

QIKJS-Part.0.I

Qualitative Inquiry of Korean Judicial System

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Dissertation Topic and Problem Statement

My topic deals with the public administration of Korean judicial system (PAKJS), which holds a focus on the selected stage of policy change and strategic reforms of Korean judicial system (KJS) in terms of the elements of public policy, such as diffusion of innovation, punctuated equilibrium theory as well as the basic philosophies of communitarianism, bureaucracy and legal professionalism. It will be designed to explicate the characteristics, variables and relationships underlain in the public administration of judicial system (PAJS) and PAKJS, which hopefully can provide an understanding, comparison, perspective, practical or scholarly lessons for the policy makers and concerned actors or intellectuals. Given that the studies of public policy turned to be more scientific across the types of public organization, such elaboration comes far scarce when we are involved with the organizational or administrative aspect of judicial system. That is particularly true when we fall with the experience of new born republics since 1945, including South Korea (Han, 2014). They often were hurried to create the western style of judicial system in urgent need to respond with the inauguration of new republic as a state. Evidence strongly vindicates that the literature to deal with the topic is mostly on the structural perspective and democratic ethos or consequent lack of political legitimacy, which is sensational and limited lacking a coherent scientific frame and analysis (Kim, 2009; Han, 2014). The problem of public disagreement, inconsistencies of policy making as well as the desultory discourse of PAKJS varying with the successive administrations and public opinions are truly an authentic puzzle that should be resolved with the empirical studies and coherent account on the relevant theories and frameworks I plan to employ as a lens of analysis. I consider the communitarian critique -- as conceived widely with Korean bureaucracies and professionalism of actors -- is more than powerful tool to investigate the Korean struggle, conflict or progress with the PAKJS (Kymlicka, 1988; Wilson, 2015). This does not mean that the liberalism is irrelevant or outmoded -- rather does it stand at the pillar of discourse -- in which the constant comparative evaluation is necessary across the significant stage of PAKJS and policy environment (Glass, Rud, 2012; Sage, 2012). The lack of scientific deals and analysis in the current literature also is addressed by being indebted to the theory on policy diffusion and PET, in which more systemic and precise account of adoption or resilience of new administrative policy can be provided as involved with the judicial system (Nicholson-Croty & Carley, 2015; Sabatier & Weible, 2014).

Theoretical Frameworks

The theoretical frameworks are a central means by which I plan to distinguish my research from other scholarly works on the law or public policy. It is interdisciplinary while the research in view of public policy and administration has rarely triggered the judicial system, especially in case of Korea. Hence the selection of theoretical frameworks is required of strict scrutiny that most appropriately explicates the phenomena and provides an account of scholarly value, which is necessary to contribute to the specific academic field. According to Sabatier and Weible, the students of public policy produce the journal articles or scholarly titles, which could be classified into several basic frameworks (2014). Punctuated equilibrium theory borrows the idea of biology and explains the inevitable dramatic change of policy, which may be viewed to just convince our simple observation. Nevertheless, it is quite plausible to explicate the gun control, energy and environment and federal tobacco policy, and the phenomena of dramatic alternation of existing programs. Given crises other than stasis typically characterize the public policies, the theory cognizes that they constantly occur. It was originally developed by paleontologists, N. Eldredge and S.J. Gould, and later received by historical institutionalism. In this line of thought, Gersick also conducted a study on how the organizations evolve and analyzed the pattern of change with six domains of change across different disciplines (1991). For Gersick, Darwinian gradualism has been challenged and evolution on realistic ground can be characterized with a postulate of punctuated equilibrium (1991). Her viewpoint is supported by similar new and empirically derived theories in a variety of different literatures, for example, Kuhn's distinction between normal sciences and scientific revolution, Abernathy and Utterback's contrast between radical and evolutionary innovation in industry, Miller and Frieson's as well as Levinson's. She proposed the revolutionary change according to six theorists, which coheres with six domains, i.e., individuals, groups, organizations, scientific fields, biological species, and grand theory (1991).

The innovation and diffusion of policy models in policy research intends to identify the policy innovation as a point of focus¹ and seeks to explain why the government is incremental and the process through which governments adopt new programs. In this case, the innovation is defined as a program that is new to the government to adopting it. The idea of innovation share many commonalities with other models, i.e., innovative behaviors by individuals in other context, for example, teachers using a new method of instruction, farmers adopting hybrid seeds and fertilizers and consumers purchasing new products, which impacted on the scholars of public policy (Sabatier & Weible, 2014). The studies of

¹ In this context, one important theoretical issue in the construction of internal determinants is how the dependent variable – the propensity of a government to adopt a policy or a set of policies – is defined. Indeed, we can turn to the literature on organizational innovation for a framework useful for assessing the variety of internal determinants likely to influence the probability that a government will innovate. Therefore, the hypotheses from internal determinants theories of government innovation emphasize variables that seem especially relevant for explaining the adoption of new programs. For example, numerous scholars have hypothesized that problem severity is an important determinant of the motivation to innovate. Nevertheless, some interest holders are skeptical if the law school reform in Korea truly resolves the problem severity of globalization that the successive governments had held.

