

# Jury System and Democracy: A Reflection Based on Comparison Method

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## Abstract:

The jury system is one of the most concerned litigation systems in the world. The jury that symbolizes democracy is declining in the common law system. Likewise, the Chinese law circle holds different viewpoints on China's existing people's assessor system. The judicial effectiveness of the Anglo-American jury was analyzed, and the relationship between the Anglo-American jury system and judicial democracy was examined in this paper. Moreover, an insight into the existence or abolishment of the people's assessor system was offered based on its status quo. On this basis, some suggestions were given regarding realizing judicial democracy for China's existing judicial system without impairing judicial specialization.

**Keywords:** Jury system, jury, judicial democracy, people's assessor system

## I. Judicial Effectiveness of Jury System

From the history of legal systems, human beings' judicial activities have undergone a journey from non-professional to professional. The judicial model was created to meet the needs of modern society, where professionals are trained to act as judges and judges by the law. However, there is a notable exception in common law countries, where the jury system is a non-professional trial attended by laypeople. Many researchers have voiced their different opinions on the judicial effectiveness of this exception.

### (I) Pros

About the judicial effectiveness of the jury system, the pros highlight the following unique values of the jury system: preventing judicial bribery, diluting and transferring judicial pressure, and guaranteeing fair and independent trials.

First, it is more difficult to bribe jurors who are called ad hoc than the permanent judicial officers. Even if a few members have been bribed, the unanimous verdict can minimize the influence of bribery on the trial outcome, thereby safeguarding trial fairness and effectively preventing judicial corruption.

Second, the jury can relieve the judge from the pressure arising from public opinions and the responsibility required for the judgment to some extent, thus protecting the judge from being attacked. "It relieves the judge from the responsibility of deciding the guilt or innocence of the defendant based solely on his own opinion," James Fitz-

james Stephen, a penologist, stated.<sup>1</sup>

Third, the jury guarantees the independence of the trial. Most importantly, the de facto jurisdiction is in the hands of 12 citizens convened ad hoc, making "the court more resistant to unlawful interference by other bodies and individuals."<sup>2</sup> Because jurors are "neither dependent on judicial authorities for their survival nor subject to political interference in pursuit of professional promotion."<sup>3</sup> This system design, independent of government intervention and public opinion, invisibly makes the trial more independent. Moreover, the supervisory role of the jury also plays an important part in guaranteeing judicial independence. Introducing ordinary people as jurors makes the whole procedure more open and transparent, which enhances judicial credibility, effectively alleviates external pressure on the judiciary, and promotes judicial independence.

In addition, a few scholars have pointed out that juries are more advantageous than judges in fact-finding. American jurist Thomas M. Cooley said, "The jury is better at judg-

<sup>1</sup> Wei Xiaona. Research on Reform of People's Assessor System, China University of Political Science and Law Press, Version 2022, page 125.

<sup>2</sup> Gao Yifei. The Voice of God: The Jury's Jurisprudence. China Democracy Legal System Publishing House. Version 2016, page 34.

<sup>3</sup> Gao Yifei. The Voice of God: The Jury's Jurisprudence. China Democracy Legal System Publishing House. Version 2016, page 33.

ing the motive of an act and weighing the probability of evidence than the individual judge.”<sup>4</sup> At the same time, the jurors are praised by judges for the role of their life experience and common sense, as well as the social values and concepts they represent in the verdict. According to U.S. Federal Judge William L. Dwyer, “the wisdom of 12 people are better than one,” “the jury brings fresh energy and common sense to the stream of justice,” “the jury brings not only the wisdom and intelligence of the group but also the value of the social community.”<sup>5</sup> The author of the book titled *In the Hands of the People* also concludes that the jury can be qualified to judge the facts and make a correct judgment.<sup>6</sup>

## (II) Cons

Many people are skeptical and negative about the jury system. Erwin Griswold, former U.S. Deputy Attorney General, questioned, “Why do people think that the 12 laymen randomly selected by various means from the street to the court will have a special ability to settle disputes between people?”<sup>7</sup> The jury system is criticized mainly because the jurors’ lack of professional legal knowledge and difficulty understanding complex evidence may cause poor quality and efficiency of trials.

