Robert Beadon and the Japanese Jury System Debate of 1878–1880

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I. Introduction

In October 1885, Robert John Beadon, formerly of the Inner Temple, London, advocate for British Imperial Federation, and future Commissioner for the Tasmanian Court of Requests, arrived at Britain's southernmost Australian colony with his wife and young family to stay 'for the benefit of his health'.[1] In forthcoming weeks local newspapers were to note that the new-

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1 "Admission to the Bar", The Mercury (Hobart), 3 November 1885, 2; "Robert John Beadon", The Inner Temple Admissions Database *http://www.innertemplearchives.org.uk/detail.asp?id=15719*; "Calls to the Bar", The Solicitors' Journal and Reporter 15 (1870–1871) 48. Beadon arrived at Hobart on the 'Ionic' on 23 October 1885: "Hobart Shipping", The Tasmanian, 31 October 1885, 26. He was appointed as an Acting Deputy-Commissioner in June 1886: The Daily Telegraph (Launceston), 31 May 1886, 2. Beadon contributed two important documents to the cause of

ly admitted barrister to the Tasmanian Supreme Court had previously practiced in Japan, and would be acting as that nation's consul in Tasmania.[2] These scant details, however, masked the reality of Beadon's experience in Japan, for Robert John Beadon had not been just another English lawyer seeking fortune in Her Britannic Majesty's Consular Courts abroad. On the contrary, he had been a senior foreign adviser and legal counsel to the Japanese government itself.[3]

Beadon's arrival in Japan almost a decade earlier could not have contrasted more with his arrival in Tasmania. On that occasion his disembarking had coincided with the outbreak of civil war. He was present to witness troops, led by the leading men of the government that he would soon serve, moving south to meet the forces of Takamori Saigō, the great hero of the Imperial Restoration who now sought the overthrow of his former ministerial colleagues.[4] Just

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Imperial Federation: R. BEADON, The Solution to the Colonial Question, The Imperial and Asiatic Quarterly Review 5(9–10) (1893) 83, and IDEM, Uniform Imperial Postage: An Enquiry and a Proposal (London 1891).

2 "Admission to the Bar", The Mercury (Hobart), 3 November 1885, 2; The Daily Telegraph (Launceston), 24 March 1886, 2. Beadon petitioned Foreign Minister Kaoru Inoue, his ministerial superior at the Ministry of Foreign Affairs (外務省 *Gaimu-shō*) from 1881–1882, for the role of Japanese Consul in Tasmania prior to departing England in August 1885. He was appointed Honorary Consul under the seal of the Grand Council of State on 21 October 1885, and commissioned to act in that capacity by Emperor Meiji on 6 November 1885. His appointment was provisionally recognised in Tasmania on 30 March 1886, and fully recognised upon receipt of Queen Victoria's approval on 10 August 1886. Beadon tendered his resignation as Honorary Consul on 13 June 1888, with effect from 30 September 1888. See: Great Britain, The Edinburg Gazette, No. 9741, 15 June 1886, 557; Great Britain, The London Gazette, No. 25596, 11 June 1886, 2797, 2798; "Government Notice No. 120", in: Tasmania, The Hobart Gazette, No. 5693, 30 March 1886, 657, 691; "Government Notice No. 266", in: Tasmania, The Hobart Gazette, No. 5714, 10 August 1886, 1223, 1245; Diplomatic Archives of the Ministry of Foreign Affairs, *Eikoku-jin Roberuto, Bīdon Eiryō Hobaruto-fu meiyo ryōji ninmei no ken* [The appointment of Robert Beadon, an Englishman, as Honorary Consul at Hobart, a British possession], Japan Center for Asian Historical Records, Reference Code: B16080183500, 3–8, 19–23, 26–28, 31–32 *https://www.jacar.go.jp/english/*; Diplomatic Archives of the Ministry of Foreign Affairs, *Ryōji Bīdon jishoku no ken. Ji Meiji nijū-ichi nen shi Meiji nijū-ni nen* [Consul Beadon's Resignation. Meiji 21 (1888) to Meiji 22 (1889)], Japan Center for Asian Historical Records, Reference Code: B16080183600, 2–5 *https://www.jacar.go.jp/english/*.

3 Chronicle & Directory for China, Japan, the Philippines &c 1882 (Hong Kong 1882) 52, 435–436; H. J. JONES, Live Machines: Hired Foreigners and Meiji Japan (Vancouver 1980) 43.

4 On the Satsuma Rebellion, see: J. BUCK, The Satsuma Rebellion. From Kagoshima through the Siege of Kumamoto Castle, Monumenta Nipponica 28(4) (1973) 427; S. VLASTOS, Opposition Movements in Early Meiji Japan, 1868–1885, in: Jansen

over a year later, the man who he would ultimately answer to as an employee of the Japanese government, Home Minister Toshimichi Ōkubo, would be cut down by disaffected samurai on his way to work.[5]

Whilst the threat of violence never left, by 1879 the challenges for the Japanese government had moved on from coping with the reactionary threat posed by samurai led violence to focus squarely on the two major issues of treaty revision and constitutional government.[6] The first was necessary to restore to Japan both tariff control and legal jurisdiction over foreigners within its borders. The second issue, also linked to the first, was essential for long term stability of the new state. The key question was the extent to which the Japanese public would be allowed to participate in the exercise of public power. Law reform, specifically the adoption of laws modelled on Western legal systems, was central to the resolution of both issues.[7] It was a time when a Western legal expert, such as Robert Beadon, could have a significant impact on the development of Japanese law and institutions.

In the second half of 1879, Robert Beadon was asked to provide an opinion on whether Japan should adopt a jury system.[8] The jury system is an important tool for allowing citizen participation in the administration of justice. The issue of the jury system's adoption therefore provided an early indication, in the life of the new Meiji state, over the extent to which the Japanese government was prepared to allow citizens to exercise public

(ed.), The Cambridge History of Japan, Volume 5: The Nineteenth Century (Cambridge 1988) 367, 399–402.

5 On the assassination of Toshimichi Ōkubo, see: S. D. BROWN, Political Assassination in Early Meiji Japan: The Plot Against Ōkubo Toshimichi, in: Wurfel (ed.), Meiji Japan's Centennial: Aspects of Political Thought and Action (Lawrence 1971) 18; The Japan Weekly Mail, 18 May 1878, 453–454, 458–459.

6 G. AKITA, Foundations of Constitutional Government in Modern Japan, 1868–1900 (Cambridge 1967) 31; Y. YANO, *Boasonādo to, sono hō-shisō: Baishin seido wo meguru ikkō-satsu* [Boissonade and His Legal Ideology: A Study into the Jury System], Waseda Hōgaku-kai-shi [The Waseda Law Journal] 47 (1997) 309, 310, 314–315; P. SCHMIDT, Law of Criminal Procedure, in: Röhl (ed.), History of Law in Japan since 1868 (Leiden 2005) 681, 682; K. TAKAYANAGI, A Century of Innovation: The Development of Japanese Law, 1868–1961, in: von Mehren (ed.), Law in Japan: The Legal Order in a Changing Society (Cambridge 1963) 5, 6–7.

7 M. FUJITA, *Shihō e no shimin sanka no kanōsei: Nihon no baishin seido, saiban'in seido no jisshō-teki kenkyū* [The Possibilities for Citizen Participation in the Administration of Justice: Empirical Research into the Japanese Jury and Citizen Judge Systems] (Tōkyō 2008) 11, 13; YANO, *supra* note 6, 310, 314–315; SCHMIDT, *supra* note 6, 682; TAKAYANAGI, *supra* note 6, 6–7.

8 *Baishin-hō iken* [Jury System Opinion], in: Hanai, *Shōtei ronsō: Mantetsu jiken o ronzu fu, baishin-hō ni tsuite* [Courtroom Essays: An Argument on the Manchurian Railway Incident, with About the Jury Act] (Tōkyō 1930) supplement 82.

power. Perhaps more importantly for the government at the time, the jury question also had potential ramifications on the possibility for treaty revision with the great Western powers. This was because the jury system was an integral part of criminal procedure for dealing with serious offences in most major Western treaty states at the time.[9] Its rejection therefore had the potential to reinforce notions that, despite reform, Japanese criminal procedure remained in an essentially pre-modern state.

Japanese scholars believe that Beadon's opinion, arguing against Japan's adoption of the jury system in the short term, was crucial in shifting the views of senior members of the Japanese government away from adopting the jury system.[10] It is therefore strange that little is known about Robert Beadon (ロバート・ビードン). Indeed, there are doubts over whether Robert Beadon even authored the jury opinion.[11] In fact, since at least the 1920s, scholars have attributed this jury opinion to Robert *Breider* (ロバート・ブレーダー), a British legal adviser employed by the Japanese government at the time.[12] Details on the last mentioned are however so elusive that even the English spelling for his surname is a matter of conjecture.

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9 Representatives of the Japanese Cabinet, who appeared before the Chamber of Elders in 1880 to explain the jury system's removal, could only point to the Netherlands as a major Western treaty power without a jury system: T. MITANI, *Seiji seido toshite no baishin-sei: Kindai Nihon no shihō-ken to seiji* [The Jury System as a Political System: Politics and the Modern Japanese Judicial System] (Tōkyō 2001) 100. For more information on the history of the jury system in Continental Europe see: W. FORSYTH, History of Trial by Jury (2nd ed., Jersey City 1875) 295–330; A. ESMEINE, A History of Continental Criminal Procedure, with Special Reference to France (John Simpson trans., South Hackensack 1913) 391-596; F. GORPHE, Reforms of the Jury System in Europe: France and Other Continental Countries, Journal of Criminal Law and Criminology 27(2) (1936) 155; J. M. DONOVAN, Juries and the Transformation of Criminal Justice in France in the Nineteenth & Twentieth Centuries (Chapel Hill 2010); B. E. HOWARD, Trial by Jury in Germany, Political Science Quarterly 19(4) (1904) 650; D. TROWBRIDGE, A German Jury Trial, California Law Review 2 (1913–1914) 34; P. TRAEST, The Jury in Belgium, Revue internationale de droit penal 72 (2001) 27.

10 T. OSATAKE, *Meiji bunka-shi toshite no Nihon baishin-shi* [Japanese Jury History as Meiji Cultural History] (Tōkyō 1926) 161–163; N. TOSHITANI, *Tennō-sei hō-taisei to baishin seido-ron* [The Imperial Legal System and the Jury System Dispute], in: Nihon Kindai Hōsei-shi Kenkyū-kai [The Japanese Modern Legal History Study Committee] (ed.), *Nihon kindai kokka no hō-kōzō* [The Legal Structure of the Modern Japanese State] (Tōkyō 1983) 544–546; FUJITA, *supra* note 7, 20–22, 26; J. AYABE, *Chizai-hō sōan kara mita chizai-hō seitei katei* [The Process for the Enactment of the Code of Criminal Instruction as seen from the Draft Code of Criminal Instruction] (Master's Thesis, Kyūshū University 2014) 80–82.

11 AYABE, *supra* note 10, 81; TOSHITANI, *supra* note 10, 544–545, 556 note 30.

12 T. HANAI, *Shōtei ronsō: Mantetsu jiken o ronzu fu, baishin-hō ni tsuite* [Courtroom Essays: An Argument on the Manchurian Railway Incident, with About the Jury

The purpose of this paper is to conclusively identify the author of the jury opinion. To this end, the paper argues that there is no evidence, outside of the 1920s attributions, to substantiate that a British legal adviser with a surname at least similar to *Breider* was employed by the Japanese government at the time. By contrast, there is considerable evidence substantiating Robert Beadon's status as both a significant Japanese government employee during the relevant period, and as a person with the legal expertise necessary to draft the opinion. More importantly, there are also primary sources from late 1879 that directly refer to Beadon as the document's author. The weight of direct and circumstantial evidence therefore indicates that Robert John Beadon was the author of the jury opinion.

The first part of the paper provides a background to the Meiji era jury system proposal and to the dispute that led to the opinion's creation. The author describes the key features of the proposal and emphasises the differences between the French system advocated by its author, Gustave Boissonade, and the Anglo-American common law system. The dispute between Kowashi Inoue and Boissonade over the jury system's inclusion is identified as the catalyst for the creation of the jury opinion. The author ends the part by arguing that the identity of the opinion's author is a key step in assessing its persuasive force. The second part of the paper focuses on the question of authorship. The paper examines the text of the opinion itself for clues on the identity of its author, but ultimately comes to the conclusion that only a wider search is capable of establishing authorship. The methodology used for that purpose is outlined. The paper argues that, on the basis of this method, Robert John Beadon is the author of the jury opinion. A biographical sketch on Robert John Beadon, focusing on his time in Japan, is then provided. The part ends by considering the question of who called for the opinion's creation. The conclusion to the paper identifies both the reasoning within the opinion, and the extent to which the opinion in fact influenced the Japanese government, as areas requiring further research. An English translation of the Japanese text of the jury opinion is included in an appendix after the paper's conclusion.

II. THE 1878–1880 JURY DEBATE AND THE THIRD OPINION ON THE JURY SYSTEM

This part of the paper provides a background to the creation of the jury opinion. The discussion starts by providing a brief overview of the drafting

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Act] (Tōkyō 1930) supplement 14–15, 82–87; OSATAKE, *supra* note 10, 162–163; MITANI, *supra* note 9, 103; FUJITA, *supra* note 7, 20–22.

process for the Code of Criminal Instruction 1880 (治罪法 *Chizai-hō*),[13] focusing upon the role played by Gustave Boissonade in the law's creation. This code was one of Japan's first two modern law codes.[14] The jury provisions within its drafts were the first attempt to introduce a jury system into Japan as an ordinary part of criminal procedure.[15] The paper briefly describes these provisions. In the process the author emphasises both the strong links with French law, and the differences with Anglo-American law of the same period. The paper thereafter turns to describe the dispute over the jury system that erupted during the review stages for the code. It identifies this dispute as being the agent responsible for the creation of the jury opinion. The paper then turns to highlight academic consensus over the importance of the opinion. It argues that this consensus is strange in light of the uncertainty over both its author's name and their credentials. The part concludes by arguing that such details are essential for assessing the persuasive force of the opinion itself.

1. The Jury System in the Drafts for the Code of Criminal Instruction

In 1877 the French jurist Gustave Émile Boissonade de Fontarabie began work on drafting Japan's first modern criminal procedure code, the Code of Criminal Instruction 1880 (治罪法 *Chizai-hō*)].[16] Boissonade was a former Professor from the University of Paris, who had been hired by the Japanese government on the recommendation of Ministry of Justice students sent to

13 *Chizai-hō* [Code of Criminal Instruction], Grand Council of State Proclamation, No. 37/1880.

14 The Penal Code was enacted on the same day, 17 July 1880: *Keihō* [Penal Code], Grand Council of State Proclamation, No. 36/1880. Previous Meiji era codes had been largely based on the laws of the Chinese Ming and Qing dynasties: SCHMIDT, *supra* note 6, 683–684; TAKAYANAGI, *supra* note 6, 20.

15 The Japanese government had already made use of juries composed of government officials (参坐 *sanza*) prior to 1879. These bureaucratic juries were used as part of ad hoc tribunals created to resolve cases involving intra-governmental disputes, and in military justice proceedings. The bureaucratic jury system (参坐制 *sanza-sei*) is discussed at length in OSATAKE, *supra* note 10, 26–145. For a more concise treatment in English, see: A. DOBROVOLSKAIA, Japan's Past Experiences with the Institution of Jury Service, Asia-Pacific Law & Policy Journal 12(1) (Special Issue) (2010) 1, 6–9; A. DOBROVOLSKAIA, The Development of Jury Service in Japan: A Square Block in a Round Hole? (New York 2017) 33–44; D. VANOVERBEKE, Juries in the Japanese Legal System: The Continuing Struggle for Citizen Participation and Democracy (New York 2015) 46-50. There is evidence that the Japanese government considered making use of lay jurors as part of the 1873 Makimura case, but ultimately decided in favour of bureaucratic jurors instead: DOBROVOLSKAIA (2010) at 7; DOBROVOLSKAIA (2017) at 35; VANOVERBEKE at 48.

16 FUJITA, *supra* note 7, 11; YANO, *supra* note 6, 329–330.

the Sorbonne to study French law in 1873.[17] Boissonade's transition from instructor to the lead drafter of Japan's modern law codes appears to have been the result of government frustrations over both the pace and quality of legal codification efforts to that point in time.[18]

In Boissonade's own estimations, the most important reform included within his draft for the Code of Criminal Instruction was a jury system for serious criminal offences.[19] This jury system was to survive several reviews, but was to ultimately end up being struck out within the space of a month at the Cabinet stage.[20] The exact reason for the removal remains unclear to this day.

