

QIKJS-Part.0.B

Qualitative Inquiry of Korean Judicial System

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The Public Administration of Korean Judiciary

My research project in the dissertation work is concerned of public administration of Korean judiciary (PAKJ or KJ herein forth). The PAKJ is the topic that had been spawned years before, which I consider most suited in several aspects. First, I was trained in the Korean law at undergraduate and graduate level. The professional competence would be unique and most competitive that can lead to the quality dissertation. Second, my area of interest also had a focus on this concern that I am serving as a professor of Korean law in the department within one local university of Korea. This can distinguish me that is presumed for easy access to the data and dated information pertaining to the topic. Since the doctoral research must be original and creative, such backdrop seems essential so as to be competitive and in order for the unabridged progress of doctoral work. Often Walden doctoral students are called upon the social change, and their idea or backdrop for the dissertation had a nexus with their workplace issue and impressive personal stories. For example, the student with the father of illiteracy may develop a research interest in the educational topic of illiterate minority. The military officer may be exposed to the sovereignty issue of countries where their foreign base is located and operating, or the privacy issue of homosexuality with the recent phenomenon, “don’t ask and don’t tell policy.” Since I had an experience as a civil law judge and law professor, my interest in this topic actually is deep and affectionate that is now seriously considered as to deal with my dissertation plan. In terms of research method, the most crucial question is “what the researcher really likes to know,” which is important to choose among the different methods, say, quantitative, qualitative, and mixed (Creswell, 2009). Given my inquiries of PAKJ, the topic is most appropriately dealt with the qualitative method, and in complement of very little quantitative data, such as government statistics. The research question would be framed basically with three questions; (i) what have been the central points of contention historically over the PAKJ, and how the policy makers have struggled with them (ii) what characterized the PAKJ distinctive with the historical experience of US court reform, a prototype of modern judiciary as well as other political branches, such as congress and executive (iii) what are the contemporary policy issues on the PAKJ and how the judiciary will be reformed?

With the literature review and my professional experience, the discourse on the judiciary and its administration or organizational reform is heavily inculcated with the separation of powers principle and judicial independence, hence principally informed by the modern constitutionalism and especially with the type of US origin (Montesquieu, Cohler,

Miller, Stone, 1989). The next framework to allow an in-depth understanding of PAKJ would be indebted to the thoughts of more policy discipline, such as theory of policy diffusion and communitarianism (Boushey, 2010; Karch, 2007; Weyland, 2007). In such short period of time, Korean constitutionalism has grown that plays on the level playing field with the judiciary of advanced countries. Hence the phenomenon and frame of policy diffusion certainly had occurred in the formation and maintenance of Korean judiciary although the time span or trait of evolution may be considerable in difference so as to be made less generalized as those of advanced nations. Importantly in my case would be the greater impact of communitarian profile of progress on the reform or PAKJ of Korean judiciary. Although the concerned players and opinion leaders had a good awareness of judicial paradigm and right system within the liberal constitutionalism, the national particulars and wake of distorted history in terms of western Republicanism actually had exerted a profound influence that Korean people had not, for some decades, benefit from the civil service judicially or deprived of the basic rights because of no independent judiciary from the political control (2010). In the arena of public policy, the perspective on the communitarianism would be much useful lens to analyze the data and discuss the Korean context of struggles or resilience toward the original form and practice of western judiciary. The rational choice theory, for example, the institutional analysis and development theory developed by Ostrom, also can provide the lens on which the persuasive account of behaviors and interaction by the policy makers in Korea can be developed. The thoughts and theories on these aspects of node allow me to make an objective and scholarly observation of phenomenon, occurrences and events, and inform the data collection and analysis, which are expected of in-depth interviews with 10-20 judicial people, public record, newspaper articles and books and journals of Korean source. The concept map of my research can be presented shortly as below.