Firstly, the jurors’ ability to find facts has long been questioned due to their lack of legal knowledge. “Juries are generally incapable of applying the court’s instructions, nor do they try to do so,” Professor Jerome David Frank argues.<sup>8</sup> The jurors may act at their will and be deceived or deluded by lawyers, as there is no sufficient legal basis. At the same time, the legal theorist Lysander Spooner argues, “If jurors themselves do not know that an act is illegal, there is no reason to expect the defendant to know that the act is criminal.”<sup>9</sup>

Secondly, the 21st century sees the emergence of more

4 Huai Xiaofeng. *Research on People’s Assessor System*. Guangming Daily Press. Version 2005, page 122.

5 William L. Dwyer. *In the Hands of the People*. Translated by Wang Kai. Huaxia Publishing House. Version 2015, page 188.

6 William L. Dwyer. *In the Hands of the People*. Translated by Wang Kai. Huaxia Publishing House. Version 2015, page 161.

7 William L. Dwyer. *In the Hands of the People*. Translated by Wang Kai. Huaxia Publishing House. Version 2015, page 160.

8 William L. Dwyer. *In the Hands of the People*. Translated by Wang Kai. Huaxia Publishing House. Version 2015, page 161.

9 Yi Yanyou. *Jury Trial System and the Adversary System*. Peking University Press. Version 2022, page 293.

complex cases involving fraud, patents, and infringement. “Scientific evidence can make the evidence in a murder case complicated and difficult to understand,”<sup>10</sup> “An increasing number of cases involve complex economic and specialized technical issues, and even experienced judges find it difficult to cope with.”<sup>11</sup> As a result, the ability of jurors to judge and understand complex cases is also being questioned. The Lord Chancellor Orde concluded in his study that judges should be given the right to conduct trials alone in extremely complex cases of fraud.<sup>12</sup> The White Paper “Access to Justice” issued by the British government also recommends that the trial be conducted by the judges alone.<sup>12</sup>

Thirdly, in the era of litigation explosion, the jury has significantly affected the efficiency of litigation. The whole process, from the call of a jury and the selection of jurors by peremptory challenge and challenge for cause to the court trial and review and the conclusion of a unanimous verdict or the dismissal of the jury due to a hung jury, will last for days or weeks, which is time-consuming and greatly reduces the effectiveness of litigation compared with a trial by judge.

## (III) Limitations of the jury: Analysis and reflection on judicial verdicts

The author believes the jury system is important in preventing judicial bribery and guaranteeing judicial independence. However, “the jury is not a truth-finding mechanism.”<sup>13</sup> And jurors are not as qualified as judges to act as a fact finder.

As revealed by the Chicago Law School project, “About 79 defendants in the study who may have been wrongly given guilty verdicts”, and 604 of 1083 defendants who were acquitted by the jury were found guilty by the judge,” “More than 14% of trial by jury were seen as erroneous verdicts by judges due to their misunderstanding of the evidence or extra sympathy for the defendant.” A study conducted in London and Birmingham also showed that “less than a third of acquittals are considered to be fair and reliable” and that “a significant proportion of ver-

10 Gao Yifei. *The Voice of God: The Jury’s Jurisprudence*. China Democracy Legal System Publishing House. Version 2016, page 50.

11 Huai Xiaofeng. *Research on People’s Assessor System*. Guangming Daily Press. Version 2005, page 125.

12 Li Meirong. *Study on the English Criminal System*. Intellectual Property Publishing House. Version 2022, pages 129-130.

13 Yi Yanyou. *Jury Trial System and the Adversary System*. Peking University Press. Version 2022, page 297.

dicts may be given based on conjecture and intuition.”<sup>14</sup> It is clear that the jury tends to make more acquittals than the judge, and judicial officials do not recognize a considerable number of these acquittals. Defenders of the jury system may argue that “both sides can reach an agreement for 75% of the cases.” However, “604 of 1083 defendants acquitted by the jury were found guilty by the judge”<sup>14</sup>. More than half of the acquittals are doubted by judges, which is concerning. This also reflects that jurors are seriously incompetent in fact-finding compared to judges due to a lack of legal expertise and training. Some people are too optimistic about the idea that jurors are more competent than judicial professionals.

