QIKJS-Part.V.G

Qualitative Inquiry of Korean Judicial System

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Weberian Thought, and Passion to Reform in the Transformative Period

In view of neo-liberal legal service market and new ethos of democratic judicial system, the policy actors had not been dormant, but gradually became reactive with alternatives and strategies. The new challenges possibly could cripple the existing habitus about the institution for an ineffective and biased chaos within the interest holders and their reception. The response may not be viewed to alter the basic paradigm of liberal restructuring of legal service market, but has been resilient and progressive to reform the traditional typology standing on the privilege and social esteem of lawyers. While the structure seems hardly resistible at its basics from influences and national need of advancement for the level playing field, the internal strife to adapt with new environment of judicial system has been chartable. The effort, however, was neither grand nor principled for any basic policy direction or as an example of PET in terms of agenda shifting, but has been creative and practical. In other words, the kind of mimesis, such as reception of American type legal education or submission to the universal terms of legal service market now in practice by the western states, ceased as less typical, but started to resonate more strongly with the verse of public policy discipline. Now the alterity of new judicial system, one settled and the other progressively in stages based on the international negotiation (legal service market, can face the stage being incorporated into the genuine reception with the policy dialogue and professional communication of policy actors, such as law professors, lawyers of KDOJ and KSC, as well as KBA. The characteristic of this mood is to solidarize the interest holders on their real challenges, such as reformation of legal aids program or their funding strategy as well as reform of three crucial institutions on the national judicial system, say, KDOJ, KSC and KBA (Kim, 2014; 2015;a,b).

For example, *Whang*, one law professor concerning the reform of legal aids program argued,

> "The legal aid program has the goal to provide a cheap or free legal service for indigents or deprived social class. The legal service is provided by the lawyer on paid basis, and the gap to consume it possibly lies in income disparity or knowledge and personal level of potential clients. The barrier or disparity in using a legal service jeopardizes the public meaning of national judicial system… The legal aid program now

> is managed in dual front between the court operating organization and legal aid firm of civilian nature. Both organizations, despite its organizational basis, has mostly been funded by the government. An ill aspect of the current system is because it is not a client-oriented, but provider-planning…."

Based on his evaluation of current ineffectiveness within the system, he suggested a number of reforms arguing for (i) specialization of service between the civil and criminal cases (ii) adequate resource and jurisdictional allocations within the state and civil initiative (iii) client centered system of service provision (iv) participation of local governments (v) diverse pools of service provider including the law school students as an intern or pro bono attorneys (vi) integrated system among the current providers (vi) evaluation and feedback network and strengthening of planning on the service provision. His argument is related with our hypothesis or theme that the shaping of PPKJS is affected by both of materialism and cultural element. It should be the matter against the materialism in some aspect. His theme on the social justice for indigents or poorly educated client would highlight that the law people are entangled deeply with the public ethics or morals. On the other, it would relate with the neo-liberal primacy on materialism and market liberalization as concomitant with the reform of new law school system. On the corner of his paper in Korean version, he narrated,

> "The legal aid is basically the responsibility of lawyers, who stood at the center of service provision. The growth of legal aids implies that more lawyers would be engaged in this public program. The new law school system can expedite the progress since the average cost to hire attorneys increasingly goes down because of more than production of new attorneys….The most important is about the identity of public service attorneys and to establish the network with the law schools..."

Our findings from the field data corroborates the hypothesis (i) the epistemology of lawyers had been diversified in spectrum, but generally convergent in terms of materialism and basic principle of judicial system within the liberal democracy (ii) they are less than revolutionaries, but moderators or adaptors for the changing environment (iii) the policy makers, mostly peers on the same professional qualification, are prone to the Weberian account of philosophy and ways of approach. Given the civilian democracy, it is true that a very limited number of lawyers had been engaged in the radical politics in Korea. The public exposure had been popularized, for example, about J.H.Lee and her husband with the radical progressives, who argued on the identity and subjectivity of Korea within the two Koreas on different ideologies and now even on particularities. Their leftist party was yet generally condemned by the constitutional court order ordering the party dissolution two years ago. At the other end of spectrum, we can illustrate the principled lawyers on the classic virtue of judicial independence and constitutional rule, such as H.D. Kim and B.R. Kim, who represented the right ethos of judicial leadership or policy view.

