. Böhlau Verlag, Köln 2000, S.379.

<sup>19</sup> Langbein, John H., Torture and the Law of Proof: Europe and England in the Ancien Régime, Chicago 1977. p.11.

<sup>20</sup> See, Schmoeckel, a.a.O. (Note 18), SS.504-506.

### III. Abolition of torture in Germany

What is the history of the abolition of torture in Japan? Under the principle of statutory evidence, criminal punishment without confession was not allowed in principle in the Edo period, and therefore, torture was at the center of the investigative process. However, a major difference with the German inquisitorial proceedings is that the possibility of an exceptional sentencing without a confession was not recognized in the law and in practice. There was no *Poena Extraordinaria*, as pointed out by Langbein.

Certainly, in the case of major crimes such as murder, arson, and theft, it was required as a precondition for punishment in Edo that the accused should confess, regardless of how much other evidence was available<sup>21</sup>. However, if a confession could not be obtained by torture, the magistrate, who was the judge, could punish the accused with the permission of his boss, *Rōju*, one of the highest-ranking government posts under the Tokugawa shogunate of Edo-period Japan. This was called *Satto-tsume*, but in the long history of the Shogunate, this was used in only one or two cases<sup>22</sup>. Moreover, unlike *Poena Extraordinaria* in Germany, *Satto-tsume* allows the death penalty to be imposed despite the lack of proof of guilt. The death penalty has been imposed in recorded cases. Hiramatsu Yosio, a leading scholar of early modern Japanese criminal law, argues that *Satto-tsume* was ostensibly intended to make defendants reflect on their crimes and wholeheartedly submit to punishment. However, he sees a political scheme to force the shogunate to comply with its orders by making them trust him<sup>23</sup>.

Somehow, after the fall of the Edo shogunate, the succession of Western law under the Meiji government led to the sudden and unavoidable abolition of torture in Japan, with no alternative in its own historical system. Nevertheless, the legislative process for the abolition of torture in Japan proceeded more solemnly than in Germany. Boissonarde's views on the abolition of torture, which were vigorously promoted by Inouye Kowashi, a legislative bureaucrat in the Justice Department, were the subject of theoretical debate in the Genro-in (Chamber of Elders), the legislative body at that time, but were passed. In June 1877, only 14 months after Boissonarde had witnessed the horrors of torture, an amendment to the Code of Criminal Procedure of the time decreed that a confession was no longer an essential condition of a guilty verdict and abolished the principle of legal proof, which was linked to torture<sup>24</sup>.

The aforementioned history in Germany shows how unnatural the speed of change in Japan was. Furthermore, the coercion of confession by torture, which was apparently "intended to make the prisoner reflect on his or her crimes and wholeheartedly submit to punishment," was abolished, with little thought given to alternatives to cases where confessions were not obtained. It is easy to imagine how confusing this could have been in practice, but the opposite is also true. In other words, practice did not adapt to these changes in legal provisions, but emphasized the evidentiary value of the confession and continued to place the coercion of confession at the center of the investigation, even after the revision, in my hypothesis.

In fact, even under *Chizai-hou* (The Code of Criminal Procedure in Japan, 1880), which adopted the

---

<sup>21</sup> *Kujikata Osadamegaki* (book of rules for public officials), Art. 83.

<sup>22</sup> Sakuma Nagakata, *Gomon Jikki* (A record of torture based on first-hand experience), in; Ono, Takeo (ed.), *Edo no Keibastu Fuzoku Shi* (Records of punishment and customs in Edo), Tenboshya Tokyo 1998, pp.524–532.

<sup>23</sup> Hiramatsu Yosio, *Kinsei Keijisoshoho no Kenkyu* (A Study of Early Modern Criminal Procedure), Sobunsha 1960, pp.829–832.

<sup>24</sup> The use of torture itself was not abolished until more than three years later. It has also been pointed out that in practice, judges were not required to state their minds and the grounds for their convictions when pronouncing one guilty. Actually, in some cases, convictions may have been obtained only through confessions. For the story of this case, see Matsukura, Haruyo, *Keiji-tetsuduki ni okeru nemo tenetur Gensoku* (The Nemo tenetur principle in criminal proceedings) 2, in; Ritsumeikan Hogaku, 2011-02, S.832-835.

principle of free evaluation of evidence based on Boissonarde's draft and explicitly forbade the use of "threats or deceptions" by the pretrial judge to hear a confession<sup>25</sup>, the defendant was subject to secret interrogation by the pretrial judge and the confession remained the strongest evidence of all<sup>26</sup>.

