# The Jury System in Modern Japan: Revolution Failed?

*Dimitri Vanoverbeke*

*This is a story of origins, of "roots" – and also of "routes,"*
*the paths by which we have arrived where we are.*

– Harold J. Berman, 1983 –

*Monster, monster, dread our fury,*
*There's the Judge and we're the Jury*![1]

– William Swenck Gilbert and Arthur Sullivan, 1871 –



## I. INTRODUCTION

A jury system or lay assessor system (*saiban-in seido,* 裁判員制度) has been in effect in Japan since May 2009. The government is expecting that about 3000 of the severest criminal cases will be judged by a mixed panel consisting of three judges and six drafted citizens. The lay assessor system is just one of a series of major legal reforms initiated in the 1990s that have attempted to fortify the rule of law in Japan and to close the gap between the citizen and the state.[2] Is this jury system new for Japan? Japan actually recorded recurrent debates on the jury since the very beginning of the *Meiji* era and had a jury system in operation between 1928 and 1942. How can we explain why the jury system was established *then* and what did it mean for the rule of law in modern Japan?

---

1 Operetta by WILLIAM SWENCK GILBERT and ARTHUR SULLIVAN in 1871, cited in: Hōsō-kai zasshi, Special Issue at the occasion of the implementation of the Jury Law 7 (1929) 308.

2 S. MIYAZAWA, The Politics of Judicial Reform in Japan: The Rule of Law at Last?, in: Asian-Pacific Law & Policy Journal 2 (2001) 89.

Most analytical models have been concerned with explaining two separate parts of the story. On the one hand, public policy analysis explains the process up to the outcome, which in this case would be the promulgation of the Jury Act[3] in 1923. On the other hand, socio-legal analysis is more concerned with explaining the content of the Jury Act and how the law operated. I argue in this paper that both parts of the story should be integrated to explain the dynamic and historical process of judicial institutions in Japan and to better understand the function of law in Japan.

## II. INSTITUTIONS AND EXPLAINING POLICY CHANGE

In recent years, scholars have displayed interest in an analytical model explaining policy change. "Path dependency" and "punctuated equilibrium" are at the center of this interest.[4] Path dependency explains that the genesis of a set of institutions is likely to have the most effect where "interest group activity is not yet well established and where even a minor decision can give one set of organizations an initial advantage."[5] The institution and the norms the institution incorporates become "locked-in" or "sticky," which means that even if the institution appears to have been a choice that was not optimal, it is more comfortable to remain on the same path due to uncertainty of change.[6] Increasing returns will appear during events that challenge the institution and will "pinpoint how the costs of switching from one alternative to another will, in certain social contexts, increase markedly over time."[7]

---

3 *Baishin-hō*, Law No. 50/1923, as amended by Law No. 51/1929 and Law No. 62/1941, suspended by Law No. 88/1943, viewable at *http://law.e-gov.go.jp* (editor's note, last retrieved on 5 October 2010).

4 C. POLLITT, Forty Years of Police Governance Reform: An Anglo-Belgian Comparison, Paper Presented to the 5th Trans-Atlantic Dialogue (Washington DC 2009); F.R. BAUMGARTNER / B.D. JONES, Agendas and Instability in American Politics (Chicago 1993); J. MAHONEY, Path Dependence in Historical Sociology, in: Theory and Society. 29 (2000) 507-548; P. PIERSON, Not Just What, But When: Issues of Timing and Sequence in Comparative Politics, paper prepared for presentation at the American Political Science Association Meetings, Boston, 21 September 1998; P. PIERSON, The Path to European Integration: A Historical Institutionalist Analysis, in: Comparative Political Studies 29 (1996) 123-163; P. PIERSON, Increasing Returns, Path Dependence, and the Study of Politics, in: American Political Science Review 94 (2000) 251-259; P. PIERSON, Politics in Time: History, Institutions, and Social Analysis (New Jersey 2004).

5 P. PIERSON, When Effect Becomes Cause: Policy Feedback and Political Change, in: World Politics, 45 (1993) 602 *et seq*.

6 K. THELEN, Historical Institutionalism in Comparative Politics, in: Annual Review of Political Sciences 2 (1999) 391.

7 PIERSON, *supra* note 4 (reference from 2004), 251.

Path dependency is treating the genesis and stability of institutions. Institutions, however, do not remain locked-in. They can be successfully challenged and new paths or new institutions can emerge.[8] The developments in public policy literature also offer challenging perspectives on how to explain change. Among the most promising models in this field is that of Bryan D. Baumgartner and Frank R. Jones, which they describe as the "Punctuated Equilibrium" model.[9] Baumgartner and Jones started from the "simple observation that political processes are often driven by a logic of stability and incrementalism, but occasionally they also produce large scale departures from the past."[10] Even in a situation of equilibrium, communities of specialists are constantly dealing with issues and proposing alternatives to existing policy, but the window of opportunity can only be seized by policy entrepreneurs if specific conditions are fulfilled. The Punctuated Equilibrium model proposes the following conditions that have to be met at the same time for a window of opportunity to open: (1) the policy venue is changed by the inclusion of new actors; (2) the policy image changes (e.g., what seems appropriate to the actors and general public); and (3) the macro-political attention for an issue increases. Punctuation happens and will create a "change in the overall policy paradigm"[11] (e.g., advocates of an open justice with a substantial participation of civilians in the criminal justice process would have their way). Interesting for the historical analysis of legal institutions in Japan is that the Punctuated Equilibrium model typically takes into account a period of several decades, that it aims at explaining stability and change, and that it does not choose between rational choices or culture in its explanation of forces and decisions in a specific policy field. Rational choice and culture are part of the same narrative. Therefore, the main question that can be answered by using this model is why events over a longer period of time and related to a certain institution (or policy) fail or succeed to change this institution, and which sequences of events are important for explaining an specific outcome. How does this relate to the case of law in modern Japan?

8 D.C. NORTH, Institutions, in: *Journal of Economic Perspectives* 5 1 (1991) 97-112; K. THELEN, How Institutions Evolve: Insights from Comparative Historical Analysis, in: Mahoney/Rueschemeyer, Comparative Historical Analysis in the Social Sciences (New York 2003) 208-240.

9 BAUMGARTNER / JONES, *supra* note 4, 155.

10 J.L. TRUE / B.D. JONES / F.R. BAUMGARTNER, Punctuated Equilibrium Theory: Explaining Stability and Change in Public Policymaking, in: Sabatier (ed.), Theories of the Policy Process (Denver 1999) 97.

11 P. HALL, Policy Paradigms, Social Learning, and the State: The Case of Economic Policy-Making in Britain, in: Comparative Politics 4 (1993); POLLITT, *supra* note 4.

