

# QIKJS-Part.III.I

## Qualitative Inquiry of Korean Judicial System

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A Synthesis, and Writing a Literature Review

### Introduction

It is a question so intrigued that has not yet been completely solved, (i) how have PAKJS (Public administration of Korean judicial system) been treated by the Korean politics and people? (ii) how have the policy makers and interested groups strived to shape the idealistic, but such clan-destine institution? (iii) how do we place the historical transformation in terms of its phenotype relating with various perspectives of social science? (iv) how do we properly construct the politics, ideals, and values enshrined within the PAKJS for self-constitution, including the various policy addresses and Korean government as affected by the power relations? While a complete construction for such relations, or subjectivity and justification, and autonomy is yet to be on the road ahead, we can identify several sources that provide the backdrop and context for our research topic. Those overly can influence my grounded theory approach that will involve a process of construction and deconstruction for the epistemological and sociological truths as well as against illusory notions from the comprehension of state.

### Three Summaries

#### A Book

The book titled “Democracy after the democratization in Korea” was wrought by J.J. Choi, which is considered one of his best works to analyze the ideologically agonal Korea upon the recess of successful democratization (2012). The book provides the paradigm of Korean democracy, and elaborates on the kind of important questions, such as “Why Korean democracy suffers to be an illness so as not to respond properly with the societal change demand?” and “Why the political group in power and system should always be conservatives?” It sought solutions and discussed the reasons for such conservative vogue for the past 15 years. The scope of dealings are extensive beginning with the origin of Korean democracy, historical evolution, and through the micro issues including the historic events and episode, which had been investigated from the consistent perspective built in his long career as a political scientist.

As the author, himself, admits, the book would likely be a *toros* attuned to provide a sketch other than exhaustive description and as focused on the central elements and dynamism.

The book has four genres in overview (2012).

The first part deals with the critical perspective against the current prevailing politics saturated with hardly underwritten conservatism, the kind of oxymoron discrete from the public and calls of time (2012). He suggests, for example, major ills of current politics, i.e., low voting rate and crisis of participatory democracy, political representation virtually monopolized by the conservative politicians, polarization of economy and deconstruction of middle classes, unequal public education and intensification of social stratification, local disparity and egregious urbanization of Seoul, desultory happening from the cold war mentality, too much influence of mass media on the political world, and incongruence between the party politics and unrepresented civil society.

The second part explores the historic and structural issues of Korean democracy seeking to identify the influence and origin as exterior in its essence, which is connected to explicate the contemporary reality of uncritical adherence to the conservatism (2012). In this part, he provides three stages of Korean democracy, which comes closely in comport with my viewpoint. In the first, he characterized with the subtitle, “cold war anticommunism and premature democracy.” He begins to explain the politics of independence years, national adherence to the cold war terms, and excessive emphasis on the growth strategy. The cold war dogmas resulted in the mental haunt of nationals, (i) from the nation to the ideological hostility and de-recognition (ii) from the left and right dichotomy through an exacerbation of inter-Korean enmity (iii) from such exacerbation to the internal disagreement and distrust within South Korea. The cold war terms also contributed to the centralized political power and bureaucratic servitude. A concentric zone model proposed by the sociologist, E.W. Burgess can properly be said of clusters with the Korean power elites. This mix of politics and bureaucracy yielded a national success as generally known. They also impacted a party politics which are ideologically restricted and patterned electoral outcomes, dominantly with the bipartisan structure. He also insightfully compared *Cesarism* of Korea and 56 years of Japanese politics within the influence of cold war international politics. He particularly sheds a focus on *personated authoritarianism* over the years in Korea (2012). The premature democracy brought, in his view, an important deviation from the prototype, (i) checkmate of cold war terms with the democracy (ii) cheap universalization of free and equal right to vote, (iii) decoration-constitution ungrounded on the public condition and without a normative power. He next discusses the political implications embedded on the Park’s leadership and developmental state paradigm of Korea (2012). He criticized the internal incongruity of his regime, and explored with the theoretical lens through three theories on the relationship between the industrialization and political regime, reinterpretation, and comparison with the Japanese path (2012). On the basis of this exploration, he casts an important question, “who are genuinely the supporters of his regime?” His concerns developed into the thread of democratization that had been typified with a civil disobedience, legacy of authoritarianism and industrialization, as well as conspiracy of mass media with the government. His viewpoint on the nature of Korean path for the democratization is not only persuasive, but also empirically with a firm ground. He saw it a kind of miracle, while the students had been a key engine to push forth. The civil movement had grown in some pattern, but with the internal disagreement being predictable. A progress toward the democracy created a platform by concession of parties and regionalism politics, which was dissected with the analysis through the origin and nature of party politics in Korea, the changing environment of party politics, its good and ill aspects on regionalism, success of

democratization and institutional reform, conservative strand spawned by the concession. He also sought the reason of prevailing and uncritical conservatism from (i) public perception of nation as primate more than ideology (ii) two tier progress of democratization (iii) non-strategic and unorganized civil movement (iii) weak opposing parties (2012).

