

2018

# Best Practices for Constitutional Government Under the South Korean Framework of Democratic Experimentalism

Kiyoung Kim  
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# Walden University

College of Social and Behavioral Sciences

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Kiyoung Kim

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2018

Abstract

Best Practices for Constitutional Government Under the South Korean Framework of

Democratic Experimentalism

by

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LLM, University of Wisconsin-Madison, 1993

BA, Seoul National University, 1985

Dissertation Submitted in Partial Fulfillment

of the Requirements for the Degree of

Doctor of Philosophy

Public Policy and Administration

Walden University

November 2018

## Abstract

South Korea has been one of the most successful newborn republics since 1948, and yet, since the new millennium, it has been embroiled in a controversy over the issues of constitutionalism and successful government, with the public expressing concerns about transparency, democracy, and competitiveness. Of particular concern is the public's perception of constitutional government. The purpose of this study was to better understand the elements of governmental success and best practices for constitutionalism in the country's framework of democratic experimentalism. Three prongs of inquiry rooted in the democratic experimentalist tradition (lessons learned from private governance, national institutions, and new concepts of rights) were examined. Dorf and Sabel's theory of constitution of democratic experimentalism was used to help answer the research question, which was, how democratic experimentalism supports constitutional government in South Korea. Data were collected through interviews with 16 legal/government professionals under the age of 40, and then coded and thematically analyzed. Findings identified 9 identified key themes as vital for the success of constitutional government in South Korea. Results suggest that constitutionalism and democratic experimentation need to be considered together when seeking to understand the South Korean constitutional government. Implications for positive social change include helping future investigators to better interpret the Korean constitutional system and supporting decision makers and public servants in making better informed decisions to further more democratic and transparent government.

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## Dedication

This dissertation is dedicated to my deceased parent, wife and lovely daughter, who encouraged and charmed for the consort of family. A special dedication goes to the rest of my families, siblings, those in law as well as many friends, who motivated and challenged me throughout the completion of doctoral journey. My worship should go to the deceased mother, who was born in South Korea in the 1930s with all odds stacked against her and expected marginalization. By the grace of God, she was strong, loving, caring, nurturing, and inventive, while she marched on, placing hope on her child, so that he achieved as a consequence of and consolation of her sacrifices. I am humble to specially dedicate this piece to her past.

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## List of Abbreviations

ALB: Arm's Length Bodies

CGDE: Constitutional government on democratic experimentalism

CRQ: Central Research Question

CV: Candlelight Vigil

DAG: Decentralized autonomous government

DE: Democratic experimentalism

DOJ: Department of Justice

DPSG: Decentralized and provincial local government

EB: Executive Bodies

EPA: Environmental Policy Administration

IAA: Independent administrative agency

ICC: Interstate Commerce Commission

ICGM: Inter-conference of Governors and Managers

IRB: Institutional Review Board

IRC: Independent Regulatory Commission

JCAH: Joint Committee on Accreditation of Hospitals

JPRI: Judicial Policy Research Institute

KCC: Korean Constitutional Court

NDPB: Non-departmental Public Body

NPA: New public administration

NRC: Nuclear Regulatory Commission

OECD: Organization for Economic Cooperation and Development

PDK: Participatory Democracy of Korea

RQ: Research Question

SPP: Separation of powers principle

TCGDE: Theory of constitutional government on democratic experimentalism

TPR: Trinity Policy Reform

UNCED: United Nations Conference on Environment and Development

WEF: World Economic Forum



## Chapter 1: Introduction to the Study

### **Introduction**

A constitutional history of South Korea (henceforth, used interchangeably with “Korea’s”) had been the center of contest for democratic government. Koreans have been living under a presidential system of government since 1987. Prior to 1987, South Korea’s system of government and its constitutions had featured militaristic rule as a result of what many considered puppet elections (Huh, 2007). It was widely believed among the public that the president Park, who assumed the role of the chairman of the National Convention for Unification, was elected by the members of the Convention through a fatally deficient democratic process and was only supported during his tenure due to his charisma as leader of the military coup in 1961 (Kyung, 2007). The long reign of militaristic rule was challenged by the increasing hegemony of civil society and an ethos for democratic government among the public. The 6.10 riot for constitutional reform in 1987 was ultimately successful in establishing the current form of constitutional procedures for presidential elections. Nevertheless, this did not end the story of Korean constitutionalism and civil democracy.

The 1987 constitution explicitly provided a 5-year one-term presidency in which the incumbent is limited to a single term. This one-term limit, despite its initial positive effect, grew to be a public trigger for what Koreans viewed as ineffective or transitional governments (Chung, 2007). As a result, an amendment ethos to revise the constitution has gained much support recently, reaching its highest level of urgency in 30 years (Chung, 2016). The current president has even pledged to organize a task force with the

focus of revising the amendment (Chung, 2016). The clamor for reform among the public, executive officers, and parliamentary members has incurred the need for a holistic scope of the reform movement in order to achieve a successful constitutional government (Choi, 2009; Chung, 2007; Fisher & Devins, 1992; Sabatier & Weible, 2014).

In the midst of rapid transformation and interstate competition within the global village, the effectiveness and prestige of national government has taken on greater importance for constitutional democracy, especially in terms of service provision and public welfare (Backer, 2012; Giovani, 1994; Metzger, 2012; Meyerson, 2014). The times of ideology and philosophy have waned as the diverse civilizations compete, and technological advances and the shifting socioeconomic structure have caused tremendous change for the private and public mode of contemporary living globally (Stewart, 1975; Sewell, 2005). In fact, the increasing diversity and volatility of communities have brought about a crisis in the constitutional tradition over jurisdictions (Dorf, 2012; Dorf & Sabel, 1998; Super, 2004).

Against this backdrop, in the present study I examined the relationship of those two values-constitutionalism and civil democracy- embedded in the states of modern republican government. It was focused on the new paradigm of administrative state around the 20<sup>th</sup> century and new millennium. The law or rights and democracy as political ideals are not isolated concepts; rather, they are foundational in (or, inseparably entwined into) the value system of modern minds (Tushnet, 2003, 2012; Wilkinson, 2010). The civil revolution for modern constitutionalism seems to have created a new order of society (Huh, 2007; Norton, 1982). The recent tumult in South Korea -- from a

candlelight vigil (CV) through the impeachment and incrimination of the president --has been a wake-up call for Koreans (Chang, 2016). In this line of thought, the concept of democratic experimentalism engrafted with the rule of the constitution was revisited as a possible sedative amelioration of the radicalism or mob politics by scholars (De Burca, 2010; Dorf & Sabel, 1998).

In Chapter 1, I outline the problem of unsuccessful constitutional government in South Korea and populist wave of reform movements raised by the political and social interest groups. The purpose of this study is to provide a coherent framework of successful constitutional government on democratic experimentalism and enhance understanding of constitutionalism and democratic experimentation in the South Korean context. The theoretical framework for the study consisted of Dorf and Sabel's (1998) theory of constitutional government and democratic experimentalism. As discussed in the "Nature of the Study" section, I used qualitative inquiry and case method as the study's core methodology. The definitions and underlying assumptions are provided to support effective comprehension. The scope of the study was limited to the Korean case of constitutional government with a focus on democratic experimentalism. The reported results have general limitations given the study's qualitative nature. Despite these limitations, the study is significant for the South Korean crisis in order to understand the best practices on new empirical findings and may have applications to other nations with a similar challenge.

## **Background**

The current scholarly literature and significant incidents relating to the constitutional government or Korean politics on ideal constitutionalism provided the background of this study. Norton (1982) and Huh (2007) reviewed the constitutional tradition of Korea and explored two major alternatives of constitutional government, namely, parliamentary and presidential systems of government. According to their framework, the parliamentary system relies on the following factors:

- the interdependence of two branches for efficient governmental organization and action,
- parliamentary sovereignty to legitimate the rule of law,
- history-proven democratic election,
- representation on the national level based on the election,
- a cabinet motivated by national compassion,
- political diversity from the productive debate on the parliamentary floor interacting with parliamentary tradition, and
- humanistic politics driven by the psychology or moral philosophy of the majority buttressed by the input of an esteemed minority party (Norton, 1982; Huh, 2007).

Linz and Valenzuela (1994) commented on a growing international interest in alternative constitutional forms emerging in many countries with different governmental characteristics. They identified a number of related policy priorities that concern policy makers and constitutional experts beyond the academic circle.

Accordingly, Linz and Valenzuela (1994) worked to provide insight for the countries that explore and debate the various types of democratic regimes. Huh (2007) and Norton (1982) argued that the presidential system of the standing constitution has many flaws in view of the constitutional tradition. Huh and Norton's major points of criticism included the simple majority election method, one-time tenure, and lack of vice presidency. Chung (2007), on the other hand, proposed that there are both positive and negative aspects of a one-time, 5-year presidency. Jung (2013), Chung, and Linz and Valenzuela (1994) are concerned about the underlying weakness of one-time and short-term presidency leading to a lame-duck period and resulting in ineffective and unstable administration.

On the issue of a constitutional amendment to move to a two-term limit of 4 years each, President Park pronounced on 6th November 2016 at a press conference that, "The strategy will similarly deceive the people if the constitutional amendment is arranged either to meet a particular interest in the coming presidential election or to meet the goals of some other ready-made scheme for any premeditated result... The executive now has an independent plan to research and confer on the issue with the standing taskforce ... The fruits of its deliberations can be expected by next April at the latest" (Joo, 2017, p. 471). Jong-in Kim, an influential leader of the largest opposing party in South Korea, reiterated his preference stating that the American type term limit is unsuitable for or destructive of the Korean culture and that the parliamentary system would be the most ideal alternative as a scholar forecast three decades ago (Fleishman, 1986).

Many public polls, such as those by Korean Broadcasting System and Gallup, indicate the will of the Korean people on the need for constitutional amendment. They commonly reported that the majority prefer amending the constitution on the government structure. Specifically, more than 30 % preferred the American type of governance, while a considerable number of respondents support a two-tiered executive and parliamentary system in descending order (Chung, 2016). Major national leaders of political and religious associations and civil society as well as academia held a public rally on June 14th, 2016, to urge approval of the constitutional amendment (Chang, 2016). Specifically, they called for organizing a special workforce within the parliament. According to Chung and Chang, scholarly work in the law discipline dealing with constitutional reform has thus far been seriously flawed because of a top-down approach and an emphasis on bureaucratic or structural issues rather than the democratic and pragmatic.

As Chang noted, it is not possible to highlight the real deficiencies of the Korean constitution and its process because of the current state of scholarship. Furthermore, research from the discipline of public administration has been limited to governmental concerns such as public-sector management or resources allocation (Joo & Chung, 2000). A holistic picture that might bridge the constitution, democracy, and public administration is missing and its lack only brings fragility to the current public recognition, thus replicating past failures of constitutional amendment. Research is, thus, needed to fill the gap in knowledge. Study findings may contribute to a new system of

thought and principles that can be used to integrate the constitutional framework for better success in government by policy makers.

### **Problem Statement**

The concept of constitutional government has been defined differently across nations. In the context of the governmental system and politics of Korea, constitutional government is defined as “all forms of government system legitimated on the constitution erected and sustained by the will of people, either through a revolution prescription or based on the legitimate process of constitutional reform” (Huh, 2007, p. 213; see also Norton, 1982). As is the case with citizens of other nations, citizens in South Korea expect transparency and accountability from their government. However, data from a study of Transparency International, for example, reveal that corruption rates in South Korea are relatively very high (Colson, 2016).

A preliminary review of the literature on South Korean politics and constitutionalism from a South Korean context suggests a lack of study in transparency and accountability in general, but particularly with respect to “democratic experimentalism,” a key element that supports constitutional government (Dorf & Sabel, 1998). Prevalent literature seems to be limited to textual analysis or comparative discourse of global government and generalized statements and conclusions based on ad hoc public surveys to address temporal requirements of government in Korean history (Chung, 2007; Giovanni, 1994; Hallowell, 1976; Jung, 2013; Park, 2007). There appears to be a lack of research on democratic experimentalism as a key factor that supports

successful government or which can serve as a mechanism to improve the constitutional system and practice in Korea. This is the gap in the literature that I sought to fill.

### **Purpose of the Study**

The purpose of this study was to better understand the constitutional government through democratic experimentalism (CGDE) in South Korea. As scholars have noted, democratic experimentalism is necessary to support the constitutional process and democracy building (Dorf & Sabel, 1998; Kechane, Macedo, & Moravscik, 2009; Sabatier & Weible, 2014; Sabel, 2001, 2012). By using Dorf and Sabel's (1998) theory of the constitution of democratic experimentalism for my theoretical framework, I sought to provide a common conceptual framework that might serve to better understand how constitutional government functions in South Korea which can further serve policy makers, scholars, and citizens by enhancing their understanding of the implications of constitutionalism on Korean politics (Tushnet, 2003).

Furthermore, I sought to raise awareness and bring attention to a growing global problem of questionable constitutional policy and diminishing government success (Eberlein & Kerwer, 2004; Linz & Valenzuela, 1994; Shugart & Carey, 1992; Wilkinson, 2007, 2010). By including key informants from academia and professional groups within the scope of investigation, the study can also provide a broader perspective on the constitutional discourse, through an evaluation of democratic experimentalism and *learning by monitoring*. This study might also offer an alternative vision for how to address the challenges associated with democracy building, particularly how to increase



public activism to reform and improve the constitutional system (Colburn, 2004; De Burca, 2010; Fisher & Devins, 1992).

### **Research Questions**

To better understand constitutional government in the context of South Korea, I posed the following principal research question: How does democratic experimentalism support constitutional government in South Korea? To help answer this question, the following secondary questions are provided:

RQ 1: What are the key differences between a centralized organizational form and a decentralized organizational form, in their capacity to support constitutional government in South Korea?

RQ 2: How does a national framework support the constitutional government in South Korea?

RQ 3: What is the role of individual rights in supporting constitutional government in South Korea?

### **Theoretical Framework**

The theoretical framework chosen for this study was Dorf and Sabel's (1998) theory of democratic experimentalism for the rule of law in the modern constitutional state (see also Wilkinson, 2007). Dorf and Sabel deviated from the stringent Madisonian tradition that is focused on the structure of separation and hierarchy and suggested a new form of governance in which the familiar type of representative and constitutional democracy can be transformed into a novel, directly deliberative one. According to Dorf and Sabel, the private sector institutions and learning by monitoring suggest a public-

sector model of problem-solving adapted to a polity, in which deliberative polyarchy occurs for the dynamic and effective constitution of government (see also Menkel-Meadow, 2004; Scheuerman, 2004). This theoretical framework enables the dynamic and convivial process of consent in the face of constitutional challenge against the tradition and effectiveness of government. In their theory, Dorf and Sabel integrated ideas and reforms into a new national framework -- for example, by describing new roles for familiar institutions within the context of democratic experimentalism (see also Super, 2008). Moreover, their framework offers a guide for “constitutional interpretation” that more significantly defines the role and responsibility of government (Tushnet, 2003).

### **Nature of the Study**

This study offers an opportunity to advance our understanding of the constitutional policy and practice in the implementation of democracy with the hope for improving the success of government and maximizing the happiness of the people in South Korea. According to Stake (2010), a study is best suited to a qualitative design when researchers strive to understand and improve the context or phenomenon being studied.

In most cases, the findings of qualitative research generate an in-depth understanding, provide insights and contribute to bringing about the desired improvement in the social context (Corbin & Strauss, 2008). Qualitative research is appropriate to obtain a complex, detailed understanding of how the constitutional or government system may be improved to maintain and enhance the protection of rights and the democratic

process encouraging an effective and stable government, leading to its success and increasing the happiness of the people.

By conducting the case study of Korean government and democratic experimentalism as well as interviewing people on the issue of learning by monitoring, the research can coherently explain the perceptions and attitudes to formulate a better view of constitutional interpretation and a deliberative or democratic process that fits well within the traditionally rigid constitutional system in Korea. The study, should provide insight into points of constitutional and political importance, offer an enhanced understanding of successful constitutional government and help address the current challenges and revision movement.

### **Definitions**

In the following paragraphs, definitions of some of the key concepts in the study are provided for readers:

*Administrative law*: The branch of law governing the creation and operation of administrative agencies and encompassing laws and principles, which provides the powers granted to administrative agencies, the substantive rules made by such agencies, and the legal relationships among them and against the public at large. As the kind of general statute in this area of law, Administrative Procedure Act with their state analogs provides a category of administrative functions - formal and informal rulemaking and adjudication – and prescription of certain procedural rules needed to follow by the agencies in exercising their functions (FindLaw, 2017).

*Administrative state:* The administrative state, against the classic constitutionalism and separation of powers principle, requires a concentration of all three powers to directly regulate the businesses and personal affairs of most nationals. In this paradigm, democratic states are underpinned by professional and political bureaucracies and the core idea of government bureaucracy is service to the public (Rahe, 2010).

*Constitutional government:* Government with a written or unwritten constitution as the fundamental law of the polity that can control power through the distribution or reciprocal checks and balances in formulating the will of the state (“Constitutional Government,” 2017).

*Constitutional tradition:* The values and established system on law and governance, which is hard that the government is required to comply with its decision-making process. The separation of powers principle, passive judiciary, non-delegation doctrine, constitutional safeguard of individual rights, and etc. constitute the elements of tradition, often top-down and critiqued as laboratories of destitution by democratic experimentalists (Law Teacher, 2017a, 2017b).

*Decentralization:* The process of distributing or dispersing functions, powers, people or things away from a central location or authority. Political decentralization or localization, as associated with pluralism and democratic representation, aims to be more democratic by giving citizens or their elected representatives more power. The principle of subsidiarity followed by European Union is one example, in terms of political decentralization or localization, in that the most local competent authority should make a public decision. The centralization and decentralization occur within both of public and

private sphere, in which the tradition of private sphere could be learned by the government (Decentralization, U. N. D. P., 2005).

*Deliberative democracy* (used interchangeably with *representative or direct democracy*): A form of democracy with the elements of consensus decision-making and majority rule - beyond mere voting - in order to give a primary source of legitimacy for the law. Hence, deliberation becomes central to decision making (Elster, 1998)

*Democratic experimentalism*: A scholarly viewpoint for the reform of democracy to meet the ideal of democratic participation or conditions of communication eventually shaping it. Democratic experimentalism looks to connect the different levels - the society as a whole and the immediate local community - to correct the defects of an exclusive focus on either (Sabel, 2012)

*Nondelegation doctrine*: The principle in administrative law that congress cannot delegate its legislative powers to agencies without the intelligible principle, so that the representative democracy can be ensured and the agency can base their regulations on the will of people. It has been rarely used to strike down legislation because it is lenient in nature and according to a number of cases including *Whitman v. American Trucking Associations, Inc.*, 531 U.S. 457 (2001) (CLS Legal Information Institute, 2017).

*Public administration*: The implementation of government policy, in which the concerns center on the organization of government policies and programs as well as the behavior of officials. It is carried out in public interest, and is a feature of all nations, whatever their system of government. Its fundamental goal is to advance management and policies so that government can function while the elements include the planning,

organizing, directing, coordinating, and controlling of government operations (Management Study Guide, 2017).

*Separation of powers principle:* A principle that ensures that the three major institutions of the state (i.e., legislative, executive and judiciary) are not concentrated in any single body and are independent in functions, personnel, and powers. It is a model for the governance of a state, in which the legislative performs a law-making role, executive executing the law into operation, and judiciary interpreting law to settle disputes. Within the dogma of clear distinction of powers between the three branches, the principle intends to prevent the autocracy or inefficiencies and to provide the checks and balances for civil liberty (Law Teacher, 2017).

### **Assumptions**

Although this research study is designed to rely on empirical investigation, there are a number of assumptions based on researcher's bias or subjectivity that may possibly obscure the accuracy or validity of reporting. Presumptions affecting this study include the following:

1. Governmental success and the happiness of the nation's population depend on ideal constitution of government and excellence in its practice and public administration on that foundation.
2. Participation in public decision-making by interest groups and stakeholders in a democratic regime is keenly dependent upon the manner in which the system and practice of participation and input is structured.

3. The increasing adoption of information technology and development into the mosaic of societal networks makes the role of public administration more important, and contributes to the corrosion of the traditional dichotomy between the public and private spheres.
4. Popular participation through localization and mutual learning with citizens causes policy and governmental decision-making to be more thoughtful and enhances the quality of the constitutional and administrative processes.
5. Challenges in developing good constitutional practice could be attributed to inadequate approaches associated with a top-down tradition of modern constitutionalism, failure to tap the capacity of civil society and lack of emphasis on the primacy of the private sphere.
6. The interviewees are sufficiently familiar with constitutional issues of the nation to provide well-informed responses for the objective of this research study. They also would be able to provide unbiased answers to questions including those relating to any hidden or political agendas.
7. Perceived hierarchical or societal perceptions involved in the interviewer-interviewee interaction would not substantially impact their independence and consciences to consent to or provide responses to questions.

### **Scope and Delimitations**

This study focuses on challenges arising from the constitutional crisis that Korean government and academia are facing in response to increasing public concern for improvement of the constitutional government and practice. Given the inherent

inseparability between governmental institutions and the people they serve, the related goals of improving the success of government and bringing happiness to the people underlie any fundamental inquiry about the democratic aspect - being constantly variable, and hence experimental in nature - along with the legal aspects of constitutionalism – valued to bring predictability and stability (Kumm, 2012; Landau, 2013; Sabel & Simon, 2004, 2011; Sabel & Zeitlin, 2012). This research study only relies on the principled level of approach that is not exhaustive to explicate the details or create a legislative proposal on a specific public agenda or public issues (Myerson, 2014). Based on the following three dimensions of major concern: the study is designed to collect and analyze material data to develop answers in terms of private and public-sector compatibility, the national framework, and a new concept of rights. Given the first dimension brings the core idea for new understanding of constitutionalism, the latter two have long been leveraged to explain constitutional law. The first (public-private compatibility) dimension, as a principle, will inform and guide the exploration of the latter two (governmental framework-rights) dimensions that delimit the scope of this study.

The general study guidelines adopted a sample size of 16 interviewees as being appropriate for this Korean case study. The study employs a purposive sampling reflecting that the interviewees are most knowledgeable to provide in-depth information to understand the constitution and democratic government. A trial set of pilot interviews will be properly used to test interview protocols and appropriateness of interview questions, and reliability and credibility will be improved by forwarding the interview results to participants and allowing them to check their accuracy. With the information



provided and disclosed above in detail as the assumptions, limitations, scope, and delimitations, the study result can be used as a model for democratic government and modern constitutionalism that is transferable to countries of similar political culture and developmental history (Škof, 2012).

### **Limitations**

According to Creswell (2009), certain limitations render the analysis of research findings speculative because of potential shortcomings inherent in study design. This study has the following limitations associated with the nature of its object and methodology.

The case of South Korea can be distinguished in that its legal system and constitution have largely been influenced by the continental tradition of Europe. Given the global impact of U.S. constitutionalism as the historical precedence of modern democracies, traditions can correlate and lessons from the U.S. as the pioneering state for democracy generally and experimentalism in particular can be precious to help face the challenges of constitutionalism in Korea. Nevertheless, the traditions differ in that their epistemology and perceptions are not perfectly aligned being that Korea is a civil law country (Michelman, 1987). Citizens and legal intellectuals in Korea are more than austere with respect to the public and private distinction, another feature that sets its tradition apart (Oberndorfer, 2015).

Additionally, Koreans have a unique history that involves in modern times its historical struggles for economic development, restoration of democracy, and a fragile peace regime against the ongoing north-south conflict. This is a unique Korean

experience that shapes the participants' points of view and may skew their perceptions and appreciation of and characterization of key issues involved in the phenomena of good constitutionalism.

Another limitation associated with this study is related to the selection of interview participants. The interviewer selected interviewed participants for their status as uniquely qualified professionals with highly socialized viewpoints, while the reality of their actual opinions may be more private in nature. The researcher bias is also rooted in his passion as a citizen of Korea and because of a long engagement as a professor of public law, being perhaps immoderately concerned with the development of the constitution and successful government in Korea. A propensity of public officers to deny or restrict an access to the documentation and records of government may create some barriers limiting the perfectness of this research study.

Yet another limitation may be due to the small sample size, which lacks diversity or otherwise negatively impacts the generalization of results. The potential to be narrow and repetitive in responses may be overcome by a larger participant group so that future studies may improve the quality of research outcomes. Since so-called saturation may not occur from the first sampling of interviews, selection of prospective interviewees needs to be made carefully at the actual stage of data collection.

### **Significance**

From a scholarly perspective, this research is significant in that it will help fill an existing gap in the literature that examines constitutional issues in South Korea, providing a connective and relational explanation of how constitutional government

functions in South Korea, and explaining the dichotomy that exists between the constitutional tradition and democratic experimentalism (Dorf & Sabel, 1998, 2000; Ford, 2001). This study is also significant in exposing key factors and elements of Korean constitutionalism which support government transparency and accountability and consequently improve the public's perception of government in South Korea. The findings from this research might help future scholars better interpret the South Korean constitutional system and its democratic and deliberative processes.

From a practitioner's perspective, this study is significant given the seemingly general lack of understanding of democratic experimentalism as a key driver of constitutional government. The results from this study can serve decision makers and public servants in general to make better-informed decisions in support of more democratic and transparent government. In terms of social change, this study presents an opportunity to shed light on what appears to be an understudied area of inquiry. The hope of this researcher is that this exploration will spawn new related studies and generate additional material research. Likewise, bringing attention to this important issue has the potential to increase civic engagement and greater collaboration between the public and government officials (Sewell, 2005).

### **Summary**

Chapter one provided the critical elements underpinning this dissertation. The problem statement was clearly identified and a gap in the current literature identified. Recalling the purpose of study, research questions and theoretical framework, this research, this study seeks to better understand constitutional government in South Korea,

through an assessment and evaluation of democratic experimentalism. A review of relevant literature and fundamental elements of the theoretical framework anchoring this study are illustrated and discussed in detail in chapter two.

## Chapter 2: Literature Review

### **Introduction**

The purpose of this study was to better understand the impact of democratic experimentalism on constitutional government in South Korea. Such knowledge may help policy makers to improve public trust in the performance of government. Although many researchers have addressed the questions of more effective and successful constitutional government (see Kim, 2017; Kyung, 2007), there is still a gap in knowledge on the topic, according to my review of the literature. I believe that this knowledge deficit stems from a lack of comprehensive perspectives and from disconnected scholarship about the challenges Korea is facing.

Chapter 2 provides an in-depth examination of the literature on the constitutional tradition and the development and reception of the constitutional theory of democratic experimentalism. The chapter also include discussion of more effective constitutionalism in the Korean context and how this pertains to successful government in the constitutional democracy. The purpose of this literature review is to present a focused review of constitutionalism and democratic experimentalism, their strands and relationships, and implications relating to jurisprudence, public ideals, and politics and public administration (Allen, 2012; Ackerman, 2000; Butler, 2012, 2017; Colon-Rios, 2012; Dorf & Sabel, 1998; Sabel, 2001). The literature review also provides the readers with background information needed for a preliminary understanding of the causes, issues, and alternatives, and arguments that have plagued the circle of Korean politics and constitutional policy makers (D. H. Kim, 2010; Lim, 2015; T. W. Kim, 2010). Through

the literature review, I intend to provide a clearer picture of the research topic and to define the direction of this study. The literature review also helps to (a) address the main and secondary research questions; (b) identify the gaps in current literature; (c) broaden the knowledge base on the constitutionalism on democratic experimentation, particularly involving the Korean context of constitutional government; and (d) prevent duplication of knowledge.

This chapter offers an examination and synthesis of the empirical research on constitutionalism and theory in general, particularly focusing on the constitutional issues of South Korea along with the theory of democratic experimentalism and how it supports an ideal philosophy. The first two sections, “Constitutional Government and Tradition” and “Toward the Public Governance,” emphasize literature concerning constitutional institutions and tradition as developed within the United States and the western world. Besides key word searches, I collected a number of papers from the most cited legal articles from HeinOnline, a major legal database. The rationale for this section is to evaluate how constitutional law provides the backbone of government practice and is adapted to the needs of public governance, and what it does not say about the effectiveness of government and democratic process or values.

In the two sections that follow, my focus concerns presenting the main theory of democratic constitutionalism under the title of “Ideal and Philosophy” and “Constitution on Democratic Experimentalism.” I also compare the relevant theories to and contrast them with the subsection on “Relationship and Compatibility.” The objective was to describe, synthesize, and analyze an extant scholarship enabling discovery of the

common and different perspectives of constitutional system and practice and identifying any shortcomings in the existing literature.

The third part of the literature review includes the sections, “Constitutional Government in Korea,” “History and Reflexivity,” and “Prospect and Challenge,” and reflects a focus on literature that deals with the constitutional issues of reform historically and currently as developed in South Korea and other relevant research involved with the problems identified in this study. The purpose of third part is to present a clear picture of the historic development and current constitutional dilemma in South Korea and consider why the results of this investigation have significant appeal for academics and practitioners.

### **Literature Search Strategy**

In conducting my literature search, I sought to gain a comprehensive understanding of democratic experimentalism and the Korean context of constitutionalism within certain time and budgetary constraints. When performing a search for this study, I used the following databases, which I accessed via Walden University Library and through general Internet searches: Google Scholar, Lexis and Nexis, HeinOnline, ProQuest, EBSCOhost, Academic Search Complete, Social Science Research Network (SSRN), Researchgate.com, Academia.edu, KISS and e-article.net. I conducted key word searches and used around 15 terms to retrieve over 400 articles and books. These were trimmed to roughly 200 articles and books. The key words included *democratic experimentalism, constitutionalism; democratic process; constitutional reform; government system; Korean constitution, efficacy, and effectiveness;*

*decentralization and localization; competitiveness of government; separation of powers; nondelegation; administrative law; decision-making; deliberative democracy; and directly deliberative polyarchy.*

First, I initially conducted research on 15 search terms using the following library databases: ProQuest, EBSCOhost, and Academic Search Complete. Walden University Library offers a wide range of sources, especially of English language scholarship (Schrum, 2004). Second, I retrieved the Korean sources of literature through KISS and e-article.net. Using the 15 search terms listed at the beginning of this subsection, I was able to find a fair range of Korean-language books, articles, and dissertations enabling sophisticated consideration of social and governmental problems. The National Assembly of Korea administers the largest national resource to satisfy the research needs of members and the general Korean public (Kim, 2017).

The contemporary researchers are fortunate to benefit from the abundant electronic sources made publicly accessible through various websites operating on the basis of public cause and objectives (Murray & Desanctis, 2006). The SSRN was consulted, which was formed in 1994 with the aim to support the worldwide dissemination of research. It provides its own electronic library, allowing registered use for every possibly interested researcher, the volume of which amounts to millions of articles, books, working papers, and other sorts of research product drawn from virtually all around the world. The system of search is very refined, such that the researcher does not need to consume much time to locate the piece(s) of interest. Academia.edu and Reserchgate.net also are popular electronic depositories that are searchable to meet the



needs of researchers. These 15 terms were applied to retrieve materials needed for the purpose of this research using the terms as modified by virtue of Boolean search alternatives. These websites have been especially useful to read and download the most up-to-date research products since they provide the conference proceedings and working papers prepared by the noted authorities in a specific field. The kinds of public service grow such that a more refined system of library use will be updated daily for the convenience and easy cross-referencing. Nevertheless, it is alarming that the reach through the electronic sources is at best 10 % of should-review literature according to the source report. This remark, of course, assumes that we have to conduct an exhaustive review, which is generally predicated upon the doctoral capstone student.

### **Literature Review Related to Key Variables and/or Concepts**

#### **Constitutional Government and Tradition**

Overview. As the purpose of research triggers a description of the constitutional government through democratic experimentalism, the constitutional tradition is the end subject, a kind of citadel to attack and reconcile to explore, discuss, critique, propose and suggest the new shape of constitutionalism and public administration. This necessitates a source of literature dealing with the rule of law and constitutional interpretation. The theory that explains the constitutional principle of democratic experimentalism began to be developed to address the limitations of constitutional provision. It also was designed as it was to incorporate the experimentalist nature of democracy into the constitutional system and process. In this vein, the traditional theories of constitutionalism, including the separation of powers principle and non-delegation doctrine as well as the stringent

concept of individual rights, are fundamental to this research study. They provide for a comparison of the basic concepts that describe the constitutional system and structure in South Korea as they relate to democratic experimentalism. Insights from the literature reviewed in this section run as a thread through the theory of democratic experimentalism described in the following sections. They provide the groundwork to survey the terms and requirements concerning CGDE, its ideal and philosophy, and relationship and compatibility, and help to answer how constitutional government can be defined and improved in South Korea. Consequently, the databases listed above were used to search with the appropriate key words to meet these goals, including terms, such as constitutionalism, democratic process, constitutional reform, government system, competitiveness of government, separation of powers, non-delegation, administrative law, decision making, and deliberative democracy.

Synopsis. The modern constitutionalism had been imperative to emancipate the feudal subjects for their life, liberty, and welfare, which was enabled by the civil revolution around the 19th century and through the American Civil War over the fourteenth amendment of constitution (McConnell, 1984; McKay, 2017). It has underlain the foundation of the modern liberal and capitalist paradigm of states, some of which have argued against their fate and toward the ideal state of working class liberalization (Ackerman, 2000; Thayer, 1893). The forms and history of modern constitutionalism variegated across the states of modern democracy. Whilst the British tradition is founded on unwritten constitutions and constitutions of parliamentary government, US constitutionalism has exported the presidential government and separation of powers

principle to the global states. Nevertheless, the rest of world democracy should be pluralistic with a considerable number of malignant regimes on the puppet constitutions in communist states and several of new born republics (Allen, 2001; Hallowell, 1976; Hardin, 2013; Norton, 1982).

The constitutional government requires people to obey the constitution as a supreme law of land. Under the constitution, the elected political branches and public agencies rule their subjects and provide the service of government for the various ends of the nation, including the protection of human rights and provision of welfare benefits or public programs (Ackermann, 2000; Huscroft, 2014; Metzger, 2012; Monaghan, 1983). The constitutional tradition differs in extent and across the countries, in which the political branches and judiciary interplay or check each other to assert their public values and the national framework, as well as the rights of the individual (Fiss, 1979; Kennedy, 1976). For example, the federal system of government may manage a dual sovereignty between the state and federal government, in which the constitution differently defines their respective roles and responsibilities. The role of the judiciary differs; strong judiciaries serve as a final bulwark to protect human rights as well as being crucial to maintain the federal system, for instance by interpreting the constitutional provisions and entertaining the prestige of final say about what the constitution ultimately means (Fuller & Winston, 1978). A weak judiciary, on the other hand, wields a limited power that only is granted with the preliminary review of legislative bills on their constitutionality before passing into effective national law.

A constitutional government is predicated on the rule of law ideals that the judiciary often oversees the policy making and its implementation under the legal tenet of judicial review as well as involving adjudication over loss or damage of individuals (Cover, 1983; Loewenstein, 1937). The constitutional tradition could build on the rule of law and top-down schema, on which the public agency is empowered to rule, yet assumed to respect the constitution and public statute (Huq, 2012; Huscroft, 2014). The tradition also recycles and is ascertained, in itself, through the role of the judiciary involving production of case laws and the stare decisis principle sustained by the case law tradition. The civil law countries also manifest their constitutional tradition with the same institution, which we call judicial review, that effectively monitors and checks the activities and will of political branches as a final arbiter of the constitution. The effect of constitutional adjudication may differ across the traditions, in which the abstract review can nullify the legislations as absolute and determinatively. On the while, the concrete review can only deny the application of law, if adjudged unconstitutional and invalid, to the case at review (Tushnet, 2013). However, the concept of modern constitutionalism transforms the traditions to deal with a foundational shift of state paradigm over history and societal conditions (Monaghan, 1983; Peterson & Rom, 2010; Young, 2015).

A classic liberal constitutionalism ideated the limited government and principle of separation of powers in expectation of yielding a most generous type of government for the new wealthier class (McConnell, 1984; Thayer, 1893; Vile, 2012). It is synonymous with the citizenry within the discipline of public administration. In classic constitutionalism, a negative liberty is an ultimate destination of government to protect

the human dignity and core values of humanity. A culmination can be historically vindicated through the American Civil War that people fought for equal protection under law guaranteed as a matter of federal constitution beyond the respective states (Wechsler, 1954).

Given that the classic liberal constitution is predicated upon the free market and capitalist production, the state paradigm to protect the wealthier class and advocacy of negative liberty faced a challenge from increasing social injustice upon the turn of last century. A modern administrative state and concept of positive liberty were an inevitable outcome in response to the wrongs of the market. The resulting need should be obvious for public intervention to correct the abuse of private power that dehumanized the working and living conditions of the underclass (Metzger, 2012; Michelman, 1969; Monaghan, 1983). In this paradigm, a positive liberty is envisaged to respond with the constitutional crisis and challenge. So every citizen shall be enabled to perfect their ego and ability with the intervention of government and provision of public service. Due to its limitations, government action increasingly turns out to be equivalent to an incapable or failed administration since government must provide marginalized people positive rights at the public expense. The goal is to restore and empower them to humanely manage their lives (Peterson & Rom, 2010). The constitutionalism and understanding of respective governments or governance enriched their contingency such that we can encounter a dichotomy between the national and international constitutionalism (Teubner, 2012; Waldron, 2012; Wiener, Lang Jr, Tully, Maduro, & Kumm, 2012). International constitutionalism may be soft and elegant, including progressive ideas, such as the first,

second and third generations of human rights under the United Nations (UN) project. A rough and soft description of diverse constitutionalism has prospered; for example, one study explores the Confucian constitutionalism to bridge the gulf in philosophy of nation between the west and east (Ham, 2000). Determinist and positivist theories on law and constitution describe dominantly the status and characteristics of national constitutions (Hart, 1958; Van Alstyne, 1968; Vile, 2012). In some views, such invincible adherence to the supremacy of sovereign laws could create the conditions that led to past world wars and helped to reinforce their attitudes toward fascism and imperialistic competition.

### **Toward New Public Governance**

#### **Overview.**

In line with the thought of liberty and emancipation as an ideal of CGDE, the constitutional traditionalist crafted an important concept, called privacy, which defines twilight of the nucleus bridging the public and private life domain (Hofstadter, Brandeis, Horowitz, & Warren, 1964). An economist, Coase, thankfully provided a theoretical thread for the foundation of institutions and public administration that the public actors from the government and public institutions had to deal with the problem of social cost (1960). Constitutionalism and public administration had awakened an enduring assertion through academics that the role of courts, especially the forms of justice under the rigidity of separation of powers principle (henceforth, “SPP”), but potentially into the sphere of politics and public administration, had been frequently revisited by commentators (Fiss, 1979; Resnik, 1982). This subtitle of the literature review represents an inner elaboration of judicial scholars through whom constitutionalism gradually

evolved in each period (1900–1940/1940–1960/1960–2000) as Figure 1 shows. In combination with the above subtitle, the works below are aligned to influence the Korean constitutionalism and referenced into a dialectic progress with the CGDE.

### **Contingency and Eclecticism.**

Insiders voiced their perspectives that rigidity in constitutional theory, such as the separation of powers principle and non-delegation doctrine, are merely true on a contingent and relative basis. A new wave toward eclecticism in law and public governance beyond the customary discourse of the constitution roared into prominence to empower the transformation of traditional jurisprudence.

