

QIKJS-Part.IV.A

Qualitative Inquiry of Korean Judicial System

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The Conceptual Framework and PAKJS

A Justification

Given the purpose of my research, the queries are related with the conceptual framework that allows or promotes a delineation and analysis for better understanding of PAKJS. As affirmed with the evidence, the current literature dealing with the Korean judicial system dominantly is approached in view of constitutional or legal exploration, particularly based on the comparative analysis of law and national judicial systems. This could have a potential to address the judicial value and competitive advantage underlying the systems of nation. Nevertheless, the criticism is no inadequate if we are inclined to deeply look into the public policy and administration on the Korean judicial system. In other words, the policy side elements has largely been disregarded that the PAKJS may be a sanctuary in one sense or scapegoat as a distinct policy area within the nation in another sense. This also incurs a resilience of policy process, skepticism of public and inadequate or partial understanding about the character and quality of research object. While the policy makers of KJS enjoy a considerable extent of autonomy to author their playing field, it is equally true that they are sensed as the kind of enclave nanny or less voiced in the major policy arena. It is fairly demanded that new perspectives or insights have to be articulated for better understanding of PAKJS. This requires the use of interdisciplinary theories or perspectives allowing the conceptual framework dealing with the behavioral, sociological, philosophical and political viewpoints as well as the PET (Punctuated equilibrium theory), advocacy coalition, and policy process or its diffusion.

The legal analysis alone could not allow a perfect account of how the new legal education system had been imported and under what influence, although the characteristic and meanings of the system within the structure of national judicial system can be comparatively discussed for its institutional strengths and weaknesses (Babbie, 2006). The merit of jury trial can be sophisticated to argue on its democratic character through the legal analysis, but could neglect importantly that cannot explicate the backdrop, resilience for its policy adoption or limited import. While regionalism or nepotism is rumored or simply reported through the news media, the systemic construction of cause, extent, and variations would not be elaborated in any scholarly way. Although the liberalization of legal service market was contended vehemently by interested groups, the literature is lacking or desultory that offers no systemic analysis through the kind of framework on the politics, ideals and values. Most basically, the

discourse on the modern political history of Korea is abundant and even typical for any uniform version of Korean politics, the cohesive explication of Korean judicial history from its birth through the present had never been attempted to the present time. Its policy side analysis or account of major events and occurrences, what I entitled with the PAKJS, is needless to mention. Therefore, my primary justification for the selection of conceptual framework as intersected with the phenomenon of judicial system and policy side elements underlie the context briefed so far.

With respect to the conceptual framework on the studies of PAKJS, I postulated two ways of analytical frame, to say, “dynamic v. static” and “proposition v. critique,” allowing that provides the basis of data analysis and hermeneutics or heuristics approach to support my qualitative investigation (Trochim & Donnelley, 2006). Given the thesis being expected to contribute to the field of PPA, the “static and critique” as one tool of such two ways are normally less related with the hard of normative or ontological analysis -- such as Habermas on post-modern epistemology or Merton as a critique of Weberian acclaims on the modern bureaucracy. Given the current literature largely lacks the dynamics of policy process on PAKJS – indicating the studies of comparative law is static – the theories or concepts to analyze the policy process, PET, and policy diffusion will be borrowed from the PPA literature and discourse (Hart, 1999). The proposition to characterize theories means the main or explicatory idea, such as Weber’s, other than critiques mostly by the post-modern circle of scholars. As aforementioned, although the “static or critique” would also be practiced by the legal scholars, notwithstanding Korea, their primary disposition still would have an intense focus and restrained purview on the interpretation of laws and comparative analysis of different system. That incurred a loss of interdisciplinary hindsight, which, I believe, alienates a researcher, participants and audience because of the sociological or epistemological limitations. The concepts or theories on the dimension of dynamics will comprise the theory of policy process and diffusion, advocacy coalition and PET, Faucauldian discourse on PIV (politics, ideals and values). On the other, the analysis will be static with the aid of bureaucratic theory and its criticism, or Bourdieu’s, PIV and Habermas. The theories categorized as proposition will be derived from the concepts or thought process of theorists to analyze the events or occurrences as illustrated with the habitus or meta-capital and law school system. Besides Merton’s on the bureaucracy, the critiques, for example, Habermas or Walzer’s can support my argument from their critical lens philosophically envisaging the possibility of normative order and communitarianism against the orthodox of political liberalism. By being indebted to the viewpoints or concepts, we may revisit a current controversy involving the extent of jury trial or law school reform as well as nepotism on the political regionalism, for example. The theories of political scientist and judicial critiques of Korea also lend a basic idea for the temporal structure of PAKJS so that my conceptual framework to characterize the research object, say, Korean judicial system, was designed to include four major temporal wake of transformation.¹

