

Globalization of legal cultures in the 19th century. Criminal trials, gender, and the public in Meiji Japan

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Introduction¹

In history, the rule of law is often seen as a Western product as well as a source of comparative advantage over non-European societies.² In these narratives, the globalization of legal cultures—usually understood to have begun in the 19th century—is therefore equated with the enforcement of European legal concepts the world over, and thus with westernization more generally.³ Japan serves as a prime example of the translation and enforcement of European legal concepts in non-Western contexts.⁴ The reasons for this are twofold. First, through its rapid adoption of French and German legal principles following the Meiji Revolution of 1868, Japan appears to be a prime example of thorough westernization. The Meiji constitution of 1889 is seen as marking the culmination of this

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2 On global history, see Bayly 2004: 81–82; on legal history see Costa 2007 or Berman 1983.

3 Osterhammel 2009: 680. For more context on globalization and Western legal concepts see Goldman 2007. On law in the process of European expansion see also Fisch 1992.

4 Haley 2010; Ginsburg 2010: 18–19; Osterhammel 2009: 853; Goodman 2003: 20–23; Tanaka 1976: 194–195; Stevens 1971: 669.

trend.⁵ Second, Meiji Japan (1868–1912) has allowed historians not only to document the extent of the westernization of non-European legal systems in the late 19th century, but also to present the process of the globalization of legal cultures as a success story: »Japan is the only case of genuine judicial autonomy being manufactured, without colonialism, in such a short time« (Ginsburg 2010: 18). In such readings, the new legal order safeguarded the empire's independence and its subsequent evolution into a great power in the period after 1900.

However, the focus on westernization is problematic. While the overall trend is scarcely open to question, the legal reforms are seldom reviewed in detail or considered in context. This is one of the pitfalls of global history, which tends to consider the globalization of legal cultures at a macro level while neglecting the complexity of local cases.⁶ Accordingly, the globalization of law is generally treated as a mere symptom rather than as a factor in what Christopher Bayly has termed »the Great Acceleration« in the decade before the First World War (Bayly 2004: 451).

On the other hand, in the historiography of Japanese law, the extent of westernization was always contested. Some authors spoke of the »the Japanization of Western law« (Coing 1990), or tried to find »the Japanese in Japanese law« (Menkhaus 1994). Others have juxtaposed »European law« and »Japanese tradition« (Seizelet 1992). But such readings often tend to essentialize Japanese legal culture by claiming that it is culturally particular as well as historically unchanging.

One problem is that the historiography of Japanese law has in the main approached legal affairs via legal texts and has mostly neglected the question of the westernization of legal cultures or legal practices.⁷ In the

5 Jansen 2000: 414; Osterhammel 2000: 269. On the history of the Meiji constitution see Ōishi 1992.

6 For a more detailed critique of law in world and global history see Benton 2002: 3.

7 Goodman 2003; Röhl 2005; Fukushima 1993; Tanaka 1976. Some of these studies highlight the perceived success of modernization or westernization (for the state of research see Ginsburg 2010: 17 and Dean

case of Meiji Japan, we therefore know a great deal about the translation of codes and the influence of various Western legal traditions. But our knowledge of the actual processes of appropriation and social response is still limited. Two problems follow from this: a focus on the history of legal ideas while neglecting the details of their specific implementation may encourage an exaggerated sense of Western influence. Additionally, legal reforms have often appeared disconnected from social change and realities—a point which concerns the broader historiography of Meiji-Japan itself:

While Japanese law borrowed extensively from European Codes, the population was unconcerned with this new legal order and the new rulers of Japan appear to have been unconcerned about the popular view of the law. It can be argued that there existed a fundamental disconnect between the new legal regime created by the Meiji oligarchs and interpreted by the Meiji courts and the realities of Japanese life in the cities and villages of Japan. (Goodman 2003: 28)

A new cultural history of law that genuinely accounts for popular responses to the legal reforms would give us a much more comprehensive picture. It is thus necessary, above all, to shift our focus from the law of books to the process of law in action. This article focuses on the courtroom as a place of encounter between the law and the general public, the site where law was implemented and thus »made.« The public trials of the mid-Meiji period appear to be a good starting point for a discussion of the implementation of Western law in Japan. For this purpose, I have chosen one of the most notorious criminal trials of Meiji Japan, that of the geisha Hanai Oume⁸ who was accused of having murdered her lover

2002: 60), while others emphasize the particularities of the Japanese system (Haley 1998; Tanaka 1976: 191–192; Stevens 1971: 667).

8 This article follows the Japanese practice of writing a person's last name followed by their first name. In the case of Hanai Oume, the first name is her surname and the second is her stage name. However, due to her fame as geisha she was generally referred to in newspaper reports by her stage name. Thus this article also refers to her as Oume.

Yasugi Minekichi in 1887 in Tokyo. Why a criminal case? First, the seriousness of this crime and its lurid character guaranteed a great deal of public attention.⁹ Second, in the early Meiji era criminal trials were held in public for the first time in Japan, thus the case enables a discussion of social participation in the new legal system. This article aims at thereby showing that legal reforms were not just a symptom of, but rather a factor for, the changing social and gender order in Meiji Japan.

The following is divided into five sections. The first attempts to reconstruct the case on the basis of the findings of the police investigation. The second section examines the historical background, particularly the far-reaching judicial reforms enacted in this period. The third section addresses the trial itself. Crucial questions include the following: What role did trials play in connecting the state and society? Did they help to satisfy the public's desire for justice? What was the relationship between the emergence of mass media, public trials, and the widespread craving for sensation? The article subsequently describes the trial's aftermath and, lastly, discusses the possibility of a new cultural history of law, asking how the inclusion of legal affairs might contribute to our understanding of the history of Meiji Japan.