Wechsler (1954) argued that the special role of courts is to maintain, interpret, and develop the chapters of the constitution for the organic framework of government. It requires deciding all constitutional cases, beyond the limited justification of judicial review over the legislative action, so as to rest on reasoning and analysis and transcend the individual cases at review. Given that law is a paraphilia of social control with the rules and principles of justice and formal institutions of law, Cover (1983) argued that the normative world, what we call *nomos*, can be in a productive and mutually corrective relationship with the narratives with which it is inseparably related. Every prescription of law can be traced to the discourse with history and destiny of nation and purposes, as well as its origin or demise, which is for the opposite in the case of narrative texts.

According to Fiss (1979), the constitution is a supreme law to create the government, describing its role and responsibility, and determines their relationship. He argued that adjudication is a social process, determining our social quality of existence,

as judges offer a kind of range of voices -- like other interest holders including private citizens --although they have no monopoly to define the public values of the constitution. In this sense, the structural suit is to defend the public values and restructure the present institutional arrangements to eliminate a threat to those values, and the injunction, as a means and special form of justice, can transmit these reconstructive directives of court.

According to Tushnet (2003), the worries persist with rights and democracy as analogous between the legislative or judicial supremacy. The institutions seeking to accommodate both traditionally addressed the needs of constitution for legislative supremacy along with judicial implementation of constitutional limits. Some recent developments in several countries may suggest that these traditional accommodations in the long run could not survive a separation and bifurcation among the political and judicial branches.<sup>1</sup> Paul Sabatier explicated an interchange between the court and elected branches by discussing 32 case studies including the issues of gay rights, abortion, affirmative action, and women in the military (Sabatier & Weible, 2014).

Richard Posner distinguished between the immutable entitlements supplied and conditioned by the contract and inalienable ones outside it. He presupposed the differences of nature entailed by the contractual relationship, so that the private and

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<sup>1</sup> This transformation has occurred within Great Britain, South Africa and Canada since their reform displayed a preference for the political branch over either a weak or strong form of judicial review. Nevertheless, the odds for such increased democratization are not inevitable, and a weak form of judicial review, a kind of middle-of-the-road accommodation between the right and democracy, may result in a strong form judicial review or parliamentary supremacy. Even if a dialogue on democratization does not ultimately provide a solution to the practical problem of public governance, it may contribute to the academics as a lens of analysis and perspective.



public nomos essentially are a different dose in the legal terms and frameworks (Gilson & Kraakman, 1984; Kaplow, 1992; Landes & Posner, 1979). Somewhat variegated from the neo-classical law and economic analysis (Jolls, Sunstein, & Thaler, 1998), suggested the thesis of behavioral approach with the aid of bounded rationality, self-interest and will power. He proposed that the positive, prescriptive, and normative analysis can delve into making the rational actors model less material. It can be feasible by explaining the behavior of officials, most effective rules to the specific ends, as well as making a broad assessment of the rules for the ends of the entire legal system (Jolls, Sunstein, & Thaler, 1998).

Comparing the European Union (henceforth, “EU”) and US (De Burca, Grainne, Keohane, Sabel, 2014) argued that the success of experimentalists for new governance and rule of law depends on the circumstances and conditions with which the community is faced. The policy process of the EU is engineered by little autonomous regulatory authority, and intrinsic elements that underpin the framework—i.e., integration and practice of EU. It seems properly viewed as a top-down affair, in which the open method coordination or participatory, collaborative, reflexive decision making virtually has no place intuitively and realistically. In other words, a backdrop and conditions of community define the different ways of evolution and grapple with different challenges. This makes a new governance, more genuinely problem-driven and bottom-up efforts developed by the US, inappropriate to describe the EU because the latter features a hierarchical engineering by bureaucrats and the traditional trait of coordination (De Burca et al., 2014; Verdun, 2012).

Nevertheless, there is a need for comparative studies because the differences are inseparable from the fundamentals and because they hold true in their particular contexts of geography and history. In a sense, similar problems and challenges can develop squarely into the terms, policy analysis and evaluation of jurisdiction although it might be a matter of emphasis and degree (De Burca, 2010; De Burca et al., 2014). For the policy students, it is more inspiring to discuss the commonalities of polities despite their great differences or their need for centralized promotion cropped up with the coordinated and decentralized new governance (Gerstenberg & Sabel, 2002). This principle requires a broad range of governance experiments. It responds with the challenges from a variety of contexts and endorses many novel forms seeking efficacy and public accountability, such as government partnerships, social welfare programs, and environmental-impact assessment (Liebenberg & Young, 2015; Liebman & Sabel, 2003).

In terms of evaluation, three major sites of governance should have their regulatory or quasi-regulatory arrangements defined, but not directly borne from successful or dysfunctional experiments (Wilkinson, 2007). In the experiments, the different background conditions are relevant given their viability and likely success of new governance, and the inappropriate arrangements can create recurrent problems or criticisms. Strategic uncertainty and interdependence, two different kinds of impetus or conditions, can foster a background for the rise or creation of a new system of public administration. Despite differences in nature and degree, interdependence inevitably occurs through sites of governance, globally or transnationally, to the EU through a medium, and through the nation states including the US, in which strategic uncertainty

can be foible in many cases. Wilkinson (2007) argued that the intensity is associated with the problem and significance of interdependence. Two hypotheses can well appertain to the current dilemma and questionable aspect of a new governance system and affect the viability and likely success of the new arrangements (Wilkinson, 2007). As we see the technical harmonization progress in the EU, he suggested that learning from difference or pure experimentation is a weaker element than intense conflict or need to coordinate and align systems, because the agenda is visible and economically salient (Wilkinson, 2007). This does not necessarily require that the field falls with crisis-proportions or the degree of interdependence be strong. The social Europe may be different in that top-down framing would work less effectively than the bottom-up process for problem identification or engaged benchmarking.

Ford (2001) suggested the importance of stakeholder groups that factors critically the success of a new governance system, necessitating the policy focus avoiding marginalizing or excluding to any considerable extent. According to Ford (2001), the new system of experimentalist governance would be modular surrounding the features of (not exhaustively) broadly framed goals, stakeholder participation, flexibility, etc.<sup>2</sup> He also proposed that adequate data and monitoring plays a critical role to maintain the system properly and successfully.

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<sup>2</sup>Besides these, Ford (2001) illustrates revisability, monitoring and peer-review, transparency, a data-based approach, learning-oriented, multi-level as key components of experimentalism governance.

## **Ideal and Philosophy of Democratic Experimentalism**

Overview. Democratic experimentalism can be traced to a certain western philosophical tradition. Therefore, the nature and essence of CGDE bootstrapped to it provides the touchstone of moral judgment and enables a more plausible understanding of contested aspects of explication. As we note, the ideal, philosophy, and relationships are aligned to the core of CGDE scholars by whom the theory of democratic experimentalism is positioned, evaluated, and criticized. Its prospect and developmental future are suggested to be contingent on the constitutional tradition.

Proposition and criticism. A number of scholars explore the original landscape of democratic experimentalism by elaborating to propose and criticize the theory based on the ideal and philosophy, in which the mainstream of western thoughts had developed and complemented among another.

Legitimacy, participation, and accountability, elements used to support democratic experimentalism, can bring the archetypes to serve the heterogeneous, complex democratic system in Canadian federalism. According to Ford (2001), democratic experimentalism fits well within the issue of Quebec secession, which can work more effectively to yield a clear qualitative majority than a referendum. His conclusion endorses some implications, beyond the bottom-up character of the theory itself, that the theory can cure the top-down troubles within the complex federalism.

Colburn (2004) argued that the SPP still effectively undergirds the pillar of the administrative state, and remains a powerful mechanism to instruct the new governmental innovation. By missing the historical point of SPP, the democratic experimentalist failed

to count its ambivalent pieces through the Administrative Procedure Act, a *détente* between the constitutional tradition (e.g., SPP) and democratic experimentalism. While democratic experimentalism reoriented the former foundation of the Leviathan state (authoritative, inscrutably rigid bureaucracies, cravenly partisan and political), he argued that it sought foundational similarities to coexist with the constitutional tradition, facilitating a new deliberative structure of the regulatory state leading to a new participatory and collaborative state (Colburn, 2004; Eckert & Börzel, 2012). According to Sabel (2012), Dewey's concern on the organizing reform of democracy or conditions of communication eventually is destined to joint problem solving and individual development. Democratic institutionalism can respond by connecting the society as a whole with the immediate local community and can correct the defects of excluding one another.

Scheurman (2004) argued that the theory has shortcomings of failing to tame and humanize capitalism, although its focus is economic-normative, asserting the deliberative polyarchy and learning of government from the private organization. Super (2008) pointed out decentralization, deliberation, deregulation, and experimentation as the central frame of democratic experimentalism. He suggested an approach ideated to offer pragmatic solutions to social problems, but the experiment with anti-poverty programs had largely failed, as exemplified by the calamity of low-income people after Hurricane Katrina. He argued that the success of democratic experimentalism would be impossible without some essential prerequisites: (a) consensus on the nature of the problem; (b) propriety of government action; (c) reliable metrics for measuring success; (d) luxury of

time; (e) lack of situations requiring centralized policy making; (f) costless deliberation. In fact, he hinted that many of the government agenda items could be more properly responded to with centralized policy making (Scheurman, 2008).

A dual-sided transformation, central or hierarchical and local or polyarchal, largely does not annihilate the principles of constitutionalism and the crucial values of republicanism. On the while, it incrementally reshapes their aspects of policy creation and implementation to accommodate profound societal change (Dorf & Sabel, 1998; Allen, 2012; Ansell, 2012). In this sense, the incense of high principle seems likely to recur; that provides the basic structure and foundation of maneuvering standards for the public actors as we pass a historical eye over the Madisonian austerity, to New Deal reshuffling through the information age (Dorf & Sabel, 1998).

A foundation of economic and political assumptions underlying the CGDE holds the fixity of mass-production that inevitably needs a new labor of ruling elites. The new labor is based on the information pooling, coordination, and monitoring as well as creation, recycling, and learning of rules (Dorf & Sabel, 1998). A creation of rules and their implementation are not intended to upstage the social actors. It is not only based on experimentation or feedback therefrom, but also on new terms of rules from learning therefrom. They are essentially participatory and under the belief in the pragmatic or incremental improvement possibility from the bounded rationality of national, subnational, and state governments (Cohen, 2013; Fossum, 2012; Sabel, 2012). The assumption is, in light of the social contract, that cooperation will be cherished and will provide a chance to admit the conditions of which one's positive liberty will be restored.

Wilkinson argued that the theory of new democratic governance paradoxically possesses the democracy deficit character by failing to provide the democratic or broadly participatory networks, and possibly resulting in the establishment of elitists (Sabel, 2012). The undemocratic nature of participant selection, technocracy and managerialism voids the essence of political process and values. It makes the theories normatively flat and mute without not committing itself to or bracketing the question of any theory of justice (Pappas, 2012; Ralston, 2012). The theory likely will not provide a fitting account unless certainty and bright-line rules are defined to sustain the system. A totalitarian proposition, heralded as a kind of panacea by its advocates, can create a misimpression and be inappropriate since there are various different kinds of policy problems. It implied that hybrid kind of organizations may respond better with the combination of flexible policy-making and hard rules on entitlement and procedural rights (Pappas, 2012; Börzel, 2012). Learning from both success and failure stories is vitally important to reduce the predictable flaws and to design the institutions accordingly. The theory of justice ultimately derives from the exercise of public reason. So the scholarship of new governance stands on a different spectrum in terms of distributive justice, making it a new theory of justice with the recursive, deliberative, participatory system. It seeks shared solutions to combat common problems (Bach, 2012; Bader, 2014; Behagel & Arts, 2014; Nourse & Shaffer, 2014). It is normatively required for the success of the system that the stakeholder participation has to be designed to ensure the broadest possible groups, not harming the effective decision making as well as informed and effective monitoring.

## **Constitution on Democratic Experimentalism**

Overview. Terms and requirements as shown in Figure 1 are directly related with one primary and three secondary research questions, and extensively explored to articulate the kind of new novel form of governance, yet compatible and adjusted under the constitutional tradition. As the arrows in Figure 1 suggest, the character of the new form of governance can enjoy a fit with the inner elaboration of progressive American legal thought with a little thicker arrow and compromises a rigid tradition as the slim arrow hints. A one-directional arrow suggests a unilateral export of influence as meant between the universal or American constitutional tradition and the source of the Korean paradigm. Given that the impact of interchange is often ideological and suggestive between the law and social philosophy, the slim arrow interrupts between the two uppermost slots in the diagram.

Terms and requirements. An experimentalist congress protects a citizen from the abuse of powers exacerbated by the central authority itself and from the hierarchical structure friendly with the ignorance of local circumstances. It needs to work on a double with experimentation to identify and adjust with the complexity of citizenship goods and uncertain components of services, as well the diversity and volatility of citizen users' needs (Dorf & Sabel, 1998). The congress, in collaboration with the levels and units of government, performs the role of authorizing, financing, and withdrawing the national support. It is based on the measurement and information yielded through the citizen participation.



A chief role of agencies in experimentalism is the organizational link for the local, state and federal government. The agencies perform a benchmarking comparison and regulations reflecting resulting differences from the diverse and composite measures (Dorf & Sabel, 1998). An obstruction, inversely using the citizen participation and to frustrate their efforts, inevitably can occur. However, the experimentalist administration eventually prevails because the mechanism is effective to identify and generalize the good practices as well as to reorganize the ability to recycle the kind of experimentalist process (Behagel & Arts, 2014; Stewart, 1975). Within the administration, the novel forms of organization flexibly and comprehensively over the needed expertise will be introduced as a conduit of information from the involved actors. Learning by a monitoring institution occurs to be capable of evaluating various differing situations, what is called team, peer, and participatory administration. They not only coordinate, but also adopt the new disciplines from resulting differences on experimentation, such as safety standards for risky industries (Dorf & Sabel, 1998; Behagel & Arts, 2014). The new innovation on experimentalism improves the New Deal pattern of organization. So distance or detachment as well as the extensive, professional and independent staff and normal research sustains their responsibility to establish the general, enduring, and impartial rules. Instead, it can enable production of the fine-grained information with complex alliances and various interests and can outperform the traditional approach relying on the normal research. The process and experimentation reinforce a continuing struggle of agencies to be aligned with the social actors. They are responsible for crafting

good practices in terms of design and problem solving as empowered with the magisterial lawgiving and factional politicking (Carolan, 2012; Robilant, 2014; Stewart, 1975).

Beyond a side constraint defining the legitimate scope of national legislation, federalism plays a centralized part of institution. A bifurcated schema can be finely identified between the authorization or finance by the congress and actual implementation by the state or local governments (De Burca, 2010; Dorf & Sabel, 1998; Sabel, 2001). As a theory of experimentalism, the two limits need to be respected to renew the traditional understanding of delegation – viewed, in principle, as non-delegation. Therefore, the congress shall provide a guideline as to the objectives pursued by states. However, it should not be so much and without surreptitiously introducing preferences for some means or others. As exemplified with the helter-skelter decentralization of welfare reform or same sex unions, the abdication of congressional responsibility from deciding important national policies can be widely permitted by evoking the non-delegation doctrine sparingly (Bohman, 2013; Dorf & Sabel, 1998).

The best understanding of rights, deeply entrenched immunities and benefits, is historical, experimental, incremental, and with conflict as charted over the expansion of franchise. It compels it to be viewed as a pleonasm rather than essentials or oxymoronic (Sabel & Simon, 2004). As we legally vindicated on the growth of rules and concomitant rights of suspects or criminal defendants, the rights are implemented as prophylactic or pragmatic by case. They also are defined with the institutional correlates and starkly manifest themselves as transformative potential (Chayes, 1976; LaFave, 2004; Sabel, 1998; Sax, 1970; Smith, 1922).

A court practice and federal government collaborate with the concept of learning by monitoring to combat drug abuse by criminals (Dorf & Sabel, 1998, 2000; Resnik, 1982). Through the times and across the drug treatment courts, they argued for a wide spread of a remarkable ensemble of institutions. It is comprised by the courts, court personnel to manage programs, and the federal government leading the information pooling or, as an authority, to monitor and disseminate successful practices (Berk, Deutschmann, Quack, Schneiberg, & Ansell, 2012). According to Dorf and Sabel (1998, 2000), the judicial involvement is continuous and incremental, which is less imperious than traditional court responsibility centered on the comprehensive remedial plan. A sedative meliorism occurs in response to comparisons with the experience that trade-offs between the efficacy and accountability (greater assumption in public administration) is no longer operative through this kind of new arrangement (Dowdle, 2017; Kersting & Vetter, 2013; Sabel, 1998).

Keohane, Macedo, and Morvcsik (2009) argued that multilateralism and the international organizations possess an extent of potential to enhance the quality of national democratic processes. Contradicting a widely-held view, they suggested that it fosters the well-functioning democracies and can restrict the power of special interest factions, protect individual rights, and improve the quality of democratic deliberation.

Dorf and Sabel (1998) argued that a local problem-solving unit is primary, and central government, in terms of democratic governance, can be capriciously unreliable ignoring the local circumstances (Eberlein & Kerwer, 2004). It neglects the responsibility to coordinate and construct, but surely is reformable with the fears of feudal overload,

self-limitation, and formalism. The role of experimentalist government, a new participatory form of democracy, is not to set the rule or police compliance, but (a) to provide the infrastructure for the autonomy of local units; (b) fix the general standards with rolling-basis decision making; (c) allow a refinement of general standards and a legitimate super-local learning process (Dorf & Sabel, 1998). The theory offers structural insight to respond with the constitutional crisis and challenges amid the diversity and volatility by suggesting the forms of public accountability adaptable to the US and European constitutionalism. Dorf & Sabel (1998) perceived the contemporary age of diversity and volatility as the constitutional predicament suggesting a new form of deliberation and constitutional interpretation. With respect to the limitations of existing categories, they suggested that new governmental innovation requires learning from the mode of decision-making developed by the private firms –say, centralized and decentralized organizational forms (Ford & Condon, 2011). The new polyarchy can be ascertained through a number of public programs and systems, including various areas of public administration over family support, local policing, and military procurement (Gerstenberg & Sabel, 2002; Scheuerman, 2004).

An experimentalism also transforms the role of courts seamlessly and incrementally without distorting the existing conceptions of constitutional democracy, and functions by a form of direct deliberation (Dorf & Sabel, 1998; Tushnet, 2003). The courts manifest a symbiotic relationship, in which the continuity of constitutional democracy and direct deliberation or experimentalism come together to idealize the new constitutionalism. The courts firstly are responsible for explicating the meaning of

fundamental legal norms relating to the protection and finality, which are deliberately exposed to the experimentalist process (Dorf & Sabel, 1998, 2000; Fuller & Winston, 1978). The means and ends test can become substantial by utilizing a kind of record by actors about manifold consequences of the experimentation. This brings the evolving concept of judicial review that a parallel examination of decisions and their admissibility upon private and political actors comes in a major form of practice. A current problem of courts centers on the indeterminate standard that is paradigmatically difficult surrounding the traditional means and ends test. The traditional scrutiny inexplicably involves retracing the ambiguous or only principled provisions. Therefore, it pushes the courts to perform a hand-wavy balancing test, to face a familiar Hobson's choice and to defer to the decision of the legislature (Fuller & Winston, 1978; Tushnet, 2003, 2012, 2013).

Democratic experimentalism dismantles the court tradition exercising a spurious precision of "once and for all" solutions and will turn out to be mainly procedural. So the court asks for and monitors the experimentation of entities, jurisdictions, agencies rather than adjudicating between right and wrong. In this paradigm, empty formalism intrinsically disappears or diminishes with a mutual learning (Dorf & Sabel, 1998; Bellamy, 2017; De Burca, 2010). Democratic experimentalism, as a new form of government, requires the private and public actors to interplay on information pooling or sharing of knowledge. Hence, the decentralized form of decision making can be possible with citizen participation, who utilizes their local knowledge to solve their policy issues and the government. The citizens are regionally and nationally empowered, coordinate and monitor their process of sharing and test outcomes to build a best standard of

solutions. The new form of direct deliberation can achieve both efficiency and public accountability, the ultimate ends of public administration (Dorf & Sabel, 1998; Dowdle, 2017; Sabel, 2001; Sabel & Zeitlin, 2012). Collaboration, coordination, as well as pragmatism and incrementalism should be elementary, in which the constitutional tradition, however, remains largely intact such that the central government is free to set goals and means to attain them. The goals and means have to be broadly set because regulatory agencies can use best practice performance – for example, rolling-based statutory provision. It comes in exchange with the participatory experimentation of regulated entities for the best solution and its possible nationwide spread through learning (Sabel, 2001; Carolan, 2012).

Dorf and Sabel (1998) argued that distance can be reduced between the ideal of a limited government associated with the SPP or federalism and a New Deal thought of all powerful congress practicing extent degree of delegation to public agencies (Monaghan, 1983; Stewart, 1975; Young, 2015). They argued that a court role historically and increasingly becomes stiff and naïvely formulaic such that the consistent application of principles is difficult and futile. Then, democratic experimentalism can bring forward a better institution to facilitate the constitutional ideal than the rigid principles or possibly capricious, yet fitting declarations of court on them (Dorf & Sabel, 1998; Carolan, 2012). Courts, rather than superficial or even disruptive and paralyzing inquiries, require the social actors to be taken into account on the constitutional process of decision making. The administrative agency, courts, and actors become involved in experimentation with the rich record of parties' intention and its continuing, comparative evaluation. (Sabel,

2001; De Burca, 2010; Resnik, 1982). A new form of government could lessen the burdens of courts as almighty superintendents, being essential to democratize public decision-making beyond the external vantage standard of court. A traditional understanding of rights needs to be re-conceptualized as soft and procedural such that the idea, such as prophylactic rules and related doctrines, have to be widely disseminated and implemented across the governmental innovation (Dorf & Sabel, 1998, 2000; Sabel, 2001). The view enables a leniency and pragmatic solution with substantial experimentation –for example, a variety of acceptable remedies beyond the formalistic or top down stipulation. Through the process and system, the best result of institutional design or understanding would facilitate such experimentation. So the democratic ideal contended through the concepts of core and periphery looms if the experimentation at the periphery redefines a core (Wilkinson, 2007; Woolman, 2013).

Relationship and compatibility. Law and new governance are deemed functional than institutional or structural, providing a complementary tool to promote the social amelioration or common good. They work out at macro- or micro-level, varying with the policy fields – for instance, environmental policy or the broader project of European integration (Sabel & Zeitlin, 2010, 2012; Wilkinson, 2007, 2012). The gap thesis suggested that law is impervious in the face of governance to respond with the constitutional crisis and challenge, and a gap exists among two components: formal law and practice of governance (Thayer, 1893; Wilkinson, 2007, 2012). The gap thesis does little to better understand the relationship between law and new governance. It obscures the tradition of the liberal legalist conception of laws –in essence, rule of laws and

uniform centralized legislation – theoretically broad from the free market liberalism or more egalitarian liberalism. According to this view, a thesis of new governance, asserting a collaboration mechanism by the public and private bodies, circumvents or bypasses legitimacy on a guarantee of the constitutional and administrative laws (Dorf & Sabel, 1998; Sabel, 2001; Wilkinson, 2007, 2012). The law’s inner morality still holds a deep justificatory power for the orthodox statist institution and use of coercion and is not to be obscured simply on the basis of the temporal character of gap thesis.

A liberal legalist developed the concept of formalistic law with the additional ingredient of values associated with the objectivity and justifiability of law. A right thesis from the experimentalist also poses a threat to the traditional concept of individual rights claiming that they are ultimate, absolute and non-derogable and arguably reified or objectified by the liberal democratic institutions (Wilkinson, 2007, 2010, 2012). The liberal legalism has been a more effective, ambivalent, and sanguine thought –even in the international sphere and with a measure of democratic and moral legitimacy. It can curtail the excess or abuse of actors’ power and ensure the justice of the international regime in the global society. Wilkinson (2007, 2012) also proposed the dangers of normative labor or “juridification” of society being potentially incompatible with the deliberative politics and informal freedoms. He suggested the contingency thesis, in which reflexive universality can bring a level of abstraction for two components on equal terms as well as a continuum rather than a dichotomy (Ackerman, 2000; McKay, 2017; Menkel-Meadow, 2004). Then, the new governance suggests a social and procedural paradigm of law focused onto the democratic citizenry and their participation. The framework of



experimentalism relies on reflexivity and universalization as well as their conditions. Therefore, the citizen adopts and learns a performative attitude beyond a merely strategic rationality and as supported by the democratic institutions (Ansell, 2012; Teubner, 2012; Wilkinson, 2007, 2012).

The law, new governance, and their relationships are essentially contested concepts according to Wilkinson (2007, 2012). He suggested an alternate concept of legality in answering difficult questions surrounding the impact of new governance on the transformation of law or new conceptions of law. The scholarship on "new governance" discusses the regulatory potential and democratic credentials similar to the discourse of Habermas (2015) on deliberative democracy dealing with the law, democracy, and government. However, it differs by being less focused on the top-down imagery or hierarchical administration on constitutionalism (Huscroft, 2014; Van Aaken & List, 2017). An emergence of new governance probably was provoked by the soft kind of transformative policy environment – transnationalism, globalization, localization, integration, and fragmentation – rather than the traditionally hard or soft policy capitals such as institutions, concepts, ideas, capital, goods, and people.

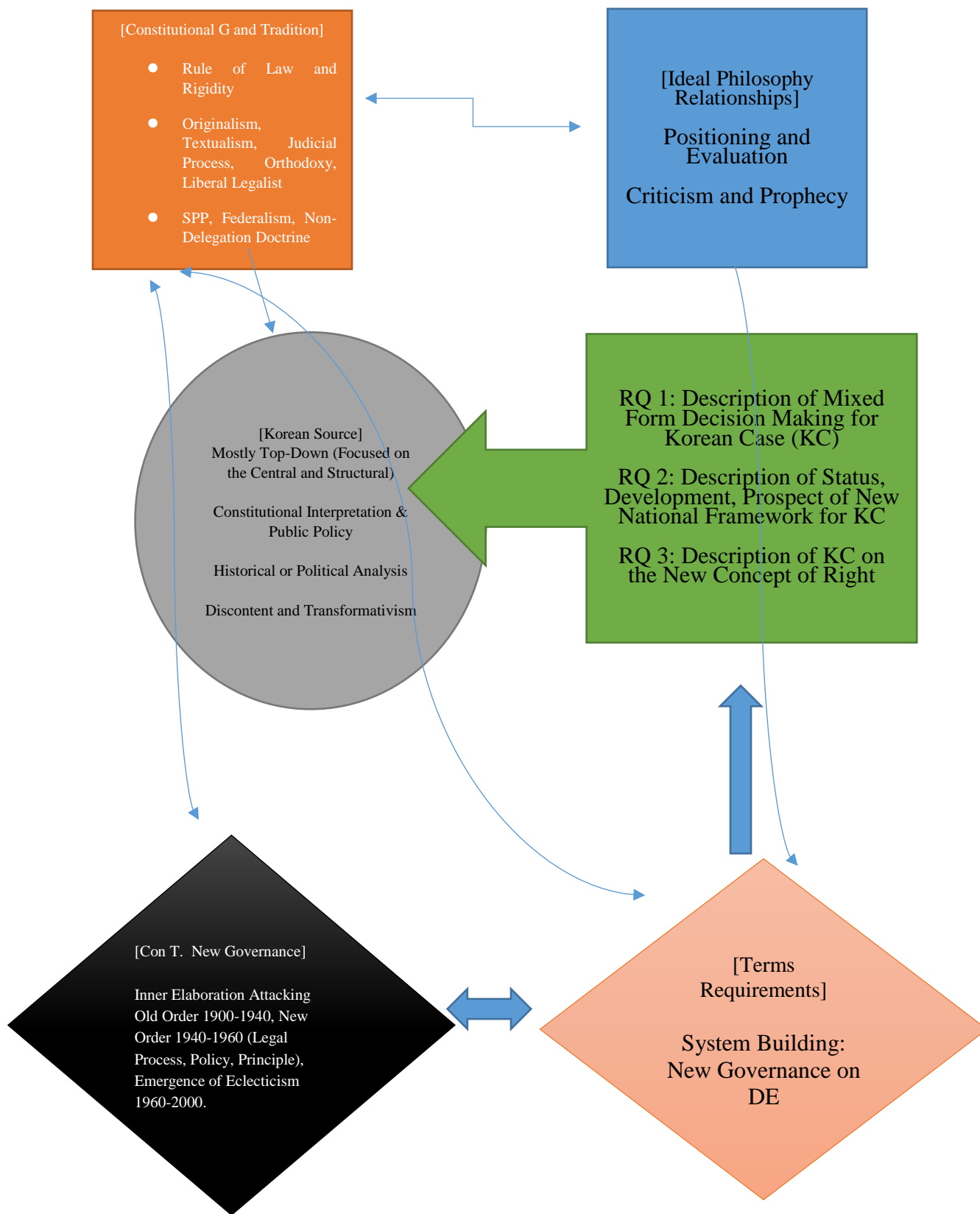
Experimentalism and mutual learning are more useful to the EU than the US because the agenda of integration is provisional, revisable, needs accommodation and promotion of diversity. It entails a vexed question that is not easily answerable between the goals and appropriate means to achieve them (Sabel & Zeitlin, 2010, 2012; Wilkinson, 2007, 2012). A transformation thesis of new governance does not deny the normative order of law and rejects the strict distinctions between enactment and

application of law. It also envisages transforming the traditional law by rejecting a formalistic approach of law, command and control as well as separation of politics from law (Alexander, 1993; De Burca, 2010; Sabel, 2012; Wilkinson, 2007, 2012). A legal indeterminacy associated with American legal realism and structural change in the New Deal foster ensuring legitimacy and accountability to be engrafted with the formal qualities of law (Crenshaw, 1991). The emergence of new governance is either based on the imbalanced account of law by formalists or positivists and involves, if least likely, any positive claim that the law is illusory. The relationship between law and governance, therefore, underlies a denial of the orthodox canon of jurisprudence. Rather, it signals certain animosity and distrust from the functionalist or traditional socio-legal theorist. Ehrlich & Ziegert (2017) argued that little adjustments can yield a better result than a complicated legislation and adjudication on hard procedure, implying that the social order is in "constant flux" and changes can come incrementally. Tamanaha (2008) argued on the functionalism and institutionalism of law that it is not only a means to the social and political goals, but also instrumental to further private gain or sectional interests.

According to Wilkinson (2007, 2012), the boundary problem, if intractable, still remains to be democratically defined to maintain focus on problem solving units. It could fall short to ensure the guarantee of regulatory frame, a historically proven element of republicanism and democratic polity (Colburn, 2004). The nature of theory may be problematic to subvert a democratic pedigree, but the prospect is unlikely to fold with level of justification and recreational power. It is because renewal and revision of boundaries of the polity are constantly required given the progress or transformation of

society. Two sacrifices will cause the robustness or viability of theory to be questioned: one that loss of universal value is often entailed with the theory and the other that a soft and revolutionary candidate relationship can threaten its own self-reproduction (Colón-Ríos, 2012; Wilkinson, 2007, 2010, 2012).

Democratic experimentalism faces the challenge in two continents, in which centrifugal forces and personification of the community in the EU can be a factor to reject the theory or at least perceive it as causing disarray and being unfit (Börzel, 2012; Gerstenberg & Sabel, 2002). A conservative ethos of US constitutionalism seems to march and congeal around the original intent method of interpretation from the old order, to putative new deal reorientation, through the age of eclecticism on legal thought. It forecasts that the liberal transformation is unlikely to rival the conservative tradition, often emphasized with a strong presidency and his leadership role (Fossum, 2012; Fuller & Winston, 1978; Tushnet, 2012).



*Figure 1.* Structure and flow of literature review.

### **Constitutional Government in Korea**

Overview. Korean sources of literature are less than austere to churn on the modern constitutionalism as a theory or historical contingency to found the republicanism. Under the influence of German legal scholarship, the constitutional interpretation as well as the traditional discourse on national framework and human rights represents a dominant character of Korean legal scholarship. A process of interdisciplinary fusing or consilience with the public policy or democracy discourse could be more expedient than the American way of scholarly experience. It is because the tradition is short while the developmental paradigm of state or policy transfer had to be accelerated to suit the national condition or demanded for attaining the most effective policy arrangement. As we see in Figure 1, the literature mostly employs a top-down approach and structural issues focused on the central government when they explore the constitutionalism issue in the nation. Notably, a vein of scholarly atmosphere divulges the discontent of scholars and aspiration for the transformative vision toward more refined governance by invoking the constitutional reform. They bring a rationale from the public policy discipline in some cases, and provide a historical or political analysis for refined system of government. Through the literature review, we can identify the gap in the current literature that lacks or fragments into any un-systemic piece of scholarship. To say, it fails to propose or articulate the mixed form of decision-making aided by the democratic polyarchy or decentralization of government as well as experimentalism,

collaboration, monitor and learning, coordination, and new experimental rule, i.e., new role for the central government.

Korean constitutionalism. D.W. Cha (2015) considered that political turbulence surrounding the reform of government is rooted in a bigoted awareness of public and interested players, who saw an excess of presidential power as making the system inoperable and suffered. Provided the pressure for government innovation within a political realm incessantly arises, we would better speculate as to whether the standing system is a sole culprit for the frustration and increasing political anomie in Korea (Cha, 2015; Shin, 2008). Cha argued for the importance of backdrop for the reform, analyzed a widespread perception focused on the evils of imperialistic presidentialism. As an alternative, he explored merits of a two-tier system. He concludes that (a) the peril of existing presidential system accrues from a manpower or operational dimension, not the system itself; (b) reform toward the two-tier system can only create chaos in the system due to inefficient devolution of power to the branches and organizations, (c) sight in time writ large is necessary to persuade the public since a short-term voice can only impress the reform movement as frivolous (Cha, 2015).

C.H. Ham (2009) provided a critique about the constitutional culture pointing out ignorance or lacked interest of people despite its significance as a supreme law in the nation. He argued that this phenomenon is mainly due to the lack of dialogue framework identifying the relationships between people and constitution, which can be improved by focusing on the constitutional history. By illustrating three perspectives on constitutional history and warning against the constitutional fetishism, he suggested a critical role of

constitutional identity in disclosing the current standing meanings of constitution. In his viewpoint, better understanding of constitutionalism is predicated on the insight and lessons from history and through an establishment of a framework to continued dialogue (Shin, 2008).

D.H. Kim (2010) explored the need of a parliamentary system as it pertains to the contemporary political culture in Korea and discussed three conditions for the success of reform. Relying on historical realism on the Korean government system, he analyzed a public exchange on the constitutional reform. It included a debate on the parliamentary constitutionalism in the founding era, backdrop, and process to import the system in the Second Republic, as well as causing the system to be short-lived (Kim, 2010). He also explained scholarly follow-ups, upon a demolition one year thereafter, to consist of the concerns and interests on the system. His second priority is to survey the problems of the presidential system in Korea, the need to change it, and prospects associated with other forms of government. He finally concluded by proposing the German style of parliamentary system as an alternative, in which he suggested several conditions as necessary in implanting that system within the Korean constitutionalism (Kim, 2010).

J.C. Kim (2014) presented two types of fallacies involving a public surge of constitutional reform movement in Korea: a sophistic hubris from the vested class and elite scholars as well as a hiatus of thought dispassionate with the people. Most problematic among the developments is a political posture to make it a kind of strategy subsidizing the need of partisan politics (Chang, 2016; Shin, 2007). In J.C. Kim's (2010, 2014) view, key holds through the reform movement is not to circumvent the political or

economic condition of people, not to fake the process with a motif to the interest of efficiency, but to respect a lesson of history with the holistic purview of the national condition (Chung, 2016). He pointed out the importance of centralizing a process with the people and envisioning the putative end destination of the movement. In doing so, he thought that we could foreclose an unproven partisan motif or tactical proposals potentially undermining the national interest as a whole. He, then, suggested a probable scope of reform that would cover the structure of government, territory, and reunification clause, protection of minority rights including aliens, and an economic chapter or that of local government within the constitution (Kim, 2014; Chang, 2017).

S.P. Eum (2008) discussed a hyperbole of public contention on the presidential system of government in Korea, which he perceived as a tradeoff of political stability with the possibility of abuse of political power. In his view, it is hard to be made optimal to the satisfaction of political analysts (Park, 2007). The original ideal of the presidential system rests within the political stability that is ascribed to the independent election of the president well as his constitutional status as a separate branch (Eum, 2008; Jung, 2013). Nevertheless, the chance is high that enormous power can emerge, coinciding with a big ruling party grabbing both legislative and executive branches. This obliterates a benefit of stable government under the check and balance that constitutional drafters envisaged originally. A small ruling party within the congress and the president of that partisan affiliation also clamor that two branches often fall to unproductive conflict or dissension. The preceding decade of Korean politics, according to his explanation, exhibited this kind of dilemma that disappointed the public expectation for any stable and competitive



government (Eum, 2008; Shin, 2007; Song, 2005). A fatal possibility of disconcert inherent in the presidential system can be ameliorated with a revamp of heinous tradition - temporal adjustment to a harmony of two elections and setting up the requirement of absolute majority for election to the presidency (Eum, 2008; Chang, 2012; Chung, 2007). Such efforts, including the second vote for an absolute majority and separate administration of each election, can bring a social change. So the political culture in Korea will transform to reinforce the civil control and restore the partisan equity or transparency rooted on the will of people and a real meter of political dynamics (Eum, 2008; Kim, 2012).

I.S. Kim (2008) argued for strength and service of a government system that devolves upon the coordinate branches and local governments (Eum, 2008; T.W. Kim, 2010; Song, 2005). He explained the contemporary crisis of the nation, including declining competitiveness or comparatively higher extent of social conflict among the nations of the Organization for Economic Cooperation and Development (OECD). He thought it as mainly due to ineffective government system that failed in pursuing adequate devolution into congress and local governments. In other words, unproductive public service of government and managerial inabilities to reduce the social conflict tend to be more likely with the unchecked and complacent centralized system of government – not only among the coordinate branches, but also between the central and local governments. He explained that the imperialistic president yielded a vertical rigidity of system, unnecessary and excessive regulations, inefficient public administration, and impotent local governments. He provided a contrast with the other successful system of

devolutionary take, which often is more superior and able to decrease the extent of social conflict (Eum, 2008; T.W. Kim, 2010; Shin, 2007). He concluded that Korea needs to catch up with those nations through the constitutional reform – paradigm summed up in two emphases – two-tier executive and devolutionary restructuring of local governance with the support of bicameralism representing local interests.

Ideals and values. J.C. Kim (2014) developed his idea critiquing the reform proposal and presented his views that it needs to be fully reevaluated in consideration of rule of law ideals, popular sovereignty, and SPP (Kyung, 2007). He narrowed down his concern to discuss the reform of congress and provided an interpretation or analysis of details according to the constitutional theory.

Y.K. Chang (2016) pointed out that the reform movement had been misled with a sole focus on the normative discourse of the system largely disregarding theorists or practitioners from the discipline of public policy. An approach of realists on the practical conditions and limitations had been curtailed to the interest or even for the dominance of ideological, partisan, and theoretical debate. An exploration of practical conditions and limitations is possible by conducting comparative analysis on political institutions and transformation according to Chang's (2016) view (Park, 2007; Shin, 2007; Shin, 2008). Based on the rational choice theory, structural approaches, as well as philosophies of political reform, he provided three counts of conclusion to enable a rethink of public governance and constitutional revision. First, a structural or politico-sociological crisis can stimulate the politics of constitutional reform, in which the early years of a new president are more likely to create such mood because of plentiful political resources.

