

## CHINA LAW UPDATE

### THE PEOPLE'S ASSESSORS IN CHINA'S LEGAL SYSTEM: CURRENT LEGAL STRUCTURE FOR THEIR DUTY AND ITS JUSTIFICATION

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### I. INTRODUCTION

On 24 April 2019, the Chinese Supreme People's Court issued the *Interpretation of the Supreme People's Court on Several Issues concerning the Application of the Law of the People's Republic of China on People's Assessors* (hereafter referred to as "Interpretation"), adjusting the division of duty between judges and assessors. In the Chinese legal system, the term "people's assessor (人民陪审员)" refers to a citizen who participates in trial activities of people's courts. The assessors share similarities with the jurors in American legal system because they are, by nature, non-judge citizens involved in the trial process.

This note starts from a brief sketch of the history of the assessor system in China and would focus on the *Interpretation*. Part II discusses the current scope of the assessors' duty, and provides some justifications for this duty arrangement. Part III focuses on the extent to which the assessors could influence the final judgment delivered by the court, with a comparison to that in American jury system.

### II. HISTORY OF THE ASSESSOR SYSTEM IN CHINA

Since the founding of the People's Republic of China, the development of the assessor system legislation can be divided into three stages.

The first stage started in 1954. Both Article 75 of the *Constitution of the People's Republic of China* (hereafter referred to as "Constitution") (1954)<sup>1</sup> and Article 8 of the *Organic Law of the People's Courts of the People's Republic of China* (hereafter referred to as "Organic Law of the People's Court") (1954)<sup>2</sup> expressively but briefly regulated the implementation of the assessor system. During this period, there was a lack of matching civil or criminal procedural

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<sup>1</sup> Xianfa art. 75 (1954).

<sup>2</sup> Renmin Fayuan Zuzhi Fa (人民法院组织法) [Organic Law of the People's Court] (promulgated by the Standing Comm. Nat' l People's Cong., Sept. 21, 1954, effective Sept. 21, 1954) art. 8 (Chinalawinfo).

laws. A relatively complete framework formed regarding the qualification, generation, and function of assessors, based on Interpretations of the Supreme People's Court<sup>3</sup> as well as instructions from the Ministry of Justice.<sup>4</sup> Lamentably, this stage ended in 1964 because of the explosion of the Great Proletarian Cultural Revolution. During the ten-year destruction of the Cultural Revolution, almost all legal systems, including the jury system, were abandoned.

The second stage began in 1979, when the Cultural Revolution ended and the “reform and open-up” policy<sup>5</sup> was put into effect. On China's way of re-establishing and re-adjusting its legal system, the *Organic Law of the People's Court* (1979) generally inherited the former provisions about the assessor system, Article 9 of which regulated the compulsory requirement to include assessors in all cases of the first instance.<sup>6</sup> However, late in this phase, the role of the assessor system was weakened. In 1983, the revised *Organic Law of the People's Court* (1983) deleted Article 9 and changed Article 10(2) into “[c]ases of the first instance in the people's courts shall be tried by a collegial panel of judges *or* of judges and people's assessors”,<sup>7</sup> thereby removing the former established compulsory requirement. Similar changes followed in the *Constitution* (1982), the *Civil Procedural Law of the People's Republic of China*

<sup>3</sup> Zuigao Renmin Fayuan Guanyu Zhuchi Tiaojie de Shenpan Renyuan Shifou Baokuo Renmin Peishenyuan deng Wenti de Pifu (最高人民法院关于“主持调解的审判人员”是否包括人民陪审员等问题的批复) [Reply of the Supreme People's Court on Whether the “Trial Judges Presiding Mediation” Include People's Assessors] (promulgated by Sup. People's Ct., Feb. 23, 1957, effective Feb. 23, 1957) (Chinalawinfo); Zuigao Renmin Fayuan Guanyu Jiehe Jiceng Puxuan Xuanju Renmin Peishenyuan de Tongzhi (最高人民法院关于结合基层普选选举人民陪审员的通知) [Notice of the Supreme People's Court on the Election of People's Assessors Combining with the Basic-level General Elections] (promulgated by Sup. People's Ct., Feb. 11, 1963, effective Feb. 11, 1963) (Chinalawinfo); Zuigao Renmin Fayuan Guanyu zai Kaiting Shenli qian Shixing Tiaojie shi Bubi Yaoqing Renmin Peishenyuan Canjia de Pifu (最高人民法院关于在开庭审理前试行调解时不必邀请人民陪审员参加的批复) [Reply of the Supreme People's Court on the Need to Invite People's Assessors to Participate in the Mediation Before Trial] (promulgated by Sup. People's Ct., Jan. 18, 1964, effective Jan 18, 1964) (Chinalawinfo).