In addition, under the Code of Criminal Procedure, promulgated and enforced in 1890 (*Meiji* Code) after the enactment of the Constitution, the preliminary examination system was maintained during which stage the accused was confined in a "secret room" where he was not even allowed to see his defense lawyer<sup>27</sup>. The possibility that this system could lead to the coercion of confessions depending on its operation was pointed out nine years after its enactment in the debate on the 1899 amendment<sup>28</sup>. The record shows that some defendants claimed in the main trial or appellate court that they had been tortured and confessed against the facts because of the threats and deceptions of the pre-trial judge or the first trial judge<sup>29</sup>. Thus, under the *Meiji* Code, confession was still the most important evidence of guilt<sup>30</sup>.

The 1899 amendment abolished the "secret room confinement" system<sup>31</sup>, and the 1921 Code of Criminal Procedure (*Taisho* Code) legislated in 1921 did not contain provisions allowing for the coercion of confessions, from which the accused and accused finally seemed freed. However, excluding the revival of torture in the special wartime legal system, the evidentiary value of confessions remained high, and the hearing of confessions stayed at the center of investigations. Historically, this sequence of events should be considered to have continued to be influential in practice even under the current Code of Criminal Procedure, as amended in the post-war era.

## Conclusion

This article provided an overview of how the abolition of torture in Japan came about in a different way than in Germany. There are other possible explanations for the lack of deep consideration of non-confession punishment in Japan, such as its impact on the policies of investigative agencies. However, the overemphasis on confession in the law of evidence is undoubtedly an example of its classic and negative legacy. The fact that torture remains in various forms, despite being legally "abolished," is also evident in Germany<sup>32</sup>. That it is not only in response to Langbein's remarks that historical research on torture and its abolition has flourished there since the 1990s confirms the awareness of torture as a contemporary issue<sup>33</sup>.

The question of whether "modern torture" in the form of coerced confessions under hostage justice continues to exist in Japan, and how to evaluate its continuation, cannot be assumed to be resolved

<sup>25</sup> Chizai-hou (The Code of Criminal Procedure in Japan, 1880), Art. 150.

<sup>26</sup> Matsukura, a.a.O. (note 24), SS.841–844.

<sup>27</sup> Keijisoshohou (The Code of Criminal Procedure in Japan, 1890), Art. 87–89.

<sup>28</sup> Isobe Shiro, *Missitsukankin ni kansuru kouan* (Considerations on the institution of locked room confinement), in, Nihon Bengoshi Kyokai Rokuji (Records of the Japan Bar Association), No. 9, Tokyo 1891, pp.51–55.

<sup>29</sup> Isobe Shiro, *Keijisoshohou kan* (The law of Criminal Procedure, final edition), Tokyo 1896, pp.190–191.

<sup>30</sup> Matsukura, a.a.O. (note 24), SS.844–851.

<sup>31</sup> Matsukura argues that this system of clandestine confinement can be compared to the German system of disobedience and false imprisonment (Matsukura, a.a.O. (note 24), S.860). However, in comparison on the historical origins and actual operation of both systems, her view is questionable.

<sup>32</sup> Nicola Willenberg, a.a.O. (Note 16), S.144.

<sup>33</sup> The debate on torture as a contemporary issue is fought over 'die Rettungsfolter (torture to the rescue)', for example. See: Winfried Brugger, Darf der Staat ausnahmsweise foltern?, *Der Staat* 35 (2003), 67 f.

even if torture is banned in the Constitution and the privilege to deny self-incrimination is enacted. The “rebuttal” by the Minister of Justice and Public Prosecutor’s Office to Mr. Ghosn’s questions is therefore of little value. Rather, a critical and continuous examination of the nature of criminal justice, including this viewpoint, is required.

The history of the development of criminal justice in Japan includes a number of elements that differ from those of the West. Of course, this is a natural consequence of the *Rezeption* (reception) of law, and it is unlikely that two cultures with very different cultural and historical backgrounds would develop in exactly the same way, even if they were positively influenced by one another. However, if we are to treat them as if they were of the same quality or similar, and provide such an explanation externally, we must say that it is false. Now is the time for Japan’s criminal justice system, which captured the world’s attention in the Ghosn case, to be aware of its uniqueness, to re-evaluate it, and if necessary, to make further changes. In this process, it is important to examine more precisely the comparative legal history described in this article. I would like to continue to send out information about this process.