government innovation can be leveled at scales, cross national investigating how countries develop new programs and how such programs have diffused across countries, interstates within the US, local and regional governments within the US, or local and regional governments in other nations. In this theory, two principal explanations are identified to support the rationale of new policy adoption, what we call internal determinants and diffusion (2014; Wejnert, 2002). The first proponents posited the importance of political, economic and social characteristics as a driver for adopting a new innovation. The second version holds a view that the intergovernmental emulations are a principal cause if one government adopts a policy. The second version of this theory is more useful to deal with my dissertation since the first explanation most often provides for the use of quantitative studies --- hypotheses and testing are usual to design the research. In the second explanations, the diffusion is defined as “the process by which an innovation is communicated through certain channels over time among the members of a social system (2014).” The state, nations or supranational organizations are viewed as a social system for the policy students in this concern, in which members emulate against other members (leveled unit of government), and are influenced by the policy choices of other governments in the system. However, theorists have identified a variety of alternative mechanisms by which the policy choices diffuse. The five mechanisms to factor the diffusion of innovation include learning, imitation, normative pressure, competition and coercion.

Relevance with the Studies

Given the dissertation deals with the important implications of period – revolutionary or quasi-revolutionary, Gersick’s framework is highly relevant and will be extraverterted to explain the phenomenon and occurrence or meaning of policy process and political morality of PAKJS (1991). Since my topic is concerned of Korean public policy, the organization or grand theory would be chosen as relevant from six domains. The table shows a brief feature of my theme as corresponds with her concepts and distinguishing.

Table 1

Keys Useful from the Punctuated Equilibrium Theory

	Description of Theory	Distinguishing-from Traditional Counterparts	Concepts of Deep Structure
Organizations	Organizations evolve through convergent periods punctuated by strategic reorientations (or recreations) which demark and set bearings for the next convergent period	Stage models postulate a set of distinct and historically sequenced stages...dominate the literature on organizational evolution. [But] organizations do not evolve through a standard set of stages...[They] may reach their respective strategic orientation through systemically different patterns of	Strategic Orientation: Answers the question: What is it that is being converged upon? While it may or may not be explicit, it can be described by five facets: (i) core beliefs and values regarding the organization, its employees and its environment; (ii) products, markets, technology and competitive timing (iii) distribution of power (iv) the organization’s structure (v) the nature, type and pervasiveness of control

		convergence and reorientations.	
Grand Theory	The “historical” path along which the system evolves...is characterized by a succession of stable regions, where deterministic laws dominate, and of instable ones, near the bifurcation points, where the system can “choose” between or among more than one possible future	The way...biological and social evolution has traditionally been interpreted represents a particularly unfortunate use of...concepts...borrowed unjustifiably from physics.....The foremost example of this is the paradigm of optimization. Optimization models ignore both the possibility of radical transformations...that change the definition of a problem and thus the kind of solution sought – and the inertial constraint that may eventually force a system into a disastrous way of functioning.	Order Parameters: collective modes... which define the order of the overall system...Order parameters...may be material, such as the amplitude of a physical wave, or immaterial, such as ideas or symbols....Once...established, they prescribe the action of the subsystems...at the microscopic level.

Table 2

Concepts Useful from the Policy Diffusion Theory

Elements of Diffusion Theory		Five Stages of Diffusion		Five Mechanisms	
●	Characteristics of Innovations	●	Knowledge	●	Learning
●	Characteristics of Innovators	●	Persuasion	●	Imitation
●	Environmental Context	●	Decision	●	Normative Pressure
		●	Implementation	●	Competition
		●	Confirmation	●	Coercion

The PET is relevant to propose my theme that the public administration of judicial system should be momentous or revolutionary at certain period of time and social environment (1991). For example, the establishment of modern constitutionalism in new land with the independence from the British colonial rule cannot be viewed as incremental in terms of public or strategic policy of organizations. The nations of post-colonial independence also have their story in this structure although they had not been immediate or original – hence extraverted or imported practically and sensibly -- upon the modern judicial system. The DOI is relevant to propose my theme that the elements, stages and mechanisms could provide a coherent account to explicate the policy process of judicial system, especially with the empirical data collected from the qualitative method. The aspect of distinction and relevance of theories arises (i) the period of struggle or acculturation for the enjoyment of benefit and values rather profiles as compressed and intensified over a short time span, which is distinct among the countries (ii) the learning or imitation as well as other mechanisms of diffusion theory generally is governing that mirrors as sub-revolutionary rather than revolutionary (iii) the elements of diffusion theory