<sup>4</sup> Sifa Bu Guanyu Renmin Peishenyuan de Minge Renqi he Chansheng Banfa de Zhishi (司法部关于人民陪审员的名额、任期和产生办法的指示) [Instructions on the Quota, Term of Office, and Generation Methods of People's Assessor] (promulgated by Ministry of Justice, July 21, 1965, effective July 21, 1965) (Chinalawinfo).

<sup>5</sup> Zhongguo Gongchandang Di Shiyi Jie Zhongyang Weiyuanhui Di San Ci Quanti Huiyi Gongbao (中国共产党第十一届中央委员会第三次全体会议公报) [Communique of the Third Plenary Session of the Eleventh Central Committee of the Communist Party of China] (passed Dec. 22, 1978).

<sup>6</sup> *Supra* note 2, art. 9.

<sup>7</sup> *Supra* note 2, art. 10(2).

(hereafter referred to as “Civil Procedural Law”) (1991),<sup>8</sup> and the *Criminal Procedural Law* (1996).<sup>9</sup>

The third stage is from 2000 until now. In October 2000, the Supreme People’s Court submitted the *Decision of the Standing Committee of the National People’s Congress Regarding Perfecting the System of People’s Assessors* (hereafter referred to as “Decision”) (Draft) to the National People’s Congress for review. A new version of the legislative proposal was passed on 28 August 2004, and enforced on 1 May 2005.<sup>10</sup> For the first time, the *Decision* offered a relatively systematic regulation of the assessor system, including the qualification and generation of assessors<sup>11</sup> as well as the rights and obligations of assessors during a trial process.<sup>12</sup> The *Decision* laid foundation for the legislation of the *Law of the People’s Republic of China on People’s Assessors* (hereafter referred to as “Assessors Law”), and acted as an important legal basis for jury system application in the following decade before the issue of the *Assessors Law* on 27 April, 2018.

According to the *Assessors Law*, the assessor system in China is for the purpose of safeguarding citizens’ participation in trial activities according to the law, promoting law justice, and improving judicial credibility.<sup>13</sup> Compared with the *Decision*, the *Assessors Law* modified some prerequisites required to be an assessor, such as age and education background.<sup>14</sup> It also provided more specific rules about the composition of a collegial panel<sup>15</sup> and the duties and responsibilities of judges and assessors.<sup>16</sup>

As regards the judge-juror relationship, throughout the history of China’s assessor system, traditionally, judicial assessors had equal

<sup>8</sup> Minshi Susong Fa (民事诉讼法) [Civil Procedure Law] (promulgated by the Standing Comm. Nat’l People’s Cong., Apr. 9, 1991, effective Apr. 9, 1991) art. 40(1) (Chinalawinfo).

<sup>9</sup> Xingshi Susong Fa (刑事诉讼法) [Criminal Procedure Law] (promulgated by the Nat’l People’s Cong., Mar. 17, 1996, effective Jan. 1, 1997) art. 147(1) (Chinalawinfo).

<sup>10</sup> Zhou Yuanyuan (周媛媛), *Woguo Renmin Peishen Zhi de Lishi Yangye yu Gaige Beijing* (我国人民陪审员制的历史沿革与改革背景) [A Probe into the Historical Evolution and Reform Background of the People’s Jury System in China] 15 FAZHI YU SHEHUI (法制与社会) [LEGAL SYSTEM AND SOCIETY] (2015).

<sup>11</sup> Quanguo Renda Changweihui Guanyu Wanshan Renmin Peishenyan Zhidu de Jueding (全国人大常委会关于完善人民陪审员制度的决定) [Decision of the Standing Committee of the National People’s Congress Regarding Perfecting the System of People’s Assessors] (promulgated by the Standing Comm. Nat’l People’s Cong., Aug. 28, 2004) art. 4-6, 8, 14 (Chinalawinfo).

