

# QIKJS-Part.I.B

## Qualitative Inquiry of Korean Judicial System

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### Experience and Reflection

Over the classes at Walden, I had not been fully minded about the prospect of dissertation stage. Before this class, most of my elaboration had been individually focused on the knowledge and points of instruction that a specific course requires of learning the subject. The tightened deals and enthusiasm of instruction in the Writing a Quality Dissertation awakened a dormant mindset over the past courses. I realized that the progress in this course actually was very precious to impel myself into the crucial stage of doctoral program. That is, we need to self-inquire such questions; (i) what is the right beginning for thesis or dissertation? (ii) what are meaning and purpose of theses and dissertations and what constitutes an acceptable theses and dissertation? I must be grateful that the instruction from Dr. Mincy had been very friendly and informative as well as with the deep care for the development as a dissertator. It also has been very systemic and organized that the process of developing the prospectus and through the end of dissertation project was detailed as the kind of protocol with an easy reference over the Walden portals. As we note, the historical development of advanced degrees and increasing tendency of specialization brought the academic attention in the field of higher education. I could create a mind with the progress of this course that the kind of considerations -- such as the role of research advisor, the way to develop and prepare the proposal, the functions of the dissertation committee, student to committee negotiations and maintaining communication as well as tips of selecting the committee -- pose the challenge in this stage of doctoral studies. A discussion with the peer students had been helpful to develop a prospectus since their view is fairly realistic and pointing not only because they actually are a competent junior researcher, but also because they are exposed to the common challenge at the floor. This latter point can never be possible if with even any prominent scholars. Over the progress, we may be seduced to think what the dissertation would be. First, it is a very distinct piece of research between the books and research articles. In other words, the volume of contents and forms would be similar with books while the ways of dealing is professional and specialized as leveraged with the research articles. Second, it is the kind of culmination or evidence to complete the rite of doctoral education. A successful dissertation means that the student now is crowned as a professional researcher and university teacher with an adequate research competence and knowledge in the field. Third, the dissertation would be a lifetime asset to compose their scholarly attitude and concentration over his professional career. The

semantic origin “doctor” means “license to teach” in its Latin trace. The dissertation is an essence of doctoral studies, and creates the basis for his or her public preaching as coupled with his continued research performance. Fourth, it is related with the trait of teaching profession that the dissertation is some kind of evidence to demonstrate he thinks in scholarly way and approached the problem in sophistication and based on the scientific standard. For example, some other higher degrees -- such as MD, DD or JD and DV -- beyond the bachelor’s level are taught-based to be suited with their vocational characteristic as a practitioner. They had to be knowledgeable and equipped with the professional talent about the right decision as an expert, but generally would be less required of research performance. It is in contrast that the university teachers and researchers have a continuum of career responsibility as a researcher that they have to seek a journal contribution and to be obligated to produce a research for the tenure. In this understanding, it is no surprising that the recent doctoral graduates pursue a publication on the basis of his dissertation with a view to expand their career prospect. It also is likely to the authors of submitting the articles that the editors of journals would look like the dissertation committee, which would be an impression through all times of his or her career performance. Over the five weeks in progress, I felt that the work and engagement are indispensable and everlasting if the students are responsible as a teacher or researcher like me.

