

Reflections on the Civil Jury System

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Abstract: As a typical transplantable civil litigation system in China, the civil jury system is virtually non-existent in the process of application, and there are such situations as "jury without trial" and "name without facts", which make it difficult for legislators to realize their original intention of functional value and instrumental value when they set up the jury system, together with the lack of procedural value of the system. In order to play a practical role as a judicial system. The author holds that, on the level of pure civil litigation mechanism, the jury system should be gradually weakened and eventually withdrawn from the historical stage, and judges or collegiate benches should exercise the judicial power of civil cases independently.

1. A comparative study of jury system

Whether the term "jury" is self-created or trafficked from Japan and whether the translation is accurate or not, it is an indisputable fact that the jury system as a judicial system is a "foreign product" from the West. In order to study what problems exist in a typical transplantable system and what fate it should follow, we must go back to the origin and re-study the jury system abroad.

1.1 Jury System in Anglo-American Law System Countries: Jury System

Although the cultural origin of jury system originated in ancient Rome and Greece, the jury system, as a rigorous judicial system, was first established in Britain and then fully developed in the United States. As far as form is concerned, the jury system in common law countries can be divided into two types: the grand jury and the small jury. The grand jury generally consists of 12 to 23 persons. Its main function and function is to "complain" criminal cases, so it is also called the prosecution jury. Compared with the grand jury, the small jury usually has only 12 "mini" teams (in civil cases). In the trial, the number of juries is generally 6-12, but it is not "mini" in terms of function - it can directly participate in the trial of the case and play a decisive role in the outcome of the case based on its "right to ascertain facts". Therefore, small juries are also called trial juries. In Anglo-American law system countries, the law does not stipulate and restrict the term of office of jury members. Generally, it is one-case selection. When a civil case with a large amount of litigation objects needs to be tried by jury, judges temporarily and randomly select jurors from the civil registration list to form a temporary trial organization. "The randomness of jury selection is described as the randomness of jury selection." The essence of jury system."

During the trial of a case, there is a clear division of powers between the jury and the judge, that is, the jury is responsible for identifying the facts of the disputed case, that is, the "factual trial"; the judge is responsible for applying substantive law or precedent and making a definite judgment on the basis of the facts of the case determined by the jury, that is, the "legal trial". The characteristics of jury litigation mode are evidently reflected in the evidence law system of the United States. At the beginning of the establishment of the jury system in Britain, it was first used in the trial of civil cases. Although in the civil case jury under the Clarington Ordinance at that time, jurors only played the role of witnesses, and did not participate in the judgment of disputed facts. On June 15, 1215, British nobles coerced King John to sign the Grand Charter of Freedom in Lanymede, which stipulated in Articles 18 and 19 that civil cases must be tried by jury. After the Pope issued a decree prohibiting clergy from participating in the trial in accordance with the spirit of the Great Charter, jurors were able to participate directly and uninterruptedly in the trial of civil cases. At this time, the civil cases to be tried by juries are first brought against the infringement of the law of wrongful acts,

and then gradually extended to the trial of general civil cases. As a constitutional system, the Constitution of the United States (the Seventh Amendment) stipulates the scope of application of the jury system: "In customary law litigation, the right to be tried by a jury should be protected if the amount of dispute exceeds twenty dollars." That is, in civil cases where the object of action exceeds \$20, the parties have the right to choose the jury for trial. But in fact, because the civil pretrial procedure in the United States has the function of promoting the reconciliation of the parties, 96% of the civil cases will be settled through the reconciliation between the parties in the pretrial procedure. Only 4% of the cases that can really go to the court procedure are left, and these cases are not all applicable to the jury system, so it is very important to apply the jury system to determine the facts of the cases in practice. Less.

1.2 Jury System in Continental Law Countries-Participation System

Unlike the jury system in common law countries, the civil law system adopts the system of participation that is, the jurors and professional judges jointly determine the facts, decide the application of law and exercise the judicial power of cases. Jurors are no different from professional judges in terms of trial duties. The system of participating in the trial is similar to the people's jury system in our country. The difference between them is that the jurors are usually experts with rich experience in a certain field, so they are different from the "civilian participation" in our country and belong to the category of "expert participation". Judges enjoy the same power and status as judges when hearing cases, and they do not appear as "companions" of judges. It is for this reason that some civil law countries call the judges "non-professional judges". For example, the Swedish Code of Procedure has stipulated the term "non-professional judge" in Chapter 4 of Chapter 1 of the Code of Procedure. In continental law countries, Germany and France also have the title of non-professional judge.