<sup>12</sup> *Id.* art. 10-13.

<sup>13</sup> Renmin Peishenyan Fa (人民陪审员法) [Law of the People’s Republic of China on People’s Assessors] (promulgated by the Standing Comm. Nat’l People’s Cong., Sept. 2, 1983, effective Apr. 27, 2018) art. 1 (Chinalawinfo).

<sup>14</sup> *Id.* art. 5-7.

<sup>15</sup> *Id.* art. 14-17.

<sup>16</sup> *Id.* art. 20-23, 27.

rights and obligations as the judges,<sup>17</sup> but their roles and functions were not clear. The *Assessors Law* in 2018 adjusted this position. According to the *Assessors Law*, when a collegial panel, basic unit organized in each court to adjudicate individual cases, includes people's assessors, it shall be the judge who presides the trial.<sup>18</sup> There are two types of collegial panel: a three-member panel and a seven-member panel.<sup>19</sup> The latter consists of three judges and four assessors,<sup>20</sup> and it is applied to certain circumstances, including criminal cases with probable serious sentence, public welfare lawsuits and cases involving great social impacts.<sup>21</sup> Both kinds of collegial panels shall adhere to the rule of the majority in a deliberation, but regarding the scope of deliberation, in a seven-member collegial, assessors cannot vote on the application of law.<sup>22</sup> As is shown in the table below, assessor's rights and functions are different under the two kinds of collegial panel. For example, assessors in a three-member collegial panel shall independently make comments and exercise the rights to vote on both fact-finding and the application of law,<sup>23</sup> while in the seven-member collegial panel, the assessors may only participate in voting on fact-finding rather than the application of law.<sup>24</sup> However, as the note will further indicate, such different arrangement of law and facts between three and seven-member collegial panel is changed by the *Interpretation* of the Supreme People's Court.

TABLE 1. ASSESSOR'S FUNCTION SCOPE UNDER THE *ASSESSORS LAW*

Collegial Panel	Assessor in a Three-Member Panel	Assessors in a Seven-Member Panel
<b>Facts-Finding</b>	(1) Make comments; (2) Right to vote.	(1) Make comments; (2) Right to vote.
<b>Application of Laws</b>	(1) Make comments; (2) Right to vote.	(1) Make comments; (2) No right to vote.

On 24 April 2019, the Supreme People's Court issued the *Interpretation*. The *Interpretation* modified and clarified the *Assessors Law*. Article 5 of the *Interpretation* excludes assessor from participating in three types of cases: (1) cases subject to trial under special procedures, supervision procedures, and public notice

<sup>17</sup> *Supra* note 8, art. 40(3); *Supra* note 9, art. 147(3).

<sup>18</sup> *Supra* note 13, art. 14.

<sup>19</sup> *Supra* note 13, art. 14.

<sup>20</sup> *Supra* note 13, art. 14.

<sup>21</sup> *Supra* note 13, art. 16.

<sup>22</sup> *Supra* note 13, art. 23.

<sup>23</sup> *Supra* note 13, art. 23.

<sup>24</sup> *Supra* note 13, art. 22.

procedures; (2) cases on application for recognition of a divorce judgment of a foreign court; (3) cases that are rejected based on a ruling or of which the court trial is not required.<sup>25</sup> Article 13(2) requires that the assessors and judges shall “vote on the issues on the determination of facts based on joint deliberation. Assessors shall not participate in voting on the issues on the application of laws, but they may offer their opinions and record them in files.”<sup>26</sup> And to assist the assessors in fulfilling their duty of finding the fact, the Interpretation stipulated in Article 13(1) and Article 9 that the seven-member collegial panel shall, before the court session, produce a list of fact-finding issues and instruct the jury on the issues that the jury will decide.<sup>27</sup> Other changes include the prohibition of the assessors to participate in the trial of a case in which they have already involved as a people’s mediator, the situations where an assessor can be sidestepped, and the permission that the assessors can raise questions to both parties, etc.<sup>28</sup>

This note will focus on the changes in China’s assessor’s system made by Article 13(2) of the *Explanation*, which provides that all jurors can give opinions and vote on the factual matters, but can only give opinions on the application of law instead of voting, regardless of panel types.