My thought is that this course would be planned with a goal of approval of overview leading to conduct of the study with the data collection and analysis as well as write-up. Hence, it seems a crucial process as to structure and provide a basic orienteering to complete the dissertation project. Now we seem to be in half a process with six weeks remaining for drafting the nature of study or research design and questions as well as specifying the possible sources of data for the final prospectus. We would also be required to consider the ethics of research and the role of IRB, and on. In the process so far, I have been impressive with the exemplars of dissertation prospectus that seem to have been prepared by the last dissertators at Walden. They were and will be useful to craft the final prospectus of mine. The identification of research topic and preparation of problem statement had not been an easy task that was deeply indebted to the comment and advice of peer students and instructor. Dr. Mincy’s enthusiasm with such frequent postings and penetrating tip of advice are deemed very effective to deal with my case. Given the scholarly nature of work and the kind of rite as a beginner of research, the literature review and our effort to connect into our theme seems an exciting, but challenging experience after all. Nevertheless, I have seen much benefit from the process toward my dissertation prospectus. The most important benefit to be gained from a review of the literature is good knowledge of the field of inquiry. I had the extent of capture and groove about the kind of questions (i) what the facts are (ii) who are eminent scholars (iii) where the parameters of the field are (iv) which ideas, theories, and hypotheses seem most important. From the literature review, I also developed some knowledge of the methodologies adequate to the field and my objective, and had a feeling for their usefulness and appropriateness. It also seems an important achievement that I had been reinforced for an earlier hope that the proposed research is really needed. Narrowing the problem and focus is one challenge that could be ameliorated with a three step sequence, i.e., reading widely, attempting always to narrow down and weeding out by thinking and analyzing, and arranging some review time with an experienced researcher in the proposed field of study and carefully talking though the problem encountered. The challenge and solution in this context could not be addressed successfully without the good provision of Walden library, instructional tip of Dr. Mincy, and kind engagement of peer students over the weekly discussions.

## The Elements of Public Policy and the Judicial System of Korea

### Problem Statement

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 administrative aspect of national judiciary. That is particularly true when we fall with the experience of new born republics after the World War II, including South Korea (Han, 2014). They often were hurried to create the western style of judicial system to respond with the inauguration of new republic as a state. The judicial system is considered important and typical which is responsible for one branch of constitutional powers, what we see adjudicative, and the organizational goal is constitutionally defined on the basis of judicial independence and separation of powers principle (Lee, 2013; Lee, 2011; Kim, 2013). The judiciary is the last branch of limited resource in terms of policy perspective, which leads to some extent of subjection to the political branches when the terms come with the public administration narrative. Nevertheless, evidence strongly vindicates that the literature to deal with the issues is mostly on the structural perspective and democratic ethos or consequent lack of political legitimacy, which is sensational and limited lacking the disciplinary standard of scientific frame and analysis (Kim, 2009; Han, 2014). The documental discrepancies along the intense public disagreement or argument about the agendas and issues of PAKJS (Public Administration of the Korean Judicial System) can simply be evidenced with the public data and Korean sources of literature. Evidence also convince us that the view -- maturity of Korean republic, is tenable in terms of national legacy -- historical lesson and success of democratic movement as well as dominance of pluralistic values in Korean community -- that the gap in knowledge had to be bridged in terms of policy discourse. (Yang, 2013; Hwang, 2012).

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 a cohesive account on the elements I plan to develop with the GT approach. In short, The policy makers on the field and scholarly literature about the PAKJS deal with the topic making a focus on the utility and practical points of strengths and weaknesses, which have not researched or under-researched the common or distinct element of phenomenology inherent in the PAKJS.<sup>1</sup> This generate an important knowledge gap, current version of dissidence, and unproductive and resilient progress of agendas and programs, as well as create a contending public response of many already implemented policies for the transformation or reform of judicial system.

### Approach for the study

The selection of research method is best tested by asking, “What does the researcher really like to know?” This query can be solved with the mixed method of studies, in which I will be presumed as primarily qualitative. The mixed method could best exhaust the literature

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<sup>1</sup> Therefore, the open coding can orient the focus of studies, such aspect as to reveal the national particulars and common elements within the trajectory of KJS beyond the agenda and issue specific focus of current literature.

of my topic to reform and improve the Korean judicial system (Kim, 2015a,b,c,d,e). Since the lens of analysis on the Korean judicial system based on the policy elements or concepts had been unexplored by the scholars, generating the theory with the grounded research can only be started off by an in-depth interview of judges, prosecutors, senior attorneys, law professors, and congressmen. The method will be effective to align with my problem statement, purpose of statement, and research questions. The qualitative inquiry makes a benefit since the judicial system is familial – not with a wide of general public unlike the quantitative purpose – based on the same professionalism and sharing of common knowledge on law. They also are a principal influence or even authority to reform the system or making a public policy concerning the national judicial system. This drives the need of deep inquiry – hence required of qualitative studies -- while the issues and concern would be lofty as aided with the philosophies of republic or immediate with the foreign innovation as requires the focus and analysis on the theory of innovation diffusion. The kind of research questions, for example, “What is most a factor in reconsidering the new law school system to qualify new attorneys?” can best be investigated by employing the in-depth interview of policy makers of Korean bar association, key educational administrator and representative professors of law department. In the quantitative presentation, the public data or statistics, for example, rise of female judges in the new millennium, can best be evidenced with the public data. A staffing of new judges from the alumni of prestigious law schools is one of criticism that we need to examine in the thesis purpose and from the perspective of communitarian critique. However, the current status showing the tendency of bias or imbalance among the law schools can be best presented with the quantitative data. Overall, my method is primarily qualitative since the empirical evidence massively is based on the interview data, public record, newspaper articles along the Korean sources of scholarly and public documentation.

