

*Caught between Professionalism and Populism: A Big-Data Analysis of the Lay Participation System in China**

Xiaohong Yu and Xiang Wang

Abstract

One of the most noteworthy recent trends in judicial reforms worldwide has been the resurgence of lay participation. Several jurisdictions, including Russia, Spain and Japan, have introduced laypersons into their judicial processes. With more than 70 percent of ordinary procedural cases handled by lay assessors, China is a notable, yet severely understudied, example of this global trend. Drawing on descriptive big-data analysis of 23 million court decisions from 2014–2016, this article offers one of the first systematic examinations of the People's Assessor System in China. It identifies a tendency for lay assessors to be used for routine cases without political significance, and the coexistence of an expert model and layman model in everyday justice. Resorting to historical and comparative analysis, we devise a novel typology to explain the China case. The tensions between the competing demands

Xiaohong Yu is Associate Professor in the Department of Political Science, Tsinghua University. Correspondence should be sent to xyu@tsinghua.edu.cn.

Xiang Wang is Assistant Research Fellow in the Department of Political Science, the Zhou Enlai School of Government, Nankai University.

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of professionalism and populism during the past few decades has created intriguing contradictions in the system, with the result that lay participation in China both facilitates and constrains judicial decisions.

There has been a surprising worldwide resurgence in lay participation in recent years despite its diminished use in the countries where it originated.¹ Several jurisdictions, including Russia, Spain and Japan, have introduced a variety of lay participation systems.² China is a notable example of this trend but has been seriously understudied.³ China renewed its interest in the People's Assessor System (CPAS) in 2004 with a piece of legislation (hereafter "the 2004 Legislation") and a series of rigorous judicial policies issued by the Supreme People's Court (SPC).⁴ Official enthusiasm was further manifested in 2014, when the central government embarked on an unprecedented judicial reform project. One of the earliest measures introduced was the 2015 Pilot Program to reform the CPAS (hereafter "the 2015 Pilot Program").⁵ In 2018, these persistent efforts were formalized into the Law on the People's Assessor System (hereafter "the 2018 Law").⁶ In addition, local courts have also welcomed lay assessors with enthusiasm. More than 70 percent of first-instance cases handled through ordinary procedures have involved at least one People's Assessor (PA), a rate significantly higher than those in other jurisdictions.⁷

The enthusiasm shown both in the center and in the localities has nonetheless been met with distinct scepticism in scholarly circles. Lay participation has been dismissed as "malfunctioning".⁸ PAs are generally believed to be "accompanying, not adjudicating." Scholars have noted that PAs have no real impact on judicial decisions, and PAs have been unkindly characterized as a bunch of retired nannies, who spend their time sitting on the bench knitting sweaters (not unlike the notorious *tricoteuses* of the French Revolution). Even those who support the system call for major reforms, such as transforming it into a jury system. Why does there exist such a discrepancy between official discourse and scholarly assessment? Moreover, such a negative assessment, which dismisses the PA system as a malfunctioning mimicry that awaits a fundamental overhaul, also makes it almost impossible to fit developments in China into the global resurgence of lay participation. There is an urgent need for a systematic and comprehensive reexamination of the CPAS.

The article sets out to examine two sets of questions. First, what is the status of lay participation in China? How do PAs participate in trials?