

QIKJS-Part.VI.E (No.2)

Qualitative Inquiry of Korean Judicial System

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The Critical Understanding of Korean Judicial System: Historical, Philosophical and Policy Side Analysis

1. The judicial system in the nations is generally considered as an important public institution to promote the liberty and social justice. The role and influence of public policy and administration can hold a considerable power in the shaping of Korean judicial system. The current literature in this field is just on legal theory, and little is known about the processes, actions and interactions of players relating with the elements of public policy studies. 2. The study's purposes were: (a) to examine the phenomenon inherent in the public administration of Korean judicial system (b) to generate a theory on its phenotype in the national and comparative or interdisciplinary viewpoints. 3. Based on the grounded theory approach as well as hermeneutics and heuristics, the kind of tools, i.e., concepts, terms, essences as well as inter-relational understanding or themes were employed. The theories and tenets generally on the elements of public policy, as stems from Sabatier & Mooney, Walzer, Habermas & Foucault, Weber & Turner, Simons, Bourdieu and so, provided the backdrop for this study. 4. Research questions focused on the policy process and actions, interactions of players within the public policy aspect of Korean judicial system and its phenotype in terms of national and comparative or interdisciplinary viewpoints. 5. Research participants consisted of a purposive sample of 30 Korean lawyers, legal historians, law professors and civic leadership who responded with the individual in-depth interviews. They were preliminarily surveyed with the written questions leading to select major occurrences or events, and deeply investigated through the interviews at next. The data collection consisted of public documentation, record, personal writings, and texts of Korean source. 6. The findings indicated that the public administration of Korean judicial system in view of public policy elements is (i) unique, but sharable (ii) inevitable, but struggled, (iii) static, but transformative (iv) general, but professional. 7. Implications for positive social change include deeper understanding of Korean judicial system in terms of public policy studies and importance of public policy on its shaping.

Thoughts and Philosophies to Possible Dynamism and Reform

Given the studies of government and administration are not the kind of universal discourse unlike other subjects on humanity and social science, the thought or philosophies had merely been tacit and intramural with the cadres of government although the theme is a vertebrate of government to be held with the binding force (Kim, 2014a,b,c; Kim, 2015a,b,c,d). In other words, the academic elaboration generally

lacked that affected the scholarly circle because of its national particulars and contingencies as less amenable to the general sharing, which is not same with the psychology or sociology and general political discourse. Thankfully with the contributions of law and policy researchers, for example, F.J. Goodnow and so, around the turn of last century, the theme could be assisted more with a practical adaptation and reflection of US progress beyond the formula or hash tag of simple classic frame, such as legal theory or separation of powers principle (Crozier, 1964). As known, the US constitutionalism had been imported by many new born republics and core ideas embedded in the document actually had exerted much influence for those countries institutionally and politically. In this backdrop, the philosophy and instruction of those scholars had a wide of influence on the discipline and much potential to guide the research for the public policy of national judiciary. Goodnow had been a professor of administrative and constitutional law at Columbia University, who also had a rich career as a university and city administrator. He was the first president on the organization of the American Political Science Association in 1903, and a member of President Taft's Efficiency and Economy Commission in 1912, and the boards of the Brookings Institution and the Institute of Government Research. He was a legal scholar in origin, but had been much attuned with the attitude of social scientists as transcending the general rigidity of law and clerical tones of work. He had been practical and the kind of messenger inspired both with the law in books and law in action spirit (March, 1966). The comments and evaluation from peer scholars hint on his scholarly character, which are malleable to the discipline of public policy and administration. We can know some of important trait from them, which could teach the scholars dealing with this theme in their future research and provide the scholar practitioners with the keys of understanding and practice. They include a notion of physiology,¹ enthusiasm for the organized movement,² evolutive interpretivism and social reform, as well as character, personality and intellect.³ These are the points of surety we can see as precious for the import of ideas from the department of law and utility from the interdisciplinary ways of approach. For example, a physiology impresses the transformative nature of public arena that can be made better and improved with practical effect, the very idea of public policy than a mere application of law.

Another suggestion is the importance of opinion leaders in importing and diffusion

¹ His general characteristic had been viewed by Powell, "Emphasis is laid by Dr. Goodnow on the physiology rather than the anatomy of government. His essentially practical mind has been quick to see that it is of prime importance to discover how the mechanism of government actually operates...His is a study of dynamics."

