



# Does the Modern Jury Represent a Successful Exercise in Democracy?

Suyi Wang

University of Edinburgh, UK

**Abstract:** This essay will scrutinise the role of modern jury in promoting civic participation in governance and how it reconciles with the concept of democracy. It will argue that in theory, it is admitted that the jury regime does fit into a successful exercise in democracy. However, in practice, due to it fails to serve democracy and unfortunately represents an unsuccessful exercise in democracy.

**Keywords:** Democracy; Jury mechanism; Citizen

**Publication date:** March, 2021

**Publication online:** 31 March, 2021

**\*Corresponding author:** Suyi Wang, 513306575@qq.com

## 1 Introduction

In comparison to the highly professionalised legal cultures that feature in legal systems, the jury regime provides a noteworthy example of lay engagement and decision-making in criminal justice systems. Strong ideological arguments for the continuity of this ancient constitutional tradition are profoundly ingrained in Western and US culture as jury regime bulwark against misuse of state power or the lamp that demonstrates that democracy lives. Modern democratic politics is mostly indirect democracy which is different from the ancient direct democracy, that is, the system of congress democracy. This maintains a highly centralized efficiency in politics, but reduces the democratic rights of citizens democratically, and the jury system is a powerful answer to this question. The jury system operates a unique direct democracy under the system of congress democracy, which is a guarantee of citizens' rights. Yet the widely divergent use, shape and role of juries

across the globe cast doubt on these arguments<sup>[1]</sup>.

## 2 The importance of juries to the realization of democracy

### 2.1 Definition of democracy

The concept of modern democracy originated in ancient Greece and is the product of the unique political structure of the Greek city-states. The spirit of citizenship and individualism is the psychological foundation of democracy. Individualism has even become a symbol of American national identity: "Individualism provides a reasonable explanation for the attitudes, behaviors, and aspirations that are unique to the American nation." It gives a unified and progressive perspective to the past, present and future. In particular, individualism expresses universalism and rationalism, which best represent American national consciousness. "The manifestation of individualism at the legal level is the growing awareness of rights. Lawrence M. Smith, an American jurist, said that the individualism has an impact on jurors. "Modern juries reflect a wider range of life backgrounds and lifestyles. So juries can reflect the general cultural composition." Most Americans want to maintain the jury system as part of their heritage and as an integral part of due process. In general, Americans don't believe in authority, preferring a system that uses the will of ordinary citizens to make decisions. Jury decisions are certainly slower, more expensive, and less convenient than judges. But that doesn't shake Americans' feelings about the value of jury decisions<sup>[2]</sup>.

### 2.2 The content of jury duty

After the formal entry into the trial, the twelve

jurors should listen carefully to the charges of the prosecution and defense, give evidence and rebuttal, and remember, in order to prepare for the subsequent deliberations, because jurors are not allowed to carry pen and paper during the formal trial process. At the review stage, the twelve must discuss and decide in a closed and isolated environment. The 12 must give a unanimous opinion to be adopted, according to the U.S. Federal Rules of Criminal Procedure: "The decision must be unanimous and it shall be submitted by a jury to a judge in an open court." "If the juries have been unable to reach a unanimous opinion on the issue, it is often referred to as "unresponded" and the jury is dissolved and a new jury of twelve is selected to re-judge the case".

### **2.3 Importance of jury duty—How juries embody democracy**

Thomas Jefferson once commented that the jury is the "bulwark of democracy"<sup>[3]</sup>. This seamlessly echoes with Alex de Tocqueville's comments on the jury as a political institution fundamental to American democracy<sup>[4]</sup>.

A system of government by the whole population or all the eligible members of a state, typically through elected representatives. Jury system is an integral part of American legal system and American litigation system, which reflects the characteristics of American litigation system. The national participation of jury system is the most attractive place of American litigation system, which fully embodies the democratization of the rule of law in the United States. The reason why the jury system can embody democracy is mainly because the jury system has the following three contributions to the realization of democracy<sup>[5]</sup>.

First, the setting of jury duty. There is voting system and everyone on the jury duty is allowed to voice out their own opinion. The form is very similar to political elections, you can speak freely, you can vote, you are the representative of the people. Nearly 32 million jury summonses are issued each year to approximately 15% of adults in the United States and up to one-third of all citizens will serve on juries at some point in their lives. Jury system selection and implementation of the concept of equality throughout, "from jury selection and composition to jury participation in the entire process, the status and qualifications of each juror are equal." "Jury

selection conditions may seem like a lot, but they are basic requirements that give almost all U.S. citizens the right to be jurors. Such a selection mechanism makes the American judicial system tend to be equal. Equality between citizens, equality between citizens and judges, equality between citizens and government<sup>[6]</sup>.

Second, jury socialization. This idea suggests that the jury, as laymen with an outsider's view offers fresh perspective in the highly professionalized criminal justice system and allows citizen contribution to trial outcomes<sup>[4]</sup>. The views of ordinary people are taken and listened to by authority.