Before progressing further it is necessary to say something about the jury system contained within the drafts for the Code of Criminal Instruction, and about its operation as part of a broader system of criminal procedure. To this end it is important to note that, as with Europe, it is the 'French version of the English jury, rather than the English institution itself,'[21] that has historically been emulated in Japan.[22] In this respect it is also important to note that trial by jury was the norm for serious criminal offences in France between 1791 and 1941.[23] The decision to abandon the jury system in favour of mixed-courts, where judges sit together with lay-people to decide cases, was only made under the Vichy Regime in 1941. The French jury system had however long been subject to significant criticism, particularly from elements of the judiciary, prior to that time.[24] The adoption of French law had important implications for the drafting of the 1880 Japanese Code.

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17 YANO, *supra* note 6, 313; Y. ŌKUBO, *Bowasonādo: Nihon kindai hō no chichi* [Boissonade: The Father of Modern Japanese Law] (Tōkyō 1977) 35–42.

18 YANO, *supra* note 6, 329.

19 G. BOISSONADE (Nakamura trans.), *Boasonādo keiji soshō hōten sōan* [Boissonade's Draft for a Code of Criminal Procedure], Ritsumeikan Hōgaku (Ritsumeikan Law Review) 2009/2, 502.

20 FUJITA, *supra* note 7, 22; MITANI, *supra* note 9, 100.

21 J. H. LANGBEIN, The English Criminal Trial Jury on the Eve of the French Revolution, in: Schioppa (ed.), The Trial Jury in England, France and Germany 1700–1900 (Berlin 1987) 13.

22 The Japanese jury system of 1928–1943 was also a creature of the English common law that arrived in Japan by way of France. Many of the 'unique' features of the system, such as verdicts returned in the form of answers to questions presented by the presiding judge and the lack of a unanimity requirement, were in fact common to Continental European jury systems. See the citations in *supra* note 9.

23 The leading contemporary work in English on the history of the French jury system is DONOVAN, *supra* note 9. See also: ESMEIN, *supra* note 9, 391–569; FORSYTH, *supra* note 9, 295–314.

24 See, for example, W. SAVITT, Villainous Verdicts? Rethinking the Nineteenth-Century French Jury, Columbia Law Review 96 (1996) 1019, 1019–1020, 1027–

The French jury operated as part of a broader system of criminal procedure that was significantly different from the Anglo-American model. Whilst the twelve member jury panel was the exclusive decider of facts in serious criminal cases,[25] under the French system the judicial panel was composed of a minimum of three judges.[26] Proceedings before the court were moreover conducted on an inquisitorial basis, with the presiding judge, rather than either the public prosecutor or the defence counsel, playing the most active role in questioning the defendant and witnesses.[27] Indeed, with the exception of reading the indictment and recommending a sentence on conviction, the prosecutor's role was largely to act as a witness to the proceedings rather than as an active participant.[28] The jury itself did not deliver a general verdict on the guilt or innocence of the accused, but rather returned its verdict in the form of a series of yes-no answers to questions presented to it by the presiding judge.[29] These questions covered the elements of the offence, the availability of any justifiable excuse, and the presence of mitigating or aggravating circumstances.[30] There was moreover no unanimity requirement under French law. A bare majority of jurors was generally sufficient for a response adverse to the accused on questions of conviction, or in favour of the accused on questions of mitigation. Ties

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1030, 1035–1037; DONOVAN, *supra* note 9, 3–12, 18–21, 35–47, 92–94, 111–115; J. W. GARNER, Criminal Procedure in France, The Yale Law Journal 25(4) (1916) 255, 276–280; ESMEIN, *supra* note 9, 410, 419–420, 450–451, 465–488, 562–565; FORSYTH, *supra* note 9, 296–297, 305–309.

25 The cour d'assizes (Assize Court) had jurisdiction over serious criminal offences. There was one for each département of France. The Assize Courts were composed of a presiding judge, two associate judges (four from 1808–1831), and a twelve member jury. The French jury delivered its verdict in the form of a series of yes-no answers to questions posed by the presiding judge, rather than in the form of a general verdict: DONOVAN, *supra* note 9, 5, 12–14, 43, 56.

26 A presiding judge and two associate judges was the norm other than the period from 1808–1831, during which time there was a presiding judge and four associates: DONOVAN, *supra* note 9, 12, 43, 56. Savitt states that the additional judges were introduced by the Napoleonic *Code d'instruction criminelle* (Code of Criminal Procedure) of 1808 to make 'the professional magistracy a more intimidating courtroom presence': SAVITT, *supra* note 24, 1032.

27 DONOVAN, *supra* note 9, 12–14, 121–122; GARNER, *supra* note 24, 262–268, 270–272.

28 GARNER, *supra* note 24, 261–262, 270–271.

29 DONOVAN, *supra* note 9, 5, 12, 31; SAVITT, *supra* note 22, 1033; GARNER, *supra* note 24, 273–275; ESMEIN, *supra* note 9, 513.

30 DONOVAN, *supra* note 9, 5, 31, 56–57; SAVITT, *supra* note 22, 1033; GARNER, *supra* note 24, 273, 278–280; ESMEIN, *supra* note 9, 513, 531–532; FORSYTH, *supra* note 9, 303–304.

were resolved in favour of acquittal.[31] The French system otherwise differed from the Anglo-American model in giving judges control over the indictment stage for serious criminal offences,[32] allowing civil litigants to be joined to criminal proceedings,[33] lacking formal rules of evidence,[34] restricting the opportunity for cross-examination,[35] and making the interrogation of the accused a mandatory part of the criminal trial.[36]

All of the above characteristics of French law were transplanted into Boissonade's draft for the Japanese Code,[37] with one exception. Jury Panels under Boissonade's draft consisted of only ten members, rather than the customary twelve.[38] The reason for this discrepancy is uncertain, but perhaps reflected an expectation on Boissonade's part that there would be a shortage of suitably qualified jurors.[39] In this respect, it is important to note that the draft code did not contain provisions on juror qualifications.

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31 DONOVAN, *supra* note 9, 14, 41, 56, 62–63; SAVITT, *supra* note 22, 1033; GARNER, *supra* note 24, 275; ESMEIN, *supra* note 9, 513–514, 532–533; FORSYTH, *supra* note 9, 304, 306. From 1808 to 1831 the five judges of the court were polled for their opinions when the jury split 7–5 in favour of conviction on the central charge. If at least four of the five judges found to the contrary, the accused was acquitted on the basis of a majority of the court (that is, judges plus jurors). Between 1832 and 1835 a majority of at least eight jurors was necessary to convict the accused.

32 J. M. DONOVAN, Magistrates and Juries in France, 1791–1952, French Historical Studies 22(3) (1999) 379, 382; GARNER, *supra* note 24, 255–262; DONOVAN, *supra* note 9, 42–43; ESMEIN, *supra* note 9, 505–510, 539–545; FORSYTH, *supra* note 9, 297–300.

33 "History of the French Codes", Jurist, or Quarterly Journal of Jurisprudence and Legislation 2 (1829) 341, 363–365; "Judicial Establishments of France", Jurist, or Quarterly Journal of Jurisprudence and Legislation 3 (1832) 198, 210; GARNER, *supra* note 24, 271, 276, 283–284.

34 DONOVAN, *supra* note 9, 12–13, 31, 98–100; GARNER, *supra* note 24, 269–270.

35 DONOVAN, *supra* note 9, 13; GARNER, *supra* note 24, 269.

36 DONOVAN, *supra* note 9, 12–13; 120–122; GARNER, *supra* note 24, 263–268.

37 See, for example, *Chizai-hō sōan* [Draft Code of Criminal Instruction]: Pt. 2, Ch. 3 (preliminary examination); Art. 68 (examining magistrates); Art. 86 (criminal court consists of three judges and ten jurors); Arts. 478, 492, 494, 497, 504, 506, 512, 515 (exclusive jurisdiction of jury over verdict); Arts. 478, 497–499 (jury verdict in form of yes-no answers to presiding judge's questions); Arts. 499–500 (no unanimity requirement for jury verdict); Arts. 2, 4, 507 (the incidental private action); Arts. 437, 462, 464–466, 468, 470, 471, 473 (presiding judge's control over proceedings and role as chief interrogator, defendant as lead witness in proceedings). See also: SCHMIDT, *supra* note 6, 688–694; TAKAYANAGI, *supra* note 6, 18–21.

38 Arts. 86, 101 *Chizai-hō sōan* [Draft Code of Criminal Instruction]; Arts. 73, 88 *Chizai-hō shinsa shūsei-an* [Code of Criminal Instruction Review Amended Draft].

39 In his later defence of the jury system Boissonade emphasised that people who were deemed to be ignorant and illiterate could be excluded from jury service. It is, however, unclear whether he saw education as a particular problem in Japan, or whether

The discussion to this point has been about a jury system but the drafts for the Code of Criminal Instruction actually contained two types of jury, the ordinary jury (陪審 *baishin*) for serious crimes and an extraordinary jury for more serious offences affecting the interests of the state (referred to as the High Jury (高等陪審 *kōtō baishin*), or Special Jury (特別陪審 *tokubetsu baishin*) in later drafts).[40] The jury for serious crimes was part of the Criminal Court (重罪裁判所 *jūzai saiban-sho*).[41] The criminal courts were sessional courts that were held at least once every three months in each prefecture at courts of appeal, or courts of original jurisdiction when there was no court of appeal in the relevant prefecture.[42] As originally envisaged, each such court consisted of a presiding judge, who was an appeal court judge, two associate judges, who were either appeal court judges or the most senior judges from the court of original jurisdiction, and 'ten jurors drawn by lot in accordance with law'.[43] The criminal courts had jurisdiction over all serious crimes committed within their jurisdiction other than those reserved for the High Court of Justice.[44]

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the lower number of jurors was simply a cost-reduction exercise. See: BOISSONADE, *supra* note 19, 547–548.

40 The Penal Code 1880 adopted the French classification of offences *(infraction)* as constituting the three categories of *contravention* (違警罪 *ikei-zai*), *delit* (軽罪 *keizai*) and *crime* (重罪 *jūzai*), in increasing order of severity: Art. 1 *Keihō* [Penal Code]. The French classification roughly corresponds with the English division into felony, misdemeanour, and summary offences: LANGBEIN, *supra* note 21, 16. Under the Code of Criminal Instruction 1880, and its drafts, jurisdiction over each category of offence was assigned to a different court in the court hierarchy. *Contravention* went to the police courts (違警罪裁判所 *ikei-zai saiban-sho*), *delit* to the correctional courts (軽罪裁判所 *keizai saiban-sho*), and *crime* to the criminal courts (重罪裁判所 *jūzai saiban-sho*): Art. 39 *Chizai-hō sōan*; Art. 38 *Chizai-hō shinsa shūsei-an*; Art. 38 *Chizai-hō.* The High Court of Justice (高等法院 *kōtō hōin*) had jurisdiction over crimes against the state, Emperor, or Imperial Family, and offences where a member of the Imperial Family or an Imperial appointed official was a defendant: Art. 98 *Chizai-hō sōan*; Art. 86 *Chizai-hō shinsa shūsei-an*; Art. 83 *Chizai-hō.*

41 Pt. 1, Ch. 4 *Chizai-hō sōan*; Pt. 2, Ch. 5 *Chizai-hō shinsa shūsei-an.* French law draws a distinction between courts from which there is an appeal available on questions of law and fact, and those from which there is only an appeal available on questions of law. Boissonade was critical of the use of the term *saiban-sho* (裁判所 French: *tribunal*) to designate both the criminal courts and courts of appeal, from which there were no appeals available on questions of fact, and the correctional and police courts, from which there was such an appeal available. The term *hōin* (法院 French: *cour*) should have been used for the former instead: BOISSONADE, *supra* note 19, 542–543 note 125.

42 Arts. 83–85 *Chizai-hō sōan*; Arts. 70–72 *Chizai-hō shinsa shūsei-an.*

43 Art. 86 *Chizai-hō sōan*; Art. 73 *Chizai-hō shinsa shūsei-an.*

44 Arts. 83, 98 *Chizai-hō sōan;* Arts. 70, 86 *Chizai-hō shinsa shūsei-an.*

The extraordinary jury was part of the High Court of Justice (高等法院 *kōtō hōin*).[45] The High Court of Justice was called on an ad hoc basis to trial offences against the state or Imperial Family, and offences where the defendant was a member of the Imperial Family or an Imperial appointed official (勅任官 *chokunin-kan*).[46] The composition of this court changed with the drafts but always featured ten specially selected jurors, described alternatively as 'high jurors (高等陪審 *kōtō baishin*)' or 'special jurors (特別陪審 *tokubetsu baishin*)'.[47] The drafts were once again silent on the qualifications for these jurors. Boissonade, however, elsewhere suggested that Japan should follow the practice of the French Second Republic and Second Empire and draw such jurors from the prefectural assemblies, as Japan had assemblies at the prefectural level to mirror those of the French general-council of departments *(conseil général de département)*.[48]

2. The Jury Dispute: Kowashi Inoue vs Boissonade

The jury system's inclusion within the drafts for the Code of Criminal Instruction soon came to the attention of Kowashi Inoue. Inoue was one of the Ministry of Justice students who had recommended Boissonade's employment in 1873.[49] He would go on to play a pivotal role in drafting two of the key foundation documents for the Meiji state, the Constitution of the Empire of Japan 1889 and the Imperial Rescript on Education.[50] After returning to Japan from Europe, Inoue had gone on to establish himself within the Japanese government as one of its most capable bureaucrats. At the

45 Pt. 1, Ch. 6 *Chizai-hō sōan*; Pt. 2, Ch. 7 *Chizai-hō shinsa shūsei-an.*

46 Art. 98 *Chizai-hō sōan*; Art. 86 *Chizai-hō shinsa shūsei-an.* The jurisdiction of the court expressly extended to judges and prosecutors of the Imperial Court under the Draft Code, but this was removed in the Review Amended Draft. Such officials may nevertheless have been captured as *chokunin-kan.*

47 Art. 101 *Chizai-hō sōan* (*kōtō baishin* [high jurors]); Art. 88 *Chizai-hō shinsa shūsei-an* (*tokubetsu baishin* [special jurors]). The Draft Code provided for a judicial bench of five judges from the Imperial Court, with a further two judges from the same venue acting as substitutes. The Review Amended Draft provided for seven judges and two substitutes from either the Imperial Court or Chamber of Elders (元老院 *Genrō-in*).

48 G. BOISSONADE (Mori/Iwano/Oyamada trans.), *Chizai-hō sōan chūshaku dai-ippen* [Annotated Draft Code of Criminal Instruction, Volume 1] (Tōkyō 1882) 395–396. The text for the relevant annotation (No. 171) is missing from Professor Nakamura's contemporary Japanese translation: BOISSONADE, *supra* note 19.

49 FUJITA, *supra* note 7, 16; YANO, *supra* note 6, 313.

50 J. PITTAU, Inoue Kowashi, 1843–1895, and the Formation of Modern Japan, Monumenta Nipponica 20(3/4) (1965) 253, 259–276; H. P. CH'EN, Inoue Kowashi: The Principles of Reform, in: Conroy et al. (eds.), Japan in Transition: Thought and Action in the Meiji Era, 1868–1912 (Rutherford 1984) 224, 225—232.

same time, he had succeeded in forging links with some of the most powerful men in the Meiji state, most notably Toshimichi Ōkubo, Tomomi Iwakura and Hirobumi Itō.[51] Inoue's interest in constitutional law and role as an advocate for the Prussian Constitution is well known.[52] Much less well known is his keen interest in criminal procedure law.[53] Inoue's studies had led him to the conclusion that Japan should not adopt the jury system.

It is not possible in the limited space now available to provide a detailed discussion about the views of Boissonade and Inoue on the jury system. The focus of this paper is after all elsewhere. It is nevertheless important for readers to have at least a general understanding of the substance of these men's arguments, to better understand the context in which the jury opinion was given. With this in mind, Boissonade argued that the jury system was a central part of any system of criminal procedure that sought to balance the interests of the individual against the interests of the state in preventing crime. Its adoption throughout the Western world, in every major jurisdiction other than the Netherlands, moreover meant that treaty revision would not be possible without its inclusion within Japan's laws.[54] Kowashi Inoue, by contrast, argued that the jury system was a 'bad law' that replaced reasoning on the basis of law by experts with the prejudices and partisanship of the masses. The jury system moreover promoted leniency for crimes and allowed criminals to escape punishment. In light of Japan's precarious position, both internally and from without, the jury system was an administratively expensive indulgence that Japan could not afford to adopt.[55]

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51 AKITA, *supra* note 6, 37–41; PITTAU, *supra* note 50, 257–260; CH'EN, *supra* note 50, 224–227.

52 See, for example, AKITA, *supra* note 6, 10, 41, 60–61; PITTAU, *supra* note 50, 259–270; CH'EN, *supra* note 50, 225–232.

53 Inoue wrote and published two volumes, of nine and five books respectively, on criminal procedure law under the title *Chizai-hō bikō* [Notes on the Code of Criminal Instruction] between 1874 and 1878. Both volumes were still in publication in 2011, see: K. INOUE, *Chizai-hō bikō jōhen (Nihon rippō shiryō zenshū bekkan 682)* [Notes on the Code of Criminal Instruction: Volume 1 (Japanese Legislative Documents Complete Works Volume 682)] (Tōkyō 2011); K. INOUE, *Chizai-hō bikō gehen (Nihon rippō shiryō zenshū bekkan 683)* [Notes on the Code of Criminal Instruction: Volume 2 (Japanese Legislative Documents Complete Works Volume 683)] (Tōkyō 2011). See also: FUJITA, *supra* note 7, 16.

