QIKJS-Part.V.J

Qualitative Inquiry of Korean Judicial System

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A speculation on the profession would likely see the characteristics of transformation, in which the inchoate simulacrum of community had not been able to survive any longer. The kind of casuistry might be adequate to erect their politics of collective identity. Nevertheless, the nebulous nature of issues and contentious agendas, partly from the professional element and also from the policy values, would create a situation that any one way solution would not gain the full support of interest parties. This resilience, if not salient,[1] left a groove that the grievances as discriminated from the determined policies can recur in terms of implementation. As surveyed earlier in literature review, the prior research to deal with the Korean judicial system in terms of policy side viewpoint has lacked, or dealt, if un-systemically by the lawyers themselves, to relate with their ideals of business, such as separation of powers and judicial independence (Kim, 2014a,b; 2015b,d). Given the tendency, it is surprising to identify two streams of academic or policy response. In one way, we can identify the hard nature of transformative process on the reform itself, which is direct and substantive with the phenomenon and policy itself. In this dimension, the government may be keen to mobilize the symposiums or reap the academic thought through conferences or research work from the peers, including lawyers and law professors. In other way, research on the lawyer themselves from the perspective or analytical tools of social psychology or sociology had supported an understanding of KJS if seldom. The latter type of research on profession could hardly be traceable in the previous works. Lee and Kim, Illinois educated sociologists and professor of

[1] In fact, the resilience and voice of opposition or resistance against a deluge of reform suggestions or programs in the transformative period should not be any strong. One reason would be a less public exposure of judiciary and judicial system in Korea because of its long dormant years with the government of control, dictate, and general tendency of positive or provisional state centering on the role of Executive branch. Other reason may call on such of contrast with the US federalism, in which the federal judiciary plays an important role to safeguard the federal system. Simply we can note the difference between Korea and US about the extent of media coverage upon the death of Supreme Court justice. If the media coverage is enormous about the posting of succeeding judge in US, that would hardly be the case of Korea. A recent death of Justice Scalia is a good example in this respect.

sociology in the local universities of Korea published an interesting book on the reform policy and expert group.

> "The society had transformed rapidly in public sphere. The transformation accelerated toward the industrialized, urbanized and informative nation has ever been stark as we share. This brought an important paradigm shift to question a relationship among the nation, human and public organization or professional association…In this context, we know that the public expectation for rule of law and quality legal service should be increasing, and Y.S. Kim's administration had targeted at the reform of KJS. This is peculiar if the professional society itself would not initiate reform, but by the political agenda. We were oblique why the Executive intermeddles with the policy shaping of judiciary or judicial system. This leads to our curiosity about the identity of legal actors and their community…."

Their studies employed the quantitative method, which are based on the 54 questionnaires dealing with the epistemology and attitudes of lawyers. Through the factor and regression analysis, they seek a correlative between the professionalism, say, independent variable, and autonomous occupational control, as dependent variable. Their argument pointed out that the AOC within the professions had not been successful, but seriously tainted over the transformative period.

> "The public policy in this area may appear of individual lawyer or stake holders, but must be viewed in terms of professionalization of sociology or AOC as an expert group or monopoly with the entrance barriers against outsiders…It could enable the AOC of professionals which is very basic to understand this group or making a public policy to deal with them or judicial system…the public poll is not good if discrediting no less significantly their community or public good they generate…"

Their research finally made a suggestion that was directed to the legal actors and comprehensively, in which they argued on the professional identity of lawyer groups as well as policy implications stemming therefrom. They specifically addressed the legal education, judges, prosecution officers and attorneys to seek a better policy of KJS.

