QIKJS-Part.VI.A

Qualitative Inquiry of Korean Judicial System

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The thesis of national and international character within the KJS can be most convivial to look into the major law firms of Korea. Their contribution to boost the development of nation has been considerable from the earlier age of Park's reign through the current. Given the profession is the kind of monopoly by the professionalization process, they would be said of monopoly to deal with the international field of legal practice and provide a service of corporate counsel for the international clients. For example, Kim & Chang, biggest and most aged law firm in Korea, as well as a couple of major law firms would be only niche that the international firms try to contact to seek a legal advice and representation in the Korean judicial proceedings. These several law firms, notably KC, would be viewed by the potential clients of nation and foreign countries that the competent international lawyers could be availed of. Unlike the US, the international lawyers would not be fairly distributed between the government and private practice, which serves a monopoly of their role to represent the government in the international suit, such within the WTO dispute settlement mechanism and other controversies of international character. A field work on the Korean literature and interview result allowed its major profile to cast meanings and implications around the sphere of my inquiries.

First, the thesis of meta-capital and professionalization to impede against the commons had been vividly processed through decades within the big law firms (BLFs). As said, the discourse on discrimination or social stratification within the profession would generally be implausible, but could be said if we are to reach the enclave of BLFs.

Second, the professionalization thesis could marry with an account, "torment of secrecy" when we attribute it to the practice of bureaucracy or expert of politics in the Weberian sense. The torment of secrecy is not merely of the production of expertise practice or public document, but even tacit through general business information, such as yearly total sales and so. The practice is based on secrecy to comport with the need of government that could well be matched and symbiotic among another. This could bring a public criticism and surprise to imbrue with a

short term employment of astronomical amount of salary for the newly retired ranked public officers. The kind of nepotism had often been argued to disqualify nominees for the important post of government through the congressional hearing over the past.

Third, the springer of powerful private institution is no longer out of public subjection merely because they are not a government branch or political power, but the ethical discourse of Weberian nature could stretch into big private powers. The concept would be likened with the general understanding of constitutionalism between the public and private sectors that could transform to allow a constitutional duty for private powers through the state action theory. Although the protection of human rights could not be argued against BFLs, some suggest that the public disclosure of income information and case status or result within the proceeding has to be made obligatory.

One finding through the interpretation and analysis of text, documents of public speech and announcement, white paper, public report, written materials, pleadings of interest holders, inquiry letters, and draft proposal of legislation discloses the conflict of different legal professions, say, among the law professors and attorneys. The insight is that the conflict theory would be only general and less related with the professions given the system of profession is traditionally sustainable, but can be disturbed in the transformative paradigm or if entangled with the policy dispute in shaping the KJS. In this type of conflict, however, it is less adequate to apply the political discourse, but has to be considered in terms of professionalization thesis that they are learned and share a common or similar paradigm of education and culture. The conflict also shows that the period of new agenda settings or PET to reform replacing the demised policy would often entail the conflict of interest holders, and the learning and policy environment to support the policy process emerged to characterize the pattern of actions, interactions and processes by policy actors. While the reform of KPO and judiciary would be problematized as a public issue, that of law school and KBO would be keener as inside issue of professional society. The conflict of this nature had been developed of processing the law school reform most intensely and traditionally with occasions to argue for the law professors to practice law as a waiver of national exam. It is distinguishable if the former reform had to deal with the public demand, such as equal share between the conservative and progressive judges or staffing of diverse backgrounds as a Supreme Court justice. The controversy to better the KPO also embroils with the public demand, but is relevant with the political group more than the citizenry if the reform can safeguard their political freedom through the independence and neutrality of this power organ. The law professors and attorneys generally are an important opinion leader through the whole of reform dimension, but more directly affected when the law school reform had been called as one of national reform package by the Y.S. Kim’s administration in the mid of 1990’s.