Y.S. Lee, the Chief Justice around the end of Park's reign provides one example for the epistemology of judicial leadership. While these examples would be amenable to the critical discourse on reflexivity or normativity, the examples would not be vast or

seldom if more properly.[1] Most of lawyers and especially policy actors would be found within the Weber's. We could borrow the ideas from Derman and Turner, teachers of Weber, that are about his elaboration to illuminate the politics and social thought making a focus on the theme, "Charisma to canonization." Derman expounded three frames of Weberian attitude for his de-magification and anti-utopian rational resignation, which best assimilates the mind and basic stance of policy makers within the global capitalism. Provided that the policy makers or actors prevailingly tend to decide on learning and rationale, we can see them canonized, if more intensely in case of judicial policy area, in which the magic word of ideology or utopian perfection would less be friendly, at least in terms of practical arena. It also may explain more plausibly a phenomenon that the charismatic leadership of judicial organs even would not be occasional as compared with the Executive or business organizations. His version of describing the Weber's had proposed cold anti-utopianism, hot anti-utopianism and temperate anti-utopianism, all of which have a fair potential to configure with PPKJS. Within the cold anti-utopianism, the principled rejection occurred by accusing it as intellectually dishonest, fanatical or escapist. This allows to stand as untethered to any value, and heroically endure the lonely existence of modern life, which is distinguished from the narrative of neo-liberal principle against political leadership, for example. In hot anti-utopianism, we can find the Kierkegaardian[2] Knight of Faith that would support the personal conviction of a resisting world, the very process we can confirm through the decision making of public policy and bitter leadership role to draw upon a public consensus. A Weberian thought culminates in the last version, temperate anti-utopianism, in which we can find the "resignation of passion," which defines the personality definitively toward any possibility of management from the arena of ideology. In this mentality, we can accept the tragic character of demystified world and affirm the dignity of human life and action. This version can have a prevailing fit within our experience demanded of leadership and policy actors notwithstanding the

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[1] I suppose that the second type of examples could be explained in view of Weberian version on moral or public ethics given their basic acceptance of liberal capitalism and participation. That would not be the contour of other two types since the first type would be aligned with the communist nationalism and support of northern regime at least in rough terms. It might be some of Habermas normativity in their own right based on the intricacies of action plan or party protocols, but might not survive the particulars of Korean politics in practical terms. This means that their leftist ideas could not be practical in South Korea in terms of public policy. That is especially true if the Korean constitution has an institution of "defensive democracy" against the threat to itself, notably the dissolution order of political party denying the basic values of Constitution. The context was revealed vividly involving the radical progressives of Lee years ago. The third case, Lee, would fall within the isotype that could be paired with the post-war existentialism or Foucauldian reflexivity, the kind of last bourgeois within the passive and chicken -- in other sense, safe -- judiciary for the enclaves of canonized lawyers despite the political authoritarianism of Park.

[2] For example, many important legislative proposals often stems from personal conviction against a resisting world. The mode of consensus in the international organization would be grounded on the conviction of small number of leadership role countries, as we see yellow room practice in WTO or American diplomacy against the terrorism in UN.

politicians, state-man and policy makers.[3]

Given the vital relationship between input and output of organizational performance, the law school reform deserves a highlight in understanding the Korean judicial system. Now the legal education of breeding the lawyers apparently turned to be lush in view of number of attorneys and expense that the prospective lawyers have to bear. An agenda to reform the Judicial Exam and the state-support training for two years had been spawned merely academically before Y.S. Kim pronounced his basic policy of national globalization initiative. As said, this simply proves the importance of top leadership in view of new agenda settings. The death-knell of old policies or system now came to be fairly imaginable that would cease in any punctuated equilibrium as the theory suggests. Two variants in transforming the then system could be posited in terms of presidential transition and turf from the politics of expert and legal culture. These variants never had been absent in the transformation of KJS, but in meek consequence that the law school reform policy has been implemented in any way in 2007, but with a lapse of time spent resiliently from its inchoate year of public announcement, 1993. A meltdown from planning through the implementation seems partly due to the change of administration and general reason of policy priorities on this specific agenda.[4] As still voiced by a group of lawyers, some traditional lawyers had not given a support of new law school system.[5] Their mentality and understanding would likely be firmly convicted of Inn-based education in Britain or one year Grand Ecoles in France and even the time of Lincoln on lawyer-to-lawyer education, say, the interpersonal apprenticeship. They basically appeared to be termed that the judicial system, including the legal education and production of new attorneys, would be a state institution rather than that of college or university, the kind of classic ethos ensconced within the professional community

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[3] Now the public can have a habitus, who expects his policy makers or leaders for an alternative or policy ideas concrete and applicable to their real problems. This was vividly disclosed through the election process. Simply we question how Sanders can address the challenges or propose any solution for economic justice in US. The citizens would fear if Trump has any practical ideas about the national diplomacy or immigration issues.