### III. THE BROAD SCOPE OF ASSESSOR’S FUNCTIONS IN CHINA AND ITS JUSTIFICATION

In China, current statutes and judicial interpretations regarding the assessors together permit the assessors to be involved in the decision-making of both factual and legal matters. This wide scope of the assessor’s function may find its justification in the lessons learned from the previous failing pilot program endeavoring to limit the jury’s function to fact-finding and, fundamentally, the relation between fact and law in Chinese judicial proceedings.

#### A. Current Legal Structure of the Assessor’s Functions in China

As prescribed by Articles 20 and 21 of the *Assessors Law* (2018)<sup>29</sup> as well as Article 13(2) of the *Interpretation*<sup>30</sup>, the current scope

<sup>25</sup> Zuigao Renmin Fayuan Guanyu Shiyong Liyong Zhonghua Renmin Gongheguo Peishen Yuan Fa De Ruogan Wenti de Jieshi (最高人民法院关于适用《中华人民共和国民事诉讼法》若干问题的解释) [Interpretation of the Supreme People’s Court on Several Issues concerning the Application of the Law of the People’s Republic of China on People’s Assessors] (promulgated by Sup. People’s Ct. Apr. 24, 2019, effective May. 01, 2019) art. 5 (Chinalawinfo).

<sup>26</sup> *Id.* art. 13(2).

<sup>27</sup> *Id.* art. 9, 13(1).

<sup>28</sup> *Id.* art. 13(2).

<sup>29</sup> *Supra* note 13, art. 20, 21.

for the assessors' function in either three-member collegial panels or seven-member collegial panels is to only vote on fact matters through joint deliberation and to only make comments on issues regarding the "application of law". This current scope, though already narrowed by the *Interpretation*, is still broader than the scope of the jury's function in the American legal system. It has been a long-established tradition in the American legal system that the jury is only the trier of fact and would never be involved in the application of law.<sup>31</sup>

*B. Reasons for the Broad Scope of the Assessor's Functions and Powers*

There are two major reasons for China's adoption of the broader scope of the assessor's functions. One is the substantial difficulties emerging in the pilot program experimenting with the absolute ban of the assessor's involvement in issues regarding the application of law. The other is that, since the relation of the fact and the law in China's legal system is different from that in the American legal system, it is impractical to draw a fixed line between the fact and law at once. These two reasons made it difficult to impose an absolute prohibition on the assessor's involvement in the legal matter in China's legal system for the time being.

1. Lessons Learned from the Pilot Program

The pilot program started in 2015 with the release of the *Notice of the Supreme People's Court and the Ministry of Justice on Issuing the Pilot Program on the Reform of the System of People's Assessors* (hereafter referred to as "Notice"). The *Notice* aimed to explore the reform of the assessor's duty in trials by requiring that the "people's assessors shall independently offer opinions on issues concerning fact-finding of the case during the course of deliberation and shall no longer offer opinions on issues concerning the application of law". The aim of this reform is "to maximize the advantages of people's assessors with rich social experience and understanding of social conditions and public opinions, and enhance the social recognition of the judgments of people's courts."<sup>32</sup> To assist the assessors in fulfilling their duty of fact-finding, the presiding judge shall inform

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<sup>30</sup> *Supra* note 25, art. 13(2).

<sup>31</sup> *Sparf v. United States*, 156 U.S. 51, 179 (1895).

<sup>32</sup> Zuigao Renmin Fayuan Sifabu Guanyu Yinfa Renmin Peishenyan Zhidu Gaige Shidian Fang'an De Tongzhi (最高人民法院、司法部关于印发《人民陪审员制度改革试点方案》的通知) [Notice of the Supreme People's Court and the Ministry of Justice on Issuing the Pilot Program on the Reform of the System of People's Assessors] (promulgated by Sup., People's Ct. & Ministry of Just., Apr. 24, 2015, effective Apr. 24, 2015).

people's assessors of the focus of the factual disputes, and explain other rules regarding evidence, procedural law and "precautions" to the jurors, but the judge shall not hinder the jurors from independently making decisions regarding the fact. The pilot program was implemented in Beijing, Hebei, Heilongjiang, Jiangsu, Fujian, Shandong, Henan, Guangxi, Chongqing, and Shanxi. In 2017, this pilot program was prolonged by one year to end in May 2018.<sup>33</sup>