² M. Smith commented on his works, "it is in reality a contribution to what Ballot-Beapture has happily termed evolutive interpretation. He continued, "He has many of the best traits of the purely academic investigator; a skeptical attitude toward traditional theories...To him a fact is of little moment unless it proves something that is worthwhile and a theory is important only in view of its effects upon social life.

³ Dr. C.A. Beard summarized the accomplishments, "Mr. Goodnow was the first scholar in the United States to recognize the immense importance of administration in modern society and to sketch the outline of the field...Not content with the law of his subject, he went behind the scenes to explore the nature and operations of politics in relation with administration..." His comment is insightful for the qualitative researchers on the public administration, "But ever inquiring, Mr. Goodnow carried his analysis over into the amazing jurisprudence of constitutional law and disclosed in that mysterious domain (once generally supposed to be mathematical) the operation of sentiments, institutions, and opinions."

a policy innovation for the national judicial system (2014, a,b,c; 2015a,b,c,d). Burt, R. in his work entitled the social capital of opinion leaders, provided the deep aspect of the opinion leaders' role and benefit in terms of policy diffusion and social capital. While he explores the illustrative evidence from the major empirical studies, which cover the medical innovation, business and politics, his results highlight the brokerage role of opinion leaders. This kind of scientific understanding for the past process and policy reform of PPKJS could have informed the behaviors and attitudes for the policy makers and stake holders. For example, public criticism based on the ideals of participatory democracy and communicative action theory could be complemented with it. Therefore, the power of interpersonal communication should not be overstated when we come to concern of opinion leaders and their utility as a social capital despite their dominating attitudes or behaviors. As stated, the conflict theory is no less minimal when we explore the vast of neo-liberal influence upon the legal service market. The legal academicians and practitioners could well disagree, and go on their separate cause. His argument about the network structure of social capital can give an insight, in which career and income advantages are associated with playing the role of opinion broker and as termed social capital. In terms of coherent understanding of PPKJS, his idea has been very plausible to the Korean experience that the structural holes from weak connections are an opportunity to broker the flow of information between people and control the form of projects that bring together people from opposite sides of holes. The stage of agenda settings around 1990 can typically described with this perspective. Then the increasingly tight attitudes among the stakeholders could be explained that the information and control benefits occur by bridging the structural holes, and the opinion leaders on the issues or agendas of PPKJS enjoy a competitive advantage with stronger network connections across structural holes. The suggestion is that the authentic leadership to reform the judicial system can be phased out in different dimension, and useful to think about whom must be ultimately responsible for the PPKJS, for example, among the social commentators, jurists or legal educators and so. It could enlarge the ideas or suggestions from various sectors on one hand, and also could help seeking the responsibility of policy failure through the hearings or audit of KNA and national audit board. Given the controversy or hate grows among the stakeholders, such as students preparing to take NJE or failed bar examinees for years, would open the doorstep for the political accountability of policy makers. The insights on the role of opinion leader could enable a plausible forum and lessons to prevent failure of policy issues. The JPI inaugurated around 2000 also could benefit from the perspective of opinion leadership organizing the study group and their fare with the research and public forum on a regular basis. Valente and Davie also suggests on the ways and practice for accelerating the diffusion of innovations using opinion leaders. The current crisis faced by the policy makers of KJS has a stem of flaws that the communication of interest holders and policy makers had been taken as unserious to slip way oftentimes. This tends to obviate new suggestions or ideas. In order to alleviate this challenge, the channel of communication needs to be made more active and prompt using opinion leaders. This way of thinking had once served any effective receipt of western constitutionalism around the classic years, democratic activism of some patriotic lawyers around the militaristic administration, and more desired to face the transformative period. Despite the limitations and extensions of the model, we could learn the importance to collect information on interpersonal communication networks. Though the studies, it seems typical that the policy makers of KJS is less exposed to media play that is clearly distinguishable from national politicians. The politicians argue or struggle against the unfair or irresponsible journalism, which is not such of extent for the case of law people and judicial policy makers. This leads to lose the benefit of media in creating a focus and interactivity with the public and set the mood of cursory or trivial treatment of law people's story failing the intense and organized response to the policy split or disagreement. This brought a costly policy expense over the years with the resilience and many unresolved issues. In this respect, I may suggest to establish