[4] The kind of midnight regulation would not be the practice or phenomenon of Korean presidential transition, which is dissimilar with the US tradition. The spoils system of presidentialism and political culture, "all or nothing," relating with the supporters or interest holders may bring it into the administrative cycle between the former and succeeding presidents in US. Given the check and balance role of cabinet in Korea and political culture against interests or party faction, such warring-like expediency hardly survive the intense public criticism and very unlikely even in the future of Korea.

[5] K.Y., the chief justice around the planning years, had been very affected by vowing his fundamental disagreement about the reform. The mood of dissension and unfriendliness against the new attorney production system still has not calm down entirely. The new president of KBO has a favor of Judicial Exam, which well steered the policy direction or KBO. This conflict of interest and gap in attitude among the interest holders had once been dramatically surfaced as showcased by impetuous public announcement of DOJ in 2015.

over tradition and history.

This cultural or intellectual consciousness may not be publicly appealing in the new paradigm of transformative society in Korea, and could well be subject to due criticism, but not easier to defy its ground entirely. First, the educational system of Korea is not same to US since it is managed under the single administration of national government. The power and authority of educational department is plenary in Korea, while most of educational affairs are being administered by the state government and regional association of higher education in the US. The adoption of new law school system seriously erodes the role and responsibility of Korean bar association, which is not the case of US, the modality Koreans followed. Second, the legal culture and tradition also are not common among the two countries, provided that the respect and loyalty to the Supreme Court and bar association are immeasurable within the professional culture and tradition in US. This variant would hardly be derailed in the policy shaping of this institution. In this regard, my finding is that the professional culture, if no written canons mostly, is and should be more powerful than the general socio-cultural discourse we have surveyed. Of the short history of liberal democracy in Korea, the amok and professional personality of lawyer had been less firm that the law school reform basically can distort the US peerage they intend to direct themselves. Third, the intellectual hue of Korea impeded a due consideration of appropriate legal education system. It had been stark with the economic upgrading through nation's short history, which dominated the national compassion. People and leadership were likely to be engineered within the path likely prearranged to correspond with the transformative national status. Given the ebb of morbid developmental era, some commented that new national quest centered on the cultural elegance that blindly put to deal with the import of US or Japanese model. The policy process had not been truly deliberative, but merely adopted the ideas of dexterous experts group through several conferences or occasional public debates in TV. The logic and metaphor of policy makers heavily tilt on the economic discourse, for example, per capita number of lawyers and the comparative statistic of national incomes against the demand of legal aid. Educational goals and best effective deals also had been proposed to support their reform advocacy. It is skeptical, however, if the professionals or interest holders had been truly reflected to shape their own destiny. This could result in an oddly complicated impact reinstating the past prongs of national ration[6] (i) neo-liberalization and economic discourse came deeply

[6] The economy and education had headed the nation as two great engines through the developmental period, and continued of Korean public for reasons. The great achievement, depicted as miracle of Han River and as cheered comparably with the miracle of Rhine river, are generally agreed to be indebted to the educated bureaucrats and scientists or technicians. President Obama had been reported of surprise to know such deep mindedness of Korean parents about the education of their child. OECD statistic corroborates the psychology and personality of Korean parents that Korea generally yields more than college graduates beyond the world average. In their mind, the learning and education are the ways to improve their socio-economic status and considered as a factor to boost the global Korea competitive against other developing countries. This attitude generally persists, but some futurists and government programs also trigger a dual educational initiative between the vocational and academic, some type assimilated to the German model.

into play that brought the fabric of judicial system into new understanding, such as meta-capital of bar license than their public meaning or change of habitus (ii) reinforcement of the powerful narrative for the educational primacy over decades. An extent of deference from the professional community seems to underlie the progress, though representative formally.[7]

