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Forms of Lay Participation in Justice in Russia and China: A Comparative Legal Analysis

Anzhelika Gavrilova,

University of Kemerovo (Kemerovo, Russian Federation)

https://orcid.org/0000-0002-7957-1898

Alexander Danshin,

University of Kemerovo (Kemerovo, Russian Federation)

https://orcid.org/0000-0003-0107-8531

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Abstract. Approximately two-thirds of the world's nations employ some form of lay participation in both criminal and civil proceedings, such as the use of juries, lay judges, jurors, lay magistrates, and members of lay courts, as well as other lay personnel. This paper examines the evolution and practice of lay participation in China and Russia, which were specifically chosen for this study of lay participation in justice since they share a common socialist past that influenced both their justice systems in the 20th century. The study employed a range of comparative legal methods, namely the micro-comparison, synchronous, and diachronic methods. The problem-chronological method was used to investigate the essential features of lay representation in civil and criminal proceedings, which helped determine the place and role of this social practice in the judicial system. The formal legal method was applied to analyze and interpret the legal norms that transformed and modernized the institution of people's participation in justice. Historically, both China and Russia have adopted various forms of lay participation, from non-professional people's courts to state courts with lay assessors. In China, the models of people's participation

in justice have evolved in tandem with changes in the legal system. For instance, traditional China preferred to resolve most civil disputes within local communities in accordance with the regional traditions and status-oriented norms of behavior. The People's Republic of China has adopted the Soviet model of justice featuring people's assessors. In modern China, the socialist legal tradition coexists with other traditions, giving rise to a hybrid model of people's assessors characterized by specific Chinese features. In Russia, unlike China, completely non-professional courts existed only for a specific period of the Old Russian state, gradually giving way to state courts with lay participation. The Russian institution of lay participation in justice has a chrono-discrete nature, i.e. it is characterized by periodic changes from the quasi-Schöffen to the Schöffen model, from the Schöffen model to jury trials, and vice versa. However, there were periods in Russian history during which the Schöffen model coexisted with jury trials, mainly in the last quarter of the 19th century and in the 20th century.

Keywords: Russia; China; justice; lay/people's participation; lay/people's assessors; jurors; Schöffen court.

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Introduction

Lay participation in justice can take two main forms: people's courts and state courts with lay assessors.

People's courts operate on the basis of customary law, i.e. customs and traditions. Although this is the oldest form of lay participation, originating in the pre-state period, it is still used in many countries that have recognized customary law as well as state legislation. For example, the Russian Empire of the 19th century had not only

official courts but also traditional courts of the indigenous peoples of Siberia and *volost* courts for state peasants that resolved family and property disputes or minor offenses based on their customs. Today, traditional courts of customary law are still common for some African countries. Despite their colonial past, these countries are currently implementing either a policy of agglomeration, with its disorderly mix of various types of legal systems, or a policy of unification, which aims to incorporate customary law into official law. Another example could be a legal "renaissance" of traditional courts such as those that existed in Kazakhstan known as the Councils of Biys.[1]

The second form of lay participation in justice encompasses official courts comprised of professional judges and lay assessors. This form is characterized by two main models, namely jury courts and courts of lay assessors (Schöffen). The fundamental difference between the two is that a jury determines questions of fact and delivers its verdict separately from the professional judge, who subsequently answers questions of law based on the jury verdict, while a court of lay assessors functions as a single judicial board that is comprised of a judge and assessors who make joint decisions on points of fact and law.[2]

Understanding the processes influencing on the sociocultural characteristics of China and Russia in the prism of their interrelations is very important, taking into account contradiction between the paradigms of state and legal development of these countries. China is one of the oldest civilizations, characterized by sustained cultural traditions and turning to partial modernization through the reception of foreign experience. Russia is a civilization with numerous historic transformations that are accompanied by a complete rejection of previous experience and legal institutions. In the process of the state transformation in the beginning of 1990s a new national identity and sovereignty were searched for, many legal institutions of the Soviet period were completely lost, including those that demonstrated their effectiveness. In this realm the Chinese experience would be useful for an effective model of public participation in justice, contoured in the Article 32 of the Constitution of the Russian Federation.

1. People's Participation in Justice: Chinese Experience

1.1. Justice Administration in Traditional China

The Chinese institution of lay participation in justice originated in the 3rd century BC and became common practice by the beginning of the Song Dynasty (960–

[1] Bakirova, A.M. (2019). The Role of Councils of Elders and Councils of Biys in the Justice System of the Russian Federation and the Republic of Kazakhstan. In *Constitution and Social Progress. Second Prokopiev Readings: Proceedings of the International Scientific and Practical Conference* (p. 224). Immanuel Kant Baltic Federal University Publishing House. (In Russian)

[2] Biryukova, O.V. (2023). People's Participation in Justice: On the Example of the Sheffen Court and the Jury. *Bulletin of the Kemerovo State University. Series: Humanities and Social Sciences, 7*(1), 59–65. (In Russian).

1279).[3] The legal system of traditional China was based on Confucianism, which was designed to protect a strict hierarchy in society. The state was responsible for maintaining public order and, therefore, it focused primarily on criminal cases, or "questions of punishments" (*xingshi* 刑事), while civil disputes were considered "insignificant matters" (*xishi* 细事)[4] and had to be resolved by the family, as well as the clan and various public self-governing bodies. According to Confucian scholars, an ideal state differed from barbarian societies in that it had social harmony, and consequently, no reasons for any conflict or litigation. If disputes arose, however, they had to be settled by the people, and only when public institutions failed could the state assume the function of an arbitrator. For example, the "Laws of the Great Ming Dynasty" (14th century) established that civil lawsuits between individuals could be brought to court only after they had been considered by public bodies[5] acting as courts of first instance.