The author also believes that the jurors are incompetent in dealing with complex legal issues. Many legal terms and concepts may be involved in complex legal issues. Lawyers and judges tend to use these legal terms, and the jurors are not allowed to take notes, resulting in a shallow understanding of cases by the jurors, which is only an initial impression. As stated by Judge Sandra Day O’Connor, “The jurors just listen to the testimony passively, have no idea of the legal issues in the case, and are not allowed to take notes or participate in the trial in any way, let alone the almost incomprehensible set of jury instructions that the judge finally read for them.”<sup>15</sup> Since the jury members have no legal knowledge, they cannot develop a deep understanding of cases and legal issues, and even their knowledge of the case may not be much greater than before the trial began<sup>15</sup>.

## **II. Jury System and Judicial Democracy**

### **(I) Pros: The jury system is the embodiment of judicial democracy**

“The involvement of ordinary people in the judicial adjudication helps strengthen the democratic factors of the judicial system.”<sup>16</sup> The process by which the jury finally reaches a unanimous (majority) verdict through collective review and discussion is called by scholars “the model of group judgment,” which is the embodiment of deliberative democracy.

In today’s society, where the public’s enthusiasm for the

election system has faded, the jury system, which is also the embodiment of direct democracy, has become the best way for people to participate in democratic life. Jeffrey Abramson, a jurisprudent, holds that “Consultation is one of the lost virtues of modern democracy, and only the jury system is left to routinely bring common citizens together for face-to-face debate.”<sup>17</sup> Twelve jurors with different opinions on a case enter the jury room and finally reach a unanimous verdict after settling differences through repeated attempts, exchanges, and negotiations. This process itself is a direct manifestation of judicial democracy. Moreover, the experiment shows that the successful deliberation process would boost citizens’ confidence in participating in democratic activities.

### **(II) Cons: The jury system has nothing to do with judicial democracy**

A few scholars have questioned the view that regards the jury system as a judicial democracy and have offered their unique insights. Professor Liu Lianjun argues that judicial democracy is a “false proposition and false concept of logical contradiction.” He points out that the participation of juries, i.e., ordinary people with no professional legal training, in judicial adjudication does not mean democratic justice has been realized. He argues that judicial democracy is not a rigorous term and that “the jury is not an embodiment and symbol of the so-called judicial democracy” from multiple perspectives, including the decline of the Western jury system, the inconsistency between unanimous verdict and modern democratic centralism, and the inapplicability of the jury in appeals.<sup>18</sup>

### **(III) Democratic dilemmas in the Anglo-American jury system: Lack of representativeness and stability**

Although the Anglo-American jury system has been theoretically endowed with the idea of democracy, judicial democracy is not well practiced for various reasons. Judicial democracy must, first and foremost, be considered a democracy, although it has not been scientifically and precisely defined. The ability to furthest reflect the will of all the people is the basic characteristic of democracy. However, the following two defects of the Anglo-American jury system make it impossible to meet this basic feature.

First, some groups are significantly underrepresented in the jury pools. According to U.S. government statistics,

<sup>17</sup> John Gastil. *The Jury and Democracy: How Jury Deliberation Promotes Civic Engagement and Political Participation*. Translated by Yu Suqing and Shen Jieying. Law Press. Version 2016, page 19.

<sup>18</sup> Liu Lianjun. *The Mystery of Rule of Law* (Excerpts) <https://mp.weixin.qq.com/s/XOGZ6wiipjGsfUQUmCkRyQ>

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<sup>14</sup> Li Meirong. *Study on the English Criminal System*. Intellectual Property Publishing House. Version 2022, page 113.

<sup>15</sup> William L. Dwyer. *In the Hands of the People*. Translated by Wang Kai. Huaxia Publishing House. Version 2015, page 209.

<sup>16</sup> Huai Xiaofeng. *Research on People’s Assessor System*. Guangming Daily Press. Version 2005, page 149.

about 1.5 million people are elected to jury panels yearly, and only 29% of American adults have ever served on a jury.<sup>19</sup> Minority democracy is one of the reasons why the Athenian democracy was highly controversial, and only less than 10% of adult male citizens were granted civic rights. The same issue occurs in the jury system nowadays, which seems to be a jury for all but only for a small portion. This makes it impossible for juries to accurately solicit the broad opinions of the public, so this minority democracy cannot be called democracy.