The third part argues and illuminates recent 15 years of Korean conservatism based on his participatory experience as an academician (2012). He thrust the kind of key questions in those years, whose insight provides a sagacious viewpoint for such sophisticated issues. Specifically, his queries include, (i) Why did Korean democracy have no possibility, but to be incompetent with a foible of politics? (ii) How do we have a lesson from the IMF financial crisis and reform toward the liberal market? (iii) What can we expect of or how can we be frustrated with the civil society? In the first, he argues on the problems and issues relating with an incompetent nation and bureaucracy, and also provides his opinion on the chronic issues of presidential system of government and centralization of power (2012). He juxtaposed between the incompetent government and charisma of president, which, he perceived, as a present myth in Korean politics (2012). He suggested a democratic leadership to remedy the public ills on this point. His viewpoint on the liberal market and democratization also coherently structured to bring our attention, (i) egregious and fallible market generated by the authoritarian leadership, (ii) importance of ideals on the democratization and globalization, (iii) unresponsive and ineffective government against *chaebol* and lack of labor unionism, (iv) class restructuring with the globalization drive, (v) no tangible policy outcomes and its aftermath (2012).

The fourth and last part gives a solution and actions that we can see as an alternative. His suggestions include views and strategies (i) uncritical conservatism (ii) social and intellectual atmosphere against the diversity and pluralism as well as constructive alternatives (iii) politicization and socialization of disagreement and conflict (iii) transformation of voters and rigidity of party politics (iv) institutional primacy (v) more grounded and concrete approach (vi) finally, perhaps, most importantly for the political theorist, between the liberalism and republicanism (2012).

### Article 1

Given the clan-destine nature of PAKJS, the understanding of regionalism deeply embedded within the Korean politics is necessary. One article from J.S. Kim is useful to meet the purpose that provides three notorious frameworks of political regionalism from the pools of prior research (2011). They include the socio-psychological frame, historical analysis on precedents, and econo-political frame, and the author finally suggests his alternatives to overcome its ill potentials. He began with the happenings around Korean neighbors, “A husband committed a suicide after he argued with his housewife on the preference of presidential candidates from *Yeongnam* and *Honam* ..... the college freshman locally based on *Honam* was insulted by the madam of room rentals, who noticed his dialectic....the college student leaving his hometown ambitiously quit his studies from the socialization pressure and returned to his local home.... marriage brokers frequently face with the shame and dilemma that one grumbles with the regional background.....(2011)”

The author held a focus on the national identification as a key strand of Korean politics, which provides a platform for the development of Korean democracy (2011). In his viewpoint,

regionalism relating with a political hegemony and resistance is empirically evidenced, but is the kind of social evils to be revisited and ameliorated. The regionalism has a root on the militaristic government from 1960's through the present, in which 1980's reign by new military elites aggravated its forge on the Korean politics and civilian government around 1990's started to consider seriously as a social problem.<sup>1</sup> His thesis is proven by the comments and speech of public figures and college professors, "the denial of regionalism now would be the kind of hypocrisy, and it now had been sublimated as the kind of ideology when we consider the reality of public elections and political activities....our national identification had been excelled by other notions formulated by the regionalism, say, *Yeongnam*, *Honam*, *Chung-cheong*, *TK*, *PK*..." The author argues that regionalism is the kind of cronyism based on the compassion and color of particular region, which arouses the discrimination of different locales and separate loyalty from one political unity (2011). In overview of regionalism, the author introduced three frameworks and research for analysis.

A socio-psychological approach, according to the author, appreciates empirical studies to prove a hypothesis that some local populace has the kind of immutable personality or a comparative finding among the different regions (2011). They perceive that such unchangeable attitude embedded on the personality has important causal relations for the thriving of regionalism. As an example, research concerning the personality of *Daegu* and *Kyungbuk* revealed that he or she is humanly and generous (50.1%), agile on public cause (47.3%), proud (34.95), and tradition adherent (30.5%). A historiography also provides a good understanding of Korean regionalism. The author introduced B.R., Shin, who argued, in the book titled "The historical background of *Honam phobia*," that an entrenchment underlying people of *Honam* is the kind of value deprivation made volatile and relative, but sensible as pointed out by Runciman (2011). W.C. Shin, according to the author, presents the historical evidence (i) history long rivalry between *Shilla* and *Baekje* created by the national unification led by *Shilla* and forgery of historical facts (ii) *Ten Commandments of Wang Gun*, the founder of Korea dynasty, *Junggamrok* (a prophecy textbook), and *Taekridge* (description text of national geography) wrought by J.H. Lee (iii) the width of agricultural area for wealth (iv) frequent civil revolts and national condemn (v) honorable frustration of historic legacy (Oriental scholarship movement with the agrarians' alliance around late 19<sup>th</sup> century) (vi) colonial exploitation and imperial rule by the Japanese. The third framework employs an analysis of econo-political