A cognition to deal with the challenge of law school reform seemed to differ of the attorneys if the departmental education of law is viewed as flawed in need of reform, yet to be incomplete. The interest holders to teach the law for their

subsistence would see it more serious that the whole scale of law school reform is necessary to overcome the versatile challenges in newly globalized age. The law professors argued that the attorneys had not been properly understood of law school reform toward the US type, and more seriously if the position was fortified with the number or statistics, which appears to defend their traditional interest or privilege. The argument attempted to alert the requirements toned with the neo-liberal circle, such as competitiveness and emancipation of production side for more than new attorneys. One important policy point was contested to decide whether the law school can be free to enter the legal education market once the minimum requirement is met or if the government would exercise a final authority that is selective and classified for an approval and after the due examination. The competitiveness in this context differs from that of legal service market, so that the law professors objected to the latter type of process while the lawyers preferred it.

While the structure of conflict had been staunch between the law professors and attorneys, the public officers of KPO and judiciary or civil activists group apparently made a less devotion to embroil with the progress of reform, and more objective if they are stable with salary and national pension benefit. The civil group, however, showed to affirm their general position for the liberal and democratic cause. It means their principled stance to support the need of law school reform. Given my hypothesis of cultural influence from Japan besides the econo-political one from the US, it is corroborative that Japan had come around similar time to law school reform, and left a post-reform aggravation concerning the remaining institutions of Japanese character, to see, the kind of problem same to Korea. The Japanese system has allowed a parallel of law department, strict control to limit the number of successful examinees on the Judicial Exam, safe harbor allowing a qualification to sit for the bar exam through the preliminary exam, and continued maintenance of judicial training institute besides the law school.

One local professor of law provides the thought in reflexivity and in terms of policy reform or necessary process,

> "The coalition of interest holders is important and the policy network has to be duly organized with the communication and learning. Given the conflict, it is necessary that the two professions had to collaborate, cooperate and coordinate (3Cs)… It is the call of times that we adopt the new legal education system if the past one are to be duly outmoded (PET)…The influence and new challenge were not properly appreciated that we had not minded or tried to learn the environmental change, such concerned of inherent flaws within the past legal education, understanding of public expectation from the importance of judicial system in face with the new millennium (CTD)…The agreement of substantive elements had been prejudiced with the factional interest and the policy process was foiled with resilience and inattentiveness....The most degrading evils would lie in a wrongful credit on the vested rights and privilege. The reform could only be feasible once the vested group retreats to the value and ideals of society, and accepts the transformative demand to the civility (CTD)…."

In their vast sense and knowledge, they are a part of big organ, who would be thought as less of "principled bottom or top." They do not know that they are any sector of slavery or exploited group, but most of them think that their predicament

essentially is associated with their lack of business skills or misfortune from the promotional opportunity. This attitude had been more impressive in the past ironically, and partly recast with the reflexivity or normativity as the globalization and new deals with the civilian liberalization since 1990's had intensified in Korea. This seems, however, would not change any dominantly an innate understanding of identity even for new lawyers. I view that the Freidson's frame of professionalization sociology can more powerfully explains their current and past epistemology, but in the sense of permanent harbor with various elements of theory, not as the part of social conflict theory that is amenable as reconstituted.[1]