The case

On the night of 9 June 1887 a murder took place in one of Tokyo's entertainment districts. According to the preliminary investigation of the crime, a geisha known as Hanai Oume stabbed her *bakoya* to death.¹⁰ Geishas usually hire *bakoyas* or »box-men« to carry their *shamisen* and other items when they are working outside of their teahouses. The victim was Yasugi Minekichi, also known as Mineyoshi or Minesaburō. Mineki-

9 Recent scholarship has recognized the significance of court trials for a new cultural history of European law: Hett 2004; Siemens 2007; and Steinmetz 2002.

10 On the course of events see *Tōkyō nichinichi*, 11 June 1887 (cited in Meiji Nyūsu Jiten Hensan Inkai 1984: 652). On Oume's life-story see Jiken Hanzai Kenkyūkai 2002: 790–791; Yamashita 1988: 211–214; Kata 1980: 22–30; Asai 1903; as well as Satō 1887.

chi was not only Oume's *bakoya*, but also her lover. Their relationship had apparently been quite complicated and unsettled. On a dark, rainy night, Oume waited for Minekichi in front of her teahouse. They began to quarrel soon after Minekichi arrived. As the preliminary investigation report stated, Oume finally attacked Minekichi with a kitchen knife and slashed his neck. Minekichi escaped but died shortly afterward from blood loss. Oume briefly fled to her father's house before turning herself in to the local police.



Figure 1: »Kinsei jinbutsushi. Hanai Oume,« Coloured newspaper page by Tsukioka Yoshitoshi, 1877. Source: *Yamamoto Shinbun*, Nr. 263, 20 Aug. 1887.

Over the next few days the case made headlines all over Japan. In the early Meiji era, newspapers were a new medium and crime and trial reporting drove the fledgling industry from the beginning. The news cov-

erage was thus not unusual, as cases of female violence attracted wide public attention. Many newspapers provided details of Oume's disreputable life as a geisha. The daily *Jiji shinpō* stated in its edition of June 11:

Hanai Oume opened a stylish teahouse called ›Suigetsu« [literarily: drunken moon] and earned her living by singing, dancing and playing *shamisen*. In the Shinbashi district of Tokyo she was also known as Hidekichi [...] and there were rumors that she was always drunk.¹¹

Not only was Oume described as a drunkard but her stage name was mentioned as a telling detail: Because Hidekichi is written with the same characters as Hideyoshi, she bore the same name as the famous 16th-century warlord Toyotomi Hideyoshi, one of the unifiers of Japan. Accordingly, in many of these articles she was described as being »mannish, proud, and overbearing« in character, despite her looks which were invariably found to be »elegant and beautiful.«¹²

Oume's career was determined early in life. She was born into a poor samurai family in 1864, in the vicinity of present-day Tokyo. At the age of six she was given up for adoption and sold to a geisha house. There she seems to have acquired some of the skills required of a geisha, such as playing the *shamisen*. At 15 she started to work as a geisha. Six years later she went into business for herself in Shinbashi and began to use the name Hidekichi. At this time, she seems to have become involved in a form of prostitution which took place on ships. Sometimes geishas provided this form of entertainment, but it was seen as a rather low-level occupation for these well-trained entertainers. Oume became known for her good looks. She was soon able to escape from the seedy environment of the harbor and found work at a more prestigious venue. There she became involved with Yodaime Sawamura Gennosuke, the president of one of Japan's first private banks. He even sought to become her pa-

11 *Jiji shinpō* of June 11, 1887 (quoted in Meiji Nyūsu Jiten Hensan Iinkai 1984: 652).

12 Nyūsu Jiten Hensan Iinkai 1984: 652–653.

tron, but Oume preferred to remain independent. She was able to save money and opened her own teahouse, hiring Minekichi as her *bakoya*.

Her teahouse was a success, but this in turn led to new difficulties. According to the police investigation, within the space of a few weeks, Minekichi had attempted to gain control of the teahouse. One problem was that the business was officially registered in the name of Oume's father, with whom Minekichi had allied himself. The two men attempted to take over her business, which Oume resisted. On the evening of the murder she took Minekichi to task and the situation escalated. At the time of the court case, Oume was 23 years old. From the beginning, the killing's lurid setting and the gender issues involved—mainly the fact that the violence was committed by a woman—ensured that the case received a great deal of public attention. An indicator for this are the many different *nishikie shinbun* that were sold all over Japan immediately after the murder. *Nishikie shinbun* combined written news reports with often lurid and bloody color prints. They were a very popular medium of the early Meiji years, and violence committed by women was one of their favorite topics (Kinoshita 1999). In these newspaper prints, Oume was shown as a cold-blooded, strong, and dominant woman who was at the same time a beautiful and artful geisha. She acted, whereas her male victim seemed helpless and feeble, and was often faceless (see figure 1).

The legal background

Oume's trial coincided with a period of fast-paced legal reforms. In the wake of the Meiji Revolution of 1868, a small new elite began an ambitious program of reforms. These reforms were all enacted in the first few years of the new era, but only after several decades would their effects become fully visible. Yet by the eve of the First World War, Japan had become an industrialized nation-state, a colonial empire, and one of the world's great powers.

Laws were central to the Meiji Revolution at various levels. First and foremost, the reforms were legally binding acts.¹³ Among the most important were an act abolishing the feudal domains (1871), a conscription ordinance (1872), and land and tax laws (1873).¹⁴ Their overall effect was to bring about the end of the feudal order. The Japanese people were confronted with a set of new rights and obligations, starting with the Five Charter Oath of 1868—the pillar of the Meiji Revolution—according to which »all classes, high and low, shall be united« (Sasayama 1994: 240). At the level of the legal system, the changes were truly revolutionary in nature: property rights were strengthened, and freedom to choose a profession and freedom of movement were granted. In consequence, the sale of human beings—the fate of the young Oume in the final years of the Edo period (1603–1868)—was banned, although in practice it at first continued. The great reforms ultimately entailed the juridification and codification of society in general. This process lasted for several decades. One reason for the ongoing necessity of new laws and reforms during the Meiji years is that the epoch-making changes enacted in the first few years after the revolution enabled entirely new forms of social relationships, behavior, and mobility. In the eyes of the authorities, these all required regulation.