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<sup>1</sup> Regionalism in national politics generally needs to be made distinct from the state competition within the federal system of government since it is the kind of socio-cultural or ethnographic phenomenon other than structure of government. Since it is suffixed with "ism," it entails a strand and ideal with the humanity and community. It is irrelevant with the law of nations and organization of government. For this reason, Bill Clinton, with the political background of Arkansas, such small state, could be elected a president in the US, which is generally unfeasible in the Korean politics grappled with acrimonious regionalism. Although the presidential election in the US is entertained with the politics of swing state, it is legitimate or even virtuous that the state itself is the component of federal system. That is not applicable to the disparate consequence of regionalism in the sense that it is cultural and social in essence, but exerts a determinative influence for the fate of politicians and enterprises. Now it is perceived any most harmful in the nation that undermines the national harmony and congruence.

environment for the cause of regionalism prevalence in the Korean community (2011). The works in this line of approach mostly invoked a public survey funded by the Korean sociological association in 1988 that Korean public generally perceive regionalism has begun from the third Republic (1961-1979). They argued that the critical time to promote Korean regionalism can be historically charted (i) 1971 presidential election competed by two-regions based charisma, D.J. Kim and J.H. Park (ii) 1987 presidential election and 1988 congressional election (iii) consistent voting patterns through the 1990's and new millennium.

While the 1971 cleavage offer a cause to embark on the discrimination from regionalism through income disparity, nepotism of government posting, 1980 *Kwangju* civil movement, and growing disparity that now became hopeless to redress. The statistics on the fiscal independence of local government, radical transformation of local demographics, and regional background of high ranked government or private officers also were included to support his theme of regionalism (2011). The author finally proposed his suggestions to overcome such extreme illness of regionalism (2011). First, he emphasizes new awareness against a regional egoism in terms of investment priority and local prosperity. Second, it is a paradox that the hierarchy and leadership of central government exacerbate regionalism, which has to shift a policy priority relying on the regional resources and competitiveness along the respect of particular region. Third, devolution of power from the central to local government has to be accelerated, in which the transparency and public access should be ensured by their own. Fourth, the development project of region has to trigger a region and people as an end purpose other than merely a ceremonial ornament. Fifth, the public moral has to be enhanced, and social leadership is responsible to educate the citizens. Sixth, creative minds have to deserve a social respect and be staffed within important public offices other than those who are skeptical, monitoring and curbing or even oppressive. Seventh, cronyism on the familial and academic background or regionalism has to be eliminated.

## Article 2

The other article wrought by Shin, one most objective evaluator as a law professor in Korea, addresses the PAKJS with a focus on the thriving age of transformative movement from 1990's through the present (2010). He posited several deals as a policy stimulus for restructuring the Korean judicial system, what he highlighted democratization, enhancement of liberal market paradigm, globalization, as well as the elimination of cronyism (2010). Public objectives proposed to guide the transformative movement also were illustrated to cover three public organs, i.e., the Reform Committee, and the Implementation Commission as well as the judiciary. He argued that the objectives are ambitious on one hand, but stereotyped on the other, which can be seen successful in some aspect, but largely needs to be further reinforced with a critical reflexivity of the ideals and burgeoning communitarianism within the nation (2010).

The first two organizations are fairly ambitious in the initiative of new administrations over 1990's. They proposed basic policy directions to attain a scope of public objective (i) judicial democratization for the public order and human rights protection (ii) fair and efficient administration of justice through the whole of national judicial process (iii) open and transparent judicial system including easy public access, public disclosure of information, citizen participation in the judicial process, democratic process of staffing for societal diversity (iv) equal protection of law and welfare onto the judicial service for the socially deprived and indigents (v) advanced judicial system to have a level playing field in the international

community (2010). The proposals filed by the judiciary surfaced later around Sept. 2008, which was endorsed as an official opinion of national judiciary in the academic symposium. The author argued that it was one kind of reaffirmation insisted through a decade (2010). They include (i) assurance of public trust on the judicial system with its inherent virtue of neutrality and objectivity (ii) elimination of undemocratic and authoritarian practice as well as client-side reform through the democratization of judicial system (iii) system to boost the fairness and judicial efficiency (iv) ensuring the personnel resources of competent and conscientious attorneys (v) participatory and democratic judicial process with citizens (vi) reform to pace with the technological and scientific advancement (vii) international standard of judicial system and leadership role of Asian region (2010).