## **Grounded Research, Philosophies and Theories**

### **Introduction**

According to Patton, identifying elements to study and establishing their relevance and relationships is premiere in structuring a dissertation plan, which is an important predicate to produce a coherent and persuasive piece of research on the empirical and scientific ground (2002). This can be achieved with the effort of investigators, who integrate their ideas, the observation of others, the research literature and their own research. In this effort, the earlier studies come into play as grist and guide to develop the theoretical frameworks that the researchers could field on a continuum as lens of analysis about the topic and subtopic they plan to explore. The networks, connections and processes would be one basic frame that can commonly be applied to the policy studies. In the majority of cases, theoretical frameworks are used in quantitative studies, and conceptual frameworks are used in qualitative studies as Dr. Barrett advises. It depends, however, upon the nature of study and the amount of literature that exists on the topic. If there is very little data about the topic or overarching theories, then your topic will be explored conceptually. Creswell, Corbin and Straus also do not encourage theoretical frameworks to be used in grounded theories because the whole purpose of doing a grounded theory is to develop a theoretical explanatory framework (2013). Given my studies would be a grounded theory approach, the theoretical frameworks I would employ to study the topic of PAKJS (Public Administration of Korean Judicial System) can be understood to employ the terms, concepts and key elements of public

policy theories and philosophies, which are thought as most effective and productive tools that integrate my ideas through three stems or sources of stories and empirical data.

*Table 1* Key Concepts & Terms from Philosophies and Theories

Political Philosophy or Ideology	Diffusion of Innovation	Agenda Setting or Punctuated Equilibrium
<ul style="list-style-type: none"> <li>● Political Liberalism/Communism/Alternative with the Communitarian Philosophy</li> <li>● Bureaucratic Tradition in General and with National Particulars</li> <li>● Western Economies/Successful Economies from the colonial experience/Resilient Group with Colonial Experience</li> </ul>	<ul style="list-style-type: none"> <li>● Elements of Policy Diffusion (e.g. Characteristics of Innovations as most salient)</li> <li>● Stages of Policy Diffusion</li> <li>● Mechanisms of Policy Diffusion (e.g. Learning or Imitating v. Virtual Coercion or Competition)</li> <li>● Judicial Actors/Congressmen Administrators/Lobbyists/Schol-ars/ Different Context of Roles by Judicial Actors (Impact as a Priori and Posterior)</li> </ul>	<ul style="list-style-type: none"> <li>● Kingdon/Baumgautner &amp; Johns/Gersick: Punctuated Equilibrium Theory or Agenda Setting Theory</li> <li>● Policy Process/Subsystem/Venue shifting/Incremental Stasis</li> <li>● Policy Monopoly/Agenda Setting or Change/Issue or Conflict Expansion/Congress as a Battlefield/ Jurisdictional or Interest and Stake-Oriented?</li> <li>● Governing through Institutional Disruption/Punctuated Equilibrium and Disruptive Dynamics</li> <li>● Judicial Actors by R.S. Wood (Impact as a Posterior)</li> </ul>

