Japan’s Past Experiences with the Institution of Jury Service

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I. INTRODUCTION

On May 21, 2009, the Act Concerning Participation of Lay Judges in Criminal Trials ("Lay Judge Act") was enforced in Japan.¹ This piece of legislation established a new mixed-court jury (saiban-in) system where the verdict and sentencing in major crimes² are decided by a panel comprising three professional and six lay judges.³

I. INTRODUCTION

On May 21, 2009, the Act Concerning Participation of Lay Judges in Criminal Trials (“Lay Judge Act”) was enforced in Japan.¹ This piece of legislation established a new mixed-court jury (saiban-in) system where the verdict and sentencing in major crimes² are decided by a panel comprising three professional and six lay judges.³

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¹ Saiban-in no sanka su rui keiji saiban ni kansuru hōritsu [Saiban-in Hō] [Act Concerning Participation of Lay Judges in Criminal Trials], Law No. 63 of 2004, as amended by Law No. 60 and Law No. 124 of 2007, translated in Kent Anderson & Emma Saint, Japan’s Quasi-Jury (Saiban-in) Law: An Annotated Translation of the Act Concerning Participation of Lay Assessors in Criminal Trials, 6 ASIAN-PAC. L. & POL’Y J. 233 (2005) [hereinafter Lay Judge Act]. The Japanese word saiban-in consists of two components—the word saiban, which means “court”, and the word in that means “member”—and has been translated in the scholarly literature in English as “lay assessor” and “lay judge”. This paper uses the latter translation to highlight the difference between Japan’s saiban-in system and the Continental-European lay assessor system.

² Cases where the maximum penalty is death or an indefinite period of penal servitude. Lay Judge Act, supra note 1, art. 2(1).

³ Lay Judge Act, supra note 1, art. 2(2). The Lay Judge Act stipulates that in certain instances cases may be adjudicated by a smaller panel comprising one professional and four lay judges. Lay Judge Act, supra note 1, art. 2(3).
The years leading up to the introduction of the saiban-in system have witnessed heated debate regarding the features of this new system and its potential to function smoothly in contemporary Japan. Two points in particular have received substantial attention and appear to necessitate further discussion.

First, as soon as the details of the Lay Judge Act were publicized, the fact that Japan’s new system of layperson participation does not have a readily comparable international counterpart was highlighted in the debate.\(^4\) Indeed, the saiban-in is a unique cross between the Anglo-American adversarial and the Continental-European inquisitorial mixed-court jury systems.\(^5\) Like their counterparts in the United States and Britain, Japanese jurors are selected at random from the list of persons eligible to vote and appointed to adjudicate one case rather than be nominated by local authorities to serve a fixed term. At the same time, the saiban-in system is a mixed-court system where judges and laypersons

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\(^5\) Two principal models of jury systems exist in the world: the Anglo-American model and the Continental-European model. The Anglo-American model provides for the formation of an all-layperson jury panel that is composed of six to twelve jurors who are selected at random from the local population and whose task is to make decisions on the questions of fact and to come up with the verdict of “guilty” or “not guilty” independently of the judge. See generally Jeffrey Abramson, We, The Jury: The Jury System and the Ideals of Democracy (BasicBooks 1994) (reviewing the features of the jury system as understood by the adversarial process); William L. Dwyer, In the Hands of the People: The Trial Jury’s Origins, Troubles, and Future (Thomas Dunne Books 2002) (discussing the history and features of the jury system in the United States); Lester W. Kiss, Reviving the Criminal Jury in Japan, 62 LAW & CONTEMP. PROBS. 261, 270-271 (1999) (summarizing the features of the Anglo-American model of jury trials). The Continental-European model, on the other hand, involves the creation of a mixed-court panel where jurors and professional judges sit together in a single panel and jointly make decisions on the questions of fact and law. See generally Criminal Justice Systems in Other Jurisdictions 83-104 (Nigel Osner, Anne Quinn & Giles Crown eds., HMSO 1993) (discussing the features of the jury systems in France and Germany) and Richard O. Lempert, Citizen Participation in Judicial Decision Making: Juries, Lay Judges and Japan, 127 ST. LOUIS-WARSAW TRANSatlantic L.J. 1, 10-12 (2001) (discussing the differences between the Continental-European and the Anglo-American models of jury trials). Jurors in the Continental-European model (or “lay assessors” as they are sometimes referred to) are not selected at random from the list of persons eligible to vote to serve on one case only, as is the case in the Anglo-American model of jury trials, but are instead nominated by local authorities to serve a fixed term (Criminal Justice Systems in Other Jurisdictions, at 98-99 (discussing the features of the German mixed-court jury system).
deliberate questions of guilt and sentencing together. While some scholars have commended Japan for choosing to implement a new model of jury trials, others have been openly critical of this decision, claiming that the country should not have adopted an untested hybrid.

Another point that has been in the spotlight of debate concerns the question of whether the idea of citizen participation in the administration of justice is compatible with Japanese values and national character. Some contributions have noted that in Japan’s society that prizes harmony and respect for authority, lay judges may be hesitant to voice strong contradictory opinions, while other additions to the literature have claimed that Japanese jurors are highly likely to be swayed by emotions and thus unable to hand down impartial decisions.

The 2009 introduction of the lay judge system is not the first experimentation with citizens’ trial participation in the history of the Japanese criminal justice system. Japan implemented various models of jury systems in the past. The Meiji government introduced the “bureaucratic” special jury in the 1870s, the twelve-layperson jury system functioned in mainland Japan between 1928 and 1943 and in occupied Okinawa from 1963 to 1972. In addition, the pros and cons of citizen participation in justice in general and the concrete plans for implementing the jury system were discussed by the Japanese government, academics, politicians, and the members of the legal profession at several key junctures in Japan’s history.

It is true that historical data are of limited applicability in drawing conclusions regarding the prospects of a reform proposed in the

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contemporary times to realize the objectives and fulfill the purposes of its implementers. After all, reforms are conceptualized, discussed, introduced or rejected in a certain social and political context, and this context is never static. Looking at the models of jury systems that Japan either experimented with or considered implementing in the past nevertheless makes it possible to identify several trends that characterized the country’s past experiences with the institution of jury service. Highlighting these trends may shed light on the two points that have figured prominently in the contemporary debate concerning the saiban-in system.

Identifying some of the insights that Japan’s past experiences with the institution of jury service offer is one objective of this paper. Tracing the history of the concept of jury service in Japan from the point of arrival of the first documents describing the features of trial by laypersons to the contemporary times is another.