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[1] The Marxists would idealize on the reconstitution of whole society with a historical insight of transformation within the production relationships. They emphasized the system of exploitation and slavery state which necessarily is predicable to reconstitute the production relations, such from feudal to capitalist paradigm. This had inculcated on epistemology and understanding of human science in the significant impact or historical verity. The kind of class consciousness would not be dormant for the minds of social justice which lent a ground for the development and tradition of critical theory by his European protégés. This might be affectionate in view of humanity and politics. Nevertheless, the status as one type of most traditional professional, as named a lawyer, largely could not defy their identity of politics. They had to take an oath to register for the new attorney role. They are expected to interpret and apply the national constitution and statutes or case laws developed therefrom, which stands on the social contract and system of plutocracy, at least in US, the leading state of liberal constitutionalism. The situation is similar with Korea although its constitution can be viewed in terms of mixed nature between the classic liberalism and the concept of social justice. The difference may not require such type of oath in Korea, but the ethical code of profession largely may copy a prevalent type of US. Their professional disposition and ethics in this kind generally foreclose the radical or idealistic humanity discourse, or into action in the least. Their logic and metaphor may not be such dialectic, but must be reduced into the legal terms and theories. The professionalization, such as a plethora of new elements to sustain their arena and track, actually made a huge impact on their mentality and attitude. This account would largely well be vindicated with the source of field data and interview results. They are interestingly distinct from the Marxian notion of guilds or various economic actors, who are expected to "reconstitute" to the justice of humanity and society. A vast of them rather tends to respect "constitute" that comes in comport with the structured functionalism. In my hypothesis or findings -- at least as with Korea, they respect the liberal constitution in case of liberalist lawyers and communist constitution in case of those of socialist nations. This also has implications to note the importance of learning in terms of policy process or general PPA discipline and sociology of professionalization. The findings also might corroborate our general assumption that the radical politics may not fit within the paradigm of welfare state given the growth of affordable middle class, but with some points of consideration. First, the CLT can stand to seek the normativity within this rapidly transformative new age of capitalism. Second, as if the kind of reflexivity discourse as an epistemology elicits, we may cast a self-inquiry who would be active toward the ideals that could be shared between idealists and lawyers with the same level of income. The idealists may seek their role with the publication or public instruction, and some of them may garden a small of plant to subsist or aged time to reflect over his communist devotion. The lawyers might do with the second reality of non-lawyer idealists, but often bear not to be active on the leftist discourse which shows the deep consequence of professionalization on the humans. This context of phenomenon would be confirmed over most of my empirical data, such as investigation of publications including the newspapers or interview results. At least, their reality is stiff with the professional requirement on their daily experiences, which most significantly defines their social or even personal identity.

System (vi) Miscellaneous.

The insight through the field work is the importance of KPO in view of political transformation in nation. Given the kind of institution often is used to support the political power through investigation of political cases, it is no surprise that the group deserved a public highlight since the 1987 constitution brought the social change. During the progress through the reform, we can identify its ride and challenges in terms of the role and responsibility and the organizational ethics. The organization is characterized as hardest of three professions that is strived as integral and austere command line and greatest turf against outsiders. In other words, the inside culture of KPO is distinct as one interviewee commented,

> "We are tied together to the fate that the line superiors are definitely the kind of absolute…We are amok and feat to be loyal to something like power or undefined, but sacred organizational goals…Occasionally to deal with our job direction and check-up, we would drink heavy sake blended with strong degree of whiskey and beer in the night, which proves the loyal relationship to the superior. The relationship sometimes is formed informally with the school affiliation or regional background. I consider it necessary on one hand, but nasty on the other. It is necessary to allow our hard work to soften and compassionate while it could be the kind of nepotism that the public would not anoint to collapse our credibility or professional pride…."

The love and affection of public had been notable through the transformative period that anticipated its role of transforming the society to the justice from the past crooked society and challenged this institution with disappointment (Kim, 2014c; 2015a,c). While the traditional Weberian concept might freeze with the overwhelming political might of authotarian government before the 1987, the gradual budding can be said with new experiment and public support (Kim, 2014a,b; 2015b,d). The bureau-institutional prototype seems to begin embedded, but challenged from lack of communitarian experience. The public criticism and suggestion on the normativity and reflexivity discourse from academicians and opinion leaders are well be the kind of onslaught to pressure the institutional reform. One of invention to improve the practice is the statutory guarantee of two year mandatory terms for the Chief that bulwarked from the influence and intervention of political power, such as Blue House and MOJ. If we view them as a litmus paper to measure the neutrality of KPO, the statutory tool would be a chaos that a number of KPO chiefs upon the enforcement of that statute had to resign in the mid of terms. Some Chief was impeached of his wife's bribery or other chief was stripped to resign from his unethical wedlock baby. The ethical challenge with the KPO had aggravated the public credibility of this institution if one young female prosecutor also was embroiled of high profile bribery. Interesting neologism attributed this institution by the public and media, such as Cake Buck prosecutor, Benz prosecutor and Chanel prosecutor. In our theme, the nepotism or moral aspect of technocrats or expert bureaucrats would well step in to describe the transformative period of KPO. One social scientist provided an insightful comment to define the future goals or reform,