## III. HISTORY MATTERS: LEGAL TRADITION CONTINUED AFTER MEIJI

Modern legal institutions were created at the time of the *Meiji* Restoration in order to answer a domestic need of stability and an international need of independence. The juncture with the past was fundamental in shape, as a new legal order based on Western examples was created. Yet the functioning of the first legal institutions was essential in defining which path the legal institutions would follow. Justice in the first years of *Meiji* Japan was controlled by various institutions reflecting more continuity than rupture with *Tokugawa* justice. Kikuyama Masa'aki[12] points at features of continuity between the first *Meiji* judicial institutions in comparison to these of *Tokugawa*[13]: (1) political interference; (2) no separation between civil and penal procedures; and (3) all cases except those relevant to the state were the jurisdiction of the governor.[14] In the first years of *Meiji* the judicial functions of the government were reduced to criminal trials, and fear persisted among the citizens that the state could turn against them if they were "seeking enforcement of legal claims or remedies against suffered wrongs."[15] The idea of law that emerged in the *Tokugawa* period was not challenged in the basic features of the *Meiji* Restoration. The conservative leadership of *Meiji* Japan (Iwakura Tomomi, Ōkubo Toshimichi, Sanjō Sanetomi, Kido Takayoshi, and later Inoue Kowashi and others) designed the administration of justice. It would only be challenged seriously by Etō Shinpei after the *Meiji* government was well on track. Once appointed Minister of Justice, Etō turned out to be a very dynamic policy entrepreneur whose ultimate goal was to realize the independence of justice (*shihō-ken no dokuritsu,* 司法権の独立) in order to – so he argued – secure order and stability for the people in a nation ruled by law.[16] He claimed that drastic judicial reforms were needed to modernize society.

One of the most important contributions by Etō to the modernization of justice, for example, were the Standing Regulations concerning the Function of the Judiciary (*shihō shokumu teisei,* 司法職務定制), which from August 1872 on resulted in the establishment of District Courts and special courts to standardize justice in modern judicial institutions. In the wake of this act, the Ministry of Justice issued Ordinance 56 (*shihō-shō futatsu dai-gojūroku-gō,* 司法省布達第五十六号), establishing the rights of the com-

12 Japanese names in this article are referred to as surnames followed by the given names (editors' note).

13 M. KIKUYAMA, *Meiji shonen no shihō kaikaku: shihō-shō sōsetsu zenshi* [Judicial Reform in the First Years of Meiji: History of the Beginnings of the Establishment of the Ministry of Justice], in: Waseda hōgaku 62 (1986) 169-214; M. KIKUYAMA, *Meiji kokka no keisei to shihō seido* [The Formation of the Meiji State and the Legal System] (Tokyo 1993).

14 KIKUYAMA, *supra* note 13 (reference from 1993), 89-90.

15 J.O. HALEY, Authority without Power: Law and the Japanese Paradox (New York 1991) 57.

16 T. MŌRI, *Etō Shinpei: Kyūshinteki kaikaku-sha no higeki* [Etō Shinpei: The Tragedy of a Radical Reformer] (Tokyo 1987) 152-153; T. ŌKUBO, *Meji ishin no jinbutsu-zō* [Images of Personalities During the Meiji Reform] (Tokyo 1989) 184.

mon people to initiate a lawsuit against local authorities.[17] This was the predecessor of administrative law and an important step in the modernization of Japanese law. Ordinance 56 stipulated that if a commoner was infringed in rights by the administration (mainly by the governor or his administration) a lawsuit could be initiated at the District Court or directly at the Ministry of Justice. The Ministry of Justice, moreover, could implement these ordinances and acts because it controlled the police and the courts. Several examples of lawsuits initiated by commoners against the state administration were recorded in the early years of *Meiji*.

The power of the Ministry of Justice was embarrassing and even threatening *Meiji* leadership but as long as Etō claimed to be instating the rule of law in Japan, any action against Etō would be considered by foreign powers as an expression by the *Meiji* leadership of the wish to interrupt the path to modernity, and as a result would jeopardize the possibility to revise the unequal treaties. However, it was a possibility for *Meiji* leaders to mitigate the power of the Ministry of Justice by using those very concepts included in a modern legal system. For the first time, political leaders outside the Ministry of Justice started to consider introducing a jury system in the criminal legal procedure. The jury system, so they argued, was to be composed of high-level bureaucrats of ministries other than the Ministry of Justice. This would ensure that the members of the jury could read and write. Such a jury system was new to Japan and the only way to introduce representatives of other branches of power into the judiciary. Certainly it was not intended to fortify the rule of law; on the contrary, its goal was to counter the rising power of the Ministry of Justice, which, with Etō Shimpei's frantic efforts to establish the institutions needed for realizing the rule of law in Japan, became a thorn in the side for other leaders. In addition to being a judicial system, the first jury system was a political system and reinforced the conservative equilibrium in *Meiji* Japan.

The first jury system in *Meiji* Japan was established in October 1873 and became known as *sanza* (参座). It was used in only a few trials, such as the *Ono-gumi* Transfer of Domicile Affair (*Ono-gumi tenseki jiken,* 小野組転籍事件) in 1873 and in 1875 in the trial of the alleged assassins of Hirosawa Saneomi, a prominent statesman in the first years of *Meiji*. The *sanza* system, however, rapidly faded in trials involving civilians, though it continued to be used in military courts. *Sanza* differed from a jury system to the extent that it was only composed ad hoc and involved between nine and twelve lay jurors selected from among higher civil servants of the various ministries. The members of the *sanza* jury were supposed to judge on guilt, while the presiding judge and the two other judges had to decide on the sanction. Hence the *sanza* system can rightly be called the first jury system in *Meiji* Japan. For sure, *sanza* was not a punctuation in the modernization process of the judiciary, but it reinforced the path-dependent features of the administration of law in *Meiji* Japan.

17 M. MIYAMOTO, *Ono-gumi no kenkyū: zenkiteki shihon shugi no kōbō katei* [Research on the Ono-Gumi: The Process of the Rise and Fall of Early Capitalism] (Tokyo 1970) 653.