Second, the Anglo-American jury system is less stable. A mock jury research led by McCabe and Purvis found that “23% of cases that were voted for guilty by real juries were found not guilty or pending by mock juries, and that 38% of cases that were voted for acquittals by real juries were found not guilty by mock jurors.”<sup>20</sup> It can be seen that juries consisting of different members may give different verdicts, and the instability and inconsistency prove that the jurors cannot fully represent the public opinions and embody judicial democracy, even with unanimous verdicts. To cite the O.J. Simpson Murder Case as an example, 83% of Americans believed that Simpson was guilty, while the 12-person jury reached a unanimous verdict of acquittals. The jury’s verdict did not represent the opinions of most Americans. It can be seen that the selection of jurors of different cultures, colors, and beliefs on the jury can easily lead to very different trial results. This case also implies that the 12-person jury system cannot represent the accurate opinions of people from different backgrounds, let alone reflect the judicial democracy.

### **III. People’s assessor system: The Controversy over Professionalism and Democracy**

The people’s assessor system is a judicial system with Chinese characteristics. It was initially developed from the jury system established by the Communist Party of China during the Second Civil Revolution. It involved the common people in judicial adjudication to realize people’s democracy. It has similar purposes to the jury system in the Anglo-American law system, although the two have significant differences in the actual operation. The law community holds different views on the people’s assessor system. Some scholars argue that the People’s Assessor system is not a professional judicial system and should be

abolished. In contrast, others hold that the People’s Assessor system is a good embodiment of China’s people’s democratic system and should be carried on. In addition, some also assert that the jury system elements in the people’s assessor system can be preserved after reform and innovation.

#### **(I) The theory of abolishment**

In the face of increasingly serious issues of the people’s assessor system that are difficult to solve through reform, many scholars have given up hope in the people’s assessor system and believe that it should be abolished. Tu Xin, a judge of the People’s Court of Sichuan Province, believes that reforming and improving the people’s assessor system does not help the situation and should be abolished.<sup>21</sup> Professor Yi Yanyou considers the people’s assessor system to lack substance and not play a critical role. He also states that the situation will not be improved despite the efforts made for the people’s assessor system.<sup>22</sup>

#### **(II) The theory of reinforcement**

Some scholars hold a positive attitude towards the people’s assessor system. Professors Huai Xiaofeng and Sun Benpeng assert that the people’s assessor system is an important and necessary way to pursue and realize judicial democracy and that the people’s assessor system can be improved by overcoming its shortcomings and solving existing issues to make it function well. Moreover, they believe that the people’s assessor system and its supporting systems can be improved by legislation, standard selection and appointment system, and establishing a juror training system to achieve its due value goals.<sup>23</sup>

#### **(III) The theory of reform**

Some scholars advocate reform and innovation to fill the people’s assessment system’s loopholes to preserve its spirit and make it more proper. Two mainstream opinions on the reform of China’s people’s assessor system are provided here: the people’s jury panel system launched by the Henan High People’s Court in 2010 and the introduction of the Anglo-American jury model as asserted by several scholars.

Professor Gao Yifei supports the reform of the people’s assessor system and agrees with the reform measures em-

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<sup>19</sup> Gao Yifei. *The Voice of God: The Jury’s Jurisprudence*. China Democracy Legal System Publishing House. Version 2016, page 48.

<sup>20</sup> Li Meirong. *Study on the English Criminal System*. Intellectual Property Publishing House. Version 2022, page 114.

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<sup>21</sup> Tu Xin. **It’s time to abolish the people’s assessor system.** <https://mp.weixin.qq.com/s/ncDBEI05cjGRGYXvP41RFQ>

<sup>22</sup> Yi Yanyou. **The trial by jury is the best way to embody China’s democracy (an exclusive interview)** <https://mp.weixin.qq.com/s/4z5tLWrDnttpzvy7mZ1sqg>

<sup>23</sup> Huai Xiaofeng. *Research on People’s Assessor System*. Guangming Daily Press. Version 2005, page 285.



ployed by Henan's court system. He suggests establishing the people's jury or trial by combining judicial publicity and the collection of opinions. The people's jury acts as a legal constraint to a certain extent by making useful suggestions for the case, and the collegiate panel may decide whether to accept such suggestions. This way, the collegiate panel is granted power over the jury while restraining the judge.<sup>24</sup>