This paper first outlines the process by which Japan became acquainted with the concept of trial by jury. It then describes the models of jury trials that Japan either experimented with or considered implementing in the past. The conclusion discusses the implications of Japan’s past experiences with the institution of jury service and summarizes the findings of this paper.

II. THE INTRODUCTION OF THE CONCEPT OF JURY SERVICE TO JAPAN

The notion of the jury as a legal institution was introduced to Japan in the middle of the 19th century.

The first document describing the institution of jury service reached Japan in the 1840s-1850s when the Chinese translation of the book entitled “Brief Account of the United States of America”, written in 1838 by American missioner Elijah Coleman Bridgman, was published in Japan. This book outlined the features of the American jury system.

The first English-Japanese dictionary, originally published in 1862 and reprinted in 1869, included an entry concerning the jury system. This entry defined the jury as “a person/persons who have the duty to (yakunin) and are [bound by] an oath to examine the details of an event” and did not even mention that laymen could serve on the jury panel. Another

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10 Osatake, supra note 9, at 10.

11 Tatsunosuke Hori, Eiwa Taiyaku Shūchin Jisho [A Pocket
understanding of the jury system was provided in the definition that appeared in the first French-Japanese dictionary, published in Japan in 1864. This dictionary defined the jury as “a position (yaku) of those who have established and are working for a guild (jurande”).

The first document written based on the actual observation of trials by jury by a Japanese person was authored by Kunitake Kume. Kume’s account described the experiences of the Iwakura Embassy of 1871-1873, one of the most important Japanese diplomatic journeys around the world. In addition to discussing the jury trial that the Japanese delegation observed in Paris in 1873, Kume expressed his own opinions regarding the prospects of implementing this system in Japan. He noted:

[The jury system] may be regarded as a thoroughly comprehensive system indeed, but difficulties might arise, if one were to try to introduce it to Japan. [...] If a jury were to be nominated, the members would be terrified of the authorities and do no more than submit tamely to their words.

Kume concluded his discussion of the institution of jury service by cautioning the Meiji government against merely copying the institutions of the West:

This is just one of numerous examples in which customs in the East and West are very opposite of each other. Learned men should do well to consider the import of this [(the jury system)], for unless great care is taken to discard the traces of their origins and adopt only their substance, the
introduction of wonderful Western laws and regulations to the East would frequently be like trying to fit a square block of wood into a round hole.\textsuperscript{15}

Kume’s argument, voiced in the 1870s, that Japan should approach the process of transplanting Western institutions creatively and work to adapt the models that it chose to adopt to ensure that they fit in well with the existing environment in Japan, has figured prominently in all subsequent discussions concerning the possibility of introducing the jury system in Japan.

III. JAPAN’S PAST EXPERIENCES WITH THE INSTITUTION OF JURY SERVICE

A. The Special Jury Systems of the Meiji Period

The first attempt to introduce the jury system in Japan dates back to around the same time that Kunitake Kume made his observations—the early 1870s.

The case that provided the incentive for the discussion of the possibility of implementing the jury system in Japan was the Makimura incident of 1873. This case involved the Onos, a family of wealthy merchants doing business in Kyoto.\textsuperscript{16} The family decided to move their residence to another city and to relocate their main store from Kyoto to Tokyo.\textsuperscript{17} In accordance with the procedure required by law, the Onos expressed this intention to the Kyoto prefectural office, but were refused permission to leave Kyoto. The prefectural office made this decision because it expected that the relocation of the profitable business of the Onos would result in the loss of substantial revenue for Kyoto prefecture.\textsuperscript{18} The Onos filed a complaint, and as the result of investigations, Makimura, the Counselor (\textit{Sanji}) of Kyoto Prefecture, and Nagatani, the Governor of Kyoto Prefecture, became defendants in a criminal case.\textsuperscript{19} As this case involved clashes of interest between the Ministry of Justice and the Ministry of Internal Affairs, the Ministry of Justice proposed that in order to preserve the fairness of proceedings it was necessary to introduce participation in the court of a neutral party.\textsuperscript{20}

\textsuperscript{15} \textit{Id.} at 134-135.

\textsuperscript{16} \textsc{Tokyo Asahi Shinbunsha Shakaibu [Tokyo Asahi Newspaper Company, Local News Section], Baishin Kôza [Lectures on the Jury [System]]} 10 (Asahi Shinbunsha 1928).

\textsuperscript{17} \textsc{Osatake, supra note 9, at 31.}

\textsuperscript{18} \textit{Id.} at 32.

\textsuperscript{19} \textsc{Tokyo Asahi Shinbunsha Shakaibu [Tokyo Asahi Newspaper Company, Local News Section], supra note 16, at 10-11; Osatake, supra note 9, at 91-92; Takuzô Hanai, \textit{Baishin to Sanza Sei} [The Jury and Sanza Systems], 263 \textsc{Nihon Bengoshi Kyôkai Rokujô} 38, 43 (1921).

\textsuperscript{20} \textsc{Tokyo Asahi Shinbunsha Shakaibu [Tokyo Asahi Newspaper Company},
The Ministry of Justice authored a letter to the Great Council of State (Daijōkan) discussing the possibility of having a jury (baishin) try the Makimura case. This initiative was subsequently rejected, however, because, it was argued, the living conditions and public sentiment (minjō) in Japan differed substantially from those in England and France—countries that had the jury system. The Great Council of State concluded that the introduction of the jury system was an undertaking that should not be rushed and required careful deliberation and that instead of implementing any of the models of trial by jury that were functioning at the time in the West, Japan should introduce a unique system of its own in the Makimura case. The officials of the Great Council of State referred to this new system as “the sanza system”. The word sanza consists of two characters, one of which, san, means “participation” and the other, za, means “a seat” or “a position”, denoting that the introduction of this system implied participation of a neutral party in the judicial hearings.

The bureaucrats working for the Great Council of State drafted the rules that formed the basis for the introduction of the sanza system. These rules, promulgated on October 9, 1873, provided for the formation of the sanza panel, also known as the “bureaucratic jury” (kan-in baishin), that comprised government officials who were appointed jointly by the Counselors of State (Sangi) instead of laypersons. According to the rules, the members of the sanza panel decided the guilt of the accused, while the judge was responsible for “evaluating the gravity of the crime”.

Local News Section, supra note 16, at 11.

21 Osatake, supra note 9, at 50-51, translated in Anna Dobrovolskaia, The Institution of Jury Service in Japan: Past and Present 43 (2010) (unpublished manuscript) (on file with author). Daijōkan was the collective name for the Japanese government between 1868 and 1885. It was headed by the Great Minister of State (Daijō Daijin). See Japan: An Illustrated Encyclopedia, supra note 13, at 270.