## IV. PROPOSALS FOR A JURY SYSTEM AT THE POLICY SUBSYSTEM

Policymakers continued to try to alter the path of law in *Meiji* Japan, but succeeded only in reinforcing it. Osatake Takeki, for example, quotes a letter by Shimazu Hisamitsu addressed to Grand Chancellor Sanjō in 1877 urging that "[Saigō] should be handed over to the judicial officials and be tried by an ad hoc court composed of high ranking officials who will judge according to the law."[18] Moreover, "policy entrepreneurs" focusing on the judiciary were very active at the end of the 1870s and at the beginning of the 1880s drafting proposals for the reform of justice and often including jury systems in their papers. In at least two legislative proposals by officials, namely that of Yamada Akiyoshi on a constitution (in September 1881) and that by Nishi Amane (in January 1883) on the Penal Code, articles on the jury were included.[19] The Code of Criminal Procedure (*chizai-hō,* 治罪法), which was promulgated on 17 July 1880 and came into effect on the first day of 1882, also became the target of a fierce debate between advocates of the jury system represented by Gustave Boissonade and opponents represented by Inoue Kowashi.[20] Gustave Boissonade – *Meiji* Japan's most prominent advisor on judicial policy – drafted the Code of Criminal Procedure and included provisions for a jury system, which he thought were an essential prerequisite for a revision of the unequal treaties[21] and needed for the proper functioning of justice. The jury system existed in the draft up to a very final stage (27 February 1880), but then all provisions related to the jury system were deleted in the final proposal.

Yet the policy idea to establish a jury system had not totally disappeared. Minister of Foreign Affairs Inoue Kaoru was seriously considering establishing a jury system in Japan as he declared during the Preliminary Conference on the Revision of the Treaties (*jōyaku kaisei yobi kaigi,* 条約改正予備会議), which was held in Tokyo from 25 January 1882 till 27 July of the same year. At the start of the Conference, Inoue even apologized for not having included a jury system in the Code of Criminal Procedure[22] and

18 T. OSATAKE, *Meiji bunka-shi toshite no nihon baishin-shi* [The History of the Jury in Japan as Meiji Cultural History] (1926) 145.

19 M. FUJITA, *Shihō e no shimin sanka no kanō-sei: Nihon no baishin-seido, saiban-in seido no jisshōteki kenkyū* [Possibility for the Participation of Citizens in the Justice System: Empirical Research on Japan's Jury System and on the Lay Assessor System] (Tokyo 2008) 34.

20 The five arguments by Inoue Kowashi against the jury were convincing to the other parties in the venue to shelve the idea of establishing a jury system. In brief, Inoue was opposed to (1) the random selection of the jurors; (2) the lack of formal norms to be applied by jurors; (3) the inexperience of the jurors (*ki ni yorite uo o motomu,* 木によりて魚を求む ['as if trying to catch fish with a piece of wood']); (4) the doubt by the jurors of their decisions; (5) the imbalance between sanctioning severe crimes and less severe crimes.

21 N. TOSHITANI, *Jōyaku kaisei to baishin seido* [The Revision of the Unequal Treaties and the Jury System], in: Shakai kagaku kenkyū 33 5 (1981) 1-32.

22 「陪審の制は未だ日本に行なはれずと雖ども此件たる政府の大に其意を注く所なり」 cited in: TOSHITANI, *supra* note 21, 9.

then stated to the representatives of the US, Russia, Germany, France, Austria and Hungary, Holland, Sweden, Norway, Denmark, Spain, England, Italy, and Belgium that

> […] the Japanese government is already considering establishing a jury system and that if this system would be adopted, for crimes involving foreigners; the trial will include some foreign jury-members.

Opinions were divided on the necessity for Japan to have a jury system as a condition *sine qua non* to consider a revision of the treaty on extra-territoriality. The American negotiator, for example, argued against the participation of lay people in the judicial proceedings. He said that, first, it would be very difficult to find sufficient foreign residents in Japan and that, second, most of them would be traders whose professional activities would be hampered by participation in a jury. The time was not ripe, so the meeting concluded, for a jury system in Japan, which would bring more problems than advantages. Britain and France were not convinced by Inoue's discourse either.[23]

Another major conference was the Conference for Treaty Revision (*jōyaku kaisei kaigi,* 条約改正会議), which took place from 1 May 1886 to 18 July 887 and was presided by Inoue Kaoru. In this conference Inoue focused on restoring judicial independence, but he failed to achieve his goal mainly because of disagreement on the issue of establishing a mixed jury system (*kongō saiban,* 混合裁判).[24] Foreign representatives acknowledged that the jury system was not needed at this stage and even underscored the decision of the Japanese government not to follow Boissonade's advice on establishing a jury system.[25] Due to this acknowledgement and to the increasing repression against the political associations, the strength of the discourse on the jury system faded and it even totally disappeared at the end of the 1880s. The policy venue and image did not expand, and the path-dependent trajectory of judicial policy was strengthened in the context of nationalism. Change could not occur. The idea of civil participation in criminal procedure was put to rest.

## V. The Path Toward Punctuation: Seeds of Change in the Taishō Democracy

The first seeds of real change can be found early in the 20th century; society was changing rapidly and public debate developed. Political parties became more important in the political process. More participation of the people in the political process and a more accountable government resulted in demands for universal suffrage and for respect for the constitution. The political developments were reflected in a consciousness among regular citizens of their political power. The number of actions by labor and by farm

23 Toshitani, *supra* note 21, 10.
24 *Id.*
25 *Id.* 29.

tenants, for example, increased, and in many cases people no longer hesitated to go to court to ask for reparation. Aside from statistics showing a rapid increase in civil court cases at the start of the century,[26] Kawashima Takeyoshi also explains that parallel to urbanization, the traditional village communities no longer provided dispute resolution mechanisms and the people became aware of the court as a means to settle their disputes.[27] The idea (image) of law and the discourse was changing. Some policy entrepreneurs pursued the policy of legal reform. For example, on 7 April 1900, Isobe Shirō and Miyoshi Taizō addressed the board meeting of the Japan Bar Association (*nihon bengoshi hyōgi i'inkai,* 日本弁護士評議委員会) on the establishment of a jury system in Japan (*wagakuni ni baishin seido o mōkuru no ken,* 我国に陪審制度を設くるの件). Events that further pushed judicial reforms on the political agenda were widely publicized trials such as the Japan Sugar Incident (*nittō jiken* 日糖事件) of 1909; the High Treason Incident (*taigyaku jiken,* 大逆事件) of 1910; and the Chicken Coop Incident (*butabako jike,n* 豚箱事件), in which prosecutors had locked up a suspect in a very small box to make him confess. Newspaper articles stirred the public against abuse by prosecutors in particular and against the poor functioning of justice in general. Triggered by those incidents, a debate emerged on ways to remedy the flaws of penal procedure law in Japan, which had been reformed in 1907. Lawyers such as Egi Chū, Motoji Shinkuma, Uzawa Fusa'aki, and Ōba Shigema; Supreme Court judges such as Yokota Kuni'omi; and also prominent scholars such as Hozumi Nobushige, Makino Ei'ichi, Ume Kenjirō, and Yoshino Sakuzō joined the discussion on the jury system. The most important law journals such *as Hōritsu Shinbun* (法律新聞) and *Hōritsu Shinpō* (法律新報) published many articles on the jury.

