

In this corner, we hope to provide useful information for our members, such as introducing the ACPF activities, past events, and re-recording the contents of the forums. For the first in the series, I will be introducing, “Is Japanese Criminal Justice Still in the Middle Ages?”, the theme of the ACPF Forum held on Tuesday, June 4, 2019.

### *Is Japanese Criminal Justice Still in the Middle Ages?!*

This is the fourth (final part) in the series. The following are the main arguments made by the defendant, Carlos Ghosn:

- (1) It would not have been possible for him to receive a proper trial under the practices of criminal justice in Japan, where the conviction rate is 99.4%.
- (2) It is “hostage justice” in that he would not be released on bail if he denied the charges.
- (3) He had no legal counsel during the interview, and he was forced to confess.
- (4) He did not escape from justice but from political persecution and Nissan’s conspiracy plot. This time I will be discussing the topic of (4). However, this is approaching a political claim, and so there is no real need to make a counterargument and therefore maybe it would be best to simply comment, “Ah, is that right?” In this part, I would simply like to point that it is interesting to see the differences in “justice” between the east and the west in terms from a linguistic perspective.

#### 1) “Justice” in Western languages

First of all, the German word *recht* which Japan emulated in the Meiji era is the key. In English, the word is right, which means “correct” and, as you know, it means “right” as in a legal claim or guarantee. In fact, *recht* can also mean “law”. Further information in this area can be obtained by reading “Introduction to Law” (*Kobundo*) written by MIKAZUKI Akira, a renowned authority on the Code of Civil



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Procedure. Moreover, “court” in German is *Gericht*. In fact, *richt* is a derivation of *recht*. Furthermore, rendering a decision is *recht sprechen*, and so *recht* refers to “speaking” law, rights, and justice or alternatively “law, rights, and justice “that are spoken”.

Next, looking at English, for example, *Shihosho* becomes the Department (Ministry) of Justice. Again, the meaning of “justice” is included. The court is referred to as “court”, which is not relevant here, but the word “judge” is significant. Usually the term “judge” is used, but a Supreme Court judge is called a “justice” and the top judge is the “Chief Justice”. This indeed shows the person is a manifestation of justice. In any case, it seems that the place or person has the sense of being right, that is, a place of justice. Therefore, in both German and English, when we say the word court or judge, we frequently verbalize the word “justice”.

Incidentally, the Japanese *Houmusho* is called the “Ministry of Justice” in English. This was because before World War II, it was a continental-law organization where the courts and the prosecution were under the Department of Justice, and because there were courts, it was called the *Shihosho* and included the English word “justice”. Since the courts became independent after the war, it became inappropriate to use the appellation of *shihosho* in Japanese and was renamed *Houmusho*,

but the English name of “justice” was kept.

## 2) *Shiho* in Eastern language

On the other hand, what about in the Eastern languages? When I say Eastern languages, I mean the countries that use Chinese-character derived languages, and the term *shiho* is used in Japan, China, South Korea, Vietnam and Taiwan. The phrase itself only means “judging the law”. The meaning of “justice” that has existed in the languages of Western countries has been completely dropped, and simply dealing with law leaves the impression of simple tinkering with the law.

I believe the difference in the meaning of the term actually has a huge impact on an unconscious level on people. For Western countries, this means repeating justice, justice over and over again when they speak. However, in the Japanese / Chinese-character derived languages, the only thing that comes out however many times the word is repeated is “dealing with the law”. You may know that many translations (coined words) were created in the Meiji era. For example, it seems that civil law, constitution, rights, courts, and strangely, “love” were created at this time (see *Iwanami Shinsho* “Background to Translated Words”). Among them, the translation of *shiho* cannot be said to accurately represent the thinking of Western countries.

However, from a different perspective (or ironically speaking), this may have been a coined word that fit the actual circumstances of the time. This is because in Asia, including Japan, I do not think there was the idea that “the court would render justice”. In an Asian sense, justice was rendered by the heavens (*Otentosama*), the virtuous emperors and kings, or the chieftains and village chiefs (*muraosa*). In other words, the idea was that justice could be realized outside of the

courts and that anyone could contribute to it, so in that sense, I think maybe it was felt to be too arrogant to insert the word “justice” into the judiciary or the courts (judges).

In MURAKAMI Junichi’s “History of Law” (The University of Tokyo Press), there is a story of a samurai’s family cautionary tale in the Edo period. Simply put, there is a hierarchy of power relations called *hi-ri-ho-ken-ten*, where *hi* is “wrong”, *ri* is “right”, *ho* is “rule or law”, *ken* is “power or authority” and *ten* is “heaven” (most powerful, in other words, God). The balance of power is positioned as “wrong < right < rule or law < power or authority < heaven” which means right triumphs over wrong, law triumphs over right, power triumphs over law, heaven triumphs over power; no man can oppose the divine. The secret here is that power or authority are positioned so as to be stronger than rule or law. This is still the case in modern society. For example, let us suppose that an organization has created a rule that “no smoking is allowed except in smoking spaces”. It is often the boss or executive who breaks the rule and even if the boss smokes in their own room and a subordinate gently admonishes the boss, he or she will probably reply, “Don’t be so hard.” Have you ever been in a similar situation? When I tell this story to people from China, South Korea, and Vietnam, they nod with a smile. In short, it is because there is a strong awareness that law is positioned below power and is only a tool of control and governance. However, this power cannot beat heaven, and if someone governs badly, heaven will intervene with some form of punishment and the control will end.

Although this is said to be heaven, in the end, a rebellion and revolution will occur because the tide of public sentiment will turn, so in a present-day sense, control by the people can be said to have worked in the “extreme”. If this becomes

“right triumphs over wrong, law triumphs over right, law triumphs over power, heaven triumphs over power” or “right triumphs over wrong, law triumphs over right which equals power which equals heaven”, this may become a Western-style “rule of law”.

### **3) Justice is rendered in the courts**

In the first installment of this series, I explained that, the criteria used by Western countries differ from those of Japan, and the criterion for prosecution there is that if there is a certain degree of suspicion, the prosecutor should prosecute and leave it to the court to decide. I think this is because, as I mentioned in 1), as the language itself shows, there is the deep-rooted idea that “the court renders justice” and “justice is rendered (should be realized) by the court”. That is why they think lawsuits are a place to realize rights, and they do not have the negative connotation of “judgment” unlike in Japan. Also they understand, logically speaking, that the Japanese prosecutor prosecutes using the same criteria as the court (beyond a reasonable doubt) and the conviction rate is high, but they are not entirely comfortable with this way of thinking.

Lastly, there is the nuance that Japanese people’s view of justice, as can be seen from the expression “realization of justice” is that “results in line with justice” can be found and achieved. On the other hand, it is called “Do Justice” in English. It may be “doing the right thing” (doing justice), but I think there is the nuance of doing the procedurally right thing rather than the results themselves.

It can be said that the fugitive escape did not practice “Do Justice” through the judicial procedures, and in fact, denied the justice that could have been obtained through the procedures.  
(End)