*Table 2* The Mind Map of Dissertation

### **Frameworks, Ideas, Concepts, and Perspectives**

The research literature in this line of concerns often deals with the important historical event or turning stages to investigate the essences and transformation of Korean judicial system. This necessarily brings a critical need to contemplate on the hypotheses and propositions of previous studies for constant comparison and zigzag process of data collection and analysis to be toned and acculturated with the theories and philosophies. For example, a plethora of research deals with the conditions that punctuated equilibrium occurs or how the issue attention and agenda setting are made to impact the policy making process. While the studies of PAKJS is distinct in terms of the characteristic of research object leading to the constitutional level of analysis, the ideas and ways of approach with the theories and philosophies provide a useful reference to yield a meaning and implications of my study. The concepts, terms or frames of thought on the policy diffusion provides an important assistance that will be applied to the research, which includes subsystem, policy process, incrementalism and new agenda setting or congress as a battle field, institutional disruption or dynamics and governance and so. They could be connected to elucidate the policy process of PAKJS, and constant comparison will be practiced to explore the commonality and variations

among the research literature, empirical data including the observation, and my own ideas. For example, Baybeck, Berry and Siegel empirically explored a strategic theory of policy diffusion via intergovernmental competition, in which location choices -- traditionally credited as most influential in formulating a specific policy -- have been overwhelmed by the intergovernmental competition (2011). Gilardi, F argued the importance of learning element by distinguishing between the *policy* and *political* consequences of reforms and emphasized the conditional nature of learning processes (2010). He explored unemployment benefits retrenchment in OECD countries, and demonstrated that policy makers of right and left governments learn from the experience of others selectively and tendingly based on their strategic preference. The concept of intergovernmental competition can be applied, for example, to the explication of qualifying the foreign attorneys in response with the liberalization of legal service market in Korea. The ideas of resilience and selectiveness for the reform issues of KJS (Korean Judicial System) are notable to be compared with the Gilardi's finding through connecting the phenomena into a meaning and story. In this way, the literature of DOI (Diffusion of Innovation Theory) will be employed to influence the qualitative studies on PAKJS (Baybeck, Brady, Berry, W.D. & Siegel, D., 2011; Bhatti, Yosef, Olsen, A.L. & Pedersen, L.H., 2011; Gilardi, F., 2010).

The PET (Punctuated Equilibrium Theory) scholars also would provide a valuable idea, ways of thinking and pattern of policy change that will be incorporated as the tools of explication. For example, F.R. Baumgartner corroborates with the Hall's (i) that the processes typically generate only marginal adjustments but occasionally create fundamental change (ii) that discredit to the status quo may be an important unexplored variables in explaining the ability of policy reformers to enact marginal, substantial, or fundamental policy change (2013). The kind of findings could be connected, for instance, into the judicial reform in Korea if then president really discredited to the status quo of KJS. Green-Pederson & Walgrave have admirably assembled a group of contributors, and bring the tools of policy analysis to bear on the central political features of countries, such as Spain, Netherland, US, Canada and UK (2014). For example, partisan politics and Queen's speech had been explored to illuminate its impact on policy change. The kind of idea and perspective between the national politics and policy change could influence the grounded research of PAKJS, which the axial or selective coding can be interplayed with. In this way, the books and articles provide the concepts, terms, perspectives and tools of analysis in conducting the dissertation project (Baumgartner, Frank R. 2013; Breunig, Christian, & Koski, C., 2012; Daviter, F., 2013; Downs, George W., Jr. & Mohr, L.B., 1976).

The grounded research eventually can produce the meanings and implications with the stories and themes on the PAKJS. For example, I may find that the role and influence of judicial actors are indeed determinative in this arena of public administration, or the congress in Korean context would not be salient in terms of jurisdictional discrepancies or venue shifting while the theme or substantive element of policy change would be more relevant in thinking the extent of influence by the congress. The frame of thought or ideas will also be borrowed from the DOI, which helps to structure the thought and discussion in meaningful ways by exploring the phenomenon and occurrences through the networks, connections and processes. The judicial reform and administration of national judicial system often are less exposed to the public attention and public deference had been notable making the story a feat of their own story. Nevertheless, the policy debate or competition often goes deep and dense among the stake and interest holders. The kind of subsystem also is distinct that the legal