An economic discourse, often married with the liberal or neo-liberal market and capitalism, now began to inform the paradigm of legal education and legal service market, which is powerful, but not entirely struggle-free from the countering perspectives. Over the progress, the role and attitude of law professors had been pioneering to insist on the need of more production of lawyers. This suggestion had been recorded well before the law school reform that ten times of more attorneys had to be produced -- through the Judicial Exam -- for the civil justice and competitive legal service provision. One testimony is interesting,

> "Law professors work within the most democratic institution. Their cause often would be grounded on the civilian virtue and value of western market….They are also peers whose students would grow to become a lawyer….I may think if they had been pushed to help their students to pass the Exam set of quota with ten times[8] passage rate. It would be a source of pride as a legal educator, and can make them less obsessed with their workplace environment…."

The number of new attorneys may actually have been a key part of contention although the new mode of legal education had emerged as a breakcore by the Kim's administration. In this respect, the view seems probative that the discourse on capitalism within the liberal developmental state is a crucial thread of public progress more than other areas of interest. That would relate with the quality of academia as one

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[7] The 1993 reform committee, the first of sort initiated by Y.S. Kim's administration, was comprised of vast variety of social representatives from the bar association, KPO and KSC, journalism, law educators, university presidents and college deans. The 1998 reform committee, organized by D.J. Kim's, focused on the task force with the law and college professors, which dealt with the mission of law school reform. The task force was organized under the authority of the grand scale of national legal reform, and explored an adoption of new law school system, in which the legal education will only be open to the college graduates and three years intensive program as awarded with master of law degree. This is a unique qualification to sit for the bar exam, which invited an intense public controversy about the socio-economic justice of nationals and social stratification within the law people. It had been plain to critique if the law school requires greater money to spend to foreclose the ladder of deprived class for the socio-economic promotion.

[8] As of phenomenon and attitude, the teachers of modern university largely would be inculcated with the western thoughts except for few disciplines. Their background would be western directly and indirectly and the science was framed to boost the liberal democracy and free market. Their principal job is expected to have the character to scientifically explore the social issues and suggest any idealistic solution or alternatives. The contrast is not nugatory to explain the policy process and interactions of policy actors if the legal practitioners have self-identity on the practice itself. At the core of dissention lies the number of new attorneys showing this contrast convivially provided that the KBO had risen to cut a stern deals foreclosing the increase of law school student-quota

critique suggested in his thesis, “neo-liberal critique of neo-liberal academia.” The exciting question is how much the judicial system can be encroached upon the commercial paradigm or public ethics expected of this profession. Will the new law school system truly step ahead to mirror the US type? In other words, many aspects of habitus to identify the US law schools can resurrect in Korea? The ranking system to class new attorneys would be one tradition, which is not yet popularized in Korea. The starting salary of new attorneys would have a place to explain the whole ranking, which is very market oriented. The bar passage rate would be one component along the peer evaluation from both of academia and practicing peers, and admission statistics can be a measure to rank it, which shows the competitiveness of law schools, say, the very ideas and value of liberal market and capitalism.

The regionalism often is received as some of bad character social psychology -- even one kind of nepotism if we are truly public or ethical -- for Korean commons, which is not sheer true in understanding the capitalism. The politics of place would be one inherent element to enable the capitalism, which means if the new regional basis of law schools would develop to comprise their own market in Korea. As we see, the state courts in US had been and are being staffed largely in preference of their state law schools, especially in case of State Supreme Court.[9] This may not be the tendency in large law firms which would hire attorneys of various states in US. Nevertheless, the criticism would be feasible that the competing law schools like to target producing a corporate lawyer of large law firms, which needs to be reflected with a diversity and public standard of practice. Or the critique may argue if the hiring practice of state governments, at least in the Korean case with the single form of government, has to be reformed to employ more competitive lawyers as their public officer. This level of concern generally supports the realistic nature of public administration as explicated by the Weber’s. The utopianism cannot meet an actionable policy or realistic solution, only if new form of limitless war against all the rest as Hobbes’, and even could not explain a phenomenon itself between the public and private dimension. The practice of government or public sector and liberal market constantly would be evolving or affected by the leadership and organizational reform despite their inchoate assumption. Also in the end, the actors and their socio-cultural consciousness are any important litmus test sheet to make the system and community congruent and agreeable when we frame a discourse on the national judicial system. In this understanding, I may assume that the reflexivity or normativity philosophically posited and developed as CTD to understand and critique the western capitalism can be visited to diagnose the status of system and epistemology of policy actors. This epistemological process or experiment of normative possibility seems facilitative especially because the nature of community is selective and classic generally disparate with the pure principles. On the real floor of process, the

