QIKJS-Part.I.A

Qualitative Inquiry of Korean Judicial System

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The Problem Statement

Let me brief on the problem statement from the last posting.

Given that the studies of public policy turned to be more scientific across the types of public organization, such elaboration comes far scarce on the topic of PAKJS. That is particularly true when we fall with the experience of new born republics since 1945, including South Korea. They often were hurried to create the western style of judicial system in urgent need to respond with the inauguration of new republic as a state. Evidence strongly vindicates that the literature to deal with the topic is mostly on the structural perspective and democratic ethos or consequent lack of political legitimacy, which is sensational and limited lacking a coherent scientific frame and analysis. The problem of public disagreement, inconsistencies of policy making as well as the desultory discourse of PAKJS varying with the successive administrations and public opinions are truly an authentic puzzle that should be resolved with the empirical studies and coherent account on the relevant theories I plan to generate through the GT approach.

The Purpose of Study

By undertaking the research on PAKJS, we can improve for a better national and world view of policy makers and administrators interested in the judicial policy or formulating and reforming the judicial system. The studies will provide a phenotype, in terms of philosophies and bureaucratic tradition that has occurred over the history of Korean judicial system and constitutional democracy (Downs & Mohr, 1976).[1] Provided that the studies will employ the

[1] In this scope of definition on the extent of focus, the PAKJS encompasses a wide scope of policy arena including the constitutional reform beyond the reform of statute, regulation and executive order. It also does not rule out, in its scope of dealings, the analysis of informal or organizational sphere of actors and interest or stake holders. Therefore, the subject scope of PAKJS complies with the largest extent of policy studes, which,

grounded theory approach, it is less meaningful to situate the research work within any definitive theoretical frameworks. Nevertheless, I will be indebted to the intellectual heritage through the preliminary exposure to two theories, PET and DOI, which allows the perspective and basic ideas of public administration as well as lens of constant comparison with the western paradigm of understanding involved with the disciplinary goals of PPA (Patton, 2002).[2] The study seeks to systemically develop a theory that explains process, action, or interaction on the topic of PAKJS.[3] The policy makers on the field and scholarly literature about the PAKJS deal with the topic making a focus on the utility and practical points of strengths and weaknesses, which have not researched or under-researched the common element of phenomenology inherent in the PAKJS.[4] This generate an important knowledge gap, current version of dissidence, and unproductive and resilient progress of agendas and programs, as well as create a contending public response of many already implemented policies for the transformation or reform of judicial system. The purpose of this study, therefore, is intended (i) to provide a cohesive view of Korean history and phenomenology of PAKJS on the elements and thoughts of philosophy and public policy[5] (ii) to explain the process, action and interaction of subsystem and delineate the distinct characteristics inherent in PAKJS (iii) to provide a focused and thematic view as elementary of philosophy and public policy along the selective deals of major events and issues. I hopefully envisage an extensive use of this theory for the comparative analysts and researchers, who are interested in the characteristics of PAJS varying with the political, economic, social, philosophical status of nations as well as culture and history.

Background of the Study

While the judicial branch or system is regarded as a bulwark of human rights protection

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however, is not unusual with the routine attitudes or ways of approach of scholars in this discipline.

[2] The grounded theory researcher has an ultimate goal to generate a theory that the primary form of data collection often would be an interviewing in which the research is constantly comparing data gleaned from participants with ideas about the merging theory.

[3] According to Creswell, the GT researcher begins independently from and as unaffected with the mainstream of knowledge, and the data analysis will be exhaustive and reiterative through the collected data. The open coding will yield one category of the focus of theory, and axial coding will enable to form a theoretical model. The selective coding could delineate the intersection of the categories what we call a theory.

[4] Therefore, the open coding can orient the focus of studies, such aspect as to reveal the national particulars and common elements within the trajectory of KJS beyond the agenda and issue specific focus of current literature.

[5] The researcher needs to hold a care so that the deals should not be bloated or miniscule. This misfeasance often would arise from the mistake as averted from the theme and focus than the extended time span of research coverage.

and modern democracy, the intellectual approach was regrettably limited in view of public policy and administration. The concern and interest tend to be constrained on the studies of law, and parochial with their own narrative of legal theory and justice (Kim, 2014a,b; 2015a,b). That is because the characteristic of innovations are conservative and constitutionally structured while the actors or stakeholders are simply the deliberator of justice rather than the public administrators. As the pluralism of society progresses, the judicial system has gradually been viewed in other perspective that the essences and elements of public policy can be a factor to give a scholarly dose for its character and identity (Baumgartner, 2013). That is particularly because those past assumptions are not only with the actors of judicial system, but also with the players of policy makers. As said, the problem would be exacerbated since the professionalism – often resilient and conservative and a culprit of those parochial assumptions -- would be shared along the tripartite branches with the intra-governmental policy network (Bhatti, Asmus & Pedersen, 2011). In this crippling environment of system, the lacking or limitations of literature on the cohesive theory of PAKJS generally militate against the universality of understanding the process, action, and interaction of PAKJS based on the scientific frames, terms and concepts. In other words, the current world of policy makers and scholarly community on this topic can well be viewed as some of already determined or ideological scratch of issues and agendas, which is seen to contribute to the current disagreement on the PAKJS and unproven or even fragmented assertion from the scholarly critiques. From the distinctness of Korean judicial system as an object of research, the pattern of phenomenon cognizable with the implications of judicial policy would be somewhat distinguishable, which created the background of this study.