Third, the jury's ambivalence. In the jury's deliberation, they do not automatically trust the knowledge and guidance of courthouse regulars. This means jurors do not pay deference to hierarchical account and authorities, but they foment their own judgement<sup>[4]</sup>. Under the division of labor and cooperation of the jury system, the jury makes the judgement on facts and the judge makes the legal judgment, which can reduce the misjudgment of the law and play a check and balance on the judge. The jury's views on the case and the judge's judgment of the case are equally valuable, which fully reflects that the jury's voice is different from the judge's and can challenge the judge's rights, and it also fully reflects the jury's democratic characteristics.

## **3 The problem of jury mechanism in practice**

Despite the fact that the jury mechanism terms with the ideology of democracy, this is the not case in practice.

### **3.1 Citizen's reluctance's participation in democracy**

Through the previous discussion, we can see that the jury system is very good for the realization of democratic consciousness in theory. Despite the fact that the jury mechanism terms with the ideology of democracy, this is the not case in practice. Because the prerequisite for the full realization of democracy in the jury system is the willingness of citizens to participate actively in juries. However, Mandak and McCurley found that most Americans perceive jury as optional and are reluctant to engage in the service<sup>[4]</sup>.

In an incomplete survey, about 80 percent of Americans don't want to join a jury each year, and

more than half successfully avoid that obligation. More strikingly, this sentiment is shared globally. For example, it is reported that Japan's courts have held some 500 mock trials across the country. Still, polls show that 80 percent are dreading the change and do not want to serve as jurors, a reluctance that was on display among the mock jurors here<sup>[7]</sup>. The Japanese faced some deep-rooted cultural obstacles: a reluctance to express opinions in public, to argue with one another and to question authority<sup>[7]</sup>.

Back in the United States, there are several main reasons why the American public is reluctant to participate in juries.

First, economic reasons. Some people who have jobs are too busy to work, and if they participate in the jury as jurors, they spend their time on the jury and cannot guarantee enough financial resources to support their families' living expenses. Some of the unemployed are busier looking for new job opportunities, trying to raise their income levels, without actively participating in the jury's interest. For American public, participating in court trials is troublesome. Jury deliberations are often protracted, and while the government will pay some financial compensation to jurors, it is clearly insignificant compared to the time, effort and absenteeism of citizens for serving as jurors<sup>[8]</sup>.

Second, the audit is strict. Under U.S. law, every adult citizen has an obligation to serve as a juror. The shortlist of jurors may seem broad, and registered voters or those with driver's licenses have a chance to be selected. But in fact, there are many selection restrictions, and those under the age of 21 who do not live in the mainland, who do not know English and have hearing impairments, and those with previous qualifications are not eligible to be jurors. In addition, in the interests of justice, persons associated with the case and even persons relevant to the areas covered by the case may not be selected. All jury candidates are subject to rigorous scrutiny by a judge. For example, in cases involving environmental litigation, the review form may include questions such as "How do you see environmental protection and industrial development" and "Are you affected by environmental pollution", and in cases of tobacco litigation, the judge would ask "Do you smoke?" and "Do your friends have smoking-related illnesses?" A candidate cannot be selected if he or she is found to have some emotional tendency to involve the case. In addition

to the judge's review, juror candidates are subject to scrutiny by defense lawyers and prosecutors, who have veto power over juror candidates. In the end, there are not many candidates who qualify as jurors through layer-by-layer vetting. Because the audit is too rigorous, many members of the public are reluctant to meet their jury duty because they reject the fact that the vetting process is too cumbersome. Even more troubling to the American public is that while jurors can go home in ordinary cases, in high-impact cases, jurors involved in trials must be subject to strict segregation measures, jurors are not allowed to read newspapers and television news during jurors, and even go to food stores to buy food with bailiffs to ensure that jurors do not contact the outside world to maintain a fair verdict. It can be argued that jurors' freedom is severely restricted during jury duty. These aforementioned strict measures that can occur during jury duty make people reluctant to actively participate in juries<sup>[9]</sup>.

Democracy is considered to be implemented as long as citizens are given the option to vote, regardless of whether or not they participate in the voting process. For example, In the 2016 election, only 30% of the US population voted although the percentage increased to 50% in the 2020 election. This kind of democracy, which is only formal and theoretical, is not at all sufficient and needs to be thoroughly implemented in practice. We need to make it into practice. Firstly, results suggest that the public service and duty-based nature of jury participation should be emphasized to understand willingness to serve and to consider novel ways to increase summons responses. In addition, we can also build citizen's confidence towards the jury system and support those jurors especially the young with subsidies.

### **3.2 The choice of jurors is difficult to be absolutely fair**

Jury selection does not represent society and groups in a good way. Even if you are fair and impartial in your selection of a jury, there is no way you can guarantee that the jurors themselves are free of prejudice. Various jury selection procedures strive to ensure the selection of fair and impartial jurors. Thus, it reflects the equal representative. However, prospective jurors, termed *voir dire*, often fails to deliver on the promise of impartiality<sup>[8]</sup>.