54 G. BOISSONADE, *Keiji baishin-ron no tōgi* [Response to the Criminal Jury Argument], in: Hanai, *supra* note 12, supplement 24.

55 K. INOUE, *Chizai-hō baishin ni taisuru iken* [Opinion on the Code of Criminal Instruction Jury System], in: Hanai, *supra* note 12, supplement 21.

3. The Third Opinion on the Jury System and Doubts over its Authorship

The dispute over the jury system reached its high water mark at the Review Board stage in the second half of 1879, with Inoue actively petitioning the Chairman of the Review Board for the jury system's removal.[56] It was in this context that a third opinion was delivered to the Code of Criminal Instruction Review Board on the jury question. The author of that opinion was a British legal adviser employed by the Japanese government at the time.[57] This paper is about that opinion ('the jury opinion').

Professor Toshitani Nobuyoshi believes that the jury opinion was sought by Kowashi Inoue in order to strengthen his own case against Boissonade, by demonstrating that there was a division in foreign expert opinion over the merits of the jury system.[58] Whilst this is a matter of conjecture, it is nevertheless clear from the document itself that the author of the jury opinion was aware of the points of difference between Inoue and Boissonade when writing the opinion. The opening sentence expressly refers to the dispute between the two named men, before stating the author's desire to merely present a general opinion on the topic rather than debate the merits of the men's arguments. More significantly, it is also clear that Inoue was responsible for bringing the jury opinion to the Review Board's attention. This can be established by two letters from the Chairman of the Review Board, Sakimitsu Yanagiwara, to Kowashi Inoue thanking him for the loan of Mr Beadon's jury response (ビードン氏陪審答議書 *Bīdonshi Baishin Tōgisho*). The second of these letters, however, refers to the opinion as Mr Beaton's jury argument (ビートン氏陪審論書 *Bītonshi Baishin Ronsho*).[59] The single day between the dating of the jury opinion and Yanagiwara's first letter suggests that Inoue, and possibly his superiors as well, saw the removal of the jury system at the Review Board stage as a priority.

The preceding paragraph indicates that a Mr Beadon (ビードン氏), or a Mr Beaton (ビートン氏), was the author of the jury opinion, but neither of these surnames is the one most commonly associated with the document. Since at least the 1920s authorship has been attributed to a British legal adviser named Robert *Breider* (ロバート・ブレーダー).[60] There are however no details currently available on who this author might be. Indeed, even the

56 INOUE KOWASHI DENKI HENSAN IIN-KAI [Kowashi Inoue Biography Editorial Committee] (ed.), *Inoue Kowashi den shiryō-hen daigo* [Life of Kowashi Inoue, Historical Materials, Volume 5] (Tōkyō 1975) 230–232.

57 HANAI, *supra* note 12, supplement 14.

58 TOSHITANI, *supra* note 10, 544.

59 INOUE KOWASHI DENKI HENSAN IIN-KAI, *supra* note 56, 230–232.

60 HANAI, *supra* note 12, supplement 14–15, 82–87; OSATAKE, *supra* note 10, 162–163; MITANI, *supra* note 9, 103; FUJITA, *supra* note 7, 20–22.

correct spelling for the surname is a matter of guesswork. This is in part because *katakana,* one of the three Japanese scripts, is a phonetic alphabet that here captures the pronunciation of the name rather than the foreign spelling. The word could therefore refer to any number of surnames, including Breider, Braider and Breida, and that is only taking account of the more obvious spellings.

4. Why the Author's Identity Matters

Despite the uncertainty over the authorship, scholars writing about Japan's prior experience with the jury system have expressed little doubt over the importance of the jury opinion in turning the government against the jury system.[61] The persuasive force of such claims are, however, undermined by the lack of certainty over both the name of the author and their qualifications.

By the end of 1879, Boissonade could point to well over half a decade of distinguished service within the Japanese government. During this time, he had risen from being a mere legal adviser and instructor attached to the Ministry of Justice to become not only the lead drafter for Japan's modern (that is, Western) criminal, criminal procedure, court organisation, and civil codes, but a key adviser to the Japanese government at large.[62] In the foreign policy sphere, Boissonade had moreover already proved his worth in assisting Toshimichi Ōkubo reach a successful settlement to the tensions created with Chinese Qing government and Western Powers through Japan's 'expedition' to Taiwan in 1874.[63] Ōkubo's selection of Boissonade to advise him in this endeavour highlights the esteem with which Boissonade's views were held at the time.[64] The successful resolution of the

61 OSATAKE, *supra* note 10, 161–163; FUJITA, *supra* note 7, 20–22, 26; VANOVERBEKE, *supra* note 15, 52–53, 186–187. Boissonade indicated in his letter of dedication to Takatō Ōki, State Councillor and Minister of Justice, that he thought prematurity was the primary rationale for the changes made to the Draft Code of Criminal Instruction, stating: "In considering the volume in question you can acquire the means to study in depth and gain an appreciation for the various items that were removed because they now seem premature in Japan, such as the jury system, but which ought to be taken up once more when the opportunity presents itself." BOISSONADE, *supra* note 19, 509; BOISSONADE, *supra* note 48, 2–3. See also: R. SIMS, French Policy Towards the Bakufu and Meiji Japan 1854–95 (Richmond 1998) 264–266.

62 N. UMETANI, The Role of Foreign Employees in the Meiji Era in Japan (Tōkyō 1971) 34; M. KOBAYASHI IKEDA, French Legal Adviser in Meiji Japan (1873–1895): Gustave Emile Boissonade de Fontarabie (PhD Thesis, University of Hawaii 1996); SIMS, *supra* note 61, 260–269.

63 KOBAYASHI IKEDA, *supra* note 62, 111–156.

64 KOBAYASHI IKEDA, *supra* note 62, 138.

issue added to that prestige. In light of the trust that the Japanese government had placed in Boissonade's judgment to 1879, it is hardly surprising that the government would have been concerned by Boissonade's suggestion that treaty revision would not be possible without a criminal trial jury system. More so at a time when the Japanese state was looking to launch a major diplomatic offensive to revise the treaties with the Western powers.[65]

Whilst Kowashi Inoue was an extremely important official, especially because of his links with Hirobumi Itō and Tomomi Iwakura,[66] it is extremely doubtful that he had either the expertise or influence to effectively challenge Boissonade by himself. Inoue was, at this point in time, still a rising star within the Japanese government. He was significantly yet to achieve the degree of influence that was only to come his way after the expulsion of Finance Minister Shigenobu Ōkuma, and the other advocates for English constitutional monarchy, from the government in 1881.[67] The

65 The appointment of Kaoru Inoue as Minister for Foreign Affairs on 10 September 1879 is generally understood to have marked a new phase in the Japanese government's efforts to revise the Unequal Treaties, so called because the provisions on legal jurisdiction over foreign nationals and taxation on imports in particular were not reciprocated by the Western treaty states: Y. NAKAMURA, *Kaidai* [Biographical Introduction], in: Boissonade, *supra* note 19, 503; L. G. PEREZ, Revision of the Unequal Treaties and Abolition of Extraterritoriality, in: Hardacre/Kern (eds.), New Directions in the Study of Meiji Japan (Leiden 1997) 320, 322–324, 327–328; J. E. HOARE, Extraterritoriality in Japan, 1858–1899, The Transactions of the Asiatic Society of Japan 3rd Series 18 (1983) 71, 72–76, 94; A. FUJIWARA, *Nihon jōyaku kaisei-shi no kenkyū: Inoue, Ōkuma no kaisei kōshō to ōbei rekkoku* [A Study into the History of Japanese Treaty Revision: Inoue and Ōkuma's Revision Negotiations and the Western States] (Tōkyō 2004) 13–14. Akihisa Fujiwara states that Robert Beadon was transferred to the Ministry of Foreign Affairs around November 1879, and cites this as one of the first significant steps taken by Kaoru Inoue to effect treaty revision: at 23. Whilst not challenging the author's underlying claims over Beadon's involvement in work on treaty revision, Japanese government documents however indicate that Beadon's transfer to the exclusive jurisdiction of the Foreign Ministry only occurred on 1 July 1881: K. INOUE, *Hōritsu gakushi Bīdon yatoikae tō no ken* [Changes to the employment of the law graduate Beadon], Letter to Sanetomi Sanjō, 6 June 1881, in: Dajōkan [Grand Council of State] (ed.), *Kō-bunroku, daini jūyon-kan, Meiji jūyonen gogatsu~rokugatsu, Gaimu-shō* [Official Documentary Records, Volume 24, May–June 1881, Ministry for Foreign Affairs], National Archives of Japan Digital Archive, Call No. 公 02931100, Item No. 29. *https://www.digital.archives.go.jp/index_e.html.*

66 AKITA, *supra* note 6, 37–41; PITTAU, *supra* note 50, 257–260; CH'EN, *supra* note 50, 224–227.

67 On the Crisis of 1881, see: AKITA, *supra* note 6, 31–57; G. M. BECKMAN, The Making of the Meiji Constitution: The Oligarchs and the Constitutional Development of Japan, 1868–1891 (Lawrence 1957) 48–68; PITTAU, *supra* note 50, 253–265.

government decision in that year to adopt the Prussian Constitution as a model for a future Japanese Constitution, the most significant outcome of the Crisis of 1881, marks the point in time in which the hitherto few advocates for the German school of law began to gain in ascendency over their French and English rivals.[68] Inoue moreover operated within a government that was factionalised, largely along old feudal domain lines, and without a single dominant personality. Some degree of consensus, particularly across the two major domain factions, was a requirement to effect or stymie significant structural change, whether in terms of personnel or law reform.[69] Perhaps most importantly in this instance, Inoue also had to contend with the fact that, in terms of breadth of training and experience, he could not expect to compete with Western legal experts on questions of Western law. A consideration he appears to have recognised himself, as his opinions on Western-based law reform were frequently written in close consultation with foreign advisers.[70] Inoue's opposition to the jury system was moreover

68 AKITA, *supra* note 6, 10–11, 26–27, 36–37, 41, 44, 49, 55–58, 60–61; PITTAU, *supra* note 50, 259–269; CH'EN, *supra* note 50, 227–233.

69 The core of the Japanese government during the Meiji period was composed of officials from the old feudal domains of Chōshū, Satsuma, Tosa, and Hizen: M. B. JANSEN, The Meiji Restoration, in: Wurfel (ed.), Meiji Japan's Centennial: Aspects of Political Thought and Action (Lawrence, 1971) 2, 8–9; J. BANNO/K. ŌNO, Research Paper 7 – The Flexible Structure of Politics in Meiji Japan (April 2010), Developmental Leadership Program, 5–9, *http://www.dlprog.org/publications/the-flexible-structure-of-politics-in-meiji-japan.php*. The stability of the Japanese government in this period can largely be attributed to the fact that, despite strong personalities and personal ambition, key figures recognised the value of power-sharing, compromise, and cooperation in working to achieve shared goals: JANSEN at 2, 8–12; G. AKITA, Government and Opposition in Prewar Japan: Is Political Success an Embarrassment?, The Transactions of the Asiatic Society of Japan 3rd Series 18 (1983) 39, 50–55; BANNO/ŌNO at 5–9.

70 By way of example, the documents on constitutional government that Inoue prepared for Tomomi Iwakura, at the behest of Hirobumi Itō, during the Crisis of 1881 were written in 'strict collaboration' with the German adviser to the Japanese Government Hermann Roesler: PITTAU, *supra* note 50, 260–261; AKITA, *supra* note 6, 37–41; CH'EN, *supra* note 50, 227–232. The same gentleman and Albert Mosse, another German adviser, both worked closely with Inoue on the various drafts for the Meiji Constitution and the commentary for the same document: PITTAU, *supra* note 50, 267–268. Despite arriving at an opposing position, Inoue's jury opinion was likewise written in consultation with a foreign adviser, Boissonade, as Inoue acknowledges in the document itself: INOUE, *supra* note 55, supplement 71–74. The relevant documents demonstrate that Inoue's work on Western law was in large measure based on feedback to questions that Inoue submitted to the relevant advisers. Inoue should therefore be seen, at this time, as still being a student of Western law rather than an expert in his own right. In saying this, it is however important to

undermined by the fact that German law and the Prussian Constitution, which he was advocating as a model for constitutional government in Japan, also recognised the right to trial by jury.[71]

At this period in Japan's legal development major legislative reforms, in the form of Western legal transplants, were always conducted in close consultation with Western legal advisers. Indeed, in most cases it was the Western legal advisers who provided the first working draft.[72] This in large measure simply reflected the fact that Japan was adopting Western laws, and the leading experts on such laws were Western. At a time when distance, language, and cultural difference provided greater barriers to acquiring knowledge about foreign jurisdictions, Japan had no option but to rely on foreign experts at home or send students abroad. The urgency for reform, however, meant that the Japanese government did not have the luxury to wait for the development of a pool of local experts. Thus, foreign employees were in reality the only effective means available to Japan to West-

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recognise that Inoue's knowledge of Western law was only part of the skills, knowledge, and experience that made him such an asset to key figures in the Japanese government.

71 Art. 94 *Verfassungsurkunde für den Preußischen Staat* [Constitution of the Kingdom of Prussia] 1850; MITANI, *supra* note 9, 116–117. The French jury system was introduced into the Rhineland during the French Revolutionary and Napoleonic Wars, and adopted throughout Germany in the aftermath of the Revolutions of 1848: FORSYTH, *supra* note 9, 325–326, 328; R. LAUN, The Rise and Fall of Trial by Jury in Germany, Hokudai Hōgaku Ronshū (The Hokkaido Law Review) 39(1) (1988) 210. Article 93 of the Prussian Constitution of 1848 recognised the right to trial by jury for felony, press and political offences. The Constitution of 1850, however, removed the last two categories of offences from the competency of juries. After unification, Imperial German law continued to provide for trial by jury for felony offences: *Gerichtsverfassungsgesetz* [Courts Constitution Act] (Germany) 27 January 1877, RGBl. 1877, 41, Scts. 79–99. The German jury system was abolished under the Weimar Republic on 22 March 1924, and replaced with a mixed-court system of three judges and six lay-assessors: GORPHE, *supra* note 9, 158. The Prussian and Imperial German jury systems reproduced the key features of the French system discussed previously, see: FORSYTH, *supra* note 9, 326–328; TROWBRIDGE, *supra* note 9, 34, 36–37, 39–42; HOWARD, *supra* note 9, 650–651, 658-661, 663, 665, 667–668.

72 Boissonade's role has already been outlined. Hermann Roesler was responsible for drafting the Japanese Commercial Code. Together with Albert Mosse, he also played a key role in the drafting of the Meiji Constitution. Otto Rudorff prepared the Law on the Constitution of Courts. Hermann Techow wrote the first draft for the Code of Civil Procedure. On Hermann Roesler, see: J. SIEMES, Hermann Roesler's Commentaries on the Meiji Constitution, Monumenta Nipponica 17(1) (1962) 1; J. SIEMES, Hermann Roesler's Commentaries on the Meiji Constitution, *Monumenta Nipponica* 19(1) (1964) 37; UMETANI, *supra* note 62, 37–40.

ernize its laws.[73] Furthermore a primary consideration for the Japanese government at the time was the impact of such laws on Western perceptions of Japan, and the chances for any reform to thereby either advance or hinder the prospects for treaty revision.[74] Legal advisers from such nations could rightly be expected to be better informed about the potential impact of any law reform upon the public opinion or governments of their respective states. With this in mind, Professor Toshitani's inference that Inoue provided the jury opinion to strengthen his own case should be seen as an understatement.[75] The dissenting Western opinion was not only an essential component of Inoue's case against the jury system but perhaps his strongest argument.

The above is not to suggest that any dissenting Western opinion would have been sufficient to counter Boissonade's arguments for the jury system, and it is in this sense that the current emphasis on the importance of the jury opinion is wanting. Boissonade's status within the government at the time was such that only a contrary opinion from a legal expert of comparable status could have been persuasive. The question of who the drafter was, their qualifications, experience and service within the Japanese government, therefore goes directly to the issue of whether, and to what extent, that opinion may have influenced the Japanese government. It is for this reason that the paper hereafter turns to resolve the question of authorship.

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73 UMETANI, *supra* note 62, 14; NAKAMURA, *supra* note 65, 503–505; YANO, *supra* note 6, 314–316.

