

<研究ノート>

Ghosn, But Not Forgotten: A Semantic/Analytic Study of Print Media Coverage on the Case of Carlos Ghosn

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Abstract

This paper aims to present an overview of print media coverage on the case of Carlos Ghosn, from his arrest by public prosecutors in November, 2018, to the present. In addition to analyzing semantic complexities that emerge in the coverage, survey findings and non-Japanese writing are further analyzed to help postulate how an informed reader may arrive at certain conclusions. It is also the author's aim to show that in spite of the efforts on the part of print media to present the confusing diversity and breadth of the case, impartiality on the part of parties involved in the judicial process is questionable at best. To conclude, it is hoped that this case, regardless of outcome, will help spur necessary changes in the criminal justice system.

Key words: hostage justice, excess compensation, obstruction of justice, plea bargaining, compensation cancellation, criminal justice system, coerced confessions, pre-trial detainment

TERMS DEFINED FOR THIS PAPER

*Detention: This refers to the holding/detaining of an individual against his or her will based on some legal ground, either the absence of permission to reside in a certain place, or because that person is guilty of breaking a law. It should not be employed for the holding of a person against his/her will where solely **allegations** apply.*

*Hostage justice: This term is used by journalists on occasion to describe the Japanese criminal justice system. It implies the abduction or kidnapping of an individual, since that is often what happens when a hostage is taken. It could also be used when the hostage is taken to obtain **some material remuneration** in return*

Plea bargaining system: An individual is arrested so that another person can receive more favorable treatment for a different infraction/crime committed. It is a form of cooperation so that a prosecutor can obtain a more significant/important conviction.

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Pocketed pay: *A person accepts money illegally and keeps it.*

Receive improper compensation: *This happens when a person receives money in some illicit or illegal manner.*

Excess payment: *This is often synonymous with improper compensation; it refers to payment in the absence of services rendered.*

Compensation cancellation: *This is the refusal to pay rightful compensation of an agreed amount to a particular individual.*

Justice: 1. *The quality of being right, fair, or just. Bringing fairness to a situation.* 2. *The action or power of the law to define an act as just within the parameters of the conditions surrounding a situation.*

Double standard: *Using two sets of measures by which to judge two different people or entities, usually to polar ends.*

Obstruction of justice: *An attempt to prevent one side in a legal contest from pursuing victory in a court case, done in an unfair or illegal manner.*

Extortion: *To obtain money from an individual under penalty of threat or force.*

Confession: *To report of a previously concealed act **that one has actually committed.***

Collusion: *A secret agreement between two or more people with the intention of deceiving or cheating other people.*

OVERVIEW: The Pre-trial Case of Carlos Ghosn

AUTHOR'S NOTE: It is necessary to point out that this summary of the case of Carlos Ghosn has been drafted relying solely on information from periodicals available to the public. In this case, daily newspapers available to any individual in Japan were used.

His fall from grace was sudden and inexplicable. In 1999, Carlos Ghosn took over as chief operating officer of an ailing Nissan Motor Company. He overhauled the way the company paid senior employees. For example, he introduced a performance-based system that offered bonuses to successful mid-level managers. The highest achievers got the highest rewards (Gelles, Rich, *The Japan Times*, November 21, 2018, p. 7).

On November 19, 2018, Mr. Ghosn was apprehended while boarding his own jet and

subsequently taken into custody (by prosecutors, not by the police.) Prosecutors accused him of underreporting his income between 2011 and 2015 by more than ¥5,000,000,000 with the help of Greg Kelly, a one-time human resources manager at Nissan and as of November 19, still a board member.

Though neither man was arrested immediately, their detention (referred to often as abduction, given the length of time and the severity of the conditions of detainment) was imminent. It was a remarkable outcome for a man who was a regular at Davos, who carried the Olympic torch in 2016 in Brazil, and who was named by Forbes in 2003 as one of the most powerful business leaders in the world.

Three days later, Ghosn was voted out as chairman (Rich, *the New York Times*, November 25, 2018, p. A 10). Greg Kelly was also dismissed from the board. Though both men insisted upon their innocence, Nissan claimed to have evidence that Ghosn had not only underreported his income, but used company funds for personal expenses. Allegations were made connecting Kelly to Ghosn's crimes.