Table I

The Concept Map for the Frame of Thought

Interest, Problem and Significance

My interest in this study lies in the pattern and characteristic of PAKJ, which is distinct area of public administration other than executive and ordinary public organizations. For example, the separation powers principle would have more of logic and metaphor as a governing frame than efficiency or rational choice theory. This also does not mean that the kind of rigid legal theory or modern constitutionalism would come prevailing as limited with the moment of creation of national judiciary, but can have a continued relevance through the settled stage of democratic constitutionalism although the power and influence in leading the discourse gradually turn on the median and flexible theories or frames (Montesquieu, Cohler, Miller, Stone, 1989). Given nine times of constitutional revision during 60 years of democratic history in Korea, the most significant reform occurred in 1987 since it adopted any most liberalistic nature of constitution, and actual practice of government had been truly on the liberal constitutionalism and civilian value or justice. Before that constitution in force, Korean democracy was led under the militaristic nature of dictatorship and prevailed with the chilling political atmosphere and ethos of impliedly forcible national development since 1961 military coup of General Park. The trait of classic years, ranged from 1948 through 1960, was dubious about its true character of judiciary that the remnant of Japanese imperial rule generally had been grappled with the judicial branch under the leadership of first president, *Syngman Rhee*. Both nature of national leadership is properly seen as charismatic, but the effect on the judiciary would not be same. Under the militaristic charisma, the cause of control and monopolistic power had really been powerful with the national development plan. The leaders also were very informed and knowledgeable with the domestic particulars if the first president is more diplomatic and friendly with the international relations. Lee actually was a founding father who studied in the US and had a long highlight as a national independence leader, and had been fairly deferred when he encountered the domestic issue such as judicial matters. Therefore, I attempted to label this period as classic years. The problem I perceive in terms of PAKJ would

underlie the phenomena that the political or even ideological environment would bring a great consequence on the creation and reform of judicial system (Bayer, R. et al, 1998; Bell, 1993). That came in good point of comparison with other public organizations, and has some relevance with other political branches of government, but with some distinction. For example, the judiciary is less sensitive in terms of formal administration that is passive and neutral. This means that the judiciary can be easier or friendlier with the concept of public administration when the constitutional drafters began their work. The selection of government type between the presidential or parliamentary system, on the other, may be the issue of first priority than a more desired form of judiciary. This subtlety of mindset and attitudes of constitutional policy makers would bring that the discourse of PAKJ centers on the SPP and judicial independence than some active reform for the efficient administration. The informal nature of public administration, such as influence of national heads, key political elites or implied power of secretariat, would rather be the source of narrative when the failure of PAKJ came to be concerned. Since it is non-political in essence, the political reality and culture of nations had been critical to characterize KJ or PAKJ, which, of course, is because the public administration is vastly political and resources-allocated as contingent on the policy determination (1998; 1993). This means that their organizational role is passive in terms of PAKJ on one hand, and the success of organizational goal depends more on the passion and spirit of individual judges than system giver or maintainer. This aspect can be same with the western countries, but the problem is that the implied ethos and communal culture of control and uniformity over such period would distort the original role of judiciary. Upon the 1987 reform, such phenomenon would be cleared in the general sense of Korean public, but the reform efforts from the legal pluralism and comparative policies would come to flourish (Kim, 2014a; 2014b; 2015a; 2015b). Now the mainstream of policy issues on KJ inquires of what is most effective policy to be suited with the Korean system in terms of policy diffusion and communitarianism. In some cases, the cost and benefit analysis or the kind of economic theory as IAD could be an important touchstone for the public administrators of Korean judiciary. For example, import of jury system, law school reform, prison reform, criminal reform of sentencing type, and establishment of preliminary chamber within the Supreme Court to meet the challenge of caseloads had been accomplished or currently is being explored with the scholarly circle and constitute a major aspect of public relations of KJ. This never means that the first concern of SPP and constitutional mandate has gone away as a source of narrative – actually many controversies and disagreements on PAKJ are contended with the constitutional complaint -- but diminished considerably with a replacement of public policy or economic discourse.

With the progress of dissertation project, I intend to develop my theme and research findings (i) the distinct aspects of PAJ, particularly with the focus on PAKJ from that of other branches or public organizations (ii) historical implications upon the characteristics of political and social environment (iii) major contemporary challenges in view of public policy and administration. The studies would be significant that we can look into the history and essences of PAKJ (Creswell, 2009). It also would provide a comparative insight for the scholars of similar nation, and hopefully for those of advanced countries, as well as the theorists of public policy in the interest of various fields.