the central office to respond with the public media on the issues of PPKJS from KBO, KSC, KPO, and KALP. According to Valente and Davie, many programs, interventions, and communication campaign are designed to change an organization or community by directing messages at mass or local audiences, and they have been evaluated that use mass media and/or interpersonal communication for behavior change. Their views guided on the strategic importance to identify who talks to whom within the community and to locate individuals who are more central to a community and thus perhaps more influential. In our case, the vice chiefs of each triad along the deans of law school or chair of law departments could class into the category. This structure could be spread out through each locality of nations. Although this idea was reflected through the intense reform period, we can argue if the checkmate organizations post reform follow up had long been neglected. As a current policy measure, we can use these individuals or opinion leaders to initiate the diffusion of a new idea or practice, who champions the new practice and accelerate the diffusion practice. The opinion leaders could bring an impact on the agenda setting, for example, yet to be merely a source to fuel in the initial stage and completely irrelevant once the policy measure settles, which, however, must be responded by feedback and reinforcement. The policy diffusion of leadership can be an alternative and one way to remedy such resilience or even intermittent abandonment. The training of leadership to cover sectors, such as college of law nationwide or professional association, as well as the governmental organs, can be networked to create a strong consensus, implementation, and feedback.

The current PPKJS can be ascribed to the lack of understanding the conceptual framework or thought frame about the policy process or diffusion despite the decades of battle cry, ails and struggles (2014a,b,c; 2015a,b,c,d). For example, the though process through the environmental context as suggested by Wejnert is fairly powerful to help understand the experience of policy makers or interest holders within the Korean judicial system. It is one category of policy diffusion variables along the characteristics of innovations and innovators that deal with the geographical settings, societal culture, political conditions and global uniformity. The geographical settings, for example, can facilitate the proper analysis for the policy issues of law as well as legal system and tradition of nation. The theory could fit within the historical experience of nation that geographical settings affect the adoption by influencing the applicability of the innovation to the ecological infrastructure of the potential adopter exerting spatial effects of geographical proximity. In understanding the classic years of KJS, it could be contended with other kind of variable, such as political conditions that the two victory powers of World War II, Russia and US, had competed to establish a new republic in the land. The political conditions, as a variable, can also be applied to the dictatorship or chilled years, but less proper to turn on KJS in terms of ornament character of new constitutional adoptions. As we see, the constitutions themselves had been democratic and on the tradition of western states mostly, but the actual process of national politics impacted much on the shaping and maintaining of KJS. As surveyed, the sociological studies of law people can help to revamp the loophole or fill the vacuum of philosophical voice. This could cure the Wejnert's perceiving the political conditions broadly to include the regulations and norms inherent in the legal systems of control actor's behavior, which we have argued on the alienated pathway between the law or constitution and practice or community of law people. While we see through the chapters, the analysis and explanation to deal with the reforms and experience had been grounded on the societal culture and global uniformity as the Wejnert's frame of policy diffusion variables. It could be matched with the socio-economic perspective of new law school reforms or globalization of legal service market. Given the philosophical understanding or critiquing could allow the values or policy ideals, the kind of conceptual practice by the scholars or scholar practitioners in my interested field could sharpen the discourse or policy communication through the process. As Wejnert suggested,

the policy actors or scholars could incorporate a fuller dealing with the focus, such as the variables' interactive character or gating function, in proposing and arguing on the agendas, issues and criticism of KJS. We also could have a lesson from the past and current with the insights and articulations elaborated by him. That is, (i) the policy diffusion refers to the spread of abstract ideas and concepts, technical information, and actual practices within a social system (ii) the spread denotes flow or movement from a source to an adopter, typically via communication and influence (iii) the study of policy diffusion had not been integral or isolated, which needs to be corrected. I hopefully expect that my studies to provide a better understanding of Korean judicial system could respond with his worry and suggestion. It is hoped provided (i) that it deals with the Korean judicial system as a social system than the issues of constitutional or public law; I have exerted to stress the importance of communication and influence (iii) my intent is to correct the studies of Korean judicial system and policy implications as integral or coherent. Besides the scholars or scholar practitioners, I expect that new JPI could be a centerpiece to disseminate the policy side views of Korean judicial system, in which the frame of thought can play a role of vertebrate for the approach, ways and practice. By employing the variables in characterizing the KJS would allow a uniform and scientific version and more persuasive account for the phenomena or system change. For the audience, I have excerpted his classification into the table as an attachment.

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