

Jury System for Us

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Taiwan has been undergoing a series of judicial reforms. Our legal system is a curious hybrid of German law and its Japanese transplant, plus some American supplements that have been haphazardly added into our body of law. Fifty years of martial law have left us with a justice system that does not do justice to a democratic civil society. In place of halfway amendments and stopgap measures, we need an overhaul. To renovate our legal system and establish public faith in the court, we need to introduce trial by jury into the Code of Criminal Procedure.

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Trial by jury guarantees due process of court procedures and thereby upholds the fundamental human rights to a full and fair trial. It should first be applied to criminal procedures, where personal liberty and sometimes life are at stake. In a criminal investigation, the prosecutor can mobilize police forces and other resources of the state while the suspect stands alone; to counterbalance this asymmetry, the burden of proof is placed upon the prosecution in the court of law. This has been affirmed in our legislation, but without a jury system, these principles are but hot air.

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In a jury system, the judge applies the law and the jurors decide the facts, i.e., weigh the evidence (witnesses and exhibits) presented by the prosecution and the defense, which are equal contenders in the court. In our current system, the demarcation is less than clear-cut. Some prosecutors still see themselves as judicial officers and walk the courtroom as if it were their principality; the defendants crouch in their seats while their lawyers, with an air of apology, attempt to settle the nuisance; the judge, perching on the high bench, arbitrates the whole procedure, interrogates the accused and witnesses, assesses the evidence, and hands out the sentence – in effect acting as both a player and the referee. This cannot be how justice is done.

The premise of democracy is to trust the people, to let the public have a say in vital decisions of the state; the enfranchised public gain political competence and efficacy, and the state attains the cornerstone of democracy – consent of the ruled. This process also works in a jury trial. The jury comprises common people, ideally representing a cross-section of the community; the defendants would be assured that they are tried by their peers, not some aloof jurists. Furthermore, it is harder for a government to impose its views in the court with a jury trial than with a judge trial. We here in Taiwan need not be reminded of this; we know too well the danger of a court that answers to the government instead of to the people.

There are some natural concerns with placing so great a power in twelve people of no special virtue. One might ask, “Are we ready for this?” The question sounds eerily familiar, because it was once used against democratization. Jury service anywhere is a learn-and-do process. Jurors are never expected to have prior legal knowledge; they are there to represent the common people, to uphold community values in the court of law. The presiding judge walks the jurors through their service: instructing them on the law, admitting or dismissing a piece of evidence; when the jury reaches a verdict, the judge has the seldom exercised power to set aside the decision if he or she believes it to be far off the mark.

Jury trial can work in Taiwan. We are more homogeneous in terms of ethnicity and language than the United States, where resentments rise when a black defendant is tried by a white jury. Our literacy rate is high; our civil participation, judging from election turnouts, is among the highest in the world.

The proposal of adopting the jury system is in tune with current judicial reforms. We are already moving from an inquisitorial system to an adversary system; more and more prosecutors begin to see themselves as public servants of the executive branch; the Legislative Yuan has codified the principle of presumed innocence and the

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practice of cross-examination in 2003; more stringent evidence rules are being introduced. It would take but a bold leap to complete the revolution.