The policy venue dealing with the judiciary only really expanded when the *Seiyūkai* decided in 1910 to prioritize legal reform. The *Seiyūkai* and its strong leader, Hara Kei, realized that society perceived justice as an important problem and judged this as a changed image of society toward law that could not be disregarded. according to Hara Kei, distrust in the proper functioning of criminal procedure was threatening stability in society. Hara believed that the jury system could provide a solution and raised this issue on the macro-political agenda. On 26 February, the *Seiyūkai* submitted a recommendation to the Diet on establishing a jury system. This recommendation was adopted by the House of Representatives but rejected by the House of Councilors.

The real policy entrepreneur concerning judicial matters who joined the venue of judicial policy was Hiranuma Ki'ichirō. This former prosecutor-general became a protégé of Hara Kei and very influential in deciding the political direction to be followed by his party, the *Seiyūkai*. Hara and Hiranuma shared an interest in establishing a jury system. Hiranuma had visited England, France, Germany, Portugal, Italy, and Belgium

26 R. HAYASHIYA / K. SUGAHARA / M. HAYASHI, *Tokei kara mita meiji-ki no minji saiban* [Statistics of the Civil Court in the Meiji Period] (Tokyo 2005).

27 T. KAWASHIMA, *Nihon-jin no hō-ishiki* [The Law Consciousness of the Japanese] (Tokyo 1967) 131-132.

in 1907 and had been impressed by the smooth functioning of the penal trial with lay-people as judges.[28] He argued that England should become an example for Japan and that oral and direct fact-finding in a jury could save time and restore trust in the penal procedure in Japan. The strong advocacy of Hara and Hiranuma, combined with the public debate on the scandals involving the judiciary, pushed the issue forward on the political agenda and resulted in approval by the House of Representatives of the proposal for a jury in March 1910. However, there was still a period of waiting before punctuation would be achieved. The Minister of Justice in 1911, Matsuda Masahisa (1847-1914), was not in favor of the idea and called the jury disconnected with reality. Again, it was pushed from the political agenda.

## VI. MOVING FROM THE SUBSYSTEM TO THE MACRO-POLITICAL AGENDA (1919)

When *Seiyūkai* strongman Hara Kei became prime minister in 1918, he pursued the politics of judicial reform. On 25 July 1919, Hara formed the Special Council on the Legal System (*rinji hōsei shingi-kai,* 臨時法制審議会). Hozumi Nobushige and Hiranuma Kiichirō were presiding over the Council. A jury proposal was first drafted by Egi, Hara, and Hanai in March 1920 as the "Draft Principles for a Jury System" (*baishin-sei ritsuan kōryō,* 陪審制立案綱領). The discussion on the draft ended on 9 June 1920 and on 28 June the plan was officially handed to Prime Minister Hara Kei. One month later, within the Ministry of Justice, the Investigation Council on the Jury Law (*baishinhō chōsa I'inkai* 陪審法調査委員会) was established, and on the first day of 1921, the Draft Jury Law (*baishin-hō shijun-an,* 陪審法諮詢案) was submitted to the deliberation of the Privy Council (*sūmitsu-in,* 枢密院). Hara would not live to see the further developments due to his assassination on 4 November. Takahashi Korekyo took on Hara's legacy. After some further adjustment to the content of the proposal, the Privy Council approved the Jury Law Revision Bill (*baishin-hō shūsei-an,* 陪審法修正案) on 27 February 1922.

On 2 March 1922, the Bill was discussed in the House of Representatives of the Diet. The new Minister of Justice, Okano Keijirō, explained that this jury system was not a mere copy of foreign models but that it was carefully adapted to Japan's specific conditions.[29] The proposal was approved by the House of Representatives but still faced approval by the House of Councilors. There it was approved, too and the Jury Act was promulgated as Law No. 50 on 18 April 1923. The Jury Act would come into effect after five years of preparation on the first of October 1928. Was punctuation achieved?

Hozumi Nobushige – one of the most influential people in the field of law (he was law professor, a member of the House of Peers, and Grand Chamberlain to the Crown Prince) – in an address on 14 April 1923 to about 100 prominent people involved in

28 FUJITA, *supra* note 19, 67
29 *Id*, 84.

some way in drafting the Jury Act or the Trust Act, stated that the enactment of these two acts signified a "*major revolution in Japan's legal history*" (*waga rippō shijō no nidai kakumei*, 我立法史上の二大革命).[30] He stressed that the Jury Act meant that after more than two thousand years of being ruled over (*taji no min,* 他治の民),[31] the people had finally obtained autonomy in criminal trials (*keiji saiban-jō no jichi-ken o e,* 刑事裁判上の自治権を得).[32]

At first sight, this story on the path toward establishing a jury system with a long period of stability punctuated by the enactment of the Jury Act in 1923 fits the model of path dependency and punctuation. A deeper analysis, however, blurs this apparent neatness. True, prominent scholars of the time like Hozumi Nobushige saw the jury act as one of the most important judicial reforms of their time, but we have to ask how radical this reform really was. Does the Jury Act qualify as a punctuation?

## VII. THE JURY ACT OF 1923: A REAL PUNCTUATION?

The Jury Act stipulated that the jury would decide by deliberation in criminal trials (Art. 1), but only those crimes that were punishable by death or life-time confinement would *have* to be tried by a jury (Art. 2). Suspects in crimes with more than three years' confinement as the statutory sanction and within jurisdiction of the District Courts *could* request to be tried by a jury (Art. 3). Yet if a suspect requested a trial by jury, he could be ordered to pay all related costs to the jury (including daily allowance, accommodation, and travel expenses of the twelve members of the jury and substitute members; Art. 106 & 107). This was a scary prospect as the costs of such a trial were very high and unaffordable for most people. In addition, many crimes were excluded from trial by jury (Art. 4). For example, the following were excluded from trial by jury: crimes related to the Imperial family, diplomatic relations, and political rebellions; army- and navy-related crimes and crimes against the election law;[33] and from 1929 onward, those crimes that fell under the Peace Preservation Law.[34] In sum, all political trials were excluded from trial by jury, despite the fact that Hara Kei and other policy entrepreneurs wanted a jury system mainly in those cases that had proved in the past the scene of bold actions by prosecutors and were at the base of the people's distrust of the criminal procedure.

---

30 N. HOZUMI, *Baishin-hō no seitei ni tsuite* [About the Enactment of the Jury Act], in: Hōsōkai zasshi 1 (1923) 261.

31 *Id*. 263.