However, in April 2018, as the pilot program came to an end, the Supreme People's Court did not give positive comments to the pilot program.<sup>34</sup> Moreover, neither did the *Assessors Law* nor the *Interpretation* followed the pilot program by barring the assessor's participation in the application of law. The Supreme People's Court explained that one reason for not incorporating the pilot program's requirement into the *Assessor Law* was the difficulty in distinguishing between fact-finding and the application of law. Current civil, criminal and administrative procedural laws in China do not address the distinction between factual and legal matters in judicial proceedings. Neither was there any uniform instruction that the judges could use to explain to the assessors on the exact scope of factual issues upon which the assessors could execute their right to make decisions.<sup>35</sup> Additionally, there were no precedents or traditions that could help to specify the scope of factual matters. In this regard, the lack of standard makes it unrealistic for the court to assist the assessors in deciding the fact and simultaneously in preventing the assessors from participating in the decision-making in legal matters.

The aim of including assessors' opinions in the court's judgment is to "enhance social recognition of the judgments". But if the assessors are prohibited from giving opinions on any legal matters, then, in cases where the scale of factual matters is mistakenly narrowed, the assessor's participation and its influence on the final judgment of the case would be seriously diminished. If the assessors are allowed to at least make comments on legal matters, like they used to be, then the assessors may impose more influence on the

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<sup>33</sup> Quanguo Renda Changweihui Guanyu Yanchang Renmin Peishenyuan Zhidu Gaige Shidian Qixian de Jueding (全国人大常委会关于延长人民陪审员制度改革试点期限的决定) [Decision of the Standing Committee of the National People's Congress to Extend the Period of the Pilot Program of the People's Assessor System Reform] (promulgated by Standing Comm. Nat'l People's Cong. Apr. 27, 2017, effective Apr. 28, 2017).

<sup>34</sup> Zuigao Renmin Fayuan Guanru Renmin Peishenyuan Zhidu Gaige Shidian Qingkuang de Zhongqi Baogao (最高人民法院关于人民陪审员制度改革试点情况的中期报告) [Mid-term Report of the Pilot Program on the Reform of the System of People's Assessors] (promulgated by Sup. People's Ct. Apr. 25, 2018, effective Apr. 25, 2018).

<sup>35</sup> *Id.*



final judgment. Therefore, only by allowing the assessors to influence both the factual and legal matters can better serve the purpose of enhancing “social recognition” of the judgments made by the court.

## 2. The Fundamental Reason: The Relation of Fact and Law in Chinese Judicial System

The failing pilot program reflected the difficulty in distinguishing between fact and law in China’s legal system. But looking beyond the pilot program, what really hinders the implementation of the absolute prevention of the assessor’s involvement in legal matters is that the fact and the law are more mixed in the decision-making process in China’s legal system than in the common law system.

Indeed, the difficulty in distinguishing between fact and law exists in both common law and civil law systems. However, in American legal system, where there is a tradition to resolve factual and legal problems separately, the distinction can be more easily made in most situations. In the American legal system, the fact comes first, and the law, as another problem, comes second. It is said by Justice Holmes that “one of the traditions is that the common law decides the case first and determines the principle afterwards.”<sup>36</sup> Hence, all judgments have to undergo two steps. The first step is to resolve, on a factual basis, a concrete dispute. The second step is to consider the law.<sup>37</sup> This common law two-step separation of fact and law makes the judges always keep an eye on the distinction between fact and law. Furthermore, this long-established notion of separation spurred abundant rules that facilitated the distinction between fact and the law.

China’s legal system, on the contrary, due to the traditions of mixing factual and legal matters, faces the lack of rules that help distinguish between the fact and the law. As is addressed by some scholars, the “factual matter” in China’s legal system refers to problems pertaining to the existence of certain facts and the questions can be delivered in plain language.<sup>38</sup> The “legal matter” may refer to how the law and legal norms would assess the given fact.<sup>39</sup>

<sup>36</sup> Oliver Wendell Holmes, *Codes, and the Arrangement of the Law*, 5 AM. L. REV. 1,1 (1870).

<sup>37</sup> Frederick Schauer, *Do Cases Make Bad Law*, 73 U. CHI. L. REV. 883, 883-84 (2006).