[9] The immediate juxtaposition would not be adequate if the US is federalism country that the state is one sovereign entity in view of constitutional structure of government. However, we can see some statistic to hire new state attorneys on the regional balance of law schools in Korea. It could also expand to the staffing tendency of courts, which is not confirmable until now because of statutory requirements of years-experience as a court clerk or attorney.

association of lawyers for the Korean democracy would be a good example that provides an anti-thesis and critical tone of policy analysis or alternatives in Korea. It has a scope of membership and publishes a scholarly journal classed prestigious in the KCI, which plays an important role to promote the democratic government and civil society with the initiative of lawyers. It has raised a voice to reform KPO and KSC, as well as the legal education and service market. One episode excerpted from the autobiography of B.R. Kim implies the importance of policy condition, hardly expounded either by the principled utopianism, who had suffered from a paucity of qualified court judges during his Supreme Court administration. It also proves that the resource management and leadership of organization should be an important challenge than any idealistic proposition.

> "The staffing of court is virtually impossible for a scanty of lawyer pools, which aggravated with the public dissent of hiring those of imperialistic background…It forced to spend myself much bitterly to address such realistic challenge while compromising to assuage the public arousal….The legislature is arrogant in terms of national policy making including the judiciary and judicial system. They tried every effort to cut a budget that threats a due living standard of judges. I have been advanced several times to persuade them by emphasizing the importance of due salary for the judicial independence…"

His thought and experience also can be traceable within the trove of his writings revealing the nature of public policy or administration relating with the politics or principled discourse in Korea. The grandeur of right and left compromise was one interesting political episode developed in Korea around the liberation years, which may be illustrative as an insight to understand their relationship. Although the attempt eventually failed because of the stiff and uncooperative position of North Korea, B.R. Kim had been passionate to show his character as a leader of judicial administration. It was the kind of Korean version comparable with the grand turns of Nixon-Mao in 1970's or recent effort of Sung Kim, former ambassador from the US to North Korean nuclear issue, unofficial visit of former US presidents, Carter, Clinton and basketball player, Roadman, the kind of northern missionaries to assuage and assimilate. It nevertheless shows the difficulties or struggle between the politics or principles and ideals of public administration discourse. This evinces a dual face of B.R, Kim as a realist in view of top leadership of Supreme Court and as an idealist in view of national politics. We compare in implications with the practice of US Supreme Court and increasing public concern about the current KSC.[10] Can the justices be assorted truly in view of their ideological stance or does it differ in thinking the Chief Justice as an administrator of Supreme Court? The sphere of expertise and court administration may allow the different thought process or strand respectively to address the challenges. This simply proves that the PPKJS stands on various elements of public policy including the role of actors,

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[10] The Korean public now began to receive their top judicial servants in view of their political or philosophical ideology that would assimilate the US tradition. The extent of media coverage simply evidences this transformation in terms of public culture, and contributed to find a best steer of national public administration. The importance of mass media as one of public policy element can have a due play in this respect.

organizational and environmental variants beyond the principled indoctrination or utopianism.

> "I have not been keen to the Comintern and did not listen their propaganda. I just dislike the frivolous northern communists. This has been same to detest those of extreme right, who are detrimentally conservative to deprave a social progress…I have share a same ethos with S.S. Kim, K.S. Paek, and spiritually aligned to yield a grand compromise between the lefts and rights nowadays…In this respect, I may properly situate myself as idealist, but we may ask ourselves how we could avert our eyes from the politics that we now confront. My position also will be supported by the US military government in the occupied South in view of their realist terms because the middle road, such as myself, can work as a buffer against the growth of leftists, eventually such crucial threat in terms of the Soviet expansionism in the Korean peninsular."

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Mini Glossary of Abbreviations

CTD: Critical Theory Discourse

KDOJ: Korean Department of Justice

KJS: Korean Judicial System

KSC: Korean Supreme Court

KBA: Korean Bar Association

PET: Punctuated Equilibrium Theory

PPKJS: Public Policy of Korean Judicial System

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