In terms of the scope of application, the provisions of various continental law countries are not the same, but a common feature is that the application of the participation system is mainly embodied in criminal cases, and rarely in civil cases. The trial system of civil cases in Germany and Italy is not applicable. France's participation system is relatively small in the field of civil litigation, only in labor disputes, commercial disputes, social security disputes, agricultural lending disputes. In Finland, although the system of participation is not applicable in the urban courts of first instance, 72 local courts require that the system of participation be adopted in principle when trying civil cases. Norway's application in civil cases is limited by the types of cases, generally only in cases of territorial disputes, real property rights disputes and maritime and commercial disputes. In Sweden, the application of the system of participation in civil cases is more narrow, which is limited to cases involving freedom of the press.

Through the introduction and comparison of jury system in common law system and trial system in continental law system, we can see that they are different in the form of establishment, the division of powers and the scope of application. In order to adapt to the judicial system and social tradition of the country, various countries have made flexible treatment in procedure design and specific application when setting up the system. Therefore, from this point of view, we can not simply say that the jury system is a regular and consensus system in the world.

2. The Development Course and Existing Problems of Jury System in China

As early as the late Qing Dynasty, Shen Jiaben, Wu Tingfang and others advocated the introduction of jury system, pointing out clearly in the compromise of the draft Criminal and Civil Procedure Law (1906) that "jurors should also be set up". The Nanjing Provisional Government put forward the idea of establishing jury system in the draft of official orders of the Central Judiciary; the Wuhan National Government also formulated the "Jury Rules for Jurors". The purpose is to establish a jury system, but for various reasons, it was not implemented until the 1930s and 1940s in the revolutionary base areas led by the Communist Party of China and other areas, the jury system was really used in our judicial trial. The 1950s is the golden age of the development of China's jury system. In 1954, the first Constitution of the People's Republic of China established the

constitutional status of the jury system. Article 75 of the Law stipulates that "the people's court shall implement the people's jury system in judging cases in accordance with the law." Later, laws and regulations such as the Organic Law of the People's Court of the People's Republic of China (1954), the Directive of the Ministry of Justice on the Quota, Term of Office and Method of Generation of People's Jurors (1956), the Notice of the Supreme People's Court on Electing People's Jurors by Universal Election at the Grass-roots Level (1963) made specific regulations on the scope of application, methods of production and term of office of the Ju Fixed. The jury system has been established as a judicial system in China.

During the Cultural Revolution, the people's jury system was abolished in the 1975 Constitution because of the serious damage to the legal system. In the restoration and reconstruction of the judicial system after the end of the Cultural Revolution, the people's jury system was restored. Article 41, paragraph 2, of the 1978 Constitution stipulates that "the people's courts shall apply the system of people's representative jury to try cases in accordance with the provisions of the law." For major counter-revolutionary and criminal cases, the masses should be mobilized to discuss and put forward suggestions for handling them." In the same year, the Supreme People's Court promulgated the Notice on the Ways to Produce the People's Representative for Jury in the People's Court, and the relevant laws and regulations thereafter stipulated the implementation of the people's juror system again. For various reasons, the 1982 Constitution once again abolished the provisions of the people's jury system. Since then, although the Constitution has been amended several times, it has never restored the constitutional status of the people's jury system. Therefore, the current system of people's jurors is only stipulated in the Organic Law of the People's Court and the three major procedural laws of our country. It does not have a constitutional status, is not a constitutional system, but only exists as a footnote of the power stipulated in the constitutional principles. On August 28, 2004, the Standing Committee of the Tenth National People's Congress adopted the Decision on Improving the System of People's Jurors, which was put into effect on May 1, 2005. In order to implement the Decision correctly, the Supreme People's Court and the Ministry of Justice jointly formulated and promulgated the Opinions on the Implementation of the Selection, Training and Assessment of People's Jurors on December 16, 2004. The jury system ushered in again. A development opportunity. On November 23, 2009, in order to guarantee and regulate the participation of people's jurors in judicial activities, the Supreme People's Court formulated the Provisions on Several Questions Concerning People's Jurors' Participation in Judicial Activities (Interpretation No. 2, 2010), which came into effect on January 14, 2010. The Provisions, combined with judicial practice, partially solved some problems of the people's jurors system in judicial practice, but also Not substantially changed or corrected.