Second, a radical abolition or change from the presidential system is improbable because a public forum shared by constitutional reformists are widely amenable to the multifaceted interest holders, which is required of their consensus (Chang, 2016; Shin, 2007). Third, the realistic assessment of history will lead to discarding the option of the dismantling presidential system because it has been deeply impressed with generations as a constitutional government (2016; Shin, 2008). Fourth, the ideological consensus among different actors generally lacks potential for transformative reform to an extent that makes virtually unfeasible.

T.W. Kim (2010) propounds that modern constitutionalism requires the government system to be the most effective to protect the bill of rights and extend the ability of citizenry as much as possible. Korean constitutionalism has exhibited two biases over history: (a) unexamined or unproven belief on and import of Anglo-Saxon tradition within the government system – so parliamentary and presidential ones, and (b) weird motives to prolong a term of reign illegitimately (Kim, 2010; Shin, 2008). Adverting on the contemporary reform surge as cautionary, he pointed out two important lessons that we should abide by: (a) the national consensus beyond the differing political or social interests about the reform need and its basic direction; (b) a government system modeled after the German model as an alternative because of: (a) its proven superiority to unify the divided nations; (b) comparative excellence to reinforce the legitimacy and continuity of unified nation; (c) structural and functional ease to align two political branches as attuned and mutually cooperative; (d) the characteristics to develop the

culture of partisan politics and parliamentary democracy (Chung, 2016; D.H. Kim, 2012; T.W. Kim, 2010).

Y.B. Kim (2012) argued that Korean community is susceptible to stratification as pluralistic and intermingled in terms of region, social class, ideology, generations, capital, and local relations and culture (Kyung, 2007). This phenomenon makes it necessarily, according to his view, a regime rooted on the democracy and consent of people. Most appealing form of government in this environment would be a parliamentary system, which, however, is not a powerful option given the political culture of Korea. He suggested a semi-presidentialism that divides the power in balance between the congress and presidency. He also applied his viewpoint of devolution into a balanced power concerning the central and local governments, which he argued would bring a social change so as to remedy discrimination on the localities (Cho, 2008; Ham, 1998; Kim, 2008; Park, 2007; Kim, 2012).

### **History and Reflexivity**

Overview. An understanding of the historical background for constitutional democracy in South Korea and how it metamorphosed into the current crisis is necessary to better appreciate the nature of political unrest relating with the government system and constitutional reform. The incessant public calls for constitutional reform at every moment of political instability arose because it has a great potential of posing a serious concern and challenge to the many interested actors, such as the Korean government, party politicians and people, and scholars and practitioners. For this reason, we can unsurprisingly meet a number of articulations from the different viewpoints, which

spelled out conceptualizations, interpretations, and analysis of Korean issues on constitutionalism from history to the present. A constitutionalism over historical, political, or cultural perspectives, and the prospect or challenges of constitutional reform at each historical time of public arousal, have been the subject of extensive debate in the literature. For effective research, narrowing down the subject of concern to a precise and concise topic is not only necessary but also useful, which ends with support for the theoretical frames and clearly triggers the research goals.

Insights and lessons. Shin (2007) argued that the constitutional policy makers elaborate to change a paradigm of constitutional government due to many foibles identified over history or distrust of people and interested actors (Chung, 2016; Kyung, 2007; Song, 2005; Sunstein, 1985). According to their views, the foibles hinder the efficient and sustainable government on policy continuance with shifting administrations and the kind of constitutional ideas - checks and balances, democratic representation, party politics, and devolution of powers into coordinate branches. However, the present debate as an approach contended by scholars neither makes any difference to solve a current controversy nor truly improves the plight of interested holders (2016; Shin, 2007, 2008). A unilateral undertone and arguments on that basis toward the result-oriented reform can only eventually challenge the capability of government system, though reformed or remained intact. It can only sustain the dysfunction of public offices or party system leading eventually to the dissatisfaction of people (Shin, 2007, 2008; Cha, 2015). He pointed out the lack of information as a root cause and stressed an in-depth understanding of interest holders' distrust, perceptions and awareness of underlying

issues. He also suggested the importance to know vantage points for reform, and strategies to make an effective or workable government through the theories of deliberative democracy and ideal polarities of democracy. The approach relying on two theoretical perspectives explores a reason for the disagreements and contention of interest holders and seeks best alternatives to reform or practice the constitutional government (Shin, 2007, 2008; Sabel, 2001).

Kweon (2007) pointed out the crisis of constitution as the cause of Korean centralism on presidency, which transgressed the principle of democracy. According to him, the constitution disabling the feudalism and enacting the liberty and equal protection of law conversely undermines the democratic system of government (Chung, 2007; Huh, 2007; Yi, 2009). He asserted that Lee, the first president of nation, seriously betrayed the constitutional culture in Korea by prolongation of constitutional term and calling on militia. Through 1952 and 1954 revisions, he reinforced his reign into projected period of terms, which sustained a chronicle of evil culture and abusive constitutional structure on presidentialism.

W.C. Shin (2008) provided a historical account of Korean constitutionalism focused on the 1987 democratic riot and lessons for the recurring constitutional crises or corresponding public roar through the present. He argued that 1987 riot (6.10 democratic movement in other name) is a critical event to find a true meaning of civil democracy in this land (Chang, 2016; Chung, 2016). The event is epochal that powerfully continues to affect the present situation and provides a criterion to evaluate the trend of standing democratic institution. According to her research findings, we can learn three counts of

important lessons, on which the constitutional policy makers rely to respond with the constitutional crisis and reform challenges (Chang, 2016; Chung, 2016; Shin, 2007, 2008). First, a lack of understanding on the role of opposing parties through the public process of revision had been present. It is not a perfect account that their roles are merely opportunistic or strategic to yield a fruit to make them advantageous. Second, the constitutional reform as a master plan actually had a greater potential to stimulate and organize the civil movement. An alliance of leading parties with the receptive public had worked effectively with a grand cause, “right to opt out their own government by the people.” He argued, thirdly, on the crucial nature of wide popular support that the failure of radical reformist around 1987 to prompt a direct election of president was seen to be caused by inattention or neglect to ally with the people (Shin, 2007; Shin, 2008).

Prospect and challenge. Often the public issues and solution are nailed down in the form of government report. It provides a central public forum to collect the wisdom and ideas from trailblazing scholars in the area of interest. The Korean congress is not exception to host or compile the flaring debates and ferments of ideas by producing an official report. The Report of National Assembly in 2014 had been a subject to further proceedings at the time of publication, but a final one at the time of this work. The report recognized the need of constitutional reform due to outdated provisions rusted with a lapse of over twenty years since the last reform (Kim, 2017; Kingdon, 2003; Woo, 2014). The 2014 Report proposed the reform of human rights section to remove the provision enacted without a serious theoretical or normative consideration as well as to newly incorporate new generations of human rights (Allan, 2001; Graham, 2013; Joo, 2017; Joo

& Chung, 2000; Kyung, 2007). In terms of government system, the report stressed the importance of overcoming evils of imperialistic presidentialism and emphasized reform to comply with the political culture or public command of social justice.

A basic direction declared within the report included: (a) new constitution brings the constitutional ideals into a specific provision and contributes to the national integration; (b) it should be strategic to ensure a protection of human rights more strongly by incorporating a changing paradigm of human rights; (c) it has to be designed to reinforce the tradition of parliamentary democracy through an avoidance of imperialistic presidentialism and to support the rule of democracy with the political culture of debate, communication, and reconciliation; (d) it needs to be designed to accommodate and develop the diversity of culture as well as to be directed to the open society with the possibility and initiative for a substantial level of local democracy. The revision proposal of Constitution in 2014 Report included the total of 11 chapters and 161 provisions with a new addition of 31 provisions. A category of report on reform issues is classed into 6 parts dealing with (i) the Preamble, General of Constitution, (ii) Human Rights, (iii) the Structure of Government (iv) the Devolution of Presidential Power, and (vi) Miscellaneous. The new presidential system triggers a weak and moderate nature of presidency long grappled with the public sentiment of dictate or disrupted communication (J.C. Kim, 2010; Lim, 2015). According to the report, the presidential power is divided into two realms by devolving a domestic sphere onto the prime minister elected by the congress (J.C. Kim, 2010; Lim, 2015). It proposed six-year one-term president who is directly elected by the popular vote. The president shall be responsible



only for the national security, foreign affairs and spheres of power required for the national representation. According to the report, the presidential power can be exercised upon the review and approval of newly enacted three key national commissions, i.e., (i) Commission of National Unification and Policy, (ii) Commission of National Security and Foreign Affairs, and (iii) Commission of National Integration (J.C. Kim, 2010; Lim, 2015).

The constitutional reform is discussed as the kind of unique solution to improve the government system in Korea that scholars explored and continue to explore its prospects and challenges. With an extensive discussion, J.C. Kim aligned key aspects of understanding entwined with the current dilemma of government system: (a) historical overview of government system; (b) the ideal of constitutional government; (c) the relationship with other institutions; (d) comparative lesson (Cha, 2015; Kyung, 2007; Shin, 2007). He refused to support a public perception flaking one-time five-year presidential system as a bum rap for the fluid or inefficient administration (2010). He instead asserted three crucial dimensions as necessary to analyze the problems of government system and formulate an alternative. He thought that they should be: (a) constitutional level of national institutions; (b) public institution on the law and statutes; (c) political culture. (J.C. Kim, 2010; Kyung, 2007; 2015; Shin, 2007). A sinus relating with the fluid and inefficient system of government is mainly due to the inertia and anomie of political culture as well as a lack of legislative response to perfect the constitutional requirements. His arguments illustrated an array of weaknesses enshrined within the current system on law, statute, and legislative – not constitutional - level of

public institutions. He specifically pointed out: (a) the lack of politics to communicate and disagreements; (b) congressional election system on simple majority to reinforce the lack of politics; (c) spoiled partisan system without autonomy and public accountability; (d) the enormity of press and mass media to manipulate or even mobilize the public as tantamount to the government in power; (e) polar contrast between the group of political wonks and political apathy (Shin, 2007; Chang, 2016; Dowdle, 2017). He asserted that popular alternatives dealing with the constitutional amendment, at best, could not be gainful for people aspiring for the success of constitutional government. According to his view, the parliamentary system is incongruent with the perception of public, who regard an election of president as compatible with the democracy itself. American type and two-tier executive also would be unable to provide an important cure against the failed practice (Cho, 2008; Choi, 2008; D.H. Kim, 2010).

Y.S. Chang (2012) provided a comparative insight, who looked back to the occasions of constitutional reform within the Korean government system. He focused on the mature conditions, including endorsement of scholarly circles, congressional sessions, and many reports in that direction. The reform has to deal in any organized fashion, which should differ from the top-down pressing into a suspicious reform for the taste of reign in the past (Cha, 2015; Kim, 2008; Shin, 2007; Song, 2005). He also argued that the reform movement already gained a popular support. The remaining issue, in his viewpoint, just will require substantiation for an action plan concerning the basic direction, procedure, time schedule, and limitations of reform. He explored the two-tier Executive as an alternative that satisfies the wishes of people, selecting the president on

their own vote and devolving the powers to moderate a potentially imperialistic character of president (Chang, 2012; Cho, 2008; Ham, 1998). His two important suggestions pointed out: (a) a participatory process of reform and consent of people as a sovereign ;(b) long term hindsight to respond with the social transformation and changing political culture of nation (Bach, 2012; Shin, 2008).

### **Summary**

The literature reviewed has been synthesized with a summary from the works relevant to this study and searched with the Walden and other electronic or brick & mortar libraries. In order to serve the goal to present a focused review of constitutional tradition and experimentalist government, Figure 1 had been attached to show the structure and flow of literature review, grand positioning of democratic experimentalism within the constitutional tradition, and elements of new governance to facilitate a fusion and collaboration for idealistic constitutional government. The literature review incorporated two sources of work from the US or global, the influence and guide to provide a framework of this study, as well as from Korea, the end subject of this study.

The Korean source of literature provides contemporary scholarship on the Constitutional Government and Tradition in Korea and Effective and Competitive Administration under Korean Constitutionalism. In comparison with the original sources of US or other countries, the Korean literature mostly employs the top-down approach with a main focus on the central government and structure of constitution. A significant part of the work reviewed focused on the constitutional tradition and democratic experimentalism or the proposition and criticism it engenders. However, little attention

has been paid to the relationship between constitutional tradition and democratic experimentalism in South Korea.

As a result of the extensive review, it is now clear that South Korean constitutionalism requires significant reform for reliable and effective government. To fill in the knowledge vacuum in this area, I examined three groups of literature – constitutional tradition, democratic experimentalism, and Korean constitutionalism - to serve this descriptive and qualitative research design. I also will conduct qualitative analysis of empirical data that will be collected from a representative sample population in South Korea. In sum, this chapter illustrated a scope of the seminal literature in the field and provided background on the CGDE. Chapter 3 is an explanation of how I will use the research methodology to conduct the study including the data collection, coding, analysis, and issues of ethics and trustworthiness.

## Chapter 3: Research Method

### Introduction

Because the research design governs the entire research process (see Creswell, 2009), it is necessary to select the most suitable method. The qualitative method was the best one for investigating the research problem in this study. Researchers using the quantitative method analyze quantified information in an effort to describe properties attributed to the general populace (Creswell, 2009). Because the measure of parameters often poses a challenge as a matter of practice, these researchers analyze quantitative statistics and practice sampling in order to collect raw data (Creswell, 2009). Since the essence of quantitative research focuses on the number or frequency, the data obtainable from the public survey, or other ways of data collection generally are of a scaled nature, generated from prearranged inquiry forms and quantifiable. For this reason, it is less advantageous to collect the qualitative nature of information triggering the whole of person as a component of populace. The characteristics of the quantitative method may be described in two ways:

1. it is used to describe the general populace rather than a parochial or intact cultural group, and
2. it is designed to test hypotheses deduced from theory and philosophy (Creswell, 2009).

These characteristics contrast with the qualitative method in that qualitative research designs are more suitable with a distinct cultural group and concerning the areas of research that are less exploited or cultivated (Bulawa, 2013).

The qualitative method is inductive to invent the kind of proposition, hypothesis, or theory while the quantitative method is conducted using deductive thinking (Creswell, 2013). Among the major five qualitative approaches described by Creswell (2013), the case study offered the best approach and research design for yielding a better understanding of CGDE. Using a case-study design, researchers are able to assess actions, interactions, or processes through interrelating categories of information based on the data collected from individuals (Corbin & Strauss, 2008). The approach emphasizes positivist underpinnings, sociological modes, postmodern perspectives and so forth. Given the previous research on the CGDE had often been generated by the legal scholars, their perspective and frame of thought would be akin to the kind of self-identification 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 of researcher, treating himself as an acknowledged participant, are an important basis for steering the data collection and analysis, leading to the final write-up.

In this chapter, I discuss the qualitative tradition regarding the study of CGDE. I also explore the characteristics of the qualitative inquiry and how a case-study design best fit the goals of this research study. Because the researcher plays a central role through qualitative investigation, I will briefly explain the role of the researcher. The methodology sections will focus on the data collection and analysis procedures I used including the coding method and my use of NVivo. Issues of trustworthiness and research ethics are also discussed in the chapter.

### **Research Design and Rationale**

The research questions dictate the study approach, in the view of Corbin and Strauss (2008, p. 12). The methodology for this study evolved from the research questions which focused on constitutionalism and democratic experimentation in South Korea. The central research question was, “How does democratic experimentalism support constitutional government in South Korea?” I also sought to answer three secondary questions:

- What are the key differences between a centralized organizational form and a decentralized organizational form, in their capacity to support constitutional government in South Korea?
- How does a national framework support the constitutional government in South Korea?
- What is the role of individual rights in supporting constitutional government in South Korea?

As seen in Table 1, my study mostly relied on the characteristic of the case study approach according to the formula of Creswell. In order to argue for the suitability of qualitative method in my case, I may begin with the negative approach that justifies exclusion of quantitative method. Because my topic concerns the CGDE, I might devise hypotheses that would be tested by exploring the empirical data within the samples drawn to saturate the statistical guide. The hypotheses could be deduced from the theory of constitutionalism or public administration -- for example, “The CGDE is most idealistic in terms of western standard or history on the rule of law and democracy” (Rudestam &

Newton, 2015, p.42). Fortunately, it might not be a null hypothesis that statistically is proven to validate research progress. Then, I might devise research questions, often *why* question within qualitative method, and prepare the survey questionnaires to collect information from the participants. Afterwards, I might analyze the survey results, discuss the implications, and answer the research questions, such as “Why is the CGDE different from the public wishes?” Although such process can bring up one of research pieces, it is less perfect in terms of general viewpoint on methodology and might be unsuitable for my research plan (Rudesman & Newton, 2015).

Generally, the investigation of Korean public as a whole would be challenging or costly and requires the expensive plan of public survey. Employment of quantitative method also is inadequate as a matter of topic’s attribute. Second, since the qualified and professional actors or policy makers are crucial in generating the knowledge of CGDE, the empirical data need to be collected from themselves, the kind of distinct cultural group within the terminology of qualitative method (O’Sullivan, Rassel, & Berner, 2008). The survey questions of quantitative method may present several reasons for the malpractice of CGDE, for example, (i) disparate regional politics of Korea, (ii) socio-economic particulars of nation, (iii) northern threat, (iv) resilient or conservative bureaucratic tradition, and (v) lack of learning and information, and the kind. Assume if (ii) and (iii) may have most responses as a reason. However, it simply could not solve the inherent reason for that problem since the question entails a complicated human interchange -- hence, process, action and interaction -- as generally less meaningful with the quantified simplification. Thirdly, the prearranged survey questionnaires imply that



the researcher would be all known analysts, which undermines the goal of social science that idealistically would be expected so as to be truly entwined with the field (Moses, & Knutsen, 2007). Given the research participants are policy makers themselves or influential about the topic, the quantitative method would be very ineffective dealings, which, however, could turn be more productive when deferring to the words of participants since they are most knowledgeable and experienced. In this case, it would be the kind of overconfidence in the self; i.e., devising the prearranged questionnaires – that the researcher initiates, leading the story or archaic expected knowledge on that specific research. That would be particularly problematic given the simple language of quantitative survey. Instead, the specific and open-ended questions as within the in-depth research would be any proper approach to deal with the research questions (Glaser, 1978).

I may present several grounds positively to select the qualitative method or case study that will address my research questions (Please see Table 1). The research questions inquire of the dimension of how that is dynamic, lively, and process-illuminating, and that would be discovered through the in-depth investigation of actors and stake or interest holders (Creswell, 2009). The survey method comes with more than emphasis on the generalizability and would mostly be effective to solve the why question since it tests on the verifiability of hypotheses (2009). The query in my case is not why the Korean constitutionalism would be distorted or angulated from the paradigm of good constitutional government, but is concerned of how the subsystem, philosophy or ideology and learning as well as the agendas of CGDE are acted out, interacted, and

processed such that they are formed or evolved and currently are being argued in terms of public policy and administration (Katz, 1983).

I have particularly been interested in building upon a theory that comprehensively exposes the picture and phenotype of CGDE in Korea, which merits the employment of case study approach (Stake, 2010; Yin, 1994). As a participant and researcher, my background as a lawyer and law professor would help, but must take care not to be prejudiced as the kind of “all known analysts” attitude. In other words, the convivial data drawn from so knowledgeable law professors, legal historian, attorneys and journalists have to inform my studies locating the characteristic of CGDE (Moses, & Knutsen, 2007). The open and axial coding as well as selective coding will guide the data analysis, and the results will be utilized to produce the various concepts, terms, and themes, and elements of CGDE that would cohesively be built into the explanation of Korean constitutionalism and new governance with a mosaic of actions, interactions and processes.

The area of interest is particular in terms of participant quality, in which they are knowledgeable and have a track of expertise on the field that will be investigated (Roy, Zvonkovic, Goldberg, Sharp, LaRossa, 2015). In the preliminary process, they, in fact, admitted that their professions and fields of practice be actually not amenable to the scaled notion about the phenomenon. They sigh, “How could I describe my experience of CGDE in words or structured format of question?” Since my studies are focused on the experts, policy makers and administrators, the notion to the classified participants are important that the truths could be divulged with a deep engagement (MacNealy, 1997).

As distinct from the study subject on quantitative method, the participants in this study are either equal to the investigator or superior in experience and know the research topic that requires a strenuous or committed engagement—which we call a zigzag process of data collection and analysis. The theme will be emerging constantly with a dialectic process of investigation that is the trait of the qualitative method (Maxwell, 2005). The data analysis will be iterative and exhaustive that left nothing to be unlearned. These needs generally nearly could satisfactorily be serviced with the quantitative design although the coverage might be perfect with the quantitative sampling and statistical assumption. In the preliminary diagnosis, the actors described their truths as something mixed with the grizzled experience and professional talents from the past through present (van Manen, 1990). Given such reality, the qualitative investigation would best fit within my research plan most scientifically.

Explained here more specifically are research benefits from several aspects of the case studies. One is that the data collection is deciphered to yield information beyond numbers and draw conclusions. As Yin suggested, it is not being limited to data collection, but encompasses various methods covering research design and data analysis techniques. Most of all, it serves a greater purpose to most effectively and directly provide the vision proposed by the study for consideration by the scholarly community (Yin, 2003). The case studies give stature to the study because the research can be determinative in scope and give more assurance since the direction and scope are clearly defined and not overly abstract. The researcher needs to take care to make a study effective in its foundation so that it avoids drawing a thin veil between the microcosmic

and macrocosmic levels of political phenomena. The case study method is valuable in that it very effectively fits within the theory building process and is most valuable to facilitate its aims by testing candidate theories. It could clarify and compare the boundaries of theories of considerable magnitude and complexity (Yin, 2003). As Yin noted, reality can be best addressed with this approach rather than to attempt to know it via pure abstraction. The case study is also beneficial by giving voice to participants encouraged by the fact that they are not merely respondents or informants. In this sense, Gomm, Hammersley and Foster (2000) argued, “the aim of case study research should be to capture cases in their uniqueness . . .” (p. 3). The case study is more effective to present the data collection for analysis with precision since it illustrates what happened in an exact measure that prevents premature conclusions. The precision of case study, in a sense, is more than capable of answering research questions regarding how democratic experimentalism supports constitutional government in South Korea. In its character, it is quite different from quantitative method, which is a kind of inference or generalization on statistical analysis. Its process is ‘logical’, ‘theoretical’ or ‘analytical’ as distinct from case study. In sum, the case study can give an analysis of Korean government on democratic experimentalism by providing a strong foundation to examine and to assess in an overarching, but effective manner. The results will be deciphered through a coding scheme and analyzed to explain the Korean constitutionalism for successful and effective government on democratic experimentalism. In this process, previous research will be used to define the case and unit of analysis, and the Discourse Quality Index (DQI) will be referenced. As posited by Yin (2003) and Gomm et al. (2000), objectivity and

researcher bias pose challenges for the case study in terms of reliable and credible research. This requires that the researcher remain objective through the stages of research operation and avoid a priori assumptions or paradigms to achieve unbiased conclusions of empirical research.

Table 1

*Characteristics and Research on the Constitutional Government on*

*Democratic Experimentalism*

Characteristics	Narrative research	Phenomenology	Grounded theory	Ethnography	Case study
Focus					O
Type of problem best suited for design					O
Discipline background		O			O
Unit of analysis		O			O
Data collection form	O	O	O	O	O
Data analysis strategies	O	O	O	O	O
Written report			O	O	O

**Role of the Researcher**

The role of the researcher, in order to faithfully execute his field work into any meaningful data or document, is crucial that results in a different quality of research outcome (Hoover, & Donovan, 2003; Patton, 2002). Therefore, he or she needs to appreciate what occurs over the stage of the research operation and should perform important points for the convenience and validity of research. Thematizing requires the

researcher as directed to the purpose of research that prepared him with the understanding of background for carrying on fieldwork, analysis and reporting (MacNealy, 1997).

Designing needs to be considered for planned and prepared research operation that he answers the different steps interrelated, time schedule, selection of respondents – such as number or criteria of inclusion or exclusion. Interviewing has to be minded with an explicit decision about the outline of theme and interview coverage, tape or video-recording, supplemental field notes, storage of data as text files, and recalling.<sup>3</sup> A transcribing requires the research to do some additional interpretive work or specific comments, such as respondent's remarkable enthusiasm at some point of interview process. It needs to be noted that the transcripts in the qualitative data is not similar to those of quantitative ones, meaning "transcripts are not copies or representations of some original reality, they are interpretive constructions...." The role of the researcher needs to be viewed in terms of analyzing, verifying, and reporting (Katz, 1983). In the dimension of analyzing, the researcher is concerned with the naming and categorizing of phenomenon through a close examination of data, cohesive and integrative coding of data to one overall analysis and comprehensive narrative at all or web of meanings and use of his personal knowledge and experiences – his unique impressions intangible and undocumented (Miles, Huberman, & Saldana, 2014). Verification of the data is another important role of researcher concerning the generalizability, the reliability, and the validity of findings.

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<sup>3</sup> Although recalling is an insecure way of collecting data, it has an advantage when the researcher wants getting non-verbal information as well.

The researcher at all stages of the research process tests them, which is inevitable before reporting findings.<sup>4</sup> Reporting is final stage of archival to present his findings as peer students complete his dissertation that can be searched through the Walden library and ProQuest. In this stage, it is needless to mention that the researcher's influence is significant, for instance, judging the voice of respondent to be represented in amount and tones, respondent's remarks and the ways of their understanding, the amount of context in relation to specific respondents and etc.

The researcher has to plan on the times and locations of interviews that are most suitable for the participants (Corbin & Strauss, 2008). The area should be free from distractions. It is also the responsibility of the researcher to be prudent to ensure the process more natural and less rehearsed. It falls within the talent of researcher that comprehensive and representative data are collected during the interview,<sup>5</sup> who promotes the environment for the participants to recount their experiences as fully as possible.

In this qualitative research, the in-depth interviews individually, was used since (i) it relates to group norms, meanings and process, (ii) it helps to clarify, extend, qualify or challenge data collected through other methods, (iii) it can feedback results to research participants (Creswell, 2013).

The role of the researcher in conducting the interviews, including but not limited to drafting interview questions, schedule and consent form, was critical to get the best

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<sup>4</sup>In practice, there hardly ever seems that any explicit evidence is required that verification takes place.

<sup>5</sup>The respondent's body language sometimes can be meaningful that he may adopt nodding, smiling or other open and emotionally neutral body language into any implicit information.

quality of discussion. According to the generally permissible range, I used 16 participants.<sup>6</sup> The researcher is responsible for preparing the interview schedule in compliance with two general principles (a) questions more general to more specific and (b) relevance to the importance of issues. Since the researcher participated as an interviewer, his role during the meeting was to be reflected implicitly before the final group meeting (Stake, 2010; Yin, 1994). Fruitful discussions entailed that the participants had valuable views and are active, positive and respectful. The role of interviewer is to establish a rapport and remain objective meaning that he has to care not to express his own views. This can discourage the participants that may lose confidence to be open and honest (Merriam, 2009). The interviewer is prepared for unpalatably critical viewpoints, perhaps important to the research topic. He needs to be comfortable and natural, which is critical to ensure the relaxed mood of interview process.

## **Methodology**

### **Data Collection, Population, and Sampling**

In the qualitative method, the data collection typically will include questionnaires, interviews, focus groups, observation, and case studies (Creswell, 2013; EU Quality Assurance, 2016). The questionnaires are intended to gather information from respondents, which incorporate a series of questions and other prompts designed to meet the purpose of the researcher. Interviews may be based on the questionnaires, but not

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<sup>6</sup> Stewart & Shadsani suggest (i) slightly over-recruitment and management of a slightly larger group that can lead to a later cancellation of session or an unsatisfactory discussion (ii) optimum range is six to eight participants (three and as many as 14 can be successful).



necessarily so, as the interviews essentially are a conversation between two or more people. Often interviews occur face-to-face, but e-mail or phone conversation as well as teleconference are other situations that technology advancement allows. The interview is classed traditionally into the focus group or one-to-one interview (Stake, 2010; Yin, 1994).

The ethical issues will be increasing if social media, such as Facebook or job portals, are used to collect data from the consumers. Observation is used to collect data relating to a group or single learners, who will be asked to perform a specific task or action, such as class performance, for the educational research. Then, the field notes or result of observations will be converted into behaviors, processes, or workflows that will be applied to real-life situation (Czarniawska, 2004; Lincoln, & Guba, 1985).

The case study works to offer a more complete picture of phenomena, often used to provide context to other data, such as outcome data. Through case studies, data or theory can be reinforced or particularized to create a knowledge web or field data.

Given that my research strategy successfully aligns the components of research design,<sup>7</sup> the next issue will be an operational issue of collecting and analyzing the data. In the case study, the common methods include participant observation, interviewing, and collection of artifacts and texts. The methods produce the type of data, so that this nebulous approach eventually could turn the story into a final write-up (Wolcott, 2001). The participant observation is one way of dealing with research needs arising from the

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<sup>7</sup>I could find a good fit of research paradigm and method with my own ontological perspective that the CGDE or research problem could only be appropriately addressed by utilizing the case study approach.

CGDE project whereby I would be immersed in the daily lives and routines of those being studied. This often can set the research activities into an extensive engagement referred to as a fieldwork.

A decade of experience and observation with the key actors in my case would enable much more data in the form of journal writings and memos. The interview also was a major form of data in the studies of CGDE, through which the researcher himself could learn about a culture or group by speaking with informants or members of the cultural group (Maxwell, 2005). The public documents and records collected from the government departments, national assembly, and courts as well as the civic association was composed as another form of data that was examined to delineate, support, and argue against the themes and stories. The materials, such as written protocols, charts, flow-sheets, education handouts, diaries, and journal writings –used by members of the target culture in their daily lives –was collected with the consent of subjects, which serves the same purpose.

Under the general principle of qualitative inquiry, I devised a sampling strategy to deal with a relatively large number of participants and organized the plan of expert meetings as well as conferences to exploit the field data (Bulawa, 2013). This extended mode of data collection generally facilitated the principles, and also adhered with the normal practice, of the qualitative researcher.<sup>8</sup> The access and rapport issue typically arises from locating the homogenous sample, as mentioned above; I found it rather easy

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<sup>8</sup>As Creswell guides, the interviews in phenomenology would require 5 to 25 people while the ground theory approach primarily exhausts the interviews with 20 to 30 people to achieve details on the theory.

to keep selecting the key actors with the lived experience of constitutionalism and government practice (Yin, 1994). It is important to select the participants to ensure the selection of the most information-rich participants, which requires using a set of inclusion and exclusion criteria based upon the research questions generated deductively from my prior knowledge of the area and a preliminary review of related literature (O'Sullivan, Rassel, & Berner, 2008).

As seen in Table 2, the population for my sampling targeted Korean attorneys, professors of relevant disciplines, and other intellectuals. The qualification of the target population is significant since the sample population would be defined as a kind of shared knowledge and culturally affected group. They served or are serving as career attorneys or professors with experience of government and leadership of civic groups, as well as law professors or legal historians, which constitute the sample pools in my study (Roy, Zvonkovic, Goldberg, Sharp, LaRossa, 2015). In order to avoid the potential bias from career years and experience, I took care to include the participants of new generation under the age of 40 for each group.

Research participants were recruited through a volunteer approach within the qualitative components of the study. For the final 16 participants, around 30 interviewees on proportional basis of each group were initially chosen using e-mail packets, including detailed information concerning research objectives and methods and a consent form. Participants were drawn from the Korean directory of law professors, attorneys, journalists, college professors as well as professional peers residing in or near Gwang-ju city. Small incentives, such as free meals or reimbursement of trip cost, were provided to

motivate inclusion because interviews are generally not pleasing, and may appear tedious or cumbersome. The voluntary approach helped to assure that participants remain anonymous.

Table 2

*Number of Interviewees and Length of Interviews*

Number of interviewees	Length of each interviewees
Total: 16	
Legal historian: 2	
Attorneys: 4	2-4 hours
Law professors: 4	
Professors (social sci.): 2	
Civil activists: 2	
Journalists: 2	

As seen in the Appendix C, the interview protocol comprises the time and place of interview and how to establish rapport and a smooth interviewing process. The interview protocol provides guidance in line with the stages of interview (Maxwell, 2005). First, the introduction of the interviewee to the nature and purpose of studies is necessary. Therefore, when setting up the interview, the kind of arrival process was interactive – for example, statements such as “I’m Kiyong. Please have a seat. Thank you for taking the time for this interview.” Next, the interviewer had to be specific about what to say to interviewees when beginning the interview. It is preferred that informed consent and confidentiality issues be communicated in this stage. In my case, the research project on the CGDE was explained to promote the activism of interviewees, “your participation in the CGDE project is really important for you, the same professionals, and

an effective as well as fair system of the nation in terms of the judiciary and professional community.”

The project helped to better understand the CGDE, to make a more effective policy, and to increase awareness as well as bringing about social change (Stake, 2010). The protocol has to incorporate the best-prepared interview questions, as guided above. Then, the interviewer gradually starts the interview, and he needs to be unhurried and relaxed to ensure a productive and smooth flow of questioning and responding. The remaining issues of protocol cover the setting up of an audio-recorder, how to conclude the interview, and what to do following the interview. The researcher has to consider the things that will be required during the interview – for example, he needs to check the quality of sound and effective functions of the audio-recorder. He may practice the traditional good-bye statement to conclude the interview, “Well, thank you so much, and as I said, I’ll be sending you a copy of the transcript and also my notes. If you see any corrections....” The plan to double-check the clarity and authenticity of transcript is a good strategy for various purposes. Therefore, I planned on a protocol in which I filled in notes, submit written findings to the experts for review, and store data in the files (Maxwell, 2005).

### **Organizing and tracking the data**

My strategy to organize and track the field data relates with the classification and categorization of the concepts that eventually leads to the discourse, meanings, and suggestions by exploring, analyzing, explaining, ordering, critiquing, and soon (Merriam, 2009; Creswell, 2013). This process of work can be enhanced to save time and energy as

well as to enable the convenience and security of storage. The dissertation work can be seminal to open one's career as a researcher but also serves as a source of knowledge over one's life-time, such as when NVivo or other programs are to be used.

One of my research questions was intended to find a continuous theme to bridge the constitutionalism through democratic experimentalism involving the concept of rights (Dorf & Sabel, 1998; Eckert & Börzel, 2012; Sabel, 2001; Tushnet, 2012; Wilkinson, 2007). This included the concepts or terms, such as prophylactic rules or experimentalist courts. Then, the concepts or terms helped to analyze the field data, based on which the analyzed result was developed into hypotheses, propositions, and explanation. The characterization and categorization of data, jottings, written materials, or pictures facilitated the research process and allowed the researcher or audience to develop the whole picture of research work. This aspect is related with software programs that the researcher may have recourse to use. The software programs, that usually referred to as Computer-assisted qualitative data analysis software (CAQDAS), would have strength in my view in terms of data storage and linking among the data, notes, and memos (Creswell, 2013). I believe that its use seems especially advantageous for visualization and presentation.

### **Coding and Data Analysis Process**

Since my research project deals with a topic familiar to the Korean public and myself, the kind of precoding structure provides an advantage to enhance the data collection and analysis. It also can enable reiteration through the amount of field data and written materials, which could likely be a beacon guiding the refined final report. As seen

in Table 3, the most appropriate strategy to deal with my coding process was to employ the hypothesis coding, provisional coding, or descriptive coding. I also could use the attribute coding since foreign audience would be far less exposed to my research setting and CGDE. With the selective coding frames, the coding of data generated an array of individual codes associated with their respective data chunks. The second cycle of coding, what we know as pattern coding, enables marshaling the coded data into the narrative description or network and matrix display. This coding process gets the data ready for analysis on one hand, and also to drive ongoing data collection on the other. Hence, as Figure 2 illustrates, the precoding structure could make the researcher more rigorous and exhaustive in data collection, a kind of important standard to measure the trustworthiness and validity of a qualitative researcher. Through the coding, the researcher had been ideated with the need of reshaping perspective and instrumentation for the next round (Creswell, 2013). The jottings and analytic memos were deemed essential to study the CGDE.

This dimension of work was important in the context of the present dissertation (Wolcott, 2001). Over the two coding processes, I could build up a brief or extended narrative to synthesize the data or their descriptive summaries into higher-level analytic meanings. The precoding structure could enhance the work that documents the researcher's reflections and thinking processes about the data (Hoover & Donovan, 2003). Memos occurred in various stages of the research process, beginning with data collection, to data condensation or data display, and even through to the conclusion testing and final reporting. The analytic memos below took a more elaborate form when

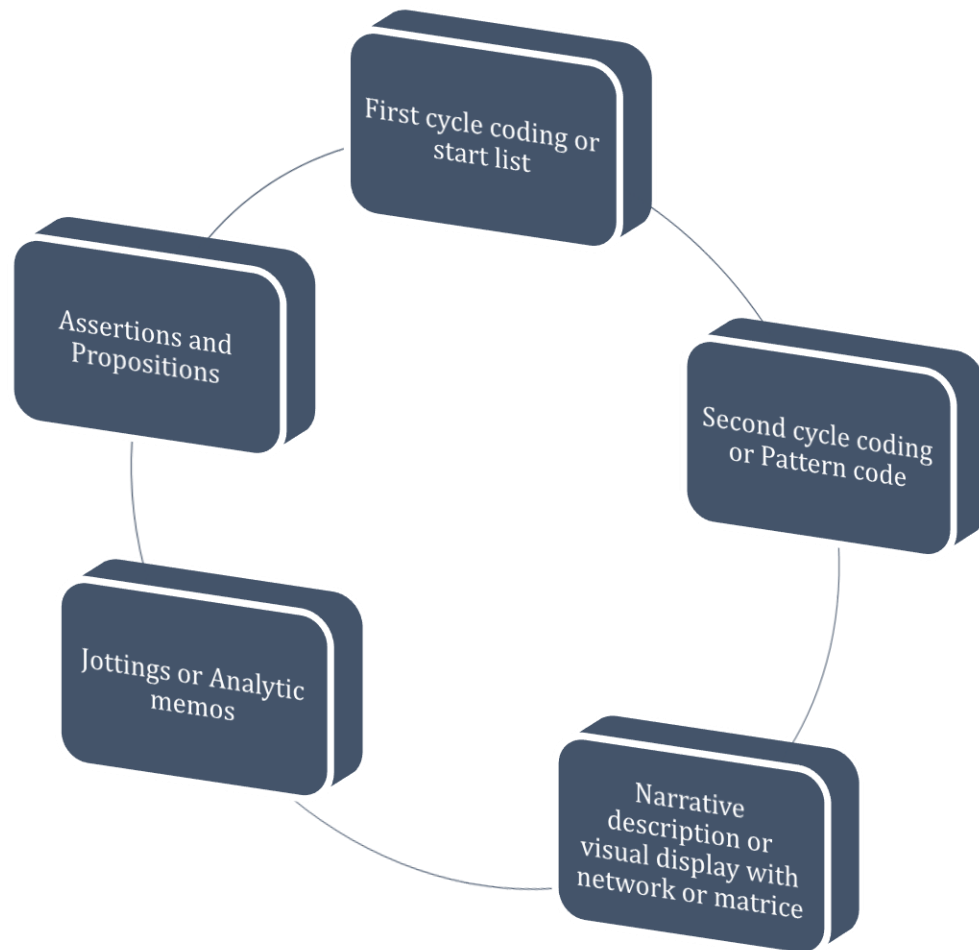
the researcher pieced together several strands of the data. It would actually be the product developed by looking across multiple measures of construct on the CGDE. Coding and analyzing memos were interrelated crucially since coding triggers analytic thought. The analytic memos then could be the basis on which the researcher formalized and systemized his thinking into a coherent set of explanations (Strauss, 1987; Wolcott, 2001).