22 Osatake, supra note 9, at 55-56.

23 Id. at 56; Sanza Rules [Sanza Kisoku], The Great Council of State Notice [Daijōkan Tashhi] number unknown of 1873, issued on October 9, reprinted in Osatake, supra note 9, at 56-58, translated in Dobrovolskaia, supra note 21, at 44 [hereinafter Sanza Rules 1873].

24 Sanza Rules 1873. The rules state that the members of the sanza panel were appointed by the organ that the rules refer to as “naikaku”. The Cabinet (naikaku) system of government was established in Japan in 1885 (Daijōkan Tashhi [The Great Council of State Notice], No. 69 of 1885), while the Sanza Rules were promulgated in 1873. Prior to 1885, the word “naikaku” was used to refer to the collegial decision-making body made up of the Counselors of State (Sangi) (10 Kokushi Daijiten [The Encyclopedic Dictionary of Japanese History] 499 (Kukushi Daijiten Henshū Inkai [Editorial Commission for the Encyclopedic Dictionary of Japanese History] ed., Yoshikawa Kobunkan 1989)). We may conclude, therefore, that the members of the sanza panel were appointed jointly by the Counselors of State.

25 Sanza Rules 1873.
The Makimura trial opened in the presence of nine “bureaucratic” jurors. In November 1873, however, the number of sanza members was increased to eleven. On December 31, 1873, the court found both Nagatani and Makimura guilty.

The sanza system was not implemented again until 1875 when the trial involving the assassination of the Counselor of State (Sangi) Masaomi Hirosawa took place. On January 9, 1871, Hirosawa was found dead, stabbed thirteen times. The defendants in this case were Masaichi Okida and Kane Fukui. In July 1875 it was decided that this complicated incident necessitated the introduction of the sanza system. The Hirosawa trial did not use the 1873 rules for sanza participation that had been drafted for the Makimura case. Instead, new rules were written in February 1875. The 1875 rules entrusted “bureaucratic” jurors not only with the task of determining whether the accused was guilty or not, but also with the responsibility of evaluating the quality of pre-trial investigations and even of commenting on the appropriateness of the court’s actions.

When the trial involving Masaichi Okida and Kane Fukui started, three other suspects—Tetsugorō Aoki, Tadasu Sakaguchi, and Takashi Sakaguchi—were arrested. The sanza panel in the Hirosawa trial initially consisted of seven members, but this number was subsequently increased to twelve. On July 13, 1875, the sanza panel found the defendants not guilty.

26 Osatake, supra note 9, at 86.
27 Id. at 91-92.
28 Id. at 95. Scottish journalist John Reddie Black (1826-1880) who was in Japan at the time of the incident referred to the assassination of Hirosawa as a “horribly cold-blooded murder” that “created great excitement in Tokio”. John R. Black, Young Japan: Yokohama and Yedo—A Narrative of the Settlement and the City from the Signing of the Treaties in 1858 to the Close of the Year 1879 with a Glance at the Progress of Japan during a Period of Twenty-One Years 299 (Trubner & Co. 1881).
29 Osatake, supra note 9, at 115; Hanai, supra note 19, at 44.
30 Osatake, supra note 9, at 108.
31 Special Court Rules Concerning the Trial of the Case Involving the Assassination of the Late Counselor Hirosawa [Hirosawa Ko Sangi Ansatsu Jiken Bekkyoku Saiban Kisoku], 1875, reprinted in Osatake, supra note 9, at 110-114, translated in Dobrovolskaia, supra note 21, at 46-48 [hereinafter Sanza Rules 1875].
32 Sanza Rules 1875, art. 7.
33 Osatake, supra note 9, at 115, 123; Hanai, supra note 19, at 44.
34 Osatake, supra note 9, at 115-116.
35 Id. at 125-127.
The verdict of “not guilty” did not signal the end of the Hirosawa Assassination case, however. In 1877, another suspect, Rokuţō Nakamura, was arrested. During interrogations, Nakamura confessed to killing Hirosawa. Based on this confession, on December 12, 1878, the Ministry of Justice ordered the Great Court of Judicature (Daishin’in) to reopen the case.\(^{36}\) The 1878 case was not tried with the participation of the sanza panel. Instead, the number of judges was increased to twelve and each of the empanelled judges was required to vote for the verdict of guilty or not guilty. New rules were drafted for this case.\(^{37}\) The trial opened in accordance with these rules on March 12, 1880, and on March 22, 1880, ended with the judges unanimously agreeing on the verdict of “not guilty”.\(^{38}\) In the end, despite seven years of investigation, the Hirosawa Assassination case was never resolved.

The “bureaucratic” special jury system was Japan’s first experiment with the participation of a party other than court officials in trials. The possibility of implementing the layperson jury system was discussed further in the late 1870s-early 1880s in connection with the drafting of the Code of Criminal Instruction.


Emile Gustave Boissonade de Fontarabie, a French scholar who was invited to Japan to advise the Japanese government following the Meiji Restoration, included the proposal to introduce trial by jury in his draft of the Code of Criminal Instruction that was completed in 1878.\(^{39}\)

Boissonade’s proposal did not provide for the transplantation of the French jury system where cases were tried by a mixed panel comprising nine jurors and three professional judges. According to the draft, crimes (jūzai) in Japan were to be adjudicated by three judges and a jury panel (baishin) composed of ten laypersons in district courts and courts of appeal.\(^{40}\) Japanese jurors were to be selected by lot from the list

\(^{36}\) Id. at 128.

\(^{37}\) Special Court Rules Concerning the Trial of the Case [Involving] the Assassination of the Late Counselor Hirosawa [Ko Hirosawa Sangi Ansatsu Jiken Bekkyoku Saiban Kisoku], 1879, \textit{reprinted in} Osatake, \textit{supra} note 9, at 128-132, \textit{translated in} Dobrovolskaia, \textit{supra} note 21, at 49-51 [hereinafter Special Court Rules 1879].

\(^{38}\) OSATAKE, \textit{supra} note 9, at 134-135.

\(^{39}\) MITANI, \textit{supra} note 9, at 103.

of persons selected as eligible to serve as jurors. The persons whose names were on the list were to retain their status as prospective jurors and jurors in reserve for the period of one year. First, twenty jury candidates and four candidates to become jurors in reserve were to be selected. These candidates were to be summoned, and the prosecutor and the defendant were each to be given the right to determine which of the twenty candidates would serve. The jurors who had been selected were required to listen to the details of the case and then answer the questions submitted for their consideration by the judges. Boissonade did not provide for an indictment jury in this draft, but included a provision regarding “the high jury” (kōtō baishin)—a ten-person jury panel that was to decide the cases tried at the High Court of Justice (Kōtō Hōin), such as offences involving the Emperor and the Imperial Household, instigation of internal disturbances as well as instigation of foreign aggression, and the crimes committed by the judges working at the Grand Court of Judicature (Daishin’in) and by the prosecutors.