Over the critical analysis on the epistemology and historical realism concerning the policy environment in Korea over the decades, he assessed that a decadal experience of Korean public, policy makers, interest or stakeholders can be said partly to be settled, but still falters leaving policy goals incomplete (2010). On this assessment, he provides an insight for the better transformative vision and suggests alternatives (2010). At first, he argued that a lack of understanding for the inherent policy needs would factor a current incomplete reform or implementation impeding the transformative movement. Secondly, he perceived, as a culprit, the limited attention to political dynamism and power relations, which led the reform purpose fallible. Thirdly, the policy makers and participants for the judicial reform have missed the interconnectedness of agendas or priorities and had taken the policy network no seriously leading to resilience and ineffectiveness. Fourthly, most of energy and focus of reform players have been exerted for the comparative studies of judicial system, apparently less consequential through the national compassion and *communitarianism*, built within a short in period of time though. Sixth, the author argued that a broad nature of public participation and civic initiative should have been an essential condition for the success of reform. It, unfortunately, had not been made successful over the fervent period of reform.

### **A Synthesis of three Sources**

*Choi*, a noted political theorist in Korea, provides the clear picture of Korean democracy on his historical realism, idealism, and post-modern understanding of regional politics (Choi, 2012). His first thesis, of course, underlies original ideals or virtues relating with the democracy as one of political terms, as well as the liberalism and republicanism, which had been applied to the analysis of Korean democracy over its origin, distortion, and contemporary problems. His conclusion was restored to these original concerns as a political theorist. His historical realism and post-modern understanding of east Asia and Korea relating with his idealism and notions of value finely had been exercised to explore the politics, democracy and its challenges, as well as responses, processes, reforms, alternatives, and interactions among the players of Korean politics (2012). His theme had a focus on party politics, government, civic society or labor given a political scientist, but it is undeniable to be keenly associated with investigating the phenotype of PAKJS. That is, of course, because the public policy and administration are practiced by the government, which submits to the political ideals and public elections. Except for the sociological or epistemological claims and scientific frames within the PPA discipline<sup>2</sup>, that is almost always true the government generates a law and enforces it

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<sup>2</sup> I mean, for example, the theory of policy diffusion or punctuated equilibrium theory can provide a dwelling

as the final authority, but without a critique. Nevertheless, his viewpoint is not limited to the law and government, but provides an insightful account on the process, acts, interactions, values, variances, and distortions, lessons and etc, which are, in fact, significant to understand the Korean experience with the transformative eyes and realistic analysis (2012). Given my four stages incorporated to investigate the PAKJS, they naturally coincide with his chapters, arguably that the PAKJKS will be an issue somewhere within his grand overview of Korean politics over history. His views, however, do not exactly match with my purpose for reasons, (i) the politics has not imparted their main interest or concern so as to less interact with the issue of national judicial system as differs from many other national agendas or priorities, (ii) the KJS (Korean judicial system) or its policy-side aspect has a breathing space from the politics -- though not perfectly intact – because of the Constitution or classic values of modern democracy so that the political transformation or value coercion could not forge to alter its basic terms of KJS (iii) the professionals in this area have often come to partner or be matched up within the political arena so that, to the variable extent, they would liaison their interests and agendas to the political arena (iv) the domain of legal intelligence also has a good basis to argue for their inherent destinations that could less be affected by the general discourse of Korean politics and democracy (Sabatier & Weible, 2014; Shafritz, Ott & Jang, 2016).

Kim provides a fairly a sociological background<sup>3</sup> for understanding the regionalism within the Korean community (2011). The author illuminated three approaches with the statistical evidence demonstrating a historical and contemporary awareness and sensibility of Korean public about the regionalism arguably entrenched within the national minds. He also made viable suggestions to overcome the regionalism, as one of public illness leading to various forms of social injustice and distortion of ideal national politics (2011). The article provides the background and context for understanding PAKJS because (i) the PAKJS deals with the endogenous nature of policy area that is clan-destine and KJS is designed to address the civil or criminal justice of nation,<sup>4</sup> more importantly because (ii) the input of judicial people is most concerned to address the nature of PAKJS.<sup>5</sup> Nevertheless, one may be skeptical if the general account for discrimination and social incongruence can be a plenary predicate to understand the PAKJS. One can see the statistics that counters or makes such generalization as not correct or insignificant in terms of personnel policies, for example, staffing justices or key

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for the meditative public officers or assist with the thought time and improvement of policy effect.