74 This is demonstrated by the emphasis that the Japanese delegation placed on law reform at the 1882 Tōkyō conference on treaty revision: GAIMU-SHŌ [Ministry of Foreign Affairs], Annexe to the Proposals of the Japanese Government (Proposals presented to foreign delegates at the Tōkyō Conference on treaty revision, 1 June 1882), in: Gaimu-shō [Ministry of Foreign Affairs] (ed.), *Nihon gaikō bunsho Meiji nenkan tsuiho* [Japanese Diplomatic Documents, Meiji Years Addenda] (Tōkyō 1948) 167. Kaoru Inoue, the Foreign Minister at that time, was to later state that constitutional government itself was not created simply to satisfy the desires of the people but to expedite the revision of the unequal treaties: AKITA, *supra* note 6, 12. Louis Perez, in his research on Japanese efforts to regain legal jurisdiction over foreigners in Japan, relied on evidence such as this to argue that revision of the unequal treaties was the engine for Japan's modernisation in the Meiji period: PEREZ, *supra* note 65, 320, 328. Going a step further, Turan Kayaoğlu more recently argued that Japan's adoption of Western-style laws and legal institutions, rather than European colonial rivalry in Asia or Japan's increasing military and economic strength, was the primary reason for the Japanese success in effecting treaty revision: T. KAYAOĞLU, Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China (Cambridge 2010) 1, 8, 10–12, 15, 25–26, 68–74, 80, 91–92, 101–103. See also: AKITA, *supra* note 69, 50–51; NAKAMURA, *supra* note 65, 503–505; HOARE, *supra* note 65, 74, 78–79, 87–88.

75 TOSHITANI, *supra* note 10, 544.

III. The Authorship of the Jury Opinion

This part examines the question of the authorship of the jury opinion. It starts by describing the circumstances under which the existence of the jury opinion was made public. The paper notes that both delay and historical inconsistencies in spelling foreign names may have contributed to the confusion over authorship. The paper then turns to properly address the question of who wrote the jury opinion. To this end, the paper finds that the text of the document supports claims that it was drafted by a British legal expert. The inquiry thereafter proceeds by simply trying to establish whether there was a British legal adviser, employed by the Japanese government at the time, with the surname Beadon or Breider or a similar sounding name. The paper concludes that, in the absence of any historical evidence to support the existence of the latter individual other than the 1920s attributions of authorship, the sole candidate meeting this description is Robert John Beadon. A biographical sketch on Beadon, focusing on his skills and qualifications and functions within the Japanese government is then provided. The discussion thereafter turns to address whether Beadon had the opportunity to come into contact with Kowashi Inoue towards the end of 1879. Organisational considerations are pointed to as supporting the existence of such an opportunity, although the paper argues that the authorisation for the creation of the opinion would have come from Inoue's superiors. The totality of these considerations point to Robert Beadon as being the author of the jury opinion.

1. The Text of the Jury Opinion as a Guide to Authorship

A useful starting point for analysing the authorship of the jury opinion is to start with the document itself and the circumstances under which it was disclosed publicly. In this respect, the first thing to note is that authorship of the document is attributed to a Robert *Breider* (ロバート・ブレーダー).[76] As indicated already, there are doubts over the spelling of the surname and thus the identity of the author. The second thing to note about the document is that it is most probably a copy of a translation of the original text, which was created some forty years earlier.

Authors referring to the jury opinion invariably cite Takazō Hanai.[77] This indicates that both the original document and the original translation of that document have been lost. Hanai was a leading Japanese lawyer during the late 19th and early 20th Centuries, a proponent for the jury system, and a

76 *Baishin-hō iken* [Jury System Opinion], *supra* note 8.

77 See, for example, Mitani, *supra* note 9, 103, 120; Toshitani, *supra* note 10, 544–545, 556; Fujita, *supra* note 7, 20–22, 289.

member of the Japanese House of Peers during debates over what would become the Jury Act 1923.[78] The Jury Act 1923 also faced considerable opposition on its way towards enactment, ultimately resulting in the Japanese system having a number of features that many believe undermined its use.[79] The debate over the law was conducted by reference to the earlier debate, with the key question being over the constitutionality of the jury system. The opposition of Kowashi Inoue, who had went on to play a crucial role in drafting the Meiji Constitution, was highlighted as pointing to an intention on the part of modern Japan's founding fathers to exclude the jury system.[80] Proponents of the jury system pointed to contrary historical evidence, such as the jury opinion, to support the contention that the jury system had not been rejected outright but simply postponed.[81]

The reference to the jury opinion during Hanai's speech in the House of Peers appears to have been the first time that opinion was disclosed publicly.[82] In this respect, it is important to note that Hanai states in his speech that the opinion had been lent to him by the then Viscount Inoue, and had also been made available to the leader of the opposition in the House of Peers, Reijirō Wakatsuki.[83] Although not certain, it is perhaps safe to presume that the document was the same document that was lent to the Chairman of the Code of Criminal Instruction Review Board, Sakimitsu Yanagiwara, over forty years earlier, or a copy of that document made at roughly the same time. We may also similarly presume that Hanai made a copy of this document, and that it was the text of this copy that was subsequently made available through Hanai's works.

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78 KOKURITSU KOKKAI TOSHO-KAN [National Diet Library], Hanai Takuzo (1868–1931), Portraits of Modern Japanese Historical Figures *http://www.ndl.go.jp/portrait/e/datas/504.html?cat=163; Baishin-hō* [Jury Act], Law No. 50/1923.

79 The background to the enactment of the Jury Act 1923 and the main rationales advanced for its failure are discussed in K. ANDERSON/P. KIRBY, Lessons from History: Japan's Quasi-Jury System (saiban'in seido) and the Jury Act of 1923, in: Linnan (ed.), Legitimacy, Legal Development and Change: Law and Modernization Reconsidered (Farnham 2012) 261, 262–271. For a contrary view on Japan's Pre-war jury system, see: D. VANOVERBEKE, The Taishō Jury System: A Didactic Experience, Social Science Japan 43 (2010) 23, 24–26. Professor Vanoverbeke argues that, despite its defects, the Jury Act of 1923 succeeded in enhancing the legal literacy and political awareness of Japanese citizens, particularly by bringing large numbers of people into contact with the justice system for the first time as potential jurors.

80 HANAI, *supra* note 12, supplement 7–23; MITANI, *supra* note 9, 106–107, 116; ANDERSON/KIRBY, *supra* note 79, 263–265.

81 HANAI, *supra* note 12, supplement 7–23; MITANI, *supra* note 9, 106–107.

82 HANAI, *supra* note 12, supplement 14–15.

83 *Ibid.,* 15. The then Viscount Inoue was Tadashirō Inoue (1876–1959).

The fact that Hanai's document is most likely a copy of the translation made of the original text some forty years earlier has important implications. It raises the possibility that – whether as a result of carelessness, indecipherable text, or deterioration in the original document – errors may have been made in copying the document, or in correctly attributing authorship. That said, it is important to acknowledge that Hanai is consistent in how he spells the author's name.[84] This suggests that Hanai was sure that the author was Robert *Breider*. With this in mind it is much more likely that, to the extent authorship may have been falsely attributed, this was as a result of much earlier factors. To this end, it is worth noting that there seems to have been much less consistency in the spelling of foreign names in the early Meiji Period.[85] Nevertheless, even taking this into account, it must be conceded that when tested phonetically there is a considerable difference between Roberto Beaton (ロベルト・ビートン), and other similar sounding spellings for Robert Beadon's name,[86] and Robert Breider, Breida, etc. With this in mind, the best that can perhaps be said is that, whilst there is certainly doubt over the identity of the author of the jury opinion, it is unclear what factors led to that confusion.

The document thankfully provides clearer guidance on the identity of the author as either an Englishman or a Briton. In this respect, it is important to note that the kanji 英人 can refer to either an Englishman or a Briton. The argument in the jury opinion is not simply based on theory, but is framed according to the English experience of having used the jury system over several centuries. The claim that the jury system is nothing more than an ornament in despotic states, for example, is discussed by reference to Eng-

84 *Ibid.,* 14, 18, 82.

85 A comprehensive study was not conducted on this point, but Robert Beadon's name were subject to a variety of different spellings in the Japanese language documentation consulted for this paper. The discrepancies, however, tended to be small reflecting either prior Japanese experience with similar names, e.g. Roberto (ロベルト) instead of Robert (ロバート), or missing pronunciation marks *(dakuten),* e.g. Beaton (ビートン) instead of Beadon (ビードン). The Foreign Ministry folders on Robert Beadon's appointment and resignation as Honorary Consul for Tasmania, which have the advantage of containing both English and Japanese language documents (including letters from Beadon himself), provide a number of examples of this phenomenon. In the Japanese language documents Robert Beadon is usually referred to as ロベルト・ビードン (Roberuto Bīdon) but is occasionally also referred to as ロベルト・ビートン (Roberuto Bīton), ロベルト・ヒートン (Roberuto Hīton), ロバート・ビードン (Roba-to Bīdon), and ロバルト・ビードン (Robaruto Bīdon). See: The appointment of Robert Beadon, an Englishman, as Honorary Consul at Hobart, a British possession, *supra* note 2, 15, 17, 29, 36, 74; Consul Beadon's Resignation. Meiji 21 (1888) to Meiji 22 (1889), *supra* note 2, 11, 25–26.

86 *Ibid.*

land's past as an autocratic kingdom, whilst the merits of the system are directly linked to Britain's existing status as a constitutional state with a politically engaged and freedom loving people.[87] The opinion is also remarkable for demonstrating a clear awareness of the jury system's operation within the broader confines of English criminal procedure at the time, particularly in terms of the differences in prosecution that applied in summary trials, jury trials, and state trials.[88]

The year 1879 was also a significant year for criminal procedure in the United Kingdom, marking the first successful attempt to introduce a limited system of public prosecution into England.[89] A system of private prosecution under which individual citizens, rather than government officials, prosecuted felony offences at regular meetings of the assize courts had prevailed until that point in time. Prosecutors in felony proceedings had therefore tended to be either the victim, or a member of the victim's family in homicide cases, although there had long been the capacity for either the Attorney-General or justices of the peace to intervene when required.[90] The last mentioned had played a central role in the operation of the system since the 16th Century.[91] Under their oversight, the right of every Englishman to prosecute for breaches of the King's peace had often amounted to an obligation.[92] By the time of the jury opinion, however, the role of the justice of the peace in felony proceedings had largely retreated to that of committal hearings magistrate.[93] The prosecutor's role had also increasingly come to be filled by magistrate clerks and police officers.[94] The distinction drawn in the jury opinion, between types of trial on the basis of whether government prosecutors were a manda-

87 *Baishin-hō iken* [Jury System Opinion], *supra* note 8, supplement 84–86.

88 *Ibid.,* 85.

89 The Prosecution of Offences Act 1879 (UK) introduced the Director of Public Prosecutions (DPP) and six deputy district prosecutors into English criminal procedure. For a detailed discussion on the law and the historical background to its enactment, see: P. B. KURLAND/D. W. M. WATERS, Public Prosecutions in England, 1854–79: An Essay in English Legislative History, Duke Law Journal 8(4) (1959) 493.

90 LANGBEIN, *supra* note 21, 19–21, 29–34; J. H. LANGBEIN, The Origins of Public Prosecution at Common Law, The American Journal of Legal History 17 (1973) 313, 317–334; J. H. LANGBEIN, Shaping the Eighteenth-Century Criminal Trial: A View from the Ryder Sources, The University of Chicago Law Review 50(1) (1983) 1, 55–84; KURLAND/WATERS, *supra* note 89, 495–497, 512, 514–516, 533, 554.

91 LANGBEIN, *supra* note 21, 20–21, 32; LANGBEIN (1973), *supra* note 90, 318–334; J. H. LANGBEIN, The Criminal Trial before the Lawyers, The University of Chicago Law Review 45(2) (1976) 263, 280–282; LANGBEIN (1983), *supra* note 90, 55–84.

92 LANGBEIN (1973), *supra* note 90, 322; KURLAND/WATERS, *supra* note 89, 515.

93 LANGBEIN (1973), *supra* note 90, 323; KURLAND/WATERS, *supra* note 89, 495–496.

94 LANGBEIN (1973), *supra* note 90, 323; KURLAND/WATERS, *supra* note 89, 495–497, 505–507, 516, 522, 534–535.

tory part of the proceedings, nevertheless remained a valid point of comparison even after the introduction of the 1879 law.[95]

The framing of the jury opinion by reference to England's historical use of the system, and the unique features of English criminal procedure to that point in time – particularly in terms of the distinction drawn between summary trials and state trials, on the one hand, and jury trials, on the other, on the basis of government prosecutors being a mandatory part of the former but not the latter – strongly indicates that the author of the jury opinion was an English lawyer, or a British one at the very least.[96] Even this certainty, over the identity of the author as English or British, must however be subject to some qualification. One of the leading experts on the historical development of English legal institutions at the time was Rudolf von Gneist, a famous Prussian jurist who would later be consulted by the Japanese government over the framing of the Meiji Constitution.[97] Japan's foreign em-

95 The Director of Public Prosecutions was to prosecute only in exceptional cases where an individual failed or refused to prosecute, or where there was a substantial public interest in prosecution by virtue of the matter's complexity, notoriety, or importance: KURLAND/WATERS, *supra* note 89, 514, 549–552, 557–560.

96 HANAI, *supra* above 12, supplement, 82, 85. On the differences that existed between the prosecution of offences in State Trials and in ordinary felony trials, see: LANGBEIN (1973), *supra* note 90, 315–317; LANGBEIN (1976), *supra* note 91, 264–267.

97 Rudolf von Gneist (1816–1895) wrote extensively about the historical development of English public law from the 1840s through to the latter years of his life. His works on the subject include *Adel und Ritterschaft in England* [Nobility and Knighthood in England], in 1853, *Darstellung des heutigen englischen Verfassungs- und Verwaltungsrechtes* [Exposition of Modern English Constitutional and Administrative Law], published in two parts in 1857 and 1860, and *Verwaltung, Justiz, Rechtsweg, Staatsverwaltung und Selbstverwaltung nach englischen und deutschen Verhältnissen* [Administration, Justice, Procedure, National Administration and Self-administration in English and German Conditions], in 1869: C. BORNHAK, Rudolf von Gneist, The Annals of the American Academy of Political and Social Science 7 (1896) 253, 253, 256–258, 265. An overview of the scope and rationale for Gneist's research is provided in the author's preface to his most well-known work on English Constitutional law, *Englische Verfassungsgeschichte* [The History of the English Constitution]: R. GNEIST, The History of the English Constitution (Ashworth trans., London 1886) iii–x. Significantly, from the perspective of this paper, Gneist was also an advocate for the jury system: BORNHAK at 253, 260; FORSYTH, *supra* note 9, 314, 327, 329–330. His book *Trial by Jury* was published in Berlin in 1849. Despite this, Gneist nevertheless indicated, in lectures given to high ranking Japanese officials touring Europe to examine constitutions from 1882, that Japan should not adopt the Prussian Constitution's jury provision, Article 94, in framing its own constitution: MITANI, *supra* note 9, 117. The Japanese government had by this time already decided to adopt the Prussian Constitution as basis for what would

ployees included German nationals who would have been familiar with Gneist's body of work, most notably Hermann Roesler.[98] With this in mind it is safer to say that, on the basis of the text of the document itself, the writer of the jury opinion was a legal expert with a significant knowledge of the jury system's contemporary and historical operation in England. The writer was therefore most likely an Englishman or a Briton.

On the basis of the above, it is clear that the document itself is of only limited assistance in identifying the author of the jury opinion. As a result, it is necessary to look beyond the document to other sources, particularly primary materials, to assist in that identification. The letters between Kowashi Inoue and Sakimitsu Yanagiwara, referred to earlier, are one such source.[99] As already noted they indicate that a Mr Beadon, or Mr Beaton, is the author of the jury opinion.

2. Establishing the Author's Identity through Other Sources

Before providing further details on the range of materials that were referred to, it is important to briefly address the range of the inquiry that was undertaken. The focus of the search was upon the two names currently associated with the jury opinion. As a result, the inquiry was limited, at the first in-

become the Meiji Constitution: AKITA, *supra* note 6, 41, 44, 49, 56–57, 60–61. Taichirō Mitani therefore believes that Gneist's opposition was a decisive blow against constitutional recognition for the right to trial by jury under that document: at 117. In this respect it is worthwhile noting that Gneist was highly sceptical that Japan would be able to transition into a constitutional state, at least in the short term: S. HIRAKAWA (Wakabayashi trans.), Japan's turn to the West, in: Jansen (ed.), The Cambridge History of Japan, Volume 5: The Nineteenth Century (Cambridge 1988) 432, 433–435.

98 According to Beckman, Roesler was a protégé of Rudolf von Gneist and, like his mentor, was also an expert on English and German constitutional law: BECKMAN, *supra* note 66, 58, note 24. Carl Friedrich Hermann Roesler (1834–1894) arrived in Japan at the end of 1878 to assume a position as an adviser to the Foreign Ministry in replacement of E. Peshine Smith, who had returned home to the United States upon the completion of his contract in 1876. With the possible exception of Boissonade, Roesler was to have a greater impact than any other foreign employee on Japan's legal modernisation with his most important contribution being to the drafting of the Meiji Constitution. Roesler returned home to Europe in 1893, where he died soon afterwards in Austria in 1894: UMETANI, *supra* note 62, 37–40; PITTAU, *supra* note 50, 260–270; SIEMES (1962), *supra* note 72; SIEMES (1964), *supra* note 72. Noboru Umetani argues that Roesler's employment, as a replacement for the American Smith, demonstrates that the Meiji leadership was already beginning to look towards Germany, and particularly Prussia, as a model for Japan's institutional development in 1878: at 38.