In the current trial of civil cases in our country, the people's jury system is less applicable, even if it has some application, it is basically in the "nominal and unreal", "jury without trial" status of identity fictitious, easy to become a form and into the plight of formalism, it is difficult to play its practical role as a judicial system. "People's jurors are amateur judges from all walks of life. They do not understand the legal knowledge and do not necessarily have the advantage of identifying the facts of a case. Therefore, they cannot ignore the instructions of professional judges in lawsuits and cannot play an independent role." The people's jury system is only symbolic and formal. Of course, we absolutely do not blindly deny formalization. There are many procedures in our civil litigation system which have symbolic significance, but they all have the necessity to exist. They play an important substantive role with their formal representation, such as ensuring fair trial and so on. What we oppose is the formalization with no form and no function, or the formalization with a certain function, but the negative meaning is much larger than the positive function, and the formalization with few malpractices and many disadvantages of the substantive function. Unfortunately, our people's jury system belongs to the latter. When China set up this system, the function and value expected to achieve have basically disappeared or no need to realize it. The author will elaborate on this in detail below.

3. Reflections on the Function and Value of China's Jury System

3.1 The disappearance of the functional value of the jury system

3.1.1 Reflections on the Jury System Embodying Judicial Democracy

Like jurors in common law countries and continental law countries, although people's jurors in our country are also produced among ordinary people and are defined as representatives of the public and society, the difference is that our judges themselves "come from the masses". Judges exercise judicial power on behalf of the people in practice. If the participation of people's jurors in judicial activities reflects judicial democracy, then why can't judge justice reflect judicial democracy? "Why are jurors superior to judges in safeguarding democracy? There is no need to make a clear distinction between the two." "If there is a matter of judicial democratization, the most important thing is that the norms applied by the courts are formulated by democratic institutions; judging cases strictly on the basis of legislation reflecting public opinion is the most important manifestation of democracy in the judicial field."

The essence of democracy lies in the universality and non-specificity of power. The temporary and random nature of jurors in western countries ensures their universality and non-specificity. However, the number of jurors who can be appointed to be jurors is still very limited because of the restrictions of Chinese law on the qualifications, appointments and tenure of people's jurors. That is to say, the jurors in our country are to some extent a specific and non-universal group, which is obviously impossible to achieve. "Direct and full participation of all citizens and universal participation of the public. The function of judicial democracy embodied in the jury system is greatly discounted, which has to be questioned."

3.1.2 Reflections on the Effectiveness of Judges' Judicial Power checked and balanced by the Jury System

Similar to the participation system in civil law system, the theoretical basis for the parties in civil litigation to choose the jury system in China lies in their distrust of the independent exercise of judicial power by professional judges, hoping to achieve the redistribution of judicial power through the participation of people's jurors. As the German scholar Mannhei said, the British jury system is based on trust in jurors and judges, while the European continent's jury system is based on mutual distrust. According to the law of our country, "jurors have the same rights as judges in the performance of their jury duties; people's jurors have the right to express their opinions independently on the determination of facts, the application of law and the right to vote independently when they participate in the deliberation of cases by collegial panel." But in fact, because most of the jurors do not have more professional legal knowledge, lack of trial experience and do not understand the rules of trial activities, professional judges are not willing to share the jurisdiction with them. The strong advantages of judges in these areas make people's jurors not have equal status and ability with them. Therefore, the people's jurors in civil trials in our country basically exist as "appendages" of professional judges. They are just "accompaniers" sitting next to professional judges at the opening of the court. They can not exercise their voting rights independently, nor can they play the role of restricting and balancing the judicial power of judges at all.

3.1.3 Reflections on the Jury System as the "Need of the Court"

Based on the function of jury system in Anglo-American law system, another expectation of establishing jury system in China is to strengthen judicial authority. However, unlike the non-professionalization of jurors in the two legal systems mentioned above, jurors in China are professionals to a large extent. Firstly, there are provisions on the term of jurors in our law: the term of the people's jurors is five years, but there is no provision on whether they can be re-elected or the number of re-elected, which leads to the phenomenon of "full-time jurors" and "professional jurors" in practice; secondly, in practice, the selection of people's jurors is limited to several industries and