Renault, partner to Nissan, cautiously kept Ghosn on as chairman even as he was questioned by prosecutors in Tokyo, a process that repeatedly turned up nothing incriminating during the final weeks of 2018.

Greg Kelly was released on ¥70,000,000 yen bail after being arrested on November 19, 2018. Many believe he was released solely due to health problems that required medical attention, specifically spinal stenosis. He had been scheduled to receive medical attention in his home country on December 7 (Pearl Harbor Day, most likely a day of both infamy and irony for Mr. Kelly from now on). However, due to his abduction by the Japanese government, he was unable to receive that treatment abroad. (Bloomberg/Kyodo, *The Japan Times*, December 26, 2019, p. 8). As this case receives occasional comparison in the foreign media with the abductions carried out by the regime in North Korea, it was commented upon that Japan did not want another "Otto Warmbier" on their hands (referring to the American youth who died in detention in North Korea in 2017.)

CEO Hiroto Saikawa issued a ban to all employees on contacting Ghosn or Kelly before the year's end. This was extended to Mr. Ghosn and Mr. Kelly's legal representation as well. (Kyodo, *The Japan Times*, December 27, 2018, p. 2). (In fact, it is still in force as of this writing.)

In late January, 2019, *The Japan Times* printed an article about Pope Francis's then-future visit to Japan in November. The article indicates that the Pope has been urged to visit Nagasaki and Hiroshima to pray for the victims of the 1945 atomic bombings. Nowhere is there any mention of the Pope being urged to help a living human being held against his will in a crude cell in Tokyo. (AFP/Jiji, *The Japan Times*, January 30, 2019, p. 6). (NOTE: Ghosn was later released in March, re-arrested, and released again. And re-arrested once more. And released once more.)

Flash forward to February, 2019. On Valentine's Day, it was announced that Ghosn's lawyers would mysteriously leave his team. There was no explanation for their departure. At the same time, there was no explanation for the repeated detention of Ghosn, though nothing but allegations had been brought forth concerning his case.

In March, the company sent out notices to shareholders asking them to dismiss Ghosn formally

at an April 8 shareholders' meeting. The notice was authorized by Nissan President Hiroto Saikawa. (Reuters, March 15, 2019, p. 1). Saikawa then urged Renault to stabilize its relationship with Nissan. (Bloomberg/Jiji, *The Japan Times*, March 18, 2019, p. 1).

On March 6, after an abduction of 108 days, Mr. Ghosn was released for the first time, soon after re-arrested, and then released for a second time on April 25 (after he posted bail of ¥500,000,000, which some foreign critics in the press called "extortion.") *The Japan Times* reported this as "hostage justice." (Sugiyama, *The Japan Times*, April 28, 2019, p. 2). It also highlighted a "silver-lining" from the abusive treatment of Mr. Ghosn: a rising number of suspects were receiving bail for the first time in many years.

Then, in early August, Japanese government prosecutors persuaded the judicial branch to forbid Mr. Ghosn from having any contact whatsoever with his wife (after taking Mr. Ghosn's ¥500,000,000, money that he earned working to build a Japanese company. Prosecutors did argue that Mrs. Ghosn could be a "concerned party" and potential witness to Mr. Ghosn's alleged crimes, yet those crimes still had not been properly identified and explained.) (*The Japan Times*, August 9, 2019, p. 6).

What were the allegations exactly? Over the months following November, impropriety was suggested by Mr. Ghosn in dealings with a Lebanese company and a Saudi institution headed by a man named Khaled Al-Juffali. It remains to be seen whether these incidents were the cause of Mr. Ghosn's arrest or merely a scramble to justify it, as several commentators such as Joe Nocera suggested. In fact, in a February 20 article, the following announcement was issued by Juffali: "The payments over four years were for legitimate business purposes in order to support and promote Nissan's business strategy in the Kingdom of Saudi Arabia, and included reimbursement for business expenses." (Du, Glenfield, Inoue, Einhorn, *The Japan Times*, February 20, 2019, p. 4). The article goes on to state: "Nissan also approved arrangements for the purchase of several homes, including those in Brazil and Lebanon." Following this announcement, Nissan decided to withhold \$83,000,000 due Ghosn AND slashed its earnings forecast. Was there a connection between this remuneration theft and the financial earnings shortcomings?