professionals often exert a decisive role partly because they are important decision makers in three branches of government and the issue is more on judicial expertise and relevant with the understanding and interpretation of constitutional and public laws. These traits of research object can widely be connected into the networks and process of judicial policy in Korea. For instance, the previous research on the mechanism of policy diffusion elaborates on the learning, imitation, coercion and competition, whose concepts or terms are useful to analyze the phenomena and occurrences within the PAKJS. Therefore, we will explore the presidential initiative of globalization program around mid of 1990s, in which the version of competition or imitation can be explored of which is more plausible concerning the agenda settings and policy process. The ideas or concepts allow a constant comparison feasible with the empirical data from the in-depth interviews, and yields the research findings on the commonality and points of distinction from the research literature. The three elements of DOI<sup>2</sup> may also be compared how much extent they are determinative, in terms of policy consequence, to characterize the PAKJS (Daviter, F., 2013). For instance, the characteristic of innovators and innovations could be more powerful and affectionate to the policy process of judicial system, in which the environmental context is less intervening practically. That might be inverse if we are concerned of stages concept or propositions of PET. On the other, the theme on the role and influence of judicial actors could commonly matter within the conceptual roads employed from the public policy theories, which generally are governing with their prominent role *a priori* or *a posterior*. Of course, the scope of judicial actors need of precise definition if the law professors or civil monitor group largely had grown to raise their voice. The role of pressure group in PAKJS would be pertinent to the data collection and analysis on the understanding of subsystem. Given the research method is grounded theory approach, the research project will be complete with a generation of new theory - hopefully testable with the subsequent researchers -- what I hope to squarely reveal the elements and characteristic of PAKJS with the stories and themes, and present the meanings, implications and propositions to this field of academics (Patton, 2002).

*Table 3* Structure of Grounded Theory Approach

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<sup>2</sup> They refer to the characteristic of innovations, innovators and environmental system as provided by the DOI theorists.

### **Preliminary Exposure, Grounded Theory and Differences**

While borrowing the ideas, terms, concepts, and elements or even frames of thought from scholars on the philosophy and public policy, I plan to employ some variations from the prevailing approach and perspective. The preliminary exposure to the research object and Korean environment created an assumption, which will be proven and disproven through the data collection and analysis. The interviews need to include a fair number of participants given the grounded theory approach. The approach requires that the data collection and analysis will be conducted in so-called zigzag process and reiterative to be exhaustive (Creswell, 2013). One note is that the connections would be established with a continuum of applying the philosophies through the exploration over the stages and agendas, which is not often the way that the theorists or researchers of public policy had not minded to explicate. Second, and as a corollary of first point of difference, the macro-economic status of nations and different path of development among the countries could be an intervening context of formulating the judicial policy and system reform. While the PET includes the grand scale of deals in their domain of change, the literature with a narrow focus on the judiciary and judicial system is limited or lacking and even seldom so as not to adequately respond with the particulars of specific nation. Third, the importance of judicial actors will be highlighted which is less a usual focus shed by the diffusion or PET theorists. Its salient role in policy effect arises in dual dimension, *a priori* and *a posteriori*, that the lawyers often exercise a fulcrum of influence as a center of system and with their seats in congress and key administrative posts in terms of public policy and administration. The paradox exists in this context that they are not only a target group or system for the policy change, but also a principal influence or actors. This characteristic can be understood in three prongs (i) their

majority status with many seats in congress (ii) the professionalism or expertise inherent in the system reform or policy change (iii) bureaucratic bumph and resilience or conservatism to defend their interest. One important characteristic that must draw upon thinking the concepts and terms from the public policy theory involved with their influence *a posteriori* based on their judicial supervision, as R.S. Wood argues in his article (2006).

Among the major five qualitative approaches, I consider that the grounded theory guides my research design which provides for the generation of a theory complete with a diagram and hypotheses of actions, interactions, or processes through interrelating categories of information based on the data collected from individuals. The approach emphasizes “positivist underpinnings,”<sup>3</sup> “three sociological modes,” “postmodern perspectives,”<sup>4</sup> and etc. Given the previous research on the PAKJS had often been generated by the legal scholars, their perspective and frame of thought can well be seen from the kind of attitude as “all knowing analysts,” which militates against the generation of creative knowledge and new convivial theories, for example, questioning legitimacy and authority. The mindset and attitude “acknowledged participant” would be an important base of steering the data collection and analysis, leading to a final write-up. This aspect is sheer in my case given I had been a long observer with the concern and interest over the historic transformation and policy changes on the PAKJS. My academic background had been from the discipline of law and the professional career as a judge, attorney, and law professor also situate me as a most productive critique and as merged into the topic as an acknowledged participant.