While Boissonade’s idea of implementing the jury system was approved by the Genrōin, the officials of the Great Council of State subsequently deleted all provisions concerning the jury system from the draft.

Grand Secretary at the Great Council of State (Daishokikan) Tamotsu Murata commented on the reasons that led to the revision of Boissonade’s draft in his autobiography. According to Murata, the Great Council of State concluded that because the decisions made by the members of the jury could not be influenced by the judge, it was imperative to ensure that only persons who were sufficiently educated and had a certain degree of financial stability would serve as jurors. The provisions of Boissonade’s draft did not guarantee that this would be the case. Another consideration that contributed to the Great Council of State’s decision to delete the stipulations regarding jury service included the observation that not all European countries used the jury system. This fact was interpreted to imply that the introduction of the jury system was not imperative for Japan’s modernization efforts.

41 Draft of the Code of Criminal Instruction, art. 89, cited in Mitani, supra note 9, at 104.
43 Draft of the Code of Criminal Instruction, arts. 101, 98, and 99, cited in Mitani, supra note 9, at 105.
44 The Genrōin was a quasi-legislative body of the early Meiji period. It was established in 1875 and dissolved in 1890 with the formation of the Imperial Diet. Japan: An Illustrated Encyclopedia, supra note 13, at 450.
45 Mitani, supra note 9, at 105-108.
46 Murata’s opinion statement is reproduced in id. at 107.
The system allowing laypersons to participate in trial hearings was not introduced in Japan during the Meiji period. The experience of implementing the “bureaucratic” special jury system and deliberating Boissonade’s proposal formed the background against which jury reform was discussed in 20th-century Japan.

C. The Pre-War Jury System (1928-1943)

Concerted efforts aimed at introducing trial by laypersons in Japan began in 1900 when lawyers Shirō Isobe\(^{47}\) and Taizō Miyoshi\(^{48}\) proposed that the possibility of introducing the jury system be discussed at the meeting of the Japan Federation of Bar Associations. Isobe and Miyoshi submitted a document, entitled “Concerning the Establishment of the Jury System”, for consideration at the 30th meeting of the councilors (hyōgiin) of the Japan Federation of Bar Associations.\(^{49}\) This document described the jury systems existing in other countries and argued that a similar system should be introduced in Japan.\(^{50}\) This proposal was adopted at the meeting of the councilors.

In 1909, the general meeting of the Federation approved the idea that the jury system should be introduced in Japan, and those members of the Federation who were also elected members of the House of Representatives began looking for ways to find political support for the idea.

In February 1910, the Rikken Seiyūkai (Friends of the Constitutional Government Party), one of the leading political parties in Japan at that time, submitted a proposal concerning the establishment of the jury system in Japan (Baishin Seido Setsuritsu ni kansuru Kengian), which was passed by the House of Representatives.\(^{51}\) The proposal stated that lay participation in the judicial system would serve to ensure the


\(^{48}\) Taizō Miyoshi (1845-1908) served as a judicial officer and as the President of the Great Court of Judicature (Daishin’in). CONCISE JAPANESE BIOGRAPHICAL DICTIONARY 1227 (Masaaki Ueda et al. eds., 3rd ed., Sanseidō, Ltd. 1994).


\(^{50}\) Id. at 368.

independence of the judiciary and contribute to the impartiality of justice.\(^{52}\)

Work on the drafting of the Jury Act began in 1920, two years after Takashi (Kei) Hara’s cabinet was inaugurated.\(^{53}\) The draft underwent several revisions prior to finally being passed by the House of Peers on March 21, 1923.

The enacted version of the Jury Act envisaged a jury system that on the surface appeared to be similar to the Anglo-American model of jury trials.\(^{54}\) The Act provided for the implementation of a twelve-layperson jury panel and stipulated that jury deliberations would be conducted behind closed doors without the presence of the judge.\(^{56}\) Jury selection procedures resembled the methods used in Britain and America at the time. Candidates for jury service had to be male citizens over thirty years of age, reside in the same city, town, or village for at least two years, pay more than three yen in national direct taxes, be literate, and possess Japanese citizenship.\(^{57}\) Selection began with the compilation of a list containing the names of those individuals who satisfied the aforementioned requirements. Candidates to serve on a particular case were chosen by lot from that list and summoned to appear in court.\(^{58}\) The defendant and the prosecutor were then given the right to exclude those candidates that they did not wish to adjudicate the case.\(^{59}\)

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\(^{53}\) Takashi (Kei) Hara (1856-1921) served as Prime Minister between 1918 and 1921. JAPAN: AN ILLUSTRATED ENCYCLOPEDIA, supra note 13, at 502.

\(^{54}\) One legal scholar argued that Japan’s jury system “to a large degree took after the French and Austrian [jury systems], but was flavored with [the elements of] the Anglo-American system and display[ed] uniquely Japanese [characteristics]” (Tetsuo Sakamoto, Baishin Hô no Jisshi ni Atarite [On the [Occasion of] the Implementation of the Jury Act] 32 HÔSÔ KORÔN 57, 58 (1928)).

\(^{55}\) Baishin Hô [Jury Act], Law No. 50 of 1923, as last amended by Law No. 51 of 1929 and Law No. 62 of 1941, suspended by Law No. 88 of 1943, art. 29 [hereinafter Jury Act].

\(^{56}\) Jury Act, supra note 55, art. 82.

\(^{57}\) Jury Act, supra note 55, art. 12.

\(^{58}\) Jury Act, supra note 55, art. 27.

At the same time, the pre-war jury system had several features that distinguished it from its adversarial counterpart. Some of these features served to ensure that the judge would retain the role of the active supervisor of the proceedings, rather than assume the relatively passive role that the judge typically assumes in the adversarial system. Specifically, according to the Act, the members of Japan’s pre-war jury were not to decide on the verdict of “guilty” or “not guilty”, but to give answers to the questions submitted to them by the judge regarding points of fact. Furthermore, the judge was given the option of disregarding the jury’s responses and calling another jury.

Other provisions of the Jury Act that distinguished Japan’s system from the Anglo-American model of jury trials had in common the fact that they all served to prevent the jury system from being used often.