Prosecutors also suggest that executive pay exceeded a ¥3,000,000,000 cap set by shareholders for 2017. (Kyodo/Reuters, November 29, 2018, *The Japan Times*, p. 1). Mr. Ghosn reported only ¥735,000,000 when in fact, he might have received as much as ¥2,500,000,000. (It is not clear how Mr. Saikawa's excessive remuneration calculates into the cap. On March 11, it was reported that executives at Nissan would disclose further details concerning Mr. Ghosn, provided a plea deal/plea bargaining could be secured.)

Then, on September 11 (an ominous date in history, again, but surely more so for some), Chief Executive Officer Hiroto Saikawa was dismissed from Nissan following confirmed reports that he and other representatives from the company had underreported income (Bloomberg, *The Japan Times*, September 11, 2019, p. 1). Renault officials, and its largest backer, the French government, neglected to comment. However, because Nissan claimed his excess payment did not constitute a violation of laws, Saikawa was free to go.

Ghosn was not. Columnist Joe Nocera illuminated two distinctions in the Japanese justice

system. One, if corporate wrongdoing is done with the good of the company in mind, punishment will be minimal. If the purpose of the corporate crime was to enrich oneself, the penalty will be severe. The second distinction appeared in his final paragraph: "I'd say there is another distinction the Japanese criminal justice system makes: Regardless of the severity or nature of a crime, if you're a non-Japanese executive accused of wrongdoing, you are likely to get tossed into prison." (Nocera, *The Japan Times*, September 11, 2019, p. 8). What Mr. Nocera does **not** point out is the semantic difference between "underreported pay" and "excess pay." Quite clearly, "excess pay" should constitute unreported pay, which would equal "underreported pay." Unless the amount involved results in some significant difference in the treatment of the infraction, the two (the excess pay of Mr. Ghosn and the excess pay of Mr. Saikawa) should be treated equally.

JOC Chief Tsunekazu Takeda, president of the Japanese Olympic Committee, also resigned without penalty in March, 2019. In 2013, \$2,000,000 was paid for the purpose of buying votes on the Olympic Committee so that Tokyo would be chosen to host the 2020 Olympic Games. Takeda reported that he had been held in Paris and questioned by French authorities.

There was one enormous difference between these two cases. Mr. Takeda was neither fined nor abducted. Again, excess pay (assuming the \$2,000,000 was not reported) would constitute unreported income. Yet Mr. Takeda left France of his own free will. Mr. Ghosn's could not do so.

Public opinion seems to be skewered in this very sense. This paper aims to explore the familiarity people in the United States had with the Ghosn case and its relevance to views toward Japan, its government, the automobile industry (Nissan, in particular) and its criminal justice system. The surveys were distributed in several places to a wide array of respondents. Due to the lengthy and complex nature of the questionnaire, refusal to participate was frequent. However, enough respondents participated to generate interesting feedback on this important bipolar case which, like the whaling issue and the refusal to deal with victims of Japanese World War II aggression (in the form of underpaid labor and prostitution), may come to harm the nation as it spurns any form of descent on or criticism against its punitive hegemony.

In a January 22, 2019, AP release published in *The Japan Times*, it was reported that Mr. Saikawa denounced Ghosn, accusing him of using money and assets for personal gain. (*The Japan Times*, p. 1). Since Mr. Saikawa was later discovered to have used money and assets for personal gain, what does this mean in terms of this case? Also, it was publicly suggested that Mr. Ghosn intended to dismiss Mr. Saikawa from Nissan even before the November, 2018, abduction took place.

A day later, on January 23, Mr. Ghosn was denied bail. The Tokyo District Court gave no reason for denying bail, but most seem to agree that it was because Mr. Ghosn had failed to confess. (Reuters, *The Japan Times*, January 23, 2019, p. 3). However, if one is not guilty of any wrongdoing, then how can a confession be expected? "Nissan believes he misused company funds for personal purposes." In no way does this amount to an indictment, and the absence of a confession leads to troubling, complex conclusions on the part of any perspicacious reader.

It seems odd to the ordinary reader that neither Nissan nor the prosecutors' office is being investigated in this matter. There are other governmental offices that could take an interest in this

case as well. Should the investigation be widened?