### **The Purpose of Study**

The purpose of this study, therefore, is intended (i) to provide a cohesive view of the phenomenology of PAKJS on the elements and thoughts of philosophy and public policy<sup>5</sup> (ii) to explain the process, action and interaction of subsystem and delineate the distinct characteristics inherent in PAKJS (iii) to provide a focused and thematic view as element of philosophy and public policy along the selective deals of major events and issues. Interviews and focus groups will be held with congressmen, public officers, judges, prosecutors, attorneys, law professors, and civil activists relating with the policy making of Korean judicial system and in order to gather data relevant to fulfilling the purpose of the study.

The studies will provide a phenotype, in terms of philosophies and bureaucratic tradition that has occurred over the history of Korean judicial system and constitutional

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<sup>3</sup> Clarke and Charmaz seek to reclaim grounded theory from its positivist underpinnings. Clarke goes further than Charmaz, suggesting three sociological modes – situational, social world or arenas and positional cartographic maps for collecting and analyzing the qualitative data.

<sup>4</sup> Clarke further expands on the thought of post-modernism, in which she highlights the political nature of research and interpretation, reflexivity on the part of researchers and on.

<sup>5</sup> The researcher needs to hold a care so that the deals should not be bloated or miniscule. This misfeasance often would arise from the mistake as averted from the theme and focus than the extended time span of research coverage.

democracy (Downs & Mohr, 1976).<sup>6</sup> Provided that the studies will employ the grounded theory approach, it is less meaningful to situate the research work within any definitive theoretical frameworks. Nevertheless, I will be indebted to the intellectual heritage through the preliminary exposure to philosophies and theories, such as PET and DOI, which allows the perspective and basic ideas of public administration as well as lens of constant comparison with the western paradigm of understanding involved with the disciplinary goals of PPA (Patton, 2002).<sup>7</sup> Since the study seeks to systemically develop a theory that explains process, action, or interaction on the topic of PAKJS,<sup>8</sup> the research project will take place basically in Korea, in which the participants will be drawn from Seoul and partly from Gwang-ju, the city of my workplace. The data also would be extensive to saturate the maxim, “nothing to be left unlearned,” which increases the credibility and trustworthiness. The guide is borne through the research project that rigor is a final standard to contest the validity in the qualitative research. The data types would be (i) archival from the institutions, such as NAK, Ministry of Justice, Blue House, Supreme Court and Administrative Bureau, and civil activists, as well as the public documentation and record of public forums and conferences (ii) interview results from the 30 participants among the generations and different roles.

*Table 4* Data Type and Sampling among the Three Generations

Three Generations	Data Type and Sampling
<b>From the 1945 Constitution through the classic Years</b>	<ul style="list-style-type: none"> <li>● Public documentation and record</li> <li>● In-depth Interview with the legal historians.</li> </ul>
<b>Over the age of developmental or dictatorship paradigm of leadership</b>	<ul style="list-style-type: none"> <li>● Public Documentation and Record</li> <li>● In-depth interview with the legal historian, senior attorneys (some with administrator or judge career), law professors, journalists and civil activists, and other participants.</li> </ul>
<b>Post-1985 constitutional reform</b>	<ul style="list-style-type: none"> <li>● Public documentation and record</li> <li>● In-depth interview with the legal historian, senior attorneys (some with administrator or judge career), law professors, journalists</li> </ul>

<sup>6</sup> In this scope of definition on the extent of focus, the PAKJS encompasses a wide scope of policy arena including the constitutional reform beyond the reform of statute, regulation and executive order. It also does not rule out, in its scope of dealings, the analysis of informal or organizational sphere of actors and interest or stake holders. Therefore, the subject scope of PAKJS complies with the largest extent of policy studies, which, however, is not unusual with the routine attitudes or ways of approach of scholars in this discipline.

