

Does the Modern Jury Represent a Successful Exercise in Democracy?

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Abstract: *This essay will analyze how the modern jury manifests democracy, so as to achieve coordination and complementarity among direct democracy, representative democracy and deliberated democracy. It also recognizes that in practice, the jurors' jurisdiction and non-professionalism pose challenges to democracy and justice. However, through the modernization and improvement of the jury system, these threats are still under control. More importantly, before the emergence of the new effective system, it was still an irreplaceable medium for democratic practice in modern society, so it is successful.*

Keywords: *Modern jury, Democracy, Judicial and political value*

1. Introduction

Jury system has a long history, which could be traced back to the trial system of ancient Greece. After that, with the change of the times, the purpose, specific composition and restrictions of the jury have changed. Modern jury system is different from the earliest litigation system. It originated from medieval England and was inherited and developed by America [1].

Jury usually refers to the random selection of many laymen to directly participate in the judicial trial according to the specific established criteria [2], which reflects the citizens' participation in the deliberative decision-making and autonomy. Procedural participation is one of the connotations of democracy [3]. Therefore, the democratic characteristics of the jury are generally recognized, which is not only unique to the common law system, but also widely applicable in some civil law system countries. However, it is argued that the development of jury is in decline and some countries are gradually giving up the use of this system [4]. So there is a debate whether jury is a successful practice of democracy or not. Some people believe that it is a failed system because of the composition and efficiency of the jury, because the unprofessional jury may not fully represent the public opinion and may deepen the uncertainty and instability of the judicial trial. On the contrary, others firmly affirm the positive influence brought by the democracy of jury system and agree that it is one of the most shocking and successful experiments of direct people's sovereignty in history and is helpful for realizing the judicial purpose of legitimacy and limiting the abuse of state power for political purpose [5].

Besides, nowadays the jury system is mostly applied in serious criminal trials, so this essay attempts to analyze the democratic nature of the jury system in criminal justice and to explore its success as a democratic exercise. My thesis is composed of three sections. It begins by briefly introducing the common core content of modern jury system based on the American jury. The next section discusses the relationship between the jury system and democracy and how the jury embodies different democracy. The last part comprehensively evaluates the positive and negative effects of jury as a democratic practice to explore its success.

2. What is The Modern Jury System?

High diversity is the main feature of modern jury system. It has various functions and applications in different countries because of the differences in national conditions, so it is difficult to find a unified and unique theory to cover all the contents of the jury systems around the world.

Historically, most of the jury systems in modern countries are transplanted from the British and American juries. But the jury has withered in England, the British Parliament not only abolished the jury in most civil cases, but also limited the application scope of the system in criminal cases [6]. Therefore, the following will take the representative American jury as the research object to explore the modern jury

system and summarize its some key contents.

There are three types of jury in the United States: grand jury, minor jury and civil jury [7]. The criminal minor jury belongs to the standard jury type, which is frequently applied and is similar to the jury in other countries. The specific contents of the system are as follows.

2.1. Jury's Composition

The jury is composed of ordinary citizens, generally 12 people, but it was later confirmed by the case law that 6 people could also form a jury [7]. As a layman of law, normal citizens also need to meet some conditions to be qualified as jurors. For example, the United States Jury Selection and Service Act has made detailed provisions on the acquisition of the qualification from the positive and negative sides. In particular, when a healthy American citizen reaches adulthood, as long as he has general cognitive ability and fluent English ability, he is possible to be qualified as a juror. On the contrast, person may lose the qualification of juror when they are under a certain age, have lived in the community less than a certain period or have a criminal record.

After determining the scope of qualified personnel, the American constitution also makes relevant provisions on the selection of jurors. Jurors are selected from different representative strata of the community where the crime occurs. It is not allowed to discriminate against candidates in economic, political, racial, geographical and other aspects. Sometimes, some juries also require a certain number of women, blacks or other ethnic groups to participate [8], so as to enhance the representation of jurors and the impartiality of the jury.

2.2. Jury Unanimity

Traditionally, the jury has carried out the principle of unanimous verdict, all jurors must reach a consensus in order to get the final de. Although the requirement of unanimity occupies the mainstream position in the jury system, the supreme court of the United States priviously did not propose the constitutional requirement of unanimity. For example, in 1972, juries in Oregon and Louisiana applied majority rule in two cases respectively [7]. However, the credibility of the jury's decision is closely related to the unity of the jurors' opinions, because based on Locke's political philosophy theory, everyone is equal, and no one can be expelled from this class without his own consent and subject to the political power of another person, so only unanimous consent could give the authority and influence to the verdict [9]. Therefore, in the Ramos v. Louisiana case in 2020, the Supreme Court of the United States ruled that the unanimous consent of the jury is a necessary and sufficient condition for the conviction in criminal justice.