- Several research articles and books had dealt with the political and historical examination of KJS or PAKJS, whose focus had been temporally limited to the years of concern and agenda specific. For example, Y.R. Lee published Jin-oh, “Rhu – a constitutional scholar in the liberation years” in 2011. Y.M. Lee and M.S. Kim researched the history and influence for the KJS, whose book and article are titled respectively, “Korean judicial system and Ume Chenziro” and “The judicial system in the US constitution and its impact on Korea.” Han, S.H., provided a grand scale of overview concerning the reform packages of civilian government over the last three decades. Hwang and Yang specifically explored the public legal aid program and two lawyer production systems -- the law school education and national judicial exam. In view of the current Korean scholarship on this area, the tools of analysis would be historic or legal, and the basic aims of research had a focus on the improvement of legal practice or service in response with the recent challenges of globalization. In some cases, the literature is helpful for the overview, or thought provoking with the deals of critiquing. Nevertheless, the detailed disclosure of process, action and interaction as well as analysis of phenomenon penetrated through the political philosophy or scientific concepts and terms had been lacking, which characterizes the PAKJS as a new theory adapted with the ambit of PPA discipline.

- Korea has a conspicuous history with the four times of judicial strike to counteract the

established order and attempt of judicial suppression with the encroachment of abusive administration (Wood, 2006). The first judicial strike had occurred in 1971 in reaction to petitioning for the detention order of two judges and one court clerk by the prosecution office on the account of bribery. The alleged ground of petition was bribery, which was embroiled with their pending case of anti-communist act. Judges had suspected that it was a plot of government to eliminate the resilient and uncooperative judges. 157 judges nationwide had announced resignation with the claim of judicial independence. The second judicial strike was the collective action against the appointment of chief justice, who was alleged not only loyal, but also partial to the former militaristic government. 335 judges publicly announced their cause of collective action, and the chief justice withdrew from his appointment shortly thereafter. The third judicial strike broke out in 1993. 40 judges of the civil court of Seoul district petitioned the claims of judicial independence to D.J. Kim, then chief justice, whose cause hold a regret and penitence from the past wrongs of judiciary. The strike was assuaged with the resignation of chief justice. The fourth judicial strike had been aligned against the appointment practice of Supreme Court justices on the basis of bar admission year of judges in seniority. 160 judges signed the petitioner name list. The strike intended to react upon the male and conservative-dominated appointment of Supreme Court justices, whose impact had been consequential with the appointment of first female justice in 2003 and second female justice in 2004. The strike provoked the reform issues on the personnel management of judicial bench.

- In May, 1999, the presidential commission on judicial reform had been inaugurated. The commission was created to promote the human rights and facilitate the social justice by providing an effective and speedy legal remedy. It also is responsible to create and review the reform policy of judicial system to address the challenges of globalization and liberalization of legal market.

- The Coalition of Participatory Democracy had established the Judicial Monitoring Center in Sept. 1994. The organization had an ambit to disseminate the ideas of judicial reform, and provide a civilian check for the civil justice and bureaucratic abuse of judicial power (Gilardi, 2010). The organization shingles out six missions of organization, proposal of reform agendas and legislative lobbying, the reform of supreme and constitutional courts and prosecution offices, agendas on the professional responsibility and ethics, public critiquing of judgments and court opinion, and other miscellaneous.

- The globalization committee 1995 had been embodied that the globalization plan was created to address the reform of legal education and professional service. Its agenda includes the public counsel, expansion of attorney provision, personnel management of judges, specialties in the legal service, and national strategy on the liberalization of legal service.

- The judicial reform committee 1999 had been organized with an advisory mission for the president. It prepared the comprehensive report containing reform plans of KJS in May 2000, which dealt with six major reform objectives, i.e., effective and speedy legal remedy, the quality provision of legal service, rationalization and specialization within the triad of professional institutions, input reform of personnel resources, elimination of professional misconduct and corruption, and strategic response to the globalization.

- The judicial reform committee 2005 had been created as a standing advisory council, which was led by the prime minister and same rank of civilian leadership and constituted by 20 council members as well as the planning and implementation teams. The members and teams were drawn from the premiere bureaucrats, judicial benches, high rank prosecutors, notable academicians, lawyers and journalists, as well as law professors (2010). The committee had been productive -- 14 committee sessions, 16 sessions of acting committee, 18 meetings of floor workers, and 46 conferences, 31 research sessions, 7 public forum, 9 times of learning travel abroad, 4 times of public poll, and 4 times of moot court. The committee had played out extensively with the 13 reform programs and 25 legislative bills.

- The judicial reform committee 2010 had been arranged under the authority of congress (national assembly of Korea). As attuned with the business-minded leadership, the new administration had been less interested in the judicial reform or PAKJS. Along with the bureaucratic maze and resilience, it generally brought a retard and regression in implementing and complementing the established plan as well as creating a new agenda (Bhatti, Asmus & Pedersen, 2011).

- H.K. Han, a noted historian in Korea, wrote a newspaper column of fifty serial contributions in *Hankyere*, which is titled the "wrath and dishonor of Korean judiciary." In this work, he explores the faltering and subjection of the KJS to the authoritative government around 1960's through the early of 1980's. His work experience as a member of government commission on the "KCIA (Korean Central Intelligence Service) and Victims of Past Administrations" allowed him a rich exposure to the theme.

- The OECD statistics publicly released in recent years showed that trust in justice for the Republic of Korea had ranged poorly below the average of OECD countries. The rate of trust was as low as 27 percents, which was ranked at 39 among the whole of 42 countries. The average of OECD member countries had been complied at 52 percent of trust, and only three countries have a less trusted judicial branch. *Dong-Ah*, one of Korean news daily, critiqued the phenomenon citing the bureaucratic and social nepotism in favor of newly resigned judges as most a prominent culprit of judicial distrust in Korea.

Photo

Graphics of Public Trust in the Judicial System

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