But the urgent need for new legislation and penal reforms were never matters of domestic concern alone (Botsman 2005: 140). The Western powers had condemned the legal order of Edo Japan as barbaric and, exploiting the absence (as they saw it) of the rule of law in Japan, forced the so-called unequal treaties on the country during the 1850s and 1860s.¹⁵ Application of the principle of extraterritoriality to the Western nations was an important element of the unequal treaties. It meant that Westerners were not bound by Japanese law. Since the treaties called

13 For the history of legal reforms in Meiji Japan see Kasumi 2007; Fukushima 1993; Röhl 2005.

14 The acts may be found in Fujita 2007: 18, 24, 27.

15 On the unequal treaties see Auslin 2006.

Japanese sovereignty into question and raised fears of colonization, the old legal practices appeared to jeopardize the state's existence.

To understand the Westerners attitude as well as the range of Meiji reforms, we must take a look at the legal order of Edo Japan. Pre-Meiji legal concepts were heavily influenced by Chinese law and thus by neo-Confucian ideas of social order and justice.¹⁶ Generally speaking, law was seen as synonymous with morality. Edo Japan lacked both written laws and a constitution accessible to everyone. The central government, the *shogunat*, did issue legal guidelines for its officials from time to time. But these officials had only a certain degree of control over legal proceedings, and only in areas under their direct rule. This excluded most of Japan, where the local feudal lords, the *daimyōs*, acted as the supreme legal authority. Edo jurisdiction thus lacked the separation of powers and was characterized by fragmentation. Moreover, criminal trials, verdicts, and punishments all depended on the social class of the accused. Punishments were severe and capital punishment was applied frequently. When the Western powers forced the country to open, crucifixion and burning were both means of capital punishment.¹⁷

All of these facts taken together made it easy for the Western powers to argue that Japan lacked the rule of law when they forced their way into Japan in the mid-19th century. Torture and corporal punishment in particular were used as a pretext for establishing extraterritoriality. Westerners naturally tended to exaggerate these points to their own advantage and their claims were not entirely legitimate. In reality, Edo Japan was by no means lawless and did know written collections of rules and laws. In practice, these laws were not as secret as has been supposed (Botsman 2005: 34). In the mid-18th century, the *Kujikata-Osadamegaki* code was issued. These »Rules for Public Officials« concerned administrative, penal, and civil law. Overall, not every aspect of the legal system of Edo

16 For jurisprudence in pre-1868 Japan see Dean 2002: 58–60 and Steenstrup 1991.

17 Between 1862 and 1865 fifteen crucifixions took place in Edo (Botsman 2005: 17–18).

Japan was unable to withstand comparison with its European counterparts—in some cases it was even »a more »modern« system, than say, prevailed in France about 1750« (Steenstrup 1991: 116). In addition, the system was not as static as Westerners maintained. To be sure, the fragmentation of legal systems was real, but over the course of the Edo years legal practices increasingly converged, guided by the shogunal jurisdiction. Lately the literature has rightfully pointed out the country's long history of legislation and legal practices as well as the tendencies toward systematization, humanization, and centralization during the Edo period that was not due to Western pressure or influence (Botsman 2005; Steenstrup 1991). But even if the legal history of Edo Japan is much more dynamic and complex than has hitherto been believed, the fact remains that the Western powers simply did not care. In their eyes, the legal order of Japan was backward and brutal. Moreover—and this is the central point in this context—after the Meiji Revolution Japan's new elite began to share this belief.

The wish to revise the unequal treaties—and thus to restore Japanese sovereignty and to secure the country's independence—was the main drive behind the great reforms (Perez 1997). Shortly after the revolution, a wide range of codes were enacted to satisfy Western demands. French and German legislation provided the chief sources of inspiration. At the same time, jurisprudence underwent institutionalization. In 1872, Japan established a ministry of justice. The changes were evident not only in Tokyo, all over Japan impressive stone courts were erected.¹⁸ The newly founded universities—above all the Imperial University of Tokyo—also played an important role in the process of institutionalization and standardization.¹⁹ After two decades of change, the process of legal reform culminated around the time of Oume's trial in the Meiji constitution of 1889. This was the first constitution in an Asian country to be based on

18 On the new court buildings see Shihōkyōkai 1995: 16–19. For the history of courts see Hayashiya 2003.

19 For the law faculty of the Tokyo University see Tōkyō Daigaku Hyakunenshi Henshū Inkai 1984a: 97–103 and Tōkyō Daigaku Hyakunenshi Henshū Inkai, 1984b: 451–514.

Western standards. The constitution marked the peak of the great reforms and was supposed to make rule of law in Japan visible to the rest of the world.

Oume's case requires a closer examination of the reforms to penal law, for which initial changes were announced only months after the revolution. In February 1868, the *Karikeiritsu* was enacted. This »Provisional Criminal Code« applied to feudal domains across Japan, and banned some punishments seen as especially cruel such as crucifixion or burning. Although it did not regulate criminal trials, the *Karikeiritsu* nonetheless proves that the new government sought from the outset to centralize legislation throughout Japan.