¹ As previously dealt, the four sections in period would encompass (i) draft of 1948 constitution and ideological chaos of Korean people (1945-1948) (ii) charismatic leadership with classic ethos (1948-1960) (iii) charismatic leadership with the haunt and control for the national development (1961-1987) (iv) civilian government, globalization, and liberal market (1987-present).

Concepts, Methodology, Research Objects and Connectivity

The pilot studies -- as supported by the preliminary survey -- have corroborated the selection of major events or occurrences that will be analyzed, interpreted, and critiqued that will lead to better understand the policy side stories of PAKJS (Babbie, 2006). The first event would be a draft of 1948 constitution, approval of KNA (Korean National Assembly), and characteristic of new born judicial system, which, I considered, the environmental system and learning concept are any most important to understand the period. Other several concepts will lend a tool of analysis, for example, the role of PET, Habermas, Foucault, and so, as distinctly with the demise of imperial rule and exterior influence to design the national constitution and judicial system. The major theme is related with the reign of B.R. Kim as a chief justice dealing with the second period, which the preliminary survey vastly affirmed his determinative role and influence to characterize the PAKJS in view of PPA (Geertz, 1985). The ethos and prevailing attribute of judicial practice and legal service would be the kind of classic serenity meaning that it had largely been informed or imitated by the Japanese modality. This implies, for example, of the attribute of judicial system as one of cultural, intellectual and civil agendas although they are placed or related within the constitutional chapter. This is not odd provided that Japan was a previous enemy state for the independent Korea. In other words, acculturation occurred that the previous system could not be altered in any one moment, but the evolution of judicial system would be persistent and frequently recur to adapt with the community on the historical continuum. This partly corroborates with the general notion of PET, but contravenes in some aspect if PET is to propose a coincidence of political shift and new agenda settings or new atmosphere changed from the long practice of old agendas.

My subtopic to characterize the third period of militaristic government was drawn upon the inertia of judicial activism and professional responsibility (Kim, 2014; 2015a,b). The challenge in this period had stemmed from the epistemological disagreement and skepticism of judicial people and policy actors. The period will be investigated through the several occurrences selected based on the survey, including the first judicial strike, disloyalty to the newly imported judicial review, and prevailing atmosphere of dictatorship and later-revoked judgments (1985). The implications and insights through four judicial strikes also will be remarked for the comparative understanding and in the aim to distinguish against the last three ones. The forth section should be blithely befallen on the civil minds of nation, which is expensive and burdensome in one sense, but normatively idealistic. In other words, the true constitutionalism, independent judiciary and advanced concept of judicial system blasted that aroused the public attention and policy movement to reform the passive and administrative scale of weak judiciary. Given its importance as a key policy maker of nation, the transformative vision spawned and enacted by the policy leadership was normatively required for various policy needs. The major events and occurrences also were chosen based on the preliminary survey, frequencies of Korean sources, and focus group, which includes the law school reform, nepotism or political regionalism of personnel policies, import of jury trials and paradigm shift toward the constitutional rule characteristic to base the democratic judiciary, liberalization of legal service market, and increasing profile of KBA (Korean Bar Association) and civic monitor group as a checkmate with the courts and prosecution offices. In terms of the methodology, the GT approach will be employed and the method of hermeneutics or heuristics will support to interpret and construct the events or occurrences, and help to analyze the field data (Grondin, 1997; Moustakas, 2014). In the process, Pattern emphasized the importance of

identifying elements to study, which must be first to be attended. He also highlighted the need of establishing their relevance and relationships. These had been tabulated in Table 3. We can consider the research environment relating with the topic of PAKJS, which could factor my research design between the theoretical and conceptual framework. I believe that the conceptual framework or reliance of key concepts would be more effective given very little data about the topic or no overarching studies (Hoover & Donovan, 2003). This also coincides with the tendency that the conceptual framework is preferred by qualitative researchers. Table 3 simply exhibits a summary dealing with the alignment of theory or concept through the research objects and in view of methods. Table I and II were prepared to show the characteristics of theories to be used for the qualitative research and their effect as to be constructed into the chapters by being interconnected into the phenomena, say, historical transformation of PAKJS.

