

QIKJS-Part.IV.G

Qualitative Inquiry of Korean Judicial System

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Left Column: Subtopic on the Qualification of Lawyers

Thoughts and Observations

1. Around the days, I remain within the campus (Chosun University) located in Gwang-ju, a southern part of Korean peninsular. It is my workplace, in which I routinely consume much of my time teaching and researching. While one Walden course bothered me so much before this class, two weeks sojourn had been the kind of euphoria for me until this class embarked. As I am a Walden student, my interest involves an activity for the constant watch and monitor with memoing and journaling with the public event and stories within the Korean news media. One of interesting issue recently turned the policy atmosphere of PAKJS to be pugnacious against other interest groups. When the law school system had been envisaged in the 1995 administration and implemented with the enabling act of Korean National Assembly(KNA) in 2007, the National Judicial Exam(NJE) was planned to gradually wane and eventually terminated until 2015. Last Wednesday, 2 Dec, 2015, the ministry of justice (KMJ) had announced four years suspension of original plan that the attorney hopefuls in Korea thankfully will not be bereaved of direct way to become a lawyer without the three years of law school education. The aftermath was serious, however, and bolstered an acid confrontation of interest groups with the entrenched policy cleavage being made publicly exposed by the media coverage. At night in the TV program, Dec. 4, 2015, four debaters had chaired to exchange their opposing views for two hours, while two practicing lawyers divided between the pro-abolition and pro-suspension of existing time schedule for the NJE. The other two were nationally renowned academicians in law field, who respectively represent the national law schools (i.e., new replacement of NJE, and pro-abolition) and traditional law departments (i.e., pro-suspension). At the center of disagreement is it known to underlie that the three years of high expense education is uneconomical in consideration of national economy; the eight years of new system has brought an ill effect, such as nepotism in the admission decision making process and corruption of

national VIPs to forge their prestige for his children -- on the admission, graduation and recruitment process by the nationally prestigious law firms in Korea; the NJE will be the kind of unique and indispensable ladder to social promotion for the deprived class in Korea. The debaters increasingly become aroused and intensified, and participating audience in the KBS (Korea Broadcasting) production rooms, mostly law students and college graduates personally committed to the NJE, occasionally stood to express their prepared message. The pro-abolitionists argued, among many others, that the 85 % result of public survey to favor a suspension decision is misleading or just weak evidence with ill-prepared questionnaires. The pro-suspension position was declared notoriously by the President of Korean Bar Association (KBA), 3 Dec, 2015.

The ministry of justice (KMJ) announced the suspension of national program on jurists that the NJE will be enforced for additional four years. The KBA is extending a favor and support for the today's announcement of government and welcomed its honorable decision with the nationals. However, the decision is temporal with only four year extension until 2012, 10 years of new law school system, and conditioned that more effort will be planned for national consensus, for example, organizing the collective conference body of interested groups. This is, then, a meek response that cannot completely settle the wishes of nationals (85.4 favors for the NJE in the public survey of KMJ). The KBA is, therefore, urging a more proactive attitude and rethought of the current program to found a system of NJE for any more everlasting ground within the statute. The sons and daughters of low income class in the community is being initially barred to become a lawyer for the high education expense, and high school or two years college graduates, as many as 17,000,000 in the nation, even are disqualified from the consideration of law school admission process. It is time, for the constitutional rights to occupation and public office, that any measure to redress the discursive embodiment of current system and schedule needs to be designed from the fundament. The NJE is a most idealistic alternative to bring a constitutional justice that guarantees the equal protection of law regardless of personal wealth, background, age and educational qualification. Since the NJE is terminated on the Act in force next year, the KNA is responsible to pass the pending proposal into the new act this year. While the proposal was submitted under the review of national judicial committee for 593 days, the final public conference had been held a month ago, dated Nov. 18 this year. Now the KNA has no reason to hesitate on the pending bill, and it must be passed any earliest time. The wishes of nationals certainly are not temporal, and the pending bill has to be approved as proposed that will place the NJE as a parallel avenue compatible with the law school education.