99 INOUE KOWASHI DENKI HENSAN IIN-KAI, *supra* note 56, 230–232.

stance, to simply trying to establish whether there were foreigners within Japan at the time with the surnames Beadon or Breider, or similar sounding names. Both English and Japanese spellings were used, for the names and their variants, in conducting the search. The initial inquiry may appear to have been excessively wide. This, however, fails to take account of the small size of the resident Western population at the time. Whilst there are doubts over the accuracy of the figures,[100] Western residents in Japan were numbered at only 2,447 people in 1878 and 2,398 people in 1879.[101] The majority of such individuals resided in the treaty ports. Having identified names, the inquiry was then extended to locating materials to establish whether any such individual was employed by the Japanese government. At the same time, research was undertaken to establish whether the individual possessed the qualifications necessary for the drafting of the jury opinion – in terms of both legal expertise and status within the Japanese government.

A range of sources were referred to during the above process. The pages of the Japan Weekly Mail, particularly the passenger lists in the 'Shipping Intelligence', and the Chronicle & Directory for China and Japan were consulted to identify names. The same sources, court and government records, online search engines, and documentary archives were then used to confirm employment by the Japanese government, and to provide details on the nature of any such employment. Further inquiries, using materials from outside Japan, were thereafter undertaken to create a more complete picture. Secondary sources were also consulted with the main focus being upon works on Boissonade and Kowashi Inoue, the historical development of Japan's laws and legal institutions (especially its criminal procedure law), Japanese jury history, early-Meiji political history, treaty revision, and foreign hirelings in Meiji era Japan. Whilst all these works have been invaluable in understanding and assessing the importance of the jury opinion, they have provided only limited assistance in identifying its author.

Using the above process, the author was unable to identify a single individual in the Japanese government service with the relevant legal expertise and a name sounding similar to *Breider*. In saying this, it is important to acknowledge that a number of names were identified at first instance which could, at least in part, have met the name requirements. Belder and Bredon are two such examples from the pages of the Japan Weekly Mail.[102] These

100 The Japan Weekly Mail, 13 September 1879, 1219.

101 *Ibid.*; C. ROBERTS, British Courts and Extra-territoriality in Japan, 1858–1899 (Leiden 2014) 358.

102 "Shipping Intelligence", The Japan Weekly Mail, 13 September 1879, 1227; "Shipping Intelligence", The Japan Weekly Mail, 4 October 1879, 1334; "Shipping Intelligence", The Japan Weekly Mail, 14 February 1880, 255.

names, and others, were largely dismissed for failing to meet the other requirements in terms of proof of Japanese government service and legal expertise. Other considerations also, on occasion, played a part. Additional research, for example, indicated that the Robert E Bredon referred to in the passenger lists of the Japan Weekly Mail was most likely Sir Robert E Bredon, a significant British citizen in China rather than Japan.[103]

Outside of the Hanai text there appears to be no evidence within primary sources, either in English or Japanese, that a British legal adviser with a name at least similar to *Breider* was employed by the Japanese government during this time. There are, however, secondary sources to suggest that such an individual existed. In his pioneering English language work on citizen participation in the administration of justice in Japan, Professor Dimitri Vanoverbeke refers to the author of the jury opinion as 'Robert Brader'.[104] In referring to the text of that document, Professor Vanoverbeke once again cites Hanai but refers to 'Hanai Takuzō Documents National Diet Library, Call No.28' rather than to the *Shōtei Ronsō*.[105] Without access to the relevant source, it has been impossible to confirm whether there are differences between the two sources. It is, moreover, unclear from Professor Vanoverbeke's own work whether he is referring to the Japanese text or to a hitherto unknown copy of the original English text. For reasons already provided, the latter seems extremely unlikely. More so considering the contrary evidence over authorship, and the absence of any other evidence to substantiate the named adviser's existence.

The introduction to this paper provides perhaps the strongest indication that the author had considerably more success finding documentary sources to both substantiate the existence of a Robert Beadon in Japan, and to establish that he was a legal adviser to the Japanese government at the time of jury opinion's creation. It is, moreover, clear from this research that Robert John Beadon was one of the most senior foreign advisers to the Meiji Government at the time. By pulling together the fragments of information provided across the sources it is possible to catch a glimpse of a significant figure from Japan's past, whose presence has been obscured by the passage of time. The paper will hereafter provide a brief biographical sketch on Robert Beadon, focusing upon his time in Japan and highlighting his role as courtroom practitioner, draftsman, and adviser to the Japanese government.

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103 The Chronicle & Directory for China, Japan, & the Philippines for the Year 1879 (Hong Kong 1879) 57.

104 VANOVERBEKE, *supra* note 15, 52–53, 186–187, 190.

105 *Ibid.,* 190; HANAI, *supra* note 12.

3. Robert John Beadon (1844–1933) and Japan

Robert John Beadon (11 April 1844 – 28 September 1933), barrister-at-law, was tertiary-educated at Oxford, where he completed a Bachelor of Arts. At the age of 23, and while still resident at Exeter College, Beadon applied for admission to the Inner Temple. He was admitted to that institution on 3 May 1867. Three years later, on 17 November 1870, he was called to the bar.[106]

On 1 November 1876 Robert Beadon attended the headquarters of Matheson & Co in London, at 3 Lombard Street, to enter into an employment contract with the Japanese government.[107] Hugh Mackay Matheson, a Scottish industrialist and senior partner with Matheson & Co, signed on behalf of the Japanese government.[108] Matheson was one of a very select group of British residents trusted by the Japanese government to act in its interests.[109] He had links with the then Minister for Public Works, Hirobumi Itō, and Deputy-Envoy for Japan, Kaoru Inoue, going back to their time as members of the Chōshū Five group of students, who had broken the Tokugawa Shogunate's travel laws to study in Britain in 1863.[110] A hand written Japanese translation of the contract signed between Robert Beadon and Matheson, on behalf of the Japanese government, still exists. The translation, prepared by or on behalf of Kaoru Inoue at the time of requesting Beadon's transfer to the exclusive control of the Foreign Ministry on 6 June 1881, includes variations to the contract made to that time.[111]

Under the terms of the contract, the three ministries of Home, Finance, and Public Works agreed to employ Robert Beadon for the term of five years from the date of his arrival in Japan, with each of the relevant minis-

106 "Calls to the Bar", The Solicitors' Journal and Reporter 15 (1870–1871) 48; "Robert John Beadon", The Inner Temple Admissions Database, *http://www.innertemplearchives.org.uk/detail.asp?id=15719*.

107 Employment Contract between Hugh Mackay Matheson on behalf of the Japanese Imperial Government and Robert John Beadon, 1 November 1876, in: INOUE, *supra* note 65, 3.

108 *Ibid.,* 3.

109 O. CHECKLAND, Britain's Encounter with Meiji Japan, 1868–1912 (Basingstoke 1989) 173–174, 179, 292 note 30; B. DUKE, The History of Modern Japanese Education: Constructing the National School System, 1872–1890 (New Brunswick 2009) 28–31, 173–175; A. COBBING, The Japanese Discovery of Victorian Britain: Early Travel Encounters in the Far West (Richmond 1998) 103, 110, 118.

110 Hirobumi Itō was to acknowledge the debt that he owed to Matheson in 1895, 'Yes, I was one of Mr Matheson's boys. I owe him a great deal and I shall never forget his home at Hampstead though it is thirty-one years since I saw it': Westminster Gazette, 4 March 1895, in: CHECKLAND, *supra* note 109, 292 note 30.

111 Employment Contract between Hugh Mackay Matheson on behalf of the Japanese Imperial Government and Robert John Beadon, *supra* note 107, 3.

tries making equal contributions towards meeting Beadon's salary of 650 gold yen per month.[112] This sum was comparable to that paid to senior members of the Japanese government at the time.[113] On 11 June 1879, the parties agreed to delete and replace the terms of Clause 7 of the contract. Beadon was to henceforth be paid the princely sum of 1,000 silver yen per month, which exceeded the salary paid to even Grand Minister of State Sanetomi Sanjō.[114] The funds moreover were to be paid on a retainer basis, one year in advance, on 1 May for every remaining year of the contract.[115]

There is no explanatory note accompanying the contract to explain the large increase in Beadon's salary in 1879. The author Akihisa Fujiwara has, however, elsewhere suggested that Robert Beadon was assigned to special duties within the Ministry of Foreign Affairs around November 1879.[116] The increase could therefore simply reflect preparatory steps taken by Kaoru Inoue, the then Public Works Minister, to compensate Beadon for the additional work he was to assume after Inoue became Foreign Minister on 10 September 1879. At the very least it is safe to presume that the salary increase was a reflection of the scope of Beadon's work, the confidence of the Japanese government in his abilities, and the need for the latter to retain his services.

Before proceeding to examine the contract further, it is worthwhile to compare Beadon's level of pay with that of Boissonade. Boissonade at the time received a regular payment of 1,200 gold yen per month, supplemented by 'additional stipends' for his services to the Grand Council State.[117] In so far as money is a measure of worth, it is therefore clear that the Japanese government valued Boissonade's contribution to the modernisation of Japan more than Beadon's. By the same measure, as one of the other most highly paid legal advisers working for the Japanese government, it is likewise clear that Beadon would have been a worthwhile ally in any dispute with the French professor.

Clauses 3 to 6 of the employment contract set out Beadon's obligations under the agreement. Clause 3 provided that he was to notify the Minister for Public Works immediately upon arriving at Yokohama. Beadon was to thereafter undertake his professional responsibilities in compliance with the

112 *Ibid.,* 1, 6 cl. 7.

113 H. J. JONES, Live Machines Revisited, in: Beauchamp/Iriye (eds.), Foreign Employees in Nineteenth-Century Japan (Boulder 1990) 17, 20–21.

114 Employment Contract between Hugh Mackay Matheson on behalf of the Japanese Imperial Government and Robert John Beadon, *supra* note 107, 8–9; UMETANI, *supra* note 62, 91.

115 *Ibid.*

116 FUJIWARA, *supra* note 65, 23.

117 JONES, *supra* note 3, 40.

directions of the Finance Minister, Minister for Public Works, and Home Minister. Clause 4 set out Beadon's professional responsibilities. It provided that he was to examine contracts and other legal documents, and to provide advice to the government on all matters relating to law. Beadon was to act for the government in civil and criminal proceedings before Japan's domestic courts, the consulate courts, and foreign courts overseas. He was to furthermore also represent the Japanese government in arbitration proceedings and committee hearings. The clause also provided that Beadon was to draft rules and regulations for the various government departments, and to advise and act in conjunction with the government's other advisers in the performance of his duties. He was to otherwise act in accordance with the reasonable directions of the ministers or their deputies, serve the Japanese government faithfully, and to respect the laws, customs and religious beliefs of Japan. Clause 5 prohibited Beadon from engaging in business, trade or commerce, or acting for anyone other than the Japanese government. Under Clause 6 Beadon was required to furnish himself with all the books necessary for practicing law at his own expense.

The remainder of the employment contract dealt with the government's obligations under the agreement, and the circumstances under which the contract could be prematurely ended. Clauses 2 and 10 required the Japanese government to provide Beadon with a 1st class ships fare and travel money, both to commence his contract in Japan and to return to England after its completion.[118] Clause 8 placed similar obligations on the government with respect to providing Beadon with a home, and compensating him for travel associated with work. Clauses 9 and 10 dealt with the early termination of the contract, with the former applying in cases of injury or illness and the latter applying in cases of breach of contract. A 1st class ships fare back to England and travel funds were provided in the first situation. The second resulted in immediate dismissal.

On 9 February 1877, Robert Beadon and his wife and infant son arrived at Yokohama from Hong Kong.[119] Over the course of the next six years, until his premature departure from Japan in December of 1882, Beadon was to act as the Japanese government's standing legal counsel for disputes involving foreign interests and as a legal adviser to several ministries, starting with the three ministries of Home, Finance and Public Works on 9 February 1877 before transferring exclusively to the Ministry of Foreign Af-

118 The obligation in Clause 2 was actually upon Matheson but he, of course, was acting for the Japanese government.

119 "Shipping Intelligence", The Japan Weekly Mail, 10 February 1877, 69; INOUE, *supra* note 65, 1.

fairs from 1 July 1881. Beadon's transfer to the last mentioned was accompanied by a one year extension to his contract.[120]

Beadon, like Boissonade before him, was to discover that foreign employees were essentially shared government resources that were used to meet the most pressing issues of the day. Thus, he was to have occasion to provide advice to the Minister of Navy on legal action in England,[121] and to both advise and draft regulations for the Hokkaido Development Commission.[122] The paper earlier also referred to Beadon's assignment to special duties in the Foreign Ministry in November of 1879, well before his transfer to its exclusive control on 1 July 1881.[123] He also represented the same ministry in legal proceedings prior to the latter date.[124]

An exchange of letters between Home Minister Hirobumi Itō and Naval Minister Sumiyoshi Kawamura, in February 1879, demonstrates that there was considerable demand within the Japanese government for access to Beadon's expertise. On 3 February 1879, Kawamura wrote to Itō to express

120 The Japan Weekly Mail, 30 December 1882, 1274; "Shipping Intelligence", The Japan Weekly Mail, 6 January 1883, 14; INOUE, *supra* note 65, 1–2; JONES, *supra* note 3, 43. The last-mentioned work states that Beadon was employed from 1877–1887. The research for this paper, however, indicates that he was only employed from 9 February 1877 through to the same date in 1883. The Japan Weekly Mail citations in this note furthermore suggest that Beadon was forced to take a leave of absence on 30 December 1882, as a result of his wife falling ill, and never returned to Japan thereafter.

121 R. BEADON, Letter to Sumiyoshi Kawamura, 7 February 1879, in: The National Institute for Defence Studies, Ministry of Defence (ed.), *Sotoiri 130 Naimu torishirabe-kyoku yori sōfu Bīdonshi yori soshō shorui* [External-Incoming 130 Sent from the Home Ministry Studies Department – Litigation documents from Mr Beadon], Japan Center for Asian Historical Records, Reference Code: C0910 3475500, 1348, *https://www.jacar.go.jp/english/*.

122 K. KURODA, *Reminton sha dan'yaku hikiwatashi seikyū jiken no Kaitaku-shi bengoshi toshite shin-ninjō* [Credentials as the Hokkaido Development Commission Legal Representative for the Remington Co ammunition delivery case], Letter to Robert Beadon, 18 June 1878, Hokkaido University Northern Studies Collection Database, *https://www2.lib.hokudai.ac.jp/cgi-bin/hoppodb/record.cgi?id=0C00363 0000000000*; R. BEADON, *Kaitaku-shi oyatoi gaikoku-jin ryohi, shukuhaku-hi kitei (Eibun sōan)* [Hokkaido Development Commission Foreign Employees Travel Expenses, Lodging Expenses Regulations (English draft)], Hokkaido University Northern Studies Collection Database, *https://www2.lib.hokudai.ac.jp/cgi-bin/hop podb/record.cgi?id=0C048300000000000* .

123 FUJIWARA, *supra* note 65, 23.

124 M. TERAJIMA, Letter to Robert Beadon, 23 October 1878, in: Gaimu-shō [Ministry of Foreign Affairs] (ed.), *Nihon gaikō bunsho dai-jūik-kan ji Meiji jūichi-nen ichigatsu shi Meiji jūichi-nen jūni-gatsu* [Japanese Diplomatic Documents, Volume 11: January–December 1878] (Tōkyō 1950) 401 No. 192.

his frustration at not having received a reply, from Mr Beadon, to his requests for legal advice on 28 November and 28 December of 1878.[125] Kawamura had asked whether his ministry should take legal action in England against the British arms manufacturer Vavasseur & Co. The Naval Ministry had sustained financial loss as a result of an injunction granted to Vavasseur by the English High Court on 8 January 1878.[126] Vavasseur had argued that ammunition manufactured by the German Krupp firm, and imported for use on the Fusō and two other Japanese warships being built in Britain, contravened Vavasseur's patents.[127] On appeal, the Court of Appeal held that the municipal courts of the United Kingdom did not have jurisdiction over the public property of a foreign sovereign.[128] The Japanese government was therefore free to remove the ammunition, but had nevertheless incurred losses. In his response to the Naval Minister on 5 February 1879, Itō explained that, whilst he recognized that Kawamura had made repeated requests, Beadon had duties in addition to other urgent matters that also needed to be investigated. No doubt keenly aware of Kawamura's status within the government's rival Satsuma faction, Itō nevertheless said that he would speak with Beadon to expedite the advice.[129]

In terms of function, Beadon's work during the course of his employment broadly complied with the terms of the fourth clause of his employment contract. In other words, he provided professional services to the Japanese government in legal representation, regulatory drafting, and advice. Beadon's work in Japan was thus, in many respects, not significantly different from the work of legal practitioners to this day, although his work as an adviser often went beyond questions of law to matters of high politics. The following provides specific examples of Beadon's work in relation to each of these categories.