Some Views from one Korean Scholar

Several pages of shriek from one Korean constitutional scholar thrust on my theme

that counts for the significance within the public lives of Korean people. He argued on the gist of transformations and prospect of judicial reform with a reflection and phenomena (Han, 2014). First, the upheaval with the advent of civilian government around 1987 converted the Korean public as being enabled that new political discourse turned flourishing despite the issue's professional attribute. The agenda of judicial reform now is inseparable with the Korean politics. Second, the frozen period with the militaristic and implied oppression from the power cores must be viewed (i) political justice than judicial one to subsidize the needs of political branches (ii) the judicial reform or PAKJ had been minimal or can only be properly described as supporting the judicial bureaucracy or in response with the market needs of legal service (iii) new public concept differs that the judiciary is expected of service mindset and the role is not ruling, but protection of human rights and public good (iv) nevertheless the outcome of judicial reform over the progress is not satisfactory since the judicial elites, a beneficiary of past administrations, actually had held a power of control and influence on the PAKJ (v) the thesis "Judicial role is to provide a legal service" has led the public alienated from the central point of contention, i.e., democratic judiciary, due to its relentless slant on the logic of free market and faction of professional interests.

His message is echoing, "what the Korean people really aspire for would not be juristocracy, but democracy...this shall be the goal of judicial reform or public administration of judiciary and attorney system, the kind of ideals on rule of democracy and law (p. 59, 2014)"

He outlined major events and implications over the history of PAKJ according to the 1987 year frame.

Table 2

Major Profile of Pre-1987 PAKJ

- **The National Institution of Judicial Apprentice 1894 (Korean Empire) – 250 judges were trained on the modality of western legal education after national independence in 1945**
- **Chosun Bar Exam 1947/Attorney Act 1948/Special Exam Act to Select Judges 1946/Special Exam Act to Select the State Attorneys 1950/Special Exam Act for NIJA 1946**
- **Higher Judicial Exam – System of Japanese Imperialism – Considered effective and working through the classic years**
- **Judicial Graduate School of Seoul National University – 580 lawyers graduated**
- **Judicial Training and Apprentice Institution 1970 – Bureaucratization of judiciary and political subordination (cf. The first judicial strike/increase of new attorneys/expansion of lawyerly roles in the government and civilian market/Statutory ground for the law firm in legal person)**
- **1988 second judicial strike of newly recruited judges**

Table 3

Major Profile of Post-1987 PAKJ

The Globalization Committee 1995 of Korean	● Judicial reform initiative as one of civil movement aligned with the 1994 civilian
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Government	<p>coalition</p> <ul style="list-style-type: none"> ● Globalization plan for legal education and professional service among the 53 policy items of government package ● American style law schools planned ● Conflict of interest between the Supreme Court or lawyers of public influence and Executive aligned with the civil coalition
The Judicial Reform Committee 1999 of Korean government	<ul style="list-style-type: none"> ● More strong democratic leadership by D.J. Kim 1998 – New educational program of Korean government 1998 ● Market ideas and consulting diagnosis – paradigm shift impact on the judicial and quasi-judicial bureaucracy ● Focused on the legal education and prosecution office/amount of reform plans and programs, but largely unsuccessful
The Judicial Reform Committee 2003 of Korean government	<ul style="list-style-type: none"> ● Successive democratic leadership and more communicable ● The fourth judicial strike – some success on the judiciary ● Largely unsuccessful on the bar association and prosecution offices
The Judicial Reform Committee 2010 of Korean Congress	<ul style="list-style-type: none"> ● Very business oriented democratic leadership ● PAKJ less highlighted ● Bureaucratic maze and resilience

On the Concern of APA Style

The APA style is useful that is enforceable at least in the professional community. Often it is required to keep faithful when the scholars work on the journal contribution. If failed with the APA style, the chance to be accepted for publication with the major scholarly journals would be unlikely. It is also required for the scholar practitioners at Walden when they submit an assignment or final project. The uniform styles in this way – several types in international and national practice including APA style – are necessary (i) facilitation of professional communication (ii) dignity of researchers (iii) the kind of affinity and pride over other professionals or lay neighbors. In some areas of professionals do we see their own forms of publication style, for example, notably bluebook-based guide for the legal scholars. The APA style can be referred comprehensively to the publication of American psychological association, and several editions for improved version (American Psychological Association, 2010). As the

