

# QIKJS-Part.I.D

## Qualitative Inquiry of Korean Judicial System

Kiyoung Kim

Professor of Law and Public Policy

Dept. of Law, Chosun University

Gwangju South Korea

### PAKJS, PPA, Empowering and Social Change

One critique, named *Koh*, today has not been deviated in the annual supervisory session of KNA 2015, in which he responded with a definitive comment, “M.H. Noh and his disciple, J.I. Moon are communist advocates (2015).” He further witnessed upon the question of assemblymen, “we could never exclude high odds of many communist judges or prosecutors currently and prospectively.” The rough atmosphere and slim public guess turned just not to be unfounded given his long years of observation and influential public position, as a head of national mass media supervision. Given the judicial system represents as one of tripartite branches and reflects the national conscience and intellectual commonality, the testimony thrusts a need of serious attention and follow-up verification. The phenomenon casts revisiting the kind of inquiries, for example, how the Korean communitarianism properly marks over the triad of thoughts spectrum among the liberalism, communism and bureaucratic ethics or philosophy. Upon the post-1987 constitution, the value of social diversity and pluralism had been strongly reinforced with the freedom of expression. The political culture certainly turned to face with a paradigm change from the expressly or impliedly uniform society with respect to the Korean attitude or even beliefs, such as national growth, conservative political liberalism to confront the northern enemy, or tolerance with the goaled and spirited leadership. For example, many victims would prove the influence of politics or policy making on the judicial system, who failed the last screening process for the post of judges on the ground of his or her public record of student demonstration (O’Sullivan, Rassel & Berner, 2008).

Given the role of judges and lawyers are important in the process of this area of policy making, the bias or flaws of input would bring a serious consequence on the Korean public (Kim, 2014; 2015a,b). Nevertheless, a systemic analysis would lack within the scientific community, government and public authorities, which would be one aspect needed of social change. They had long been reticent or stay with an ad hoc pointing out of phenomenon, in which they are less participatory or active and even unfrank. A cohesive account on history and transformation of environmental system could nurture the better view, alternatives and even solution in response with the current status of PAKJS. Although the kind of inquiries, how agendas are setting or processed or how subsystem plays out in shaping a public policy of judicial system are vital as an important thread, the dialogue had been fragmented or even un-minded that the social change is necessary (Kraft & Furlong, 2012). For example, the players and actors would be retracted to advert on the northern threat if such attitude is just a faltering

of controlled society in their mindset. It would be unfit with the new liberal paradigm in their perception. While the advent of nuclear powers upon the Korean war generally reduces the chance of another Korean war, it is, however, questionable for some circle if we can be liberal as same as other advanced nations. The same inquiry is not just for the 2015 Korea, but we may retrospect the militaristic government asking if the usual admonition of war probability by the political leadership is trustworthy. That is because the leadership had been a powerful thread driving the public to be haunted with their mottos and policy direction. In some cases, it is alleged that the creation of war threat had been a useful policy tool to perpetuate or prolong the lifetime reign of leaders. This point also can be analyzed comparatively with other post-colonial republic, which might be successful or lagged behind with the developmental goals. The phenomenon implies, for example, that the aspect of PPA generally would be more consequential about its impact and national identity than the judiciary or judicial system in case of Korea and, perhaps, similar with other post-colonial republics (Jones, 1997). That would be in some contrast with US in which the role of judiciary is fairly preaching and even binding over the policy makers, although the voice of critiquing the attitude of US supreme court as political justice along the Iraqi war. Nevertheless, the post-1987 Korea turns to get closer to the judicial role of US in which the constitutional culture began to flourish, which, as perverted in this period, created the public culture potentially exaggerating the role of judiciary. That generally militates against the kind of reality as the US faced with the treatment of Iraqi aftermath, but also comes shared in some area, such as anti-sedition act of Korea.<sup>1</sup> While the phenomenon, therefore, is distinct according to the group of countries and specific nation, it tends to converge with the speedy reform in some aspect of consideration. This tendency corroborates with the thesis of PPA, such as “how much the learning factors the diffusion of policy”

An understanding of how the identity of Korean Republic with the 65 years of democratic experience in terms of philosophy and ideology would change the society of this concern, which can be revealed with the empirical evidence of research participants (Kraft & Furlong, 2012). They themselves had been and are important actors to comprise the subsystem, who can provide a valuable information to understand the Korean phenomenon and its characteristic to be hailed into a theory with the GT approach. The communication within the subsystem seems to have been halted or stiff with the prejudice and tradition of judicial bureaucracy. They are a principal driver leading the discourse of PAKJS, which, however, often are subject to the peers of Korean National Assembly (KNA) and executive branch. Empirical