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125 S. KAWAMURA, Letter to Hirobumi Itō, 2 February 1879, in: The National Institute for Defence Studies, Ministry of Defence (ed.), *Sotode 71 Bakudan yokuryū ni tsuki Eikoku Babashuru sha e shōkin seikyū rihi torishirabe no ken Naimu-shō saidan* [Outgoing-External 71 Urgent discussions with the Home Ministry on examining the merits of a compensation claim against the British Vavasseur Company over the detainment of bombshells], Japan Center for Asian Historical Records, Reference Code: C09113307000, 677, *https://www.jacar.go.jp/english/*.

126 *Ibid.;* Vavasseur v Krupp (1878) 9 Ch D 351–352.

127 Vavasseur v Krupp (1878) 9 Ch D 351, 351–353, 357.

128 *Ibid.,* 354–356, 358–361.

129 H. ITŌ, Letter to Sumiyoshi Kawamura, 5 February 1879, in: The National Institute for Defence Studies, Ministry of Defence (ed.), *Sotoiri 89 Bakudan yokuryū ikken ni tsuiki Bīdonshi e jimon-hō no gi Naimu-shō kotae* [Incoming-External 89 Home Ministry reply on questioning Mr Beadon about the bombshells detainment case], Japan Center for Asian Historical Records, Reference Code: C09101626500, 739, *https://www.jacar.go.jp/english/*.

Perhaps the most surprising part of Robert Beadon's work for the Japanese government is that it involved regular appearances before the courts. In this respect, it is even more surprising that the majority of such appearances were not before the Western consular courts but Japanese domestic courts.[130] It is difficult to establish the extent of Beadon's work as an advocate in Japan. The cases hereafter are therefore provided merely as a sample of what could be a much wider body of work.

On 4 April 1877, Beadon was admitted to practice before her Britannic Majesty's Consular Court for China and Japan.[131] Records indicate that the following year, 1878, was one of his peak years as an advocate in Japan. On 24 May 1878 Beadon boarded the Tokio-Maru, bound for Shanghai and ports, to defend Walter F Page of the Japanese Imperial Railways against a claim brought by Henry Seymour before the British Consular Court at Kōbe. He returned to Tōkyō on the Nagoya Maru on 2 June 1878 to confront a much more difficult case.[132]

On 18 June 1878, the Director of the Hokkaido Development Commission, Kiyotaka Kuroda, appointed Beadon to act in a dispute with the American firearms manufacturer E Remington & Sons.[133] The facts of the case were that on 21 September 1874 the Commission entered into a contract with Martin Cohen & Co, a Yokohama based firm, for the purchase of 1,600 Remington rim-fire rifles with accompaniments and 800,000 rounds of ammunition. The goods were to be delivered within seventy-five days.[134] Under the terms of the contract, the Commission was required to leave $20,000 for deposit with the Oriental Bank, as part of the $46,020 purchase price, with the balance being due on delivery. Cohen & Co instead used the deposit to fraudulently secure a $46,000 loan to purchase the goods.[135] Unfortunately, the relevant items were not available for purchase when

130 Christopher Roberts states that there is only one record of Beadon having appeared before the British consular courts: ROBERTS, *supra* note 101, 69 note 115. Following English practice, the British consular courts only allowed lawyers employed by the Japanese government to represent their employers: at 59.

131 The Japan Weekly Mail, 7 April 1877, 255.

132 Henry Seymour v Walter F Page, 1 June 1878, cited in: ROBERTS, *supra* note 101, 61, 69 note 115; "Shipping Intelligence", The Japan Weekly Mail, 25 May 1878, 503–504; "Shipping Intelligence", The Japan Weekly Mail, 8 June 1878, 553. Walter F Page was the Kōbe based Traffic Manager for the Japanese Imperial Railways: The Chronicle & Directory for China, Japan, & the Philippines for the Year 1879 (Hong Kong 1879), 374; Chronicle & Directory for China, Japan, the Philippines &c 1882 (Hong Kong 1882) 420.

133 KURODA, *supra* note 122.

134 Kaitakushi v Martin Cohen & co, United States Consular Court, Yokohama, 5 March 1875, in: The Japan Weekly Mail, 6 March 1875, 206–207.

135 *Ibid.,* 207.

Cohen arrived in the United States. As a result, more expensive centre-fire rifles and re-usable cartridges were purchased instead.[136] The Hokkaido Development Commission, however, refused to accept the goods at additional cost, and commenced legal proceedings in the United States Consular Court for breach of contract.[137]

On 5 March 1875 the United States Consul-General, Thomas Van Buren, delivered a judgment for the Commission.[138] To satisfy the judgment, Cohen subsequently entered into a deed of assignment transferring the firm's interest in the goods to the Commission. The latter took possession upon meeting Cohen's obligations to the bank.[139] Unbeknownst to either the bank or the Commission, 200,000 cartridges had been provided to Cohen & Co as part of an agency agreement for sale on consignment. The relevant ammunition therefore remained the property of Remington & Sons.[140] The company commenced action in the Tōkyō High Court (東京上等裁判所 *Tōkyō jōtō saiban-sho*) for recovery of the cartridges and damages.

On 12 September 1876 the Tōkyō High Court handed down a judgement in favour of the Hokkaido Development Commission. The Court held that, since it had no notice of Remington's interest in the cartridges or the agency agreement with Cohen, the Commission was entitled to ownership of all of the goods upon meeting Cohen's obligations to the bank.[141] Remington appealed to the Imperial Court (大審院 *Daishin-in*).

On 7 October 1878 the Commission received a setback, with the Imperial Court overturning the earlier decision and ordering a retrial.[142] The Court held that the Tōkyō High Court had erred in simply treating the Commission as a bona fide purchaser for value and without notice, when title to the goods had been acquired to satisfy a judgement and not on the open market.[143] The Court also held that the earlier court had failed to make adequate

136 *Ibid.*

137 Kaitakushi v Martin Cohen & co, United States Consular Court, Yokohama, 5 March 1875, in: The Japan Weekly Mail, 20 February 1875, 167; 27 February 1875, 184; 6 March 1875, 206.

138 Kaitakushi v Martin Cohen & co, *supra* note 134, 206–207.

139 E Remington and Sons v Kaitakushi [Hokkaido Development Commission], *Jūhō torimodoshi ikken* [Firearms Cartridge Recovery Case], Daishin-in [Imperial Court], No. 165, 7 October 1878, in: *Daishin-in minji hanketsu-roku ji Meiji jūichi-nen kugatsu shi Meiji jūichi-nen jūgatsu* [Imperial Court Civil Case Reports: September-October 1878] (Tōkyō 1885) 1098, 1103–1104, 1172–1174.

140 *Ibid.,* 1099–1103.

141 *Ibid.,* 1124–1125.

142 *Ibid.,* 1181.

143 *Ibid.,* 1172–1174, 1180–1181.

enquiries to establish whether the relevant ammunition was part of the deed of assignment.[144]

Robert Beadon's involvement with the case seems to have proceeded from this point, as the Court Cassation decision refers to John R Davidson as the applicable legal representative.[145] Davidson, a member of the Scots Bar who had also distinguished himself during his time in Japan, had been forced to leave the county through illness earlier in the year.[146]

The case, at least from a legal perspective, was ultimately resolved in favour of the Hokkaido Development Commission.[147] In its retrial judgment of 27 December 1880, the Imperial Court held that there was nothing to prevent Cohen & Co from selling or offering as a security the 200,000 rounds of ammunition in dispute. As a result, the Oriental Bank had, without notice of the plaintiff's interest and on the same terms used for the other goods, taken possession of the cartridges as a security for an amount advanced to Cohen & Co. The latter had subsequently defaulted on their obligations to repay the loan, leaving the bank in the position where, after providing the appropriate notice, it was free to sell the goods to recover the loan.[148] Contrary to the plaintiff's argument, the Hokkaido Development Commission had not simply attained possession of the goods through the deed of assignment. The Commission had entered in negotiations with the

144 *Ibid.,* 1174–1179.

145 *Ibid.,* 1143.

146 JONES, *supra* note 3, 40; ROBERTS, *supra* note 101, 62; A. MORI, Mr. Davidson's notes on Draft Treaty of Friendship between Japan and England 1880, Letter to Kaoru Inoue, 13 August 1880, in: Nihon Gakujutsu Shinkō-kai [Japan Society for the Promotion of Science] (ed.), *Jōyaku kaisei kankei Dai-nippon gaikō bunsho daini-kan* [Japanese Diplomatic Documents Relating to Treaty Revision, Volume 2] (Tōkyō 1942) 634 No. 198; The Japan Weekly Mail, 22 June 1878, 586.

147 E Remington and Sons v Kuroda Kiyotaka, Kaitaku Chōkan [Director of the Hokkaido Development Commission], *Jūhō torimodoshi ikken* [Firearms Cartridge Recovery Case], Daishin-in [Imperial Court], No. 376, 27 December 1880, in: *Daishin-in minji hanketsu-roku ji Meiji jūsan-nen jūgatsu shi Meiji jūsan-nen jūnigatsu* [Imperial Court Civil Case Reports: October-December 1880] (Tōkyō 1885) 1119. The Japanese government appears to have been diplomatically pressured into paying compensation: K. INOUE/T. ŌKI, Letter to Sanetomi Sanjō, 27 December 1881, in: Gaimu-shō [Ministry of Foreign Affairs] (ed.), *Nihon gaikō bunsho dai-jūyon-kan ji Meiji Jūyonen ichigatsu shi Meiji jūyo-nen jūni-gatsu* [Japanese Diplomatic Documents, Volume 14: January–December 1881] (Tōkyō 1951) 459 No. 198; S. ITŌ, *Meiji zenki ni okeru Nihon no kokka-kan baishō (ichi)* [Japanese Inter-State Reparations Claims in Early Meiji (1)], *Refarensu* [Reference] 47(12) (1997) 63, 79 note 28.

148 E Remington and Sons v Kuroda Kiyotaka, Director of the Hokkaido Development Commission, *supra* note 147, 1184–1188.

bank over price, and ended up paying $35,769.60 in addition to the $20,000 previously deposited with the bank.[149] To the extent that E Remington & Sons had a legal remedy available to them, it was against Cohen & Co.[150] The Middle Temple trained Japanese barrister Hoshi Tōru appeared for the Hokkaido Development Commission.[151] Robert Beadon was nevertheless gifted with some fox furs for his work on the case. On 2 February 1881 he sent a letter to the Commission to thank them for the gift, and to congratulate them on the decision.[152]

1878 also gave rise to another contractual dispute involving foreign interests and firearms. On 4 November 1878 the Imperial Court delivered its judgment in A Milsom v Ministry of Finance.[153] The substantive issue was whether a promissory note issued by the former Hakodate Customs Office in favour of the merchant Alexander Porter, on 27 October 1868, and subsequently transferred to the Yokohama based firm of Valmale, Schoene & Milsom, on 12 December 1868, could be enforced against the ministry.[154] The note, which had been given to secure funds for the old Tsugaru domain to purchase rifles under a contract of sale, promised to pay 'A P Porter' 7,000 *ryō* and 1.5% interest per month until full payment. By 17 May 1875, principal and interest amounted to a claim for 15,559 Mexican silver coins.[155] The matter before the court was complicated by the fact that the underlying sales contract had not been performed, with contrary claims over responsibility.[156] Legal arguments were presented to the court on the basis of both Japanese

149 *Ibid.,* 1187

150 *Ibid.,* 1188.

151 *Ibid.,* 1120. On Tōru Hoshi, see: Kokuritsu Kokkai Tosho-kan [National Diet Library], Hoshi Toru (1850–1901), Portraits of Modern Japanese Historical Figures, *http://www.ndl.go.jp/portrait/e/datas/190.html;* R. W. RABINOWITZ, The Historical Development of the Bar, in: Dean, Japanese Legal System: Text and Materials (London 1997) 322, 323.

152 R. BEADON, *Kitsune kegawa juzō reijō narabi Reminton soshō jiken kaiketsu o yorokobu* [Letter of thanks for the gift of the fox furs and congratulations on the resolution of the Remington case], Letter to Gennosuke Noguchi, 2 February 1881, Hokkaido University Northern Studies Collection Database, *https://www2.lib.hokudai.ac.jp/cgi-bin/hoppodb/record.cgi?id=0C003770000000000*>.

153 A Milsom v Ōkura-shō [Ministry of Finance], *Yakujō-kin seikyū ikken* [Claim for Contractual Damages Case], Daishin-in [Imperial Court], No. 182, 4 November 1878, in: *Daishin-in minji hanketsuroku ji Meiji jūichinen jūichigatsu shi Meiji jūichinen jūnigatsu* [Imperial Court Civil Case Reports: November-December 1878] (Tōkyō 1885) 1.

154 *Ibid.,* 2–5, 7–10, 73–77.

155 *Ibid.,* 2–5, 7–8.

156 *Ibid.,* 38–39, 42–43, 55–58, 59–61, 65–68.

and English customary law.[157] As a result, the court was also asked to take into consideration the English holder in due course principle.[158]

The Imperial Court held that Milsom did not have a legal interest in the relevant document at the time of making demands for payment, as there had been a failure to comply with the formal requirements for transferring promissory notes (振手形 *furi-tegata*) under Japanese customary law.[159] The court furthermore agreed with the Tōkyō High Court in holding that, in absence of A P Porter appearing as a witness to provide evidence on the agreement, the subsequent assignment of the promissory note to meet these requirements was not enough to establish the appellant's case.[160] Robert Beadon and Kitamura Taiichi appeared for the defendant ministry.[161]

Beadon acted for the Japanese government on at least two occasions in 1879. In March of that year he appeared before the Tōkyō High Court to represent the Department of Agriculture against an action for unlawful dismissal brought by another foreign adviser, James Begbie.[162] The court found in favour of the department on the basis that the plaintiff's refusal to write a report, in accordance with the lawful instructions of his employer, amounted to serious misconduct sufficient to warrant dismissal.[163] This case was followed by a much more serious matter for the Japanese government.

On 23 October of the preceding year, Beadon had received a letter from Foreign Minister Munemori Terajima authorising him to act for the Japanese government in a lawsuit for damages brought by Oscar Heeren.[164] Heeren was a wealthy Peruvian resident German national, who had previously acted as the Peruvian Consul General in Tōkyō.[165] The facts of the

157 *Ibid.,* 25–32, 35–41.

158 Beadon and Kitamura refer to the holder in due course principle in their submission at pages 36–38 of the judgment.

159 *Ibid.,* 74–75. The Japanese customary law on the transfer of promissory notes (振手形 *furi-tegata*) is stated at pages 8–9 of the judgment: 'When wishing to transfer from B to C a contractual document or *furi-tegata* that pays money over from A to B, there must be an attached document, or words recorded on the agreement or *furi-tegata,* to say it was transferred. The same principle applies for transfers from C to D on onwards, irrespective of how many times the agreement or *furi-tegata* is transferred.'

160 *Ibid.,* 22, 75–77.

161 *Ibid.,* 1, 5, 34, 65. Beadon is referred to as Roberto Beaton (ロベルト、ビートン).

162 James Begbie v Mayeshima Mitsui, Chief of the Agricultural Bureau, Tōkyō Jōtō Saiban-sho [Tōkyō High Court], 10 March 1879, reported in: The Japan Weekly Mail, 15 March 1879, 329.

163 *Ibid.*

164 TERAJIMA, *supra* note 124, 401 No. 192.

165 J. F. ELMORE, Letter to Munenori Terajima, 23 September 1878, in: Gaimu-shō [Ministry of Foreign Affairs] (ed.), *Nihon gaikō bunsho dai-jūik-kan ji Meiji jūichi-*

dispute were that the Japanese government had acted to prevent Japanese artisans, hired by agents acting for Heeren, from leaving Japan. Heeren argued that this conduct was contrary to both Japan's laws and the treaty obligations it owed to Peru. Those actions had moreover resulted in Heeren incurring substantial damages.[166] The dispute may therefore be characterised as an early Japanese example of an investor-state dispute. In April 1879, the Tōkyō High Court delivered a judgment in favour of the Japanese government. The decision was based on procedural grounds, with the plaintiff failing for not having identified a suitable defendant.[167] Heeren was to have much more luck diplomatically.[168]

Details on Beadon's courtroom activities thin-out after 1879. There are, however, good grounds for believing that he was involved in the retrial for the Remington decision referred to earlier.[169] The judgment for this case, in favour of the Hokkaido Development Commission, was delivered on 28 December 1880.[170] It is otherwise not too much to expect that further details simply await discovery within the records of the Japanese courts.