However this was only a first step. Over the following six years, the government drafted several new penal codes. In 1871, the government enacted the *Shinritsu kōryō* (Outline of the New Criminal Code) and two years later the *Kaitei ritsurei* (Reformed Criminal Code). While the first was largely based on Chinese legal principles of the Ming and Qing periods, the latter was Japan's first penal code which borrowed extensively from Western legislation. Both of these laws reduced the frequency of severe corporal punishment and replaced it with imprisonment in some cases—mainly to meet Western expectations.²⁰ But the real bone of contention was the public nature of the punishments. Therefore, during the 1870s punishment in public was banned altogether. Foucault's assessment of late 18th and early 19th-century France might thus also be said to apply to early-Meiji Japan (Foucault 1975). Again, this development does not solely reflect Western influence, since even in the Edo period Japanese penal practices were evolving toward »somewhat more humanitarian methods.«²¹

However, the reforms of the early Meiji years were unable to halt Western criticism. The famous Iwakura Mission, which traveled in the United States and Europe in the period from 1871 to 1873, failed to persuade

20 On punishment in Japan around 1870 see Oda 2009.

21 Steenstrup 1991: 154.

any of the Western powers to cancel the unequal treaties. The Japanese authorities realized that the country's penal laws remained a key obstacle. The new penal laws enacted in the early 1870s contained several problems. On the one hand, the various new codes were all used at the same time, leading to confusion. On the other hand, the new codes still maintained social discrimination.²² By the middle of the first decade of the Meiji era, it had become clear that the system required more fundamental changes. In 1875, a committee began to plan for a new criminal law which was to be based on Western—mainly French—law. Strongly influenced by the French legal scholar Gustave Emile Boissonade, who was serving as a law professor at the ministry of justice in Tokyo at this time, the commission finished its work five years later and published the *Keihō* (Criminal Code) and the *Chizaihō* (Criminal Procedure Law). Beheading and torture were abolished once and for all. The Criminal Procedure Law also brought fundamental changes; for example, it introduced federal prosecutors and lawyers.²³ These two codes met with strong public interest and, even before they came into force in January 1882, publishing houses all over Japan published dozens of editions of the codes.²⁴

The reasons for this interest are clear, since all courts were now open to the public. As the closed tribunals of the Edo period disappeared, a new courts system emerged. In this process, after the Meiji Revolution, trials were gradually made public. Access was initially restricted to journalists. The general public was permitted to attend civil trials in 1875, but had to wait seven more years until they were admitted to criminal trials (Matsunaga 2006: 24). However not everyone was immediately welcome. It was necessary to apply for access, which was quite often refused. The authorities wished to maintain some degree of control. For them, open-

22 For more detailed information on criminal law in the first decade of Meiji Japan see Röhl 2005: 607–609 and Chen 1981.

23 For the history of lawyers in Meiji Japan see Tani 2009 and in late-Edo Japan Tani 2008.

24 Anon 1880; Dajōkan Insatsukyoku 1880 and Hashizume 1880.

ing the courts proved problematic, as is reflected by the number of laws enacted in this period regulating the public's behavior in the courthouse. The public's behavior was also an issue in Oume's trial—as we will see in the following.

The Trial

Oume's trial took place in the 'Tokyo »court for serious crimes« over the course of three days in November 1887. It was only »the fourth occasion that the courtroom of the 'Tokyo »court for serious crimes« was open to the public,« as the *Jiji shinpō* reported.²⁵ The courthouse was a new building in the Western style. It held public trials and could accommodate hundreds of visitors, a necessity due to the widespread interest attracted by criminal trials. But, as the *Yomiuri* newspaper reported, the court proved too small for Oume's trial:

Yesterday, in the early morning while it was still dark, crowds waited at the entrance to the 'Tokyo »court for serious crimes.« There was a crowd of around 1,000 and therefore the crush was terrible. Then more police arrived to restrict entry to the court and for about an hour it was impossible to enter or leave the court. Finally, after much discussion and begging, the first two hundred people in front of the court building were permitted to enter the court and received their tickets for admission.²⁶

Three things are important: First, the open trials of the late 1880s attracted crowds. Second, tickets for admission were now distributed on a first come first serve basis; the authorities obviously no longer sought to control or select the audience. Third, for the gathering crowd, attending a trial had become almost an everyday occurrence. They expected to enter without delay, and those who were denied admission saw the police's behavior as a provocation. When the doors were closed many protested and tried to interrupt the trial. They threw stones and destroyed

25 *Jiji shinpō*, 14 July 1887 (quoted in: Meiji Nyūsu Jiten Hensan Inikai 1984: 652).

26 *Yomiuri shinbun* 19 November 1887: 3.

five courthouse windows. A 32-year-old traveling salesman was held responsible for this incident and received a prison sentence (Yamashita 1988: 215).

But what happened inside the building and who was able to enter? The *Chōya* newspaper gives us an impression:

There were calligraphy students, merchants, and *rakugo* players wishing to see the trial of Oume. [...] The 200 people who were permitted to enter the court included storytellers and around 23 housewives and their children.²⁷

Many newspaper reports included descriptions of the spectators. The presence of storytellers at the trial is readily explicable since Oume's crime was soon reflected in various forms of entertainment, including *kabuki* plays. But the presence of so many »common women«—sometimes together with their children—seems to have puzzled the journalists. Overall, these reports suggest that in the 1880s huge audiences—from a broad range of social strata—gathered to follow the trials.

For those who were unable to gain admission to the court or who lacked the time to attend, illustrations of the trial in the form of black-and-white woodblock prints were on sale within a period of days.²⁸ Together with the newspaper reports, these prints provide a detailed description of the Meiji-period courtroom. The existence of such pictures is in itself remarkable: It was one thing to open up the courts, but quite another to permit commercial publishers to print images of the protagonists at the trial.

27 *Chōya shinbun* of 19 November 1887.

28 *Tokyo eiri shinbun* of November 19, 1887: 2 or Satō 1887: 4–5. For an example of another trial see Meiji Nyūsu Jiten Hensan Inkai 1984: 6.