Traditional China had several forms of lay participation in justice, each with a number of managerial and judicial powers delegated to them by the authorities. The most notable were village elders "*qilao*" (耆老) and village policemen "*tibao*" (提报) who were elected by local people from the most respected members of their clan. Special recognition was given to those who had an academic degree of *xiucai* (秀才) awarded on the basis of unified state examinations and were deservedly considered part of a privileged learned class of the *shenshi* (绅士). Enjoying great authority, comparable with that of local officials, the *shenshi* helped their fellow villagers draw up various kinds of legal documents and defended them in courts as "lawyers". They often ended up working as court secretaries, clerks, or holders of other similar jobs in state institutions. A district judge could appoint a village police officer to act as an agent between the local administration and public self-governing bodies. Reporting directly to the judge, this police officer would represent the interests of the state in the village without receiving any payment for these services. The main duties of this police officer, in addition to protecting public order, would be to detain suspicious persons, make inquiries into suspicious deaths, search for suspects or defendants and bring them to court, and enforce debt payment by placing debtors in custody if necessary. Additionally, a *xiangbao* (详报), who was elected by the community and then approved by the local judge, was also involved in special instances, for example, in searching for people and bringing them to the judge. A *xiangbao* could be responsible for up to two dozen settlements, in which he also handled civil claims or collected materials on both civil and criminal cases on behalf of the judge. If the materials showed that a civil

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[3] Clark, H.R. (2002). *Community, Trade, and Networks: Southern Fujian Province from the Third to the Thirteenth Century* (p. 3). Cambridge University Press.

[4] Bernhardt, K. & Huang, P.C.C. (1994). Chapter One: Civil Law in Qing and Republican China: The Issues. In *Civil Law in Qing and Republican China* (pp. 1–12). Stanford University Press.

[5] Chan, P.C-H. (2012). The Enigma of Civil Justice in Imperial China: A Legal Historical Enquiry. *Maastricht Journal of European and Comparative Law*, *2*(19), 318–332.

claim had not been considered by any of the public officials vested with the requisite power, the judge could decide to suspend the proceedings of the case.[6]

Despite numerous cases of abuse perpetrated by these persons in the exercise of their judicial and police powers, local people, especially villagers and merchants, preferred not to turn to *yamen* (衙門).[7] Instead, they preferred to resolve their disputes through their local institutions of people's justice, including family clans or merchant associations, based on the principles of business trade, charters of trade guilds, corporate codes of merchants, or local customs. Ordinary people considered these customs to be fairer than court decisions since the judges often handled civil cases on the basis of a legal doctrine of "human compassion". This doctrine arose from the basic Confucian principle of "*ren*" (仁 meaning benevolence or humaneness), which prescribed taking the side of those in a difficult financial situation. Under this doctrine, the judges often sided with the debtor and, at best, only partially satisfied property claims, even if the defendant's fault was obvious and the creditor's claims were fully justified.[8]

1.2. The Institution of Lay Assessors in the People's Republic of China

The main form of people's justice in modern China is the institution of lay assessors, which was borrowed by the Chinese communists from the Soviet Union[9] and tested in the Chinese Soviet Republic (1931–1934) and in a number of Soviet regions of China during the Second Sino-Japanese War (1937–1945). In asserting the need for such an institution, the Chinese officials often refer to Ma Xiwu (1899–1962), chairman of the Supreme Court's branch in one of those regions, who said that "<…> the introduction of courts with people's assessors can not only attract the masses to participate in national governance, but also increase the people's sense of community and political responsibility, which will place court proceedings under the supervision of the people."[10] Ma Xiwu's efforts to implement the principles of "people's justice under the leadership of the Communist Party of China" were supported by Mao Zedong, who then used those principles to create the judicial system of socialist China. In a similar vein, the scientific and political circles of modern

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[6] Danshin, A.V. (2017). The State and Social Mediation in Traditional China. *Bulletin of Kemerovo State University, 3*(3), 74. (In Russian).

[7] A government office in the county towns of traditional China; a residence of local officials where they received visitors and carried out legal proceedings.

[8] Brockman, R.H. (1981). IV Commercial Contract Law in Late Nineteenth-Century Taiwan. In J.A. Cohen et al. (Eds.), *Essays on China's Legal Tradition* (pp. 99–102). Princeton University Press.

[9] Zihui, A. (2016). Improving the People's Legal System of China Based on the Reforms of the Legal System of Russia. In *Development of Russian-Chinese Relations: New International Reality: II International Scientific-Practical Conference, Dedicated to the 70th Anniversary of Victory in World War II (Irkutsk, September 21–22, 2015)* (p. 14). Baikal State University Publishing House. (In Russian).

[10] Chinese Practice of the People's Assessors System: Authoritative Release-Supreme People's Court of the People's Republic of China. https://www.court.gov.cn/fabu-xiangqing-374801.html. (In Chinese).

China often discuss the need to develop "Ma Xiwu's Way of Judging" (*maxiwushenpan fangshi*, 马锡五审判方式), which is based on the people's idea of honesty and justice. For example, an article posted on the website of the Supreme People's Court of the People's Republic of China describes the system of people's assessors as a "manifestation of justice for the people."[11]

After the formation of the People's Republic of China (PRC) in 1949, the Second All-China Conference of Justice Workers (1953) emphasized "an urgent need for a gradual introduction of permanent elected lay assessors to have equal rights with judges."[12] This was partially enshrined in the first Constitution of the PRC (1954), in which Article 75 stated that "by law, people's courts considered cases using a system of people's assessors."[13] The day after the Constitution came into force, a law was passed on the organization of people's courts that mandated the participation of lay assessors in courts of first instance in all cases, except for "simple civil and minor criminal cases" (Arts. 8 and 9).[14] Although the law did not specify that lay assessors were to have equal rights with judges during a trial, such was the assumption arising from both the spirit of the Constitution and the practice of the "democratic dictatorship of the people," which was being implemented in all spheres of socialist society. The widespread participation of lay assessors in the PRC's judicial system was interrupted by the Great Proletarian Cultural Revolution (1966–1976) which destroyed all democratic judiciary institutions, including the publicity of trials, the right to defense, equality of all nations and nationalities in court, etc. The institution of people's assessors was replaced by "courts of the masses," with thousands of spectators participating in "citation proceedings," where court decisions were based on excerpts from the works by Mao Zedong, rather than on law.[15]

The institution of people's assessors was restored in the "Law of the People's Republic of China on the Organization of People's Courts," which was adopted in 1979 and is currently still in force. According to Article 38 of its first edition, citizens of the PRC who have reached the age of 23 can be elected as people's assessors who are designated "members of courts of first instance that have equal rights with judges."[16]

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[11] Inherit and Develop the "Maxi Five Trial Methods" in the New Era. https://www.court.gov.cn/zixun-xiangqing-217661.html. (In Chinese).