Firstly, the Jury Act stipulated that not all cases were eligible for jury trial. Only contested criminal cases where the maximum penalty was death or imprisonment for life were tried by jury. In cases where the maximum penalty was imprisonment for greater than three years and the minimum penalty was imprisonment for not less than one year the defendant had the right to request jury trial. Cases involving crimes committed against a member of the Imperial Family, crimes related to instigation of internal disturbances as well as instigation of foreign aggression, crimes related to foreign relations, and the election of public officials were not eligible for trial by jury. The 1929 amendment of the Jury Act limited the instances when jury trial could be requested further.

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61 Jury Act, supra note 55, art. 88.

62 Jury Act, supra note 55, art. 95.

63 Jury Act, supra note 55, art. 2. These cases were referred to as “cases designated by law to be tried by jury” (hōtei baishin jiken). See BAISHIN TEBIKI: HÔTEI SAN’YO NISSHI TSUKI [THE JURY GUIDEBOOK: INCLUDES JOURNAL OF TRIAL PARTICIPATION], supra note 52, at 18-19, translated in Dobrovolskaia, supra note 59, at 254.

64 Jury Act, supra note 55, art. 3. These cases were referred to as “cases that could be tried by jury upon request” (seikyū baishin jiken). See BAISHIN TEBIKI: HÔTEI SAN’YO NISSHI TSUKI [THE JURY GUIDEBOOK: INCLUDES JOURNAL OF TRIAL PARTICIPATION], supra note 52, at 19, translated in Dobrovolskaia, supra note 59, at 254-255.

65 Jury Act, supra note 55, art. 4(1). Violations against members of the Imperial Family were tried by the Great Court of Judicature (Daishin’in). Saibansho Kōsei Hō [Court Organization Law], Law No. 6 of 1890, art. 50.

66 Jury Act, supra note 55, art. 4(2).

67 Jury Act, supra note 55, art. 4(5).
The provision added in 1929 stipulated that jury trial could not be requested in cases involving the violation of the Peace Preservation Act.\(^{68}\) This amendment denied access to trial by jury to criminal defendants who adhered to communist and socialist ideologies, as crimes of political nature were outlawed by the Peace Preservation Act.\(^{69}\)

Secondly, the defendant was given the right to waive jury trial,\(^{70}\) and several provisions of the Jury Act made it beneficial for the accused to exercise this right. Specifically, appealing jury decisions \(kōso\) on points of fact was not possible.\(^{71}\) This encouraged defendants to waive jury trial in order to preserve the right to this appeal. In addition, the Act made the defendant responsible for bearing the costs of the trial, if he or she requested trial by jury, which encouraged many to waive jury trial.\(^{72}\)

Thirdly, jury trial was available only in cases that had undergone preliminary investigation \(\text{(yoshin)}\), which made it possible for public prosecutors to avoid trial by jury.\(^{73}\)

At first, the jury system appeared to be gaining the support of the general public and of professional lawyers. In 1928 and 1929 there was even talk of establishing the indictment jury \(\text{(kiso baishin)}\) or the indictment lay assessor \(\text{(kiso sanshin)}\) system.\(^{74}\) While this initiative was never realized, the fact that the possibility of further expanding layperson participation in the judicial system of Japan was discussed appears to reflect the enthusiasm that surrounded the Jury Act during the first few years after its enforcement.

Jury candidates approached their duty very diligently. The number of instances when a jury candidate failed to report to court was

\(^{68}\) Jury Act, supra note 55, art. 4(3).

\(^{69}\) Chian Iji Hō [Peace Preservation Act], Law No. 46 of 1925, as amended by Emergency Imperial Ordinance No. 129 of 1928, art. 1 [hereinafter Peace Preservation Act].

\(^{70}\) Jury Act, supra note 55, art. 6.

\(^{71}\) Jury Act, supra note 55, art. 101. It was possible to appeal \(jōkoku\) on points of law to the Great Court of Judicature \(\text{(Daishin’in)}\). Jury Act, supra note 55, art. 102.

\(^{72}\) Jury Act, supra note 55, art. 107.


\(^{74}\) Hideo Mikami, Baishin Hô no Shikô o Shuku Shite [Celebrating the Enforcement of the Jury Act], 32 HÔSÔ KÔRON 49, 57 (1928); Hikosaburô Hirai, Saiban Baishin yori wa Kiso Sanshin no Seido ga Nozomashii [Rather than Court Jury, An Indictment Lay Assessor System Is Desirable], HÔRITSU SHINBUN, Jan. 5, 1929, at 17.
miniscule.\textsuperscript{75} Some candidates appeared in court and carried out their duty despite having a sick parent,\textsuperscript{76} while others publicly discussed their disappointment when they were excused from service. The candidates who were excused explained that they considered it a disgrace to return to their places of residence not having served as jurors.\textsuperscript{77}

Records of several cases tried by jury in pre-war Japan have survived to this day. Among the best documented cases is the first case to be tried by jury in the capital of the Japanese Empire, Tokyo. The defendant in the Tokyo case of 1928 was a young woman accused of attempted arson. The prosecutor argued that the defendant had deliberately set her house on fire to collect insurance money. During the course of pre-trial investigations the defendant first confessed to committing the crime, but then withdrew her confession claiming that she had been forced to confess by the detective in charge of investigating the case and pleaded not guilty. The detailed account of the trial that appeared in the \textit{Hōritsu Shinbun} (Legal News)—a newspaper—demonstrates how the case of the prosecution that was primarily based on the initial confession of the defendant fell apart.\textsuperscript{78} According to the \textit{Hōritsu Shinbun} article, the accused claimed the following:

This detective told me that if I did not confess, I would not be able to return home […] He even told me what to confess to, said that I poured gasoline on a newspaper and lit it up with a match!

In response to the judge’s question concerning these allegations, the detective stated that he never used rough methods of questioning, but had nothing to say to the following remark that was made by a member of the jury:

[The detective] is simply stating that he never asked leading questions, and that what the defendant has said is not true. Unlike the statement of the defendant, which is logically organized, there is something lacking in the testimony of this witness. Can’t he answer in such a way

\textsuperscript{75} Shinkuma Motoji, \textit{Baishin Hō Shiren Ichi Nen no Seiseki o Kaerimiru} [Looking Back at the Results of the First Trial Year of the [Functioning of the] Jury Act], 7 Hōsōkai Zasshi 29, 32 (1929).

\textsuperscript{76} \textit{Id.} at 32.

\textsuperscript{77} See \textit{Baishin Tebiki: Hōtei San’yo Nisshi Tsuki} [The Jury Guidebook: Includes Journal of Trial Participation], \textit{supra} note 52, at 41; Dobrovolskaia, \textit{supra} note 59, at 263.