psychology is fairly basic or applicable to deal with the professional research or has exerted a great impact on the wake of western intelligence, it is not surprising that APA had a responsibility for the uniform publication style. The manual guides an issue ranged from a punctuation, grammar, tables, and figures through citations of various materials, and in-text citation as well as the style of reference list (2010). For example, they provide a guide of how to cite the statutes, dissertation of doctoral students or newspaper articles. They also ordain a rule for in-text citation as well as the reference style for the books and research articles. When writing this assignment, the APA guidelines were respected. First, APA requires a double space through the presented writings that was applied to this piece. Second, the requirement is that the thesis must be titled in head summary, which appears as seen in this piece, “Running head: Dissertation Topic and A. Writing” The caption “Running head” must not appear from the second page that was honored in this writing. I am not sure if the title page and 12 size in font with Times Roman are required as a matter of APA style, but was agreed at least in the Walden community. That had been my rule that was applied to this writing. Third, the figure shall comply with the APA style that the legend appears above the figure, which describes the essential message contained therein. It should appear in bold letters and Italic script will be on the letter, *Figure*. Fourth, the in-text citation has to be complied with, in which the last name of author and year of publication will come with a parenthesis. In the next consecutive citations, the last name of author needs not recur until the citation of other author intervenes (2010). The rule of co-authorship also was ordained that became eclectic between the need of full honor of co-authors and compactness of writing. Therefore, we can put “et al” for the case of many authors as the rule guides. In case of reference list, the book title must appear in Italic while the Italic will be for the journal title in case of research articles. The last name of author will be followed by the initials of first and middle names, as well as the publication year at next with a parenthesis. Each reference shall be indented with 2.5 margin for the second and next lines. The “Reference” as a title shall not be bold as same with the title of writing. That differs from the title of title page that the title of writing, name of author and Walden University had to appear in bold letters. Page numbering is necessary for this writing that appears in the head section.

References

- American Psychological Association. (2010). *Publication manual of the American Psychological Association* (6th ed.). Washington, DC: Author.
- Bayer, R. et al (1998). *The essential communitarian reader*, Lanham, ML: Rowman & Littlefield Publishers.
- Bell, D. (1993). *Communitarianism and its critics*, New York. NY: Clarendon.
- Boushey, G. (2010). *Policy diffusion dynamics in America*, New York. NY: Cambridge University Press.
- Creswell, J. W. (2009). *Research Design: Qualitative, quantitative, and mixed methods approaches* (Laureate Education, Inc., custom ed.). Thousand Oaks, CA: Sage Publications, Inc
- Han, S.H. (2014). Judicial reform, wake in history and bitterness in reflection, *Democracy* No. 5, pp. 41-59.
- Karch, A. (2007). *Democratic laboratories: policy diffusion among the American States*, Ann Arbor. MI: University of Michigan Press.
- Kim, Kiyoung, Human Rights: Are They Just a Tweak for the Policy Makers or Administrators? (March 3, 2015a). European Academic Research, Vol. II, Issue 6, September 2014. Available at SSRN: <https://ssrn.com/abstract=2572951>
- Kim, Kiyoung, The Constitution and Tripartite System of Government: From the Mutiny for the Limited Government Through the Interbranch Subtlety. (September 1, 2014). International Journal of Advanced Research (2014a), Volume 2, Issue 9, 392-401. Available at SSRN: <https://ssrn.com/abstract=2574711>
- Kim, Kiyoung, Theories and Tenets: An Impalpable Troll for the Policy Makers, Research Officers and Administrators? (March 4, 2015b). International Journal of Interdisciplinary and Multidisciplinary Studies (IJIMS), 2014, Vol 1, No. 8, 30-50.. Available at SSRN: <https://ssrn.com/abstract=2573526>
- Kim, Kiyoung, The Separation of Powers Principle: Is it a Lynchpin or Pushpin for the Voyage of American Public? (August 1, 2014b). International Journal of Advanced Research (2014), Volume 2, Issue 8, 887-895. Available at SSRN: <https://ssrn.com/abstract=2573560>
- Montesquieu, C., Cohler, C., Miller, B.C., Stone, H.S. (1989). *Montesquieu: The Spirit of the Laws*, UK: Cambridge University Press.
- Weyland, K. (2007). *Bounded rationality and policy diffusion: social sector reform in Latin America*, Princeton. NJ: Princeton University Press.