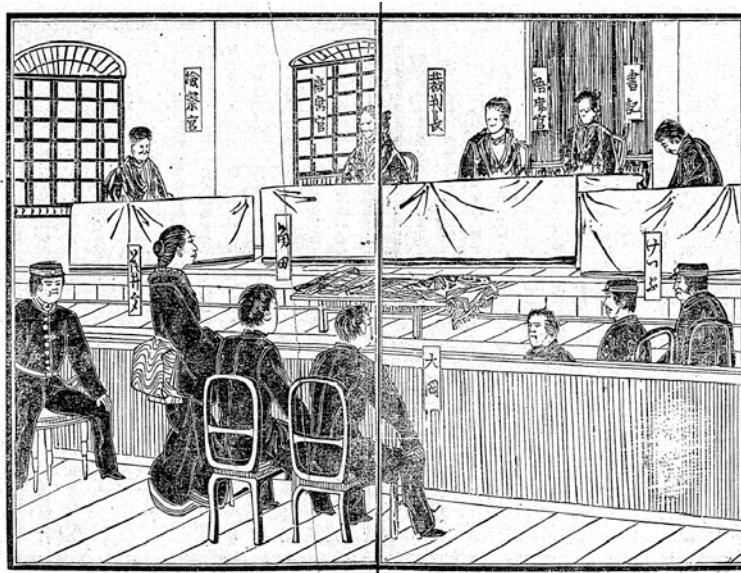


Figure 2: »Notes from the public trial of Hanai Ume,« Black-and-white print, double page. Artist unknown. Source: Satō 1887: 26–27.

The woodblock prints all essentially show the same setting (see figure 2): the key protagonists at the trial and their positions within the courtroom. In the mid-Meiji period of the late 19th-century, this setting was always identical due to the strictness of the Criminal Procedure Law. The presiding judge sat in the center, flanked by two assistant judges. The public prosecutor sat to their right at a separate table, and a clerk sat to their left. These persons were all seated on a raised platform. In front of them was a small table for the deposition of evidence. A fence separated the accused and her lawyer from the judges and the public prosecutor, with police officers standing in between. The overall effect of the seating arrangements was to heighten the sense of the authorities' superiority. The accused was the sole person who was required to stand. As other sources confirm, the woodblock prints produced during Oume's trial depict a standard courtroom scene in Meiji Japan (Shihōkyōkai 1995: 5). Another aspect of these prints is also eye-catching: The above-mentioned figures are always labeled in courtroom illustrations. In other words, the court-

room scene was so new and unfamiliar that ordinary newspaper readers could hardly be expected to recognize the protagonists.

Most visitors will have readily identified the judges through their position at the center of the courtroom. In line with continental European practice, the presiding judge played a very active role in trials. He certainly did so at Oume's trial, which was documented in its entirety in a report entitled *Notes from the public trial of Hanai Ume* (Satō 1887). This court report—in all likelihood the first of its kind in Japan—consisted of a small book of around fifty pages and was published quite promptly. It was on sale just a few days after the trial ended in early December 1887. The *Notes from the public trial of Hanai Ume* claimed to give a realistic account of the proceedings (Satō 1887: 1).

The judge's questioning opened the trial. According to the narrative of the *Notes*, the judge played the key role in the prosecution.²⁹ Judge Kosugi Naokichi first established Oume's personal details and read out the charges before embarking on a long series of questions concerning her life in the period leading up to the crime. The dialog between the judge and Oume fill over a third of the entire *Notes*. Evidently, Kosugi wanted to know everything about Oume's life in order to understand her crime. Oume was granted a great deal of time to describe her family background, her career as a geisha, and all of the hardships she had faced in her young life.

The protracted nature of this initial questioning of the accused is all the more remarkable because Oume had already confessed to the crime. The preliminary investigation had commenced in June 1887. This investigation had a central role within the trial system. In it, the key facts were established, the witnesses were heard, the evidence was presented, and the medical examination of the corpse was discussed.³⁰ Together with the open trial practice of only submitting evidence in the form of long dialogues between the judge and the accused, the preliminary investiga-

29 Procedures for the start of a trial are stipulated in Anon 1880: 133.

30 On the preliminary investigation see Satō 1887: 3.

tion lent the Japanese system an inquisitorial touch. Lawyers were not allowed to take part in the preliminary investigation. This was controversial since lawyers saw a danger that »after elaborate investigations by *juges d'instruction*, the accused was presumed in the public mind to be guilty« (Dean 2002: 99). At first glance, this secretiveness might be interpreted as a remnant of old, inquisitorial methods. Yet it would be mistaken to interpret the preliminary investigations and the inquisitorial character of the trial as proof of the continuing backwardness of penal law in mid-Meiji Japan and its incomplete westernization. The proceedings described here followed exactly the French model initially established during the age of Enlightenment during the second half of the 18th century, transformed by the French Revolution, and finally systematized in the Napoleonic Code of 1810. The procedure for French criminal trials was traditionally inquisitorial in nature, especially during the preliminary investigation.

However, as in the French system, Oume's public trial combined elements of the inquisitorial and the adversarial system (Elliott 2011: 210–214). The power of the judge, and thus of the state, was balanced by three important factors. First, by the prosecutor—who was also present at the trial. While it was easy for Japanese spectators to identify the judge, the prosecutor was less conspicuous. The public may have struggled to understand his role in the courtroom. This was partly because the prosecutor remained silent and passive for much of the proceedings. In Oume's case, he only intervened in the final third of the trial and his role was limited to summing up his view that Oume was guilty of murder and not simply of manslaughter (Satō 1887: 28). While a clear distinction now existed between the judge and the prosecutor for the first time in Japanese history, the former tended to dominate the trial and to diminish the latter's profile. Despite this, however, the prosecutor played an essential role in the overall system. Ever since the introduction of public trials and the office of the prosecutor during the French Revolution, the two had been inseparable (Hett 2004: 32). In Meiji Japan, the prosecutor thus revealed France's influence in the Japanese Criminal Code as well as

a departure from the even more inquisitorial system that had been characteristic of the Edo period.