Table 3

*Types of First Cycle Coding*

A Sort of Coding	Elements
Descriptive Coding	<ul style="list-style-type: none"> <li>- Summarized in a word or short phrase, often nouns</li> <li>- Led to the inventory of topics for indexing and categorizing</li> <li>- Ethnographies and studies with a wide variety of data</li> <li>- Social environments than action</li> </ul>
Provisional Coding	<ul style="list-style-type: none"> <li>- Based on preparatory investigation</li> <li>- Can be revised, modified, deleted, or expanded to include new codes</li> <li>- Codes with a reference to the previous research</li> </ul>
Hypothesis Coding	<ul style="list-style-type: none"> <li>- Researcher-generated, predetermined list of codes to assess the hypothesis</li> <li>- Developed from a theory or prediction</li> <li>- Can be Combined with statistical applications</li> <li>- Use for the hypothesis testing, content analysis, analytic induction of data set</li> <li>- Use to confirm or disconfirm assertions, propositions or theories as developed midway or later</li> </ul>
Attribute Coding	<ul style="list-style-type: none"> <li>- Coded to note the basic descriptive information</li> <li>- Coded to deal with the fieldwork setting, participant characteristics or demographics, data format, and so.</li> <li>- Particularly for the studies with multiple participants and sites, cross-case studies, and studies with a wide variety of data forms.</li> <li>- Use for future management,</li> </ul>



*Figure 2.* Research process based on the precoding structure.

### **Considerations on the Data Collection and Analysis**

In my case, the sources of data were abundant as the research objects, participants, audience, and interest holders daily speak, express their thoughts, and interchange so as to be publicly exposed (Czarniawska, 2004; Lincoln, & Guba, 1985).

The articles and books of interest are, though indirectly so, closely linked as well as fairly available through neighborhood libraries. Therefore, the strategy to develop and test the data collection tool was not traditional, but must be based on the consideration, summarized above, through the data analysis tools. In this process, it needs to be ensured that the data collection is not restricted to the interview. The points of testing, as a corollary, arise in dual considerations. To specify, we need to inquire if we can analyze the data without a respondent, instead using other publicly available data of Korean sources, such as official reports, conference proceedings, statistics, batches of newspaper articles, or interviews by newspapers (Moses, & Knutsen, 2007). Given the interview, nevertheless, has been planned to cover the group of professionals as discussed previously, what points should be considered? The first question is related with various approaches using analytical tools that were explored briefly above, and the general support is prevalent by peers and scholarly text on method (MacNealy, 1997; Merriam, 2009). Let me excerpt responses from the social media of researchers into the Appendix D, which were retrieved from [www.researchgate.net](http://www.researchgate.net).

The second point generally would be amenable to the traditional guidance of data collection tools so that we need to question, for example, suitability of data collection methods for the target groups and the issues being assessed, ability to identify the significant issues of CGDE, reliability of the measuring instruments (for example, the extent of producing same answers to the same questions), and advantages and disadvantages of each type of data collection tool (MacNealy, 1997; Merriam, 2009; Maxwell, 2005). In my case, I believe that the group of interviewees and their number

were sufficient to address the issues of CGDE because it was coupled with the vast corpus of secondary sources. The target groups were adequate to reveal the relevant and credible information, and also corresponded with my aim of social change in the policy area. One point needs to be remarked on: some part of contrast sampling had been planned, in which I expected more different or opposing views rather than same answers in terms of reliability issues concerning the interview instruments (Creswell, 2013; Patton, 2002). In addition, observation seemed an ineffective method since the topic was less behavioral, even being somewhat historical as implicated in the policy studies and actions or suggestions. It can be more value- or ideal-oriented that the behaviors or simulation of the test group were less usable in my case.

### **Data Analysis and NVivo**

The data analysis within the case study typically are conducted by means of coding strategies and with the aid of computerized NVivo. NVivo is very effective for processing the dissertation project, in which I organized the collected data into computer files that had been imported into NVivo (Creswell, 2013). The type of data collected were versatile, ranging from PDFs, interview results, pictures, other form of word files, and videos. NVivo would enrich the enjoyment of the dissertation project by providing a convenient and integrity of data processing. It also is helpful for representing and visualizing in the form of matrixes or trees. The automated process helped to increase efficiency by reducing hand coding work such that the contexts, categories and comparisons were formulated more objectively. The process of NVivo data analysis had gradually shaped those results into themes or meaningful stories. This process represents

the thought process of the researcher and his values or beliefs. I consider the service and facility of NVivo is very useful in the data analysis due to (a) its ability to create the function of cognitive map or many functions on the innate attribution, what we call nodes, and (b) its ability to objectify the qualitative data into a quantitative shape or semi-quantitative data, and many other functions (Maxwell, 2005). In handling my qualitative research plan, the attraction of NVivo had been obvious. It simply provided the function of most convenient data storage and met my requirements, in which various types of data were collected and analyzed. Thankfully, the coverage of NVivo use, in terms of data files, includes pictures, audio files, social media data, word documents, PDFs, database tables, spreadsheets, videos, and web pages. In compliance with the general guide, my ethics on the data analysis arose from coding principles. For example, I once used Ryan and Bernard's social science queries, that the general goals of the research— e.g., democracy, professionalism, or productivity – had been constantly consulted (Moses& Knutsen, 2007). In addition, the five vantage points would be held through the analytical process that normally are required of qualitative researchers: (i) what is going on, (ii) what are people doing, (iii) what is the person saying, (iv) what do these actions and statements take for granted, and (v) how do structure and context serve to support, maintain, impede, or change these actions.

### **A Closing of Methodology**

Since the case study of CGDE has two basic purposes – (i) that it seeks to instill issues of importance for specific groups of people and (ii) creates meaning about those issues through analysis and the modeling of theory –purposive or theoretical sampling

was typical and also guided my research operation (Merriam, 2009; Moses, & Knutsen, 2007). Theoretical sampling is a central tenet of this case study, which is essential to the development and refinement of understanding and awareness that are grounded in data. For the work of data collection, I crafted principles that were applied to the sampling strategy of CGDE: (a) establishment of trust in the data and explanation of the case study subject<sup>9</sup>; (b) maximization of opportunities to discover variations among concepts and to hone categories in terms of their properties and dimensions; (c) reduction of possible risk from a prescriptive approach without creativity and limited conceptualization; (d) reduction of the extent to which data are processed deductively<sup>10</sup>; (e) assurance of purposeful, but theoretical sampling by ensuring the selection of participants with shared knowledge or experience of the particular phenomena identified by the researcher as a potential area for exploration (MacNealy, 1997; Roy, Zvonkovic, Goldberg, Sharp, LaRossa, 2015).<sup>11</sup>

### **Issues of Trustworthiness**

The validity and trustworthiness are typically challenging in qualitative studies. Besides the inherent issues with the case study method, the general issue of qualitative

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<sup>9</sup>Hence, Barbour pointed out mythical quality of GT approach, “a sleight of hand produces a list of themes, and we are invited to take it on trust that theory somehow emerges from the data without being offered a step by step explanation of how theoretical insights have been built up.”

<sup>10</sup>For example, application of the 6C coding family in the axial coding is to identify conditions, context, action/interactional strategies, intervening conditions, and consequences, which emerging concepts are tested against and fitted deductively into this paradigm rather than allowing theoretical concepts to emerge inductively. Hence, Glaser and Holton have remodeled the methodology as part of generic qualitative data analysis.

<sup>11</sup>Therefore, Hood suggested that all theoretical sampling is purposeful, but not all purposeful sampling is theoretical.

research concerning the evidence and evaluation of quality clearly tends to be present, which makes it necessary to strategically respond by ensuring it is credible, confirmable, transferable, and dependable (Bulawa, 2013). As Lincoln and Guba (1985) suggest, these four elements of post-positivism have been enshrined within the evaluation of qualitative research. My strategy to enhance the quality of research is summarized in the Table 4, Chapter 4.

### **Ethical Procedures**

In terms of research ethics, the first problem involves the validity of research, which the research must take care of and hold a focus on (Rudestam & Newton, 2015). Otherwise, it is ethically problematic to use people for invalid research, being disrespectful and counter-productive. It would be a deceptive practice to fail the public trust in the scientific community. The participants also may face public disfavor or mockery due to invalid research. Therefore, the researcher has to comply with the lessons and standards of methodological selection or data collection as well as analysis, which are essential to produce valid research.

A proper extent of interviewees needs to be arranged to increase the credibility, and the researcher must assure that the interviewees give voluntary consent. In this way, the evidence will not be biased to explain the phenomenon associated with the constitutional reform or practice in Korea (O'Sullivan, Rassel & Berner, 2008). The audiotaping will be carried out during the interview process so that the accuracy of information can be mutually confirmed after collection. The competency of the researcher relates with the ethic that he should not unduly tire the participants or drive

them to be under pressuring conditions (Rudestam & Newton, 2015). It could not only impede collecting of accurate information, but also involve the abuse of human subjects. The interview times need to be strictly respected and additional permission has to be cordially assured if any extension is sought.

The interview protocol needs to be prepared with due care that the process flows informatively and cooperatively, which forms raw data. The data analysis and write up are crucial in terms of investigator's competence that will ensure a beneficial outcome in terms of the quality of research. The intent and key information intended to be delivered by the interviewees should not be misinterpreted and unduly connected to other stories and themes. The necessary cost has to be redeemed adequately to compensate for the labor of participants, but should not amount to buy-in or given at a level that can create an undue influence (Maxwell, 2005). A translation into English has to be assured in terms of its accuracy in order not to distort the raw data. This aspect was particularly important in my case. Since the interviewees of CGDE studies were drawn from professionals or the intelligentsia, they would be special populations that deserved due consideration in terms of collecting unbiased and honest responses and protecting their sense of pride (Creswell, 2013; Stake, 2010). They might also reject my request that they participate since they were skeptical, for example, by asking "what kind of research is beneficial to the current Korean republic?" The response to such negative attitude must strategically be prepared in advance by mailing a short introduction and key questions as written. In my expectation, the written questionnaires also would have an effect, which can be complimented with the follow up oral interview process. That is because the data



typically include a portion of confidential disclosure that often is more convenient via written interchange (Creswell, 2013; Yin, 1994).

An essential ingredient in the ethical aspect of research is that the participants provide fully informed consent. It ensures voluntariness of providing the data and serves as one of key elements to establish a rapport with the interviewees. The researcher needs to bear in mind that the most controversial type of research design is one that employs concealment or deception (Rudestam & Newton, 2015). Hence, the elements of informed consent have to be obeyed, which eventually facilitates obtaining an authorization signature in a timely fashion. For example, the researcher tells the participants who is conducting the study, explains why the particular persons have been singled out for participation, and explains if there will be any potential risks and how they will be managed. Most importantly, it is helpful to provide the participants with a copy of the informed consent, which can be taken from the Walden resource. The graduate students have to (i) be knowledgeable about the university's requirement, and (ii) the approval should be sought before the data collection is undertaken and as soon as possible after the research procedures are established. Generally, the norms and values to shape the ethical requirements are reinforced by the scientific community, which pertain to my case too (MacNealy, 1997; Rudestam & Newton, 2005).

### **Summary**

This methodology chapter provides a justification for the selection of qualitative approach and case method as appropriate to the inquiries or research questions that will be answered through the chapters. The principle of data collection and role of research as

pertain to this study are explained. The operational issues of collecting and analyzing the data that cover the population and sampling strategy were discussed. It necessitates highlighting the number of interviewees and the interview length as well as interview protocols that facilitate a strong understanding on the nature of this study and establish rapport and a smooth process of interviewing. Some examples of interview questions as well as strategies on the organizing or tracking of data and coding process were explicated. The first cycle and second cycle of coding are useful for this study because they can underpin the analysis of the preliminary investigation of topic relating with the literature review and empirical findings. The chapter also provides considerations on data collection and analytical tools, such as content analysis and use of NVivo. The quality issue and strategies to improve credibility, transferability, and confirmability were also explained. The conclusion illustrated my principle through the data collection and analysis. The ethical problems and the strategies to adequately respond thereto were discussed surrounding the validity of research, due treatment of interviewees and accurate replication of interview results, and issuance of informed consent.

## Chapter 4: Results

### **Introduction**

I explored CGDE in South Korea in this study. The theory of CGDE formulated by Dorf and Sabel (1998) provided a useful theoretical lens, which was supplemented by the work of other juridical writers and political philosophers. As a reminder, the central research question asked, “How does democratic experimentalism support constitutional government in South Korea?” To help answer this question, the secondary research questions asked,

RQ 1: What are the key differences between a centralized organizational form and a decentralized organizational form, in their capacity to support constitutional government in South Korea?

RQ 2: How does a national framework support the constitutional government in South Korea? and

RQ 3: What is the role of individual rights in supporting constitutional government in South Korea?

I collected and analyzed evidence in support to answer those research questions according to the normal standards of social science. The qualitative inquiry consisted of 16 face-to-face interviews and documentary examination to yield empirical findings of this study. The inquiry involved additional qualitative analysis using a textual, content analysis and critical discourse approach as well as the coding of data using NVivo software. The study methodology required interviewing experts on the topic as well as using a purposeful population sampling representing sufficient data to achieve saturation

(see Creswell, 2013). In conducting semi-structured interviews with participants following Merriam's (2009) approach, I gained perspective on Korean politics and constitutionalism and CDGE in South Korea, including such dichotomies as private- and public-sector interests, national frameworks, and reform movements; a possible new conceptualization of rights; and the constitutional tradition. Bracketing helped to ensure an unbiased and clear understanding of participant responses. I used recordings to double-check the accuracy of data, which also helped place them in a coherent order to explain CGDE (Creswell, 2009) This chapter will include information on how I selected and recruited study participants, the approach I used for the interview process, the methodology for coding and analyzing the collected data, and the key findings and a summary of the research.

### **Setting**

I conducted the research study upon the approval of the IRB. There was no barrier or any significant challenge to the data collection process. No adverse personal events or altered organizational conditions, such as changes in personnel or budget cuts, occurred that might have influenced participants or impacted their experiences. The data collection and analysis process were sound and well-isolated to minimize bias of the empirical findings and their interpretation.

My sampling strategy was purposive and theoretical sampling, as well as contrast sampling, which I devised to deal with a relatively large number of participants as proposed within the methodology section above. I conducted the face-to-face interviews with each of the 16 prominent experts to gather a holistic picture based on their opinions

and viewpoints and supplemented by field data collected from the conferences. I paid much attention to the access and rapport issue by locating a homogenous sample and selecting the key actors with significant actual and live experience of constitutionalism and government practice, as per Yin's (1994) suggestion. The selection of participants was strategically made to ensure the most information-rich group of participants, using a predefined set of inclusion and exclusion criteria.

### **Demographics**

I targeted Korean attorneys, professors of relevant disciplines, and other seasoned intellectuals for my study participants. Participants included two legal historians, four attorneys, three law professors, two professors in social science, two civil activists, and two journalists. I selectively chose participants because the qualification of the target population was significant to the relevance of results. It was also because the sample population in my study design required shared knowledge of a culturally affective nature. Participants served as career professionals and were noted among the public as rationally-minded and prominent professionals, known to be well-versed with issues of constitutionalism and democracy in Korea. As indicated in Chapter 2, I took care to also include participants under the age of 40 for each category, in order to avoid the potential bias from uniformity in career years and experiences.

### **Data Collection**

The research study involved a purposeful sample of 16 participants identified by using public records on Korean attorneys and college professors. The interviewer asked Individuals who expressed their interest to participate in the face-to-face interviews to

call or e-mail to provide their contact information. They were recruited until a theoretical saturation occurred around late April 2018. I used informed consent to obtain their voluntary and confidential participation. I also make it clear to participants that their decision to take part or not was solely their own, that they were fully enabled to withdraw from participation at any time during the course of the study, and that they could request the elimination of their questionnaire responses. I took a due care to ensure privacy and to maintain the secrecy of participant identities so that I identified them only by a participant number and used e-mail as confidential.

I provided the final confirmation of participation in the interviews by e-mail. I was the interviewer and moderator for all interviews in March and April. An information sheet was e-mailed to participants in advance along with the invitation to establish a time and place for each interview as shown in Appendix C and to review the research study purpose, procedures, and process; to go over the informed consent form; and to obtain a signature. The interviews were audiotaped with notes taken during the interview process. Upon completion of interviews, participants were further contacted to arrange their review and confirmation of participant questionnaire transcripts for accuracy, changes, and approval prior to publishing findings. I completed these steps by e-mail, phone, and Skype. The data collection and analysis process lasted 2 months. During that time, I had an initial contact using e-mail, and the duration of interviews did not exceed three hours. There was not any perceptible risk to the participant's organization or the participants in the study. Nominal stipends were provided for individuals' participation in the study

(e.g., to cover lunch costs or transportation fees). Participants received an executive summary at the end of the study.

### **Data Analysis**

As stated, I had used the kind of precoding structure which provided an advantage to enhance the data collection and analysis and enabled to process the amount of field data and written materials. My coding process employed the hypothesis coding, provisional coding, or descriptive coding, and used the attribute coding for the foreign audience. With the selective coding frames, I had generated the individual codes associated with their respective data chunks (Please see Appendix B). I also conducted the second cycle of coding that produced the narrative description or network and matrix display. In the event, the two coding processes enabled to build up a brief or extended narrative with their descriptive summaries or higher-level analytic meanings. I used memos in various stages of the research process, and the analytic memos had been the basis for the researcher to turn his thinking into a coherent set of explanations (Wolcott, 2001). The NVivo software was used to input internal and external data generated from face-to-face interview, literature, and for analysis of various themes and patterns that emerged from the input data as described in Chapter 5. The researcher had imported the data file into NVivo software, and the consent documents had been included in the data imported into the NVivo software. NVivo software also was helpful to store the data and to generate analysis, and generated reports for the answers to each question. This software also helped to ensure credibility and reliability of the data. The results will allow the participant and organization to improve Korean constitutionalism through democratic

experimentation. The information from the case study will eventually allow better understanding of Korean constitutional government and its improvement. The participants of the study received an executive summary of the findings by e-mail.

### **Evidence of Trustworthiness**

As said, trustworthiness in a qualitative research instills reliability in the study, which requires to ensure four elements, as Lincoln and Guber (1985) expounded, to be addressed for quality product. They cover the issues of credibility, transferability, dependability, and confirmability as shown in Table 4. The member checking, for example, had been completed for checking the accuracy of the data collected from the research participants during and after the interviews. It was a sure way of establishing trustworthiness. Credibility, as a first element, is required to ensure the findings of the study to be sincere, dependable, and true. To enhance it, I obtained the assistance from outside experts on several meetings. It generally depends on the creativity, skill and competence of researcher how much extent of credibility can be acquired. Achieving credibility in research therefore requires creativity, skill and competence of the researcher. Transferability can be defined, according to Merriam (2009), as the extent to which the results of a research may be applied or transferred beyond the bounds of the inquiry. In order to enhance the element of trustworthiness, I had ensured a sufficient depth and relevance of data and incorporated a detailed description of the analyzed results into the final study. Guba and Lincoln, as a third element of trustworthy research, required that the reliability and stability of data are sustained over an indeterminable period. In this admonition, I had exerted on the clarity and accuracy for the audience, as



above, including the research design, setting and demographics, and in-depth details of the data collection processes. In the end, a well-thought-out assessment of the research study could only bring the dependability of research study. Confirmability directed that the results are well supported by study participants, in which the findings could be confirmed by texts or events as unbiased from the researcher's own opinion or assertions. In order to ensure the confirmability, I elaborated on the rich and thick descriptions of participants' account, practiced the journal writings or memoing as well as provided clarity in the thought process for data analysis and interpretations. The table below charted the main aspects and my strategy about the trustworthiness of this research study.

Table 4

*CGDE & Quality Issue*

Quality issue and strategic points of plan			
Credibility	<ul style="list-style-type: none"> <li>● Inquires if the results are believable</li> <li>● Can only be verified by the researchers &amp; participant</li> </ul>	<p>Threat:</p> <p>Personal biases. In the CGDE research project, the threat to the credibility of research would arise from personal biases of researcher. Although he is any best fitted researcher known well to the phenomenon studied, it also militates against a more confirmable result.</p>	<ul style="list-style-type: none"> <li>● Shared the threat and challenges with the participants</li> <li>● Discussed implications of my status and background that possibly influence the research plan and operation.</li> <li>● Obtained assistance from the outside experts, who review the data and challenge any of implausible assumptions.</li> </ul>
Transfer-ability	<ul style="list-style-type: none"> <li>● The extent to which the data can be applied to other contexts</li> </ul>	<p>Threat:</p> <p>Biases of data collection and possible spoils of data analysis may be present</p>	<ul style="list-style-type: none"> <li>● Acknowledged the nature of qualitative studies: (i) biases in sampling (ii) dynamic, iterative, and constantly emerging</li> <li>● Ensured a sufficient depth and relevance of data</li> </ul>

Confirma-  
bility

- Required to be as much as objective in the best possible way of research operation

Threat:  
challenge of description/  
against the criterion of bias-free write up/monotony fallacy

- Had a consultation and meetings for data collection and analysis issue
  - Consistent and transparent interpretation of data/meticulous record keeping and demonstrates a clear decision trail
  - Interview arranged in Korean/Walden guide for the international research is constantly referred (e.g., back-translation for the authenticity of information)
  - Rich and thick descriptions of participants' account/journal writings or memoing practiced/clarity in the thought process for data analysis and interpretations
  - Collaborated with other researchers to reduce the bias and obtains the respondent validation (e.g., inviting the participants to comment on the interview transcript)
-

## Results

The results presented here are grounded on the interpretations of texts and documents, field notes and interview data. Recurring themes were identified and organized to correspond with research questions. In order to show correspondence and patterns, the coding scheme detailed above had been implemented, which ultimately enabled grouping of the analyzed results and constituted a primary focus of the data analysis in this study. I concentrated on the identification and interpretation of the most frequent themes that emerged during data collection. The results are therefore organized by the main research inquires and sub-questions including the corresponding interview questions and responses, and the recurring themes which emerged. Through the process, field notes were significantly useful to facilitate the process, but should be unbiased on the daily developments. The news stories or impression from the Korean dramas, for instance, had been a source for them and themes generated thereby constituted an important aspect of the results.

The sources of data included three inquiry types, open-ended questions and interview results, texts of documents, and field notes. Documents or texts consisted in the content of government records, conference materials, newspaper articles, historical documents, and scholarly materials of Korean authorities. Findings are presented in nine main components to relate the responses and empirical evidence to the one central theme and the three more explicit secondary questions. Documentary and textual examination when subject to critical analysis brings forth the summary chart comparing the US and

South Korean constitutional tradition based on my research questions. They help to clarify the holistic picture and form a backdrop for the structural attributes of discourse involved in this research study. They are available for consideration in Table 5 and Table 6. The main components that respond to the research questions are presented in Figure 3 and Figure 4. According to Table 7 and Table 8, summary of findings are illustrated thereafter according to each of nine component or themes. More extensive features of the analyzed results and interpretation of findings are elaborated upon within Chapter 5 in the section for discussion and suggestions. Figure 3 and 4 help to elicit the core of Dorf and Sabel's proposition in the CGDE. Table 7 also aligns with the main assertions of Dorf and Sabel and its potential influence impacting the constitutional controversy, which is dissected into nine themes to explain constitutional government in South Korea.

Table 5

*Comparison Summary Concerning Constitutional Tradition*

Classification	South Korea	United States
Source of constitutional Tradition	# Written constitution # Case laws of KCC # Major public statutes	# Case laws of US Supreme Court # Written constitution
Structure of written constitution	# Preamble # General clauses # Bill of Rights (Classic and advanced or social) # Structure of government # Key institutions under constitutional protection	# Major public statutes # Preamble # Structure of government # Bill of Rights and amendments

**[Points of Understanding]**

While differences between the two legal traditions are assumed, they are more equivalent in the area of public laws. Since the US is classed as a case law country, this comparative study is more primarily focused on public laws. It is mainly concerned with legal culture and intelligence, and the points of convergence between the traditions. The implication with respect to public policy discipline is that rule makers and enforcement officials can argue or dispute the constitutional issues as defenders of such public values as are keenly related to their job duties. That is the same with both the US and South Korea such that officers working in the national frameworks within all branches, notwithstanding political or judicial spheres, are all responsible for the Constitution and democracy.

The structure of a written constitution reflects the history of democracy and modern constitutional states. The Korean version is fairly notable for its wide scope of coverage, and not merely in terms of pages or words. It includes the general clauses on structure, advanced or social bill of rights, and key institutions under constitutional protection. A number of political elements from modern disciplines of democracy are affected to increase focus on key national concerns. The implications for this study is that Korean reform movement should maintain a focus on needed revisions to the provisions or language within the written constitution. Nevertheless, constitutional reform should be comprehensive to take into consideration the principles and cover the attitudes and policies suggested by a wide spectrum of interpretations and opinions of Supreme Court

and public officers, to result in reform of major public statutes beyond the written provisions or language within the constitutions.

Table 6

*Elements of CGDE and Two Constitutional Tradition*

Characteristics	South Korea	United States
Private v. Public mode of decision making	<ul style="list-style-type: none"> <li># State action theory imported &amp; practiced (Learned from public, vice versa on our theme)</li> <li># Protection of key institutions (Mutually learned and crossed-over areas of constitution-typical example: commission of participatory decision making)</li> </ul>	<ul style="list-style-type: none"> <li># State action theory invented &amp; practiced</li> </ul>
National framework- 1: central government	<ul style="list-style-type: none"> <li># SPP &amp; non-delegation doctrine</li> <li># Presidential system variegated or imperialistic</li> <li># Two types of supreme courts, unitary congress (KNA)</li> <li># Prime minister and cabinets</li> <li># Comptroller audit</li> </ul>	<ul style="list-style-type: none"> <li># SPP, non-delegation doctrine/federal system</li> <li># Presidential system-original</li> <li># Bicameralism</li> <li># Unitary Supreme Court</li> </ul>
National framework II – institutions	<ul style="list-style-type: none"> <li># Political parties &amp; partisan system</li> <li># National economy</li> <li># Decentralization and localism</li> <li># Public education</li> <li># Family &amp; spouses</li> <li># National military</li> </ul>	<ul style="list-style-type: none"> <li># No comprehensive or systemic deals</li> <li># National army and navy</li> </ul>
	<ul style="list-style-type: none"> <li># Bill of Rights (Classic and first-generation rights)</li> <li># Freedom of political</li> </ul>	<ul style="list-style-type: none"> <li># Bill of Rights (Classic and first generation)</li> </ul>

Individual rights	parties (advanced) # Right to labor, public education, decent housing, and so (social and second generation)	# No comprehensive or systemic deals
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### **[Points of Understanding]**

The implications for this study underlie the ways in which perception and attitudes of constitutional reform in Korea can attract the public more tangibly surrounding the diverse issues of a written constitution. In contrast, the constitutional reform or suggestion therefore are more academic and scholarly in U.S., and mostly inclined to deal with the thoughts or principles triggering the practice of U.S. Supreme Court due to the differences in the major coverage of topics and issues. This difference is thought to arise from the unique background of constitution among two nations and federal or unitary status of the nation. It brings (i) more frequent and significant revision of constitutional language in Korea (ii) contention over the public discourse and practices of public officers and (iii) centralization of power for the traditional politics in South Korea. While the response shows most starkly the imperative need of decentralization or localism, a suggestion to implement the federal system in Korea would not be a surprising viewpoint. It is not obvious how this change will affect public policy workers and administrators. In Korean case, it potentially would mean “more power” for them since they are not the only possible initiators of the written constitution, but also presumably elevated by their constitutional status with respect to each of their job responsibilities. Public policy workers or administrators in the US are more than merely operating under congressional control and create their distinct rules to specific local



needs if they can be arguably validated in the courts. Therefore, South Korea is more preferably focused on the “state of public policy” while US policy is generally attributed to the “state of law or constitution.” Therefore, “constitutional public policy” may be a distinct area of research in public policy disciplines being similar with those other areas. The main research question that drives me is to probe how the private mode of decision making improves constitutional government in Korea. The existing paradigm of both constitutions are quite interesting to show that public policy unilaterally influences the private province of citizens through constitutional theory and institutions. Theory or case law that is ideated and ground on public policy can be more instructive and starkly unique than the exploration of the traditional dichotomy between the public or constitutional and private domains. Most of all, it is paternalistic and top-down for the government to intervene, as opposed to changes initiated from a private or industrial model of decision making. Nevertheless, learning by monitoring or coordination with local or sector experimentation by public officers can contribute to theory and case law or new language in written constitutions. This process of mutual interaction has already come to influence Korean constitutional tradition and enabled incorporation of the constitutional shield to key institutions beyond the structure of governments and the protection of individual rights that are the traditional main themes of modern constitutionalism. One notable point is that most institutional protections in constitutions can be compatible with the Dorf and Sabel’s cause, while the only exception might lie in the political parties or partisan systems and learning from the atrocities of two world wars, thus being international and top down. At the same token, the Korean constitution

affirms the principle of international peace and respect for international laws as an explicit language within Art. 5 although it is not institutional but is akin to the kind of foreign affairs or war power argument in US. Overall, the service and utility of democratic experimentalism in both countries are related to the matter of location, and suggest how case law pronouncements, change of language in the written constitution, or enactment of new public statues affect and yield transparency and effective government.

Table 7

*Identified Themes*

Category	Themes
Theme 1	Conditions to reform
Theme 2	Consolidated civil society
Theme 3	Public officers as a change Agent
Theme 4	Parliamentary system-a unitary form
Theme 5	Decentralization and competitiveness-small and strong
Theme 6	Independent Administrative Agency-small, independent and strong
Theme 7	Economic justice and Korean constitutionalism
Theme 8	Social congruence and multiculturalism
Theme 9	Korean constitutionalism and green peace

Table 8

*Quick Reference to the Findings: Characteristics and Best Practices*

Characteristics & Tradition	Incrementalism & Transformation	Number of times mentioning the item (Total of 16 Interviewees)
A: Pandect legal tradition (No private on public Issue)	A: Conditions to reform	42
A: Political culture on feudalism	A: Consolidated civil society	45
A: "Once for all" populism		
B: Separation of powers principle	B: Public officers as a change Agent	53
B: Non-delegation doctrine	B: Parliamentary system-A unitary forum	38
B: Butter-finger presidentialism	B: IAA-small, Independent and strong	42
B: Warrior state against northern threat	B: Decentralization and competitiveness	56
B: Cronyism and corruption		
C: Lack of social concept on right	C: Economic justice and Korean constitutionalism	43
C: Tension on knowledge gap and progressivists	C: Social congruence and multiculturalism	39
	C: Constitutionalism and green peace	39

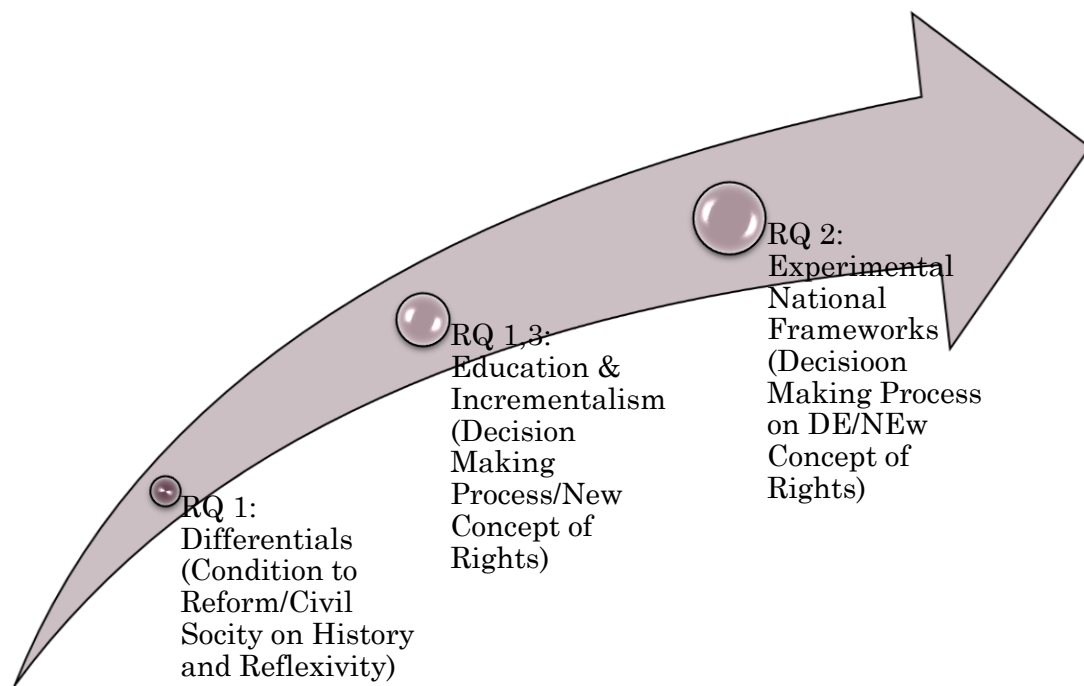


Figure 3. Research questions and dimension.

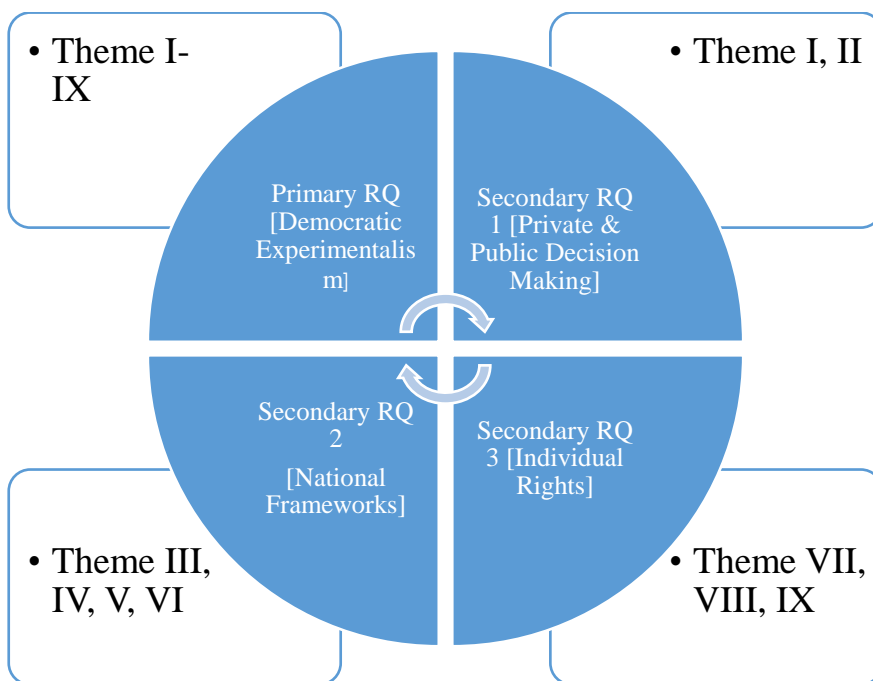


Figure 4. Research questions and themes.

This research study is driven by one primary and three secondary research questions to form a thread of data collection that seeks to better understand constitutional government in the South Korean context. The principal research question is how does democratic experimentalism support constitutional government in South Korea? The three secondary questions followed accordingly to answer how the CGDE helps to support a better understanding of constitutional reform and improve the practice of government in South Korea.

### **Summary of Findings**

CRQ & RQ 1: By asking “what are the key differences between a centralized organizational form and a decentralized organizational form, in their respective capacities to support constitutional government in South Korea,” the questioner sought to elicit responses along the interchange of private and public sector dichotomy and to determine their impact in decision making and the constitutional system in order to address the needs of successful and transparent government in terms of the provision of public services and adjudicating individual rights. Response highly suggested the importance of public education, role of public officers as a change agent, social congruence in the era of multiculturalism, and improvement of civil society as a solid grounding of Korean constitutionalism.

1. Interviewees were commonly concerned about the conditions that have to underlie the reform movement, which determines the success of reform and government system resulting therefrom.

2. The most crucial condition for the success of constitutional reform is a common awareness about the need and its basic direction to be compassionately shared by the political parties and citizenry alike.

3. Three factors leading to recent trauma in Korea had been identified and need to be discussed. One is the tale of revenge-taking in political circles, second being CV, and increasing embedment and intensity of struggles among two extremists political ideals-left and right.

4. The success of constitutional localism is predicated upon two key efforts embarked upon by the newly elected assembly through the working organizations within it.

5. The first principle of public administrators or soft value management model commands that they should be servants so as not to impinge upon the rights and liberty of the people. The efficiency, effectiveness and economy of public administration, what is called a hard value, generally governs the narrative of successful government.

6. Due restraint is required to maintain the integrity of governmental regulation and minimize the effect of extra-governmental pressure. The notable institution would be the oversight and supervision of congress within the separation of powers principle. There exist a number of constitutional classifications that concern the ethics of public officers. The interview results suggest the need to learn the protective systems of advanced countries. Social change requires that the concept of justice operate to protect the essence of civil society and to provide minimal welfare for deprived

classes. A growing paradigm is to define the success of government in terms of the modern positive or administrative state, but without harming the first principle.

7. Interviewees and texts and documentary evidence demonstrate several critical elements that are necessary for the success of constitutional government in Korea. They include the social change and multiculturalism, public education on constitutionalism, and amelioration of social conflict.

8. The consolidated democracy has been the ideal that interviewees expressed, with constitutional reform being defined to bring the success of government. The interviewees largely agree that the distinct part of political culture in Korea stems from the historical fact of the recurrence of authoritarian regimes and continuing transformation.

9. The constitutional reform needs to be designed that can affect the education and enhanced culture of the people for the support of democracy and national development. The objective element of political culture is favorable and encouraging as Koreans enjoy the same ethnicity, common tongue, religious toleration, developed economy, high level of public education, comparatively stable middle-income earners, and a variety of interests and pressure groups with civilian initiative. According to the findings, the success of government is defined as an upgrade to the quality of life, in which democracy is sustainable and productive of the stability and continuity of administration. Studies in this area of interest gave us an insight that the stir of Korean constitutionalism and democracy has largely been unsuccessful with a bias that produces unproductive progress.

CRQ & RQ 2: By asking “how does a national framework support the constitutional government in South Korea,” the questioner intended to draw on response for improvements to government structure that are most suited to democracy and the constitutional system in South Korea. Responses and analyzed results were utilized to explain how a successful system and practice of constitutional government can be realized through the current reform movement and constitutional discourse. The three themes, i.e., parliamentary system, the independent administrative agency (IAA), decentralization and competitiveness, were identified to reveal the Korean elements orthodox or distinct from the general theory on CGDE but found much to be shared with Dorf and Sabel’s proposition and assumption.