There is also the December 14, 2018, article on page 4 of *The Japan Times* with this damning headline: “Report that Ghosn planned to oust Saikawa brings relationship into focus.” The information was unveiled by *The Wall Street Journal* just days before that. Interestingly, Saikawa failed to comment on this situation publicly. When asked if a coup had been exercised at a news conference on November 19, Saikawa explained, “This is not my understanding. I didn’t make such an explanation and you (the journalists) should not think of it that way.” A Nissan spokesperson explained in the article: “Nissan has been cooperating with authorities to investigate misconduct on the part of its former chairman.” Semantically, was this cooperation tantamount to “plea bargaining”? Or could it be interpreted as collusion? (Bloomberg, Reuters. *The Japan Times*. December 11, 2018, p. 4). This may have served as the impetus for Mr. Ghosn’s arrest.

On November 27, Nobuo Gohara, a former prosecutor and prominent lawyer, had this to say regarding the case: “Ghosn may have fallen victim to Japan’s recently established plea bargaining system, leading to an arrest despite a lack of clear incriminating evidence.” (Takenaka, *The Japan Times*. November 27, 2018, p. 2).

AMBIGUOUS SEMANTIC TERMS ARISING IN THE CASE

A more accurate term as applies to this case, **abduction**, as opposed to **detention**, has already been introduced in the previous section. **Hostage justice** is yet another that was discussed in an earlier section of this paper. There are other euphemisms that often come up in reading whose ambiguity may require explanation.

1. **Compensation cancellation.** Mr. Ghosn was to be paid ¥4,400,000,000 in retirement benefits that he had ostensibly earned during his tenure at Nissan. Additionally, he was to receive ¥2,270,000,000 from a stock appreciation rights plan (Bloomberg, *The Japan Times*, June 28, 2019, p. 4). Both forms of compensation were reported “cancelled.”

Since Mr. Ghosn declares himself innocent of all crimes and no allegation has yet been proven, these cancellations could be construed as “theft.” According to the Longman Dictionary of American English, theft is defined as “the act of stealing.” Were a man to walk into another man’s home and take cash that he had rightfully earned from a desk drawer, it would be considered as such. A company (serving in the role of the second man, in this analogy) taking back money a man had rightfully earned might be looked upon similarly.

2. **Excessive compensation.** It was confirmed that Hiroto Saikawa received “excessive compensation.” He said that he would return the additional pay, apologized, and departed Nissan **without facing criminal charges**. (Emphasis attributed to the author.)

Mr. Ghosn has denied that his compensation was illegally obtained in any way. Mr. Saikawa has confessed that he accepted payment for services not rendered. Yet, as Junichiro Hironaka succinctly put it, “This is clear discrimination against foreigners.” (McLain, Sean, *The Wall Street Journal*, September 10, 2019, p. 1). (NOTE: Mr. Kelly’s lawyer, Aubrey Harwell, said that his client did nothing wrong and acted “according to the law and according to company policy.”) (Kyodo, *The*

Japan Times, December 4, 2018, p. 1).

Moreover, there is no explanation as to the fate of the ¥70,000,000 bail money paid by Greg Kelly at the end of December. Who receives this money exactly? In none of the articles read for this analysis could any such information be found. For the ordinary reader, this is troubling.

3. **Confession.** When a person has actually committed a certain act and others wish to know about it, prosecutors may press the individual to confess. In the event the person is pushed to confess something that he/she did not actually do, under the pressure of duress or force, this is tantamount to **coercion**, a form of pressure in which an individual is forced to lie to avoid pain or punishment for the sake of his/her captors. Hence, the terms **forced confession** or **coerced confession** often appear concerning discussions of the Japanese criminal justice system. Though it would seem to be illegal and inhumane, it is used commonly by prosecutors in the Japanese criminal justice system to achieve convictions. (Naito, *The Japan Times*, April 18, 2019, p. 3).

In the Democratic People's Republic of Korea (North Korea), it is said that in the justice system, "if you are accused of a political crime that means you are guilty." (Jeppesen, p. 102). One could argue that proceedings in that nation bear great similarity to the case of Mr. Ghosn. The economic, political, and social fallout from this semantic schism could result in unnecessary ill-will of an extensive nature.

SURVEY RESULTS FROM THE UNITED STATES

A questionnaire was given out in the weeks following the abduction of Carlos Ghosn by the Japanese government. People were chosen at random; there was no scientific basis for the subject selection. A total of 48 responses were gathered in three different venues, yielding the following results on the questions.