32 *Id*. 263.

33 *Shūgi-in gi'in senkyō-hō*, Law No. 37/1889, readable at *http://www.geocities.jp/nakanolib/hou/hm22-37.htm* (last retrieved on 5 October 2010) and *Sangi-in gi'in senkyō-hō*, Law No. 11/1889 (editor's note).

34 *Chian iji-hō,* Law No. 46/1925, viewable at *http://ja.wikisource.org* (editor's note, last retrieved 5 October 2010).

The jury was composed of twelve members (Art. 29) and had to decide with a majority of votes on the guilt of the accused by answering questions (*shumon* 主問) submitted to them by the judge. Article 91 of the Jury Act stipulated that if no majority of the jury members agreed on the guilt of the accused, he or she would be acquitted. No appeal was possible against the decision of the jury (Art. 101) if it had been accepted by the court in its sentence (Art. 97). Only a final appeal before the Supreme Court was allowed (Art. 102), and only in well-defined cases mainly concerning unlawful charges (*setsuji,* 説示) of the judge to the jury. Direct proof finding prevailed (*chokusetsu shugi* 直接主義, Art. 71), but exceptions were manifold, such as those that stipulated that a protocol of examination and additional documents could lawfully be used as proof in the jury trial if (a) the accomplice or witness had died or was affected by an epidemic or similar causes that made it difficult to summon the person to court; (b) the accomplice or witness made a substantial alteration during the trial compared to the statement during interrogation; and (c) the accused or witness refused to make a testimony during trial (Art. 73). All other documents and testimonies related to the case that were made outside the court and which, due to the death of the witness or person who drafted the document, could not be reproduced inside the court would be accepted as proof in the jury trial (Art. 74). Moreover, the president of the court could hand proofs and documents that were produced in court to the jury in course of deliberation (Art. 82). No objection could be made against the judge's charge to the jury (Art. 77), which would influence the jury extensively as this was the time that the judge could state his interpretation of the proofs. The judge, moreover, could decide at all stages of the trial that the return of the jury was not adequate and confer the case to another jury (Art. 95). The judge could renew the jury as many times as he deemed necessary so that the jury's decision and the judge's opinion would match.[35]

Eligibility for jury duty was restricted to males older than thirty who paid at least three Yen of national taxes and had been registered for more than two consecutive years in the village or city (Art. 12). Observers of the prewar jury questioned the representativeness of the jury as only men of a certain age and wealth were entitled to become jurors. The total number of people entitled to vote in the first general elections of 1928 was 19,409,078, but only 1,781,232 were entitled to participate in a trial by jury in the same year.[36] This is less than ten percent of people with voting rights.

The Jury Act indeed was less punctuation than Hara Kei had hoped it would be and than Hozumi claimed it was. The 1923 Jury Act in itself provided no radically new vision with regard to the judiciary in general and to the participation of lay people in the criminal procedure in particular. Still, the jury would become operative after five years of costly and intense preparations from 1928 onward, and it allowed civilians to partici-

35 N. TOSHITANI, *Nihon no baishin-hō: sono naiyō to jisshi katei no mondai-ten* [The Jury Act in Japan: Problems with Content and Operation], in: Jiyu to seigi 35 13 (1984) 6.

36 *Id*. 6.

pate in the criminal procedure. It was certainly not inertia or path-like "business as usual." Indeed, the jury system was finally realized and civilians were able to participate in the criminal procedure, even if only in a limited number of cases and in a restricted way. Moreover, as conciliation procedures (*chōtei*) proved, the institutions could be a departure from the past in their operation even if this was not anticipated by their designers (the legislators).

## VIII. THE JURY IN ACTION

The early reports on the operation of the jury system praised the new system. After three months, on 23 February 1928, the *Law Journal* (*Hōritsu Shinbun,* 法律新聞) reported that "it is remarkable how the jury's returns are contrary to the conclusions by judges and prosecutors." This journal enthusiastically suggested that the jury system should be expanded to other stages of the criminal procedure.[37] In May 1929, however, the tone in the *Law Journal* had already changed because of the many acquittals in cases which, if tried by professional judges, would certainly have ended with conviction. The *Law Journal* even questioned whether the jury system would not endanger public peace and order if acquittal happened in too many cases.[38] Aside from this critical report, newspapers were surprised to see that there were almost no jury cases on request by the accused (according Art. 2). It was common practice, so the report stated, that in the few cases of jury on demand, the total costs for the jury trial were to be paid by the accused. This amounted on average to 386.62 Yen, which is equivalent to about 1,300,000 Yen[39] today.[40] It should be no surprise that the number of jury cases remained very limited. Other reasons why few demands for trial by jury were registered – and even why those accused of crimes that had to be tried by a jury waived their right for a jury trial – included the negative effects on reputation caused by the cases being reported in the newspapers and the hardship in finding lawyers who were willing to defend in a jury trial. In the first one year and eight months that the jury was in operation, out of 1282 cases that were entitled to trial by jury (Art. 1), only 243 were actually registered to be tried by a jury. And out of 1857 cases where the accused could demand a trial by jury, only fifteen cases were registered to be tried by a jury (see: *Figure 1*). An article in the *Yomiuri Newspaper* of 31 July 1930 was headlined "The Extremely Unpopular Jury: Already Now Claims for Reform!" The article went on critically, anticipating that because there were "not even one tenth of the anticipated number of cases," the much-anticipated jury system would end by "achieving a destiny of existing only in name." Some months earlier, the same newspaper on 11 May 1930 had reported on comments by Hanai Takuzō,

37 *Id*. 8.
38 *Id*. 8.
39 Approximately € 11,287 as of 5 October 2010 (editor's note).
40 FUJITA, *supra* note 19, 125.

Member of Parliament and one of the main architects of the Jury Act. Hanai's main motivation in drafting a Jury Act had been to fortify the separation of powers and curtail political actions of prosecutors. Yet the *Yomiuri Newspaper* reported that Hanai, at the end of the parliamentary session in May 1930, stated that "the present organization of the judiciary is not adequate to preserve the independence of the judiciary." Hanai concluded that the main problems of the judiciary were "political actions by prosecutors." In 1931 (15 January 1931) *Yomiuri Newspaper* went even further and asserted in its editorial that "the jury court is useless: the judicial authorities have difficulties to recover lost reputation."