Table 1

Classification of Influences for the Studies of PAKJS

Static	Dynamic/Processorial	Proposition	Critique
Weberian understanding of Bureaucracy + Korean Theories on Politics and Regionalism	● PET (Punctuated Equilibrium Theory)	● Weberian ● Woodrow Wilson	● Ludwig von Mises ● Robert Merton
Habermas and Normative Theory	● Policy Process/Diffusion of Innovation	Post-modern Discourse on Politics, Ideal and Value (Faucault)	Possibility of Normative Order (Habermas)
Bourdieu's Socio-economic Theory	● Advocacy Coalition	Bourdieu's/PET/Policy Process/Advocacy Coalition	

Table II

Attribute of Findings & Overall Structure of Studies

Temporal & Transformation	Tones & Metaphors/ Logic & Persuasion
Period I, II, III, IV through the Present	History and Reflexivity/Phenotype and Ontological or Normative
From the Present to the Future	Alternatives and Suggestions

Table 3

Theories and Concepts, Research Objects, and Methodology

Research Objects & Method	Theories	Concepts
<ul style="list-style-type: none"> ● Policy Side Dynamism ● GT Approach + Hermeneutics or Heuristics 	PET/DOI/AC/Choi	<ul style="list-style-type: none"> ● Environmental System ● Learning/Immitating/Coercion ● Public Attention/Advocacy Coalition and Opposing Group ● Policy Process and Role of National Assembly ● Role of Judicial Actors a priori and a posterior ● Political Regionalism of Korea ● Korean Conservatism/Communitarianism
<ul style="list-style-type: none"> ● Bureaucratic Aspect ● GT Approach + Hermeneutics or Heuristics 	Weberian/Wilson/Critiques/Choi & Han	<ul style="list-style-type: none"> ● Dualism between the Corporation and bureaucracy (counterpart as mutually relied : Marx)/Bureaucracy as a distinct form of government (Mills)/rational-legal authority (Weber) ● Rigid Division of Labor ● Chain of Command ● Qualified Education and Training ● Discredit from Econo-political Ideals (Mises) ● Trained Incapacity/Over – conformity/resistance to changes/arrogant and haughty (Merton)
<ul style="list-style-type: none"> ● Legal Education & Service Market ● GT Approach + Hermeneutics or Heuristics 	Faucault/Bourdieu/Habermas	<ul style="list-style-type: none"> ● Meta-capital/Habitus and so ● Power Relations and Politics of Identity ● Politics, Ideals and Values ● Post-modern Discourse and Normative Ordering

References

- Babbie, E. R. (2006). *The practice of social research* (11th ed.). Belmont, CA: Wadsworth.
- Geertz, C. (1985). *Local knowledge*. New York, NY: Basic Books.
- Grondin, J. (1997). *Introduction to philosophical hermeneutics* (J. Weinsheimer trans.). New Haven, CT: Yale University Press.
- Hart, C. (1999). *Doing a literature review: Releasing the social science imagination*. Thousand Oaks, CA: Sage Publications.
- Hoover, K. R., & Donovan, T. (2003). *The elements of social scientific thinking* (8th ed.). Belmont, CA: Wadsworth.
- Kim, Kiyong, Ethics, Law and Social Justice (April 10, 2015a). Available at SSRN: <https://ssrn.com/abstract=2592876> or <http://dx.doi.org/10.2139/ssrn.2592876>
- Kim, Kiyong, Public Policy and Governance: Some Thoughts on Its Elements (April 3, 2015b). Available at SSRN: <https://ssrn.com/abstract=2589526> or <http://dx.doi.org/10.2139/ssrn.2589526>
- Kim, Kiyong, The Relationship between the Law and Public Policy: Is it a Chi-Square or Normative Shape for the Policy Makers? (September 10, 2014). *Social Sciences*. Vol. 3, No. 4, 2014, pp. 137-143. doi: 10.11648/j.ss.20140304.15. . Available at SSRN: <https://ssrn.com/abstract=2577832>
- Moustakas, C. (2014). *Heuristic research: design, methodology, and applications*. Thousand Oaks, CA: Sage Publications.
- Trochim, W., & Donnelley, J. P. (2006). *The research methods knowledge base* (3rd ed.). Cincinnati, OH: Atomic Dog.