> "The job satisfaction and pride was proven as highest among the three professions. Particularly, the professional integrity and self-regulation in terms of…professional sociology is deemed excellent with the systemic disciplinary scheme. But the cognitive gap between the people and profession is considerable (CTD). Given the prevailing consciousness with self-regulation within the staffs, our assessment is due of satisfactory grade. The reality is not satisfactory as we exemplify the historic case of impeachment accusation against the Chief.…The Chief has been a critical touchstone to measure the soundness of role and

> responsibility for this organization. The method to appoint this post is definitely implicating to improve the practice. The two statutory terms would be less meaningful in my view. The reform with the new mode of appointment, such as the search and screening committee of broad public leadership would be one important alternative. The organization of KPO commission is a good idea to increase its workplace democracy, and congressional control needs to be enhanced to secure the institution independent from the political core. Then the nepotism on regionalism or political affiliation could be eliminated…"

The field evidence on KPO raises an interesting point relevant with our theme of expert group and bureaucracy, such as the unity theory of prosecution officers. The theory has been developed as a matter of criminal procedure within the inquisitive system that defined the organization as a fiefdom to empower the nation-wide operation in unity. It originated from the Japanese criminal culture, and sustained the purpose of Japanese imperialism, which had been deeply embedded on the theory and practice of KPO. The theory can allow the effectiveness and efficiency of KPO function, but had created the mood and condition that the political influence could exploit their goals and the line authority can be absolute to command for a chafe and frustration as an expert bureaucrat in law. The theory, therefore, along the political wrong way of nation, could provide any shortcut to be voiced of the will of dictator, and proven a very volatile institution that could aggravate the paradigm of professionalization sociology. This point would be where the conflict between the discourse of professionalization and political leadership or democracy occurs. Through the investigation of KPO, we can see the agenda setting or policy process theory would be relevant that several major profile of reform issues arose as a new vantage issue from the past, and reform process was made with the advocacies, and critical scholars or other stake and interest holders. The communicative action or normativity within the public sphere had intensified with several works to report or critique the field developments. The texts and scholarly writings of this sort are based on the critical discourse analysis showing the importance of democracy and communicative action. The notion of normativity from German rationalism from Aristotle, to Kant and through Habermas led the intellectual stream of public voices toward any better understanding or reform of PPKJS. Nevertheless, the professionalization or disciplinary discourse to deliver the essence of transformation within the KJS can be feasible to frame our inquires and findings into the FDA, in which the institutions or actors could be particularized on their organizational character and public reason on standing. The approach can moderate and develop the radical communication tested whether it is viable about the normativity between the democracy or community of non-democratic nature. Given the reflexivity may be purely subjective on research method or way of approach of sociologist or policy actors, the normativity or communicative action provides the feasible public order on the community specific of the researcher's target. While the theory is important to consider the communicative action as a principle on the contemporary democracy and market, the issue of professionalism or bureaucracy had not been specifically addressed that may lead to the two fold thoughts between democratic and anti-democratic. Some writers on the judicial reform disposes in this taste, but others can be more specific to analyze the specifics of each organization or policy actors on their own frame that has to be connected into the whole biology of KJS. The culture, emotive aspect of organization, and professional terms on interested organs, such as law school or law department,

KBO, KPO, KSC, and DABM, would be enriched that truly emancipated themselves from the discourse of prevailing political economy. The field data generally supports that the policy process occurs within the terms of formal institution, such as leadership of Supreme Court and KPO with the KNA. The American concept of administrative procedure also guides to govern most aspect of policy reform as same with other policy fields. The hard nature of American influence as said before underlies this kind of mandate arising from the constitution and administrative statutes. The German influence, perhaps stranded with the traditional rationalism, idealism and critical reflection since 20th century, to emphasize the deliberative process on communication also heavily affected the discourse on the values, democracy and judicial reform. The bio-politics and power-knowledge interactivity from the French taste also had worked impliedly with the influence of expert politics or bureaucratic theory, or professional terms on training and discipline. The new policy to grade the performance of judges several years ago as expanded into the PO could be one illustration for the Foucauldian understanding of social phenomenon. The problem of government focally dealt within his thesis may also reach out to the reform of court or KBO.