[12] Maksimova, O. (2022). Book Review: Ch. 1. In A.V. Vinogradov et al. (Eds.), *The Modern Chinese State. Vol. 1: Basic Institutions of State Power and Management* (pp. 773–903). Institute of Far Eastern Studies. (In Russian).

[13] Kuznetsov, D.V. (Comp.). (2014). *Constitutional Acts of China: An Anthology* (p. 99). Blagoveshchensk State Pedagogical University. http://istfil.bgpu.ru/

[14] *Law on the Organization of the People's Court of the People's Republic of China (1955) (adopted by the first session of the National People's Congress of the First Convocation of the People's Republic of China on September 21)* (p. 8). Gosyurizdat. (In Russian).

[15] Troshchinsky, P.V. (2018). *Evolution of the Legal System of the People's Republic of China* (p. 54). (In Russian).

[16] Organic Law of the People's Courts of the People. https://www.court.gov.cn/jianshe-xiangqing-962.html. (In Chinese).

This was a development of the collegiate court, which had already been tested in China, where a panel consisting of two non-professional judges (people's assessors) and a professional judge decided on questions of both fact (*quaestio facti*) and law (*quaestio juris*). Although the 1978 Constitution, which was in force at that time, had no mention of people's assessors, a possibility of involving them in the administration of justice arose from Article 41, which established that "representatives of the masses participate as experts in the administration of justice" and also that they "should be involved in the judicial process for discussion and proposals."[17] The currently effective Constitution of the PRC adopted in 1982 has no mention of people's assessors either, but it does state that "the organization of people's courts is provided for by law" (Art. 129).[18] This reference pertains to the "Law of the People's Republic of China on the Organization of People's Courts," which mandates the institution of people's assessors.

An important stage in the development of the institution of people's assessors was outlined in the "Five-Year Plan for Reforming the People's Courts in 1999–2003" published by the Supreme People's Court of the PRC in 1999. It resulted in the "Decision of the Standing Committee of the National People's Congress on Improving the System of People's Assessors", whose preamble stated that it was adopted "in order to ensure the participation of citizens in trials".[19] This document launched pilot programs in dozens of Chinese cities and provinces which revealed the need for certain adjustments to the institution of people's assessors. In particular, questions were raised about changing the age and educational qualifications, as well as the selection procedure, the number of people's assessors, and other aspects. The greatest debate, however, was over the choice between two options for the future. One approach would be to further develop a well-established system of the collegiate court, in which judges and people's assessors would have equal rights, including in matters of decision-making or sentencing. Alternatively, an institution of jurors could be introduced, where jurors worked independently from judges and passed their verdict only on questions of fact (offense) or guilt. Although the document above only provided for the first option, the latter has been widely used in the modern world.

The results of those discussions were reflected in the "Law of the People's Republic of China on People's Assessors"[20] adopted by the Standing Committee of the National

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17 Constitutional Acts of China. http://istfil.bgpu.ru/. (In Chinese).

18 Constitution of the People's Republic of China (adopted at the Fifth Session of the Fifth National People's Congress on December 4, 1982, and promulgated and implemented by the announcement of the National People's Congress on December 4, 1982). http://www.gov.cn/guoqing/2018-03/22/content_5276318.htm. (In Chinese).

19 Decision of the Standing Committee of the National People's Congress on Improving the People's Assessors System (adopted at the Eleventh Meeting of the Standing Committee of the Tenth National People's Congress on August 28, 2004). http://www.npc.gov.cn/zgrdw/npc/lfzt/rlyw/2017-12/13/content_2033668.htm. (In Chinese).

20 People's Assessment Law of the People's Republic of China (The Second Meeting of the Standing Committee of the 13th National People's Congress on April 27, 2018). https://ru.chinajusticeobserver.com/law/x/peoples-assessor-law-20180407/chn. (In Chinese).

People's Congress on April 27, 2018. According to Article 2 of this law, it was not only a right but also a duty of Chinese citizens to participate in court proceedings as people's assessors. Article 15 mandated that a collegiate court with people's assessors consider all criminal, civil, or administrative cases that are complex in nature and of great social importance, attract wide public attention, and affect group or public interests, as well as other cases "requiring the participation of people's assessors in the trial" in courts of first instance. Additionally, the courts of first instance may involve people's assessors, which are often referred to in China as "judges without a robe", in any other cases should this be desired by the defendant in a criminal case, the plaintiff or defendant in a civil case, or the plaintiff in an administrative case (Art. 17). Candidates serving as people's assessors must meet the following requirements: be Chinese citizens, abide by the Constitution and laws of the People's Republic of China, have high moral standards, be physically able to perform their duties, have at least secondary (previously, higher) education, and be at least 28 years old (Art. 5). Candidates ineligible to serve as people's assessors are members of the Standing Committee of the National People's Congress, court staff, prosecutors, employees of national security agencies, lawyers, and notaries (including former lawyers and notaries who were banned from practice), as well as "other persons who are not suitable for performing the functions of people's assessors by virtue of their duties." In addition, bad debtors, ex-offenders, those who were removed from civil service, or those who committed serious violations of the law and discipline that could undermine confidence in the judicial system, etc. are also ineligible (Arts. 6 and 7).