QUESTIONS 1/2/3: *Who is Carlos Ghosn and what has happened to him?/What does he do for a living?/What has happened to him in the past two weeks?*

40 respondents (more than 80%) had no idea who he was. The majority of these people cited TV and the Internet as their main sources of news information. More intriguing yet is the answer to Question 2 (NATIONALITY). Ten of these respondents wrote "White" or "Caucasian", perhaps out of habit (i.e., few surveys ask for nationality while many would like race identified). This amounted to more than 20% of the respondents.

Of the eight who responded affirmatively to this first question concerning Mr. Ghosn's identity, all of them correctly identified him in Question 2 as the head of either Nissan, a foreign car company, or both. As to Question 3, his arrest was identified on all of the forms while one indicated (inaccurately) that he had been arrested for corruption. Concerning Question 4, finally, one respondent indicated that Mr. Ghosn was a **victim**, not a criminal. Seven of the eight believed that Mr. Ghosn was guilty or highly suspicious of having done something wrong. The following explanation appeared on one return: "He misreported his income." Four believed he had been unfairly incarcerated. (This result is particularly interesting because it means that although the three respondents believed him to be guilty of some infraction, they found it reprehensible that he

was being held in custody against his will.)

Two believed he deserved to be arrested while two were of no opinion on the matter.

One respondent wrote that the government seemed to be colluding with other parties to keep Mr. Ghosn incarcerated in Japan. The suggestion (in the respondent's own words) was that the Japanese counterpart to the Internal Revenue Service (i.e., the national tax office) wishes to tax him on his estate, which, at a significant amount of money (rate of 55% in Japan for citizens and residents) would make sense that Mr. Ghosn be kept in prison and stay there for a long time. As he is reportedly in poor health (and worsening under the brutal conditions of his incarceration) and in his mid-60s, the chances are good that he could die in a Japanese prison. Hence, the Japanese government would receive 55% of his estate, just as Nissan appears to have received ¥5,000,000,000 from Mr. Ghosn simply by accusing him and then denying him his income. (Refer to the previous explanation of compensation cancellation.)

In terms of semantics, more extensive explanation would help readers fall prey to this ambiguity concerning bail money, fines, and cancelled compensation.

OUTCOMES/OUTCRY

It was reported at the end of October that sales of Nissan in the United States had dropped 21% in the month of September. This could be the result of news finally disseminating to larger segments of the population. At the end of July, Nissan cut 7% of its workforce (its entire workforce) in an effort to apparently “turn around its business.” (Reuters, *The Japan Times*, July 25, 2019, p. 3). At the end of October, Renault cut its expected sales demand by 4%. (Bloomberg, *The Japan Times*, October 26, 2019, p. 3).

It is possible that the proliferation of articles in widely-read news publications steered potential customers away from Nissan. Popular Bloomberg journalist Joe Nocera had this to say on September 11 in *the New York Times*: “There is another distinction the Japanese criminal system makes. Regardless of the severity or nature of a crime, if you're a non-Japanese executive accused of wrongdoing, you are likely to get tossed into prison.” (Nocera, Joe, *the New York Times*, September 11, 2019, p. 8).

Bruce Aronson, a scholar at the U.S.-Asia Law Institute of New York University, wrote: “The Ghosn case will have important implications for the increasing number of Japanese firms that conduct a majority of their business overseas, but which are still governed in Tokyo.” (Aronson, *The Japan Times*, August 20, 2019, p. 8). He adds that people in Japan tend to view Nissan as an iconic Japanese company while Americans see it as part of a global enterprise based in France.

Bloomberg columnist David Fickling had this to say: “No executives at Takata Corp. have been charged over the millions of fatal air bags made by the now-bankrupt company. Toshiba Corp. restated its corporate filings and ¥152,000,000,000 of profits because of accounting irregularities. Kobe Steel Ltd. misstated quality data on its products sold to customers over nearly five decades. Yet there haven't been any executive downfalls that compare to what's happened to Ghosn and Kelly.” (Fickling, *The New York Times*, January 18, 2019, p. 6).

On February 20, 2019, a team of journalists had this to report regarding alleged discrepancies involving payments to a Saudi Arabian business partner: “The payments over four years were for legitimate business purposes in order to support and promote Nissan’s business strategy in the Kingdom of Saudi Arabia, and included reimbursements for business expenses.” The article also states that Nissan approved purchases of several homes, including those in Brazil and Lebanon. (Du, Clenfield, Inoue, and Einhorn (Bloomberg), *The Japan Times*, February 20, 2019, p. 4). Needless to say, this scarcely seems like financial misconduct, though it could be the object of envy on the part of an inside rival.