2. The bloggers and reporters of newspaper had also turned very stimulated while the sudden announcement of KMJ emerged as a new hyperbole. They perceived the policy actors, such as the national judiciary (NJ), Korean Prosecution Office (KPO), and Judicial Committee of National Assembly (JCNA), would not be congruent to respond with the sensitive issue of NJE abolition. They saw the conflict will be expanded and disagreement may swell even with the incongruity of policy process. One reporter said, "the Supreme Court (SPK) had not given an endorsement...it rather reprimanded the

unilateral action of KMJ as short tempered and without prior consultation with other interested actors....given the utility and service of NJE found by KMJ, four years suspension needs to be rethought for the protection of examinees' expectation and reliance." The SPK continued on the primacy of diverse interested voices, and keeps a stance most neutral and considerate. The sources of mass media also disclosed the response of SPK further, "the SPK was neither consulted in advance nor requested to review and provide its opinion from the KMJ....it will file an official opinion upon a fullest review and due consideration that will be separate from the KMJ...opposing or dissonant alternative will mean a cleavage between two important institutions in the national judicial system." As the public protest of over 6000 law school students and hottest debate late at night simply show, the disagreement has chronicled most intensely between the KBA and law schools. While KMJ may be motivated by and determined with the gross favors of public survey, one senior lawyer just implied that the public survey is weakly trustable, but merely could grow the antipathy and mutual disrepute. Now other two actors within the government fueled the inferno of chaos that should await the session of KNA for a final resolution.

Right Column: Approaches in the Qualitative Method- Hermeneutics and Heuristics

Observations on Thinking Process

Days of reflection over the policy conflict thrust a thought between the state and society as reflected by Bourdieu P. The sociological imagination is itself a progeny of state, in which the state would be omnipotent to influence the society in totality and general comprehension. In this sense, French philosophers had gone one step further from the Weberian thought frame, in which he perceived an essential of the state that it is a successful whole by monopolizing the physical violence legitimately. In fact, the French philosophers and sociologists expanded the impact of state squarely through the society that a subjectification, voluntary adjustment, and homogeneity process occur with the apparent primacy of state and in the shroud of culture and social generalization. The kind of habitus is an applied or advanced understanding that the state comprehensively affects the diversity and voluntariness of society beyond the Weberian simplification. Given the approach involved with our notion of political science and sociology, our theme of PAKJS can also pertain that be indebted from these philosophical insights (Kim, 2015a,b,c,d). The policy makers will be an engineer to liaison the social need of Korea and state power, in which the influence of state and Faucauldian construction of unbiased reality within the society are to be married for subjectivity and humanistic or social justice in the end. The college graduates and law school students could be the object that will be addressed within the twilight of state and society. They could be incorporated into the main culture of state or system in power, while another odd can also happen to be divested of their right, perhaps injustice or discrimination in their metaphor. The policy makers in two government organs will be a state agency themselves that would enforce a law as the kind of policy machination. They respect the separation of powers principle and carry their statutory or constitutional responsibility through the process. The learning process

benefits their decision making process as we see several of public conferences within the NA and the public survey expended with a budget. They are formally and informally progressed to develop a most plausible solution, in which the social relations and policy network have to properly operate for any most effective policy diffusion.¹ The inter-agency communications seem desired to make a uniform voice of nation that can prevent a policy dissidence and public disappointment. To our expectation, it is not surprising that the KBA, the public organization of professional and civic nature -- in some sense grey and ambiguous between the power and civil society, take a side to support the pro-suspension of NJE.

The dissidence in its root origin underlies the globalization and western adjustment of diverse national culture and voluntary association, of course, including the society of legal professionals. The neo-liberalism, spawned and expanded by the econo-political restructuring ultimatum, now impacts the society at large that even created the cultural or educational buy-in by the agreed states of neo-liberalism. In the cultural and educational contest in the Korean market, the priority of being purchased allowed a door step to the US type legal education with the concession of abolishing the Euro-Korean legal system for production of new lawyers. This concession now is claimed to be rethought implying the context of state-social conflict that likely keeps abreast with the Faucauldian critique on “politics, idealism, and value.” The value is now argued on the basis of Korean communitarianism (the kind of strand orthodox and other than Europe or United States) -- encouraging and ambitious, but very costly in exchange for the value of cultural and societal honor of nation -- seemingly the kind of Korean habitus in my apprehension. Generally the developing states often submit to dimensions of nation in the cause of economic development as we note in the trajectory of many successful nations over recent history. They even sacrifice their political fate of worldwide democrat value on the free, equal and unabridged right to vote, which had been heralded and urged by the world leading countries. The leadership of such developmental nations even gladly undertake the fight and resilience against the pressure of advanced democracies. They even think that the countries of international leadership implicitly could be conspired to defend their market interest and economic advantage – in principle, as associated with the political democracy and liberal market. They never will be easily agreed, at least in the philosophical dimension, that the value