Although the expression of explicit biases and prejudices has, without a doubt, declined in contemporary American society, implicit biases endure, operating without people's awareness, intent, or control. Implicit biases are unconscious attitudes that affect our assumptions about other people and distort our judgment and behavior. Over the past few decades, it has become apparent that these biases permeate the criminal and civil justice systems, and even those who insist that they harbour no preconceptions, prejudices, or ill will toward others exhibit this subtler form of bias. The selection of jurors is not immune from its reach.

One of the best-known experimental techniques is the Implicit Associations Task, or IAT, in which people make a series of rapid judgments about pairs of words to assess the strength of association between concepts such as gay people or African Americans and evaluative terms such as good or bad, smart or athletic. Faster responses to particular pairings are interpreted to indicate stronger associations in memory, revealing attitudes that people are unaware of. Results of these studies generally show that people maintain unconscious biases against stigmatized groups that they would never reveal in public. Even members of bias-affected groups show these predilections. Such information, which affects the fairness of the trial, is difficult to fully disclose when selecting jurors. If there is a bias in the execution of your jury duty, then you are not fair and impartial. If you don't achieve fairness and justice, you don't show the consciousness of the whole group, you don't embody democracy.

In my opinion, democracy is always biased, but it does not affect people to engage in the public affair. Some measures to this could be: when selecting jurors, it is important to maximize diversity, be sure to keep up with the times, and take into account the sensitivity of the case to determine how to place jurors.

### **3.3 Legal professionalism trumps over jury populism**

The increasing authorities and power of judges in the modern courtroom diminishes the jury's contribution of fresh laymen perspective to the trial. It is rather unsurprising, given jury's biased opinion. A survey revealed that the general public believes judges were respected as better safeguard of the people's rights

than the jury because they were more professionally equipped to know the law. This position was based on doubt upon the jury's abilities on analyzing the facts and distrust upon their commitment in comprehending the legal rules. In contrast, most survey participants also trust more judges' professional competence and norms of impartiality.

Here are some examples of the above argument. In *Sparf and Hansen v United States*, a case involving a sailor's alleged murder at sea, the question of whether a judge had overstepped by pigeonholing the jury with a convoluted and highly restrictive charge was presented in front of the Supreme Court and the majority held that trial judge has acted reasonably<sup>[10][11]</sup>. This case shows the official recognition that the rights and opinions of judges are far more important than those of juries. In addition, Munro found that jurors are still reluctant to jettison their more natural inclinations to reach individual and collective verdicts on the basis of narrative constructions grounded in 'common sense' and 'personal experience'<sup>[12]</sup>. Many people admit that they are reluctant to give their opinions and many opinions are influenced by judges or other jurors.

In my opinion, democracy itself is about taking part in the debate rather than making the right decisions. What is more interesting is that Munro found in a simulations study of 160 members of the public that most members in the jury groups are willing to engage, understand and apply judicial direction in the cases<sup>[12]</sup>. We should separate political affairs from legal affairs<sup>[13]</sup>.

## **4 Conclusion**

As can be seen from the above, the successful implementation of a system depends on the achievements of many conditions. Jury trial, as one of the better embodiment of democracy, has its economic development requirements for the reasons, has its profound accumulation of people's feelings, has its norms and detailed legal provisions. At the same time, we also know that the practical form of any system cannot be perfect. Time-consuming, inefficient, case-by-case injustice, etc. pose challenges to the full realization of democracy in the course of the development of the jury trial system.

## **References**

- [1] Bloeser A, McCurley C, and Mondak J, 'Jury Service As Civic

- Engagement' (2011) 40 American Politics Research
- [2] Bornstein. B, and Greene E, *The Jury Under Fire: Myth, Controversy, And Reform* (Oxford University Press 2017)
- [3] Dzur A, and Mirchandani R, 'Punishment And Democracy' (2007) 9 *Punishment & Society*
- [4] Dzur A, 'Democracy's "Free School": Tocqueville And Lieber On The Value Of The Jury' (2010) 38 *Political Theory*
- [5] Ellison L, and Munro V, '“Telling Tales”: Exploring Narratives Of Life And Law Within The (Mock) Jury Room' (2015) 35 *Legal Studies*
- [6] Onishi N, 'Japan Learns Dreaded Task Of Jury Duty' (Nytimes.com, 2007) <<https://www.nytimes.com/2007/07/16/world/asia/16jury.html?auth=login-google>> accessed 29 December 2020
- [7] Zouhary J, 'Jury Duty: A Founding Principle Of American Democracy – The Civil Jury Project At NYU School Of Law' (Civiljuryproject.law.nyu.edu, 2020) <<https://civiljuryproject.law.nyu.edu/jury-duty-a-founding-principal-of-american-democracy/>> accessed 29 December 2020