---

<sup>1</sup> The Korean judiciary has been and seems to persist as stern so as not to emancipate the criminal paradigm of anti-sedition act in the awareness of political reality with the northern enemy. In this sense, the hypothesis that the judicial branch and its subsidiary system could possibly established that they play distinctively with the reform issues with other branches or public organizations in that they less come on role with the international politics or national security issues, but conservative or deferent to the PPA authority. The hypothesis tends to transcend or deny the notion that the public organizations or branches of government would be a creature of changing environment in case of PAKJS or PAJS when we consider the output aspect of judiciary. That is exemplarily because the practice over history in Korea consistently proves the conservative nature of response with the kind of challenges. However, the input process, other than throughput or output, would be more reformable, which would be an important avenue that the policy makers would influence the judicial performance. This also generally corroborated with the thesis of SPP and constitutional value of judicial independence.

evidence also implies that they are less open-minded to the voice of civic pressure group, which generally validated the critiquing of juris-tocracy. As introduced, the four times of judicial strike is significant to characterize the importance of actors within the judiciary, which would be seen in several implications (i) the kind of quandary in normal sense of civilized community, (ii) highly legitimate on its cause and courage (iii) much consequential to make a repercussion with an extraordinary outcome that the formal process could not realize. In other words, the informal aspect of public organization ironically had brought an excellent solution with resignation of judicial head and the kinds. The incidents also plainly evidence the organizational characteristics that the policy student has to be discrete against other types. This also implies that the judiciary is (i) social than collective (ii) intellectual than commanding or authoritative. They show a propensity of familial identity, and seem associated with the mutual honor and same expertise, which is related with the SPP principle and judicial independence as well as narrow resource in terms of organizational machination. The problem underlies (i) general impediment among the triad of peers that the judges tend less negotiable or pompous against the attorneys and the civil pressure group (ii) general attitude to keep a distance with the prosecution power and peers assigned with other branches of government. This kind of ignorance and inadequate network of subsystem tend to victimize the judiciary and judicial system with the occasional media exposure of problematic judges, or resignation of chief justice and general discredit of public on the national judiciary as well as undesirable impression as a public institution. The key informants drawn from the pool of senior administrators and national assemblymen of same professional background as well as law professors and journalist participant will provide how the networks operated or faltered and how the ideas of reform and new agendas were set and diffused to shape the judicial system (Rudestam & Newton, 2015).

Another aspect of input occurs in the introduction of statutory term for the head of Korean Prosecution Office (KPO) and production of new attorneys via the law school system in replacement for the national exam-based selection. While the kind of soft elements – philosophy, tradition and ideology -- involves dealing with these issues, the policy diffusion theory may incur more profoundly in agenda setting and policy process. For example, the Korean communitarianism over the post-1987 constitution created the environment, in which the public could no longer tolerate the enslavement of KPO to the political power. The policy makers under the auspice of new public value -- the political neutrality of KPO – devised a statute of two years of mandatory term for the head of KPO, which, however, functions as perfunctory with around ten disruptions of earlier step-down over a short of twenty years. The ill policy effect of this kind shows the importance of policy actors than system itself, in which the qualitative studies could inform and improve its operation. The law school system also is currently contended by the interested players that needs of qualitative information to understand the policy issues and process.

### **The Social Change Matrix and PAKJS**

*Table Social Change Matrix*

<b>Knowledge</b>	<b>Skills</b>	<b>Attitudes</b>
------------------	---------------	------------------

---

<i>SOC I-AL</i>	Society	V	V	V				V	V
	Community	V	V	V				V	V
	Organization /Profession	V	V	V		V	V		
	Group/Team					V	V		
	Person-to-person					V	V		
	Individual			V			V		V
		Scholarship	Systems Thinking	Reflection	Practice	Collaboration	Advocacy	Civic & Political Engagement	Humane Ethics
	<i>CHANGE</i>								

As above, I have checked with a V marking, which is thought to be relevant with the potential social change through my research project and post-project career activities. Let me provide a comment partly for the social change matrix as complements.

While the recursive loops on the thought of social change for the research project is a way to fulfill the success of doctoral studies and post-study career road, I may present some of current ties or prospective expansion networking the implications of my study with the nodes of social change matrix.

In terms of systems thinking, the PAKJS is to be operative within the formal procedure of constitution and public laws, in which the actors, however, are crucial to shape the public policy (Yob et al., 2014). In other words, we have two planes -- rigidly legal and subsystem or informal -- that could influence the PAKJS, which interplay to create the policy. The social change could be brought firstly as with the soft plane, the actors of subsystem or groups of advocacy and criticism, and lately expands into the statutory or constitutional reform possibility. One drawback of Korean practice would lie in the conventional retreat deferring to the formalistic process of system making. While the congress and executive body as well as administrative unit of judicial or quasi-judicial branch are important players as a subsystem, the soft power from the civil group or law professors and journalists also complement their sagacity importantly relating with the public attention and opinion. The collective knowledge and wisdom can be generated in this way.