People's assessors are selected in a multi-stage process. First, candidates are randomly selected from among the permanent residents in their area by local justice bodies together with basic people's courts and public security services. The number of these candidates should be at least five times as many as the required number of assessors. Another group of candidates is made up of those citizens who have personally applied or have been recommended by public associations or urban (rural) committees. Their number should be within one-fifth of the total number of candidates. All of the candidates are required to take a special qualifying examination. Based on its results, a register is compiled from which people's assessors are selected by lot. Their number must be at least three times the number of judges in a court. The lists of selected persons are sent to the standing committees of local people's congresses, which then officially appoint them as people's assessors (Arts. 8–11). For a particular case, people's assessors are randomly selected from the list of those appointed by local authorities (Art. 19). According to the provisions of the Supreme People's Court adopted in 2019, when experts with special knowledge are required to participate in court proceedings, they can be randomly selected from a separate list of people's assessors with such knowledge. One assessor may participate in a maximum of thirty cases per year.[21]

[21] Interpretation of the Supreme People's Court on Several Issues concerning the Application of the "People's Assessors Law of the People's Republic of China." https://www.court.gov.cn/zixun-xiangqing-154792.html. (In Chinese).

People's assessors are elected for five years without the right to be re-elected (Art. 13). During this term, they undergo special training "as necessary" and those who have special achievements in judicial work are recommended for various rewards (Arts. 25–26). Furthermore, people's assessors retain all social benefits associated with their primary employment and are provided with subsidies to cover transport, food, and other expenses incurred by them in connection with their work in courts. Safety is also guaranteed to them and their close relatives (Arts. 28–31).

The most notable innovation in the current law on people's assessors is that it establishes two types of collegiate courts in the judicial system of the PRC: one consisting of one judge and two assessors and the other consisting of three judges and four assessors (Art. 14). This innovation is referred to as a "specific feature of the Chinese system of people's assessors"[22] in the official document of the PRC Supreme People's Court entitled the "Chinese Practice of the System of People's Assessors" adopted in October 2022. First, the two types of collegiate courts differ in their size (three people and seven people, respectively). Second, only a panel of seven people can consider criminal cases with a punishment of more than ten years, life imprisonment, or the death penalty, as well as civil and administrative cases with large social consequences, such as those involving land requisition and demolition of buildings, environmental safety, food and drug safety, etc. (Art. 16). However, the main difference lies in the scope of the powers of people's assessors in these collegiate courts.

In a three-member panel, people's assessors have equal rights with the judge. This means that they can freely express their opinion and vote on matters of both fact and law. In a seven-member panel, people's assessors can speak freely on any issues, but they can vote only on matters of fact, being excluded from decision-making or sentencing (Arts. 21–23).

Thus, the "distinctive specific feature" of the Chinese legal system is that in addition to having preserved and improved the system of people's assessors borrowed from the Soviet Union, which modern Russia has abandoned, China has also incorporated an element of the institution of jurors that is widespread throughout the world, wherein people's representatives can only pass a verdict of guilt or innocence. However, since they pass such verdicts together with professional judges, rather than separately, this practice cannot be considered a real "trial by jury." It is interesting to note that a fairly harmonious combination of "trial by jury" and "trial by Schöffen" was practiced in pre-revolutionary Russia during the counter-reforms of the judicial system of the 19th century, when "both models of lay participation in justice co-existed but only in criminal trials."[23] In China, however, the people's

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[22] Chinese Practice of the People's Assessors System: Authoritative Release-Supreme People's Court of the People's Republic of China. https://www.court.gov.cn/fabu-xiangqing-374801.html. (In Chinese).

[23] Gavrilova, A. (2023). People's Participation in Justice in Modern Slavic States. *Bulletin of Kemerovo State University*, *7*(1), 74. (In Russian).

representatives considered not only criminal but also administrative and civil cases. The existence of two main forms of lay representation in the legal system of one country makes this system quite unique among modern states. China is currently "testing" this system for its viability, and it has already shown some positive results. In particular, the quality of court work has improved as a result of raising the minimum age of people's assessors from 23 to 28, as well as a continuous development of their qualifications and the provision of regular moral rewards. The social strata of "judges without a robe" have significantly expanded as a result of lowering the educational qualification from a higher degree to general secondary schooling, as well as providing people's assessors with financial support. There are currently 53.9% of men and 46.1% of women among people's assessors, with 88.3% of them having a secondary education or higher degree. In terms of employment, 41.7% of them work at enterprises and institutions, 36.4% are engaged in local governments and public organizations, and 21.9% are peasants or self-employed.[24] In the last ten years, the number of lay assessors in China has tripled, reaching more than 327,000 as of March 2023.[25] In 2018–2022, China's collegiate courts considered about 8.79 million civil cases, 780,000 administrative, and 2.15 million criminal ones, with more than 23,000 cases considered by seven-member panels. According to these statistics, over the past five years, Chinese courts with people's assessors have considered four times more civil cases than criminal ones, which is one of the most important achievements of the ongoing reform of this institution.[26]

China is currently searching for an optimal system of people's assessors while reforming its entire judicial system. Recently, at the 20th National Congress of the Communist Party of China, President Xi Jinping emphasized that while inheriting "the best achievements of traditional Chinese legal culture," it is also necessary to "create, at an accelerated pace, a fair, highly effective and authoritative socialist judicial system", since "fair justice is the last line of defense that ensures social equality and justice."[27]

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[24] Chinese Practice of the People's Assessors System: Authoritative Release–Supreme People's Court of the People's Republic of China, 2022. https://www.court.gov.cn/fabu-xiangqing-374801.html. (In Chinese).

[25] Work Report of the Supreme People's Court–March 7, 2023 at the First Meeting of the 14th National People's Congress. http://www.npc.gov.cn/npc/c30834/202303/e1abfbee8ef3493291db5ab4cf60fcf9.shtml. (In Chinese)

[26] Chinese Practice of the People's Assessors System: Authoritative Release–Supreme People's Court of the People's Republic of China, 2022. https://www.court.gov.cn/fabu-xiangqing-374801.html. (In Chinese).

[27] Jinping, X. (2022). *Carrying High the Great Banner of Socialism with Chinese Characteristics China*. https://www.fmprc.gov.cn/rus/zxxx/202210/t20221026_10792071.html. (In Chinese).