<sup>38</sup> Gao Xiang (高翔), *Peishenyuan Canyu Minshi Anjian Shishi Rending Chengxu Goujian Lun* (陪审员参与民事案件事实认定程序构建论) [*The Construction of the Procedure of the Jury’s Involvement in Civil Cases*], 5 XIANDAI FAXUE (现代法学) [MODERN LAW SCIENCE] 144 (2018).

<sup>39</sup> Chen Hangping (陈杭平), *Lun Shishi Wenti He Falu Wenti de Qufen* (论“事实问题”与“法律问题”的区分) [*On the Distinction between Factual Problems and Legal Problems*], 2 ZHONGWAI FAXUE (中外法学) [PEK. UNIV. LAW J] 322 (2011).

On one hand, China may have a tradition to avoid the clear separation of the fact with the law. For instance, the “Ma-Xiwu” way of judgment, which is recently promoted by the Supreme People’s Court, emphasizes that in order to resolve actual disputes, the court should take into account of the fact, the law, and local customs altogether in order to resolve to the dispute, to release the tension between the two competing parties, and to “educate” the parties in the lawsuits and local people.<sup>40</sup> This traditional way of giving judgments seems to ignore the addressing of legal problems as a separate matter after the dispute resolution.

On the other hand, regarding the application of law to the fact, China somehow seems to emphasize the inter-mingled or circular relation between factual and legal matters, instead of emphasizing how the fact and the law should be seen as separate problems. Law in China’s systems is mostly statutory, though there are cases suggesting some interpretations of the statutory law. However, since the language used in the statutes cannot cover all real-life circumstances, there would be some facts that do not fall within any situations prescribed by the statutes. Therefore, in order to appoint a legal answer of yes or no within the framework of law, the law must undergo certain extensions so it can be applied to the fact. This process of law application may not share much difference with that in the American system. However, judges and scholars in China seems to emphasize that this decision-making process should go “back and forth”, in a circular manner, between the fact and the law.<sup>41</sup> This “back and forth” way of applying the law to the fact may diminish the notion of the separation of the fact and law.

The two aforementioned traditional notions have imposed great influences on China’s legal system. They may have led to the China’s lack of experience and rules regarding the distinction between the fact and the law.

#### IV. THE WEAK INFLUENCE OF CHINESE ASSESSOR SYSTEM IN MAKING THE FINAL DECISION

In *Sparf v. United States*, the court held that “the court was careful to say that the jury were the exclusive judges of the facts, and

<sup>40</sup> Tansuo Xinsidai De Ma-Xiwu Shenpan Fangshi (探索新时代的“马锡五审判方式”), [On Exploration of the “Ma-Xiwu” Way of Judgments in the New Era], CHINA COURT (Dec. 08, 2019), <https://www.chinacourt.org/article/detail/2018/12/id/3602224.shtml>.

<sup>41</sup> Renmin Peishenyan Zhidu Zhong de Qufen Shishishen he Falushen (人民陪审员制度中的区分事实审和法律审), [The Distinction between Trial of Fact and Trial of Law in People’s Assessor System], CHINA COURT (Oct. 20, 2018), <https://www.chinacourt.org/article/detail/2018/10/id/3537697.shtml>.

that they were to determine—applying to the facts the principles of law announced by the court—whether the evidence established the guilt or innocence of the defendants of the charge set out in the indictment.”<sup>42</sup> Therefore, under the U.S. common law jury system, the court rests upon the jury the responsibility of applying the law to the facts, and finally, returning a verdict.

However, according to the *Assessors Law*, assessors in China are not allowed to draw conclusions independently from a compound of law and fact. Instead, judges participate in the whole process, which reduces the tension between the judge-juror relationship, and form a majority opinion together with the assessors to reach a verdict. This part endeavors to discuss two factors that might have led to the difference between the influence of the jury in the judicial decision-making process in China and that in the common law systems.

#### *A. Traditional Belief in Authority*

Although it is undeniable that, absorbing assessors into the trial process is in a way quite an effective way to enhance the prestige of national judicial system, it will go too far and even backfire if assessors are entitled to return a final verdict independently, replacing the role of judges, considering the history and society of China.

