

QIKJS-Part.I.J

Qualitative Inquiry of Korean Judicial System

Kiyoung Kim

Professor of Law and Public Policy

Dept. of Law, Chosun University

Gwangju South Korea

Prospectus

The Elements of Public Policy and Understanding the Korean Judicial System

Kiyoung Kim

Public Policy and Administration

Walden University

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Problem Statement

The judiciary and national judicial system provides the governmental function and legal service ensuring the liberty and social justice, and generally had been considered as an indispensable institution for the Republican concept and modern democracy. Despite its importance, the policy researchers have given it little attention. As Korean government and bar association have endured a history long struggle for the idealistic judiciary and judicial system, complaint from all sides of public voice and international statistics of distrust in the national justice administration share a common theme that the public administration of Korean judicial system (PAKJS) does not support effective judicial system for the public and stakeholders. The problem of public disagreement, inconsistencies of policy making as well as the desultory discourse of public administration of Korean judicial system (PAKJS) varying with the successive administrations truly are an authentic puzzle that should be resolved with the cohesive account on the elements I plan to develop with the GT approach.

To date, no empirical evidence concludes on the true phenotype of PAKJS and its trajectory over creation, evolution, and current through the prospect. On the while, the scholarly literature available for this field of inquiry is limited to practice-based or issue-by-issue exploration, merely a structural argument on the constitution, or consequent lack of political legitimacy (Han, 2014; Hwang, 2012; Yang, 2013). A cogent argument can be made that much of what is written and believed to be true about the PAKJS is based less on policy side research and more on opinion or legend. Although the stakeholders or interested actors – e.g. judicial bureaucrats, judicial committee members of national assembly, leaders of national bar, civic leaders of judicial affairs -- are substantial to affect the shaping of Korean judicial system, the evidence-based and policy side research had not been attempted thus far that had seriously been distorted from the true social science and understanding of the phenomenology of PAKJS (Kim, 2009; Weible, Heikkila, deLeon, Sabatier, 2012; Wood, 2006). This generates an important knowledge gap between the current understanding of Korean judicial system based on the law and Korean politics and that based on the policy process, actions, interactions within the PAKJS. This under-research contributes to the current version of dissidence, no integral thought of policy side Korean judicial system, unproductive or resilient progress of agendas and programs, as well as creating a contending public response of many already implemented policies for the transformation or reform of Korean judicial system.

Significance

This qualitative study will focus on the phenotype of public administration of Korean judicial system and will examine the process, actions, interactions of key policy makers and groups of opinion leaders on the judicial affairs, and will seek to increase understanding of PAKJS dealing with the historical analysis leading to the themes or stories, typology and meaning, lessons and prophecies (Breunig & Koski, 2012). This study will make an original contribution by filling a gap in literature with the theory and paradigm newly generated through the GT research and adding to the foundation of knowledge how the kind of segmented people acts, processes and interacts dealing with the agendas, issues and important national judicial policies (Bhatti, Asmus, Pederson, 2011; Daviter, 2013). Given its order and comprehensiveness with the theory of PAKJS, positive social change will result to bring a wide

scope of consequence in this area of interest, including the scholarship, systems thinking, collaboration, civic and political engagement.

Background of the Study

Selected articles, books and major events relating to the PAKJS that brought the need of cohesive exploration in terms of public policy elements and empirical inquiry of segmented people of research subjects are described here.