*Figure 1:*

Jury Trials in Japan
(1923 – 1943)

| *Year* | *Registered statutory cases* | *Registered elective cases* | *Jury effectively deliberated (stat. case)* | *Jury effect. delib. (elect. case)* |
|---|---|---|---|---|
| *1928* | 309 | 6 | 31 | 0 |
| *1929* | 1428 | 17 | 136 | 7 |
| *1930* | 1699 | 3 | 66 | 0 |
| *1931* | 1981 | 5 | 61 | 1 |
| *1932* | 2270 | 3 | 54 | 1 |
| *1933* | 2126 | 2 | 35 | 1 |
| *1934* | 2269 | 2 | 24 | 2 |
| *1935* | 2083 | 0 | 18 | 0 |
| *1936* | 2043 | 0 | 19 | 0 |
| *1937* | 1917 | 0 | 15 | 0 |
| *1938* | 1732 | 1 | 4 | 0 |
| *1939* | 1424 | 0 | 4 | 0 |
| *1940* | 1235 | 0 | 4 | 0 |
| *1941* | 1229 | 0 | 1 | 0 |
| *1942* | 1352 | 4 | 2 | 0 |
| *Total* | 25,097 | 43 | 472 | 12 |

In the 1930s, various people tried to explain why the number of jury trials was extremely low. Toshitani Nobuyoshi quotes Judge Aono, for example, who wrote in 1935 that the main causes for the accused to waive the possibility of trial by jury was their "trust in the professional judges," but Judge Aono acknowledged that also the collapse of liberalism, the rise of radical nationalism, and the difficulty of harmonizing Japan's national character (*kokumin-sei,* 国民性) with the jury system was at the origin of the bad functioning of the expensive jury system.[41,42] Lawyers, from their point of view, lamented too much pressure by the judges that made independent decisions by the jury impossible. In contrast, a prosecutor wrote that the judges were too constrained by the return of the jury; as the prosecutor asserted, this could be seen in the fact that "the jury was never renewed more than twice."[43] Suzuki Nobuo was one of the lawyers defending the accused in a jury trial at the Shizuoka District Court. The accused stood trial for murder on 19 recently born children who were given away for adoption by their biological parents. Instead of handing the children to foster parents, the accused was suspected to have killed the children and kept the money. The accused was convicted and his lawyer, Suzuki, reflected on the jury trial in October 1929. He thought the jury system was a failure because of problems with the provisions of the Jury Act, but also because of the difficulties for jurors to escape from the traditional respect for representatives of state administration (*kanson minpi,* 官尊民卑) and because of the inferior status of the lawyers at the time. Toshitani, in his brilliant analysis of this jury trial, relates how the judge and prosecutor entered the court through the same door while the lawyer was to enter the court room from another door (Toshitani, 1982: 239). The strict hierarchy and traditional education with respect for Confucian values made a proper and equitable participation of civilians in the criminal justice system hardly possible. In its operation, the jury also appeared to be reinforcing the path that justice in Japan had been on for decades. The Jury Act in its operation can hardly be labeled a punctuation.

41 TOSHITANI, *supra* note 35, 10-11.

42 Not only was the jury system expensive for the accused, who, if convicted, had to carry the costs of the procedure. It is remarkable that the amount of money used in five years to prepare for implementing the jury system was reported to amount to 7,064,092 Yen (N. OHARA, *Baishin-hō no jisshi junbi ni tsuite* [On the Preparations for the Enforcement of the Jury Act], in: Hōsō-kai zasshi: Baishin-hō jisshi kinen-gō [Special Commemorative Issue of the Journal of the Association for the Legal Professionals on the Effectuation of the Jury Act] 7 (1929) 320-322). This included costs for administration; for increasing the number of prosecutors; for study of the jury system abroad; for financing more personnel at the Ministry of Justice; for printing brochures, etc.; for increasing the number of assistant judges; for reforming the courts and building dormitories for jurors (this demanded most of the budget); etc.

43 TOSHITANI, *supra* note 35, 11.

## IX. Sources on Jury Trials in the Tōhoku Region Reveal Indirect Results

Yet the jury in action also contributed to the enhancement of the rule of law in modern Japan in what may have been a less visible but no less important way.[44] Osatake Takeki points at the didactic effects (*kokumin no hōteki kunren,* 国民の法的訓練) of the jury system for citizens who directly (by being jurors or candidates for jury trial) or indirectly (through newspaper articles, etc.) were confronted with the criminal justice procedure.[45] The number of people who in some way or another came into contact with the jury system was impressive. Once every four years, a list of potential members of the jury had to be drafted by the head of the village or by the mayor (Art. 17). This list had to include the number of people who were allocated by the president of the District Court to a certain village, and that number had to be communicated to the head of the village (Art. 22). The head of the village then selected the candidates for jury duty by means of drawing in the presence of at least three candidates (Art. 23) and informed the candidates of their registration (when their name was drawn) (Art. 25 part 2). Even if most candidates were reluctant to participate in a jury trial, the process of drafting a list of candidates by the head of the village stirred the discussion on legal process. Moreover, the involvement of the villagers with state matters combined with the introduction of general suffrage in 1928 intensified the political discourse at the most local administrative level.

At the Aomori District Court, for example, not a single trial by jury was recorded in 1936 and 1937.[46] Yet the list of potential members for jury duty submitted in 1937 included a total of 1,048 people. They were farmers (542), retailers (204), owners of bars and restaurants (14), agricultural managers (4), farm aids (26), administrators (14),

---

44 Some valuable documents exist in form of pads of documents on reports of jury trials and on administration concerning the jury in a certain region and year. These pads were mainly used as instruction manuals for judges and administrators involved in jury trials. One of these, the "Binding of Documentation Concerning the Jury Act" (*Baishin-hō ni kan suru seki suru shorui tsuzuri;* author and year of publication unknown) provides a structured and insightful overview of the jury system in action in the Tōhoku region through records of jury trials and administrative documents concerning the selection of the members of the jury for 1936 and 1937. The prefectures covered by these documents are Sendai, Akita, Aomori, Yamagata, Morioka and Fukushima. Other main primary sources on the jury in action are the "Special Commemorative Issue of the Journal of the Association for the Legal Professionals on the Effectuation of the Jury Act" (Hōsō-kai zasshi: Baishin-hō jisshi kinen-gō, *supra* note 42) published in September 1929 and a unique research article by Toshitani Nobuyoshi on one specific jury trial, N. Toshitani, *Moraigo satsujin baishin saiban* [The Jury Trial of Murder on Adopted Children], in: Ushiomi/Kitano/Oda / Toriu (eds.) *Gendai shihō no kadai* [Contemporary Legal Issues] (Tokyo 1982) 205.

45 Osatake writes that the main cause for human rights abuse is the fact that the people have no knowledge of the legal norms (*hō-shisō no toboshisa,* 法律思想の乏しさ), T. Osatake, *Jinken jurin to teisō jurin* [On Violations against human rights and Violations against Virtue], in: *Chuō hōritsu shinpo*. February-March (1923).