The scholar Zhang Zhiwei claims that the people's assessor system is "not consistent with the future judicial reform" and "does not conform to the principle of exercising judicial power independently according to law. He thus believes that it is "not a real jury system." He envisages that the jury, but not the judicial committee, is fully responsible for fact-finding. In contrast, the judicial committee can overrule a jury's verdicts of guilty according to law and verdicts of acquittal by following a strict procedure. His conception is affected by the Anglo-American jury.<sup>25</sup> Furthermore, Professor Yi Yanyou also agrees to take reform actions by referencing the Anglo-American jury.<sup>26</sup>

#### **(IV) Limitation of people's assessor system and necessity of reform**

The author holds that the people's assessor system does not function well and should be abolished. The reasons are as follows:

First, the accountability mechanism of the people's assessor system is difficult to execute. A new problem emerges if the public is entitled to the same judicial power as the judges and forms a collegiate panel for trial: Is it necessary to hold people's assessors accountable in subjectively misjudged cases? If the answer is yes, then how do we design the accountability mechanism for people's assessors? No clear solutions are proposed in existing relevant laws in China. Article 27 of the People's Assessors Law stipulates the punishment for people's assessors as follows: "the people's assessors who refuse to attend the trial and affect the trial progress without justified reasons" or "result in wrong verdicts or other serious consequences due to violation of laws and regulations related to the trial, engagement in illegalities for personal gains" can be "punished by notice, announcement or other measures."

<sup>24</sup> Gao Yifei. *The Voice of God: The Jury's Jurisprudence*. China Democracy Legal System Publishing House. Version 2016, pages 266-270.

<sup>25</sup> Zhang Zhiwei. *The Jury System: Value and Construction*. Law Press. Version 2017, page

<sup>26</sup> Yi Yanyou. **The trial by jury is the best way to embody China's democracy (an exclusive interview)** <https://mp.weixin.qq.com/s/4z5tLWrdnttpzvy7mZ1sqg>

No punishment for misjudged cases caused by subjective errors is regulated. In the book titled *Whose Assessment?* In a survey on People's Assessment of China, the presiding judge, Mr. Li, of the second civil court of F County People's Court, proposed that "the punishment for people's assessors must be same as the judges" when making his comments on what needs to be improved for the people's assessor system. "As a part of the collegiate panel, people's assessors should also be held accountable in case of misjudged cases."<sup>27</sup> However, on the one hand, if such an accountability system was established, there may be a serious blow to the public's confidence in participating in judicial activities, and the number of people's assessors may further reduce because they are afraid of being held accountable in case of misjudged cases. On the other hand, if no such accountability system is established, it is equivalent to plotting at their wrong verdicts caused by subjective malice, which seems that the people's assessors are inferior to the judges, causing an adverse effect.

Second, the situation in which people's assessors cannot play their due role cannot be changed. As regulated in Article 14 of the People's Assessors Law of the People's Republic of China (from now on referred to as People's Assessors Law), "People's assessors and judges form a three-person collegiate panel for trial of cases, with the judge serving as the presiding judge, or a seven-person collegiate panel consisting of three judges and four people's assessors." The people's assessor system was envisaged as follows: judges and assessors supervise each other to avoid the tyranny of the majority and make full use of the judges' professional knowledge while realizing judicial supervision in combination with the public's common sense of life. However, the people's assessor system has an enormous issue in judicial practices—the people's assessors fail to use their power and tend to keep silent, making them more like a standby than a judicator.

This situation is attributable to three reasons. First, China's feudalism in history and hierarchy for thousands of years led to the current social situation in which "people fear the officials." As a result, people have developed a reverence for governments. This is also why East Asian people are more likely to accept the "judge by the superior." "People are blindly subject to monarchical power, clan power, and privileges."<sup>28</sup> People's assessors tend to remain silent when they disagree with the judge due to

<sup>27</sup> Liao Yongan. *Whose Assessment? Survey on People's Assessment of China*. China Renmin University Press. Version 2018, page 86.