2. Lay Participation in Justice: Russian Experience

2.1. Justice Administration in Pre-Revolutionary Russia

The history of lay participation in justice can be traced back to the pre-state tribal system, when justice was administered by the elders of a clan or a tribe. As statehood was established in Rus', those functions were delegated to the prince and other privileged people. However, since the Old Russian state was an early feudal monarchy with remnants of the tribal system, it preserved such forms of lay participation as *veche* (a popular assembly in Ancient Rus') and *verv* (a community in Ancient Rus'). Yet, *veche,* which was represented by people, acted as a court only in high-profile cases (involving high-ranking officials, etc.), while *verv*, which was represented by an elder or a council of elders, considered only low-profile cases (e.g., land disputes in the community), increasingly giving way to the administrative court.

As the Muscovite state became centralized, it unified its judicial policy and made justice an exclusive function of the state. However, lay participation in justice was maintained at the local court level. For example, Article 38 of the Sudebnik (code of law) of 1497 forbade governors from administering justice without the *zemstvo* headman or best people elected by the community. After the *guba* and *zemstvo* reforms, justice was administered with the participation of so-called "cross kissers," headmen and best members of the community who swore an oath by kissing the cross. They actually performed the functions of lay assessors, and their presence, in addition to the officials appointed by the tsar, was mandated by the Sudebnik of 1550.

During the judicial reforms of Peter I, who, in fact, began to form the judicial branch of power, the court gradually became professionalized. This partly reduced the importance of people's participation in justice, which was still practiced in class courts. For example, the city magistrate courts of 1723–1724 included burgomasters (literally, "master of the town") and local councilors elected by the community. City magistrates served as courts for city dwellers, while military courts, or *Kriegsrechts*, were based on lay participation, predominantly from the military.

In 1775, Catherine II adopted the "Statute on Provincial Administration in the All-Russian Empire" (hereinafter, the Statute), one of the fundamental laws that institutionalized the collegiality of courts represented by professional judges and lay assessors. According to the Statute, the number of assessors depended on the court instance (first or second) and class affiliation. In particular, Chapter 14 of the Statute stipulated that two chairmen and ten assessors sit in the upper *zemstvo* court, distributed evenly to consider criminal and civil cases. Assessors were elected every three years by the *uyezd* assemblies of nobility from the nobles who permanently resided, or were on permanent service, in the *uyezd*. Similarly, the noble court of first instance, or the *uyezd* court, also consisted of a permanent judge and two assessors elected by the assemblies of nobility.

Chapters 20 and 22 of the Statute established the election of local councilors and assessors every three years to represent the urban community (comprising

lower middle class and merchants) in city magistrates' courts (four councilors) and provincial magistrates' courts (totaling six assessors, three for the civil department and three for the criminal department).

According to Chapters 23 and 24 of the Statute, assessors for the upper courts (ten assessors, five for civil and five for criminal cases) and lower courts (eight assessors, including two for the lower *zemstvo* court and two for the orphan's court) for state peasants (as well as economic, palace, and possession peasants) were elected from impeccable representatives of the community subject to the respective courts, from nobles or learned people, from officials, or *raznochintsy* (intellectuals not belonging to the nobility).

Although the judicial model established by Catherine II was class-based, it was similar to the German mixed model of justice which, in some German lands, was represented by a single panel of crown judges and several assessors. Catherine's judicial system, with some changes introduced by Paul I and Alexander I, survived until the reforms of Alexander II.

The Judicial Statutes of 1864 advanced the judiciary and legal proceedings and introduced a new model of lay participation in justice. In particular, they replaced Catherine's courts of lay assessors with jurors. Most importantly, unlike his predecessors (Peter I and Catherine II), who had made the first attempts to separate the court from the administrative power, Alexander II actually managed to fully implement this principle by declaring judicial independence. We agree with N. Efremova that "in the absence of a formal constitution, the Judicial Statutes constituted the foundations of the judiciary in Russia, albeit without officially recognizing the separation of powers, having taken the first practical step towards a constitutional monarchy."[28]

The election of jurors was no longer class-based; instead, they were elected from local residents of all classes aged 25 to 70 who had permanently resided in one *uyezd* for at least two years.

Unlike the former courts, which administered justice in both criminal and civil cases, jurors were now restricted to only considering criminal cases, particularly those involving the deprivation or restriction of rights along with determining the main punishment (e.g., hard labor, prison camp, etc.), which was assessed based on the gravity of the criminal act.

However, acquittals in political cases, which fell into the category of especially serious criminal cases, coupled with the unstable political situation, eventually led to counter-reforms that withdrew many of the democratic principles of the Judicial Statutes. One of them, the law "On the Jurisdiction of the Proceedings on Crimes against the State" of 9 May 1878, transferred the jurisdiction of authority

[28] Efremova, N.N. (2019). Constitutional Foundations of the Judiciary in the Russian Federation as a Factor in the Progress of the Domestic Organization of Justice. In *Constitution and Social Progress. Second Prokopiev Readings: Proceedings of the International Scientific and Practical Conference* (p. 33). Immanuel Kant Baltic Federal University Publishing House. (In Russian)

over criminal cases involving the opposition to official power or other criminal acts against the interests of the monarchical regime from the jurisdiction of district courts that used jurors to that of judicial chambers.[29] According to A.F. Koni, since judicial chambers included representatives of certain classes, Russia returned to the model of German Schöffen courts, with the only difference being that their scope of cases was significantly expanded.[30]

The administration of justice with the participation of jurors in pre-revolutionary Russia was primarily based on the classical model of a jury trial.[31] Jury trials were conducted in district courts, which were the courts of first instance in a particular district of the judicial area. They were not held in courts of appeal. Jurors were selected from the list by lot, and it was their duty to serve on the jury.

During the preparation for a trial, the jurors could be challenged "without any explanation." Both the prosecution and the defense had the right to challenge, and they could file up to six challenges each. At the beginning of a trial, the jury was composed of twelve jurors and two alternates.