> "The judges had to be integrated into the integrity and coherence of professional community, meaning a selection of career attorneys regulated by the statute or other way of consensus. The findings on survey in my research simply proves this alternative as most supported, implying the distaste of inexperienced junior judges, who often perform any clerical or passive role…It prevents the leave of judges for economic reason, or nepotism on the preference of retired judges to exploit his recent influence with his post. The pay increase of career judges then would follow that can prevent unethical practice or other evils creating the social problem and lead a job satisfaction….As KBO is an important public organization or quasi-governmental, the self-regulation is foremost of concerns, which must satisfactorily be responded by KBO itself. In another dimension, educational institute to train the attorneys had to be specialized by separating from the current unitary scheme of professional training on three professions. It would be more effective than the policy of restriction on the place of practice or representation of criminal cases in the region of his influence…"

The thesis of professionalization would not be chipped away over the progress, instead, it could be any formal requirement to conclude the reform influence. Various initiatives and public process on conferences or debate would be crystalized into any new regulations or their revision. The educational reform confirms it, and KBO also had been reformed as a principal authority to discipline their bar members. The change of disciplinary scheme from KSC to this voluntary professional organization indicates that the professions could be more integral and faithful to the professionalization thesis. It is no longer the common voluntary organizations amenable to the governmental regulations. Provided if the Supreme Court or DOJ is the organ of government, the role on the professional education or discipline to ensure their identity may be more compatible with the responsibility of KBO. The Code of Ethics on the Attorneys also had been revised to respond with the needs of details and enhancement of ethical standard along the development of society and professions. The revision was not improvised , but could be corroborative of continued or very prospective trend of rapidly growing attorney in number. The report of disciplinary cases had had steadily increased in quantity and remarkable especially in quality by subjecting high profile of retired officers or justice. Recently five formerly top POs were

reported that they were being considered to be disbarred because of their unreported exploitation in accepting the position collectively as the outside director of wealthy corporations. One Supreme Court justice, for his political misconduct to arouse the public fury, had been denied a bar admission upon his application filed soon after his retirement. A general consensus on my findings seem to converge to the basics of policy implications. First, the policy reform has to be individualized to each of three professions on its own characteristic given their public role and responsibility despite their common ground in view of basic professional terms. Second, the autonomy thesis of professionals is most desired with the judges so that they have to be independent as an adjudicative office and intense self-control or regulation should be any more important prerequisite to execute their responsibility. Third, the reform of KPO will be preferably approached through the collective deals as an organization since it acts unitarily or organizationally than individually. Forth, the consciousness on their professional identity is found lowest with the group of attorneys, which naturally leads to the job dissatisfaction. This brings the need to integrate and strengthen their identity as a legal professional by means of enhancing their common strand or terms, such as requirement of CLEs, boost of clientele through public counsel laws or establishment of legal service corporations, award and disciplines, mutual aids program, and increased forums on their issues and legal learning. On my findings, we can state that the epistemology and social psychology of professions tends to be seriously affected by the institutional terms of legal theory and thesis of professionalization. The constitutional provision on judges would make them as more than individualized player. The statutory provision to require the KPO as unitary through the national criminal jurisdictions may bring them more organizational in terms of their professional identity. The thesis of professionalization may generally dominate the last of profession, what we call the attorneys.