Having established Beadon's credentials within Japan as a legal representative, it remains to address the other important functions that he performed for the Japanese government. In terms of advice, Beadon's work here appears to have extended from the merely explanatory to more complex opinion pieces on law reform, official accountability, anticipated litigation, and diplomacy. Perhaps the clearest examples of the first mentioned is a document on 'The Statutory Laws of the 23rd and 24th Years of the Reign of Queen Victoria', within Waseda University's Japanese and Chi-

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nen ichigatsu shi Meiji jūichi-nen jūni-gatsu [Japanese Diplomatic Documents, Volume 11: January–December 1878] (Tōkyō 1950) 398 No. 190, 400; Oscar Heeren v The Imperial Japanese Government, Tōkyō Jōtō Saibansho [Tōkyō High Court], 10 April 1879, reported in: The Japan Weekly Mail, 26 April 1879, 530.

166 Oscar Heeren v The Imperial Japanese Government, *supra* note 165, 530–531.

167 *Ibid.,* 531. Japanese law at the time required the government to be sued in its various capacities. Heeren, following court practice until that time, had simply identified the defendant as the Imperial Japanese Government.

168 The matter was settled diplomatically by the governments of Germany and Japan. In June 1880 the Japanese government paid Heeren 6,051.92 dollars. This seems to have been followed by a further undisclosed amount in 1881: ITŌ, *supra* note 147, 63, 70, 79 note 31.

169 See, for example, R. Beadon, *Daishin-in ni okeru Davidoson benron-sho utsushi sōfu irai* [Request to be sent copy of Davidson's submission in the Imperial Court], Letter to Taizō Hara, 17 June 1878, Hokkaido University Northern Studies Collection Database, *https://www2.lib.hokudai.ac.jp/cgi-bin/hoppodb/record.cgi?id=0C00362000000000;* KURODA, *supra* note 122; BEADON, *supra* note 152.

170 E Remington and Sons v Kuroda Kiyotaka, Director of the Hokkaido Development Commission, *supra* note 147.

nese Classics Collection.[171] The same venue also has a range of documents that demonstrate the scope of Beadon's work in advising on law reform and official accountability. These include opinion pieces on 'Establishing an Administrative Court',[172] 'The right of injured members of the public to claim compensation for harm caused through the fault of government or officials',[173] 'Answers to questions on popular petitions',[174] and 'Process for the disposal of the assets of criminals'.[175] A document in the Hokkaido University's Northern Studies Collection, 'An argument for permitting government officials to engage in commerce', would also fall into this category.[176]

Sumiyoshi Kawamura's request for advice on the merits of legal action in England against the British arms manufacturer Vavasseur & Co, referred to earlier, provides an excellent example of Robert Beadon's work in advising on anticipated litigation.[177] In his letter dated 7 February 1879, Beadon advised the Naval Minister that, if his Ministry were to act, legal action should be taken in the name of the Emperor against either Ahrens & Co, the Japanese government's shipping agent, or the shipbuilder. The basis for the claim being that the Japanese government had sustained losses as a result of one or other, or both, of the firms going beyond the authority of the injunction.[178] The High Court did not have jurisdiction over the public property of a foreign sovereign. The relevant parties should not therefore have prevented the Japanese government from removing its property from England.[179]

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171 R. BEADON, *Vikutoriya Joō sokui dai-nijū-san/nijū-yo-nen seibun-ritsu,* Waseda University Japanese & Chinese Classics Database, *http://www.wul.waseda.ac.jp/kotenseki/html/i14/i14_a4608/index.html.*

172 R. BEADON, *Gyōsei saiban-sho setchi ni tsuite,* Waseda University Japanese & Chinese Classics Database, *http://www.wul.waseda.ac.jp/kotenseki/html/i14/i14_a2541/index.html.*

173 R. BEADON, *Seifu matawa kanri no kashitsu ni yoru higai jinmin no songai baishō seikyū no kenri,* Waseda University Japanese & Chinese Classics Database *http://www.wul.waseda.ac.jp/kotenseki/html/i14/i14_a2540/index.html.*

174 R. BEADON, *Jinmin seigan ni kansuru mon ni kotafuru sho,* Waseda University Japanese & Chinese Classics Database, *http://www.wul.waseda.ac.jp/kotenseki/html/i14/i14_a2537/index.html.*

175 R. BEADON, *Hannin zaisan shobun hōhō,* Waseda University Japanese & Chinese Classics Database, *http://www.wul.waseda.ac.jp/kotenseki/html/i14/i14_a2531/index.html.*

176 R. BEADON, *Seifu kanri no shōgyō kyoyō ronben-sho,* Letter 9 July 1878, Hokkaido University Northern Studies Collection Database, *https://www2.lib.hokudai.ac.jp/cgi-bin/hoppodb/record.cgi?id=0C003670000000000.*

177 KAWAMURA, *supra* note 125, 677.

178 BEADON, *supra* note 121, 1351–1353.

179 *Ibid.,* 1352–1353; Vavasseur v Krupp (1878) 9 Ch D 351, 353, 354–356, 358–361.

There was no viable action against Vavasseur, as there was nothing to prove that they had acted improperly in seeking the injunction.[180] Indeed, Vavasseur as the patent holder would have been within their rights to demand the destruction of the shells in other circumstances.[181] Beadon suggested that the Ministry could seek to resolve the matter through direct negotiation with Ahrens and the shipbuilder, but hesitated to recommend legal action in the event that negotiations failed.[182] In essence, Beadon suggested that such action might be more trouble than it was worth. On 16 April 1879 Sumiyoshi Kawamura wrote to Robert Beadon to thank him for providing the advice at a time when he was extremely busy.[183] On 16 May 1879, Beadon replied to thank the Naval Minister and to offer his 'humble services' for any future occasion.[184]

In terms of diplomatic advice, Beadon's major contribution in this area was in aiding the Japanese government in preparing for negotiations with the Western powers over treaty revision. On occasion, however, he was also asked to submit opinions on other foreign policy challenges facing the Japanese government. Although after the date of the jury opinion, an example is the advice that was provided to the Japanese government, on relations with China, after Korean attacks on the Japanese legation in Korea in 1882.[185] The document focuses on the strength of China's claims to having a right to intervene in Korea, the likely Chinese response to the presence of Japanese personnel in Korea for treaty negotiations, and strategies for minimising tensions with the Chinese state. Beadon thought that China would

180 BEADON, *supra* note 121, 1350–1351.

181 Vavasseur v Krupp (1878) 9 Ch D 351, 355, 358–361.

182 BEADON, *supra* note 121, 1353–1354.

183 S. KAWAMURA, Letter to Robert Beadon, 16 April 1879, in: The National Institute for Defence Studies, Ministry of Defence (ed.), *Sotode 312 Bīdonshi shōkai Fusō hoka nikan sonaetsuke no bakugan yokuryū no ken shaji* [Outgoing-External 312 Referral to Mr Beadon – Expression of thanks on the matter of the detainment of bombshells for the Fusō and two other vessels], Japan Center for Asian Historical Records, Reference Code: C09115443200, 1364, *https://www.jacar.go.jp/english/*.

184 R. BEADON, Letter to Sumiyoshi Kawamura, 19 May 1879, in: The National Institute for Defence Studies, Ministry of Defence (ed.), *Sotoiri 385 Bakudan kōryū kamon no gi Bīdon kaitō* [Incoming-External 385 Beadon's reply on the bombshell detainment inquiry], Japan Center for Asian Historical Records, Reference Code: C09101864200, 1555, *https://www.jacar.go.jp/english/*.

185 R. BEADON, *Chōsen jiken to Shinkoku no kanshō ni tsuki Bītonshi iken* [Mr Beadon's opinion on the Korean incident and the intervention of China], Letter 9 August 1882, in: Itō et al. (eds), *Hisho ruisan: Chōsen kōshō shiryō, jōkan* [Secret Document Collection: Korean Negotiation Documents, Volume 1] (Tōkyō 1936) 237. See also: "Editorial Notes", Japan Weekly Mail, 5 August 1882, 945–946; "The Korean Affair", The Japan Weekly Mail, 5 August 1882, 963–967.

send troops to Korea, thereby complicating treaty negotiations and giving rise to the possibility of armed confrontation between Japanese and Chinese forces in the area, and advocated diplomatic efforts to reassure the Chinese that treaty negotiations were about restoring the status quo rather than expanding Japan's influence.[186] In terms of Chinese claims to having a right to intervene in Korea, Beadon referred to the well-known dilemma for China at this time, in trying to protect its influence in East Asia, of claiming nearby states as dependencies but disavowing the political authority to administer their internal or external affairs.[187]

Beadon's key role in advising the Japanese government on treaty revision is perhaps best illustrated by the English text of the 'Remarks addressed to H.E. the Minister of Foreign Affairs upon Mr. Davidson's Observations and Notes on the Treaty Proposals transmitted by H.I.J.M's Minister in London' of 15 October 1880.[188] This document also provides the clearest example of Beadon's role in drafting proposals for treaty reform with the Western treaty states. At Item X, Beadon expresses satisfaction over Davidson's interpretation of Article V of the Draft Treaty of Friendship between Japan and England 1880, noting that he is glad 'the meaning intended is the only one capable of being borne by the words *I used* in drafting the clauses in question' (author's emphasis).[189] The reference to the 'Note' in 'the annotated copy of the Drafts circulated among Members of the Government and Envoys at Foreign Courts', under Item XI, suggests that Beadon was likewise responsible for these annotations.[190] The date of this document adds weight to claims that Beadon was assigned to special duties within the Ministry of Foreign Affairs from November 1879.

Beyond the sphere of treaty revision, there are at least two examples of Beadon's skill as a regulatory draftsman still in existence. These are the 'Draft disciplinary rules on the loss or theft of Industry Start-up Loan Certificates' and the 'Kaitakushi regulations applicable to the Foreign staff in Japan, as to Travelling Expenses, means of Conveyance and allowances in

186 *Ibid.,* 237–239.

187 *Ibid.,* 237–238.

188 R. BEADON, Remarks addressed to H. E. the Minister for Foreign Affairs upon Mr. Davidson's Observations and Notes on the Treaty Proposals transmitted by H.I.J.M's Minister in London, Letter to Kaoru Inoue, 15 October 1880, in: Nihon Gakujutsu Shinkō-kai [Japan Society for the Promotion of Science] (ed.), *Jōyaku kaisei kankei Dai-nippon gaikō bunsho daini-kan* [Japanese Diplomatic Documents Relating to Treaty Revision, Volume 2] (Tōkyō 1942) 1367 No. 473.

189 *Ibid.,* 1372.

190 *Ibid.*

lieu of House accommodation'.[191] The title of the latter is as provided in Beadon's English drafts for the regulation.[192]

The biographical sketch above establishes that Robert John Beadon was a Japanese government legal adviser during the period in which the jury opinion was written. It moreover also demonstrates that Beadon had the legal skills necessary to draft the opinion. In terms of status, Beadon's pay level, lower than that of Boissonade's but above that of the most senior member of the Japanese government, indicates that he had considerable status within the Japanese government. The substantial increase in his salary within months of the jury opinion furthermore indicates that, through effort, he had earned respect commensurate with his pay. The details on Beadon's work to 1879 and his assignment to work on treaty revision from November of that year, one of the most important objectives for the Japanese government at this time, reinforces this impression.

4. Kowashi Inoue and the Authorisation for the Jury Opinion

The numerous references to key personnel in the Japanese government within the biographical sketch, across the powerful Chōshū and Satsuma domain factions, suggests that Beadon was well placed to be both consulted about the jury system, and to be asked for a written opinion. It is nevertheless worthwhile to consider whether Beadon would have had the opportunity to come into contact with Kowashi Inoue in November to December 1879, as Inoue was responsible for delivering the jury opinion to the Chairman of the Code of Criminal Instruction Review Board, Sakimitsu Yanagiwara.[193]

Kowashi Inoue was at the relevant time a Grand Secretary of the Ministry of Home Affairs, and the Director of the *Torishirabe-kyoku* (Studies Bureau) within the same organisation.[194] We already know that Beadon was also employed by the Ministry of Home Affairs during this time.[195] English sources, however, suggest that Beadon's proximity to Inoue may have been even closer, with at least one source referring to Beadon as being the 'standing counsel and legal adviser to the Torishirabe Kioku of the home

191 R. BEADON, *Kigyō kōsai shōsho no funshitsu matawa ni kakaru shobun kisoku-an,* Waseda University Japanese & Chinese Classics Database, *http://www.wul.waseda.ac.jp/kotenseki/html/i14/i14_a2425/index.html.*

192 BEADON, *supra* note 122.

193 INOUE KOWASHI DENKI HENSAN IIN-KAI, *supra* note 56, 230–232.

194 K. KINO, *Inoue Kowashi kenkyū* [A Study on Kowashi Inoue] (Tōkyō 1995) 465–466; MITANI, *supra* note 9, 100–101.

195 JONES, *supra* note 3, 43; INOUE, *supra* note 65, 1–2.

department'.[196] There is, in other words, the possibility that Inoue was his direct superior within the Home Ministry. Organisational factors therefore suggest that the opportunity existed for Inoue to consult with Beadon on the jury system.

The fact that Inoue may have had the opportunity to consult with Beadon on the jury system does not necessarily mean that Inoue authorised the jury opinion. As noted in the biographical sketch above, Beadon's expertise was in demand within the Japanese government. So much so that by late 1879 tensions had already emerged over access to his services.[197] Both Hirobumi Itō, in his letter to Sumiyoshi Kawamura, and the Naval Minister, in his letter to Beadon, had acknowledged that the Japanese government kept the English barrister very busy.[198] Beadon moreover had just been assigned to special duties within the Ministry of Foreign Affairs to work on treaty revision, arguably the most important objective for the Japanese government at the time.[199] It is therefore doubtful whether there would have been the time, or the tolerance within the Japanese government itself, for Beadon's services to be spent on vanity projects or pet pursuits. In other words, the request for the opinion would have had to have come from higher within the government. It would have moreover been made with the understanding that, in asking for the opinion, Beadon's attention was being taken away from other pressing matters.

In making the above point it is important to emphasise that the resources spent on the jury opinion would have went well beyond Beadon himself. As noted earlier, Beadon wrote the opinion with an awareness of the substance of the dispute between Inoue and Boissonade over the jury system.[200] This means that, at the very least, Beadon would have been advised on the main points of Inoue's and Boissonade's arguments. It is, however, much more likely that the relevant documents from both men would have been translated into English and then sent to him. There is, of course, the possibility that Beadon may have had some exposure to French prior to arriving in Japan. In any event, a translation of Kowashi Inoue's argument on the jury system, if not an English translation of Boissonade's argument, would have been

196 Chronicle & Directory for China, Japan, the Philippines &c 1882 (Hong Kong 1882) 52, 436. See also: The Chronicle & Directory for China, Japan, & the Philippines for the Year 1879 (Hong Kong 1879) 391, 393.

197 KAWAMURA, *supra* note 125, 677.

198 ITŌ, *supra* note 129, 739; KAWAMURA, *supra* note 183, 1364.

199 FUJIWARA, *supra* note 65, 23; PEREZ, *supra* note 65, 320–324, 327–328.

200 R. BEADON, *Baishin-hō iken* [Jury System Opinion], in: Hanai, *Shōtei ronsō: Mantetsu jiken o ronzu fu, Baishin-hō ni tsuite* [Courtroom Essays: An Argument on the Manchurian Railway Incident, with About the Jury Act] (Tōkyō 1930) supplement 82, 82–83.

required. Both men's arguments would have then needed to be sent to Beadon, who would have subsequently sent back his reply. The translators would have in turn translated Beadon's reply. That document would have then been sent to Kowashi Inoue for delivery to Sakimitsu Yanagiwara and the other members of the Code of Criminal Instruction Review Board. The single day between the dating of the jury opinion and Yanagiwara's letter to Inoue, to acknowledge receipt of the document and to thank him for the same, suggests that the translators would have been under considerable pressure to produce the relevant translations as quickly as possible.[201]

The work required of the translators would have been magnified by the complexity of the concepts contained within the arguments of all three men. Beadon's jury opinion, for example, covers the limitations of the jury system, the personnel requirements for its successful operation, the links between the jury system and liberty in a liberal-democracy such as Great Britain, and the dangers posed by the jury system in autocratic states without an independent judiciary. It moreover discusses the operation of the jury system within the broader context of English criminal procedure.[202] The translators, for example, would have had to come to grips with the distinction drawn under English law between felony trials, summary trials, and state trials, and to thereafter identify suitable terms in Japanese for these concepts. Thus, the additional resources required for the creation of the jury opinion further indicates that Kowashi Inoue was not ultimately responsible for its creation.

The text of the jury opinion itself also suggests that authorisation for the opinion came from elsewhere. The introduction presents the argument as having been given at arms-length from Inoue and Boissonade.[203] If this were not the case, you would expect a barrister of Beadon's experience to disclose the fact that he had been asked by one, or other, of the parties to give an opinion. If for no other reason than that he would have been aware of the potential for non-disclosure of such details to undermine his argument. The substance of that argument also indicates that Inoue did not request the opinion. As others have noted, Kowashi Inoue was in essence arguing that the jury system, as a 'bad law' giving rise to lawlessness, should never be adopted.[204] Beadon, by contrast, was arguing that the jury

201 S. YANAGIWARA, Letter to Kowashi Inoue, 10 December 1879, in: Inoue Kowashi Denki Hensan Iin-kai, *supra* note 56, 231.