> "The lawyers in Korea had an expectation that is equal with their western peers, say, high socio-economic compensation for their labor, but generally feel no satisfied with their reality…The judges would deem himself most respectable among three occupations…They were not duly trained, however, to amount to the western level of collective identity and many paradigms to understand the professions, such as AOC, which make them vulnerable psychologically and realistically…The reform of legal education by importing the graduate system of US model would not seem effective that disregard the tradition of profession sustained with the concept of professionalization, such as training, AOC, formal and informal discipline, expert labor and high economic reward, and on…The high rate of leaving the office is a challenge in case of judges, which requires of due measure on the affordable salary. The inadequately low salary and loss of social credence on judges need to be taken seriously…"

It is interesting if they suggested the law school reform was not a good policy in terms of professional sociology, which later proved against the implementation of law school by way of enactment. Nevertheless, the scope of discussion included a wide of crucial policy issues on KJS, such as nepotism, socialization on professional education, formal or informal disciplinary mechanism, epistemology and attitude, as well as practical issues on KPO and KBA, which is still an issue contended to shape a better KJS. The research has a meaning for

the professional community, perhaps significant that withstands the new launch of KIPPJS on the governmental basis. As I have said, the understanding of interest and stake holders is a most important thread to enact a better policy on the subject. It would be sociological and philosophical as well as professional that forms a triad to deal with our understanding and attempted alternative or solution. The kind of work must deserve many thanks if needless to mention the importance of interdisciplinary work or their proposition to understand the specific policy problem, say, KJS in my case.

While I generally agree on their proposition and respect their neat quantitative studies, it is no immediately agreeable if the authors misread the Freidson as a subscriber to the social conflict theory. More problematically, it is less of prevailing perception with the professionals that the structured functionalism had been rejected as an analytical tools to look into the professional community and their sociological psychology. In the field data, we can recourse a convincing extent of evidence that the professions are immanently conservative identifying themselves in terms of social organism, part of whole biology within the society rather than those on the social conflict, such as Marxist's or views of critical theory. The emancipation from exploitation or slavery from the structure would not be their direct concern or peculiarity of job, at least in terms of their own matters other than their job as a professional agency. I have argued, however, that the western perspective has increasingly informed the basic stance of KJS policy actors (2014c; 2015a,c). Nevertheless, it is highly unlikely if they….. be or determined to reconstitute the whole system in Marxist terms…As Giddens and Comte suggested, the functional thought stems through three stages to explain the human concession within the whole society, i.e, theological, metaphysical and scientific stage, but should be moderated within a positive side of social psychology towards the biology of society if the science can provide the closets and most compatible model for social science. This paradigm of view is most plausible to define the lawyers and stakeholders in KJS on my findings. One interviewee offers his view,

> "The lawyers, especially those of seniority and leading position within the profession, might be a scientist of law, which is, however, less true of young lawyers or some high income class of lawyers. They may not be a fit within the human paradigm of Comte's science stage. They generally remain the kind of mentality as metaphysical stage, the kind of general ration, but with some comparative point. The young lawyers would largely be untainted with hopes and expectations, very rational personality in positive sense, but some high income lawyers might be lucrative and playing on his income source callously, even could be unethical for profits…."

The interview result suggests implications that the professional experience needs be revisited for an adequate retraining or lifelong cultivation for exploiting legal service market. The professionalization thesis actually dominated the pattern of experiences and inculcated the policy makers or public activists to deal with system building. It provides a thread to understand and reform. The field evidence on the trove or Korean texts thrust a thought that the researcher has to highlight. First, the clientele is any central concept to understand the lawyers and legal service market, which corroborates the professionalization theme in Korea. Second, the training and discipline, key elements within the thesis, had an increasing profile in use for the community. Third, some standard to test the effect of legal education can be discerned with respect to the globalization of national lawyers in terms of their professional activities. Forth, the conflict theory can still has a say, but rather in terms within the

professional actors themselves than the general discourse with public. This does not say that the profession would entirely avert the social conflict at public scale at large, whilst the lawyers had been competitive at political arena and specific group of lawyers had performed his political cause in a neat and organized fashion.