mostly requires equipment. Providing certain legal knowledge, showing the trend of "elitism" and lacking of extensive sources, makes the jurors in our country relatively fixed, and in fact has become a "non-professional judge" with little difference from professional judges; at the same time, the system design of our country can not make people's jurors like jurors in Anglo-American legal system, in the process of trial, the names and the number of jurors. Identity is confidential unless they are willing to disclose it to the outside world. "They live together in a secluded place and are escorted to the courts by a special car of the forensic police every day. Normally, they can not meet their relatives and friends, nor can they watch TV news or newspapers that have not been examined by the judicial police, so as to avoid the influence of public opinion on their fair judgment of the case. "Even in the course of the trial of the case, they can still carry out normal social life and receive the reaction from all walks of life to the case." Therefore, if the judicial authority of professional judges is insufficient and easy to become the object of "power rent-seeking" which leads to judicial corruption, then when the jurors present the characteristics of elitism, professionalism and professionalism, we have enough reason to suspect that people's jurors may become another object of "power rent-seeking" to a large extent and corruption also occurs, we can not be sure. The credibility of the guaranteed jurors will be higher than that of the judges. Based on this, the author believes that the people's jury system can not fundamentally eliminate the people's distrust of professional judges, and can not effectively strengthen the role of judicial authority.

In recent years, with the strengthening of people's legal consciousness and the increase of social contradictions and disputes, the number of cases accepted by courts at all levels in the country continues to increase year by year, and the contradiction between the increasing number of litigation cases and limited judicial resources is becoming more and more prominent. In this case, some scholars pointed out that attracting people's jurors to trial can relieve the pressure of "litigation explosion" that professional judges are tired of dealing with. The author has reservations about this. Article 39 of China's Civil Procedure Law stipulates that: "When people's jurors try civil cases of first instance, a collegial panel shall be composed of judges and jurors or a collegial panel of judges." It can be seen that the choice of people's jurors means that the trial of cases will adopt the form of collegial system, and the form of collegial system in practice means that the ordinary procedure must be chosen, and the application of simple, fast and efficient summary procedure will be abandoned. The loss of litigation efficiency caused by the delay and delay in the application of ordinary procedures just increases the pressure of the court's work. Article 11 of the Decision on Improving the System of People's Jurors also stipulates that: "People's jurors participate in collegial panel trials and exercise their right to vote independently on the determination of facts and the application of law. When a collegial panel deliberates on a case, the principle of minority being subordinate to majority shall be applied. If the people's jurors disagree with other members of the collegial panel, their opinions shall be written down in the record. If necessary, the people's jurors may request the collegial panel to refer the case to the president for a decision on whether to submit it to the trial committee." These procedural provisions have also resulted in a reduction in litigation efficiency. As some judges have pointed out, arranging jurors to participate in the case will be much slower than the general progress of the case. In cases that need to be submitted to the trial committee for discussion, not only can not ultimately reflect the opinions of the jurors, but also artificially delay the proceedings. Moreover, because jurors are not court staff, when they shirk responsibility or neglect to participate in the trial, the court is helpless, which brings a lot of inconvenience to the management of the court. The role of the civil jury system in alleviating the pressure of the court system is beyond discussion. On the level of "court needs", the jury system loses its significance.

The author believes that it is a good way to solve the increasing pressure of the court caused by the increase of social contradictions, absorb the participation of the masses and give full play to the unique advantages of the masses in dispute resolution, but it is not to absorb them as people's jurors, but to focus on the establishment of a diversified dispute resolution mechanism combining litigation with non-litigation, and actively explore judicial mediation and administrative mediation. The new system of "trinity" of mediation and people's mediation. What we really need to build is a system

and mechanism that can get to the essence of the problem and solve the problem fundamentally, such as the establishment and perfection of the procuratorial supervision system, the construction of the internal mechanism of the integrity of judges and so on.

4. Reflections on the Jury System's "Benefit to Execution"

On the basis that the jury system can strengthen judicial authority and realize the implantation of public value, many scholars have proposed that the application of the people's jury system has the function of "facilitating execution". As mentioned earlier, in our country, the application of jury system can not enhance the credibility of the judiciary, strengthen judicial authority, and realize the hypothetical function of social public value implantation. Therefore, it can not solve the problem of "difficult execution" caused by "low credibility of judicial decisions". On the other hand, if the jury system can alleviate the "difficulty of execution" to some extent before, in recent years, through the amendment of the Civil Procedure Law, the promulgation of the Supreme Court's "Several Provisions on Restricting the High Consumption of Executed Persons", the implementation of the implementation of linkage measures, the establishment and improvement of the credit information system and other measures, the implementation of the "difficulty of execution" has been strengthened. It can be solved to the greatest extent without the limited role of the jury system.