Lawyers were more important as a counterbalance to the judge's power.³¹ In their case too, many spectators will have no doubt struggled to understand their role. The general public appears to have found them of considerably more interest than the silent prosecutor. Apart from Oume, the lawyers are the only other courtroom protagonists who are indicated by name on the woodblock prints (the judges and other court officials are merely indicated in terms of their functions). Oume had two lawyers, Tsunota Shinpei and Ōoka Ikuzō, both of whom were obviously eager to defend her since public interest in the trial represented an opportunity for them to establish reputations for themselves. Ōoka was to become one of the most famous criminal defense lawyers of Meiji Japan. Born in 1856, the young Ōoka was admitted to practice as a lawyer in 1882. He began his career at the age of 26 defending the accused in the Chichibu Incident, a peasant revolt which took place near Tokyo in 1884. By the time he took up Oume's case, he was already well-known for defending »hopeless« cases, and the newspapers provided detailed reports of his defense of Oume.³² The lawyer's profession is a good example of the opportunities that the new political order of Meiji Japan created for the self-made man of the era. Open trials provided lawyers with a platform for fame, and their careers were founded on the reputations they gained from their courtroom performances; they became courtroom celebrities. Ōoka appears to have become even more popular by acting against the state in political cases. He later became a successful politician—a clear illustration of the wide range of new career opportunities that emerged in the Meiji years and how they were connected to legal affairs.

Ōoka surprised the spectators and the judges at Oume's trial by stating that Oume was mentally confused and had been temporarily insane at

31 On Western lawyers see Duff 2007: 40–41.

32 *Jiji Shinpō*, 14 July 1887 (cited in Meiji Nyūsu Jiten Hensan Inkaï 1984: 652).

the time of the crime. In Japan, this form of plea was rather new. By way of evidence, Ōoka contended that Oume's mother had also been mad. Oume had attacked Minekichi in a state of confusion, he insisted, and her crime was thus manslaughter rather than deliberate murder (Satō 1887: 26–28). He thereby wanted to save her from the death penalty.

The media and the general public were the third and final counterbalance to the power of the judge. Newspaper coverage of trials was a new phenomenon, as daily newspapers only began to appear in the early 1870s (Okitsu 1997). Journalists started to cover trials in the 1880s, and crime stories were soon an important part of the news. This is clear in any perusal of *Yomiuri* and *Asahi*—two of the most popular Meiji period newspapers, both still published today: The phrase »public trial« [*kōhan*] was first used around 1880. In the five years after 1883—the era of Oume's trial—*Yomiuri* printed over 1,000 articles on public trials. *Asahi's* figures are even more impressive. In the same period it published over 2,200 articles referring to »public trials,« a frequency of more than one article per day. However, it was only later that the phenomenon peaked. In the five-year period from 1888 to 1892 *Asahi* published over 4,000 articles in this area. These articles subsequently appeared less frequently, a trend which is all the more remarkable in view of newspapers' growing size. While in the 1870s one page was the standard, around the time of Oume's crime three pages were average, and by the end of the Meiji period ten or more pages were not unusual. One might therefore expect the growing size of newspapers to have entailed a wider coverage of trials. Since this was not the case, it is reasonable to conclude that interest in this new form of justice peaked in the first decade following the introduction of public trials.

All over Japan, readers could learn of developments in the trial on the following day. It was through this media that Oume became a well-known figure. Her crime was omnipresent, not only in the newspapers but also in book form. Courtroom narratives and criminal biographies both surged in popularity at this time. The *Notes from the public trial of Hanai Ume* were clearly written for a wide readership. Their Chinese characters were accompanied by a Japanese syllable script to make them eas-

ier for unskilled readers to read. The popularity of court reports published in book form peaked in Japan in the final years of the 19th century. To be sure, courtroom narratives already existed in the Edo period—based on a Chinese tradition—but »these stories were written in a climate of authoritarian legal thought, and they generally glorified the state’s authority as it was embodied in the wise judges at these stories’ center«; the heroes of these narratives were the judges who were portrayed as »unfailingly clear-sighted men« (Silver, 2008: 16). Something had changed in the courtroom reports of the early Meiji period: While the judges still played a prominent role, they were no longer the sole source of law, justice, and morals they had been in the Edo period. The courtroom reports, which claimed to be as realistic as possible, documented a new fascination with establishing the truth through a time-consuming act of gathering evidence. They included official documents, records of criminal testimony, the wording of the proceedings, and/or medical reports. The general public thus obtained a »scientific« view of the trials of the mid-Meiji years, an entirely new development. And many contemporaries saw a symbol of the new era in the scientification of legal practice.

Moreover, the accused was now granted much more attention than in the courtroom narratives of the Edo period. This leads us to the question of how Oume was portrayed in the press. Usually, she was described as an elegant lady. The newspaper *Chōya*, writing about her appearance at the hearing following the preliminary investigation on 12 November 1887, stated:

Oume is today wearing two decorative pairs of medium-size kimono undergarments of raw silk twill fabric in a fine diamond pattern, above this three black kimonos decorated with a family crest, an *obi* of fine woven Chinese satin damask, a long under-shirt of crimson crepe and a white silk crepe *obi*. Her hair is untied. (Meiji Nyūsu Jiten Hensan Iinkai 1984: 653)

It was not unusual for Geishas to dress for work in such a way that their crimson under-kimono became visible, but it seems noteworthy that a woman presented herself like this before a court. On the one hand,