- 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, Lee, Y.R. (2013) published Jin-oh, “Rhu – a constitutional scholar in the liberation years” in 2011. Lee, Y.M. (2011) and Kim, M.S. (2013) 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. (2014) provided a grand scale of overview concerning the reform packages of civilian government over the last three decades.
- Hwang, S.H. (2012) and Yang, C.S. (2013) 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.
- Gilardi F. (2010) provided the importance of learning and response of policy actors by asking who learns from what in policy diffusion process, and similarly Daviter (2013) focused on the information processing perspective on decision making in the European Union.
- Baumgartner, F.R. (2013) discussed the nature of agenda setting, levels of policy change, and explained how the status quo is discredited and punctuated equilibrium theory actually occurs through the policy process.
- Baybeck, B. William, D.B. and Siegel, D (2011) explored what motivated the policy diffusion. They provided an understanding whether the governmental competition is crucial to diffuse a policy innovation and how it affects.
- Wood, R.S. (2006) provided the dynamics of incrementalism and discussed the role of subsystems, politics the land policy of agriculture. His work is especially implicating that *a posterior* judicial intervention exerts any most determinative influence on the policy effect.
- Green-Pederson, C. & Walgrave (2014) provided a comparative view how the agenda setting, politics and political systems intersected within the major countries.
- Weible, C.M., Heikkila, T., deLeon, P, Sabatier, P. (2012) introduced three overarching strategies that operate at the policy subsystem level: developing deep knowledge; building networks; and participating for extended periods of time. They then considered how a democratic ethic can inform these strategies.

- Korea has a conspicuous history with the four times of judicial strike –1971, 1986, 1993, 2014 to counteract the established order and attempt of judicial suppression with the encroachment of abusive administration.
- The government also launched several committees in the ambition to globalize and develop the Korean judicial systems, i.e., 1995, 1999, 2005 and 2010. In response with the resilient progress of reform and persistent public discontent of judicial practice, 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.
- K. Han, a noted historian in Korea, wrote a newspaper column in fifty serial contributions for *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.
- 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 Framework and Elements

The conceptual framework for this study is less amenable to any definite theoretical or conceptual frameworks due to the nature of study- GT approach. Nevertheless, the theories of Sabatier (2012), Baybeck (2011), and Baumgartner (2013) concerning the punctuated equilibrium, policy process, agenda setting, and diffusion of innovation would provide the elements of public policy through the policy side ideas, terms, concepts, and perspectives (Downs & Mohr, 1976). In understanding the PAKJS, the conditions that punctuated equilibrium occurs or how the issue attention and agenda setting are made to impact the policy making process can expose the researcher to a prelude of study and helps to conduct the data collection and analysis for the GT research (Patton, 2002). The theory of policy process from Sabatier also provides the elements of public policy, i.e., subsystem and stake or interest holders, advocacy coalition, relationship between the politics and public policy, and environmental system. The theory of policy diffusion can also inform the study with the elements – such as importance of learning or drivers of diffusion and through connecting the phenomenon into a meaning and story. According to Corbin and Strauss, the grounded theory research can produce meanings and implications with the stories and themes on the PAKJS that eventually generates a theory (2014). The theories of notable scholars above would be consulted through the three coding strategies and construction of the theoretical intricacies concerning the PAKJS.

Research Questions

First, how do we properly understand the common and different strands over the three major periods of PAKJS? **POLITICS AND ENVIRONMENTAL SYSTEM**

Second, how are the major phenomena or events in each period developed in terms of public policy elements? **SUBSYSTEM/AGENDA SETTING/POLICY DIFFUSION**

Third, how do we understand the phenotype and meaning of PAKJS in view of the social science perspectives? PHENOMENOLOGY AND THEMES

In view of political history, culture and morality?

In view of socio-economic history and status?

In view of comparative judicial system?

In view of types of public organization?

Nature of Study

The nature of this study will have a qualitative focus. Qualitative research is consistent with needing a complex, detailed understanding of how the PAKJS is properly understood in terms of policy side elements, which is the focus of this dissertation. By conducting the grounded theory research and interviewing the people involved in the policy process of PAKJS, the research generates a theory with the insights through major events and occurrences, and provides enhanced understanding on the phenotype of PAKJS (Kim, 2015a,b,c,d).

Possible Types and Sources of Information or Data

1. Interviews with the leadership and senior attorneys on the duty of current or former PAKJS
2. Interviews with the law professors and legal historians
3. Interviews of the civic leadership including the journalists and key informants of civic association for judicial monitoring and supervision
4. Interviews of junior attorneys
5. Examination of the congressional report and session records
6. Examination of conference materials and white papers from the government
7. Information from local news outlets including news papers and television
8. Review of social media websites.

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