¹ This aspect of policy process implies that we can delineate important methodological paths for a sociology of the state, which involves bureaucrats and judicial actors. As Durkheim had been on religion, Bourdieu perceived, “what makes the state especially difficult to grasp objectively, that is, to conquer as a properly sociological object, is that it is a successful fiction: a well-founded illusion, which, like all social institutions, exists in things and in minds, that is, both objectively through its material manifestations and subjectively in individual and collective mental structures and representations.” Therefore, we see the de-reification of the states fictional illusion is to conceptualize and study the state properly as a (i) social field – a space structured with the oppositions linked to specific forms of capital with differing interests, (ii) juridical subject and (iii) bureaucratic field. Furthermore, the centrality of symbolic dimension, lessons from a tangential focus on such trivial and mundane components of the state, and the importance of genuine of social relations as well as case study of specific state are all the ways through the investigation of this research project.

and idealism are essentially rooted on the liberalism or democratic government. They rather buy a learning and true knowledge to address their economic and social subjectification. The leadership of developmental states would be seen two ways between the communists, currently China, and militaristic one of conservatives, often attributed as one kind of western liberals except for the madly driven on planning and national development. Given the Y.S. Kim's reign² being OECD friendly and on level playing field with the advanced western states, now the Bourdieu's state supremacy or illusion on the social, intellectual and cultural rationalization under the comprehensive and often hierarchical influence of state can well be expected to phase in for the transformation of Korean society.

Globalization became a primary thesis that Korean government had to learn and practice, which, of course, accompanied a neo-liberalization restructuring. The western leadership viewed the market as a crisis announcing that the societal strife is necessary with no governmental shields and protection any longer. Interestingly, the government picked up this British-American alternative – of course vastly in view of economic terms – which implies a growth at most vanguard, another form of developmental primacy. A reflection on the cultural, intellectual and social elements had still been curtailed that an immaturity and impulse generally become never non-existent within the Korean society and even government – new born OECD member state around Kim's reign.³ The progress in these years gives us an insight and implications in terms of public policy and administration (PPA) (i) economic priority is any most prime and determining factor to understand the government regardless of developing and developed states, in which its role as a factor of policy decision making or policy diffusion, however, is not clear, but perhaps either sophisticated or complicated (ii) While, in the militaristic government, the political branches generally chilled the social and professional vitality of judiciary or judicial system, the civilian government of novice or inexperienced state -- but economically advanced -- needs some time lapse and learning gap of period in establishing the social, cultural, intellectual pride and to own their independent prism of evaluation (iii) this can bring a already diffused policy rethought and also can have a push of struggle and adjustment, which is because they lack not only the tradition and centuries of lived experience with the democratic government, but also politics, idealism and value as parallels

² He ruled the Republic of Korea from 1993 through 1998, who is considered truly a first president of civilian origin unlike S.M. Lee, the hereditary and independence charisma, and three militaristic presidents. He passed away in Nov. 2015.

³ The OECD membership generally evidences the advanced status of nation, and Korean GDP per capita increasingly grew to get closer to other western liberal economies thereafter. Nowadays the growth rate becomes stagnant around 2-4 % annually and around 25,000 dollars GDP per capita, which patterns the developed economies.

with such wake of modern civilian polity.⁴

⁴ The view of Bourdieu is, therefore, highly implicating to address the Korean state, who conceived “the logic of the emergence of the modern European state is that of the accumulation, concentration and transmutation of different kinds of capital -- economic, physical force, symbolic, cultural or informational through a dual process of monopolization and universalization.” He also suggested a new form of capital by commenting, “this process whereby private capital is accumulated, centralized, and transformed into public capital simultaneously generates a kind of meta-capital and thereby gradually establishes the state as a meta-field or the meta-field of power. His discourse thrust a useful frame of thought for the economists and policy makers, especially in our case of KJS, in which the policy makers themselves are qualified with the professional license or degree that would be kind of meta-capital in his terms. They also practice in a meta-field within the professional community or some powers available from the constitution and public laws, in which we can see as compatible with the kind of knowledge economy. Interestingly, the advanced states now sell the kinds of capital, technology, intellectual property, cultural attractions and public system. Important with the policy makers of chasing countries, they have to have an independent frame of politics, idealism, and value to suit their state needs and status.

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