10. For the interviewees, the parliamentary system was likely approached as a kind of mystery though it was a short-lived system in in Korea in 1960. A preference for a parliamentary system was voiced no less often than a continued presidential one, which now guides the direction of constitutional reform discourse equally with the two-tier executive or revised presidential system.

11. A preference for a parliamentary system seeks to accomplish a number of policy purposes rooted in public considerations for improvement in the political practices of nation. Advocates for this system delineated several elements to support the success of their preference; change of power at regular intervals with two or another small number of major parties, political accountability, foreclosure of de facto dictatorship via political localism (not merely institutional localization or localism), deficiencies of a one- time



five-year presidency, and the need to reform the current extravagant electoral expense dynamic.

12. A key theme identified by most interviewees is how South Korea continued to develop and maintain its competitive, developed and positive welfare-oriented national paradigm. The interview results prove that the success of government is mostly pivoted on continued strides of nation in furtherance of the post-industrial errand.

13. Centralization of power naturally erodes autonomy and accountability of local governments. A solution to prevent the erosion of public trust via centralism naturally requires a decentralized system of government for the competitiveness of the nation, especially with increasing globalization and the knowledge economy. An underlying value inherent in decentralized government is an educational effect yielded therefrom that ameliorates the problems of inefficiency and unproductivity.

Decentralization helps to facilitate social congruence and satisfaction in the people. The current dilemma embedded in disagreements and public resentment highlights the importance of this area of concern and requires leadership to combat notwithstanding differences in political views and economic standing, or variations in education levels, religion or community status.

14. Reform of congress has to be secured for effective constitutional localism because national legislators are currently able to obviate the empowerment of local government through their central power of supervision. The provinces in Korea provide a unique concept underlying the Korean particulars of public administration, defined as a

wider area than the traditional municipal unit of local administration with a more extensive power similar to the state in the federal system.

15. Besides decentralization and productivity, interviewees were concerned with the constitutional status of the major bureaucracy or public agency and civil society actors, in terms that will define the success of government. The kind of concepts brought up, such as social cost evaluation by the Coase theorem, attempted to grapple with the problem of how constitutional reform might inescapably be traded off by the loss of other public necessities or ideals. Thoughts and reform ideas concerning economic justice were deeply valued for the successful provision of government services. Value in public administration has textually been defined in the view of administrative efficiency and productivity. The idea had gradually been imbued with a perspective that legitimated the written constitution and case law on public administration. A deluge of rule-making around 1970's and a stack of case law in that period yielded by administrative judges, sometimes by the Article 1 Court, simply demonstrated the remarkable advent of the administrative state as the will of the people, but only within the constitutional principle and detailed mandate.

16. The epistemology expert interviewees offered highlighted that the public agency, including the legislators and the citizenry, is well settled to decisively lead and engineer the constitutional statecraft in order to define the success of government. Interestingly, they were keen to share the important role of public education for both realms of the public agency, and agreed that necessary provisions, at a minimum level of required documentation, will have to be placed into effect as legal provisions or even as

new entire chapters for successful bureaucracy and civil society. The constitutional reform needs to be concerned with maintaining the system of agency independence.

17. The interviewees often mentioned the independence of experts in public administration to sustain the ideals of performativity and normativity. In order to adhere with the constitutional system, reformers can explore the diverse alternatives as a predicate to reinforce the advocacy of IA as a kind of primary form of public agency. In order to bring the success of government and social change through the IAs, the foundational guideline needs to be agreed upon either through the text of the constitution or interpretive understandings.

CRQ & RQ 3: By asking “what is the role of individual rights in supporting constitutional government in South Korea,” the researcher sought to assess how flexible the overall constitutional system might be in South Korea, in which the progressive thoughts and incrementalism, both in civil society and constitutional tradition, can be strengthened so as to implant the new concept of rights. Study participants and public documents dominantly identified two themes, economic justice and green peace, as most concerned with the improvement of Korean constitutionalism. They also adverted most frequently to themes II and III, expressing their support for inculcation of public officers as coordinators for social change and social congruence to benefit immigrants and minorities.

18. Constitutional reform and success of government in Korea necessarily requires a discussion on constitutional policy concerning economic justice. While the government plays a great role in the regulation of monopolies and oligarchies in the

market, reasonable allocation of resources and the adjustment of income disparity are the underlying problems that must be initiated or adjusted. The suggestion is to maintain the fundamentals of the constitutional mandate while proceeding hesitatingly through the communicative or participatory concept of democracy. In addition, the traditional dualism between the public and private sectors is predicated on the autonomy and freedom of individuals including the contract and property. Interviewees stressed the principle and also pointed out the importance of public education and cautioned against the extreme left.

19. One noteworthy finding concerns increasing foreign immigrants, social congruence and multiculturalism. The interviewees perceived that the government at this time needs to rethink the traditional policy of alien labors and human rights. Understanding of the utility of aliens inherent within the liberal economy needs to educate market participants as well as constitutional reformers and policy makers.

20. Throughout the investigation, the core of reformers voiced the low carbon economy and green peace as indispensable issues to be safeguarded constitutionally. A social change effort to reformulate the green concept within a constitutional effort is highly remarkable and accords with international relations and diplomacy. A constitutional policy that deals with the challenge of environmental degradation requires due prudence because of its foundational impact on the legislation and the regulation by public agencies.

21. It is undisputable, according to interviewees, that the public ethos and sympathies are even more crucial than the success of constitutional revision. The solution

may come from a comparative review of the various constitutional policies on the environmental challenge.

### **Summary**

This chapter presented the research setting along with the participants' demographics and confirmed that the original plan proposed to conduct this final study was faithfully implemented. The data collection process and data analysis were clearly and, to the greatest extent possible, explained for the audience to understand the research operation. In order to increase the dependability of this research, the evidence of trustworthiness was discussed, including endeavors to increase credibility, transferability and confirmability. All research participants were interviewed without any complication and according to the interview protocols, and no issues arose in terms of access or rapport. Nine important themes and findings on characteristics were provided corresponding with research questions, to help bring a better understanding of constitutional government in South Korea and improvements of its practices in view of Dorf and Sabel's theoretical framework. These themes summarized the data from all three data sources and helped provide answers to the research questions. Chapter 5 will include a discussion of the findings in relation to the existing literature, theory on CGDE, as well as the implications of the research findings to improve the constitutional system in Korea. A concluding remark, including the researcher's reflections on the final study, and recommendations for further investigation will also be presented at the end of chapter.

## Chapter 5: Discussion, Conclusions, and Recommendations

### **Introduction**

The purpose of this study was to identify the elements of constitutional reform movement in terms of CGDE and to better understand the democracy and constitutional system in Korea. The study was designed to identify approaches that South Korea could undertake to improve its constitutional policy in a manner that aligns with the terms and requirements and ideals of CGDE and other interrelated scholarship. Such a study was needed to understand how Korean constitutionalism, in view of the decision-making process, national frameworks, and new concept of rights, could be addressed to increase democratic experimentalism and sound constitutional tradition. The information collected and presented in this study could be used as a basis for Korean policy related to constitutional reform and the successful practice of government. Using study findings, I developed a common conceptual framework with nine identified themes. Another focus of mine in conducting the study was to raise awareness and bring attention to questionable constitutional policy while reinforcing governmental success in Korea.

The research questions for the study focused on the Korean situation and the theory on CGDE necessary to understand and improve the constitutional reform movement in Korea. The results of this study suggest that, while the United States has been the original forum of CGDE (Dorf & Sabel, 1998), Korea may be different in terms of constitutional tradition. Nevertheless, both also have demonstrated necessary commonalities in constitutional policies or ideals. In this context, the nine themes I identified delineate the greater potential for CGDE to be implanted in Korea. Hence, the

nature of elements entailed in CGDE, such as public education, incrementalism and progressive ideas and virtues, decentralization and direct deliberation, public officers as coordinators and agents of social change, a learning and debate culture, and so forth, have been affirmed as essential ingredients for improvement of the constitutional system.

In this chapter, I will describe the ways in which findings confirm, disaffirm, or extend knowledge in the discipline of public administration by comparing them with what has been found in the literature review included in Chapter 2. My objective in discussing the findings of this research is to offer an assessment and interpretation of the findings of the research study based on the empirical evidence yielded through various types of collected data mainly including the responses of the research participants to the research questions. I hope that the findings can lead to solutions and conclusions for improved practice of constitutional government in Korea. In this chapter, discussion of the nine themes and conclusions of this qualitative study will be presented, and some of my reflections on the final study will be described. I also will offer recommendations for further studies that could be conducted to augment the issues and needs presented in this research.

### **Interpretation of the Findings**

In this section titled Interpretation of Findings, I present a discussion of nine themes unearthed from the collected data and analyzed results. My presentation was aligned to correspond with the ordering of research questions so that the first two themes relate with RQ 1. Four themes following RQ 1 deal with RQ 2 while the last three themes pertain to RQ 3. All nine themes, of course, provide an answer to one central question in

the end. At the end of each title on nine themes, I place a summary table concerning the research questions, discussion and answers, which I hope to illuminate your understanding.

### **Interpretation of Findings for CRQ and RQ1**

**Conditions to reform.** Interviewees were commonly concerned with the conditions, which were thought to underlie the reform movement in order to determine the success of reform and governmental system (Cohen, 2013). They recalled the lessons learned in the MB administration, in which the president called for leadership and action by national assembly to move forward the reform plan around the middle of his term. This kind of effort to tap the action of national assembly has actually been a stereotypical strategy during previous administrations (Kim, 2014). Inside this type of recurring and traumatic reform agenda lies the contemporary dissension and public resentment concerning the lack of necessary conditions to process and establish the success of government.

The most critical condition for the success of constitutional reform is a common awareness about the need for, and basic direction of, reform that is shared and compassed by the political parties and citizenry alike (Bellany, 2017; Cha, 2015; Chang, 2016; Coase, 1960; Colón-Ríos, 2012). According to Chang (2016), this can be uniquely powerful to foreclose a partisan motive and political prejudice on the supreme law of the land through a reform proposal and resolution initiated by the president or congress. The taunted experience, however, entwined with a maligned plot of reform, merely created a bad impression against the president and congress (Chung, 2016;



Kyung, 2007; Shin, 2007, Song, 2005). One interviewee offered the following on the critical role of congress:

Interestingly, congress had stood as a center of resistance when the dictates of the imperialistic president distorted the national democracy. It accomplished much after 1990's by crafting a law of wisdom for welfare and advanced institutions for a limited, yet workable government. MB Lee, the last administration from 2007 to 2012, therefore, would have been shrewd and politically sensible to call upon the congress to steer a leading role in order to address the needs of constitutional reform.

The effort to convert the mind of president afterwards simply proves a dislike for presidential engagement in any constitutional movement. A stiff hill to climb to reach consensus among political circles and the people at large is obvious, which corroborates that the theme of rethinking democracy within the political or constitutional process is essentially concerned with the (a) political culture and history of Korea as well as the (b) popular preference for devolution and localization within the government system (Cha, 2015; Dorf & Sabel, 1998; De Burca, 2010; De Burca et al., 2014).

Along with the president's initiation, congress was coopted to organize the research and advisory council, to prepare its own version of a proposal, and hold a conference to study the issues and challenges. Nevertheless, the initiative with president just sprawled into the realm of concerned experts and professional groups, but failed to create a popular interest and shared awareness. Many interviewees conceded that this failure had been critical in confining the constitutional movement in the limited scope of

interest holders (see Colburn, 2004; Eckert & Börzel, 2012). This plainly demonstrates how the participatory framework of democracy operates to define success in constitutional reform and the governmental system resulting from it, and constitutes the greatest condition to bring a successful social change in terms of democratic experimentalism, featuring devolution, decentralization, learning from private organizational decision-making, or directly-deliberative polyarchy based on rolling-best practices (Dorf, 2012; Dorf & Sabel, 1998). Another implication is that the awareness and participation of people need to be determined with the impression and sense of reform as an inevitable option. This means that constitutional policy and revision are somewhat distinct from other policy areas if they are conducted by extremists and are revolutionary in nature. This point marks the fundamental departure between the perception and awareness of the United States and Korea, and emphasizes the point of reflexivity learning and the pragmatic and evolutionary framework proposed by Dorf and Sabel (Gertenberg & Sabel, 2002; Huh, 2007).

The three elements of recent Korean trauma had been identified and need to be discussed. One is the tale of revenge-taking in political circles, second being CV, and increasing embedment or and intensity of struggles among two extremists political ideals-left and right.

Constitutional crises have occurred twice in 15 years, both of which involved impeachment of the presidential incumbent. The tale of revenge in the political arena of the nation is not the story of unfounded allegation, involving rather the kind of endemic scholarly type issues common among the nations, or at least in South Korea. The two

impeachments mirror our assumptions about a version of political revenge that acts as a hind-force for a national political dynamism. In terms of constitutional implication, the instigators do not perceive it as an issue of constitutional reform, but rather as their power to entertain their right and voice to influence the government system and partisan politics (D.H. Kim, 2010; Ham, 2000; J.C, Kim, 2010, 2014).

CV is likely to serve as a union jack in the battle that has stigmatized the field of national totalitarianism, suggesting its greater role as an intervention against the normal processes of democracy. In line with this general thought (Backer, 2012; Ham, 2000; Hart, 1958), one interviewee on journalism revealed the character of CV in a very fine way,

Given their critical role in politics and constitutionalism in Korea, we can say upon reflection and further understanding; (i) they are more likely progressive or radical to some extent and confrontational against the Korean right or conservatives (ii) they know much about the rule of law and constitutional theory and take themselves as a national sovereign beyond the branches of government, but their misunderstanding fails to distinguish between the sovereign as an idealistic notion and merely greater number of people (iii) they are not compliant against the rule of government because of that misunderstanding, and are mistakenly proud to create a national politic as a kind of genesis undermining the role of parliament and giving it deliberative value within a representative democracy.

Then how do we see if they are crucial or positive to bring a social change and success within the government system of Korea. As we suppose, we have two sides of a coin within the grand scale of intervention via CV. The negative side is that it frequently interrupts the benefit of representative democracy by virtually nullifying the role of congress and attendant political parties (Tushnet, 2003, 2012, 2013; Wilkinson, 2007, 2012). The misunderstanding and arrogance inherent within the power of contemporary mob<sup>12</sup> also militates against the principle of democracy in various ways. The positive side can be noted that the corruption of government can be monitored and openly penalized with the mass media and labor unions or other pressure group in the nation (Tushnet, 2012). This accompanies a general caution concerning “McCarthy syndrome” to scapegoat an innocent person or classes of people. In terms of defining the success of constitutional government in Korea, it incurs many of the implications concerning (i) normative power of the constitution (ii) popular and parliamentary sovereignty (iii) concept of the sovereign and (iv) partisan politics (Vile, 2012; Waldron, 2012; Wiener, Lang, Tully, Maduro, Kumm, 2012; Wilkinson, 2010).

Not relevant to the CV, constitutional reform requires an understanding of two historical lines of political thought and their practical outcomes throughout the real political arena over a decade. Given that the constitution represents political culture and ideal of the nation, how the constitution will be drafted as a readable text importantly

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<sup>12</sup> Therefore, inductively, candlelight vigils can be seen as no sovereign, but it is “rule” and mob voice. Some scholars in Korea, however, countered, “if they are rule, then why are they not sovereign,” “Why is a pure democracy, not sovereignty?” They argued, “it may not be representative, but it is sovereignty, is it not?”

requires that the conservatives and progressives have to work together and agree on the framework and philosophy (Ackerman, 2000; Allen, 2012; Butler, 2012, 2017; Young, 2015). Practically, the success of reform depends on progress to determine how to alleviate the current confrontation and disagreement among the groups of the two prevalent political thoughts. One interviewee described,

The conservatives support a small scale of revision including the structure of government. Other issues contended by the two opposing parties ought to be reserved and should not be included since they merely delay and aggravate negotiation and the process of reform. Those involve the clauses of the national ideal, the two Koreas and national territory, some of the bill of rights, and the economic chapter. The progressives or radicals oppose this attitude emphasizing a whole scale comprehensive revision including such clauses.

The prospects of entering into a substantial stage of negotiation and proposing a revision seems blurry given the prevailing political culture of Korea between the two confrontational positions (Bader, 2014).

Success of constitutional localism came to center on the critical condition to reform. It is predicated upon two key efforts initiated by the newly elected assembly through the working organization within it. An interprovincial conference of governors and mayors is required to prepare a uniform proposal in consultation with the lower ranks of local governments (Sabel, 2001; Sabel & Simon, 2011). In terms of general approach, the levels and scope of local governments share a common cause and maintain a strategic position to assert constitutional localism. Among the issues of contention, however, they

are not completely settled and hardly approach a uniform proposal to persuade central constitutional policy makers (Sabel & Zeitlin, 2010). In order to overcome the disagreements concerning the specifics of policy issues, a resilient and unshakable leadership and attitude within the ICGM can only react against the constitutional crisis and challenges. Most interviewees seem to be influenced by the superiority of the Japanese policy experience in fiscal administration, what is called “Trinity Policy Reform.” The Korean textual understanding concerning TPR is expounded as follows,

Policy reform refers to three areas of system upgrading-namely, abolition or reduction of financial support from the central government, devolution of power to tax and resources, and overall restructuring of tax transfer. Such reform is purported to correct unequally clustered fiscal source by central government, to solve the chronic fiscal deficit of local governments, as well as to rationalize administrative partitions and units.

Through the reform process, conflict, and disagreement in the Japanese ICGM, top ranks of local governments played a leading role to persuade and conciliate the levels of interested local governments or public organizations (Joo, 2017; Kim, 2008; Song, 2005). Setting up of policy network for diverse purposes has been successful to consolidate the levels of local government with a common cause and sympathies. Research and conferencing have been key elements to develop the reform epistemology and public rationale and have been engineered principally by the governors themselves. The result of this endeavor helped to phase out clearly the problems and issues that were contended by the two governments. A stiff series of strategies armed the governors based

on the belief systems acquired through research and conference. They schemed to coerce their policies upon the central government using the motto “no acceptance of TPR, no more services to implement the responsibilities delegated by the central government.”

Creating an agreeable support environment within the local citizenry is also important to the success of decentralization of power and constitutional localism. That is of course because the public is the ultimate authority of constitutional policy-making alongside political and administrative peers (Škof, 2012). In order to make public relations active and supportive, it is inescapably necessary to increase the public awareness and participation with community education programs and venues. A new curriculum also is required to disseminate reform ideas within the educational institution of each local government, and the course may possibly be as entitled “decentralization of government and constitutional reform” The educational approach to educate the public officers and create an ethos of sharing constitutional reform seems strategically inevitable and empowers the interests of stakeholders (Sabel, 2012; Sunstein, 1985).

Through the reform of central and local governments, a key element of policy making requires that the interest holders share or reinforce a common cause and sympathies as implicated by the communicative democracy (Dorf & Sabel, 1998, 2000; Elster, 1998; Hallowell, 1976; Kyung, 2007). One interviewee verbalized that,

It can be directly translated into the role of reformed constitution to safeguard such values as the unity of the nation through the locales and democracy and empower and equalize the capacities of the people. The reform need has ebbed with the leadership of Chung, a Speaker of national assembly, and coincides with

societal transformation through globalization, localization and informatization.

The global localism and industrialization occurred at high speed and has brought a multifaceted challenge to transform the industrial mode of production, life styles, ideology and epistemology, and values (Sabel, 2001; Sabel & Zeitlin, 2012). It created a justification of constitutional reform, and most interviewees ultimately emphasized the decentralized concept of supreme law, which responds with the dual dimension of government. The reform of central government requires a revamping of power structure to establish a two tiered executive or parliamentary system while the constitutional localism directs the role and responsibility of reformed local government. Table 9 summarizes points of discussion in this section and a gist of answers to the research questions.

Table 9

*Participant Response for CRQ & RQ 1*

CRQ & RQ1	Points to discussion	A gist of answers
CRQ: How does democratic experimentalism support constitutional government in South Korea? To help answer this question, the following secondary questions are provided	● Global localism and industrialization as a multifaceted challenge and constitutional crisis	● The theory on TCGDE informs to facilitate the principled and practical understanding of Korean constitutionalism and democracy. For example, the volatility and diversity for constitutional crisis in TCGDE is compatible to recognize the global localism and industrialization in Korea.
	● Common awareness shared and compassionated by the political parties and citizenry	
RQ 1: What are the key differences between a centralized organizational form and a decentralized organizational form, in their capacity to support	● Political culture and history	● The constitutional localism in Korea needs to develop and refine as informed by TCGDE, and proves that both organizational forms are necessary to complement and
	● Beyond the president's initiation	
	● Against the extremists and revolutionary	



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constitutional government in South Korea?	<ul style="list-style-type: none"> <li>● Revenge-taking/CV/left v. right hostility</li> <li>● Constitutional localism (decentralized concept of supreme law)</li> <li>● Creating an agreeable support environment within the local citizenry</li> <li>● Interest holders shared and sympathetic through the communicative democracy</li> </ul>	<p>reinforce for the success of CGDE</p> <ul style="list-style-type: none"> <li>● The framework “learning by monitoring” provides a lesson to overcome the three ailments immediately (Revenge-taking/CV/left v. right hostility), as well as rethink the political culture and history progressively</li> <li>● DE is predicated upon the participation, information pooling and sharing, monitoring, and learning, which counters the traditional paradigm on the centralized form of government or SPP. The thought and ideas offer to lead the reform movement concerning the common awareness, sharing of interest holders in Korea, and creating agreeable support environment in Korea.</li> </ul>
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**Consolidated civil society.** Consolidated democracy has been an ideal that the interviewees identified for constitutional reform to result in the success of government. It requires an embedded people-oriented value system, in which the sustained cultural practice is to deal with political issues and agendas in an invariable and routinely demonstrable manner that is consistent with the proven democratic requirements and procedures.<sup>13</sup> The perception of street marchers reconstructed by the interview results

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<sup>13</sup> In this respect, the CV exposed a dual aspect of outcome, positive to struggle with the evils or corruption of instituted system and negative so as to be hailed with no opportunity to refine the contentious issues. It hinted on several elements to be vital (i) occasions-proven resilience and continuum against the threat or crisis of nation (ii) fair competition and principle of games with incentives or disincentives within the realm of econo-political arena rooted on the government system and political practice in the nation

generally complies with R. Dahl's (2008) version of the sustainable system of democracy, who says,

The success of democracy can only survive with the strong political culture supporting the ideas, values and practices of democracy shared by both of leaders and followers...the political culture will be reinforced over the generations with lessons and succession.

In terms of a consolidated democracy, the success of reform in Korea seems conditioned upon (i) the belief system of people widely shared being the ideal democracy of equal participation in the politics (ii) the legitimacy of organized force, such as military and national police being under the control of democratically elected political leadership (iii) the system guaranteeing the freedom of expression, market competition of ideas and generosity for dissenters (Cho et al., 2000; Cohen, 2013; Dorf & Sabel, 1998). They also support the need to inculcate the people with the political culture of developed nations. In this highlight, we can note that the constitutional tradition and deliberative democracy or democratic experimentalism should be an essential ingredient to breed civil society into consolidation and effective government on the basis of good constitutionalism. As argued by Dewey and Sabel, public education and politics of democracy or communicative justice for the democratic process of decision making looks like an unavoidable imperative if we are to adopt the western attire of constitutionalism (Dorf & Sabel, 1998; Liebman & Sabel, 2003). The theme, hence, entails a negative or

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(iii) value of democracy and standard of conduct immanent with the people as a habitus and political culture.

twilight aspect entwined with the positive popular perspective: (i) the people would be resilient and gladly take on the necessary pains to resolve political and policy contentions or priorities through the consumption of whatever time is necessary; (ii) the political leaders and experimental branches of government in Dorf and Sabel (1998) are steady and consistent to respect the democratic procedures, which may be difficult and challenging; (iii) the public trust and confidence will increase even through occasions of national crisis, problem solving efforts and restoration; (iv) the quality of citizenry needs to be upgraded culturally, especially in view of historically negative political culture and ongoing democratic requirements, beyond their narrow economic or political outlines; (v) people of anti-democratic character are made marginal in share and are legally excluded from too much impact on the mainstream of society leading to no threat therefrom.

The interviewees largely agree that the distinct part of political culture in Korea stems from the historical fact of the recurrence of authoritarian regimes and transformations. The external factors include historical experience, geopolitical elements, international politics, social transformations, and characteristics of the government system that shape the political culture of a specific nation (Chung, 2016; Kyung, 2007; Shin, 2007; Song, 2005).

Constitutional reform needs to be designed to affect the education and enhanced culture of the people for the support of democracy and national development. The interviewees highlighted the importance of political culture,

The crisis of credence of the public system and governmental power structure as well as their fatigue through the processes of democratic reform are no less

negligible. The right wing may see it acceptable that the militaristic regime can resurrect while the left entertains candlelight vigils on the occasions of national crisis and major policy disputes. Their influence and political consequences are notorious now in the view of the global public, which resulted in the ousting of Park from the presidency. It created an unusually exciting theatre for the politics of Korea as if the nation is an experimental lab of ideology and politics although many scholars had mentioned its demise through the emancipation of east European countries and unification of Germany. The extremists in this sense are too powerful either to sustain the past militaristic governments or to exercise revolutionary prerogatives as popular sovereigns in order to overhaul the normal constitutional government.

This generally corroborates the perception of interviewees about the fear or instability that may stem from extremists meaning a decline of public confidence, support and commitment to the rule of constitutional government.<sup>14</sup> Their diagnosis also implied

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<sup>14</sup> The countering view also had come from one interviewee, “Candlelight vigils are extreme in what sense? When the Constitutional Court listened to that discourse and rule 9 to 0 for impeachment, the Korean people cried and received a wonderful boost in their confidence in the constitution. Nothing about the Declaration of Independence was in accordance with the British Constitution as far as the King and Parliament was concerned yes, but I don’t see why it was not in conformity with the *Magna Charta* ... What about Martin Luther King’s movement can be considered extreme? His passive resistance or his call for fundamental human rights for black citizens so that they can sit in front of the bus and go to school with other white children? A perception of instability from the vigils in Seoul is just that... and is mostly in the minds of Koreans... there was no such viewpoint as far as I knew in the West. I don’t think of popular movements like this as being extreme and outside of the constitutional process. How are we to begin the process of amending the constitution without such popular discourse?”

the need for adjustment or difficulties of implanting DE in different countries or system<sup>15</sup> (De Burca, 2010; Tushnet, 2013). The political culture appears to be a powerful variable for the advocacy of CGDE in South Korea. South Korean discourse is more akin to De Burca's European paradigm of comparative CGDE, for example, the element of intelligence in the civil law tradition that is top-down and deductive (Dorf & Sabel, 1998, 2000). This can be comparable to incrementalism, or inductive effect of public decision making on the standard of CGDE, if culminated to coordinative public offices over all three branches. The debris of mob politics tends to hurt the deliberative and refined concept of modern democracy that the success of constitutional reform critically hinges upon ameliorating the politics of extremists to make it impossible for them to either check or powerfully overwrite the normal constitutional process (Kim, 2017).<sup>16</sup>

The objective element of political culture is favorable and encouraging as Koreans share the same ethnicity, a common tongue, religious toleration, a developed economy, a high level of public education, comparatively stable middle-income earners,

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<sup>15</sup> Such learned interviewee continued, "All this is good... but that does not mean that if we institute DE in Korea, there will never be a need for people to create extemporaneous movement for change... even at the local level of government. Who says local levels of government can never be authoritarian? Just go to the South in the United States, where there are town mayors and County sheriffs that rule over the populace like emperors."

<sup>16</sup> While a majority of interviewees can be seen as advocate of normal constitutional process, some interviewees have never been robust to rebut the CV, "I am not so certain that mob politics is inductively incremental, and politics is an exact deductive science. If legislators can rule, why can't the people be sovereign? They may not know enough to make law... but they sure know enough to assert that they are not happy. My 5-year old child knows that she also has an equal right to ice cream whenever her brother gets some."

and a variety of interest or pressure groups within the civilian initiative. Those factors can encourage the growth of the political culture to maintain or advance the democracy of the nation. Negative factors also exist at times making the politics of the nation falter with resentment and disagreement. Nepotism on a regional basis and political bias with affiliation, exclusion and otherness are in fact very determined factors that define the politics of the nation (Cho et al., 2000). A shallow experience of party politics and partisan culture, boss politics within the party and usual cliffs among the opposing parties, rule of man tendency than that of system or law and malignant effect from the centralization of power, all militate against the success of government that the chronic policy issues are still unsolved, and a number of reform projects faced a serious challenge. In this viewpoint, the political culture or central government structurally are determinative in order to implement the CGDE in South Korea (Ackerman, 2000; Allen, 2012; Dorf & Sabel, 1998; Wilkinson, 2012). Hence, the past militaristic regime, extremely distorted partisan politics or localism critically hinders the good government challenged by diversity and volatility from within the civil society. In terms of political culture and national ethos, we can properly call it the crisis of identity, extremism, and confidence. One interviewee said,

I had occasions to participate in the CV with my neighbors. They had been regular to do it with a family...Through it, we feel identical with candle lights and assuaged from the pressure or strains of lives arising from the undefined and incapable government. What we can find here is to feel our political identity... The kind of mentality we see here is very close to the hymn of critical theorists,

what we know as identity politics. A Freudian concept for the professionals and impossibility may explain some participants of CV, i.e., authority, teleology and the intreatable or incurable. They may be fatigued to associate with the ideological climate defined by efficiency and performance. The singers, academicians, lawyers and health professionals, and politicians themselves had been willing to participate and the public also gathered to coerce their political belief or commission.

The democracy of nation is assessed vulnerable and seriously flawed in terms of representativeness, accountability, interest intermediation, and autonomy and democratic control. Because the anti-democratic culture and quality of public living need to be improved for the success of government, the constitutional reform had to be designed to counteract those multifaceted challenges (Kim, 2017; Kingdon, 2003; Woo, 2014). The public distrust on the government or political leadership and dishonesty of politicians would be foremost and urgent to redeem for the success of government system.

According to the findings, the success of government system is defined as to upgrade the quality of life, in which the democracy of nation is sustainable and reproductive for stability and continuity of administration. The democracy is the end destination in this sense and corroborates the assertions of CGDE balanced with the private and public mode of decision making, liberalism and emancipation as an ideal of theory, and new concept of individual rights (Dorf & Sabel, 1998). The interviewees also emphasized that the democracy is the kind of instrumentality yielding a prolific and efficient policy process to meet the expectations and wishes of people (Dorf & Sabel,

1998, 2000; Sabel, 2001). Therefore, a variety of policy areas covering income, public health, social welfare, labor, education and culture, relating with the quality of life need to be concerned how they are successfully fulfilled by the government. Through this process, the mode of decision making would matter, or mutual learning inevitably occur to change the role of government to the kind of experimentalist framework. In any case, the interviewees did not reject that the quality of life is essentially interwoven with the democracy of nation and critically defines whether the government system is successful or not. One interviewee looked over,

Given the industrial period spanned around 1960-1970, the previous studies mostly investigated the correlative of industrialization and developmental paradigm of economy with the quality of life. The studies following the post-1987 rather need to turn its focus between the progress of democratization and routine living environment or its qualitative condition... The pre-1987 system failed of social democracy and depraved the quality of life although the industrialization had been fast achieved with the dictators beyond the law. The post-1987 system also faltered to be unsuccessful and a negative reflection of people became more major in tone.

Those revealed that the individuals became affordable with a marked improvement around income level, welfare environment, cultural identity and satisfaction. On the other hand, the qualitative conditions of public lives were observed declining so that the public transportation, air pollution, educational environment, crime prevention, sanitation and water services, and cultural amenities had all been gotten



worse (Cho et al., 2000; Kim, 2014; Song, 2005). More problematic would it be a prevalence of public sensibility on unequal opportunity or discrimination in terms of democracy and economic benefit varying with the region -- especially if central or local - - and social class (Sabel, 2001; Tushnet, 2003, 2012). All these public dissatisfactions arguably require the elements of CGDE can make a good and needs to inform the thought frame of policy makers, hence, directly deliberative polyarchy or rolling- based best practice, and so.

The studies in this area of interest gave us an insight that the wake of Korean constitutionalism and democracy largely has been unsuccessful with a bias and unproductive progress. A ubiquitous and congruent society on equal participation, more pleasant living environment as well as improved quality of life had just been a slogan of government that in fact was not real or unsatisfactory for the citizens. One of key external factors for the constitutional reform lies within the development of national democracy, which, however, would wane without the enhancement of life quality. The success of government needs to be defined with measuring both indexes into account. It is mutually symbiotic and cannot be traded off. The reform should assure that the key necessary provisions have to be enacted and the suggestive phrases convert to the mandatory languages binding the government. The policy implementers also pursue a multifaceted strategy that squarely respond with the needs or priorities and minimize the cost of policy effect (Sabel, 2001; Sabel & Simon, 2004). Table 10 summarizes points of discussion in this section and a gist of answers to the research questions.

Table 10

*Participant Response for CRQ & RQ 1*

CRQ & RQ 1	Points to Discussion	A Gist of Answers
CRQ: How does democratic experimentalism support constitutional government in South Korea?	<ul style="list-style-type: none"> <li>● Success of constitutional reform for a consolidated civil society</li> <li>● Designed to affect the education and culture for the support of democracy and national developments</li> </ul>	<ul style="list-style-type: none"> <li>● The constitutional tradition and DE as an essential ingredient to breed civil society</li> <li>● Political leadership and experimental branches of government steady and consistent to respect the democratic procedures</li> </ul>
RQ 1: What are the key differences between a centralized organizational form and a decentralized organizational form, in their capacity to support constitutional government in South Korea?	<ul style="list-style-type: none"> <li>● Objective element of political culture or structure of central government as favorable, negative and determinative to implement DE.</li> <li>● Success of government as to upgrade the quality of life and sustainable or reproductive for effective administration</li> <li>● Development of national economy, yet distorted to fail a ubiquitous and congruent society on equal participation, pleasant living environment, and quality of life</li> </ul>	<ul style="list-style-type: none"> <li>● Need for adjustment or difficulties of implanting DE in different countries or system</li> <li>● The assertions from TCGDE corroborate and reinforce Korean solution for government success in various aspects, including a new mode of decision making, liberalism and emancipation as an ideal of theory, as well as new concept of rights</li> </ul>

**Interpretation of the Findings for CRQ and RQ2**

**Public officers as a change agent.** In terms of RQ 2, public officers are an important element for the success of democratic experimentation. They are required to execute their constitutional duty within the new framework, i.e., learning by monitoring, experimentation, and coordination, making decisions for recycling the process. They need to be loyal to the value of democracy, cherish education or experimentation and

appreciate communicative justice to reach an ultimate decision (Dorf & Sabel, 1998; Ralston, 2012). Dorf & Sabel also propose priorities and requirements for congressman, public agencies, and court judges (Dorf & Sabel, 1998; Cho et al., 2000). Nevertheless, findings reflect the traditional expectations of their job image often admired by the public, faithful servant of constitutionalism and protection of civil rights. Two immediate priorities had been mentioned concerning the liberty interest or ethics standard of Korean officers and traditional paradigm of SPP between fiscal limitations and realization of constitutional values. In this sense, the suggestion of contingency theory between constitutional tradition and democratic experimentalism, as Wilkinson (2012) argued, should be a fair account with persuasive authority. The critical aspect to raise public officers of DE requires their role as social change agents, and also drives consideration of the character of their ethics for emancipation and freedom as extensively as possible from unnecessary regulation or intervention. A research participant and professor on ethics of law highlighted,

The first principle of public administrators or soft value commands that they should be servants so as not to impinge upon the peoples' rights and liberty.

Conducive to the assumptions of social contract theory and coordination in terms of democratic experimentation is that they are merely trustees of public power, not owners of humanity or licensees against the society of persons.

According to the principal and agency theory, they are expected to respect the constitutional guidelines and plot their course in conformity with the ultimate interests of principal. Therefore, it is proper that they be personally responsible for the loss or harms

suffered by the policy recipients (Sabatier & Weible, 2014). The kind of absolutism attributed to the *raison of state* in the concept that the “King can do no wrong” has been moderated in recent times, and as we know federal tort claims are abundant. A subtle attempt to comingle the sovereignty of the people and state generally underpins the constitutional design to shape the relationship. As we learn from the US tradition, the indispensable role of government is to bring about and embed the stability and reliability of public livelihood, without which there would be no agreement to say it is a successful government. Predictability, stability and reliability in the performance of government should be the first principle of government but may not be visible and is less accessible to the public attention (Chayes, 1976; Cover, 1983; Fiss, 1979; Hardin, 2013). The character of these factors is their non-transferability and non-tradability with the secondary nature of other values to rate the success of government. Nevertheless, their general invisibility is thought mainly to be due to the enhancement of civilized government and sharing in the global village as well as its limited arena in the core of conservative priorities. As previously explored, the efficiency, effectiveness and economy of public administration, what are called hard values, generally govern the narrative of successful government (Sabatier & Weible, 2014).

As Waldo (1986) asserted, the optimal mix of guidelines is to design a successful government in which democracy and bureaucracy will be balanced from the competing interests. Then such balance will be firmly imbedded in the ethics of bureaucrats and public officers within a deep culture and fixed personality meeting constitutional requirements in tandem with the values of efficiency, effectiveness and economy of

administration (Metzger, 2012).<sup>17</sup> In terms of feasibility to constrain the behemoth of bureaucratic organization, express and implied institutions, such as norms of various public codes including the constitution or practices, helped impose the standard of conduct for public officers. According to Lane (1987), the norms can be intra-governmental or extra-governmental in that public officers are required to persevere for their principals and the primacy of democratic government. Their standard of conduct is continually varying with the transformation of society, but always requires the adulation of democracy. The standard text of government issued from congress and the constitutional court espoused as a principle on Korean constitutionalism,

A notable institution would be the oversight and supervision of congress within the separation of powers principle, which includes but is not limited to (i) congressional hearings and investigative powers (ii) approval and audit for the budget of government (iii) power to approve the nomination of important federal officers (iv) lobbying and networking to support congressional power (v) monitoring of constituents' grievances and the right of petition (vi) and the adoption of laws to both empower and constrain the power of bureaucracy.

The role of the Court had gradually grown through enhancement of the power of judicial review overseeing the Executive office and acting as a final arbiter of the constitution and interpretation of public statutes (Monaghan, 1983; Norton, 1982). The

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<sup>17</sup> Waldo defines the bureaucrats as a special group of people in terms of its large scale, formal, complex, task-specialized and goal oriented characteristic.

hierarchical administration or overhead democracy also plays a key role to provide the norms, standard, and ethical requirements for public officers. Since congress and the court are external and could not be perfectly aware of the details and substances of bureaucracy, internal control including the autonomous code of ethics could be more than effective and should not be disregarded.

As constitutionalism has been experienced through history, a kind of heritage passed down from Jefferson, Hamilton and Madison has awakened and suggests that we could receive the values and understanding of our governmental system from a study of the public life of Americans. Such prior knowledge competes or concedes with compromise to the evolutionary reality of society over times and to differences in thought (Stewart, 1975; Tushnet, 2013; Van Alstyne, 1968; Wechsler, 1954). A complexity and limitations embedded in public administration underlie two regimes which appear inevitable -- Republican constitutionalism and democratic values. Republican constitutionalism demanded separation of powers within the system and function of government, federalism and limited government, constitutional limitation of governmental power, and reserved power within the state and people. Democratic values require the protection the liberty and freedom, equality, as well as human dignity and respect. These two regimes provide the foundational ethics for public office to help determine what conduct is permissible or impermissible (Resnik, 1982). In addition, Rosenbloom, Carroll and Carroll (2009) argue that superior and competent officers are well versed in constitutional requirements and behave to comply with them. One interviewee testified,

There now exists a number of constitutional classifications concerning the ethics of public officers. Through the job functions, they must act in a dual status, what we describe as a service provider, on the one hand, and the incarnation of the constitutional government, on the other. The first amendment right entitled to public officers may not pass constitutional muster based on the balance test.