Interestingly over the recent period, Korean lawyers had been made successful of important international post. As we see, the international organization is one of notorious employer to recruit specialists to deal with the public responsibility. In a considerable number of cases, lawyers would be a popular background for the post, in which we may illustrate, for example, the chief of IMF and president of FIFA, to list a few. Provided if the international plane is vastly diplomatic, we can say that the ideal would be of mixed nature between the state sovereignty or negotiation, hence diplomatic, and rule of laws, hence legalistic. The appointing practice also would be such that the national diplomacy comes into a central influence in deciding who actually would be nominated or recommended for the organization. One interviewee needs to be cited,

> "Korea rose as a considerable global power, and is understood to have a potential of meaningful contribution. We are asked to fill many important offices of international organization, and feel if the qualified and competent resources had to be provided on a stable basis. This requires the competitive education to yield a global caliber in many fields…I am not sure, but the law school reform should not be fallible in my sense…We now have K.M. Ban, the UN secretary general consecutively for two terms…several judges of international tribunals and WTO or even the chief administrator of ICC…This proves our success of national diplomacy and legal education…."

The context provides any convincing evidence about the superiority of Korean people and national prestige with the global peers, and could be reinforced with the better system of education and diplomatic strategy. Given them be the lawyers before the law school reform, we could not prove that new law schools are more competitive to bring such positive returns, but most lawyers would expect of future stride to sustain the success. Many lawyers would agree on the importance of English or foreign language competence and corresponding curriculum within the law school. However, the perspective of lawyers would diverge to facilitate the international business between the English education and professional terms of education. One law professor, who previously served as a chief post gave a comment,

> "Many lawyers would see the international worker of lawyerly character must speak English fluently, but it is a misconception. Any more decisive factor to perform a successful duty as a judge of WTO or international criminal court and tribunals of law of sea is the legal specialty and mind to carry with the respective terms of law…Study of law deeply in Korean language could give a significant potential to be successful of international lawyers…"

His insight seems very proving that can explain the phenomenon of Korean judicial profession and even the global practice of nations. For example, the law schools had been required of priority to establish a specialty or defined role to characterize each of it, the kind of scores considered to decide whether or not it would be approved. This has been in parallel with the internationalization score, such as the activities of international symposium or conferences. One recent graduate of

new local law schools gave ads that their graduates were hired to serve as an employee of UN and other organization, who focused to tell their superiority of law school education, and impliedly the importance of foreign language school. The dimension between the national and international lawyers, therefore, entail the kind of Tokyo taste, who makes us feel to come fronted and also retarded recursively between the English community and their national homes. This also arouses the international practice of language politics between the Franco-phonic or English version of written preparation or official documentation in the international organizations or Canadian judicial system. In this finding, it needs to be adverted that the characteristic of public education and legal system can fairly speak for the discipline of PPA on a continual basis. It seems the kind of eternal process or institutions for the society and generation to generation if the politics would evaporate as transitional given the spoil system. This means that the kind of midnight regulation or political offices instant with the goals of elected president would be resisted by the bureaucrats and public offices, notwithstanding the kind of Weberian sociology or bureaucratic mazes in…The law and education, hence, can be a good peer subject to enrich the elements of PPA discipline in terms of interdisciplinary relationships. Ironically, the educational reform to breed the caliber of lawyers and diplomats had been pursued around the recent years of transformative period in Korea. Their reform modeled after the US type that the traditional basis of National Exams were revised, for example, from the subject tests toward more aptitude measurement through LEET and national exam for the high ranked diplomats. It generally sustains our hypothesis that the US is a most powerful influence in pursuit of public reform or new settings of policy agenda. Several years later, the national training institute for the ranked diplomats had been inaugurated with a new paradigm of education as significant for the career of diplomats and with the intensive curriculum than past.[2] This means that the government implemented in consonance by importing the college or institution-basis training system to manage the human resource of important professionals within the nation.