46 *Supra* note 44.

fishermen (12), smiths (3), farm tenants (22), teachers (2), etc.[47] Most of the drawn candidates were aged between 40 and 50 (338), followed by those men between 50 and 60 (293). 212 people on the list were older than 60 and 205 younger than 40 for the list drafted in 1937.[48] The jury system entered the village through the preparations for the jury trials more than by the actual jury trials.

Moreover, if there had been resistance and aversion toward a jury system, this should also have been reflected by the unwillingness among the people summoned to show up in court. It could be expected that not only the accused, the lawyers, prosecutors, and judges would be reluctant to participate in a jury trial, but that in the first place the candidate jury members would be unwilling to be appointed as effective juror. Records of the Tōhoku region, however, show that for 1936 and 1937, few people did not show up when summoned (between 1 and 6 on a total of between 30 and 35).[49] Based on these primary sources for the traditional Tōhoku region, where most jury candidates were farmers, it is surprising to note the willingness of the candidates to participate in the jury trial (see *figure 2*).

Once effectively drafted for jury duty, the juror in the traditional Tōhoku region also acted as an independent juror. They were certainly not reluctant to decide against the prosecutor's conclusions, despite the general idea that the prosecutors were powerful representatives of the state. More than half of the jury trials in the Tōhoku region in 1936 and 1937 resulted in a "not guilty" verdict. This could be explained by the support of the judge for the jury's return or it could be the result of the charge to the jury by the judge. Yet apparently the jury could even disagree with the judge's opinion, despite knowing that the judge could refuse to accept the jury's return and confer the case to another jury. This was the case, for example, in the jury trial of Nakata Eisuke, who was accused of attempted arson. This trial took place at the Akita District Court. Eisuke was accused of his crime after having been angered by abusive language related to a financial debt Eisuke could not pay back. Eisuke and his wife started to feel bitter toward Yuki and Teigoro, who were living close by. When the accused learned on 15 April 1936 that Yuki and her husband were absent for some days, he wanted to settle old scores and inserted sticks of incense and wrapping paper in piles of straw. He intended to burn down Yuki and Teigoro's house but the incense went out naturally. This was what the prosecutor's report stated. The police's report of the first interrogation of the accused, however, stated that the accused denied committing the crime though the investigating judge in his report wrote that the suspect confessed to the crime. In light of inconclusive

47 *Id.*

48 The oldest candidate was 86 years old. Remarkable is that the total number of eligible people for jury trial declined every year in Sendai. For 1937 this was 24,882; for 1938 this was 20,214; for 1939 this had declined to 19,851; and in 1940 this had become 17,177. There is no cause mentioned for this decline, but several hypotheses can be put forward, such as the increasing number of poor farm tenants; people leaving the villages after being mobilized in the army; or even farmers moving to Manchuria, etc.

49 *Supra* note 44.

evidence and remaining doubt, the jury decided that the accused was not guilty. This return was not accepted by the judge, who referred the case to another jury on 2 February 1937. Despite the fact that the prosecutor this time challenged 14 out of 34 people summoned for jury duty, the conclusion of the jury remained the same: "not guilty." Presiding Judge Wake this time accepted the jury's conclusions. Nakata Eisuke was acquitted on 5 February 1937. Costs for both trials amounted to 682.92 Yen.

*Figure 2:*

Overview of Jury Trials in Tōhoku
(1936, 1937)[50]

| *Court* | *Accused (name)* | *Crime* | *Date verdict* | *Candid. for jury* | *Chal-lenged* | *No show* | *Costs (Yen)* | *Verdict* | *Other* |
|---|---|---|---|---|---|---|---|---|---|
| *Sendai* | Saito | arson | 14/2/'36 | 33 | 6: pros.<br>8: def. | 3 | 486,4 | not guilty | |
| | Kuwabara | Murder & aband. dead body | 9/3/'36 | 30 | 6: pros.<br>3: def. | 6 | 687,78 | guilty | |
| | Tsuji | arson | 8/5/'36 | 30 | 8: pros.<br>6: def. | 6 | 365,64 | not guilty | |
| | Kawase | arson | 11/8/'36 | 33 | 6: pros.<br>1: def. | 3 | 399,78 | not guilty | |
| *Akita* | Hagiwara | arson; fraud | 14/7/'36 | 35 | 11: pros.<br>2: def. | 1 | 577,6 | guilty | |
| | Matsuda | arson | 30/9/'36 | 34 | 7: pros.<br>5: def. | 2 | 596,89 | guilty | |
| | Nakata | arson (attempt) | 28/10/ '36 | 32 | 8: pros.<br>6: def. | 4 | 619,98 | return not accept | |
| | Nakata | " | 5/2/'37 | 34 | 14: pros.<br>5: def. | 2 | 682,92 | not guilty | second trial |
| *Morioka* | Takeda | arson | ? | 32 | 5: pros.<br>3: def. | 4 | 452,9 | | jury decision not accepted |
| | Takeda | arson | 3/3/'37 | 33 | 5: pros.<br>5: pros. | 3 | 517,3 | not guilty | |
| | Sasaki | arson | 21/4/'37 | 33 | 3: pros. | 3 | 487,14 | not guilty | |
| *Yamagata* | Kobayashi | murder | 22/3/'37 | 31 | 6: pros.<br>9: def. | 5 | 477,62 | guilty | quest.1: no;<br>quest. 2: yes |

50 *Id.*

## X. CONCLUSION

In the little less than 15 years that the jury system was operative in Japan, 483 jury trials were organized. 17 percent ended in a "not guilty" verdict, an important change compared to the conviction rate in trials judged only by professional judges (between 96.7 and 98.8 percent conviction rate).[51] The jury system played an important role in preserving attention for the protection of human rights[52] and provided an important forum for lawyers (*bengō katsudō no ba,* 弁護活動の場)[53] to bring abuses of the judiciary to the attention of the public. The existence of the jury system also put pressure on the police, investigators, prosecutors, and judges to conduct their investigation in a rigorous and cautious way. It is therefore too easy to merely disregard the Jury Act of 1923 as an unimportant sequence in the historical path of the criminal procedure in Japan.