<sup>28</sup> Huai Xiaofeng. *Research on People's Assessor System*. Guangming Daily Press. Version 2005, page 27.

their respect for and trust in the judge, impairing the function of the jury system. Second, people's assessors do not know what to do in the professional judicial adjudication process because they lack specialized legal knowledge, making it easier to be influenced by judges with specialized legal knowledge. Third, people's assessors have their work, and few can spare time to attend the court trial, let alone the file review before. As a result, they have no sufficient knowledge of the case. Even if they want to question the defendant in the trial, they do not know how and what to ask because they lack legal knowledge and trial skills. The three reasons mentioned above make people's assessors less capable of finding facts than jurors in common law countries. Since the above three issues have not been solved, the situation has become increasingly common, and people's assessors only play a negligible role in the practice.

Unlike the Anglo-American jury members who are allowed to neglect the judge's instruction and have the power to abolish the law, judges in the collegiate panel restrain people's assessors and are limited by scarce legal knowledge. In this case, the people's assessor system cannot function as conceived. "After all, knowing how to supervise is the fundamental to play the supervisory role."<sup>29</sup> The people's assessor system fails to give play to the advantages of judicial supervision and implicitly connives at the potential judicial corruption.

Third, the verdicts by the people's assessors are not final. Professor Gao Yifei asserts that "the authority of the jury needs to be guaranteed by the one-time trial of facts."<sup>30</sup> However, people's assessors are not only subject to judges but also to the judicial committee. As provided in Article 23 of the People's Assessors Law, "if the collegiate panel members disagree significantly, the people's assessors or the judges may ask the collegiate panel to submit the case to the chief judge who will decide whether the case needs to be discussed by the judicial committee." At the same time, as stipulated in Article 115 of Interpretation of the Supreme People's Court on Several Issues Concerning the Enforcement of the Criminal Procedure Law of the People's Republic of China, "the collegiate panel shall execute the decisions made by the judicial committee. Any different views of the collegiate panel can be submitted to the judicial committee through the chief judge for reexamination." The above two provisions demonstrate

that the judicial committee has the responsibility to guide and supervise the collegiate panel, that the court's final jurisdiction rests in the judicial committee's hands, and that the verdicts by the people's assessors are not final. In the common law system, the jury's verdicts are holy and inviolable. The trial of fact is only conducted once unless the procedure is illegal. It cannot be corrected no matter what verdicts the jury reached. Although the safeguard against the jury's verdicts in the common law system is not conducive to access to justice, the authority of the jury's verdicts is guaranteed. On the contrary, the final jurisdiction still rests in the hands of the judicial committee in China, making the jurisdiction of people's assessors, which was originally a mere formality, nonsense.

Fourth, the composition of the people's assessors remains unchanged. In interviews, many judges expressed their expectations that people's assessors are better to have some legal knowledge, which is also a response to the objectives of "building a specialized trial team" and "accelerating the specialization of teams in people's courts." Therefore, people's courts tend to invite people's assessors with experience in practice. Although this has maximized the trial efficiency, the composition of the people's assessors remains unchanged, making it difficult to mobilize the people's engagement and realize judicial democracy.

#### IV. Conclusion: How can democracy be embodied in judicial systems?

Nowadays, China's judicial systems are experiencing reforms in judicial specialization. In this context, how do we embody judicial democracy in judicial systems? Many different views have arisen from the law community regarding the relationship between "professionalization" and "specialization." Some people believe the two are in conflict, while others argue they can find a balance. In the author's opinion, they are not just opposite or unified with one another. To embody democracy in the court trial system, like the jury system, the judges need to transfer partial or all the power of fact adjudication to the public to realize judicial democracy. As a result, the judicial democratization and professionalization conflict. In this case, the two cannot be compatible with each other, and judicial specialization has also been severely impacted by judicial democracy. However, if the public is not granted the role of adjudicators, judicial democracy can coexist harmoniously and organically with judicial specialization.

Professors Jiang Huiling and Yang Yi stated, "it is important to limit judicial democracy to situations where it does not interfere with judicial professionalization."<sup>31</sup> In the

<sup>29</sup> Liao Yongan. Whose Assessment? Survey on People's Assessment of China. China Renmin University Press. Version 2018, page 108.

<sup>30</sup> Gao Yifei. The Voice of God: The Jury's Jurisprudence. China Democracy Legal System Publishing House. Version 2016, page 257.