<sup>3</sup> Of course, the phenomenon and reality over the decades of Korean experience involved with regionalism now are properly seen as political more than sociological

<sup>4</sup> This just means the main aspect of KJS. We also cannot deny that the contemporary judiciary of nation can also internationally be stark with the increasing trade amount, globalization as well as advancement of informative technology.

<sup>5</sup> The public policy of personnel resources and management is an important area within the purpose of discipline. This aspect can be more salient within the PAKJS since the personnel play on the basis of distinct professionalism, knowledge, and conscience, as often ranked as one of clusters for the decision making role of public policy.

judicial posts and regional balance for the law school endorsement of government (Sabatier & Weible, 2014; Shafritz, Ott & Jang, 2016).

Shin provided a doxically critical examination of historical wake for the reform of KJS (2010). He began with a prelude that public distrust on the judicial system is considerably high, and summarized the government reform plans or programs and its achievement or resilience over the past administrations (2010; Sabatier & Weible, 2014; Shafritz, Ott & Jang, 2016). He provided a *Faucauldian* discursive construction and power relations within the trajectory interacted by interested players, i.e., government, academia, civic leadership, and professionals or policy addresses (2010). Reading this article, I may recollect the Korean particulars with the kind of *Fauclaudian* or *Habermas'* argument on the self's capacity for autonomy, politics of ourselves by Allen, as well as the *Faucauldian* understanding thorough the "politics, idealism, and value." A thought process of Korean *intelligenza* is highly proximate, in terms of logic and metaphor, with the kind of post-modern thinkers and critiques. For the immanence of PAKJS discourse, we also encounter the national philosophy on political thoughts, for example, as elaborated by *Walzer* under the ideal of *communitarianism*. Shin provided the context and background beginning with the definitional work of judicial power and judicial system, and surveyed a historical experience over the short period of Korean empire, Japanese imperial rule, and the militaristic government through a global citation to the acclaims of 2007 World Bank. Nevertheless, the author argued that the policy effect of judicial reform is not palpably stark, in which we can note a public distrust on the criminal justice against the poverty class, nepotism within the *juristo-cracy*, misconduct and corruption within the judicial system, and authoritative benches (2010).

The public calls on judicial reform had a backdrop of these policy environments (Kim, 2014; Kim, 2015a,b). While positing several deals as a policy stimulus for restructuring the Korean judicial system and public objectives proposed by major policy organs in this field,<sup>6</sup> he provides a critical analysis on the epistemology and historical realism of policy environment in Korea over the decades and assessment that the decadal experience of Korean public, policy makers, interest or stakeholders of system can be said partly to be settled, but still falters leaving policy goals incomplete. On this assessment, he provides an insight for the better transformative vision and suggests alternatives (2010). The article inculcates the context, backdrop and most comprehensively deals with the policy reform of KJS from the standpoint of epistemology, idealism, and sociological imagination of Korean community. The utility of this article would lie in the tone and metaphor that explores the topic in terms of policy circumstances, which is ontological and rooted on a specific agenda, say, PAKJS on which we have a focus. A further research to be developed by my dissertation project can (i) refine and expand the thought of article from the lens of post-modern critiques and policy theories or elements within the PPA discipline (ii) specifically be planted with the details of story and action, process, interaction of players in the field (iii) add other point of views available from the competing views within the law or policy circles and as interdisciplinary (Sabatier & Weible, 2014; Shafritz, Ott & Jang, 2016).

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<sup>6</sup> He highlighted the democratization, enhancement of liberal market paradigm, and globalization, and elimination of cronyism.

## **Conclusion**

The literature review and dissertation project, as we know, have a fairly projected relationship through various stages of research operation. As Cooper's taxonomy of literature review explicated, the process and skills of literature review are predicated on understanding its characteristics and categories (2009). A well trained researcher on the literature review can benefit to carry out his research goals successfully through the problem formulation, data collection, data evaluation, analysis and interpretation, and public presentation. One book and two articles, as summarized and presented as an essay form, touched on the core of PAKJS, which are thought important authorities inculcating my grounded theory approach and provisional of the text to wheel ahead with the hermeneutics and heuristics approaches. In this way, hundreds of articles and books from US, Korean and foreign sources will be reviewed to provide a reference of my doctoral studies. We need to bear the maxim that exhaustiveness is one element of rigor to enhance the quality and validity of qualitative method.

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