In *The Wall Street Journal*, former lawyer and prosecutor Yoji Ochiai said the following: “Arresting someone on similar allegations repeatedly could raise some doubts, making it look like prosecutors are trying to buy time by dividing the possible charges.” (Fujikawa, *The Wall Street Journal*, December 11, 2018). As was indicated on one survey response, (just one of out 48, however) in the absence of concrete charges and in the face of repeated arrests, collusion at some level of leadership certainly seems highly possible. This assessment was made back in late November, 2018. This was long before print media reports provided far more information on this incident.

CONCLUSIONS

Given the survey results, it does not seem that the case of Carlos Ghosn had a large **initial** impact on the majority of the American people. Just one of 48 respondents seemed to suggest foul play on the part of Nissan and government entities/prosecutors. Only two indicated that he was being treated unfairly. Most had never heard of him (as of November, 2018.)

On the other hand, by the time nearly a year had transpired, sales of Nissan and Renault vehicles had dropped significantly in the U.S. An army of journalists had run a score of articles in August and September criticizing the Japanese legal system, an absence of justice, failure to address human rights, etc. Moreover, the frequent use of terms/expressions such as abduction, detention, injustice, harsh treatment, forbiddance of spouse contact, etc., seem to have sunk into the public’s psyche... or those who have an interest in such affairs, in any case.

Will the Japanese government ever apologize to Carlos Ghosn if he is found to be innocent (unlikely in a system in which an accused person’s guilt is so aggressively pursued)? Will the Japanese government treat Carlos Ghosn to a fair trial and allow him to remain free, spend time with his wife and basically, live his life without further abduction? Will it clarify a preference for “excessive pay” and freedom vs. “unreported pay and incarceration? Will Hiroto Saikawa be subjected to the same harsh treatment as his predecessor, or will he be allowed to walk free because he is a Japanese national? Will further clarification be given on JOC chief Tsunekazu Takeda concerning illegal acts? Will the Olympic Games go over well in 2020, knowing that bribery was used to secure the nomination for those Games? Will Nissan be punished for the criminal act of taking money rightfully earned by Mr. Ghosn? (For that matter, Renault also withheld a 10,000,000 Euro severance payment to Mr. Ghosn, once again assuming that Renault will keep, and use, money that was rightfully due

Mr. Ghosn.)

More pressing questions are, will multi-national companies avoid establishing offices in Japan in the future for fear that their executives will be subjected to unfair/injust treatment by the legal/political system? Will talented executives skip Japan and go to countries where they feel they will be treated more justly should a complex issue arise in which they are involved? The Ghosn arrest reportedly had many candidates abroad rethinking plans to accept offers in Japan. “This will become a big problem for Japan and its business,” said Junichiro Hironaka, Mr. Ghosn’s attorney. “Nissan should have solved this problem internally.” (Einhorn, Du, and Jie, *The Japan Times*, February 26, 2019, p. 6). Finally, will the French government regret not standing more firmly behind Mr. Ghosn while he was mistreated and abused within the Japanese legal system?

Of course, in the event that a trial is held and evidence that unmistakably proves Ghosn’s guilt comes to fore, then most of the questions raised will be of no importance. (The nepotistic Saikawa charge dismissal, however, will still be of extreme interest and scrutiny in that case.)

Colin Jones, a professor at Doshisha University Law School in Kyoto, puts the chances of a fair trial into perspective: “Japan’s criminal justice system functions mainly as a sentencing factory with prosecutors being highly certain about an end product, a conviction, and judges essentially conducting a quality control inspection.” Many trials, according to Jones, consist of defendants throwing themselves on the mercy of the court in a trial that is entirely about sentencing. (Jones, *The Japan Times*, December 14, 2018, p. 10).