<sup>31</sup> Jiang Huiling, Yang Yi. Taboos and Limits of Judicial Democracy. People's Court Daily. Version 6 <https://www.>

first situation mentioned above, the jury system is used to embody judicial democracy, which is a practice to realize judicial democracy by undermining judicial professionalization. Nevertheless, the Anglo-American jury system discussed above is still not a good representation of judicial democracy due to a lack of stability and representativeness and has no judicial efficacy in fact-finding. It not only fails to give full play to judicial democracy but also weakens judicial professionalization, resulting in difficulty in enhancing judicial efficacy. Therefore, this method is also not feasible.

As the People's Court Daily reported, "People's engagement in judicial adjudication is the highest level of judicial democracy, but by no means the only form of democracy."<sup>32</sup> Apart from embodying democracy through people's engagement in judicial adjudication, we can find other ways to integrate the justice system with democracy. In other words, we can introduce the mediation system as an important part of people's judicial systems. The author suggests establishing the people's mediator system where "people's assessors" are replaced with "people's mediators." In the moderation system, judicial democracy and specialization can coexist and complement each other.

In the mediation system, the mediator persuades the parties to reach an agreement, similar to the jury process. It is also a part of the consultative democracy. Secondly, mediation can also play the role of democratic supervision. In recent years, fake reconciliation, such as engagement in malpractices for personal gains, corruption, and bribery, has appeared in criminal reconciliation pilots. The involvement of people's mediators in criminal cases allows them to act as supervisors to prevent judicial corruption. Compared to people's assessors, people's mediators require little legal knowledge and can achieve better supervision effectiveness, thus enhancing judicial credibility.

### **(I) Why is mediation important for China today?**

The Chinese traditional culture emphasizes peace, and Confucianism emphasizes the importance of social harmony, laying historical and cultural foundations for implementing the mediation system. Similar to the people's assessor system, the reconciliation system has a long history. It was adopted in the "Ma Xiwu trial mode." For judiciary authorities, "a case that requires several weeks to settle by trial can be settled within half a day through me-

chinacourt.org/article/detail/2014/09/id/1448130.shtml

32 Ding Xiangshun, How to Balance Professionalization and Democratization—From the Perspective of the Reform of the People's Assessor System. People's Court Daily. [http://rmfyb.chinacourt.org/paper/html/2017-04/20/content\\_124623.htm?div=-1](http://rmfyb.chinacourt.org/paper/html/2017-04/20/content_124623.htm?div=-1)

diation."<sup>33</sup> The reconciliation system fundamentally plays a role in sharing the work burden and pressure from public opinion that judges face and promotes the implementation of the leniency system. For individuals, reconciliation means reduced or waived penalties and gives defendants of minor crimes a chance to correct their mistakes without leaving a stain on their records. Therefore, mediation is of great significance and value for both individuals and judiciary authorities.

### **(II) Why can the people act as mediators?**

Many judges said that people's assessors are more competent in mediation when giving their comments on people's assessors. First, people's assessors are generally served by a respected local man of good character. If they work as mediators, both sides may be more convinced. Second, people's assessors have more significant advantages than judges in the mediation process, and both sides may not tend to resist the mediation. Thus, people's assessors can achieve a better outcome than judicial officials. Moreover, "mediators (unlike arbitrators) do not make decisions or give judgment"<sup>34</sup> So, less legal knowledge is required. In the meantime, people's mediators are more empathetic and have rich life experiences, enabling them to better understand the parties and help them express their feelings. "When the emotional and financial needs of the parties are satisfied, the trial cost, pressure, and risks will be avoided accordingly."<sup>34</sup> By combining the empathy ability and life experience of people's mediators with the legal knowledge of professional judicial mediators, a better effect of reconciliation can be achieved.

Thus, it is unnecessary to sacrifice judicial specialization to integrate judicial democracy into the judicial system. We can establish the people's mediator system and expand the scope of its application from civil to simple criminal cases. With the help of professional judicial mediators, the great advantages of the people in mediation can be fully exploited, establishing a balance between judicial democracy and specialization.

33 William L. Dwyer. In the Hands of the People. Translated by Wang Kai. Huaxia Publishing House. Version 2015, page 225.

34 William L. Dwyer. In the Hands of the People. Translated by Wang Kai. Huaxia Publishing House. Version 2015, pages 225-226.