<sup>7</sup> The grounded theory researcher has an ultimate goal to generate a theory that the primary form of data collection often would be an interviewing in which the research is constantly comparing data gleaned from participants with ideas about the merging theory.

<sup>8</sup> According to Creswell, the GT researcher begins independently from and as unaffected with the mainstream of knowledge, and the data analysis will be exhaustive and reiterative through the collected data. The open coding will yield one category of the focus of theory, and axial coding will enable to form a theoretical model. The selective coding could delineate the intersection of the categories what we call a theory.

Table 5 Number of Interviewees and Length of Interview

Number of Interviews	Length of Each Interview
<b>Total: 30</b> <ul style="list-style-type: none"> <li>● Legal historian : 2</li> <li>● Senior Attorneys : 12</li> <li>● Junior Attorneys : 5</li> <li>● Law Professors : 5</li> <li>● Civil Activists : 5</li> <li>● Journalist : 1</li> </ul>	40 minutes-1 hours

### Background of the Study

While the judicial branch or system is regarded as a bulwark of human rights protection and modern democracy, the intellectual approach was regrettably limited in view of public policy and administration. The concern and interest tend to be constrained on the studies of law, and parochial with their own narrative of legal theory and justice. That is because the characteristic of innovations are conservative and constitutionally structured while the actors or stakeholders are simply the deliberator of justice rather than the public administrators. As the pluralism of society progresses, the judicial system has gradually been viewed in other perspective that the essences and elements of public policy can be a factor to give a scholarly dose for its character and identity (Baumgartner, 2013). That is particularly because those past assumptions are not only with the actors of judicial system, but also with the players of policy makers. As said, the problem would be exacerbated since the professionalism – often resilient and conservative and a culprit of those parochial assumptions -- would be shared along the tripartite branches with the intra-governmental policy network (Bhatti, Asmus & Pedersen, 2011). In this crippling environment of system, the lacking or limitations of literature on the cohesive theory of PAKJS generally militate against the universality of understanding the process, action, and interaction of PAKJS based on the scientific frames, terms and concepts. In other words, the current world of policy makers and scholarly community on this topic can well be viewed as some of already determined or ideological scratch of issues and agendas, which is seen to contribute to the current disagreement on the PAKJS and unproven or even fragmented assertion from the scholarly critiques. From the distinctness of Korean judicial system as an object of research, the pattern of phenomenon cognizable with the implications of judicial policy would be somewhat distinguishable, which created the background of this study.

- Several research articles and books had dealt with the political and historical examination of KJS or PAKJS, whose focus had been temporally limited to the years of concern and agenda specific. For example, Y.R. Lee published Jin-oh, “Rhu – a constitutional scholar in the liberation years” in 2011. Y.M. Lee and M.S. Kim researched the history and influence for the KJS, whose book and article are titled respectively, “Korean judicial system and Ume Chenziro” and “The judicial system in the US constitution and its impact on Korea.” Han, S.H., provided a grand scale of overview concerning the reform packages of civilian government over the last three decades. Hwang and Yang specifically explored the public legal aid program and two lawyer production systems -- the law school education

and national judicial exam. In view of the current Korean scholarship on this area, the tools of analysis would be historic or legal, and the basic aims of research had a focus on the improvement of legal practice or service in response with the recent challenges of globalization. In some cases, the literature is helpful for the overview, or thought provoking with the deals of critiquing. Nevertheless, the detailed disclosure of process, action and interaction as well as analysis of phenomenon penetrated through the political philosophy or scientific concepts and terms had been lacking, which characterizes the PAKJS as a new theory adapted with the ambit of PPA discipline.