Nevertheless, denial or restriction of that right requires a compelling state interest that would be most compelling to argue and rule on the side of the government.

This comports with the canons and lexicon that characterize constitutional reform as moving forward towards the ideals of decentralization, civil and local autonomy, wider participation and productivity.

Nevertheless, it is significant that the US Court constitutionalized a limited scope of reasonable restriction imposed by the government. However, vast cases proved to expand the liberty interest of public officers.<sup>18</sup> That is because the public officers are special group in the constitutional framework as not entirely same as ordinary citizens. The policy treatment of the court to resolve this subtlety can have a repercussion for reformers in Korea in the sense that it could serve to catch two rabbits simultaneously-

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<sup>18</sup> The government practice of patronage dismissal is unconstitutional to infringe with the first amendment freedom of public officers (*Elrod v. Burns*: 427 U.S. 347, 1976). The freedom of speech requires to provide the constitutional shield for the sort of public employees under the contract of contingent work arrangement (*Rankin v. McPherson*: 107 S.Ct. 2891, 1987). The speech of public employees concerning the public interest or agendas has to be reviewed in view of its meaning, forms, and associated impact when it needs to be adjudicated of constitutional justice. A regulation of reactive and symbolic expression against the racial discrimination is impermissible, in which the black police officers detached off the badge of national flag from their uniform.

namely, public accountability and quality civil service and democracy. The Supreme Court has been consistent and dispositive affirming that the liberty interest overwhelms the compelling state interest and is of paramount and vital importance (Rosenbloom, Carroll, & Carroll, 2000). In terms of the technical matter, the court ruled that the burden of proof falls upon the state implying the constitutional priorities of individual freedom.

The fourteenth amendment provides an equal protection of law, which prohibits from the discrimination on the basis of color, ethnicity, gender, religion or nationality as well as unreasonable classification (Michelman, 1969). For example, age classification for the adolescents about the legal sales of beer in terms of gender discriminates against male youths under the statutory target. Moreover, a statutory classification based on the duration of residency can be unreasonable and discriminatory. A plethora of constitutional cases have been successfully argued on behalf of citizens based on the fourteenth amendment and could be leveraged to prevent public officers from placing unlawful restrictions against civilians. The holdings of the court generally affirmed that statutory classification has to be justified by a compelling state interest and that there is no less restrictive means available to meet that interest. A thoughtful and considerate policy of the Supreme Court is highly indispensable to balance the regulatory needs of public officers and harms of public interest incurred by giving free reign to public employees' actions (Michelman, 1987; Rosenbloom, Carroll, & Carroll, 2000).



The due process of law provided by the fourteenth amendment prohibits states from depriving citizens of life, liberty or property interests without the due process of law. The court said in *Hurtado v. California*,<sup>19</sup>

Due process of law in the [Fourteenth Amendment] refers to that law of the land in each state which derives its authority from the inherent and reserved powers of the state, exerted within the limits of those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions, and the greatest security for which resides in the right of the people to make their own laws, and alter them at their pleasure.

Social change requires that the concept of justice operates to protect the essence of civil society and to provide minimal welfare for deprived classes (Michelman, 1969; Norton, 1982; Oberndorfer, 2015). A paradigm grows to define the success of government in terms of the modern positive or administrative state. Within this understanding, the administrative austerity and budget limitations may not be compelling to legitimate infringement of constitutionally protected individual rights. Fiscal deficiency cannot, for example, justify a waiting period for a public pension program and violates the equal protection of law. An inappropriate and unsatisfactory healing program

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<sup>19</sup> The attitude of US Supreme Court in this preserve of constitutional policy seems a hardliner to require the government to be constrained from regulating the acts or behaviors of target group. In *Elrod*, the patronage dismissal has been ruled unconstitutional despite an intense and vociferous argument for the efficiency and effectiveness of government (1976). The similar context of competing interest had been heard about the case involving the privacy right of military personnel about their sexual propensity. No duty to tell his gay or her lesbian attitude had been affirmed by the court.

in a state hospital of psychiatry is not constitutional provided that it contravenes the due process of law and infringes upon the right of a patient to equal protection of law (Peterson & Rom, 2010).

Traditionally, the Court is thought as a passive nature of branch that had nipped in the bud the public hopes for a compulsory measure to adjust the financial authority of Executive (Fiss, 1979; Sax, 1970; Sewell, 2005). *Jenkins* reformulated the classic notion to a new direction in the court's role, mandating the Executive to provide the required service in compliance with the equal protection of law. Russel Clark, a federal district court judge, ordered to increase Kansas City property taxes in Missouri to support and finance desegregation within the public-school system. Over nine thousand citizens picketed and demonstrated their cause to disapprove the order by authorizing payment at the previous rate of tax. The court order was affirmed by the Supreme Court two years later. The case recalls the relationship between the court and Executive, what we call a new partnership. It recasts, in a yet more revolutionary reification, the key four elements that galvanize the discourse to include (a) equal protection of laws (b) separation of powers in a tripartite system of government (c) federal system and state sovereignty and the principle of comity (d) duty of federal government ensuring the republican form of government (*Missouri v. Jenkins*, 1995). The rigidity of the constitutional tradition can be assuaged in this context so that the executives and courts are mutually learning through the case, often a good forum for direct polyarchy, for equal protection and effective administration. This mode of decision-making, and administration resembles that of private organization, autonomy of decisional units, communication and coordination for

the progressive interpretation of the constitution (Dorf & Sabel, 1998). Table 11 summarizes points of discussion in this section and a gist of answers to the research questions.

Table 11

*Participant Response for CRQ & RQ 2*

CRQ & RQ 2	Points to discussion	A gist of answers
CRQ: How does democratic experimentalism support constitutional government in South Korea?	<ul style="list-style-type: none"> <li>● Public officers as an important element for the success of DE</li> <li>● Role to bring about and embed the predictability, stability and reliability of public livelihood</li> </ul>	<ul style="list-style-type: none"> <li>● The new roles of public officers as a system manager for a new form of deliberation and decision making needs to be implanted as a paradigm of Korean government. However, the contingency theory or traditional job image also informs to understand and reform the government employees.</li> </ul>
RQ 2: How does a national framework support the constitutional government in South Korea?	<ul style="list-style-type: none"> <li>● Efficiency, effectiveness and economy of public administration and successful government between democracy and bureaucracy</li> <li>● Standard of conduct from congress and constitutional court</li> <li>● The public officers between republican constitutionalism and democratic values</li> <li>● Liberty interest of public officers</li> <li>● Fiscal deficiency, administrative state, and public officers as a change agent</li> <li>● Collaboration with the Courts on equal protection issues</li> </ul>	<ul style="list-style-type: none"> <li>● The TCGDE does not alter the constitutional tradition or deny constitutional interpretation that supports the roles for predictability, stability and reliability of public policy.</li> <li>● As the chief concern is inefficiency in TCGDE, its paradigm helps much to improve the Korean status of public administration.</li> <li>● As the traditional expectation for public officers in Korea is strong, the reform needs are necessary to comport with the new terms for constitutionalism, democracy and bureaucracy. In this process, TCGDE importantly guides the paradigm of reform</li> </ul>

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movement through liberty interests, ethics code and new roles of judges, congressmen and public agents

- Collaboration with the courts can be facilitated with the advice, “mutually learning and coordination”
  - Prophylactic rules of right for public employees as well as social welfare or positive rights of citizens: flexibility to recognize the new scope of rights
  - Informed by TCGDE through the perfection of positive or administrative state for constitutional requirements and efficiency
- 

**A unitary forum.** According to Dorf and Sabel (1998), the DE does not alter the constitutional tradition. However, centralized and decentralized form of organization, direct deliberation, polyarchy, learning by monitoring and coordination should occur toward an effective paradigm of participatory constitutionalism. Both types of values would be contingent as Wilkinson (2007, 2012) argued, but necessary and are history-proven to be inseparable to Republican democracy. That does not mean the current presidential system should be either tarnished or reformed, rather a transformation of the governmental system to a parliamentary one is the major desire of the people as interviewees corroborated (Giovanni, 1994). That would be impractical, and less possible in the US since it is a big country of great demography and manages a federal system or dual sovereignty (Hallowell, 1976). In case of South Korea, a number of interviewees

pointed out the importance of parliamentary system and public education in order to faithfully implant democratic experimentalism. However, skepticism also was expressed by one interviewee,

What about the fact that the President may be thinking about federalism as a way to facilitate unification with the North? Federalism may surely come to Korea, with the north and south being two states as a number of scholars have suggested. In America, we have something like a hidden parliamentary system...in a way... the Speaker of the House is more powerful than the President in many ways directing his Party's decision about what bills pass to committee, who serves on the standing committees, etc. Moreover, the choice of who will be a candidate for the presidency is made behind closed doors in the party system that controls the Conventions, when in the early 19<sup>th</sup> century it was made by intelligent lawmakers in the caucuses. When the party system was created in the Jacksonian period, all this constitutionalism went out the window and a new reality of the party system came into being. I am not sure how the parliamentary system is going to make folks more virtuous. If one man, the President can be corrupted, what good is having a diffuse power structure with a bunch of ministers, each of which is an island in himself and can be corrupted. At least the president is the one man or woman that can be said to represent all of the people and is directly answerable to all of them in the impeachment processes or the next election. How will a minister from Pusan whose daddy was a Chaebol represent the people of Gwang-ju exactly?

A unitary forum between the executive and congress have been argued to have many benefits for debate and learning culture, participation of citizenry, localism and direct deliberation, flexibility rather than rigidity, as well as prophylactic rules to limit the political right. They suggest that the check and balance more likely enhance the hard nature of rights than new concept or rules, such as prophylactic, or traditional than progressive with the learning and coordination (Colburn, 2004). The Korean case concerning the separation of powers principle informed by imperialistic presidentialism actually projects a picture that it is hard and traditional and seems to leave an impression of being inherently public, meaning “less associated with the private institutions.” In this vein, they voiced out the use of parliamentary system not only to cure the imperialistic presidency, but also to hopefully bring the ideal of democratic experimentation into our constitutional lives, leading to evolutionary thought, Dewey’s educational priority, and pragmatism. With respect to the role of public education, Wilkinson’s admonition needs to be received seriously that education without proper politics can possibly fail liberalism and frustrate democratic experimentalism (Cohen, 2013; Wilkinson, 2010). The use of parliamentary system to breed the culture of debate and public education along its attributes was probed (T.W. Kim, 2010)

Koreans support democracy in their collective epistemology in the form of political ideals. The problem is that they have been unexposed to receive its value and required terms within their personal or communal lives. With respect to this problem, empowerment and constitutional localism and decentralization of power can possibly provide a solution enabling the success of government. A movement

to bring a meaningful and uncurbed social change can only be bred with the cultivation of people into the habitus of democracy to a prominence of attitudes and social practices. The attitude to approach democracy emotionally or informally can create an inferior culture when compared with the developed western states. An egoism or personal amenities militates against an acceptable and good standard of social conduct, which contravenes the terms of participatory democracy and communicative justice through the process of democratic system of government. The success of government varies significantly with differing perceptions and opinions on its legitimacy and proper accomplishment.

The preference for a parliamentary system has been strongly supported by the people and guides the direction of constitutional reform (T.W. Kim, 2010). The system, along with the two-tier executive or revised presidential system, is one of the three most prominent alternatives for our national framework of central government (Chang, 2012, 2017; Cho, 2008; Chung, 2007; Kyung, 2007; Kim, 2012). First, it is simply resonant with the social change being that the presidential system of government has already operated during most of the foregoing constitutional calendar years. Second, the transformative vision is more powerful and accounts for the ebbing opinions of public and policy makers in preference for a change. Third, undesirable experiences with hardliners serving as previous presidents or the so-called imperialistic presidents generally dissuade the public from transforming the structure of government according to one of the alternatives. Forth, the sharing or communicative concept of democracy can be more plausible with the parliamentary system, which comports with their traditional

sense and intelligence, more likely aristocratic than would be monarchic (Kingdon, 2003). This is especially realistic if the nation is neither a large nor federal, while the citizens and their society became more diverse and economically interested as an OECD member of a high-income country.

The preference for parliamentary system seeks to accomplish a number of policy purposes rooted in the public considerations for improvement of the political practices of a nation (Chang, 2016). First, a system is required to develop the internal and external democratization of political parties. One interviewee commented on the attribute of presidential system,

Generally speaking, the presidential system inherently is less susceptible to partisan politics as a pristine rule of democracy. For instance, should the ruling party seize two powers by winning two independent elections, a behemoth of ruling power readily became empowered to derogate the virtue of separation of powers principle which the presidential system theoretically is standing for. If the two powers divide into separate parties, political instability inescapably ensues to create a frequent confrontation, disagreement, and resentment.

The growing political culture of revenge and ensuing deficit of democratic elements or experimentalism likely are related with this structural flaw (De Burca, 2010; Dorf & Sabel, 1998). A fear was shared that might disrupt the importation of the parliamentary system because the low-level democracy or alternatively cronyism within the parities threatens the sound operation of parliamentary system. A lack of political ideals, along with a focus on geographical sympathies, also undermines the conditions



needed to transform the system into a parliamentary one as the core of national politics. Nevertheless, those problems are less persuasive since parliamentary governments have been successfully embarked upon under worse conditions (Giovanni, 1994; Jung, 2013). Conversely, the negative conditions concurrent in the parties can provide a rational ground for the adoption of the parliamentary system because the partisan politics inheres with the system and one general election sweeps all for a selection of party for the government as in the plebiscite accounts in other nations (Giovanni, 1994; Jung, 2013). The parliamentary system is also viewed as superior in that it reinforces the infrastructure of democracy through partisan politics, breed the soils of democratic citizenry, and enables participatory democracy through partisan competition and electoral results. The professionalization of politics and crucial role of parties as expert groups in politics would now be palpable for the success of reform and meaningful social change (Kweon, 2007). Some interviewees expressed within sophistic inquiries,

If the *Saenuri* (past ruling party) controls the entire parliamentary ministerial system, that is good for democracy? That prevents gridlock and revenge, but how does it help the situation that all powers are now controlled by one party? ...In what science do you have two expert groups that disagree completely and are both experts and only one of them is completely victorious not through deliberation by the parties in congress, but via election of lay persons? So... we can decide at the outset that the expert professionals can only be two... because there are only two truths, not because this is normatively proven, but because everywhere in the world we have this duality of one group that loves the market and security and

another the people... while the Constitution is one and includes both...which means that the text of the entire constitution, which covers both interests, is just too large to fit into one expert's mind and heart.

Second, the voice to reform for the parliamentary system stresses a regular turn of power with two or small number of major parties as the indispensable strand of modern constitutionalism. The switch of government by the competing parties, however, needs to rely on public reason or democratic legitimacy. An original and desirable style of governmental change requires us to deal with both of the visible and invisible values for healthy constitutionalism and national interest. A past style of governmental change imbued with inner circle succession within the line and peers of the military failed to meet the invisible value although it met the formalistic protocol of governmental change. A preference for the parliamentary system underlies these considerations provided that the current system is more rigid to guarantee the change of government with major competing parties although South Korea is now considered as one of the developed and democratic nations with OECD membership (Chang, 2016; Shin, 2007).

Third, an increasing awareness of the need to ensure a political accountability complies with the parliamentary system that is able to cure the frustration and resentment of people concerning the incapability and unfaithful execution of presidential office (Cha, 2015; Kyung, 2007). The presidential system of constitution has no provisions to effectively hold a problematic president to be legally or politically accountable. On the other hand, the parliamentary system is designed to operate on the autonomy principle coherent with the people, political parties, congress and cabinet (Song, 2005). In this

scheme, the cabinet is politically accountable for the congress and the congress is ultimately responsible for the people through the general election. As congress is a basin for the government and centralizes as the core of national politics, it is most successful of prototypes to uphold the ideal of parliamentary sovereignty. In terms of constitutional practice, the prime minister can be held accountable for extreme confrontations and politically significant incidents via the initiatives of congress to discredit the cabinet (D.H. Kim, 2010; Lim, 2015; Woo, 2014). Alternatively, the prime minister is empowered to dissolve the congress if the above situation arises. The ultimate criteria for this kind of constitutional process, of course, lies within the political intent and wishes of people.

Forth, the parliamentary system is more capable to foreclose the rise of dictatorship repugnant to the values of liberal constitutionalism.<sup>20</sup> However, distrust is inherent within the political culture of Korea and the attributes of the presidential system fearing that it could recur with the mightier and undemocratic leadership of a powerful president (D.H. Kim, 2010; Eum, 2008; Ham, 1998). Skepticism was uttered by one interviewee,

In Theresa May is still the Prime Minister, but there is very little confidence in her among many, because she talks about the success of Brexit but gives no details of how it is going to happen. I am not sure it is all that sure that she can be easily

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<sup>20</sup> The inauguration of YS. Kim in 1993 rewrote a history as a first civilian government in South Korea, and truly terminated a decade continuance of militaristic government. The administration under his leadership brought a change of paradigm for improvement of public reason and intraparty democracy.

replace BEFORE she drags the country into bankruptcy. Except that in any Republic, once the election is over, the people have nothing much to say until after the disaster. How is that different than presidentialism?

Fifth, political localism can be staved off by way of practicing the parliamentary system of government. The greatest culprit for unproductive and struggling national politics has been the avoidance of policy competition over the time, while under the structure of greatest man politics. The kind of structure segued into a political alliance on localism. One interviewee, however, puzzled,

This sounds nice, but where is the proof that localism is so structurally created. I thought localism and hometown networks was a part of the Confucian societal structure? This certainly does not hold true in some Parliamentary governments.

With an aggravation of such phenomena and attitudes of interested actors, the incongruence, dissidence, and disunity of citizens became rampant and dismantled the platform of national democracy (Cha, 2015; Shin, 2008). The localism in different political provinces stigmatized the presidential election, deepened the cleavage and dissension ensuing therefrom, and created a favorable culture to legitimate political revenge by a new power regime. While the flaws of this phenomenon was deeply entangled with the government system, political environment and culture of the nation, the parliamentary system is thought superior to moderate such evil consequences because of the necessarily active and vigorous political biology required among the parties for strategic alliance and coalition government.

Sixth, the findings generally show that the current system ultimately cannot stand because of the one-time five-year presidency (Chung, 2007, 2016; Eum, 2008). This inherent defect tends to disparage the mechanisms of popular checks, the people's voting rights, and obviate consistent and foresighted policy enactments and implementation. It requires constitutional reform if the evils could not be eliminated merely by revision of statutes and lower rank laws. In order to bring social change beyond revisions and narrowed articles, most interviewees suggested that a sea change of the system into a parliamentary one can more significantly effectuate positive transformation (Kweon, 2007; Norton, 1982). Since the legitimacy and continuance of government hinge on the support of parliament, the controversy surrounding a term can be foreclosed as a matter of systemic change. The implications seem to be that Korean thought is more than political or the worship of written constitutionalism, tending to call for a once-and-for-all solution than incrementalism, which should be foreign to the thoughts of CGDE, yet is inevitable to resolve various differences about the system and the legal tradition as Table shows (Chang, 2016; Dorf & Sabel, 1998; Kim, 2014).

Seventh, electioneering expense of politicians in the nation is unnecessarily extravagant because the political parties or interested actors exert every measure and sacrifices to win the election. Intrinsic within this mechanism is a natural frustration of the virtue of efficiency and is harmful to effective and rational fiscal administration of a welfare state (Coase, 1960; Peterson & Rom, 2010). In contrast, a one-time general election is explanatory for organizing the government including a symbolic head and

prime minister, and it would arguably make for cost effective elections and national efficiency.

The necessary conditions to import the parliamentary system into the constitutional provisions require an incorporation of a federal system and bicameralism. Although the federal system can be compatible with either government type, the system is predicated on the stability of new parliamentary government. It inherently comports with the ideals of checks and balances and promises to be superior with respect to the democracy and rule of law principle (Giovanni, 1994; Kyung, 2007). Most of interviewees considered the importation of the German system, a Korean forum on the debate of constitutional reform is not minimally influenced by the German precedent, and a prevalent number of law professors have a doctoral degree therefrom. The importation of German type system needs to be considered as part of any plausible alternative that involves a federal system. I believe them effective the horizontal and vertical distribution of constitutional power among the peer branches and the concomitant terms of geographical partitioning.

A federal system can bring positive social change to respect the geographical, religious, and cultural diversity and pluralism, which ultimately accounts for the protection of minorities as one of essential feature within the democratic polity (Cha, 2015; D.H. Kim, 2010; Kim, 2008). The import of a federal system may also be necessary to productively adapt to the peninsula's bifurcated status, with the two Koreas hoping to bring success to the ideals of unification. One interviewee, however, cautioned,

What about the effect of this on regionalism, revenge and other issues of

factionalism? Analyzing these issues in isolation fails to take into consideration the interactive effect of one change on another... you may think political localism is ameliorated by federalism...this is true, but is it to a necessary degree? Is the political South in the United States sufficiently like the North after 240 years of federalism and a Civil War? The one thing that ameliorates regionalism is a fervent belief in the oneness of humanity under one single government and one single religious system wherein the constitution of both firmly uphold the brotherhood of man. North Korea and South Korea are now talking because of what? Federalism? Or a shared understanding of their common culture? We need to continue to promote a global cultural identity along with instating federal structure, not merely replace it with structure.

The heterogeneity of two Koreas can be leveraged to overcome duality and recover a commonality of the two peoples as innately one nation. The federal system multiplies participatory democracy and voting effect, increases public awareness and breeds politically educated citizens. It could be a great alternative to ameliorate political localism for a seizure of power because the federal system is institutional or legal and politically delimited, neither cultural nor sympathetic (Kim, 2012; T.W. Kim, 2010). The bicameralism is also not a foregone conclusion in the system of government (Giovani, 1994; Huh, 2007; Norton, 1982).<sup>21</sup> In the Korean case, the upper chamber of congress

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<sup>21</sup> Nevertheless, the parliamentary system of government often practices bicameralism. Within the system, the House of commons generally represents the will of people politically, and the Senate or House of Lords may be on traditional reason or constitutionally shall be required to address the issues of federal system.

may be designed as a mediator to resolve conflict and disagreement between the cabinet and House or fulfill an agency role to fill the vacuum of congress in case the House is dissolved (Park, 2007).

Electoral reform is necessary to institute the parliamentary system of government in Korea. Public voting is a powerful act within the current partisan paradigm of political parties, which not only affects the paradigm itself and can transform the political system as a whole to meet the popular will. Electoral reform can be procedural for democratic legitimacy and even substantive for the legitimate operation of government (Ackermann, 2000; Huscroft, 2014; Metzger, 2012; Monaghan, 1983). The reform can envisage a larger scale of proportional allotment for current dual mode of elections, which comports with the increasing ethos of diversity, professionalism, and the increasing participatory quest to seek the public interest (Linz & Valenzuela, 1994). The expectation of the people for a collegiate body and a more intimate policy making process through the windows of congress requires a larger number of incumbents seated within congress. Provided, however, that if the increase of seats contravenes the prevailing sensibility of people, an effort to communicate and persuade the public is preconditioned to build trust and bring democratic legitimacy, as a kind of necessary social cost beyond the economic cost (Coase, 1960; T.W. Kim, 2010). Table 12 summarizes points of discussion in this section and a gist of answers to the research questions.

Table 12

*Participant Response for CRQ & RQ 2*

CRQ & RQ2	Points to discussion	A gist of answers
	● Importance of	● A unitary form



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<p>CRQ: How does democratic experimentalism support constitutional government in South Korea?</p>	<p>parliamentary system and public education on Korean political culture and history</p> <ul style="list-style-type: none"> <li>● One of three most prominent alternatives for the national framework of government system: resonant with social change, transformative vision, undesirable experiences from presidentialism, and communicative democracy</li> </ul>	<p>strategic for debate and learning, participation, localism, direct deliberation, flexibility and prophylactic rules for political right</p> <ul style="list-style-type: none"> <li>● Compliant with DE, Dewey's educational priority, and pragmatism</li> </ul>
<p>RQ 2: How does a national framework support the constitutional government in South Korea?</p>	<ul style="list-style-type: none"> <li>● Internal and external democratization of political parties</li> <li>● Regular turn of power as the indispensable strand of modern constitutionalism</li> <li>● Increasing need to ensure a political accountability</li> <li>● More capable to foreclose the rise of dictatorship repugnant to the liberal constitutionalism</li> <li>● Political localism staved off</li> <li>● Critical failure of one-time five-year presidency</li> <li>● Extravagant electioneering expense of politicians</li> </ul>	<ul style="list-style-type: none"> <li>● Politics of revenge and deficit of DE related with structural flaws; benefits from infrastructure of partisan politics, participatory democracy, professionalization of politics as guided by TCGDE</li> <li>● Federal system and bicameralism on TCGDE or German type can provide a modality as a precondition for Korean parliamentary system</li> <li>● Lessons from TCGDE are effective to rethink the rigidity of traditional elements, such as SPP or non-delegation doctrine; advise to formulate a new system of government particularized to suit the Korean status, such as unification of North and South, evils of political localism, need for electoral reform, participation and social change.</li> </ul>

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**Small, independent, and strong.** We have seen that public agencies act under the hierarchy and line of command, in which they constantly inquire the best alternative to guide their actions and decision making (Waldo, 1986). They often ponder to determine

the ultimate ideal and ask themselves what standard they should follow as commanders and respect as acting officers. This kind of conundrum has been particularly implicated in the area of administrative discipline, what we may describe as principles of public administration, ethics of administration or values and ideals of administration.<sup>22</sup>

According to scholars of NPA, the old style public administration had not provided a cure for the issues and challenges of American civil service, which is mainly due to its empirical and positivist propensities focused on the cause and effect framework to solve social issues (Dunleavy & Hood, 1994; Wamsley, 1990). They instead offer that the ontological and normative knowledge are indispensable and essential ingredients to formulate or implement agency rule and public policy.<sup>23</sup>

Traditional public administration has stressed four ideals as objective including efficiency, effectiveness, democracy and legitimacy. Efficiency requires an investigation

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<sup>22</sup> This kind of philosophical inquiry into the public administration gained the attention of scholars around the advent of NPA-new public administration in the 1960's, which reacted to the inability or lower performance of traditional public administration rooted in behavioral science and logical positivism.

<sup>23</sup> In our case, Confucianism prevailed from our feudal dynasty periods, whose influence still remains to significantly complement the political culture and policy environment of Koreans. It is normative and ontological, but has been newly indoctrinated with Japanese imperialism, liberal capitalism, and military culture. In other words, they have to execute their office functions with the new administrative technology as problem solvers, in which successful statistics and efficiency are actually the ultimate standards to measure performance. The paradigm is widely critiqued and is hardly sustainable and the people are sick with the nepotism and unethical behavior of public officers and the not so infrequent large accidents and disasters that deprive the people of the sensibility of public safety. A new understanding of public administration will be necessary to purify if from the ills of bureaucratic nepotism, the maze of resilience and passivity at a minimum, as moreover, to stimulate the positive and active roles of public officers to make the constitutionally promised values real.

of the ratio of input against output, and effectiveness relates with success rate of meeting specific goals of the agenda. Democracy requires an assessment of responsiveness through the administrative and political process while the legitimacy underlies the rule of law for public policy and administration. Administrative practice, nevertheless and especially in Korea, has sacrificed the latter two to pursue the former two objectives. To counteract the ultimatum of efficiency and effectiveness for the discipline, scholars are inclined to propose such concepts as social justice, public interest, equity, freedom and liberty as well as equal protection (Dorf & Sabel, 1998; Fiss, 1979; Resnik, 1982; Wamsley, 1990). The new wave of thinking rose to serve as a warning to those that would participate in predatory practices driven by numbers and statistical accomplishment. Despite its grandness as an alternative, the problem with this new thought is not unambiguous, however, if the resulting concepts are too comprehensive, abstract, and not clearly defined. In this regard, the challenge necessarily entails a dual approach to address that we should reform from the bane of orthodox public administration and also need to ask how the new concepts can be clearly defined. The interviewees generally viewed that the latter inquiry can be addressed through constitutional reform. They agreed,

In the paradigm of modern constitutionalism, the core of state values can simply be identified with the language of the constitution, which includes the social contract for the nation state and republic. Provided that if the public administration has purpose in the public interest, its value and ideals may be thought to stem from those of the constitution.

The suggestion is to improve the clarity of administrative ideals through explicit constitutional revision and rely upon constitutional adjudication to incorporate the needs and morals of the community (Ackerman, 2000; Huscroft, 2014; Sabel, 2001; Metzger, 2012; Monaghan, 1983). Human dignity and value, concepts of public service including loyalty to the sovereign, equal protection of law, due process of law and freedom of expression all guide public officers toward success of government. As the law is reflective of history or culture and serves as an expression of public belief and collective will, constitutional reform and adjudication should not necessarily be purely a product of a probative, comparative investigation (Dorf & Sabel, 1998; Giovanni, 1994). Nevertheless, it offers a good opportunity for self-reflexivity and can help to identify the Republic with such objectivity that can eventually result in developed and productive performance leading to the success of government.

The interviewees often mentioned the independence and expertise of public administrators, which they considered as sustaining performative and normative ideals. As previously mentioned, the old and new public administration comprise the two beacons of light inherent in the discipline that is directly translated into the success of the governmental system (Dunleavy & Hood, 1994). As the findings suggest, contemporary government is guided by the paradigm of the positive state so that the executive branch has to be more active to play a critical role to ensure liberty - not only by applying less intervention, but also by enabling individual capacity – and social justice through redistribution. Criticism triggering the enormity of presidential power has generally failed to bring the success of government although the expectation might have resulted in a

strong and powerful executive (Cha, 2015; Kyung, 2007; Shin, 2008). The implication is that the prestige and greatness of the president is not necessarily conducive with the efficiency and effectiveness of a working level of public agency (Chang, 2016).

Therefore, constitutional reform needs to be concerned with the system of independent agency, perhaps involving an Article 1 court and commission type decision making unit, which can be introduced or augmented. While the four types of agency fall within the IAA, the use of IAA is currently less than perfect and infrequent with the selected scope of illustrations.<sup>24</sup>

The advent of IAA within the constitutional schema creates a controversy whether it comports with the separation of powers principle, in which it is empowered to act on independent ground from the normal line of the presidential system (Arpaia, 1956; Devins, 1993; Shapiro, 1997). In this regard, it requires a rule, adjudication of the dispute and an action to pursue the constitutional or statutory responsibility. In other words, they

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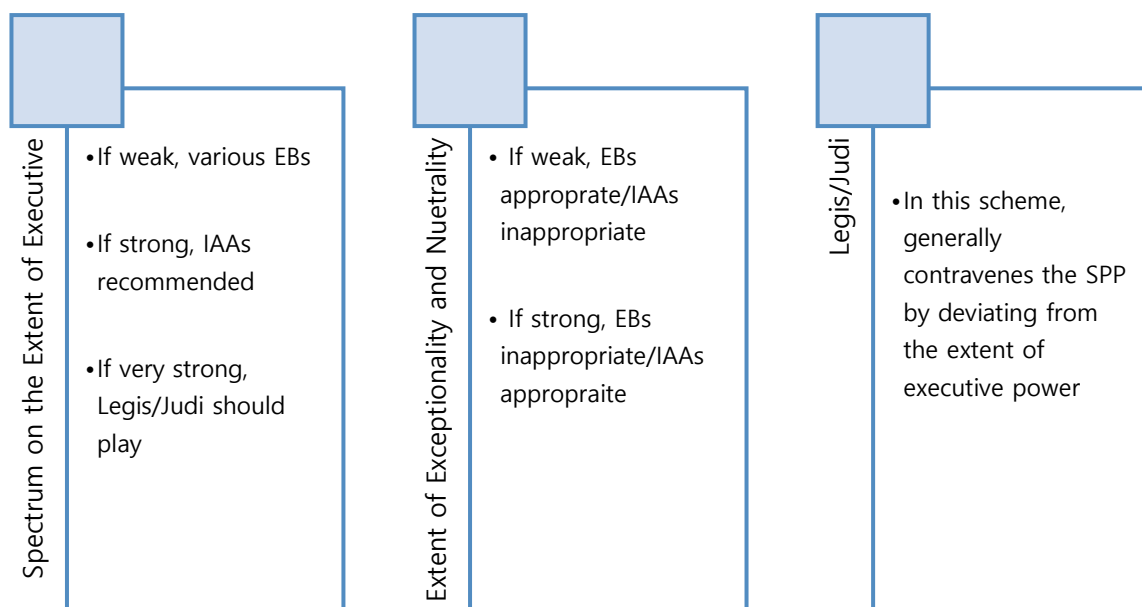
<sup>24</sup> (i) National Election Committee and Office of Comptroller organized under the provision of Constitution (ii) National Commission on Human Rights organized by the special statute and specially quoted as independent from the Executive, legislative, and judiciary (iii) fair trade commission, commission on mass media and broadcasting, commission on finance and monetary policy, commission on the civil rights and welfare, and commission on the nuclear safety inaugurated within the ground statute of government system (iv) committee on deregulation and reform, review committee on the administrative petition founded within the ground statute and related laws. The first type has continued to be controversial about its propriety at every momentum of constitutional reform historically because the prevailing practice of nations classifies them as a legislative matter as we see in the US. The second case also is heavily critiqued about its unconstitutionality by the prior studies. The fourth types enjoy a considerable extent of independence from political branches and grounded on the enabling statute, but differ from the third in that it is subordinate to the existing line of authority within the organs while the third is created by special act specifically purported to execute the public administrative need.

are enabled to and require exercise of a hybrid nature of power, legislative, adjudicative, and executive, which can potentially encroach the constitutional limitations of each branch. One interviewee remarked about the character of IAAs,

The use of IA also implies an extraordinarily enlarged executive with the stretch and extension of new roles and responsibilities called for by market expansion, technology and science and the needs of social welfare. As decentralization and competitiveness guide our progress as the principles of constitutional reform, the issue of IA is not irrelevant to the division of the executive into types.

Nevertheless, the issue is rather more normative and ethical providing efficiency and performance if the IAA functions more responsibly with legitimate and science-based decision-making representing the modern concept of the professionalism of the technocrat within the Executive (Thatcher, 2002; Volden, 2002). It can be appropriated to balance and check the moving train along the line of command of Presidential organs but can equally reinforce the role and power of the Executive because it still is not independent from it at least in view of its organizational status as opposed to its function or duty (Devins, 1993; Shapiro, 1997). Furthermore, IAA can be more sensitive to any irresponsiveness or irrational workflow through command line organs. With the proper means to ensure control and supervision, reformers need to consider the increasing interest in and demand from the public to import the vibrant models of advanced countries to ensure civil service that is more scientific and professional (Dorf & Sabel, 1998; Sabel, 2001; Waldo, 1986).

Table 13

*Executive Bodies (EB) v. Independent Administrative Agency (IAA)*

In order to cohere with the constitutional system, we can comparatively explore the diverse alternatives as a predicate to reinforce the advocacy of IAA as a primary form of public agency. Ideas and philosophies that enjoy a common ground with Dorf & Sabel's theories include the private mode of decision making, or semi-judicial framework of direct deliberation by social actors, functioning as a coordinator instead of a line of command, and so on (Dorf & Sabel, 1998; Sabel, 2001).

The first order of business would be to divide the executive system, in which the prime minister has a separate political basis for election along with the president. This duality already has been discussed when exploring the theme of decentralization. A fourth branch can be conceived under the supervision of congress or with an independent

constitutional status that is equal to the other three branches. A third option can be drawn upon a devolution of public power, in which certain appropriate roles and responsibilities can be privatized as with enterprises and businesses. The Executive model could be a fourth choice, in which the IAA is subservient to the Executive organizationally but executes its offices to function independently.

The divided executive system is arguably superior at checks and balances than the unitary one and better complies with the legitimate functional division of labor. The system pertaining to the special area of public administration can be especially useful for administration that is vital for fairness and justly distributive (Lowi, 1972). The election of state attorney generals in the US or Korean proctors of city and provincial education districts can be exemplary in this regard.

The unitary executive system that Hamilton successfully argued for and incorporated into the constitution provides the basis of energetic and united action by the Executive, in which the Presidential office has to be solely responsible for efficient and accountable administration with the balance of power against the other branches. The counter theory has also had its momentum, if only among scholars, with the rationale of (i) citizen participation and public disclosure of information, (ii) democratic control and accountability, and (iii) balance of power. In other words, the execution of policy and rule-making will be more transparent than in the unitary model while each unit in a divided system can be subject to democratic control for their performance and accomplishment (Cushman, 1938). Since the responsibility of the Executive has grown to



be tremendously excessive, the balance of power against the other two branches is also never negligible.<sup>25</sup>

In respect to the third option, the contracting-out or privatization should be a tool of policy implementation of a decentralized Executive function, in which the private businesses act as quasi-governmental structures although they are not a part of any branch (Cushman, 1938; Dorf & Sabel, 1998; Lowi, 1972). We need to consider if this type of delegation complies with the thought of CGDE provided that such primacy of private institutions in Dorf and Sabel would not be contrary to the constitutional tradition. The JCAH in the US is exemplary. It is a non-profit staffed with civil experts, who are empowered to determine the eligibility of social welfare benefits and medical insurance based on the assessment of hospitals. A prison or other correctional facility managed by privatized enterprises can also serve as an example, which prevents an excess of public bureaucracy that is egregiously large against the other two sister branches. The idea also can reduce the transaction costs to gather or process information and science for enhanced and modern civil service (Coase, 1960; Dorf & Sabel, 1998). The scholarly text of Korean sources also brings up the two sides of the coin entailed with privatization,

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<sup>25</sup> The illustration of second case would be the ICC and IRC, which arguably fall within the subordinate branches of the congress in US. The independent agencies in this sort are viewed as creatures of Congress, and part of the legislature. One also considers that the Independent Regulatory Commission is equal and independent from the Senate, House, President and Judiciary. A critique concerns the question of its constitutionality if the legislature is so powerful to create the organs of Executive power. They see that a creation through legislative delegation might fail constitutional muster because it can encroach upon the checks and balances among the three peer branches.

In terms of efficiency and transformability, civilian actors could be more competitive and expertly in the relevant policy areas, which is advantageous to bring in the success of government eventually. A negative side of privatization is equally present—namely, that the feasible area is limited to the regulation of special policies addressed, such as prisoners or hospitals, which is vulnerable to be influenced by interested groups. Public accountability also faces a high risk of erosion, which propels the Court to constitutionalize it selectively and restrictively.