Under the hierarchical social order of Imperial China, justice is sought through elite authority without any participation by the general public.<sup>43</sup> With thousands of years passed, a sudden *de facto* judgment from lay assessors would definitely shake the foundation of the community’s long-lasting reliance on the national judicial system, thus harming “the interests of the state, its stability and security”.<sup>44</sup>

#### *B. The Objective of Introducing the Assessor System in China*

At the beginning of *Assessors Law*, the objective of introducing the assessor system in China is declared as “safeguarding citizens’ participation in trial activities according to the law, promoting judicial justice, and improving judicial credibility”.<sup>45</sup> While it is without doubt that the assessor system promotes citizens’

<sup>42</sup> See *Supra* note 31.

<sup>43</sup> Di Jiang, *Judicial Reform in China: New Regulations for a Lay Assessor System*, 9 PAC. RIM L. & POL’Y J. 569, 588 (2000).

<sup>44</sup> THOMAS CHIU ET AL., *LEGAL SYSTEMS OF THE PRC* 19 (1991).

<sup>45</sup> Renmin Peishenyan Fa (人民陪审员法) [Law of the People’s Republic of China on People’s Assessors] (promulgated by the Standing Comm. Nat’l People’s Cong., Sept. 2, 1983, effective Apr. 27, 2018) art.1 (Chinalawinfo).

participation in judicial area, the role of assessors should be within a certain scope in order to maximally achieve the other two goals.

Positively speaking, by absorbing lay participation in trials, the court is more likely to reach a judgment in accordance with the public's expectation, thus contributing to its judicial credibility. However, we shall recognize that, conformity with the public's general perception is one dimension for evaluating judicial justice but not the only dimension. Over-participation of citizens can, in turn, harm other judicial values, i.e., justice and credibility. As the wording in the article indicated, both "promot[e]" and "improv[e]" refer to reaching a better status compared with the original position. It is professionalism – professional judgments from professionally trained persons – that constitutes the basis for establishing judicial justice and credibility. Therefore, the role of assessors is more of assistance than dominance.

Mr. Chang I. Pang, former Vice-Minister of Justice, stated in a lecture in 1923 that the reason to adopt the jury system is that "although the present judges of the various provinces are learned in law, they are not well-aware of the good habits and customs of the places in which they sit because they are usually natives of foreign provinces. Consequently, their decisions are usually contrary to the public opinion of their respective places, resulting in loss of confidence in the court by the people. The adoption of the Jury System will avoid this problem."<sup>46</sup> Distant as this lecture was, the problem mentioned continues in New China, as an inevitable consequence of the nation's vast territory. Common problems and consistent intention may exist between the assessor system nowadays and the jury system in the past. For example, in Liangshan Yi Autonomous Prefecture, the *Degus*, who are knowledgeable and highly respected by Yi family branches, are selected as people's assessors and participate in trials and mediation processes.

Therefore, the adoption of the assessor system is intended to be assistive instead of decisive for judgments. It shall always be the judges who hold the most effectiveness in deciding a case.

## V. CONCLUSIONS

This article begins with an overview of the history of China's adoption of the assessor system and the introduction of the latest change in the people's assessor system in the *Interpretation*. Then this article focuses on Article 13(2) of the *Interpretation* and endeavors to discuss the scope assessor's function and power. The assessors are allowed to vote on factual matters but to only give

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<sup>46</sup> Chang I. Pang, *History of Judicial Reforms in China*, 1 CHINA L. REV. 156, 166 (1923).

comments on legal issues. This scope is broader than the jury's function and power in the common law system. The reasons for China's adoption of this rather broader scope are twofold: the lessons learned from the pilot program's substantial difficulty of keeping off the assessors from legal problems and the fundamental difference of the relation between fact and the law in China's legal system and the common law system. Yet, regardless of the broadness of the scope, the effectiveness of the assessor's power is, in fact, weaker than the jury's power in common law countries. This weakness of the assessor's power results from both the traditional reliance on elite authority, instead of public participation, in public affairs and the merely assistive, not deciding, nature of the assessor's contribution to the trials.

The people's assessor system in China is rather unique as compared to the jury system in other countries or regions. Particularly, the assessor's function and power in China has a broader scope but is less effective and powerful than that in common law countries.

This phenomenon is a result of the history, the judicial traditions and the nature of the civil law system. China should reconcile these factors to make the next move in improving its law regarding people's assessors.