The jurors sat separately from the crown judges, but they had a right to examine physical evidence and ask questions through the presiding judge regarding all the circumstances of the case. The law banned jurors from leaving the courtroom and collecting information on the case independently outside the court session.

The jurors were entitled to deliberate and vote in private, separately from the professional judges, under the guidance of a jury foreman. Before moving to the deliberation room, they received instructions from the presiding judge on the essential circumstances of the case and its legal grounds. The jurors answered questions of fact that had to be reflected in the jury's verdict, for example: Has a crime been committed? Is the defendant guilty? Did the defendant act with intent? If not, do they deserve leniency?

There was no rule that obliged the jury to reach a unanimous decision. Disagreements were resolved by a majority of votes, and when the votes were equally divided, a decision was made in favor of the defendant.

If the jury passed a verdict of not guilty, the presiding judge immediately declared the defendant free from trial. In case of a guilty verdict, the court pronounced a judgment after hearing the prosecutor's conclusion regarding the punishment, the civil plaintiff's demands, and the defense lawyer's petition for mitigation of punishment, while also taking into account the jury's opinion on leniency. However, if the crown court (which comprised three professional judges) unanimously

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29 Nemytina, M.V. (1999). *Courts in Russia: Second Half of 19th – Early 20th Centuries* (p. 85). Diss. (In Russian).

30 Koni, A. (1894). Introductory and final reports on the jury trial and on the trial with class representatives under the leadership of the Meeting of Senior Chairmen and Prosecutors of the Judicial Chambers on December 29–31, 1894. *Journal of the Ministry of Justice*, *4*, 38. (In Russian).

31 Nasonov, S.A. (2015). European models of the proceedings in the trial by jury: Trial by jury in Georgia (comparative legal studies). *Journal of Foreign Legislation and Comparative Law*, *6*(55), 164. (In Russian).

recognized that the jury convicted an innocent person, they decided that the case be presented to a new jury, the decision of which was to be final.

The Statute of Criminal Proceedings of 1864 did not provide for an appeal against a sentence based on the jury verdict. Only a cassation appeal was allowed if there was a clear violation of the law or its misinterpretation, as well as a violation of the legal procedure or the authority's frame of competence.

2.2. The Soviet System of Justice

The Soviet system of justice was formed within the Leninist concept of the proletarian people's court, which involved the participation of all workers in the administration of justice, even those without a complete general education, let alone a law degree.

The Marxist-Leninist concept aimed to de-ideologize the bourgeois element in the justice system, thereby rejecting the pre-revolutionary judicial system, including jury trials. These changes were reflected in Decrees on the Court No. 1, 2 and 3 which introduced the people's court and institutionalized lay assessors.

While the new system of justice was being established, the Soviet regime used some elements of the former model of people's participation. For example, Decree on the Court No. 2 of February 15, 1918, stipulated that decisions on criminal cases be made by a panel of twelve regular assessors and two alternates under the chairmanship of one judge. Later, the Regulations on the People's Court of the RSFSR dated 30 November 1918 differentiated between the numbers of lay assessors based on the gravity of the offense. In particular, extremely serious criminal offenses were considered by a people's judge and six lay assessors, while other criminal and civil offenses were considered by a people's judge and two lay assessors. Notably, lay assessors were involved not only in criminal but also in civil proceedings.

The Statute on the Judicial System of the RSFSR, which was adopted during the New Economic Policy in 1922, established a regular collegiate panel of a people's judge and two lay assessors for all courts of first instance, including the Supreme Courts, to hear both criminal and civil cases. This composition remained unchanged throughout the whole Soviet period.

Regulatory acts adopted at different times established the following requirements for lay assessors. First, lists of lay assessors and their elections were based on the principle of gender equality. Secondly, they were elected by groups at the place of work or at the place of residence, and they could only be released from their duties if challenged by the voters or on the basis of a court decision. Thirdly, the minimum age was first determined by the right to vote granted at the age of 18, and later, it was raised to 23 years (as per the USSR Law "On the Judicial System of the USSR and its Constituent and Autonomous Republics" of August 16, 1938) and 25 years (under the Framework Legislation on the Judicial System of the USSR and its Constituent and Autonomous Republics of December 24, 1958). Finally, there was a reputational criterion that stated: politically unreliable citizens were deemed

ineligible for participation in justice (e.g., those deprived of the right to vote or excluded from public and professional organizations for misconduct) followed subsequently by citizens with a criminal record.

The procedural role of lay assessors in court was determined by procedural codes, including the Civil Procedure Codes of the Russian Soviet Federative Socialist Republic (RSFSR) of July 10, 1923 and June 11, 1964 and the Criminal Procedure Codes of February 15, 1923 and October 27, 1960. All of these codes equated people's judges with lay (people's) assessors: "the word 'judge' refers to people's judges and people's assessors".

Since lay assessors had no legal skills, the judge was obliged to provide them with all of the necessary explanations of the general and legal issues of the case prior to its consideration.

The fundamental difference between court proceedings with lay assessors and jury trials is that lay assessors discussed a case (criminal or civil) and voted on it in a deliberation room under the guidance of the presiding judge. None of the collegiate court members had the right to abstain from voting, and each question had to be answered in the affirmative; the judge voted after the assessors in order to prevent his influence on them. The decision was made by majority vote.

The presiding judge or one of the lay assessors had the right to draw up a judgment or a decision to be signed by every member of the collegiate court, even the judge or a lay assessor who had a dissenting opinion.

To summarize, the institution of people's assessors in the Soviet period performed three important functions. Firstly, they administered justice in collegiate courts of first instance, both in criminal and civil proceedings. Secondly, they exercised people's control over justice and enforcement proceedings. Thirdly, they performed educational and preventive activities related to legal education, re-education of offenders, and public prevention of crime.

