CHAPTER 7

What’s Happening in the Jury Room? Analyzing Shadow Jury Deliberations in Korea

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I Introduction

Jury trials were first introduced in 2008 in Korea.¹ The Korean jury system, as envisaged in the Act for Civil Participation in Criminal Trials of 2007 [Gukminui hyeongsajaepan chamyoe gwanhan beoprul] (the “Act”), incorporates elements of both the US-style system and the German lay assessor system, to be implemented during an initial five-year experimental phase. The idea of utilizing the two primary styles of lay participation was to experiment with each of them in the Korean context in order to come up with the most appropriate model.

The Korean jury system was to serve dual purposes: to increase democratic participation of the lay people and to enhance the credibility of the judiciary.² It is regarded by scholars as an effective channel to infuse the public’s sense of

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² Gukminui hyeongsajaepan chamyoe gwanhan beoprul [Act for Civil Participation in Criminal Trials], Law No. 8495, June 1, 2007, Article 1(1) [hereinafter the Act].
justice into judge-only decisions,\(^3\) which were frequently criticized as dogmatic and elitist. As of the end of the year 2012, a total of 848 jury trials had been held, and the number of jury trials has consistently increased from year to year.\(^4\) This fact alone demonstrates that the jury system has furthered democratic ideals in Korean judicial decision-making.

On the other hand, the mere addition of lay people into the judicial decision-making process does not necessarily bring about the enhancement of the credibility of the judiciary, which is the second prong of the legislative purpose. It is only fulfilled when the general public believes, at a minimum, that jurors’ decisions are as well reasoned and reliable as those of professional judges. The success of the jury system requires the people’s support and respect for jury verdicts.

The general view of lay people as being unable to engage in meaningful discussion and to reach consensus in a rational manner was one of the main reasons for opposing the jury system. This criticism centers on cultural assumptions about Korean people: namely, that they are emotional and are easily influenced by non-legal factors during the decision-making process;\(^5\) that they are influenced by elders or the more educated during the deliberation process; and that they are not used to participating in public debate, especially concerning sensitive subjects. These tendencies are said to be more pronounced amongst young females.

And yet, if one considers internet sites and recent social media trends, it can be seen that Koreans do frequently and passionately discuss social and political issues. Anecdotal evidence and experience indicates that Koreans in fact have great enthusiasm for discussing politics and the issues of the day in social gatherings. Moreover, there is a contrary assessment of the emotional tendency of Korean jurors, indicating that the jurors did not wrongfully make decisions due to emotional influences.\(^6\) This complexity leads us to suspect that the reflexive pessimism regarding the Korean jury system could be based on misconceptions.

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