One significant finding over the progress of reform and history through KJS is that the policy makers, critiques and public concept transforms beyond the independence thesis of judiciary and state attorneys toward the concept of public accountability. The new concept of accountability is never meant to bust or defy the classic value. However, it is implicating deeply than can lead to any possibility of paradigm shift in understanding the PPKJS. The new understanding with the accountability thesis refresh the notion of professionals as active and participatory, whose discourse may be some replica of argument between the active and passive judiciary in the US. Given the social progress may depend on the activism of judiciary, the aspect can signal positively both of institutional reform and their original role as an adjudicator. At least, such new shift in understanding the phenomenon of KJS can be seen more friendly with or stimulates our purpose of policy side analysis on PPKJS since various voices of interest or stakeholders could be heard. While the independence thesis may be more toned with the classic constitutionalism or Weberian concept of ethical or rational bureaucrats to the call of terms, the responsibility thesis can be supported with the account of critical theories or professionalization viewpoint, that would go on value, ideal, dynamic, critical, and reformative. Despite a countervailing view, the paradigm shift would be indebted to the opportunity of new affluent communicative channels and evolution of e-technology to sustain the democratic value of contemporary times. One juridical scientist provides an insight on the public policy on the KJS,

> "The reform thesis on KJS has historically been elaborated on the independence of judiciary because the authority of reform has been steered solely by the KSC. The reform proposal can only be filed by the professional organizations, and the bottom up process with the

> citizenry had been devoid of….Despite the eagerness on the independent thesis, the public accountability of judiciary or judicial system cures a flaw of extremist independence theorist, such as unreasonable privileges and benefits for the judges, alienation of wider public process on the econo-political issues, and callousness against the social demand or environmental change….Five innocent judges have to be pointed out to illustrate their meaning.[2] They have been persecuted cruelly by the mainstream of judicial circle, who had been deprived of their privilege from social custom, if not ethical. Most importantly, they suffer to deep personally…The process reinforced the kind of judicial authoritarianism irresponsible not only for the citizenry, but also for their members…"

In addition, his suggestion to increase the public accountability of courts would echo, and largely can prove our professionalization thesis or CTD, which is critical and receptive through a sharing on common value and ideals. One is the reinforcement and tightening of disciplinary institution over various standing laws and ethical codes on three professions. In this respect, special investigation agency needs to be considered as an alternative. The award and discipline had to come in balance and purpose to steam up with the professional morale or integrity. He also suggested that the grading system of judges has to be reformed to be substantial and effective. His suggestions impacted much on the bench and bar associations that is made into reality currently. This would be one example that the public discourse can bring a social change as we share with the theories of reflexivity, normativity, governmental rationality.

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[2] Moon had been excellent over his professional career, but was expelled by the core judges leading his resignation eventually. His critical behavior had been considered pert and was unfortunately unacceptable by them that made him impotent of career progress thereafter. Bang had been undesirable to contradict the criminal policy of supreme court and government by rejecting the detention subpoena of KPO. He was relegated to the local court, which provoked to file a constitutional complaint on the ground of unconstitutional court order to impair the judicial independence. He failed to gain a reappointment in1997. Shin has a good character and learned much as a researcher if Tokyo university and apprenticeship with the Japanese Supreme Court and Tokyo local district court. He published a cultural book of profession on judges and prosecutors of Korea, which distorted the public image of them. He also posted two inner communications to criticize the judiciary and KPO. The bad sensibility erupted around the peer circle, and organized opposition led by one chief judge of local district court had encroached upon his office. Several reprimands had slammed, and he was demanded of reflexive essay for public excuse. He was uniquely excluded from the reappoint process on the constitutional provision in 1993. Chung pursued the resignation of Chief Justice Lee in 2007 because he ordered an illegal order of promotion for a ranked judge. His action had expended to stimulate the arousal of judges for constitutional impeachment of Lee through intra-communication on electronic mode. Upon no response, he criminally accused the Chief Justice and justices on the abandonment of public office with the KPO. His controversy expanded to embroil with the rumor of ethical committee on him, and petition to disclose the pertinent information. He was referred to the disciplinary board of judges that was sentenced with two months decrease of salary on the two accounts of misconduct, say, relating with the public credence of courts and integrity of judges. His appeal was denied by the Supreme Court in 2009. He later argued on the misappropriation of court budgets with the civil activist group. Generally he was viewed as extreme that went further. In any case, he now suffers from the due professional opportunity on promotion.

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