\textsuperscript{78} \textit{Tanteiteki Kyōmi o Sosoru Tokyo no Hatsu Baishin} [Tokyo’s First Jury Trial: Detective Intrigue Overflowing], \textit{Hōritsu Shinbun}, Dec. 30, 1928, at 20, \textit{translated in} Dobrovolskaia, \textit{supra} note 21, at (7)-(18). See generally Dobrovolskaia, \textit{supra} note 59, at 235-237 (discussing the \textit{Hōritsu Shinbun}).
When another detective who had investigated the case on trial was put on the witness stand, a juror inquired: “Could you detect fingerprints on the box of matches [that was found at the scene of the crime], or did you not think of looking for them?” To this question that, as the Hōritsu Shinbun correspondent noted, “sounded like one coming from a professional”, the detective replied with “a devastated look on his face”, —“The box was wet and it was impossible [to check it for fingerprints]”.

The newspaper account of this case demonstrates that Japanese jurors actively made use of their right to question witnesses. It also indicates that the members of the jury—at least in the situation where every word of theirs was in the spotlight of public attention, as was the case with the first few trials that took place in Japan—were courageous enough and willing to express their opinions in the courtroom and to even reprimand the detectives investigating the case.

Despite the fact that the jury system initially appeared to be earning the support of the general public, the system’s limitations became the subject of criticism as early as 1929. While the fact that the number of cases tried by jury was much lower than the Ministry of Justice had expected made some journalists argue that the institution of jury service did not fit Japan’s national character, other contributors to the debate focused their analysis on the internal problems of the Jury Act. In 1936, legal scholar and President of the Kyoto Imperial University Yukitoki Takigawa described Japan’s jury as “powerless” and the participation of laypersons in the judicial system under the provisions of the Jury Act a mere “formality”. Takigawa stressed that the limited power of the Japanese jury constituted the main reason for the lack of popularity of the system. He concluded that the future of the Jury Act was “glummy” and that legal scholars like himself could do nothing but “watch in sadness how the Jury Act disappears from this world”.

79 Jury Act, supra note 55, art. 70(2).

80 The number of jury trials during the period when the Jury Act was functioning is as follows (year/ number of jury trials that year): 1928/ 31; 1929/ 143; 1930/ 66; 1931/ 60; 1932/ 55; 1933/ 36; 1934/ 26; 1935/ 18; 1936/ 19; 1937/ 15; 1938/ 4; 1939/ 4; 1940/ 4; 1941/ 1; 1942/ 2. URABE, supra note 73, at 10.

81 Ryōichi Yasushi, Baishin Hō no Kekkan [The Defects of the Jury System], HōRITSU SHINBUN, Aug. 3, 1931, reprinted in Daisuke Midori et al., Hiroshima ni okeru Baishin Saiban: Shōwa Shoki no Geibi Nichinichi Shimbun Chūgoku Shimbun no Hōdō narabi ni Keiji Hanketsu Genpon o Chūshin ni shite Miru Baishin Saiban [Jury Trials in Hiroshima: Jury Trials as Seen through the Articles of the Geibi Nichinichi Shimbun, the Chūgoku Shimbun as well as through Original Criminal Verdicts of the Beginning of the Shōwa Period], 29 SHŪDO HÔGAKU 45, 144-150 (2007).

82 Yukitoki Takigawa, BAISHIN HŌ [THE JURY ACT] 42 (Nihon Hyōronsha 1936).

83 Id. at 51.
In line with these pessimistic predictions, the pre-war Jury Act was suspended in 1943 in view of the fact that it was unpopular, costly to maintain and because in the situation of war there was a lack of prospective jurors, as the overwhelming majority of men over the age of thirty holding Japanese citizenship had joined the army. The Act Suspending the Jury Act stipulated that the jury system would be reintroduced as soon as the war was over, but did not set forth any details as to the time when this would be done.\footnote{Baishin Hō no Teishi ni kansuru Hōritsu [Act on the Suspension of the Jury Act], Law No. 88 of 1943, art. 3 \[hereinafter Act on the Suspension of the Jury Act\].}

D. Attempts to Introduce the Jury System in the Immediate Post-War Period in Occupied Mainland Japan and Okinawa

The end of the Second World War signaled the start of a new period in Japan’s history—the period of the Allied Occupation. The occupation of mainland Japan lasted from 1945 to 1952. One of Japan’s prefectures, Okinawa, remained under the rule of the United States until 1972. The occupation of Japan and of Okinawa resulted in sweeping legal reforms. In both mainland Japan and Okinawa, the occupying forces attempted to introduce the jury system as part of these reforms.

1. Occupied Mainland Japan

At the beginning of the Occupation of Japan, the occupation lawyers were not planning to propose that Japan restore trial by jury. In November 1945, the Counterintelligence Corps (OCCIO) sent a query to the Government Section, Supreme Commander of the Allied Powers (SCAP), regarding the position of the Section on the issue of the possible restoration of the jury system in Japan. In its response, the Government Section stated that it would not recommend that Japan implement jury trials.\footnote{Note No. 2, Declassified E.O. 11652 Section 3(E) and 5(D) or (E) NNDG No. 775012 (on file with the National Diet Library, Japan) (code: GS(B)02883).} Regarding the reasons for this decision, the note explained:

An attempt to revive the jury system by directive of SCAP would not be desirable unless it were accompanied by a revision of Japanese court procedure. It would also require considerable retraining in common law concepts on the part of the Japanese bar and re-education of the Japanese citizenry at large as prospective jurymen.

The position of SCAP changed by the end of 1945, however. SCAP considered adding a provision regarding trials by jury to its draft of Japan’s post-war democratic Constitution. Specifically, one of SCAP’s drafts of the Constitution, written in early 1946, contained an article that stipulated that “[t]rial by Jury shall be accorded to anyone charged with a
capital offence, and to anyone accused of a felony, at the request of the accused.” 86 This provision was subsequently deleted, however, and is not to be found in SCAP’s draft of the Constitution dated 12 February, 1946. 87

The possibility of implementing the jury system was discussed jointly by the Japanese government and the occupation lawyers in 1947 in connection with the drafting of the Court Organization Law. The Japanese side initially opposed the idea of including the provisions regarding the jury system in the text of this law, arguing that such provisions should be added to those pieces of legislation that directly addressed the issue of jury trials, such as the new Jury Act, if this law would ever be drafted. In response, the representatives of SCAP explained that they did not wish to impose the jury system on Japan, but thought that it was necessary to include a provision that would open the door for the possible implementation of such a system at some point in the future. 88 At the end of the negotiations, both sides agreed that an Article stipulating that “the provisions of this law shall in no way prevent the establishment by other statutes of a jury system for criminal cases” would be added to the draft of the Court Organization Law, and it is these words that may be found in the enacted version of this piece of legislation. 89

The jury system was never implemented in occupied mainland Japan in view of the expenses that jury reform would entail and because of the absence of the necessary infrastructure in the immediate post-war period. 90

2. Okinawa under the U.S. Occupation

In occupied Okinawa, the United States established two political bodies: the United States Civil Administration of the Ryukyu Islands (USCAR) 91 and the Government of the Ryukyu Islands (GRI). 92 The

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86 “Original Drafts of Committee Reports”, February 1946, SCAP Files of Commander Alfred R. Hussey, Doc. No. 8 (on file with the National Diet Library, Japan) (not allotted a code number).