Oume was apparently not afraid to use her charms. On the other hand, the authorities obviously did not disapprove of such behavior, as she was able to obtain the elegant and expensive clothing she needed during her stay in jail. The newspaper in turn contributed to the voyeurism by giving detailed and sexualized description of Oume. Concerning her appearance before court, woodblock prints backed the newspaper article (Satō 1887). In the *Tōkyō eiri* newspaper, for example, Oume is presented as an elegant geisha. In this print she has center-stage rather than the judges, the prosecutor or the new legal system as represented by the court building. Through her beauty, she seems to challenge the dull, technocratic appearance of the other protagonists at the trial. This effect is heightened by Oume's outsized and framed image. Set against the courtroom background, her beauty appears untouched by the legal proceedings; she seems to be standing outside or above the legal order.³³ The newspapers enhanced these effects by focusing on every aspect of the trial and even inquiring into her everyday life, which was discussed in detail in the media as well as in the courtroom. The public thirsted for biographies of criminals in the mid-Meiji period. Supposedly they hoped to find some explanation for the violent acts in the lives of delinquents. This, together with the long interrogation of the accused by the judge, may be interpreted as an attempt to establish something along the lines of a social context or a social reality within which the crime was committed. In other words, an attempt to understand crime as a product of social circumstances. Summing up, her performance seemed to have helped Oume gain public attention and fame. Occupying center-stage in the media in turn proved useful as regards her sentence—as we will see in the following.

The Aftermath

The judges refused to follow the arguments of Oume's lawyers and found her guilty of deliberate murder after a three-day trial. Under Article 292 of the Criminal Code, this crime was punishable by death pen-

33 *Tōkyō eiri shinbun*, 19 November 1887.

alty. However, due to her life story and her confession, the judges acknowledged extenuating circumstances, possible under Articles 89 and 90. They sentenced her to life imprisonment rather than imposing a death sentence (Satō 1887: 41–42). Her escape from capital punishment came rather unexpectedly and—if we are to believe the comments—Oume seems to have been pleased with the outcome. Overall, it seems as Oume benefited from her performance before the judges as well as from her popularity due to the media coverage of the crime. But the verdict also fits with the overall trend in jurisprudence, as the administration of capital punishment—especially for women—saw a general decrease in those years (Schmidt 2002: 25–26).

The verdict also implied the possibility that the criminal was amenable to reform. The mid-Meiji court differed fundamentally from its Edo-period predecessor in this respect. Before 1868, a crime jeopardized public order, which was restored by determining guilt and inflicting severe punishment. In the fast-changing world of Meiji Japan, this was no longer possible. The social order was now re-established by comprehending the crime and its context, of which the court, the criminal, and the public at large (at least ideally) were to reach a common understanding. The point was not only to understand Oume's motives for the murder, but to comprehend her state of mind in committing the deed.

The interest on the part of the authorities and the general public in Oume's character, life-story, and motives continued even after the court's ruling. Oume spent only 15 years in prison, in 1903 she was pardoned and released, at which time she was 40 years old. A well-timed biography appeared at her release from prison, and the newspapers once again began to cover every aspect of her life. Exploiting her widespread fame, she opened a restaurant close to the scene of the crime. Two years later she even played herself in a drama about the crime and toured all over Japan. She later resumed work as a geisha before dying of pneumonia in 1916 at the age of 53. Several songs, novels, and even *kabuki* plays still told of her crime even then, and more was to come: Between 1922 and 1935 four films about her life appeared, the last of which bore the name *A woman of the Meiji era (Meiji ichidai onna)*. The novelist Kawaguchi

Matsutarō used this same title for his book on Oume, with a preface by the famous author Tanizaki Jun'ichirō. In the second decade of the *Shōwa* period (1926–1989) *A woman of the Meiji era* also became a famous song. With the passing of the old world of Meiji Japan, Oume increasingly came to symbolize the women of her generation; a fallen but bold figure who—through the various contradictory aspects of her character—represented the rapidly changing social and gender relationships of her era.

What are the reasons for her ongoing popularity and her post-prison career and »success« as a symbol of her age? The presentation of her life-story as a narrative of repentance and rehabilitation is surely an important element. During her imprisonment, the media's discussion of whether Oume was in fact mentally ill was by no means flattering to her (Marran 2007: 82). While this discussion did ensure continuing public interest, she was often found to be a crazy woman who was beyond rehabilitation and of no use to society. Influenced by the new scientific discourse on mental illness, the general public was fascinated by questions of repentance, rehabilitation, and criminals' usefulness to society. It is thus hardly surprising that, with the help of a journalist, Oume produced a book about her life in which she promised to tell her whole story all over again, including her years in prison, and thus sought to improve her public image. She presented herself as someone who had gone through the prison system and thereby once more become a useful part of society (Asai 1903: 1–2). In retrospect, it is the multifaceted and contradictory story of the difficulties which she faced, the narrative of mental and social reform, and her success as a businesswoman which make her life appear typical of the fast-changing society of Meiji Japan.

Conclusion

An opening question for this article was the extent to which the legal system of late 19th-century Japan underwent westernization—in theory and in practice. By the early 1880s, the Japanese criminal code was a faithful copy of French legislation. Given the fact that there weren't many alternatives to reform of the legal order, this is hardly surprising.

But Oume's trial proves that even Japanese legal practice was westernized *in extenso*. In the mid-Meiji years, the courtroom scene and proceedings so closely resembled the French model that a European visitor versed in French legal culture who attended Oume's trial might have readily identified the key protagonists. If this visitor had also been capable of understanding Japanese, even the proceeding and the argumentation of the verdict would have been familiar to him. It has been claimed that the »code of criminal procedure [...] could not be adjusted to Japanese circumstances and thus quickly became a paper tiger« (Schmidt 2002: 25). As far as Oume's trial is concerned, this can not be confirmed. Japan's case illustrates, first and foremost, the scope of the globalization of legal culture in the 19th century within a specific context. These findings complement existing research focusing on law in text and it contradicts research claiming the ongoing cultural particularity of Japanese law.