The collaboration can also be systemized given the importance of issues that two achievements are relevant as an avenue to disseminate the ideas and understanding of my research project (2014). The Participatory Democracy of Korea (PDK) had launched a branch division in 1993 entirely devoted to the monitoring and reforming the judiciary and judicial system with the civic initiative. One other achievement is that the Supreme Court of Korea established the Judicial Policy Research Institute (JPRI) in 2014 staffed with the researchers and cadres of judicial post, which represents the voice of government (Judicial Policy Research Institute, 2015).<sup>2</sup> Two organizations are considered as an important *ThinkTank* that I need to interact to make a social change. They regularly hold the academic symposiums and conferences, and publish the reports, articles and books.

Since the project is planned with the GT approach in the end of generating a theory on PAKJS, reflection is a critical part to make a social change (2014). Often the current effort on this concern in Korea had been narrowed to the comparative studies of judicial system, particularly focused as issue or agenda-specific, which had largely foregone the contemplation of policy process and inimitable thesis of Korean philosophy through the democratic experience. A cohesive understanding on the PAKJS over the historical continuum would inculcate the policy makers and stake or interest holders that facilitate the scholarship and practice in this field.

The advocacy is not my immediate purpose given the theory on PAKJS is required to be neutral and objective by providing a better world view of this topic (2014). While the focus is shed on the scholarship, the advocacy also is no less irrelevant that the current mishap over a considerable amount of administrative agendas or issue is thought to be reexamined or corrected. In some cases, the globalization logic would exert a plenary sweep over the policy change that is questioned if the Korean critique of communitarianism steps in. The bureaucratic tradition of defensiveness or nepotism would also create a public disfavor. An unfit of policy and impetuous policy making need to feedback or invite a critical contemplation. Since the thought hierarchy was dosed from the philosophies, to political turning point with new agenda setting or issue attraction and through the diffusion of policy, the tools of philosophies would be grandest that will be connected into the story of PAKJS. The advocacy or scholarship as well as the humane ethics would be implicated that the critical thoughts will be expected of interchange in making the social change. The level of affect scope often would cover the society, community and profession or organization because of the characteristics of my studies. While the learning and sharing are involved, the scope hopefully could stretch into a group, person-to-person and individual.

---

<sup>2</sup> The webpage of organization provides the mission statement, “The Judicial Policy Research Institute has been established as an independent research institute in order to plan appropriate policies and engage in research one new solution plans by organically and synthetically combining adjacent fields of studies....expanding judicial exchange with foreign countries, and taking a leading role in influencing the international justice system.”

## References

- Jones, C.O. (1997). *An Introduction to the Study of Public Policy* San Diego, CA: Harcourt.
- Judicial Policy Research Institute. Retrieved Oct. 8, 2015 from <http://jpri.scourt.go.kr/news/RINewsListAction.work?gubun=981>.
- Kim, Kiyong, Ethics, Law and Social Justice (April 10, 2015a). Available at SSRN: <https://ssrn.com/abstract=2592876> or <http://dx.doi.org/10.2139/ssrn.2592876>
- Kim, Kiyong, Public Policy and Governance: Some Thoughts on Its Elements (April 3, 2015b). Available at SSRN: <https://ssrn.com/abstract=2589526> or <http://dx.doi.org/10.2139/ssrn.2589526>
- Kim, Kiyong, The Relationship between the Law and Public Policy: Is it a Chi-Square or Normative Shape for the Policy Makers? (September 10, 2014). *Social Sciences*. Vol. 3, No. 4, 2014, pp. 137-143. doi: 10.11648/j.ss.20140304.15. . Available at SSRN: <https://ssrn.com/abstract=2577832>
- Koh, Y.J. (2015, Oct, 7). Are with the Communist Politicians and Public Officers? *Chosun Daily*, p. Sec. 4.
- Kraft, M.E. & Furlong, S.R. (2012). *Public Policy: Politics, Analysis, and Alternatives*, Thousand Oaks, CA : CQ Press.
- O'Sullivan, E., Rassel, G. R., & Berner, M. (2008). *Research methods for public administrators* (5th ed.). New York, NY: Pearson, Longman.
- Rudestam, K. E., & Newton, R. R. (2015). *Surviving your dissertation: A comprehensive guide to content and process* (4th ed.). Thousand Oaks, CA: Sage. ISBN: 978-1-4522-6097-6.
- Yob , I., Lao, T., Uldall, B., Crum, M. B., Clay, O., Brock, N.,...Dixon-Saxon, S. (2014). *Matrix: Preparing Walden learners for social change*. Minneapolis, MN: Walden University.