87 Memorandum to Chief, Government Section, 12 February, 1946 (on file with the National Diet Library, Japan).

88 YORIHIRO NAITÔ (1959) 2 SHŪSENGO NO SHIHÔ SEIDO KAIKAKU NO KEIKA [THE PROGRESS OF POSTWAR LEGAL REFORMS] 658-660 (Shihō Kenshūjo 1959).

89 Saibansho Hō [Court Organization Law], Law No. 59 of 1947, art. 3(3).


91 Establishment of the United States Civil Administration of the Ryukyu Islands, Civil Administration Proclamation No. 1 of 1950. The terms “Okinawa”, “Ryukyu Islands”, and “Ryukyu” are frequently used interchangeably, and this convention is followed in this paper.

92 Establishment of the Government of the Ryukyu Islands Civil Administration Proclamation No. 13 of 1952.
former government body was headed by the High Commissioner of the Ryukyu Islands, a serving Lieutenant General of the U.S. Army, while the latter was headed by the Chief Executive, a Ryukyuan who was directly responsible to the USCAR High Commissioner.

USCAR and GRI maintained their own court systems. USCAR courts exercised jurisdiction over those cases that involved nationals of the United States, and GRI courts adjudicated all other civil and criminal cases. At USCAR courts trial hearings were conducted in English, while at GRI courts the Japanese language was used.

The reversal of several USCAR court verdicts on the grounds that the defendant had been denied the right to be tried by jury alerted the U.S. Occupation forces to the importance of guaranteeing this constitutional right to U.S. citizens. One such case was the so-called Ikeda incident where the defendant, a U.S. citizen, who had been found guilty of criminal fraud by a USCAR court, appealed the verdict arguing that he had been deprived of his constitutional rights as he had neither been indicted by grand jury nor was going to be afforded a jury trial in Okinawa.

The criminal jury (petit jury and grand jury) was introduced to the USCAR court system in 1963 and the civil jury system was implemented in 1964. Defendants charged with an offence in a USCAR court were given the right to indictment by a grand jury “as to any offence which may be punished by death or imprisonment for a term exceeding one year and trial by petit jury as to any offence other than petty offence”. The grand jury was summoned to work for not more than one year and consisted of not less than six and not more than nine members with an indictment found only upon the concurrence of five or more grand jurors. Defendants had the right to waive a petit jury trial.

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93 Providing for Administration of the Ryukyu Islands, Executive Order No. 10713 of 1957, section 10, para. b.

94 Providing for Administration of the Ryukyu Islands, Executive Order No. 10713 of 1957, section 10, para. a. Cases that involved persons subject to trial under the Uniform Code of Military Justice were handled by courts-martial. Providing for Administration of the Ryukyu Islands, Executive Order No. 10713 of 1957, section 10, para. c.


96 Code of Penal Procedure, Civil Administration Ordinance No. 144 of 1955, as amended on 8 March 1963, and United States Civil Administration Criminal Courts, Civil Administration Proclamation No. 8 of 1958, as amended by Civil Administration Proclamation No. 18 of 1963.

97 Code of Penal Procedure, Civil Administration Ordinance No. 144 of 1955, as amended on 8 March 1963, chapter 5, section 1.5.1.

98 Code of Penal Procedure, Civil Administration Ordinance No. 144 of 1955, as amended on 8 March 1963, chapter 5, section 1.5.4. The 18th amendment of the United States Civil Administration Proclamation No. 8, entitled “United States Civil Administration Criminal Courts” (dated July 21, 1958), stated that in the Superior Court
Procedurally, the jury system in Okinawa was very similar to its counterpart in the United States. Jury trials at USCAR courts were conducted in the presence of a twelve-person all-laymen jury panel whose verdict of “guilty” or “not guilty” was binding. Prospective jurors were chosen by lot, and those members of the panel whose knowledge of the people or circumstances related to the case to be tried could affect their impartiality were excused. Jurors who were selected were sworn to try the case, attended trial hearings, and at the end of the hearings retired for deliberation to a separate room after receiving instructions from the judge.

In two respects, however, the Okinawan jury differed from the system of layperson participation used in the United States. Firstly, to ensure a sufficiently big pool of potential jurors, the nationality requirement for jury service was dropped, which made all persons who had attained the age of 21 and who had resided within the Ryukyu Islands for a period of three months eligible for jury service. Secondly, the requirement for English language proficiency was added to ensure that all jurors could participate in trial hearings and deliberations.100 These adaptations allowed persons of various nationalities to serve as jurors in Okinawa. The document entitled “Petit Jury-SUP C-13-64” that is part of the materials related to a criminal case tried in a USCAR court in 1964, for instance, lists jury candidates for that trial in accordance with their nationality and gender in the following way: “U.S.: 29; Ryukyuan: 13; Filipino: 5; Chinese: 2; Japanese: 1; Total: 50”.101

The remaining accounts of the experiences of the non-U.S. citizens who served as jurors at USCAR courts indicate that Japanese and Okinawan jurors approached their duty diligently and with a great sense of responsibility.

Some Okinawan citizens were so inspired by their experiences at USCAR courts that they became active proponents of introducing the jury system in post-occupation Japan. One such supporter of the Anglo-American model of jury trials is the award-winning novelist Chihiro Isa. Isa served as a juror on a criminal case that was tried in Okinawa in 1964 and described this experience in an autobiographical novel, entitled

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99 Code of Penal Procedure, Civil Administration Ordinance No. 144 of 1955, as amended on 8 March 1963, chapter 5, section 1.5.3.

100 Code of Penal Procedure, Civil Administration Ordinance No. 144 of 1955, as amended on 8 March 1963, chapter 5, section 1.5.5.