- Korea has a conspicuous history with the four times of judicial strike to counteract the established order and attempt of judicial suppression with the encroachment of abusive administration (Wood, 2006). The first judicial strike had occurred in 1971 in reaction to petitioning for the detention order of two judges and one court clerk by the prosecution office on the account of bribery. The alleged ground of petition was bribery, which was embroiled with their pending case of anti-communist act. Judges had suspected that it was a plot of government to eliminate the resilient and uncooperative judges. 157 judges nationwide had announced resignation with the claim of judicial independence. The second judicial strike was the collective action against the appointment of chief justice, who was alleged not only loyal, but also partial to the former militaristic government. 335 judges publicly announced their cause of collective action, and the chief justice withdrew from his appointment shortly thereafter. The third judicial strike broke out in 1993. 40 judges of the civil court of Seoul district petitioned the claims of judicial independence to D.J. Kim, then chief justice, whose cause hold a regret and penitence from the past wrongs of judiciary. The strike was assuaged with the resignation of chief justice. The fourth judicial strike had been aligned against the appointment practice of Supreme Court justices on the basis of bar admission year of judges in seniority. 160 judges signed the petitioner name list. The strike intended to react upon the male and conservative-dominated appointment of Supreme Court justices, whose impact had been consequential with the appointment of first female justice in 2003 and second female justice in 2004. The strike provoked the reform issues on the personnel management of judicial bench.
- In May, 1999, the presidential commission on judicial reform had been inaugurated. The commission was created to promote the human rights and facilitate the social justice by providing an effective and speedy legal remedy. It also is responsible to create and review the reform policy of judicial system to address the challenges of globalization and liberalization of legal market.
- The Coalition of Participatory Democracy had established the Judicial Monitoring Center in Sept. 1994. The organization had an ambit to disseminate the ideas of judicial reform, and provide a civilian check for the civil justice and bureaucratic abuse of judicial power (Gilardi, 2010). The organization shingles out six missions of organization, proposal of reform agendas and legislative lobbying, the reform of supreme and constitutional courts and prosecution offices, agendas on the professional responsibility and ethics, public critiquing of judgments and court opinion, and other miscellaneous.
- The globalization committee 1995 had been embodied that the globalization plan was created to address the reform of legal education and professional service. Its agenda includes the public counsel, expansion of attorney provision, personnel management of judges, specialties in the legal service, and national strategy on the liberalization of legal service.
- The judicial reform committee 1999 had been organized with an advisory mission for the president. It prepared the comprehensive report containing reform plans of KJS in May 2000, which dealt with six major reform objectives, i.e., effective and speedy legal remedy, the quality provision of legal service, rationalization and specialization within the triad of professional institutions, input reform of personnel resources, elimination of professional misconduct and corruption, and strategic response to the globalization.
- The judicial reform committee 2005 had been created as a standing advisory council, which was led by the prime minister and same rank of civilian leadership and constituted by 20 council members as well as the planning and implementation teams. The members and teams were drawn from the premiere bureaucrats, judicial benches, high rank prosecutors, notable academicians, lawyers and journalists, as

well as law professors (2010). The committee had been productive -- 14 committee sessions, 16 sessions of acting committee, 18 meetings of floor workers, and 46 conferences, 31 research sessions, 7 public forum, 9 times of learning travel abroad, 4 times of public poll, and 4 times of moot court. The committee had played out extensively with the 13 reform programs and 25 legislative bills.

- The judicial reform committee 2010 had been arranged under the authority of congress (national assembly of Korea). As attuned with the business-minded leadership, the new administration had been less interested in the judicial reform or PAKJS. Along with the bureaucratic maze and resilience, it generally brought a retard and regression in implementing and complementing the established plan as well as creating a new agenda (Bhatti, Asmus & Pedersen, 2011).
- K. Han, a noted historian in Korea, wrote a newspaper column of fifty serial contributions in *Hankyere*, which is titled the “wrath and dishonor of Korean judiciary.” In this work, he explores the faltering and subjection of the KJS to the authoritative government around 1960’s through the early of 1980’s. His work experience as a member of government commission on the “KCIA (Korean Central Intelligence Service) and Victims of Past Administrations” allowed him a rich exposure to the theme.
- e OECD statistics publicly released in recent years showed that trust in justice for the Republic of Korea had ranged poorly below the average of OECD countries. The rate of trust was as low as 27 percents, which was ranked at 39 among the whole of 42 countries. The average of OECD member countries had been complied at 52 percent of trust, and only three countries have a less trusted judicial branch. *Dong-Ah*, one of Korean news daily, critiqued the phenomenon citing the bureaucratic and social nepotism in favor of newly resigned judges as most a prominent culprit of judicial distrust in Korea.

*Photo* Graphics of Public Trust in the Judicial System

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