In this sense, that Mr. Ghosn did not cave in and issue a false confession, that he insists on pursuing his innocence at all costs, that he brings scrutiny on a criminal justice system that pays little mind to human rights, is commendable. Mr. Ghosn (and Mr. Kelly) were arrested originally for the odd charge of “filing incorrect financial compensation reports” with financial regulators. One would think that in such a case, regulators would assist them in “correcting” the improprieties. On December 10, 2018, prosecutors announced that they would be initiating prosecution for this offense, a clear sign, even to a layman reader such as this author, that several weeks of interrogation and detention carried out during Mr. Ghosn’s and Mr. Kelly’s abductions turned up no evidence of the more serious offenses that were levied against the two (and why ONLY two in a company the size of Nissan? This question should puzzle everyone.) (Kyodo, *The Japan Times*, December 1, 2018, p. 1).

That Mr. Ghosn, win or lose, has stood up firmly and proudly in the face of a functionally corrupt justice system propelled, most likely, by surreptitious and deeply entrenched interests, is, to repeat, commendable. The barrage of articles from the foreign and **domestic** press only confirms that admiration for Mr. Ghosn is in no way isolated or unique. One comment from the questionnaires stands out: “In any case, Mr. Ghosn is dead (NOTE: This means he has no chance of securing an acquittal in a Japanese court of “law”) no matter what, so automobile buyers and investors would do well to steer clear of Nissan- and perhaps Japanese companies in general.” In other words, this respondent suggests that people all over the world seeking justice should unite in a uniform backlash aimed at punishing the forces that most likely consider themselves beyond retribution.

On the day that he was arrested, Mr. Ghosn had a reservation to eat *yakitori* (grilled chicken on skewers) at a small restaurant in Tokyo. The owner received a telephone call from Mr. Ghosn's secretary, who said that Mr. Ghosn would be unable to come. His secretary added, "He was set up. He will take revenge. And he will come back to the restaurant." (Gelles and Rich, *The New York Times*, November 22, 2018, p. 7). Perhaps not, if his captors have the final say.

And given a hostage justice system, actually, they do have more than the final say. It appears they have ironclad control over the justice system. Whether this will benefit Japan, the automobile industry, and Nissan ultimately remains to be seen down the road.

Pre-trial detainment has drawn particularly strong criticism in news reporting from abroad. It led to the reporting of claims of questionable veracity as well (for example, Fox news declaring, "Carlos Ghosn and his family are targeted because they're *gaijin*, because they are non-Japanese.") (Naito, *The Japan Times*, April 18, 2019, p. 3).

Does the judicial system's pre-trial detainment process have flaws? There would appear to be two. One, the excessive duration (20 days) prior to being formally charged with a crime. Two, the absence of an attorney during this period of intense questioning by prosecutors. One could add a third: Detention should not be routinely extended for "new" charges suddenly produced (unproven) at the end of a prior period, as happened repeatedly in the abduction of Carlos Ghosn.

To bring its criminal justice system more closely in line with the norm featured in most democratic countries, the case of Carlos Ghosn may be remembered for bringing these issues into focus. Moreover, it is hoped that the trial will prove that Carlos Ghosn was removed and persecuted so that a Japanese company could find a smooth way to regain more assertive control over its own structure.

Cesare Beccaria (*Crime and Punishments*) made a Herculean effort to overhaul and reform criminal law in Europe in the 1700s. Above all, he argued that legitimate authority is derived from the consent of the governed, and should be minimal in its exercise. Moreover, it should be justified only as it contributes to human happiness, and be based **on evidence, not tradition**. (Emphasis the author's.) Rational rules of evidence and protection of the accused ranked foremost among his assertions. His work was one of the most profound achievements of the Enlightenment.

It is 2019 as of this writing. At the start of this year, Carole Ghosn drafted a letter to Human Rights Watch, a global advocacy group, criticizing both her husband's lengthy detention and the criminal justice system, which she deemed "harsh and unfair." (AP, Reuters. *The Japan Times*. January 15, 2019, p. 2). One hopes there will be closer scrutiny on the modern evolution of the justice system in Japan and that Enlightenment may one day come to improve it. The 1700s have long since passed. It is important to understand society as **a social contract in which individuals forfeit the least necessary amount of freedom in exchange for the greater happiness of safety and civil order**. (Emphasis the author's.) As stated earlier, regardless of the outcome of his trial, Carlos Ghosn is heroic in that he did not cave in to and uphold this harshness and unfairness.

Guiding a Japanese company to financial success may be remembered down the road as Carlos Ghosn's second great achievement. Turning his abuse and persecution within the Japanese justice system into a catalyst for structural and societal improvement may come to ultimately rank first.

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