4.1 The disappearance of instrumental value of jury system

The proposition that professional judges have the deficiency of social experience - to absorb people's jurors to participate in the trial - to make up for the deficiency of professional judges' social experience and knowledge is another purpose and good wish of setting up the jury system in our country. However, can the proposition that "professional judges have defects in knowledge structure" be considered as a prerequisite really hold?

What we expect is that people's jurors can make up for the deficiencies of professional judges in social knowledge and experience, so as to realize the implantation function of social public value, such as the jury system of Anglo-American law system, and solve the problems brought by the "closeness" of judges, and better guarantee the fairness of judgments. This is not to blame, but an obvious fact is that judges in our country do not have the "closeness" of judges in Western countries, they "come from the masses, go to the masses", they are social people in the standard sense, and they are the participants of the society in which they are themselves. They can "maintain the combination of judges' sense and reasoning ability, and the same social solidarity that inspires legislators to enact laws lives in their hearts", "sentence" is not the product of knowledge and intelligence, but the recognition of what already exists; it has etymological basis, derived from 'sentiment'. It is the expression of will based on social experience, according to which judges strive to achieve specific social utility through their own judgments. Therefore, the value of expecting people's jurors to bring social values into trial is not necessary and does not exist, and it is fundamentally impossible to achieve.

Therefore, the author believes that the proposition that "professional judges have a lack of social experience - to absorb jurors to participate in the trial - to make up for the lack of social experience of professional judges" itself is a false proposition, and can not be a legitimate reason for setting up the jury system. The people's jury system in our country does not have the function of participating in the trial as in the civil law countries, either by means of the professional knowledge of the jurors or by means of the jury system as in the common law countries. With the help of the social knowledge and experience of the jurors, its instrumental value in the trial has almost disappeared.

4.2 Lack of procedural value of jury system

The principle of procedural participation belongs to the category of procedural justice and due process, which generally includes "the right to know the lawsuit" and "the right to hear the lawsuit", and is the "right to participate in the procedure" enjoyed by the parties. Nowadays, the international community generally believes that the right to participate in the procedure is the basic right of the litigants, and the protection of the right to participate in the procedure belongs to the category of

"due process protection". A legitimate civil legal system or procedure must and should guarantee the parties' right to participate in the procedure. In view of the provisions of Chinese laws and regulations on the system of people's jurors, besides whether the people's jurors can be applied for trial by the parties concerned (the final application still needs to be decided by the people's court after examination), other issues such as the determination of the jurors involved in specific cases are discussed. Article 14 of the Decision on Improving the People's Juror System stipulates that if a case tried by a grass-roots People's Court should be tried by a people's juror in a collegial panel according to law, it shall be selected randomly from the list of people's jurors. If the intermediate people's court or the high people's court shall, according to law, try a case by a people's jury in a collegial panel, it shall be selected randomly from the list of people's jurors of the grass-roots people's court in the city where it is located. All of them are determined by the court, and the parties are excluded, so that their right to participate in the proceedings can not be guaranteed. Therefore, strictly speaking, as a judicial system, the jury system is not designed as a "due process". It seriously infringes and deprives the parties of the basic procedural rights - the right to participate in the proceedings, and does not reflect the independent quality or value of civil litigation.

5. Conclusion

The jury system is not only a judicial system, but also "a result and embodiment of democratic politics, a basic form of citizens' political participation, and therefore a political system". But in modern society, its political function has gradually weakened, and as a judicial system, it can not play or has lost its intrinsic function and value. In the legal system of civil procedure, the jury system has become a frontier system and has been formalized. It can only increase the complexity and complexity of the procedure, but "the formal complexity of the procedure does not mean sincere conviction. In this respect, it is similar to religious rituals: the numerous procedural rules on which the law guarantees fair trial are symptoms of unhealthy conditions." Trillion.

Compared with the jury system in common law countries, the people's jury system in our country does not have the "embeddedness" with the power structure, system arrangement, social culture and litigation mode of our country. Its disadvantages in our civil litigation far outweigh its advantages. In view of the analysis of this article, the author advocates that the civil jury system in China should conform to this trend and be gradually diluted and eventually withdrawn from the historical stage.

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