2.3. Jury Trials in Modern Russia

In modern Russia, the main form of people's participation in justice is the possibility of a jury trial for certain criminal offenses. The return to the pre-revolutionary model of jury trials was declared in the Concept of the Judicial Reform of the RSFSR dated October 24, 1991 and institutionalized in Article 123 of the Constitution of the Russian Federation. Until 2003, however, lay participation in justice mainly had a symbiotic nature since the changes in the Civil Procedure Code (1964) and the Criminal Procedure Code (1960) of the RSFSR, which were in force in the 1990s, allowed for several court compositions ranging from only professional judges to panels with people's assessors in civil and criminal cases, as well as jury trials in criminal cases at the request of the accused. The institution of people's assessors was finally abolished by the Civil Procedure Code of the Russian Federation and the Criminal Procedure Code of the Russian Federation. Lay participation in civil proceedings was abolished on February 1, 2003, and in criminal proceedings, from January 1, 2004.

The analysis of pre-revolutionary and modern Russian legislation points to the continuity of the pre-revolutionary model of legal proceedings with jury trials. Although the majority of the features are common for both models, there are some distinctive characteristics of the modern criminal process.

Both models share some general eligibility criteria for jurors, namely the minimum age of 25, the absence of a criminal record or criminal charges, the absence of any medical contraindications on physical and other grounds, and the ability to speak the language in which the proceedings are to be conducted.

The modern model, however, excludes certain categories from jury service, namely public officers, people holding elected positions in local governments, in the justice system, and law enforcement agencies, as well as those involved in professional legal activities (such as lawyers and notaries), military personnel, and clergy.

Some of the requirements regarding those eligible to serve on a jury for were also waived, primarily due to their datedness or no longer being relevant. For example, those excluded from certain societies and noble assemblies or those under guardianship for profligate spending were formerly ineligible for jury service. Property and gender qualifications were also abolished.

The majority of juror's rights, nevertheless, have largely remained unchanged, including the right to study all the circumstances of a criminal case and examine material evidence, to ask questions through the presiding judge, and seek clarification on legal norms. The limitations are also the same: jurors cannot leave the courtroom, communicate with anyone other than the court members before passing a verdict, collect information on the case outside the court session, or disclose any details of deliberation and voting (Arts. 333 and 335 of the Criminal Procedure Code of the Russian Federation).

Similar to the pre-revolutionary era, in modern Russia also jurors have to answer the same questions of fact: "Has it been proven that the act took place? Has it been proven that this act was committed by the defendant? Is the defendant guilty of committing this act?" If the defendant is found guilty, the question is raised whether he or she deserves leniency. However, it is important to note that unlike the Statute of Criminal Proceedings of 1864, the Criminal Procedure Code of the Russian Federation provides for a possibility of asking further particular questions, in addition to the three main questions above, to establish whether there were any circumstances that affected the degree of the defendant's guilt or changed its nature, including those that could entail the release of the defendant from liability (Art. 339).

The order in which the judge gives instructions to the jury and the procedures for the jury's deliberation, voting, and passing a verdict are almost the same as in the former model (Arts. 340–343 of the Criminal Procedure Code of the Russian Federation). In particular, after hearing the instructions from the presiding judge, the jurors retire to the deliberation room, without professional judges, to issue a verdict. The deliberation is chaired by a jury foreman. The voting process is open and priority

is given to a unanimous opinion. If the jury cannot reach a unanimous opinion, they can decide by majority vote on each issue, and in case of a parity of votes, they accept the answer that is in favor of the defendant. A guilty verdict is issued with a majority of votes on all three main questions. However, a verdict of not guilty is issued if a negative answer to any of the main questions was given by at least four jurors in a republican supreme court, a regional court, or any other court within the respective jurisdiction, or by at least three jurors in a district court or a garrison military court (Art. 343 of the Criminal Procedure Code of the Russian Federation).

Furthermore, the actions of the presiding judge after the verdict is announced have also remained unchanged (Arts. 346–351 of the Criminal Procedure Code of the Russian Federation). In case of a verdict of not guilty, the defendant is declared acquitted and, if in custody, is immediately released from it in the courtroom (Arts. 346 and 347 of the Criminal Procedure Code of the Russian Federation). In the case of a guilty verdict, the court has to resolve other legal issues (such as qualifying the offense, passing the sentence, resolving any civil claims, and hearing arguments from the parties). The presiding judge, however, may decide to dissolve the jury and arrange for this criminal case to be considered by a different court if he or she recognizes that "the guilty verdict was passed against an innocent person and there are sufficient grounds for issuing a verdict of not guilty since the fact of the crime has not been established or the participation of the defendant in the crime has not been proven." This decision is final and cannot be appealed.

However, there are certain differences in the judicial proceedings between a jury in pre-revolutionary and modern Russia. The fundamental difference is that now the defendant has to file a motion for a jury trial, while the Statute of Criminal Procedure of 1864 established such proceedings *a priori* for a certain category of criminal offenses.

Another difference from the pre-revolutionary legislation is the possibility of posing both unmotivated and motivated challenges to prospective jurors based on their questioning in order to identify any circumstances that might prevent a person from participating in a jury trial, with the first questioning conducted by the defense side. This rule is in contrast to the right of unmotivated challenges, where priority was given to the prosecution (Art. 328 of the Criminal Procedure Code of the Russian Federation).

The rules regarding the number of jurors have also changed. Initially, the jury institution was restored with a classic composition of twelve jurors and two alternates. Later, however, Federal Law No. 190-FZ of June 23, 2016, which introduced certain amendments to the Criminal Procedure Code of the Russian Federation, reduced the number of jurors to eight in the republican Supreme Courts, regional courts, and other courts within the respective jurisdiction, and to six jurors in district courts.

The above law also expanded the category of criminal offenses that can be tried by a jury. Initially, these were the crimes that could be punished by life imprisonment or the death penalty. Now, this category also includes those crimes for which a prison sentence may be imposed with alternative terms.

Also new is the procedure for dissolving the jury due to its composition bias. The jury can be dissolved before it is sworn in if the judge satisfies a motion filed by one of the parties about the jury's inability to issue an objective verdict due to specific peculiarities of the criminal offense (Art. 330 of the Criminal Procedure Code of the Russian Federation). In this case, the court resumes the preparations for a jury trial of the criminal offense as stipulated in Chapter 42 of the Criminal Procedure Code of the Russian Federation.