202 R. BEADON, *supra* note 200, 83–87.

203 As previously noted, Beadon states that he merely wishes to present a general opinion on the jury system rather than to critique Inoue's and Boissonade's arguments: BEADON, *supra* note 200, 82–83.

204 AYABE, *supra* note 10, 81.

system had merits but its introduction into Japan was premature.[205] If Inoue was shopping around for support, he surely could have done a better job in finding an adviser who actually supported his point of view.

Beadon's workload and the text of the opinion itself both therefore undermine any notion that Kowashi Inoue alone authorised the jury opinion. The question then remains as to who actually requested the opinion. Short of discovering a hitherto unknown document, it is probably impossible to identify a single individual as being responsible with any degree of certainty. That being said, by looking at the context in which the opinion was given, the circumstances of Beadon's employment, and the major issues facing the Japanese government at the time, it is possible to identify likely contenders amongst the senior members of the Japanese government.

There is, for example, a strong case to be made for Foreign Minister Kaoru Inoue. Boissonade had, after all, suggested that treaty revision would not be possible without a criminal trial jury system for felony offences, and treaty revision was one of the most important objectives for the Japanese government during the Meiji period. Beadon had as a result been assigned to special duties within the Foreign Ministry in November 1879.[206] Inoue therefore had both physical access to Beadon, and an incentive to ask for an opinion on the jury system. As an English barrister Beadon was well placed to give an authoritative opinion on the merits of the jury system, and whether its absence would be an issue in negotiations with, the biggest stumbling block to treaty revision, Great Britain.[207] This being said, it is important to acknowledge that the opinion does not expressly address whether the jury system was essential for treaty revision. Thus, whilst the Foreign Minister certainly would have had an interest in knowing whether Beadon thought Japan should adopt a jury system, the words of the opinion itself suggest that the request for the opinion came from elsewhere. It is, however, worth noting that, having English language skills through study in Britain and Japan, Kaoru Inoue like Hirobumi Itō would have been able to directly converse with Beadon about the jury system and its potential impact on treaty revision.[208]

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205 *Ibid.*

206 FUJIWARA, *supra* note 65, 23.

207 Britain controlled upwards of forty percent of trade with Japan and had the most comprehensive system in place to implement its extraterritorial rights: PEREZ, *supra* note 65, 327, 331–334; HOARE, *supra* note 65, 76–77, 79–83.

208 With respect to Hirobumi Itō, his English language correspondence, and contemporary accounts of his English language skills, indicate that he read at a high-intermediate to advanced level, spoke haltingly but otherwise well, and wrote in an unaffected and clear style. Overall, his English skills were 'quite solid': K. TAKII,

As indicated in the preceding paragraph, Hirobumi Itō also emerges as a possible source for the request. Itō had a close relationship with both Kaoru Inoue and Kowashi Inoue, and as Home Minister also had links with Robert Beadon. He would have therefore almost certainly known about concerns over Japan's prospects for treaty revision without a jury system. The treaties with the Western powers were not, however, the only issue facing the Japanese government at the time. The Crisis of 1881 can trace its origins back to an 1879 decision to reject the draft constitution prepared by the Chamber of Elders (元老院 *Genrō-in*).[209] The draft drew inspiration from the English system of constitutional monarchy, but was also influenced by the basic law of other European states.[210] Hirobumi Itō already had firm views that Japan should embrace gradualism in moving towards being a constitutional state.[211] The Japanese people were, as a result, only to be admitted into the ranks of those who participated in the exercise of public power on an incremental basis. A criminal trial jury system, particularly one that allowed a large range of people to qualify as jurors, was clearly a very large step away from gradualism. Itō therefore had an incentive to try and quash the jury system at the review board stage, especially if its exclusion would not impact significantly upon the prospects for treaty revision. Hirobumi Itō, whether alone or together with Kaoru Inoue, therefore also emerges as another likely source for authorising the request.

In concluding this part of the paper, there can be no doubt that Robert Beadon is the author of the third opinion on the jury system that, until now, has been attributed to Robert *Breider*. As conclusively shown in the body of this part, Beadon was a highly paid legal adviser with the Japanese government at the time. He had the skills and experience necessary to draft the opinion and was ideally placed, both physically and in terms of status within the Japanese government, to offer an authoritative view on the subject. Whilst there are links between Kowashi Inoue and Robert Beadon, which support the latter's claim to authorship, questions still remain over who was responsible for requesting the jury opinion. At the very least the circumstances of Beadon's employment, and the context in which the opinion was given, indicate that even if Kowashi Inoue made the request he did so with the full knowledge and consent of his superiors.

Itō Hirobumi: Japan's First Prime Minister and Father of the Meiji Constitution (Takechi trans., London 2014) 14–15.

209 BECKMAN, *supra* note 66, 48–56; AKITA, *supra* note 6, 10–12, 32–33.

210 BECKMAN, *supra* note 66, 46–49, 51–52; AKITA, *supra* note 6, 10–12.

211 BECKMAN, *supra* note 66, 48–51; AKITA, *supra* note 6, 11–12, 36–37, 41.

IV. Conclusion

On 30 December 1882 Robert John Beadon, barrister-at-law and adviser to the Ministry of Foreign Affairs, returned to England with his wife and three young children on a leave of absence.[212] The pages of the Japan Weekly Mail, in recording Beadon's departure, noted that 'Mr. Beadon has served the Government of this country for six years in the capacity of legal adviser, and his high qualifications have not failed to receive due appreciation.'[213] Beadon was by this stage one of the most highly paid and respected foreign advisers to the Japanese government. He could point to well over half a decade's worth of accomplishments as a drafter, adviser, courtroom practitioner, and foreign policy specialist. The Japan Weekly Mail joined the Beadons' 'numerous friends' in wishing them a safe voyage to England, and in hoping to see them back in Japan soon.[214] Beadon was, however, never to return to Japan to resume work with the Japanese government.

Beadon's association with Japan did not, of course, end with his departure from that country. Less than three years later, in 1885, Beadon was able to call on his long association with Foreign Minister Kaoru Inoue to secure the position of Japanese Consul in Tasmania.[215] The memory of Beadon lingered also in Japan, with the pages of the Japan Weekly Mail reporting on Beadon's involvement with the Imperial Federation League in the Australian colony on 26 May 1888. 'Mr. R. J. Beadon' was 'a name well known in Japan'.[216] More significantly, in terms of Beadon's contribution to the Japanese government, the same paper was to note, in August of the same year, that Foreign Minister Shigenobu Ōkuma had taken several documents with him to Atami to study treaty revision, including an 1882 statement on Japan's case made by 'Mr. R. Beadon'.[217] With time of course this was to change, with Beadon disappearing into the lengthy shadows cast by the figures that he had served.

Beadon would have, perhaps, found it ironic that his contribution to Japan would be rediscovered in connection with the advice that he provided on the jury system, the great English legal institution that he could only conditionally support. That Beadon is in fact the author of the jury opinion delivered to the Japanese government on 9 December 1879 cannot be doubted. Both the circumstantial evidence of Beadon's skills, knowledge

212 The Japan Weekly Mail, 30 December 1882, 1274; The Japan Weekly Mail, 6 January 1883, 14.

213 *Ibid.*

214 *Ibid.*

215 See *supra* note 2.

216 The Japan Weekly Mail, 26 May 1888, 482.

217 The Japan Weekly Mail, 25 August 1888, 171.

and experience, and employment within the Japanese government, and the direct evidence of the letters between Sakimitsu Yanagiwara and Kowashi Inoue establish this fact. It is moreover clear that Beadon had the status within the Japanese government, by late 1879, to be able to challenge Boissonade on the merits of a Japanese jury system.

There are nevertheless questions that still remain over the jury opinion. Both the reasoning within the jury opinion, and the extent to which the opinion in fact influenced government deliberations on the jury system, require further research. A cursory reading of the opinion, for example, indicates that Beadon was in part influenced by perceptions that the Japanese population were neither educated nor politically engaged.[218] Both of these assumptions are debatable, especially with respect to the former members of the warrior class. In terms of the impact of the decision upon government deliberations on the jury system, further work needs to be done to explain why, if at all, the jury opinion was influential. The links between debates over the jury system and constitutional government, in particular, need closer examination. In this respect, Yūko Yano in 1997 identified the removal of liberal and individualistic elements, such as the jury system, from Boissonade's draft criminal procedure code as the first legislative step in creating the Meiji constitutional system.[219] The significance of the jury opinion may have, therefore, simply been in reinforcing a pre-existing bias within the Japanese government against rapid expansions in citizen participatory rights. These are, however, considerations for another day.

V. Appendix

Translation: Robert Beadon, Jury System Opinion[220]

I do not wish to discuss the points of difference in the opinions of Mr Inoue and Mr Boissonade on this topic here, as this is not the place for debating their merits. I simply wish to express a general opinion on the topic.

The public always places too much value on the jury system but, if you were to have me evaluate it, I would say that its benefits exist mainly in the fact that what can be hoped for only in theory can never be seen in practice. The reason why is because although the jury system looks as though it

218 R. Beadon, *supra* note 200, 83–84, 87.

219 Yano, *supra* note 6, 310.

220 R. Beadon, *Baishin-hō iken* [Jury System Opinion], in: Hanai, *Shōtei ronsō: Mantetsu jiken o ronzu fu, Baishin-hō ni tsuite* [Courtroom Essays: An Argument on the Manchurian Railway Incident, with About the Jury Act] (Tōkyō 1930) supplement 82. Translation by the author.

possesses various benefits in theory, experience shows that it actually produces the contrary results.

Even if according only to theory, I would have to say that it is totally contrary to reason to entrust assemblies of completely uneducated citizens with the various difficult matters that jurors must ordinarily perform; such as, distinguishing between entangled facts, comparing articles of evidence, arranging facts and testimony that are confusing or inconsistent with each other, or identifying how witnesses are behaving and what their intentions may be.

To have jurors carry out their duties properly you must first of all educate them to adhere to logic in observing matters, or go a step further and train them so that they are able to act on the basis of legal thought. Be that as it may, simply on the basis of logic, how can you possibly even hope to achieve good results by entrusting the most difficult cases to an uneducated mob?

That which creates the harmful effects that arise from logical thought not residing in the minds of ordinary citizens, as mentioned previously, and exacerbates its occurrence still further is nothing other than class feeling or partisanship. This is because, even if an honest person, it is only natural for people to be undermined by feelings of partisanship and err in making their decisions (it is a situation that is often difficult for even particularly well-educated people to avoid, let alone for ordinary people).

For reasons such as those stated above, it is empirically clear that trial by jury often produces unjust results. That being said – because jurors usually form some sense of the judge's inclinations, and generally guess the points that the judges' thoughts are leaning towards before making their factual decisions (there may also be occasions when jurors legitimately follow directions that the judge must give as a matter of law) – I cannot categorically deny that trial by jury on the contrary reduces the risk of harm. Nevertheless, I cannot assess the jury system on the basis of this point and call it a perfectly good system.

Those who argue in favour of the jury system consider this system to be an extremely important tool for protecting citizen liberties. They are correct. It is not something that even I would argue to the contrary. Nevertheless, in nations that possess a constitution like England and that settle on citizen liberties the jury system is, of course, not only sufficient to guarantee citizen liberties but has become one of the factors that allowed those liberties to be gained in the first place. That said, in comparing this with the annals of history, the jury system is nothing more than an ornament in nations that live under an autocratic government. This is because in nations like these executive officers will invariably strengthen their despotism and, irrespective of what kind of trial method you enact, the judicial system will be trampled on in the interests of executive power. As a result, the judicial

system will be completely unable to safeguard the liberties of citizens. Just as in England, at the time in the past when it also ranked amongst the autocratic kingdoms, the jury system will wholly become an instrument of the executive along with the judges, as if there is no jury system despite one being enacted. Ultimately, you end up with judges having jurors make their decisions by conveying to them the expectations of officials.

The above is also true for summary trials, and for state trials as well, since executive officers must always occupy the prosecutor's position in such circumstances. Thus, irrespective of whether the judge makes the decision alone or together with jurors, it will be essentially impossible for citizens to safeguard their liberties. The jury system will instead allow citizens to discover that the government is abusing its power. As a result, it will no doubt act as an intermediary for encouraging citizens to conspire against the government. The reason why is because it is easy to conceal the despotism of executive officers when judges alone conduct trials without jurors, but when you use jurors and then impose restrictions upon them you alert the general public to that despotism. You thereby make them furious at the government for enacting a useless system without real effect, and for ridiculing and deceiving the people.

In nations where citizens creating public opinion aspire to constitutional government, and that take on an atmosphere such that citizens yearn for freedom like they love their own bodies, the general public will be enraged by the tyrannical deception of the government, as stated before, and just as in England the jury system will instead produce surprisingly good results. The jury system became the indirect reason for England developing the true freedoms of today. If you permit jurors to make their decisions freely, the results will be satisfactory and should not differ widely from trial by judge alone. On the other hand, if judges or executive officers attempt to restrain or manipulate jurors, or if they try to use unjust means to select jurors, as despotic governments usually do to constitute juries, then there is no doubt that citizens treasuring freedom in this way will immediately grow angry at the tyrannical deception and oppose the government.

Although not directly related to this topic, there is something that I wish to say a few words about here. In nations where executive officers are able to appoint and dismiss judges with arbitrary decisions, it is by no means possible to even hope to strengthen trial independence. Judges who are honourable and learned and independent and unchecked are able to conduct fair trials, irrespective of whether there are jurors present or not. If judges are not, however, judicial officers who occupy their positions for life, but are made conditional judges who may be dismissed at any time because of the views of senior officials, then the jury system will in my opinion simply end up existing in name but not in reality. This is because the judges will

inevitably obey the orders of executive officers, and the jurors will abide by the warnings and directions of the judge.

To my way of thinking, a major advantage in relation to the jury system is that it allows ordinary citizens to develop an awareness of politics through providing people, who are not otherwise officials, with the opportunity to participate in public affairs. This is extremely important, but to allow people who lack experience to become jurors on this account, and thereby treat this as part of a method for teaching political awareness, is something that is not generally accepted. It is like teaching children to run before they have learnt to walk.

For the above reasons, you should be in no doubt that to establish a jury system and make Japanese citizens assume the extremely difficult responsibilities of jurors, until such time as they have become rich in political thought through gradually participating in national affairs, starting with small matters of local government first of all, will not only lead to wasted effort in particular but also give rise to all sorts of consequences.

(9 December 1879)

SUMMARY

In the second half of the 19th Century a dispute arose within the Japanese government over the inclusion of a jury system within drafts for the Code of Criminal Instruction (治罪法 Chizai-hō), Japan's first system of criminal procedure law based on Western law. Prosecuting the case for the retention of the jury provisions was the man entrusted with drafting Japan's first modern legal codes, the French jurist Gustave Émile Boissonade de Fontarabie. Opposing him was the powerful bureaucrat, and senior adviser to some of the most important men in the Japanese government, Kowashi Inoue. At a critical stage in the law's enactment another opinion was offered, an influential opinion by a little-known British adviser. Indeed, even the adviser's identity is a matter of conjecture. The aim of this paper is to conclusively identify the author of that opinion. It argues that the opinion's author is Robert John Beadon, an English barrister who, from 1877 to 1882, was one of the highest paid foreign employees working for the Japanese government, and at the heart of Foreign Minister Kaoru Inoue's early efforts to revise Japan's mid-19th Century treaties with the Western powers.

ZUSAMMENFASSUNG

In der zweiten Hälfte des 19. Jahrhunderts entbrannte innerhalb der japanischen Regierung eine Debatte darüber, ob ein Jury-System Bestandteil der Entwürfe für die erste westlich inspirierte Strafprozessordnung, das sog. Chizaihō, werde sollte. Für ein Jury-System setzte sich namentlich der französische Jurist Gustave Émile Boissonade de Fontarabie ein, der mit den Entwürfen für die ersten modernen Kodifikationen Japans beauftragt worden war. Sein Gegenspieler war Kowashi Inoue, ein einflussreicher Bürokrat und wichtiger Berater zentraler Regierungsmitglieder. In einer kritischen Phase des Gesetzgebungsprozesses erstattete ein wenig bekannter britischer Berater ein einflussreiches Gutachten. Selbst zur Identität dieses Beraters gibt es allerlei Mutmaßungen. Ziel dieses Beitrags ist es, den Autor des besagten Gutachtens zweifelsfrei zu identifizieren. Der Beitrag vertritt die These, dass es sich bei dem Autor des Gutachtens um Robert John Beadon, einen englischen Barrister, handelt, der von 1877 bis 1882 einer der bestbezahltesten ausländischen Berater der japanischen Regierung war und eine zentrale Rolle bei den Bemühungen von Außenminister Kaoru Inoue spielte, eine Revision von Japans ungleichen Verträgen mit den westlichen Mächten zu erreichen.

(Die Redaktion)