The fourth alternative triggers the system outside the normal lines of hierarchy and supervision. Nevertheless, an independent agency should still be a part of the Executive, in which it acts independently and is based on internal knowledge and conscience that is outside the command of the Executive head. It can be enabled to administer the demand of civil service more elastically to prevent a behemoth of Executive power because of its independent role and accountability (Dorf & Sabel, 1998; Thatcher, 2002; Volden, 2002). This option needs the collaboration of the legislature by creating the enabling statute that serves the constitutional ideal of checks and balances through the legislation process. The alternative also ensures the independence and accountability of IAA because the congressional debate is rigorous and intense to assess the needs and standards for creating the agency. Although the presidential directory power cannot reach the agencies of this type, the communication and guidance channel is available as a matter of function and coordination, which is made distinct from the other alternatives (Ackerman, 2000; Fisher & Devins, 1992; Vile, 2012). In other words, the

President can collaborate with the process of appointment, or receive reports of audited accounts and guide the basic direction of the organizational policies and standards.

As differs from the concern of tripartite branches, the decentralization theme has a benefit and disadvantage in terms of efficiency and effectiveness. If the decentralization is a unique objective, we can tell that the former three options would be more demanded than the last one. The checks and balances with the body of separate organs functioning against a growingly monstrous Executive is obviously not plenary to bring the success of government but is just one condition for enabling it to do so (Devins, 1993). More efficient and competitive civil service by public agencies should also be an important ingredient to gain public agreement and compliance with the goals of government. In this understanding, Hamilton's acumen hundreds of years ago still echoes to claim the essential strength of a unitary administrative branch. The interviewees argued on the strength of the fourth option,

In order to subsidize the two objectives potentially in conflict, the fourth alternative would arguably be most effective and penetrating. In other words, it can uniquely solve the problems inherent within efficiency and the ideal of checks and balances among the branches. The comment by Arthur Miller surely makes a repercussion in the face of the intriguing challenge to design a successful government. In his words, bureaucracy is the most effective institution other than congress against the potential arbitrariness of president. It could uphold the comparative advantage of independent agencies in the fourth option.

In conformity with the separation of powers principle, the former three options require a revision of the constitution (Devins, 1993; Vile, 2012). Otherwise, the creation of a new system is entirely impossible. Furthermore, the privatization option is foundationally crippled because it is currently unconstitutional because the inherent element of Executive power is privatized. The fourth option also is constitutionally muddy unless cleaned and perfectly free from controversy through textual revision. A review of its constitutional muster entails two issues. First, quasi-legislative and quasi-judicial powers ordinarily conferred on IAAs may contravene the separation of powers principle. For example, scholars, such as Theodore J. Lowi (1972), argue that delegation of legislative power to the IAAs creates a confusion and malfeasance in terms of constitutional order and relationship and threats to frustrate the constitutional goals including the limited government as well as substantive and procedural calculability.

The second challenge is that it is repugnant to the constitutional provision mandating that the offices of administrative function within the Executive and presidency. A notable criticism is found in the Report of Brownlow Committee under the Roosevelt administration arguing that the IAAs exercise the executive function although it is irresponsible and unclearly defined with respect to its constitutional schema, which is designed to truncate responsibility inescapably into one of three branches (McKinley, 1951).<sup>26</sup> The criticism needs to be recast in terms of the role and objective on which SPP

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<sup>26</sup> A scholar interviewee well-versed with American constitutionalism equally stressed on the fragility of SPP, “This Constitutional triangular scheme is very neat obviously, but unreal. A prosecutor in America is in the executive branch of government, but we know that prosecutorial “discretion” to charge someone with a crime or not is far

functions. In fact, SPP is the active principle to create the system of government by distributing the power of constitution while it has a passive virtue to prevent arbitrary and oppressive regime.<sup>27</sup> It also is envisioned to ensure the workable and efficient government with coordination and collaboration.<sup>28</sup> One scholar addressed the role of contemporary SPP,

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more than merely executive. There is nothing executive about the President. He doesn't execute anything in the United States except in theory. Can any scholar name me one law of Congress that the President actually executes? When was the last time Congress declared war unilaterally and then the President executed it? Actually, 90 percent of Congressional laws originate in the Executive departments. Congress doesn't initiate much...why? Because the problems are manifest to the Executive. As to letters written by the people to Congressman, they tend to express only the people's unhappiness. The people don't have any idea what the solutions are. If they did, we would have a pure democracy and not a republic as you have so nicely pointed out. I am astonished that so many scholars talk about separation of powers and checks and balances in the same breath. Obviously, normatively, separation of powers and checks and balances are inconsistent with each other. If a branch is distinctly separate as an absolute mechanism, how in the world can it check any other branch? Separation of powers failed the moment it was implemented. .... How can you say burning a flag is unconstitutional one year and constitutional another year? By acting like the Constitution is a sure thing one day in one direction and acting like it is a sure thing another day in another direction. To do this you must play games... like separate while checking... so you can be separate one day and check the next...the problem is that there is no clear line... just game playing.”

<sup>27</sup> Nevertheless, Korean situation may be seen from other perspective as one critical interviewee elicited, “I don't see how passive is best...passiveness is a necessary evil to avoid the exercise of power by an oppressive regime. There are four permutations. Passive, Active, Virtuous and Non-virtuous...In order of priority from best to worst the four permutations are: Virtuous – Active Virtuous – Passive Non-Virtuous- Passive Non-Virtuous – Active. Obviously, the best is not non-virtuous – passive... the best is virtuous – active. Moon Jae in is virtuous – active. Why would we want to institutionalize non-virtuous – passive?”

<sup>28</sup> Justice Scalia opined in *Morrison v. Olson*, “...purpose of the separation and equilibrium of powers...was not merely to assure effective government but to preserve individual freedom...” One interviewee also hinted, “Workable and efficient government cannot be passive. The problems are diverse, the enemies of truth are many... We like to be bifurcated between Thomas Hobbes and John Locke... Honestly, both are right... life is brutish without Leviathan, and at the same time some people will be good if you leave

The modern attribute of this principle also provides fresh ideas that highlights the standard or principle-based approach rather than normative requirements. In other words, the principle can have a leeway with elastic requirements. In this purview, the discretionary views can infuse the blood and fresh by modifying the stiff orthodoxy of principle in the end to protect the human rights and improve the effectiveness of government.

Consequently, policy makers needing to act on the controversies and wishes of interested players must face the needs to consider if the success of government vitally requires revising the structure of government. Otherwise advocates of the status quo can gainsay the change and argue that the current system is the most economical option to bring the success of government.<sup>29</sup> According to this conservative viewpoint, an interpretive latitude can be an avenue for the success of government without the effort and expense of reform, in which the system of Executive can be partly transformed with fusing it with the other powers outside the traditional patterns and functions (Ackerman, 2000; McKinley, 1951). We may recall at this point that Dorf and Sabel (1998) accept that constitutional interpretation is necessary and elementary to establish a new kind of important constitutional tradition along the lines of democratic experimentation (Arpaia, 1956). However, one interviewee gave cautioned,

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them alone. The evil child needs a strong hand, the innocent child needs freedom. One size will not fit all.”

<sup>29</sup> Nevertheless, we know that three most promising candidates in 2017 presidential election commonly confirmed their public pledge that the national referendum of constitutional revision will have to be administered at the same time as the local elections the following year.

A fear that the presidency and IAs may be fused against the checks and balances among the branches is an undeniable eventuality, and potentially threatens the polarities of democracy that protect individual freedom and liberty. Nevertheless, the fusion is relative to the sway of pressures and is never inherent, relying on an unproven assertion that public accountability and supervision will not be duly provided.

Against the second argument, we can counter against fusion in that the bureaucracy is actually superior to the legislature and judicial branches in terms of its power to check the president.<sup>30</sup> A productive use of IAAs does not translate into the illegitimate excess of Executive sphere because the Executive is already tied to the growing administrative requirements and delegation of powers by the legislature.<sup>31</sup> As said, the president can intervene the organizing and operating of IAAs in a manner that complies with the constitutional mandate relating to the executive status of IAAs (Devins, 1993; Thatcher, 2002).

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<sup>30</sup> A scholar interviewee suggested, “This is true...very true... but it is not true concerning the ministers... They may indeed fuse their interests with the President or the Prime Minister and his party. In America, the head of the EPA, appointed by Trump, says there is no such thing as global warming... How dangerous is that?”

<sup>31</sup> We also could note a harsh criticism from the interview data, “Really? Congress does not understand at all what is the job of the EPA.. Congress does not have the expertise to understand the Environment. How can they be experts distinctly and yet be controlled by politicians who know nothing about their area of expertise? How does Congress control the NRC, the Nuclear Regulatory Commission? Congress knows something about the dangers of nuclear energy? Congress knows everything the NRC tells it in an agency report.”

In order to bring the success of government and social change through the IAs the foundational guidelines need to be agreed upon either through one paragraph of the constitution or via subsequent interpretive understandings.<sup>32</sup> Besides the legitimacy argument thus far, the plausibility aspect exists to enable or delimit the creation of IAAs specifically because they depend on the discretion of the legislature. Without constitutional language and implied principles to weigh the value of IAAs, an inappropriate enactment of lower level laws to create IAs ad hoc will obviously and predictably undermine the success of government with an enormity of expense and ineffectiveness (Cushman, 1938; Volden, 2002). A new paradigm for the creation of the IAs is inextricably necessary in either case. The issue whether to create a new agency or use the already established organs to respond with the new administrative demand is not yet before us. The scope of this question differs from the legitimacy arguments such as questioning the constitutionality of IAAs, the potential conflict with the SPP or the power of president to remove the committee members of IAA, etc. Table 13 shows a gist of comparison in summary. There is a potential problem, however, in that the discretion of

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<sup>32</sup> It seems vital as corroborated by a number of interviewees. However, the admonitions echoed from some interviewees, “I know this distinction, but it is not so hard and fast...principles are also normative... A lower dichotomy of principles is resolved by reference to a third higher priority of norms that serve as first principles. In every decision, there is a right and wrong and a moral issue. Prior truths must determine thought and action, and then be extended by further thought and action. All of this is consistent with Confucian philosophy... All of this is nice... sounds great... but it guts the vitals of constitutionalism to put so much flexibility in the Constitution that you basically turn it into a preamble of high sounding words. First principles are normative, not merely low-level principles to weigh against other low-level principles in a manner that allows the court or IA to rule one way one day, and completely another the next.



the legislature is ample and ordinarily not subject to the judicial review. In contrast, the British case is fairly helpful since, although the use of non-ministerial Quangos or NDPB had been traditional since the 16<sup>th</sup> century, yet the abusive creation of these organs incurred the need of systemic review and assessment for the enforceable standards about their merit and public utility.<sup>33</sup>

An act subordinate to the constitution in Korea also provides the standard to resolve similar concerns of creating the committee type organs within four guidelines; (i) the tasks and responsibilities are essentially entwined with expertise and science (ii) the gravity of the tasks requires considerate and prudent procedures (iii) the tasks and responsibilities are not redundant and are distinct from those of existing bodies (iv) the tasks and responsibilities are durable and incessant (Dorf & Sabel, 1998; Sabel, 2001; Lowi, 1972). With the precedents taken into account, we can extract two indispensable rules requiring the technical exceptionality and neutrality of tasks and responsibilities.

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<sup>33</sup> The Prime Minister, David Cameron, pronounces three elements of standard for creation and abolition of Quango; (i) whether the infrastructure of the organ is termed with the precise technical operation (ii) whether the responsibility of the organ is to adjudicate an impartial decision (iii) whether the dispute of facts shall be transparently determined independently of political interference. The ministry of finance and treasury had issued the Reform of Arm's Length Bodies urging that the organs of this sort need to be clearly defined in terms of the organizational goals and public accountability at the stage of inception. The report has five substantive and procedural standards; (i) the creation shall be a last option (ii) it is mandatory to provide the sunset clause along with the exact date of closure besides the inauguration clause (iii) it needs to accompany the abolition of outdated legislation and obsolete bodies (iv) the redundancy of responsibility with the existing organs has to be prevented (v) it is required to report the comprehensive financial and operation outcome and information. The effort brought the passage of Public Bodies Acts 2011, in which the ministers can abolish or merge ALBs under their command and supervision.

The exceptionality requirement can be satisfied if the task is technical and falls within the special area of their expertise or if it can be made distinct from the traditional area of public administration and intramural conflict among the bureaus or units and organs. The neutrality requirement is satisfied when the tasks and responsibilities are adjudicative and based on the neutrality of bodies (Arpaia, 1956). In this understanding, the patent administration may be tasked within the existing and normal bodies of the Executive, while the election management or Office of Comptroller requires the IAAs to be free from potential political interference. Table 14 summarizes points of discussion in this section and a gist of answers to the research questions.

Table 14

*Participant Response for CRQ & RQ 2*

CRQ & RQ 2	Points to discussion	A Gist of answers
CRQ: How does democratic experimentalism support constitutional government in South Korea?	<ul style="list-style-type: none"> <li>● Traditional public agencies under the hierarchy and line command, NPA, and four ideals as objective of public administration</li> <li>● Independence and expertise of public administrators as sustaining, performative and normative deals</li> <li>● Reform of independent agency to address the need of administrative state, and four possible types without the constitutional controversy</li> </ul>	<ul style="list-style-type: none"> <li>● TCGDE guides to improve the clarity of administrative ideals and rely upon constitutional adjudication to incorporate the learned outcome with experimentation</li> <li>● TCGDE suggests the new role of agencies and mode of public decision making as compatible with SPP or other hard traditions.</li> </ul>
RQ 2: How does a national framework support the constitutional government in South Korea?	<ul style="list-style-type: none"> <li>● Divided executive system/unitary executive system/contracting-out or privatization model/executive model</li> </ul>	<ul style="list-style-type: none"> <li>● TCGDE provides an insight to respond with the increasing demand from the public for vibrant mode of civil service more scientific and professional</li> <li>● TCGDE tells that a new kind of constitutional</li> </ul>

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<ul style="list-style-type: none"> <li>● Selection among four types to advance decentralization or faithful to SPP</li> <li>● Constitutional review of four types</li> <li>● Standard to resolve similar concerns of creating the committee type organs within four guidelines</li> </ul>	<p>tradition can be achieved through the constitutional interpretation, which is necessary or elementary and should not be altered by DE.</p> <ul style="list-style-type: none"> <li>● The elements proposed by DE, i.e., public agency with expertise and science, considerate and prudent procedures for experimental decision making process, efficient organizational form without redundancy, as durable and incessant on a new form of deliberation, can help to inform the constitutional issues involving IAAs.</li> </ul>
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**Decentralization and competitiveness.** Two international indexes plainly show our reality with respect to matters of great concern to public administration—namely, what is the competitiveness of the nation concerning social conflict. One is the index that was compiled by WEF and Swiss IMD, in which Korea was placed 26th among 140 nations, a relatively good score, but disappointing on the numbers for transparency, efficiency of the legal system, and judicial independence. Despite skepticism about its reliability, the rating provoked anxiety among concerned policy makers and government officers. The other is an index annually announced by *Samsung*, in which South Korea is rated second worst among 27 OECD countries. A key theme identified with most interviewees is how South Korea continues to develop as a nation and maintains its status as a competitive, developed nation with a successful welfare paradigm. Interview results prove the perception that the success of government is mostly pivoted on the continued progress of the nation on the post-industrial errand.

The observation of two statistics<sup>34</sup> generally supports a hypothesis that smaller governmental units are more likely prone to be competitive or socially compatible in terms of public administration (Dorf & Sabel, 1998; Kim, 2008; Song, 2005; Super, 2008). In our experience, conservative priorities focused on decentralization, pluralistic autonomy and competitiveness have resonated with this hypothesis.<sup>35</sup> Since the interviewees characterized the success of government within a framework of competitiveness and social satisfaction, a centralized form of government with a plenary power of oversight through a singular form of government seems fairly problematic. The paradigm of central functioning through a geographically distributed system needs to be rethought. The opposite, a decentralized and small autonomous system of associated units, seems highly preferable.

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<sup>34</sup> Within the two indexes, it is obvious that some group of nations are typical of the highest ranking, enjoying the kind of model that we need to follow when we design the system of government. Switzerland, Finland, Denmark, Sweden, Holland, Belgium and several others are such that we need to cull their commonality. Through a review, we can notice that countries in this group administer a manageably small sized administrative units either through a federal or singular form of system. The larger countries, such as Germany, US and Canada, achieve this advantage through the federal system, and other countries that are less sizable are able to maintain competitiveness and social satisfaction through a singular form of government. In some cases, we can find small singular states, such as Switzerland and Austria.

<sup>35</sup> Hence, the thought corroborates that the CGDE can be a leading framework to increase and strengthen national competitiveness. The advocacy of CGDE asserts on the direct polyarchy of small decisional units, decentralized and centralized form of organization with learning by monitoring and coordination within the contingencies of the constitutional tradition. Nevertheless, the ideal of CGDE is strongly or even fatally honed with the liberal ethos of emancipation, which public offices must consider beyond competitiveness.

The fallacy within the centralized form of government can simply be proven with the facts, lessons, scholarly sources of Korea and results of interview. One interviewee, senior legal historian, remarked,

The presidential system of government in Korea has been practiced as the biased norm in Korean culture, in which the imperialistic president has been usual to mark the characteristic of public administration. Given the normal sense and capacity of an elected president, it is simply evident that he or she can take control as the head of ruling party and congressmen of partisan affiliation. He can exercise his leadership and power through the terminus of administrative units through the ministries, special agencies and central or local commissions. The imperialistic power of the president does not rest solely within his office.

The truth is that the enormity of presidential power affects the central administration as a whole, as well as congress under the responsibility of supervision and oversight for them (Cha, 2015; Shin, 2008). It derogates the nature and advantages of autonomy and the potential of decentralized competitiveness inherent in local governments.

Why do we prefer a decentralized system of government? We begin the analysis with reflection upon a maxim from Weingast (1995) that the government that is able to protect property rights and enforce civil contracts is just as powerful to deprive the people from the protection as a whole.<sup>36</sup>

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<sup>36</sup> The statement simply creates a fear of powerful and uncheckable government, which can be highly prone to implement excessive and prejudicial regulation. The flaws

A competitive government that is able to properly manage emergent conditions never can be envisioned within the Korean culture of centralization. One such policy area seriously distorted with the intervention of central government was the Capital Zoning Plan. The restriction of zoning in the capital area through laws and regulations gained public support and was considered reasonable when rapid urbanization characterized the area notably around 1980-90. The policy situation has changed, and the proper imposition of restrictions requires the assessment of a comprehensive developmental plan for the area. The intervention of central government is thought to be groundless to decide on restrictions given that developmental planning naturally falls within the responsibility of local government.

The centralized system exhibits many shortcomings creating a groundswell of opinion that congress has become predatory and monopolistic designed to approve partisan nominations as an electoral mandate for the heads of local government and assemblymen. Central leaders within congress and political parties compel local leaders to surrender their autonomy and adjudicatory powers in the local administration. Such

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are not transparent but are very consistent over the administrations whereby the congressmen traded off their responsibilities of public welfare for their reelection possibilities. Party nominations decisively hinge on the head of the party and president, who are two imperialistic horns in direct line of hierarchy. The one-time 5-years tenure of the president pushes the misfortune further so that congressmen and high ranking executive officers pursue their interests by sacrificing public accountability to procure a political culture of personal concern along partisan lines of interest groups. Some influential politicians lead groups of other politicians associated with their political and personal interests rather than policy good. They tend to be submissive to cronyism or nepotism as well as self-protectionism, in which the pork barrel is not an unusual way of doing business in the policy negotiation or making process. The chronic bias favoring this line of practice contributes to a lower score of political credence within the ruling parties or government.

relationships are informally moderated and to adhere to the private interests of administrators to largely spoil the ostensible benefits of decentralized power, the administrative knowledge base for local autonomy and the devolution of central power. While central leaders claim a need for party nominations to preclude disqualified candidates at the local level, it is simply problematic that actually more competent and locally knowledgeable politicians are consequently unable to provide their expertise for public service (Dorf & Sabel, 1998; Giovani, 1994; Linz & Valenzuela, 1994).

Centralization of power naturally erodes the autonomy and accountability of local governments. A solution to prevent this erosion obviously requires a decentralized system of government for the competitiveness of the nation, especially with increasing globalization and the knowledge economy. One interviewee explained this need with some suggestions,

If as a matter of extent, the concept of autonomy and multiplicity is no more than merely something demanded, where in fact various unitary policy makers possess the legitimate power to make policy for locales and specialized policy areas in competition with others, what does the CAM denote? The key strand of this schema calls for the decentralization and devolution of power to the small and independent units geographically and subjectively. Political decentralization to this end can fulfill the goals of fiscal and administrative purpose. Constitutional reform is necessary to ensure political decentralization, which should be an essential prerequisite for the competitiveness of the nation and consequently the success of government.

A constitutional guarantee of political decentralization precludes a derogatory central government and makes it impossible to breach promises at the functional level of government. The system can benefit from the checks and balances principle because an imperialistic president or an otherwise enormity of power within the central government is institutionally faced with a multiplicity of players with the autonomous power to safeguard the constitution (Cha, 2012; Cho, 2008; Ham, 1998.) The US federal system can be seen as a possibility for consideration including its features of bicameralism, an independent judiciary, provincial and local governments, and expert bureaucrats in the Executive.

A value inherent in decentralized government is its underlying educational effect, which ameliorates the problem of inefficiency or unproductivity (Song, 2005). Such value can be created through a variety of transformations associated with decentralization. Intergovernmental competitiveness is key to transformation in leaders and those that follow them, in which the central government functions, after devolution of power, by focusing on strategic intergovernmental fields, including coordination and promotion, as well as serving as a fostering center to support the empowered local governments (Dorf & Sabel, 1998; Hickman, 1998; Song, 2005). The educational effect will more remarkably benefit local governments through a package of local policy priorities for the investment of capital and labor or economic vitality. A constitutional requirement delimiting two governments and increasing competition of inter-local governments can disable a monopoly of governmental power against the market. If the free flow of capital and labor is ensured, the deterministic intervention of government



into the market shrinks or disappears because an invisible hand would penalize such manipulation of local government. Rent seeking activities and coalitions for strategic distribution, culprits of inefficiency, will diminish in extent and frequency, which will serve to bring more effective and successful government. The message offered by one economics scholar made its realism more apparent,

Competition of inter-local governments functions to boost the effect of the free market because the regulatory measures, often problematic with the rent seeking activities, discourage investment for more favorable or regulation-free locale. This result is achieved because a locale without unnecessary or unreasonable regulation can make the enterprises more competitive. It implies that the more devolution of power from the central to local powers, the more likely that local regulations will lessen or be abolished due to inter-local competition.

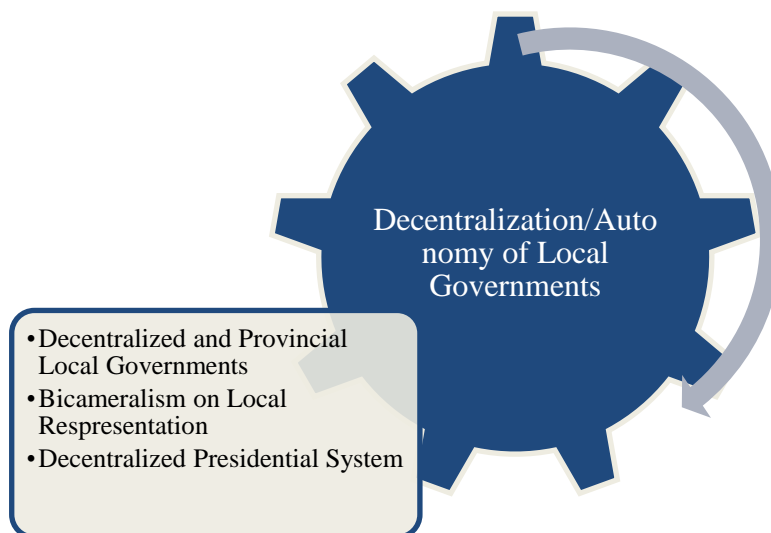
Decentralization helps to facilitate social congruence and peoples' satisfaction as seen, for example, within the notion of the local problem-solving unit (Bohman, 2013; De Burca 2010; Dorf & Sabel, 1998; Sabel, 2001). The current dilemma is embedded with disagreements and public resentment highlighting the importance of this area of concern and requires leadership to combat notwithstanding differences in political views and economic standing, or variations in education levels, religion or community status. Scholars generally agree that the more decentralized the system of government is, the more likely it is that social conflict will diminish (Eberlein & Kerwer, 2004). This positive result is achieved because the decentralized system, at least, provides a spectrum of policy solutions or opportunities to respond to the potential social conflicts. As

Stephen commented, the federal system uniquely responds to the challenges of cultural diversity as a matter of democratic government. The reason for this advantage of decentralization stems from other modes of decision making other than simply majority rule (Dorf & Sabel, 1998). As seen in Figure 5, a devolution of power to the local system presupposes the rule of autonomous and collaborative governments. A power of the majority shrinks through the mechanism, and local policy units or subjects collaborate to make decisions, what we may describe as delegation and the quasi-majority method.<sup>37</sup>

Decentralization to cure current problems is not complete with the traditional top-down institution of devolutionary power but requires a holistic reform of the entire system itself resulting from the political decentralization. Comprehensive reform requires a sufficient review of the “institutional complementarity” as a condition to successful implementation. It falls within the arena of “experimentation, learning and monitoring, coordination” or “new roles for the three branches on the private mode of decision making (Dorf & Sabel, 2000).” According to the Coase (1960) theorem, the institutional complementarity explains the scope of economic benefit yielded from a specific organizational change through an interaction of the various institutions within the society. It provides a useful account to explain the failure of discrete institutions against the social transformation resulting in lower performance and unintended ill effects from their establishment.

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<sup>37</sup> Within the method, we can find major three types, multipolar co-existence mechanism, arbitration mechanism and limited government mechanism.



*Figure 5.* Keys to decentralized structure.

Given that decentralization institutions serve as the foundational pillars of constitutional reform and social change, the triangle of central and local governments operate as the bulwark of the entire structure to realize the success of government. A pursuit to establish decentralized and provincial local governments is inseparable from the two-tiered decentralized executive (Cha, 2015; Cho, 2008). A two-tiered executive system is fraught with various issues, and the main position of interviewees disclosed that the arena of war and foreign policy ought to be for the president's discretion, while the prime minister should truly act as a chief executive officer for public administration. The prime minister will be elected by congress and politically responsible to it. The consequence would be that the majority party of congress shall ultimately be responsible for politics. The president will play an external role beyond the partisan interests and the

prime minister will operate the nuts and bolts of government for the internal and complicated policy issues (Giovanni, 1994).

Reform of congress has to be secured for effective constitutional localism because congress is able to vitiate the empowerment of local government through its central power of supervision. Therefore, a bicameralism of divided government into a Senate for local representation and a House for the commons of nation can help preclude Congress' prerogative as a dominating central power (Huh, 2007; Jung, 2013; Levmore, 1992; Tsebelis & Money, 1997). Through this institutional effort, local governments can find their way for proper democratic representation while they can be plenary in power in terms of local policy-making including fiscal administration. The view of interviewees in this respect is highly consonant with the general hypothesis that bicameralism can provide a most effective forum for communication between the citizens of local and central governments (Dorf & Sabel, 1998; Tsebelis & Money, 1997). It also comports with the idea on the communicative concept of modern democracy and provides a thread of discourse for social change. The role of Senate often is regarded more powerful and directs to represent the will or palpable interest of people, and we may agree that areal studies are more realistic and substantial while the commons tends to be more idealistic.<sup>38</sup>

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<sup>38</sup> Between the Senate and Congress, one progressive interviewee, however, was skeptical, "This is abstract and possibly paternalistic if it is referring to the United States. The House represents the will of the people, while the Senate represents the State governments and vested interests... If the people are idealistic, how does the Senate represent them better if the Senate is more substantial. Idealism may be the will of the people, but they are represented better by the paternalistic wisdom of the Senate? There are only 2 Senators representing the entire population of California and their needs? Are

Many interviewees and scholarly materials in Korea simply demonstrate a strong need for bicameralism as a predicate for a decentralized and provincial system of government.

One interviewee suggested,

By instituting a bicameral congress, the DPSG can yield a massive benefit that should be seen as a critical factor for the successful government. It is a system similarly operating as the federal system of government. Local governments in this system have multiple policy areas to regulate without any national intervention or supervision that is compulsory as a matter of law and administrative practice.

The province, a unique concept underlying the Korean particulars of public administration, is defined as a wider area than the traditional unit of local administrations with a more extensive power similar to the state in the federal system. Since Korea is a unitary form of government, it can be said to have quasi-state system of government that most effectively responds with the changes in circumstances that accompany globalization. The most effective size of a province is, however, challenging and is intensely debated among scholars (Warner & Hebdon, 2001). An in-depth investigation leading to a definitive solution is beyond the scope of this dissertation. Two helpful insights include Ohmae's (1996) proposal for a paradigm of the regional state while Scott elicits the concept of the global city region. Scott's viewpoint shares a congruence with

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these Senators that wise and representative of the entire population and their variegated needs? Really?"

globalism in which the provincial government truly serves as a responsible actor to meet the demands and requirements of globalization as well as a borderless liberal market. The typical regional state within the Ohmae's (1992) version may be the one wherein the population amounts to around 5 or 20 million, in which the international airports or sea ports economically feasible for each unit and the transportation system as well as highway infrastructure to commute to other states or major cities are well provided. The most ideal number of provinces suited with the conditions of nation is thought to be six, and the current system can operate with a merger of wider cities into a province and one provincial government (Ohmae, 1992).<sup>39</sup>

A DPSG can best operate with the appropriate allocation of power within a two-dimensional governments. The citizens' empowerment and participation to enable the success of government is preconditioned not merely on empowerment, but also on the appropriate allocation of power. As Canes-Wrone, Herron & Shotts (2001) asserted,

The power of government needs to be rethought across two opposite hypotheses, a rush to the bottom or the benefits of a democracy experiment. The proper criterion for the allocation of power in the government requires preventing the malignant effect of a rush to the bottom, which may result from abusive competition between local governments. The key point to consider underlies a new concept of the central government that transforms from planning or decision making to the role of promoter,

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<sup>39</sup> Six provinces include *Seoul*, *Kyung-ki* with a merger of *Inchon* city, *Kyung-nam* with a merger of *Pusan* and *Ulsan* cities, *Gang-won* with a merger of *Dae-gu* city, and *Cholla* with a merger of *Gwang-ju*.

supporter, and enabler (De Burca, 2010; Fisher & Devins, 1992; Sabel, 2001). It needs not be an implementer actually but should take on a different role as a procreator of working local government. Its imagery shall be of a big brother, which is responsible for the key features of leadership, being strategic, global, long term, directional, value giving, vision creating as well as setting the national agenda. A partnership relationship between the central and local governments will be necessary so that the provincial form of local administration will appropriately mature and operate (Dorf & Sabel, 1998; Colburn, 2004). In this schema, local governments must be sufficiently sized and capable to be equally strategic in some areas and voice to negotiate or discuss the policy priorities, issues, and agendas with their partners. With a 5 to 20 million population within each provincial government, two important benefits will accrue-namely, inter-governmental policy competition and laboratories of experimental democracy.

The benefit and advantages of the DAG can be summarized, as follows:

First, the fear of imperialistic dictators can be ameliorated at its root (Cha, 2015; Kim, 2008; Shin, 2007). This will incur through two operations (a) a high level of accountability in public administration when dealing with domestic issues (b) public perception of a kind of symbolic sovereignty that establishes and maintains national integrity, non-partisan leadership and charisma, and improves pacific foreign policy on the bases of expertise and devotion.

Second, the alleged fear of political instability from separate heads of partisan affiliation within a two-tiered executive is not persuasive (Cha, 2015; Cho, 2008; Ham, 1998). Instead, the situation can yield political advantage through the functioning of *Big*

*Compromise and Partisan Alliance*. Its benefit has been demonstrated in the history of many European countries, and we also see that it can be a powerful fix to assuage conflict prevalent with the dichotomies of age, ideology, region, and social classes.

Third, the new system transforms the paradigm of government, brings social change in order to increase the competitiveness of the nation, and encourages social congruence or satisfaction. The role of the central government will diminish in scope and lessen in intensity with constitutional reform or resultant cultural change. Central government can maintain a focus on the strategic priorities for national competitiveness. It also can be more competitive to address the challenges of social conflict provided that it adjusts to be receptive to diversity and the particulars of local policy conditions.

Forth, the empowerment and growth capabilities of local government will be an important product of decentralization, in which the educational effect from the expanded levels and scope of government will be leveraged to wheel the paradigm of DAG (Dorf & Sabel, 1998; Ohmae, 1992; Warner & Hebdon, 2001). Table 15 summarizes points of discussion in this section and a gist of answers to the research questions.

Table 15

*Participant Response for CRQ & RQ 2*

CRQ & RQ 2	Points to discussion	A gist of answers
CRQ: How does democratic experimentalism support constitutional government in South Korea?	● Two international indexes and Low-rated Korean government	● TCGDE can bring a value inherent in decentralized government with the underlying educational effect for efficiency and productivity
	● Fallacy within the centralized form of government and small governmental units	● TCGDE offers a model to increase competition of inter-local governments through rolling-based best
RQ 2: How does a national	● Erosion of the	



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framework support the constitutional government in South Korea?	autonomy and accountability within local governments due to centralization of power, especially enormous power centered on the presidency	practice and learning with monitoring.
	<ul style="list-style-type: none"> <li>● Constitutional guarantee of political decentralization, possibly with the federal system and bicameralism</li> </ul>	<ul style="list-style-type: none"> <li>● Decentralization for the successful government can be achieved with the notion of local problem-solving and direct polyarchy with the autonomous and collaborative governments-a core thought from TCGDE.</li> </ul>
	<ul style="list-style-type: none"> <li>● The province as a unit of public administration in Korea, DSPG and DAG thesis of local governments with two opposing hypotheses-a rush to the bottom or democratic experimentation</li> </ul>	<ul style="list-style-type: none"> <li>● The new role of congress as framed within TCGDE informs the reform of congress in Korea for effective constitutional localism</li> </ul>
	<ul style="list-style-type: none"> <li>● A new concept of the central government with the role and responsibility to procreate, promote, support and enable</li> </ul>	<ul style="list-style-type: none"> <li>● A partnership mode of working government can be suggested by TCGDE drawing upon a new form of deliberation and decision-making process, such as information pooling, error-detecting or error correction.</li> </ul>
	<ul style="list-style-type: none"> <li>● Values and advantages with decentralized administration-constitutional tradition untainted, political stability, social change and competitiveness of the nation.</li> </ul>	<ul style="list-style-type: none"> <li>● The idea to learn from private forms organization can be realized to define a relationship between the central and local governments.</li> </ul>

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### Interpretation of the Findings for CRQ and RQ3

**Economic justice and Korean constitutionalism.** Constitutional reform and success of government in Korea necessarily requires a discussion concerning the necessary relationship between constitutional policy and economic justice. Such constitutional policy may be similar to the concepts of social investing and principle of trust delineated by Langbein & Posner (1980) in private law. In other words, the

declaration of a constitution brings the role of government nearer to a trusteeship to help the national economy prosper and survive. It also requires that the government be responsible to create and administer the structures for social investing and planning for the public welfare. The backdrop for this advanced declaration implies an inculcated mindset and attitude of positive constitutional design and citizenship in Korea. Nevertheless, it is still undeniable that the ideal will likely impose an unmanageable and costly framework of public administration for the two circles of political thought (Bader, 2014; Behagel & Arts, 2014).<sup>40</sup> The suggestion is to maintain the fundamentals of the constitutional mandate and proceed conservatively through the communicative or participatory concepts of democracy (Colburn, 2004; Bach, 2012; Eckert & Börzel, 2012). Hence, the key thoughts drawn from the empirical findings of this research study can be compatible with that of Dorf and Sabel that the contingencies between the hard legal tradition and national economy or market, on the one hand, and civil society on democratic experimentalism, on the other, are enduring, but thus should be incremental with mutual learning. Under the principle and chapter of Korean constitution, the Sabel's (2001) paradigm, "quiet revolution of democratic governance towards democratic experimentalism" will more conveniently occur, and mostly with the initiative executive

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<sup>40</sup> Neo-liberalization and small government stunned with the classic role of police or national defense would be a solution for the conservatives. It goes otherwise for the progressives that the government can be regarded as successful for their deep role or accomplishment of social welfare and justice. In this regard, it is highly difficult to answer what is the best practice of government to satisfy the wishes and expectations of stakeholders or citizens.

officers. The Korean constitutional court would largely defer to the rules and standards created by the expert policy makers in the executive (Dorf & Sabel, 1998; Wilkinson, 2007, 2012; Sabel, 2001). Believers in classic thought were some in the group of interviewees,

As I stated previously, incrementalism in the United States' development has been irrational and purely political and experiential... drifting now to such a degree that the balance of powers between the President, Congress and Courts is completely unknown to anybody. That incrementalism is rational... is an ideal that has never been achieved in the United States or England. Brexit may be incremental, but it is not rational. Not one scholar says Brexit is rational. What stops the expert policy makers in the executive from largely deferring to the Corporations? They can exercise the important function... but what gives them the incentive to do so? Nothing is more important to Koreans than economic prosperity in the market. Inside the average Korean family is the culture to promote social inclusion and equality or monetary success?

This version endorses an embedded understanding that is moderate and progressive to empower the government to exercise the functions of socialistic intervention although the worship of property rights and liberal market constitutes the core of economic principle in this land. The attitude leads to constitutional justification of possibly undue and excessive intervention of government for the purpose of policy adjustment. The main disposition of Constitutional court through a variety of economic cases over the history also reinforces the version standing somewhere between the

defective or less readily defined principles and a plenary playground for a possibly abusive government (Huh, 2007). In my point of view, social change to bring about economic justice and success of government requires respect for the canons of predictable and reliable government with a sense of trusteeship to create a livable community.

While the government plays a greater role to regulate the monopoly and oligarchy of the market, reasonable allocation of resources as well as the adjustment of income disparity, a problem underlies what can be triggered or adjusted. In other words, it raises the rule of law question in which the government is required to provide the standard or norms by which interested actors are informed about the consequences of their behavior (Sunstein, Hastie, Payne, Schkade & Viscusi, 2008). Therefore, the head of state needs to be in the full view of the people and well aware of the norms and a minister of the cabinet or the rank and file of the administrative state should be more cognizant of their duties to bring about social justice through the rule of law. The problem is concerned with the core function of the state for civil society, and as one interviewee pointed out,

Enterprises and businesses, notwithstanding domestic or foreign, would not prefer to invest if the kind of norms are vulnerable or capricious so as to potentially damage their investment or business operations. Therefore, it is of utmost importance that the state should adhere with first principles. The success of government could not be brought about tangibly if the socialistic paradigm does not bring sustainability to the market of economy.

Over the various cases, the Constitutional court consistently applied the concept of economic justice to ameliorate the maleficent consequence from the free market in terms of social justice (Huh, 2007). In this sense, the courts in Korea are passive in principle, but may widely be active judicially. While the intolerable evil has been remedied through constitutional justice, benign capitalism has also roared back to address the market crisis. Korean society had done good thus far, but there is a problem in the potential threat associated with the left extreme's efforts to bring about unpredictable transformations in the disguise of economic justice.