2.3. Jury Nullification

American jury nullification refers to that sometimes the jury may ignore the law, acquit the accused and make a verdict contrary to the evidence [7]. To some extent, jurors do not overlook the law, but update it. Specifically, the jurors can deny the law which they do not agree with and then redefine or reinterpret it. This is a direct participation of citizens in the judicial construction, the community representation of the jury also deepens the embodiment of the law to the public consciousness, so as to improve the judicial credibility [10]. Therefore, the supreme court of the United States also recognizes the right of the jury to decide or change the law (Georgia v. Brailsford, [1794]).

3. How Does the Jury Demonstrate Democracy?

Democracy is usually defined as a political concept, reflecting the idea that sovereignty lies with the people. The jury system exists not only as a judicial system, but also as a political system [11]. Democracy is the main political influence of the system, and it is also contained in the judicial attribute of the jury system. However, due to the complexity and historicity of democracy, there is also no unified definition of it, and some different kinds of democracy have been developed based on various theories. Although different kinds of democracy have differences in the way of democracy identification, they have reached an agreement on the fundamental people-oriented idea to safeguard civil rights and interests. Modern jury system is based on different political theories and embodies three kinds of democracy.

3.1. Direct democracy

Direct democracy is a form of democracy in which citizens can directly decide policies or make laws. Its central claim is the participation of the entire community. However, due to some factors such as efficiency, it is difficult to apply direct democracy in large countries. Therefore, recently direct democracy in the American system has gradually disappeared. It is said that the jury is the last reservation of direct democracy [12].

Direct democracy is embodied in two aspects in modern jury. One is lay participation, which is also the fundamental feature of the jury. The jury system provides a platform for ordinary citizens' autonomy, jurors from different community direct join the criminal justice. The other is jury nullification, sometimes jurors can acquit the defendant based on their explanation of legislation [13]. America is a case law country, so jury's decisions is equivalent to a new definition of law and may be adopted by future trials, which shows the direct democracy of citizens' direct participation in the formulation of laws.

It is argued that jury's composition violates direct democracy. There are sufficient obstacles to restrict citizens to become jurors, which goes against the philosophy of "all visitors" in direct democracy [14]. However, it is necessary to set up the qualification requirements of jurors. Otherwise, it is hard to guarantee the quality of judgments, which is even more inconsistent with the purpose of democracy.

3.2. Representative democracy

Although jurors' selection violates direct democracy, it is the embodiment of representative democracy. It means that citizens exercise rights or expresses opinions on behalf of a group after voting [15]. A jury is judged by the level of community representation. For example, the sixth amendment to the United States constitution holds that the purpose of jury selection is to form a jury that can represent the whole community by random selection and the permission of actual situation. It is also valuable to consider gender, race and other objective factors of jurors. Because jury may include different types of people as much as possible and become the reflection of the community as much as possible. As a result, the jury has successfully demonstrated the benefits of representative democracy, which may consider most citizens' participation right to maintaining political fairness and the multi-level thinking modes may promote the justice of verdict [14].

3.3. Deliberative democracy

Jury system is a cornerstone of deliberative democracy [16]. Deliberative democracy contains the principles of consensus decision-making and majority. It advocates that citizens equally discuss so as to unify the consensus and get the generally accepted decision [17]. The jury unanimity abandons the majority principle and is more strict with the unified standard of public consciousness, so that the verdict can be recognized by the citizens to the maximum extent. It is in line with and even transcends the spirit of deliberative democracy.

To sum up, the modern jury reflects different branches of democracy in terms of its composition and the procedural principles. Even if its some details violate a branch of democracy, it reflects another kind of democracy in another theoretical level. Therefore, democracy is deeply embedded in the modern jury system.

4. Why Modern Jury is Successful as A Democratic Practice?

Through the analysis of the relationship between modern jury and democracy, it is found that the jury not only conforms to but also promotes the democratic values of credibility and legitimacy [21]. The Democratic attributes of jury promote the citizen to trust the government and legislation and meet the requirements of criminal justice for legitimacy and fairness [18]. Therefore, in contemporary culture, jury is regarded as a model of democratic management virtue. But is it completely successful as a democratic practice? Is it flawless in practice?