Finally, the pre-revolutionary and modern laws differ slightly in their appeal proceedings against sentences handed down by a court with a jury trial. For instance, the pre-revolutionary law only allowed for a cassation appeal on the basis of a clear violation of the direct meaning of the law or its misinterpretation, as well as a violation of legal proceedings or the court's competence. There was no possibility for revision au fond if the verdict's legality, validity, or fairness were called into question. The rule was that "the sentences pronounced by a district court with a jury trial are final." Although a form of appeal was introduced in the Criminal Procedure Code of the Russian Federation by Federal Law No. 433-FZ of December 29, 2010, the grounds for canceling or changing a court decision on appeal (Art. 389.15) are, in fact, the same as the grounds for pre-revolutionary cassation, i.e. a significant violation of the criminal procedure law, a misapplication of the criminal law, or an unfair sentence.[32]

Conclusion

The Chinese institution of people's participation in the administration of justice has its roots in the 3rd century BC, becoming a widespread practice during the reign of the Song dynasty. Imperial China had several forms of lay participation with certain powers delegated to them by district judges. Most often, these individuals were village elders (*qilao*), village policemen (*tibao*), or quasi-officials (*xiangbao*) elected by the community and approved by the local authorities, who independently considered civil lawsuits and collected information on civil or criminal cases on behalf of the judge. The law of that time required that civil lawsuits could be filed only after their consideration by such persons. Although they often abused their powers, ordinary people preferred not to go to courts since the judge could make a decision based on the Confucian idea of humanity and take the side of the debtor, even if it was obvious that the accused was guilty. The absence of a real opportunity to have the defendant fulfill his contractual obligations via a court decision lent weight to the institutions of people's participation in exercising judicial powers and resolving civil law disputes. Such participation became common practice throughout the era of the Celestial Empire, which left a deep imprint on the minds of many generations of Chinese people.

[32] Nasonov, S.A. (2013). Models of review of sentences not entered into legal force, decided on the basis of jury verdicts in Russia and foreign countries. *Lex russica*, *4*, 379–390. (In Russian).

The institution of people's assessors was the main form of people's participation in justice in the People's Republic of China. Borrowed from the Soviet Union, it was tested in the Soviet Republic of China (1931–1934) and then enshrined in the first Constitution of the PRC in 1954 as an important element of the "democratic dictatorship of the people". In 2018, a new law on people's assessors was adopted, which established the right and duty of a Chinese citizen to participate in the proceedings of people's courts. The participation of people's assessors is now mandatory in the courts of first instance considering criminal, civil, or administrative cases of great social importance. The "specific feature of the Chinese system of people's assessors" in the modern period is that it innovatively combines the features of the "Schöffen system" of people's representation adopted by the Soviet state and some elements of the "trial by jury." Since China is one of the leaders in the increasingly globalized world economy, its centuries-old experience in people's participation in justice still deserves research and attention.

In Russia, unlike China, the institution of lay participation in justice has a chrono-discrete nature, i.e. it has undergone periodic changes in its models. We identified five periods in its development, which gave rise to five models.

The first period is associated with the formation of the Old Russian state. Although non-professional people's courts were still used in certain cases back then, the role of the state in justice administration gradually expanded, which led to a quasi-Schöffen model that was chaotically represented by elected members of the community, mainly at the local court level. Their role was not so much to decide a question of law or fact but to deter the judges from corruption and outright injustice.

The second period started with the "Statute on Provincial Administration in the All-Russian Empire" adopted by Catherine II in 1775. The Statute allowed for civil and criminal proceedings to be carried out by both professional judges and lay assessors who equally participated in making a judgment. Thus, this model was similar to the Schöffen model of lay participation, which originated in the German lands.

The third period is related to the Judicial Statutes of 1864, which rejected the Schöffen model of lay participation and introduced jury trials for certain criminal cases. The Schöffen model, however, was partially reinstated by counter-reforms for specific political and state crimes that could no longer be tried by a jury and were instead considered by the judicial chambers with the representatives of certain classes. Thus, both models of lay participation coexisted in the second half of the 19th century, but only within the criminal process.

The fourth period followed the October Socialist Revolution of 1917 and the subsequent transformation of the political and legal system. This period rejected all bourgeois elements, including those in the justice system, replacing jurors with people's assessors.

The fifth period, which characterizes modern Russia, was introduced by the Concept of the Judicial Reform of the RSFSR dated October 24, 1991. It gradually rejected the entire Soviet past, including people's courts with lay assessors, and

reincarnated jury trials for certain categories of criminal cases at the request of the accused, which significantly narrowed people's participation in justice.

Considering the cyclical alternations of the Schöffen model and jury trials in Russian history, we can expect the former to return or both models to coexist, just as they did in the second half of the 19th century and in the 1990s.

The People's Republic of China demonstrates two models of public participation in justice can co-exist, which, in turn, can become a guarantee of constitutional human rights and freedoms aimed at ensuring the legality, justifiability and fairness of a judicial decision. The revival of the institution of people's assessors in the courts of first instance, along with the preservation of proceedings with the participation of jurors in serious criminal cases, will strengthen the democracy of proceedings in accordance with article 32 of the Constitution of the Russian Federation The People's Republic of China experience in creating fair justice through the dualistic model of people's assessors is a clear example of direct democracy, and it can be useful for any state, regardless of the preferences of its political elite and the specifics of national ideology.

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Information about the authors

Anzhelika Gavrilova (Kemerovo, Russian Federation) - Associate Professor, Department of Theory and History of State and Law, Kemerovo State University (33 Tukhachevskogo St., Kemerovo, 650070, Russian Federation; e-mail: anzhik77@mail.ru).

Alexander Danshin (Kemerovo, Russian Federation) - Associate Professor, Department of Theory and History of State and Law, Kemerovo State University (33 Tukhachevskogo St., Kemerovo, 650070, Russian Federation; e-mail: danschin.garant2013@yandex.ru).