The pattern of professional society and their actions or interactions as well as processes would be explained very plausibly of the international and national bifurcation. The hypothesis of neo-liberalization and globalization as an influence would be a good fit to provide a coherent account for the shaping of KJS although the theory of professionalization and socio-economic discourse can also be any important lens to look into the phenomenon of society. In this process, the rapid development of information technology can factor the character of communication

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[2] Before the institution began, the scores obtained in the national exam would determine the general privilege of junior diplomats in view of staffing post and promotional chance. The new institution-basis career system cherishes more than the grade of institutional training and education than the National Exam. The law school system also had transformed the general culture of preference toward high GPA graduates when they are considered in the legal service market. Beyond the nepotism or unfair admission decision involving a famous politician or social celebrities, this had fueled to bring an occasional controversy about the social relationship among law professors and students.

and bring an impact to shape the public policy. The agenda settings can be affected in any speedier way or learning occurs expediently to make it dense, but not lagged. The kind of glocalization thesis to settle an initial impact of globalization could be said to explain the transformative KJS.

In the dimension of legal education, the traditional law departments would organize their communication channel to survive their cause for public education, the kind of prelaw in US terms. They restructure their educational paradigm as a prepa-institution for the law school admission or raise the paralegals, such as local police officer or administrative staff of Court and prosecution office. This could be the localization in sense, but the global impact seems indiscriminate among new law schools or traditional departments. From the field data, we can find that the professors of department use a Cartalk to facilitate their communication for any departmental resolution. White face US lawyers would fill the webpage as a member faculty not only for the prominent law schools, but also for law departments. This suggests that the sociology of professionalization would be more than powerful factor to define the community and national judicial system than the econo-political discourse of neo-liberalization and globalization. If the PET theory may be friendlier to the latter and fitted to describe the staged transformation of KJS, the econo-political or meta-economical and critical theory discourse could help to find the process and struggle of policy making on KJS or describe its character. One senior attorney shows an impact leading to the glocalization convivially. He was aged around late fifties, and graduate of prestigious law department in the late 1970's. He had some career years as an advocacy group of national democracy right upon his completion of KJITR, and decided to practice near to his hometown a southernmost of peninsular. He is a solo practitioner with one female assistant and other male officer. His career implies of a square aspect of our inquiries concerning KJS, such as policy environment of national politics, socio-economic issues of lawyers, and dualism between national and international thesis as well as the relationship between the law departments and practitioners. For example, the globalization could reach out to this terminal office at the end of peninsular, or we can notice an exaggeration of general discourse beyond the professionalism. He disclosed his career experience in his personal book story,

> "As seen, I had been educated such to meet the expectation of big law firms, but my decision is to be a lawyer of activism to reform my country that should respect the democracy and liberty…My conscience and personality would push me to be associated with same tone of peers or my close friends to defend the justice and counsel the poor class of society…I have moved my office for this distant location, but was much celebrated with a greater job satisfaction. I feel content with the applauding neighbors in this small town when I won the case on behalf of aggrieved parties, especially when they are deprived economically or seriously discriminated….I could be more vigorous with the fresh air and could make time to increase my professional wisdom or knowledge and due meditation as a competent lawyer… I occasionally serve as a part-time lecturer for the local college and subsidized the law school project of one local university around 2006, which regrettably failed. I consider it competent and well qualified to meet the criterion of government approval, but the returns…I feel it, however, less significantly, and later was appalled to know the law professors were so greatly affected...It seems some emotional gap among the peers of different role…I may state that I had been economically successful if moderate….I

am not sure, however, if the legal service market would transform much enough to threat my income basis, some traditional character to be based on the local people and general type of lawsuits. The specialization, now some motto of new law school education and KBA is necessary to cultivate the new sort of legal demand, but how it could process….The internet is affectionate to change my routine or professional life. You see the Russian and English script in some part of my personal webpage that I am such globalized, but right through the window can you see a port scene of one Korean humble locale (laugh..)"

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