101 United States of America v. Megumi Yoshihisa (1964) case materials. The fact that the petit jury in USCAR courts was not made up exclusively of American citizens was used as grounds for appeal. For example, in Rose v. McNamara (1967), the appellant argued that conviction by USCAR petit jury was invalid for this reason and cited Title 28 of the United States Code, which requires that federal jurors be citizens. This claim was rejected by the court.
“Turnaround: A Jury Trial in Okinawa under American Rule”.102 The incident on trial involved four Ryukyuans who were accused of inflicting bodily injury on two U.S. Marines by beating them and causing the death of one of them, in violation of Article 205 (bodily injury resulting in death) and Article 204 (bodily injury) of the Criminal Code of Japan as in effect in the Ryukyu Islands. According to Isa’s detailed account of the trial and of the jury deliberations, Japanese and Okinawan jurors did not hesitate to disagree with the other members of the jury. Isa states that at the beginning of the discussion of the case, the majority of the jurors were in favor of proclaiming at least one of the defendants guilty of murder. It was Isa—an Okinawan—who persuaded the other members of the jury to find the accused not guilty on the charge of murder—hence the word “turnaround” in the title of Isa’s novel. The jury found the defendants not guilty of violating Article 205, but guilty of inflicting bodily injury.

Arguably, not all jurors were as enthusiastic about the institution of jury service in Okinawa as Chihiro Isa. If there was any dissatisfaction on the part of the users of the Okinawan court system, however, it was not prominent enough to disrupt the functioning of the system. Given the fact that only about ten cases (criminal and civil) were tried before USCAR jury during the period of the U.S. Occupation103 the negative feelings regarding jury service or jury trials, if existent, were not allowed to accumulate, which secured the smooth functioning of the jury system in USCAR courts.

The criminal and civil jury systems functioned in USCAR courts until 1972 when Okinawa was reverted to Japan’s control. The jury system in Okinawa was the last among the successful past attempts to implement the institution of jury service in Japan.

IV. CONCLUSION

Japan has witnessed several attempts to implement the jury system over the course of history. All of Japan’s past experiences with jury trials—successful and failed—provide us with unique insights.

First of all, a review of the history of the institution of jury service in Japan reveals that whenever Japan considered introducing jury trials it invariably created completely new systems of laymen participation that

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were different from the models functioning in other countries. The “bureaucratic jury” and the “all-judge jury” systems of the Meiji period were Japan’s inventions, conceptualized as alternatives to the Western layperson jury system, the pre-war jury had several peculiarities that made it unique in the world, and the jury system in Okinawa, introduced for the benefit of the occupying forces, also featured elements that distinguished it from the system that was used in the United States. In view of such history, the fact that contemporary Japan chose to introduce a model of trial by jury that does not have a readily comparable international counterpart no longer appears to be surprising.

Another insight that an examination of the history of the institution of jury service in Japan provides is that virtually all past discussions concerning the concept of trial by jury featured claims that Japan’s cultural values were incompatible with the idea of citizen participation in the administration of justice. Ever since the concept of trial by jury was introduced to Japan, the participants in the debate regarding the jury system repeatedly expressed doubts concerning the ability of Japanese jurors to voice strong contradictory opinions and come up with fair decisions. The claim that laypersons in Japan would be “terrified of the authorities”, if nominated to serve as jurors, was first voiced by Kunitake Kume in the 1870s. The argument that the living conditions and public sentiment (minjō) in Japan made the country ill-suited for the implementation of layperson jury trials was also expressed in the course of the very first discussion regarding the possibility of implementing the jury system to take place in Japan—the deliberations between the Great Council of State and the Ministry of Justice concerning the Makimura case of 1873. The argument that Japan differed in certain, albeit not clearly identified, respects from England and France—countries that have the jury system—was used as a justification for the government’s decision to implement the “bureaucratic” special jury system instead of the layperson jury. Boissonade’s jury proposal met with resistance on the part of the bureaucrats working in the Meiji government on the grounds that the provisions of his draft made it impossible for judges to influence the members of the jury who, it was implied, could not be expected to reach fair decisions on their own, without any guidance from professional judges. The argument that the institution of jury service did not fit Japan’s national character resurfaced again in the 1930s when it became clear that the system provided for by the pre-war Jury Act was losing popularity among users. In the post-war period, the cultural argument was overshadowed by other, more urgent, concerns that included the fact that in the immediate aftermath of World War II Japan lacked the necessary infrastructure to introduce the jury system and needed to pour all resources into reconstruction before having another jury experiment. Similarly, in Okinawa, the question of whether Japanese cultural values were compatible with the concept of jury service was not discussed, as the jury
system was implemented for the benefit of the U.S. citizens stationed in Okinawa whose constitutional right to trial by jury had to be protected. The cultural argument has, however, survived the occupation decades and reappeared in the spotlight of public debate in connection with the introduction of the saiban-in system.

The third insight that an examination of the history of the institution of jury service in Japan offers is that none of the actual experiences of Japan with jury trials offer unequivocal support to the cultural argument. On the contrary, the historical data indicate that in pre-war Japan and in occupied Okinawa the Japanese members of the jury approached their duty with a great sense of responsibility. The accounts of pre-war trials reveal that contrary to Kunitake Kume’s expectation that Japanese jurors would “do no more than submit tamely” to the words of the authorities, the members of the jury actively used their right to question witnesses and were willing to express their opinions in the courtroom. Similarly, in Okinawa, the remaining records of jury deliberations indicate that despite the many challenges that serving on a jury in USCAR courts implied for the Japanese and Okinawan members, such as the requirement to use English, which was a foreign language for the Japanese, those persons who were selected to serve actively discussed the details of the case and did not shy away from disagreeing with the other members of the jury. Rather than give credence to the Japanese exceptionalism argument, these experiences appear to offer support to the optimistic view regarding the prospects for effective public participation in the Japanese court system.

It remains to be seen whether Japan’s most recent attempt to expand citizen participation in justice—the introduction of the saiban-in system—turns out to be a success or not. Unlike the situation in the Meiji period when the decision to introduce the “bureaucratic jury” was made without any public discussion, or the pre-war period that was characterized by tightened censorship, rising fascism and militarization, or the period of post-war occupation—a regime that was essentially undemocratic—in the contemporary times the features of the newly-implemented saiban-in system are open to debate and scrutiny. This fact implies that in the event there are problems in the functioning of the new system, the factors responsible for the setback stand a much better chance of being swiftly identified and corrected than ever before in Japan’s history. It also serves to ensure that it will be the Japanese people who will be the ultimate decision-makers with regard to whether the new system of citizen participation is to be accepted and function effectively in the country. This, in turn, is a powerful indication that Japan’s saiban-in system has greater potential to function smoothly and become a vehicle for citizen empowerment than any of the models of jury trials that were discussed and implemented in Japan’s past.