Not surprisingly, the jury does have some potential threats to criminal justice and democracy in practice. The harm mainly comes from the fundamental characteristics of jury, lay participation. The unprofessional nature of the jurors may lead to their the ignorance and irrationality. Specifically, sometimes jurors cannot understand the law which needs to be applied in the case during the procedure, so that they is likely to be criticized as incompetent fact promoters [5]. In addition, jurors are prone to

bias since they are not professionally trained. Especially now the jury is more applicable for the serious criminal crimes. These cases are more complex and their penalty is more severe than others, which aggravates the requirements of jurors' legal ability and objective attitude. However, due to the layman nature of jurors, it is difficult to meet this demand. Consequently, it might have some negative impacts on judicial justice, because the rationality of the decision maker is the most essential requirement of judicial justice [19]. However, in the modern jury, the judges often play the role of guide, they can explain the relevant provisions to the jurors and properly remind the jurors, but will not directly interfere in jury's review, which may offset the injustice of jury. Besides, there is no requirement for the jury to explain its decision. This highly confidential adjudication process damages the link between openness and accountability and is not in line with deliberative democracy [14]. This is a restriction for the wider public's cognitive understanding of the relevant verdict. Decisions without explanation may reduce the credibility of citizens, so as to reduce the representativeness of the jury and ultimately weaken the democracy of the jury. Nevertheless, the provision is also beneficial. The secrecy of deliberation helps to maintain legitimacy and avoid external interference, such as bribery from the parties. As for citizens' cognition, the judge can produce relevant explanations, which can be refined from the jury review, while avoiding leaking too many private details, so as to promote citizens' understanding of decision-making. Therefore, although the modern jury system has some limitations, it has little influence on justice and democracy through the mediation of judges [20].

On the other hand, due to its dual attributes of justice and politics, jury system also brings double benefits to the democratic practice. One is the judicial value. One of the dominant advantages is that jury could inject public opinion into criminal justice [21]. The jury can redefine or create laws through consultation and adjudication, so that the application of laws may respond to the needs of the citizens and avoiding the application of evil laws. Moreover, the diversity and various practical experience of jurors are possible to prevent the breeding of single misconceptions in the trial and bring new blood to the trial [5], thus jury can play a positive role in the criminal procedure. Furthermore, jury may increase the legitimacy of judicial decisions, because compared with the independence and community representation of judges and lawyers, jurors can not profit from the trial results relatively, and the results' justice and the representation of the community are the best interests. Therefore, the jury will be so cautious as to avoid judicial bias. As a result, jury's verdict can be more fair and in line with the community value.

The other is political interests. The direct democracy of the jury is that citizens can directly participate in the criminal justice and have the right to review and adjudicate, which is the embodiment of people's sovereignty [22]. Secondly, it has educational value to citizens [23]. The jury is a free school where ordinary citizens can enhance their understanding of the law and actually use the law, so as to strengthen their respect and trust in the judicial and political system after returning to the community [11]. The system can also prevent the abuse of state power [5]. Citizens who directly participate in the judicial process can objectively supervise the operation of the judicial system and the application of the law. Consequently, it can limit the potential judicial corruption and abuse of rights.

Generally speaking, even though the jury has deficiency, it is still under control, and the system can serve the purpose of deliberation in the judicial system and political system [16], so its overall impact in the process of democratic practice is positive.

5. Conclusions

In conclusion, the modern jury system, as the "bastion of democracy" of judges [23], is a successful practice of democracy. As one of the most representative juries in modern society, American jury is characterized by its composition, unanimous verdict and nullification of judgment. Although one feature can not involve all branches of democracy to achieve absolute democracy, these contents can also manifest different types of democracy respectively, including direct democracy, deliberative democracy and representative democracy. Therefore, the jury is in line with the relative democracy.

Moreover, the positive significance of jury in democracy lies in its role in the wider judicial and political order, which not only promotes fairness, justice and legitimacy at the judicial level, but also protects the interests of citizens and supervises the government at the political level. And the potential defects of the jurors are also made up by the appropriate guidance of the judge. Therefore, modern jury as a democratic exercise brings more advantages than disadvantages, it is successful.

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