The Jury Act was temporarily suspended on 1 April 1943 because – as Minister of Justice Iwamura explained in the Diet – there was very little demand for jury trials, but mainly because of the excessive administrative burden in the villages to administer the jury system and because "the citizens were busy with war."[54]

The Imperial Diet explicitly recognized that the jury system should be preserved for better times. The discussion in the Diet between advocates of abolishment of the jury system and advocates of temporary suspension was won by the latter. The Minister of Justice stated that the jury could work well if some amendments were added to the Jury Act, such as the possibility of appeal.[55] After World War II, the discussion on restarting the jury trials was waged with representatives of the Allied Powers, but finally it was decided to wait for a more appropriate period. The Minister of Justice in Japan's postwar cabinet – Kimura Tokutarō – was opposed to restoring the jury system because "of the national character and because 45 courts were destroyed in the war. Rebuilding those courts is not possible for the time being as the financial burden is too heavy."[56] Yet the Jury Act carried on its legacy to the period after the Second World War as we can read in Japan's Court Act.[57] Article 3 Para. 3 of the Court Act stipulates that "[t]he provisions of this Act shall not prevent the establishment of a jury system for criminal cases separately by law." Other legislative expressions of a genuine wish to revive the jury system in

51 TOSHITANI, *supra* note 35, 11.
52 *Id*. 205.
53 *Id*. 249.
54 N. TOSHITANI, *Sengo kaikaku to kokumin no shihō sanka: baishin-sei, sanshin-sei o chūshin toshite* [Postwar Reforms and the Participation of Civilians in Justice: Focus on the Jury System and the Mixed Trials], in: *Tōkyō daigaku shakai kagaku kenkyū-jo* (ed.), *Sengo kaikaku: shihō kaikaku* [Postwar Reforms: Judicial Reforms] 4 (1975) 94.
55 *Id*. 95.
56 *Id*. 161.
57 *Saiban-sho-hō,* Law No. 59/1947 as amended by Law No. 71/2008; Engl. transl. *http://www.japaneselawtranslation.go.jp/law/detail/?ft=2&re=02&dn=1&yo=%E8%A3%81%E5%88%A4%E6%89%80%E6%B3%95&x=22&y=13&ky=&page=1* (editor's note, last retrieved 5 October 2010).

post-World War Two Japan can be found in the postwar constitution stipulating in Article 37 that "in all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal." This article was carefully drafted to prevent claims that the jury was unconstitutional as could be heard from opponents of the 1923 Jury Act. Those opponents referred to Article 24 in the *Meiji* Constitution[58] stipulating "no Japanese subject shall be deprived of his right of being tried by the judges determined by law."

Despite these signs that the jury would be revived, and even a premature article in *Asahi Shinbun* on 6 March 1946 that the jury was operative again, the discussion on restarting the jury remained confined to the policy subsystem. Not until the 1990s, in the wake of larger judicial reforms, did the policy proposal on lay participation in the criminal justice procedure catch fire.

This paper attempts to show how policy change in the field of civilian participation in the criminal justice system in modern Japan came about through an interaction between the policy venue and policy images. Initial attempts at change in the 1870s and 1880s and at the beginning of the 20th century did not produce any significant change because of lack of political interest. In the final years of the *Meiji* period, the first signs of real change could be seen with the advent of political parties and popular protest, further reinforced by scandals involving the judiciary, such as the Japan Sugar Incident (*nittō jiken,* 日糖事件) of 1909 and the High Treason Incident (*taigyaku jiken,* 大逆事件) of 1910. Yet it took another decade before the expansion of the policy venue and the concomitant collapse of the traditional policy image resulted in punctuation and actual policy change in 1923.

The Punctuated Equilibrium model is useful to identify the sequences of events leading finally to change. A closer look at the result is required, however, to identify whether the alleged punctuation really can be labeled as such. The content of the institution as a result of the punctuation and even an analysis of the operation of the institution will help to define the level of change that occurred. This exploratory case study suggests that policy models such as that developed by Baumgartner and Jones (Punctuated Equilibrium) are useful for understanding the dynamics of law in Japan. Further empirical research on the functioning of the various actors in the policy venue related to justice administration and more systematic theoretical framing of the empirical data will help to more systematically "test" the Punctuated Equilibrium theory and to situate these findings in a broader context, both within Japan and in an international comparative perspective.

58 *Meiji kenpō,* February 2, 1889, Engl. transl. *http://history.hanover.edu/texts/1889con.html* (editor's note, last retrieved 5 October 2010).

ABSTRACT

*A jury system or lay assessor system came into effect in Japan in 2009. The government is expecting about 3,000 of the severest criminal cases to be judged by a mixed panel consisting of three judges and six citizens. However, the jury system is not new for Japan, which adopted a jury system in 1923 and recorded recurrent debates on the subject from the very beginning of the* Meiji *era. The enactment of the 1923 Jury Act was the result of a decade-long political process to fundamentally reform the nation's judiciary. In April 1923, Hozumi Nobushige announced that the Jury Act was the final stage in the modernization of Japan. Hozumi also labeled the jury system "a revolution in Japan's legislative history" which, so he argued, would "bring autonomy to the people in criminal matters." In this paper, we will explain the political process leading to the promulgation of the 1923 Jury Act and address the socio-legal relevance of the jury system when it was operative (1928-1942). The theoretical implication of this paper is reflected in the central question whether the Jury Act fits the analytical models developed in the institutional tradition using concepts such as "path dependency" and "punctuated Equilibrium."*

ZUSAMMENFASSUNG

*Im Jahre 2009 trat in Japan ein Schöffen- bzw. Laienrichtersystem in Kraft. Die Regierung geht davon aus, dass etwa 3000 der schwersten Straftaten durch ein gemischtes Gremium, bestehend aus drei Richtern und sechs Bürgern, gerichtet werden. Allerdings sind solche Jurys in Japan nicht neu, da dort schon im Jahre 1923 ein Schöffensystem eingeführt und seit Anfang der Meiji-Zeit wiederkehrende Debatten über das Thema geführt wurden. Der Erlass des Schöffengesetzes im Jahre 1923 war Ergebnis eines jahrzehntelangen politischen Prozesses einer grundlegenden Reform der nationalen Justiz. Im April 1923 verkündete Hozumi Nobushige, dass dieses Gesetz die letzte Stufe der Modernisierung Japans darstelle. Er bezeichnete das Schöffensystem als „eine Revolution in der Gesetzgebungsgeschichte Japans", die, so seine Argumentation, „in Strafsachen Autonomie für das Volk bringen" werde. In diesem Aufsatz werden der politische Prozess, der zur Verkündung des Schöffengesetzes 1923 führte, erklärt und die rechtssoziologische Relevanz des Schöffensystems in der Zeit seiner Anwendung (1928-1942) angesprochen. Die theoretischen Implikationen dieses Aufsatzes spiegeln sich in der zentralen Frage wider, ob das Schöffengesetz zu den analytischen Modellen passt, die in der Institutionentheorie entwickelt wurden, indem Konzepte wie „Pfadabhängigkeit" und „unterbrochenes Gleichgewicht" verwendet werden.*