In fact, Japanese idiosyncrasies only become apparent through an examination of public reaction and the debate surrounding the crime. Courtroom culture changed dramatically in the mid-Meiji period, when public interest in open trials peaked. Oume's public trial thus shows that around 1890, a specifically Japanese legal culture emerged through a combination of legal reforms and public participation. But the key point is that these idiosyncrasies cannot be explained in terms of a »traditional,« »unchanging« Japanese legal culture and in no way represented a wish to return to legal practices of the Edo period or to traditional ethical norms. They were instead a product of their era and thus historically contingent. In summary, this convergence of fast-changing practices and omnipresent public interest in trials marks a short and specific moment in modern Japanese history.

In any case, it is misleading to examine the affair exclusively through the prism of »westernization.« First of all, there were huge differences between Western legal systems in the 19th century (for instance, between the French inquisitorial system and the American adversarial system) that persist right up to the present day. The term »westernization« is therefore overly general and elides the broad variation in Western legal practice around 1900. Secondly, a focus on westernization obscures our view of

the dynamics of change and the particularity of Meiji Japan, because it describes an endpoint. In this sense, the use of the term »westernization« is ahistorical. The revolution of 1868 entailed new forms of social opportunity, mobility, and behavior. The abolition of the feudal order also gave rise to fear and uncertainty. Some of this is evident in the judge's repeated questioning of Oume as regards her origins and her social status—noble, samurai or commoner—and in the difficulties she experienced in providing correct answers to these questions (Satō 1887). Other ambiguities also played a role in the trial, particularly moral issues linked to the gender question. Oume worked as a geisha and killed to regain control of her business. She thus acted out a gender role far removed from the officially sanctioned model of a good wife and a wise mother—a new ideology of the early Meiji period, which picked up older Confucian gender ideals. It is surely no coincidence that a series of killings featuring female perpetrators, and geishas in particular, attracted public interest in the mid-Meiji period. The phenomenon became so popular that the contemporary press even coined an expression: *dokufu*—femme fatale, or literally an evil woman or »poison woman.«³⁴

The open trials of the 1880s are best understood as rituals seeking to address and finally to resolve social crises triggered by the Meiji Revolution. They were social dramas which unfolded in the new public sphere of the courtroom.³⁵ Yet this space was never under the state's absolute control, and trials were not engines of repression. In fact, in many ways the courtroom represented an arena in which the state and society were able to negotiate with one another. Oume's case demonstrates above all the way in which police, judges, prosecutors, and lawyers interacted with experts, the media, and spectators in an open trial. Surprisingly, the latter (who might be termed the urban masses) were not passive and in fact played an active and participatory role, sometimes even criticizing proceedings. It is interesting to note that some similar development have been described for Western societies during the interwar years—espe-

34 For a broader discussion of the *dokufu* see Silver 2008: 17.

35 On social drama see Turner 1995: 108–127.

cially for Germany (Hett 2004; Siemens 2007). In the future it could be fruitful to compare these findings in global perspective, to ask about the degree of mediatization of court trials in different societies, and the starting point of such developments.

In Japan many benefited from the legal reforms and from open trials. The media, the crowd, the lawyers and the prosecutors as a new class of legal professionals, and even the accused exploited the trial in their own, very different ways. It would be overly simple to see Oume as a mere victim of the proceedings. Instead, she used public interest in the trial for her own purposes. By telling her story and explaining her motives, she often met with something akin to public sympathy for her fate. To be sure, this public curiosity also had negative consequences, as illustrated by the continuing discussions about her mental stability. Ultimately, her trial provides us with a picture of the complex and contradictory nature of urban society in the mid-Meiji years.

Through Oume's case we glimpse the beginnings of a notion of public space in Meiji Japan. The Meiji courtroom may scarcely fit with concepts of a public sphere or civil society as defined by Jürgen Habermas.³⁶ In reference to such classical notions of a public sphere, many scholars have noted the absence of this (Eurocentric) idea in Meiji Japan. Certainly, following the high-point of the »Freedom and People's Right Movement« in the mid-1880s, it may be hard to find a liberal, rational, bourgeois public sphere along the lines of the 18th-century Western European salon in late 19th-century imperial Japan. But the courtroom does reveal a different kind of public sphere, resulting from public interest in criminals and sometimes even sympathy for them. This was a public sphere created also by the mass consumption of new media such as newspapers or *nishikie shinbun*. Therefore, in connection with public trials, the emergence of a new mass consumer culture—usually dated to the Taishō years (1912–1926) in Japanese historiography—can be traced back to the last decades of the 19th century.

36 On the notion of the public sphere, see Habermas: 1989.

This public sphere emerged amid official attempts to strengthen state authority and to establish a nation-state in the period leading up to the promulgation of the constitution. The emergence of this form of public sphere in late 19th-century Asia has not attracted much scholarly attention. But the case of Oume shows that it is worth thinking about changing legal cultures and practices during the Meiji era. On the one hand, a cultural history of law can make an important contribution to research on the social history of Meiji Japan—as the question of a public sphere shows. In this context, it provides us with a more complex insight into the multifariousness of Japanese society in the decades around 1900. And it contradicts the thesis that in Japan »legal modernization preceded social change (Seizelet 1992: 72)«; rather both went hand in hand and had a reciprocal influence upon each other. Also, the idea that »in the Meiji period, criminal law developed as a bulwark against liberal movements« (Seizelet 1992: 77) seems too crude. On the other hand, the trial of Oume also provides a concrete historical setting for an examination of the globalization of legal culture in the 19th century. When one looks at Oume’s case, the legal system of Meiji Japan appears neither exotic nor alien. Her trial instead historicizes Japan’s experience of legal reform processes within global contexts around 1900. This deepens our understanding of processes of legal globalization in the late 19th century, but also complicates our notions of »westernization.«

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