may commonly be applied to the original or importing states of modern judicial system or constitutionalism while the five mechanisms more starkly impress on the post-colonial states including South Korea (iv) the post-colonial states tend to put a more emphasis of economic development or sovereignty that defers the agenda of modernization of judicial system as a secondary or tertiary priority – distinct trajectory in terms of advancing the democratic judicial system with commonality, but also with the national or group particulars (e.g., 77 groups of UN and economic planning of south Korea) (v) economics and national politics tend to be highly influential that the five stages of diffusion or five mechanisms within the diffusion theory would gravely be impacted (vi) the pattern of resolving the conflict or disagreement among the stake or interest holders and policy makers differs and more frequently are connected with the framework of PET than that of the normal or stable conditions (vii) the engineering of judicial reform and paradigm creation are essentially intertwined with the legal professionalism and constitutionalism, in which, for example, the concepts of deep structure in PET are simply very pertinent to the deal with theme and craft a proposition or explore the implications of PAKJS. (viii) five mechanisms are useful to delineate the phenomenon of specific agendas in any coherent way, e.g., competition or imitation for the YS Kim’s globalization and law school reform policy and so. (ix) the philosophies of communitarianism can be connected with the grand theory of PET and fairly plenary over the whole projection of Korean experience, but organizationally destined with the aid of PET.

A Brief of Comparison about the Frameworks

According to Cairney & Heikilla, scholars compare theories how to combine their insights or accept some and reject others (Sabatier & Weible, 2014). In this way, they proposed three criteria to compare the eight policy research frameworks² (i) basic elements of a theory (ii) activeness of research programs within each framework (iii) the extent of explanation or emphasis on the policy process. For example, they look into the extent each theory has a defined scope and levels of analysis or a shared vocabulary and defined concepts that compare theories in terms of elements of a theory. They consider the extent of publications to compare the activeness of research programs.³ The two theories would be used in combination to explore the stories of PAKJS since one framework is less fitted to deal with the complications of topic and subtopics. In general, both theories penetrate the whole of dealings, but come less powerful to explicate in specifics and as varying with the different political environments or alternation of public assumption on the political culture. For example, the years of 1945 independence or reforms of 1987 constitution would more properly analyzed by PET in view of their fundamental alternation of organization or social system.⁴ The DOI may be applied as we

² The eight representative frameworks employed by the discipline of PPA includes (i) ambiguities and multiple stream analysis (MSA) (ii) punctuated equilibrium theory (PET) (iii) democratic policy design: social construction of target population (SCF) (iv) policy feedback theory (PFT) (v) advocacy coalition framework (ACF) (vi) narrative policy framework (NPF) (vii) institutional analysis and development framework (IAD) (viii) innovation and diffusion models (DOI)

³ For example, the literature based on the MSA would include the Kingdon’s two editions plus numerous applications, while the SCF framework research rose with numerous applications, 111 listed between 1993 and 2013.

⁴ The policy student often deals with the kind of governmental entities as their research object, such as state,

assume the learning or imitation had been a factor to create the 1945 or 1987 constitution. However, the impact or relevance comes less in extent. The theories would be distinguished that the PET had a focus on the commonalities or characteristics -- based on the dichotomy of stability and periodic major challenges -- among the major domains of organizational change. That is otherwise that the DOI provides a dynamic picture involving the elements, stages and mechanisms, which characterize the narratives and themes of dissertation in terms of tone, logic and metaphor as well as points of illumination. Other theories than those two would be useful for the policy research, but could merely be implicit or at best parted with the PAKJS due to the characteristic of theories. For example, the ACF is interested in the conditions and subsystems for its scope and levels of analysis while two theories tend on the social system and venues or states (2014). Given the dissertation topic is grand in scale over the time span, but with the focus and theme held on concepts and elements, the narrow level of ACF would be inadequate. Due to the qualitative inquiry of my research, the influence of narratives on public opinion, coalitional strategies, and policy learning often keyed to define the relationships among the concepts in NPF may possibly be conceived as a way of approach. However, while NPF is partially useful with the interview result of participants and its analysis, the system and environmental context of policy process is a more determinant factor in characterizing the PAKJS. MSA generally is not relevant with the PAKJS since the judicial policy, from the standpoint of public administration, generally has a clear pattern of policy process and actors involved often are characteristic because the important policy environment would be ready-structured and constrained more rigidly by the constitution and public laws (2014;Kim, 2014a,b; 2015a,b). This trait steers more properly that the structure and ethos of scholarly approach is constitutional or ideological, in which the two theories have strengths than other frameworks.

nation-state, international organizations and supranational organs. In this case, they frame and define such entities broadly as one of social system in the DOI and organizations or component of grand theory in PET. The dissertation topic in my case requires exploring the Korean judicial system, in which the triad of legal institutions, i.e., judiciary, prosecution office and bar association will be covered. Therefore, it is not inadequate to employ such frame and definition – social system or organizations that the policy student would have -- an assumption on the attribute of research object.

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