According to W. Viscusi (1996), the measure of regulatory success in government relies on a bifurcated approach that properly balances the economic and social dimension. The first task is to remedy the evil structure of the market and the untoward behavior of market participants. The regulation of market performance is technically difficult due to the unfeasibility of quantitative manipulation. The second deals with the environmental preservation, protection of labor and consumers as well as unemployment policy. The economic dimension is operating in pursuit of efficiency and fair competition while the social regulation has a purpose to ensure the equity or fundamental justice. One noteworthy illustration of economic justice concerns regulation of the business of electronic telecommunication. Traditional policy has maintained the state monopoly with the rationale that business is essentially entwined with public necessities (Gilson & Kraakman, 1984; Kaplow, 1992; Landes & Posner, 1979). A social change requires the agent to think forward and backward to encourage the liberal market to prosper along with the satisfaction of the constituents and citizenry. This could bring

the people to perceive the success of government and eventually implant an enduring belief in a public good that the government generates.

Given the primacy of economic freedom and the liberal market, we need to recount the inherent elements that are enshrined to sustain values and public utility. The traditional dualism between the public and private sectors is predicated on the autonomy and freedom of individuals including the contract and property. It promotes individual freedom and envisages limited government with least intervention, in which individuals and the government are respectively accountable for their own spheres of autonomy. While it once was critiqued that civil laws may be rewritten with a deluge of public programs or rules, deregulation and least intervention does not efface the essential role of government with the traditional role as an enforcer of civil laws, such as civil court system, punitive damages or public oversight and authentication (Landes & Posner, 1979; Sunstein, Hastie, Payne, Schkade & Viscusi, 2008). One social scientist corroborated on Dorf and Sabel and also reflected on the Korean culture,

It is paradoxical that a reversion to the traditional role of the state for regulation of economic issues of individual and firms can improve the democratic practice of citizens with their active participation in the game of public policy and implementation. In lieu of public leadership, it engenders the individual as a policy maker or participant in the political process in compliance with the transparency and accountability. They would be pushed invisibly into a role as quasi-public officers on their own agenda to redress the economic crisis. The problem of course is that education is incremental and very slow, but

decentralization is quick... what happens in the meantime? Are we going to replace many centuries of Confucianism with one stroke of the pen?

Hence, public mindfulness and preparation can have a characteristic synergy with Dorf and Sabel's paradigm (1998), in which they act within a framework of information pooling, direct deliberation with economic actors, and civic participation, all good conditions for a direct polyarchy. The underlying difference is that the government must play its role under the explicit principles of the constitution, the US counterpart being devoid of them. I consider both traditions to converge although the legal treatment of the constitution is distinguishable. However, the sincere honor and respect the experimental congress, public agencies and court judges have for the principals, consisting of the citizenry, is necessary if they are to fulfill their role as monitors and coordinators of public service.

In other aspects, an understanding of utilities inherent in the material production requires education of the market participants as well as constitutional reformers or policy makers. In the meantime, the reflexivity of investors and their environment needs to be educated that the universal right to property and economic freedom shall be limited to achieve that pursuit of human potential that constitutes the universal purpose of property (Ralston, 2012; Sabel, 2012). One should not be unconscious of the origin and goals of goods and service and practice his or economic acts with a morality and principles that are acceptable and fair to the community (Nozick, 1973; Rawls, 2009). The universal purpose of property is consummated with a new concept of liberty, in which the societal conditions ensure that every citizen has the ability to fully participate in an enabling

enterprise that operates to help individuals fulfill their highest and most productive personalities.

Interviewees perceived that the government at this time needs to rethink the traditional values of the free market. On the balance, the prevalent trend has been a government that has been restrictively focused on funding and fostering the private sector, and criminal muscle has not been frequently extended to derogate the key owners of *Chaebol*. It created the impression that government suppresses the businesses and enterprises that discourage investment production.<sup>41</sup> It now requires a new concept of economic policy derived from the basics and needs of coordination for fair distribution and adjustment (Dorf & Sabel, 1998).<sup>42</sup> Table 16 summarizes points of discussion in this section and a gist of answers to the research questions.

Table 16

*Participant Response for CRQ & RQ 3*

CQR & RQ3	Points to discussion	A gist of answers
CRQ: How does democratic experimentalism support constitutional government in South Korea?	● Social investing and planning for the public welfare, but need to be through constitutional mandate on communicative or participatory democracy	● TCGDE offers a thread and leads a progress as focused on the quiet revolution of democratic governance on experimentation
	● Tension between the	● TCGDE endorses to empower the government to

<sup>41</sup> Consumption had also been affected by the economic polarization and income disparity.

<sup>42</sup> For example, transaction cost can ineffectively increase in accordance with market expansion and private organization if the role of court and legislature as a provider of rule and principle shrinks and becomes exceedingly minimal. In this sense, findings from the interviewees generally corroborated the perspective of scholarly circles by echoing the American institutionalism and neo-liberalism.



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<p>RQ 2: What is the role of individual rights in supporting constitutional government in South Korea?</p>	<p>hard legal tradition and DE</p> <ul style="list-style-type: none"> <li>● Regulatory needs and rule of law question</li> <li>● Judiciary passive in principle, but active as a proponent for economic justice</li> <li>● Equity or fundamental justice concerning regulation of market, environmental preservation, protection of labor and consumers, and unemployment policy</li> <li>● Needs of education that the universal right to property and economic freedom shall be limited according to the universal purpose of property</li> <li>● Role as a coordinator for fair distribution and adjustment</li> </ul>	<p>exercise the functions of socialistic intervention- yet on democratic constitutional process</p> <ul style="list-style-type: none"> <li>● Indebted to TCGDE, a social change requires an agent to think forward and backward to encourage the liberal market and satisfaction of constituents or citizenry</li> <li>● The new concept of rights, flexible and recognized under the prophylactic rules, can help to redefine the property rights or economic freedom; the thought is that individuals and government are respectively accountable for their own spheres of autonomy.</li> <li>● Public mindfulness and preparation about the individual rights and social justice as a good condition for direct polyarchy and rolling-based best practice</li> <li>● Collaboration of three branches to monitor and coordinate as guided by TCGDE</li> </ul>
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**Social congruence and multiculturalism.** The success of government in this global age is not only political or economic, but also relies on the gross of socio-cultural satisfaction within the community. The social change requires a policy focus to respond with a growing multiculturalism and possible discrimination against the influx of peoples of different color, race or ethnicity (Ford, 2001). Since Korea has a long history of common ethnic origin and the impact of foreign immigration has actually been tenuously

minimal, and democracy and political culture had in fact been blind to the potential conflict and challenge arising from a growing heterogeneity of community. The conservative elements in this regard militate against speedy adaptation of western democracy and liberalism and dissuade the people from communication and participation. Provided that the democratic experimentation holds a critical assessment for the two paradigms against the constitutional tradition and is grounded on various western philosophies, CGDE theory has a background with the US's history-rich profile of democracy and communitarian jurisprudence on race, sex, or ethnicity, and so on (Sabel, 2012). The development of increasing multiculturalism into the mainstream of South Korea implies changing Korean foundation, for which the terms and requirements offered by Dorf and Sabel can simply operate as a model to follow, yet only thoughtfully with critical eyes (Super, 2008). South Korea is in fact required to respond to this theme, in which the Dewey or Rawlsian perception of education or distributive justice, localism and direct polyarchy, the imperatives of private institution and civil society, mutual learning and coordination by government, and so on, can well inform the elements of effective and transparent constitutional government. Korea actually would be an alien state indiscriminate from the accusation by legal critical theorist in US, in which the kind of echoing litany of society for equal protection, "mapping the margins...[and] intersectionality," is not adequate to locate the satisfaction of people and success of government" (Crenshaw, 1991, p. 1). An improvement of social policy in this pattern, if it is to lead to something other than economic polarization, could only be a subterfuge for the government role, but would normally be incapable to incite the horns of society. This

marks a difference from the US case provided we discuss the success of government and social change. A growing number of foreign immigrants have gained a foothold, and the government is called upon to serve an adequate role for social congruence and equal protection of laws. One commentator in newspaper article described,

In what ways have the old ladies and old men who search through our garbage to collect cans and cardboard for sale to recycling centers for a few pennies a day have social equivalence with professors in terms of a retirement plan as a result of democratization so far in Korea since 1987? Who speaks for these people since they have no education or voice to speak for themselves?

The interviewees' suggestions were consistent with the assertion that public education to increase multiculturalism, constitutional identity and self-reflection on the foundations of democratic Republicanism plays a key role to bring the social change and success of government (Cohen, 2013; Fossum, 2012; Sabel, 2012). An unpreparedness or disinterest to boost communication and participation through public education may cripple the constitutional values and hopes of a livable community. The initiative of government or social leadership would be vital to inculcate the changing paradigm of a transformative society and to rehabilitate the ethics of the citizenry. In terms of multiculturalism and public education, we are called to diagnose how much flexible our society demonstrates to accommodate changing circumstances. A demographics shift that predicts a fair increase in foreigners is well charted and their diverse backgrounds have engrossed the mainstream of Korean culture accordingly (Cohen, 2013; Fossum, 2012). One interviewee offered insightful viewpoints,

While multiculturalism is a fun and popular watchword, it is of little significance in Korea with only 3% foreign presence CURRENTLY and is really just a red herring today. You may recall that the expert from Seoul told us this in the Moot Court room. The real difficult issue in Korea, and determinative of equality or not among Koreans themselves, is a consciousness of social class. Is a person who regularly shops at *Nam-Gwangju Shijang* or some other traditional market considered the equivalent in class with someone who regularly buys at *Lotte* or *Shinsegae*? In Korean, which one of the above persons is more likely to be referred to in formal honorific language? So are we going to suggest a change in Korean language to inculcate equality in social standing? It is important to note maybe that although North Koreans share blood lines with South Koreans, their culture is quite different, so that multiculturalism is important to the prospects of successful unification.

A second generation of immigrants will be more powerfully integrated into the society, and the kind of settlement will ultimately occur. The transformation then brings the need of change for native Koreans, but the sense of alienation or heterogeneity, what we know as otherness, is undeniably strong. It serves as a precaution that cultural openness of Korea has been rated very poorly around the bottom among over 50 countries according to the Swiss IMD. Worse, organized action to look down on otherness or to even practice anti-multiculturalism akin to hate-conduct has not been infrequent.

The key to ameliorate social conflict lies with the people as a whole, and it is important to bear in mind that the solutions offered would obviously be less than effective without the consciousness of empathy, tolerance and compromise derived from a general sense of morality and self-determination (Bach, 2012; Bader, 2014; Behagel & Arts, 2014; Fossum, 2012; Nourse & Shaffer, 2014). A legal response by the Human Right Commission and Department of Justice can only provide a partial solution where, for example, the accused is ordered to forebear from posting harassing messages on the internet space or when intense surveillance is imposed. Compulsory measures and legal recourse can ban or shrink the proscribed acts, but their legitimacy is predicated on social consensus and moral grounding to render them conducive with the beliefs and daily practices of societal members. Therefore, it is agreed that the public education to respond with a transformative society of multiculturalism is indispensable to bring the success of government.

According to one scholar interviewee, successful education on multiculturalism must be characterized by three facets,

A melting-pot theory cherishes an assimilationism, in which the residents need to accommodate the language and culture of indigenous group of people. Mozike theory was devised to complement with the weaknesses of MPT but failed to provide a clear cut of holistic solution. In other words, it simply reinforced the co-existence and intercultural tolerance between the majority of people and discrete or insular minority. A salad dish theory attained a scholarly support as desirable for the activism and leadership of majority people to integrate the people of

minority culture.

The melting pot theory provides a narrative account for the traces of French, German, and Japanese history through industrial transformation and speedily growth of immigration (Gleason, 1964). It is also thought to be effective that the DOJ provides a public program of social integration, in which on-line education is available for the immigrants to learn Korean and understand the society, economy and law of Korea for good citizenship and ethics. According to the third theory, the people of mainstream culture are required to endorse the legitimacy of minority people for the evolution of mainstream identity and communal diversity (Pope, 1995). Therefore, it also provides a platform for policy makers and educational authorities to act to cast a wide safety net for social integration on race, ethnicity and welfare of the indigenous group.

As a reminder, the issues involve modern constitutionalism and the practices of a democratic state, which is capable of establishing squarely the arena of successful government. It also inherently entwines with social change for justice and equal protection. Multiculturalism in South Korea deeply implicates the volatility and diversity or limitations of existing categories. It also requires the public agency to exercise or implement benchmarking, obstruction of old forms, and construction of new forms of organizations (Dorf & Sabel, 1998). A new paradigm of deliberation, direct polyarchy, and constitutional interpretation, and the framework of DE thought are closely aligned with the multiculturalism in South Korea, which supports the constitutional government in the nation. Nevertheless, there is a kind of oxymoron that is not absent-namely, that public programs and education only yield a limited or eye-catching and outward

administration. The government enforced limited protections for the spouses of international marriage, but a comprehensive policy focuses to cover all foreign immigrants remains lacking nor is it contemplated. For example, public schools are often critiqued because they tend to segregate the children of immigrants within the special classes to the effect of stigmatization. The expertise of their teachers has been questioned and the administration has been directed to conduct a public review that is proved vain and unsubstantial. The problem persists, and no one can formulate a cure, other than provisions or events that are one-off and the contents are substantively slim and scanty. A major attribute of the national response recalls the weakness of the melting-pot theory, which renders discrimination or the feeling of otherness invisible such that it is not completely remedied (Gleason, 1964).

A constitutional education can improve the pluralistic mindfulness and attitudes of citizens within the mainstream of society so that they better understand the meaning of equality and legitimate treatment of discrete or insular minorities leading to tolerance and benign co-existence. R. Smend (1985), an influential constitutional scholar of integration and constitutionalism, identified the important paradigm of constitution as being the ordering of a socially integrative and livable community. According to him, the constitutional process is to constantly recreate the national unity *Lebestotalitat* as a livable community, and the constitution is nothing but the individualized deals for the satisfactory integration. The document in this understanding is ahistorical and principled, but varies with new meaning or temporal requirements, and the constitutional education transcends the statutes and provisions toward the fundamental value and ideals. An

abstractness, normativity, politics and history would be key elements of constitution so that every class of citizens can have an idea for the livable community. As Paul C. Gorski (2009) suggests, discourse and public education on multiculturalism with a focus on the equal protection can be productive. The same message had been affirmed by a recent survey of law professors and other concerned groups of experts, in which the equal protection of law is the second most suggested area of education in terms of thematic importance. The survey pinpointed its role as a thread of necessary thought to care for and share the community of diverse people with cultural differences. Throughout the program of social change arising from a planned educational program, bias and discrimination identified to cause social conflict can be removed. The message from the survey can be transcribed as follows,

Public education programs will play a valuable role to create opportunities for reflection and discover the unique differences among natives and immigrants. They also help formulate attitudes supportive of tolerance and acceptance that largely contribute to the integration and congruence in society. A creation of such livable community is an essential condition to bring the government positive acclaim and success.

Interviewees commonly asserted that mutual learning and information sharing are not only feasible, but also realistic through the constitutional education. They also provide a strategic program of communication for participatory decision-making and constitute a new form of deliberation that is implanted with the pragmatic and incremental nature of DE (Dorf & Sabel, 1998). A practical agenda for constitutional



education on multiculturalism concerns class preparation and use of appropriate materials. One suggestion is to utilize the case laws of KCC to draw upon for the contents and class notes. Different from the existing supreme courts, the KCC is admired for its active role and grand scale of accomplishment in rendering a host of case law. Its opinions have generated the nuts and bolts of doctrine to navigate the thorny and abstract provisions of the constitution that promulgate the rule of law in Korean culture and foster the mindfulness and ethics of citizens. The KCC is a final arbiter of the constitution and lays down the bulwark of laws to protect fundamental rights. It is expected to redress the wrongs which the majority or political process commit against insular or discrete groups of people.

Constitutional case law is useful to know the neighboring, but unknown representative stories that expose the anomalies or dysfunctions of social relationships among the peoples of different cultures. Case law can be more straightforward and productive in terms of educational effect because of their clarity in issue-spotting and their potential to assist with integration within a historical perspective. The students of case law is able to rethink the genuine values of constitutional language and provisions, and cultural differences can be overcome incrementally with fundamental changes in attitude and mindfulness. Classes on case law will assist to create opportunities for understanding the living conditions of different peoples and their basic rights within the community. Students can also express their ideas and thoughts concerning the conflicts between various constitutional rights and the impact of their balancing on the legitimacy of governmental intervention. Concerning the refurbished role of KCC against the former

unitary Supreme Court, one interviewee uttered an echoing comment to divulge the essence of multiculturalism education,

Citizen education to respond to a growingly multicultural society...is to breed students who are capable of productive labor and ethics in their understandings and prudent to take care of others...to support their individual, social, and civilian activism, and to build and maintain a humanistic and fair community.

Constitutional reform would only crawl if it is approached objectively with only the grand of revision of a textual package. In other words, self-awareness and the heuristic process of subjects to find their constitutional identity looms as an essential external factor for the success of constitution and government (Crenshaw, 1991; Dorf & Sabel, 1998). It is pointless to assert that success in constitutionalism and resulting social change can be merely brought about because of education on the morality and values inherent within the constitution. Lacking the element of subjectivity within the constitutional process, the constitution would be nothing but a faux that is ornamented to disguise the tyranny of future failed administrations. According to Rosenfeld (1997), the constitutional identity is defined as an ego to create the trans-valuate norm, in which one reflects and renews their personal value perceptions and attitudes in favor of new ideals and constitutional values. Rosenfeld argued that constitutional identity is created from sameness or selfhood. In this process, one is influenced within a dual dimension of vigorous exchange with past imagery of self so as to envision a planned future of sameness. The exchange occurring inside the self may be mutually contradictory or

complementary in reinforcement. Constitutional identity, according to Linklater (2000), requires a dialogue between the past and present for its formulation.

A discussion on the success of government needs to note that the concept of constitutional patriotism as proposed by Calhoun (2002) can be keyed to improve constitutional practice for the government and citizenry.<sup>43</sup> The concept was specially designed to address the particularities of Europe and the political discourse of European integration. However, it offers insights to improve the ethics or morality of citizens in their public lives. The core of idea is coextensive with the cause of a united Europe, in which exclusion and discrimination are set aside in favor of constitutional patriotism. To this end, the theory relies upon reciprocal benevolence and comradeship and understanding by exchanging differences with commonness. A romantic nationalism would be imperceptible and inopportune to this process of objective meting based on the European constitutionalism. To understand the Korean constitution and democratic experimentalism, European experience and history of integration may provide another

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<sup>43</sup> Modern constitutionalism is understood in a dualism in which the version based on universalism accounts in part while the constitution will essentially be represented by the sovereign and political will of the nation. The latter view hinges on the kind of nationalism that ebbed through 18th century until the present. Nationalism has been described as an imagined community in which the ideal itself created the nation, not that the nation engendered nationalism. Despite the ubiquitous nature of weird and despicable nationalism, modern democracy sallied forward with the binding force of equality and peerage. It is amazing in a sense that nationalism has sustained the government and constitution against challenges from social polarization, extreme income disparity, and paucity and discrimination. The theme that associates constitutionalism with nationalism, therefore, differs from the discourse on multiculturalism since the latter arises from a more universal understanding of the constitution.

good point of reference besides Dorf and Sabel (Colburn, 2004; De Burca, 2010; Fisher & Devins, 1992). Table 17 summarizes points of discussion in this section and a gist of answers to the research questions.

Table 17

*Participant Response for CRQ & RQ 3*

CQR & RQ 3	Points to discussion	A gist of answers
CRQ: How does democratic experimentalism support constitutional government in South Korea?	<ul style="list-style-type: none"> <li>● Successful government and gross of socio-cultural satisfaction</li> <li>● Development of increasing multiculturalism into the Korean community</li> <li>● Public education for multiculturalism and constitutional identity for social change</li> </ul>	<ul style="list-style-type: none"> <li>● Within the process to change Korean foundation on increasing immigration and diverse society, TCGDE can provide a lesson and help to inform the elements of effective and transparent constitutional government; a difference from US case, however, needs to be considered concerning the specifics of Korean community.</li> </ul>
RQ 2: What is the role of individual rights in supporting constitutional government in South Korea?	<ul style="list-style-type: none"> <li>● A key to ameliorate social conflicts for transformative society to emancipation and use of TCGDE on benchmarking, obstruction of old forms, a new form of deliberation, and so on.</li> <li>● Constitutional education, especially involving the studies of case law, associated with mutual learning and information sharing</li> <li>● Breeding a constitutional identity or patriotism for self-awareness and the heuristic process of subjects for the success of government</li> </ul>	<ul style="list-style-type: none"> <li>● Given that multiculturalism in South Korea is concerned with volatility and diversity of community, the terms and requirements from TCGDE can be closely aligned to facilitate social congruence.</li> <li>● Since the constitution has a strand involving individual deals for satisfactory integration, the mutual learning and information sharing are more than effective leading to an efficient government.</li> <li>● Constitutional education and communication for participatory decision making, as proposed by TCGDE, also support to</li> </ul>

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integrate the society for incrementalism on DE and successful government; For example, information sharing and learning of the constitutional case law improve a participation for immigrants as well as the performance of governments, and help to respond with the dysfunctions of social relationships within different cultures.

- DE is predicated upon the constitutional identity, patriotism and participation in the decision-making process; Hence the cultural or social policy of Korea on multiculturalism is required to exchange with the ideas or thoughts on TCGDE, especially with European experiences.

- The concept of individual rights advanced by TCGDE can fairly apply to face with the challenges arising from multicultural society.

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**Korean constitutionalism and green peace.** Throughout the investigation, the core of the reformers voiced the low-carbon economy and green peace message as one that is indispensable to safeguard constitutionalism. This phenomenon reflects the global political discourse between the developmentalists and environmentalists, systematized through foundationally set agenda, disagreements, and consensus formulated through diplomacy and multilateral treaty agreements (Rothman, 1998).

An interviewee, a newly elected chairperson of Korean constitutional studies, simply heralded an articulation of the constitutional environmentalism that would be considered a priority for an OECD member and global top ten country,

Here and there, the issues of air pollution and climate change arise and are expected to be met with appropriate measures. While the development of the issues in Korea are heavily affected with those of the neighboring states, notably China, the radical formulation and maturation of political culture over the previous two decades between the leftists and right circles also informs the fate of this issue in the national agenda. Lacking a planning strategy to deal with environmental challenges just means the failure of government and concerned observers have connected this theme and aligned it with the constitutional reform movement.

Interviewees commonly agreed that the success of government is not feasible without the constitutional green peace movement. It surprisingly defines the success of government as a critical external factor that is thought to have a constitutional locus of incorporation and related public policy elements within the statutes. Green peace has characteristics in terms of our thought frame within the arena of constitutional policy in (i) which the new concept of rights or prophylactic rules are intensely contested but of great interest; (ii) where experimental government and incrementalism would have the best fit as opposed to other public issues; (iii) and its flexibility makes it amenable to international politics and values, all of which implies a soft type of paradigm, such as learning by monitoring, private mode of decision-making and interplay of centralized and

decentralized forms of organization as appropriate to reform toward successful constitutional government (Dorf & Sabel, 1998; Kim, 2000). In this standpoint of view, the theme has a greater potential than that of Dorf and Sabel's theory and can support to better understand or reform the constitutional system in South Korea (Dorf, 2012; Dorf & Sabel, 1998). One most stark example can be found in the government organization titled the Public Panel on the Nuclear Power Plant. It was founded on a legislative act and placed the sensitive, important, and complicated issues facing this multifaceted challenge for consideration by an ad hoc panel to be decided upon public debates with their final vote. A number of civilians and experts have been participating, and mutual learning is said to occur through conferences and debates to culminate with their vote to bind the cabinet and form the responsible jurisdictional basis for the issues (Dorf, 2012). The moderator or chief commissioner, JH Kim in this case, is expected to play an important role as a coordinator to monitor the process and implement the learned outcomes to resolve the controversies of nuclear power plants as either a continued alternative for power generation or one that should-be-stopped.

The environmental agenda was formulated as an outstanding policy item in the Lee's administration around 2007, and the statutory ground was laid in Jan. 2010 when the Framework Act on Low Carbon, Green Growth regulation passed the legislature. The social change effort wheeled this opportunity forward to further address the problems through the constitutional movement (Kim, 2014; Tushnet, 2012). While the Korean constitutionalism incorporates the necessities into the tripartite governmental dimension, it also integrates the issues into the general impetus of the nation-state and human rights

regimes.<sup>44</sup> The legal chapters on the national economy and local governments are two extras that are submissively tied to the constitutional policy of the nation.

The social change effort to reformulate the green concept within the constitutional effort is highly remarkable and accords with our international relations and diplomacy obligations (Kim, 2000; Kim, 2014). Many devoted members of the scholarly circles and citizen associations dedicated to economic justice have been working to raise public awareness and organize the social movement. For older citizens, a suspicion surrounding campaigns and propaganda is certain for any extension that appears to sympathetic to communism. Most constituents are progressive and accept the need for incorporation of environmentalism to account for our international privilege and national esteem. The technical aspect has been specified within a comparative studies effort. Korean texts on this issue commonly introduce global scholarship in support of transformation,

Scholars have pinpointed several legal models including the protection of natural life conditions as amended in 1994, protection of animals in 2002, pronouncement of environmental chapters in 2005 French constitution, and the right to nature as

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<sup>44</sup> As we see, the constitutionalism varies depending on the particulars of national politics, culture and history. It is arguably traditional to classify it between the classic or liberal constitutions and progressed constitutionalism on the idea of positive state and social welfare. The US constitution is seen as the former while Germany and Korea may fall within the latter. It represents to show the history of world politics given the US and Germany had been an enemy state for the two wars underlying the contemporary foundation of world order on the economy and politics or security in the least. The US constitution still is devoid of general part on political party and international peace, in which no chapters on economy and constitutional localism would be found. While Korean constitution has three or five chapters meaning a large constitutional touch than classic one with two distinct chapters on government system and bill of rights.



prescribed within 2008 Ecuador constitution. They also revisit the relevant history, including environmental rights then newly created in 1980 and hurriedly adopted within the time schedule for constitutional reform. The problem they raise is that a serious debate and necessary review for coherence and constitutional legitimacy have regrettably been curtailed in consideration of the high chance of incongruence between the projected development and protection of the environment.

Historically we note two basic attitudes to incorporate environmental policy into constitutions (Koh, 1999). One is when the constitution pronounces it as one of the national goals in the preamble or other general sections. The other is that the constitution explicitly affords a protection as one of explicit individual rights. Both policies demonstrate pros and cons that require comparative review and analysis surrounding the issues of justiciable rights, public education and awareness, and scope of protection. The most notable point of distinction between the two attitudes is that the former is unable to afford an individual with the private right of action based on injury to the environment. This means that the individual cannot claim his losses in a courtroom with respect to damage to the environment (*Sierra Club v. Morton*, 1972). Presumably, without statutory justice, constitutional justice also faltered, but there has been progress in some sense with respect to a series of environmental litigation matters in the US. These actions actually stood on very good public rationale but were also challenging to enterprise and businesses due perhaps to the enormous amount of spending required to comply with progressive laws. In our view, the flexible mode of decision making, for example, rolling

based best practice, possesses a character that is most appropriate for this area of public policy, and the practice of the EPA is notable as exemplary of Dorf & Sabel (1998). Constitutional policy to deal with environmental challenges and degradation requires due prudence because of its foundational impact on legislature and public agencies. The oversight role of legislature and judicial branch over rule making and its implementations are essentially related to the provisions, mandates and requirements of the constitution. Amongst the challenges of environmental reform in the context of a new constitution, a starker point of considerations entails the balance between individual rights and the public interest, akin to the inherent and traditional conflict between democratic values or the ideology and social progress (Dorf & Sabel, 1998; Koh, 1999). The right to a protected environment inherently comes as an anti-thesis to property and ownership rights. An awareness of previously unconfessed democratic ideals within the consciousness of politicians and their citizenry growingly interacts with the environmental agenda, such as when student activists in the 1980's roared to sustain two past left-directed governments and aspired to resurrect the glorious reign of a previous decade. The precise nature and scope of protection afforded by the right to the environment is in fact difficult to conceptualize and encapsulate because it involves air, water, natural resources, diversity of species and inseparably relates in many facets with the world populace. A merely historical contingency in the nature of privileges and immunities as argued by Dorf and Sabel (1998) could inform the nature of environmental issues in Korea. The traditional concept of liberty and human rights is arguably different when they offer a legal basis to assert a private claim of loss or damage more concretely.

The standard of adjudication of opposing environmental concerns between the right and public interest could, henceforth, be nurtured by the philosophies of CGDE, as would be expected with the liberal mottos of emancipation upheld by an ideal government (Fiss, 1979; *Sierra Club v. Morton*, 1972). One commentator disclosed the international commitment in his newspaper article,

Therefore, the international community defines it as a third generation of human rights beyond both the political and civil rights (1<sup>st</sup> generation) and the social and cultural rights (2<sup>nd</sup> generation). The definition of rights is not firmly proven at this stage but remains malleable to the transformation of society and constitutional values. The social change efforts on this important agenda seem very responsive to the public perception, which is ontologically welcomed for social progress.

Therefore, it is not wrong to say that it constitutes one of the important external factors and revision elements to be pursued in order that the government is deemed successful.

Undisputed among the interviewees was the notion that public ethos and sympathies are even more crucial than the success of constitutional revision. While new textual provisions grant and formulate key policy apparatus, enhanced public awareness and civilian impetus to protect our precious environment are necessary for successful advocacy of any precatory goals or mandatory options. An approach based on the concept of right rather than national goals is thought more effective to educate the public and impose the imagery of threats and challenges predicated upon continued environmental degradation (Dorf & Sabel, 1998; Koh, 1999). We know that the leadership of Korea has

been sincere to pledge a package of progressive measures, yet the plans are known to comport to the subsidies of their political interests. There is a not so insignificant contrast between the Korean situation and that of developed countries, where both public agencies and citizens are well aware of the character of issue and the evil consequence arising from predatory development (Kim, 2000). The issue may be foreign for the political elites in Korea, who have been long bred to advantage the developmental paradigm as vital and unavoidable.

Given the subtleties involved in adjusting public policy in response to the variety of interests and vested rights, the scope of the environmental right is in fact understandably controversial and under contention in a number of court cases. The implication is that the constitutional players ought to endeavor to create an acceptable standard as a rule in Korea. The Supreme Court enunciates this aspect in a plethora of cases, notably in *Pusan University* (Korean Supreme Court, 1995).<sup>45</sup>

The constitutional policy also needs reconsideration to clarify that the right to decent housing has to be distinguished from the scope of the environmental agenda since the latter traditionally is deemed to be within the area of social welfare. The confusion creates an exaggerating imagery of social state, which ironically weakens the intent of

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<sup>45</sup> The court opined, "...The art. 35 of the constitution is not interpreted to create a concrete right within an individual, but clearly goes beyond the role of the judiciary as an equal peer of other two political branches under the separation of powers principle. In order to be enforceable within the courtroom, the act or relating rules of public agency is required to expressly confer it as a private right or such rights can be impliedly acceded by the court such that the subject, object, nature and quality, as well as the statutory procedure to claim those rights can clearly be identified...."

progressives to reform the constitution and define the success of government to their ideal. Another lesson is that the current constitution is inadequate to incorporate environmental issues within the chapter of social right, and their confounding falters to weaken both policy effects. The interviewees gave a picture that describes the relationship between politics and constitutional environmentalism in Korea,

If it is just a social right, the chances of it being enforceable as a remediable right within the courtroom is highly doubtful, and as illustrated in the past has actually proven ineffective due to the traditional conservatism of the court. The progressives are hopeful that the attitude of the court will change even if incrementally.

Given its placement in the near middle of the constitution, art. 34, it also loses a policy effect that forges a lasting impression as an inevitable and principled priority within the scheme of national goals (Koh, 2008). The German practice then was wiser, and we have to regret a lack of public attention and sufficient debate to deem the issues more appropriately and constitutionally focused.

The solution may reveal itself through a comparative review of the various constitutional policies on environmental challenges. As distinct from the passivism of the past ages, it is undeniable that here or there the environmental issues have been eclipsed by the governmental interests in encouraging the economy and liberal capitalism, which serve as the foundational goals for the first wave of constitutionalism in any new nation.<sup>46</sup>

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<sup>46</sup> The international success to counter the environmental challenge also is chartable through the time period; Stockholm conference in 1972, 1992 UNCED in Rio,

The failure to comply with this common global theme obviously would be fatal to the success of government because it breaches international obligation and fails the national diplomacy, leaving an ugly impression (Kim, 2000; Kim, 2014). It also detours the proper cause of environmental protection, which, however, seems unlikely with the rising ethos of a left-oriented government. The case of Albania seems appropriate and serves as an example that adheres to the traditional approach of constitutional reform. The principled language may well appear in the preamble, and the green concept might be affirmed as a national goal in the general section. The international cooperation may be mentioned within art. 6, which is known as the clause of international peace and law, and which obliges the government to endeavor to trend with the international community. Table 18 summarizes points of discussion in this section and a gist of answers to the research questions.

Table 18

## Participant Response for CRQ &amp; RQ 3

CRQ & RQ 3	Points to discussion	A gist of answers
CRQ: How does democratic experimentalism support constitutional government in South Korea?	<ul style="list-style-type: none"> <li>● Low carbon economy and green peace to safeguard constitutionalism and for success of government</li> <li>● New Power Plant led by JH Kim, a coordinator to monitor the process and implement learned outcomes</li> </ul>	<ul style="list-style-type: none"> <li>● Environmental litigation requires to use the flexible mode of decision-making or rolling-based best practice as TCGDE suggests.</li> <li>● The right to a protected environment is akin to TCGDE discourse that a right may be historically contingent and can be submissive to the prophylactic</li> </ul>
RQ 3: What is the role of individual rights in supporting constitutional	<ul style="list-style-type: none"> <li>● Incrementalism and social monitoring concerning</li> </ul>	

Brazil; 2015 Paris. Since the concept of sustainable development was coined originally in 1992 Rio, it became a motto of global jurisdictions as a sacred and indispensable responsibility of every nation.

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government in South Korea?	environmentalist's cause	rules or defined through the experimental monitoring.
	<ul style="list-style-type: none"> <li>● Tripartite government, human rights regime, economic justice-elements to interact with the Korean environmentalism</li> </ul>	<ul style="list-style-type: none"> <li>● As guided by TCGDE, comparative review of constitutional policy on environmentalism and efforts of government to trend with the international community require information polling or learning by monitoring through building efficient administration; for example, given a new form of deliberation within TCGDE, the right to decent housing is crucial and can be made distinct from other programmatic nature of environmental interests.</li> </ul>
	<ul style="list-style-type: none"> <li>● Two types for importation of environmentalism into the constitution-principled within the preamble or protected as a new concept of human right</li> </ul>	
	<ul style="list-style-type: none"> <li>● Public ethos and sympathies more crucial than the success of constitutional revision</li> </ul>	
	<ul style="list-style-type: none"> <li>● The right to a decent housing and other general environmental agenda</li> </ul>	

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### Summary of Key Research Findings

The preceding discussion has elaborated on nine themes identified as most critical to improve Korean constitutionalism and democracy in the face of the current constitutional crisis from the unbridled diversity and volatility of civil society. As we note, the key concept of Dorf and Sabel's theory centers on the experimental incrementalism as sharply distinct from such existing hardline approaches as self-described originalists, theorists of public choice, critical legal scholarship and moral philosophers. The theory of CGDE provided a framework of this study, inspiring us to ask one principal and three secondary research questions. In order to better understand constitutional government in the South Korean context, we need to answer the principal research question, "How does democratic experimentalism support constitutional

government in South Korea?” As a follow up, secondary questions need to be answered to completely solve our queries about the service and inutility of TCGDE and also help to answer the principal research question. Again, those are reiterated here: “What are the key differences between a centralized organizational form and a decentralized organizational form, in their capacity to support constitutional government in South Korea?”; “How does a national framework support the constitutional government in South Korea?”; “What is the role of individual rights in supporting constitutional government in South Korea?”

The purpose of this section is to provide a brief, but focused and structured account to show how the above discussion and analysis are implicated to answer our research questions. I like to denominate the nine themes upon which this empirical research is based—namely, “K-9 on constitutional democracy (K9CD),” which is intimately related to the propositions and suggestions of CGDE. The interconnectivity of themes on the Korean compliance with CGDE simply suggests the utility of their theory, and I have already pinpointed the role and lessons of TCGDE for each part of the discussion in the preceding sections as you may have noticed.

To begin with the first secondary research question, findings evidenced that a current challenge for the progression of constitutional government in Korea stems from the centralization of power, notably a tradition of imperialistic presidency and a monolithic ruling party, which necessitates a reform toward decentralized and autonomous local government. The discourse of TCGDE, chiefly from Dorf and Sabel and other prominent theorists, i.e., Wilkinson, Waldo and so on, guides analysis to



improve the Korean practice indicating that one organizational form would only encourage tyranny by a dictatorial government, while the other could only exist as an isolated phenomenon. Both are collaborative to reinforce a best-rolling practice of decision-making, whose idea and systemization originated in private firms and can provide a solution to face the constitutional crisis. Within this framework of organizational collaboration, benchmarking, organizational changes, simultaneous or concurrent engineering, error-detection and error-correction systems would take place in turn to improve the practice, which is spoken of as a system of collaboration to enhance whole learning by monitoring. Provided that the chief concern of TCGDE is inefficiency and the impact of incrementalism on democratic experimentation, it guides and explicates a proper Korean response to safeguard against the current inertia from ineffective constitutional government. Our empirical findings concerning the importance of public education, conditions to reform, social congruence and multiculturalism, and improvement of civil society, show that TCGDE supports the improvement of Korean constitutionalism eliciting (a) a solid foundation for grass-root democracy and participation (b) a qualified and learned citizenry (c) a bright-line reformulation for the new role and leadership of judges, congressmen, and public agents (d) a volatile and transformative challenge for a lenient perspective in constitutional understandings.

Our second research question pertains to the national framework for constitutional government. As the theoretical proposition from Dorf and Sabel involves such notions as the traditional SPP, federalism or non-delegation doctrine as well as new roles of three branches, it can frontier to instruct a progressive response to the current controversy of

Korean constitutional reform. Through four identified themes, i.e., parliamentary system, public officers as a change agent, IAA, decentralization and competitiveness, TCGDE provides a thread of discourse and positive lessons and references (a) to elucidate any contingencies that arise when dealing with institutional needs to suit particular conditions and systems of various nations (b) to guide the inevitable evolution from the political paradigm on SPP to the administrative state (c) to engender a new form of deliberation by participating social actors, and to monitor and learn to make better decisions in a reciprocal and cyclical process (d) that the process can be facilitated by public officers as a change agent. By suggesting learning from private sector institutions as well as by a public sector model of problem-solving that is adapted to polity, TCGDE validates that omnibus or national measures can rarely address the particularities of local experience. On the other hand, even the most immediately promising solutions cannot be addressed by a locale in isolation from the central government. Although the Korean case brings up the possibility of a new parliamentary system besides the traditional presidentialism or two-tier executive, a principled account of TCGDE normalizes the reform of government within a deliberative and participatory democracy and a culture of public learning. The paradigm of TCGDE for a new role for public agencies and judges also helps to reform the executive with a prosperous use of IAA, which facilitates an independent and knowledgeable decision making process to face the challenge of a diverse and volatile civil society.

Within the discussion and analysis in the preceding section, the third research question has been explicitly or impliedly answered along with the themes on economic

justice, multiculturalism and green peace. Those three themes are viewed as highly concerned with the improvement of Korean constitutionalism, and may fuel the public carnage in a public contest and dispute surrounding the traditional framework of individual rights and leading to a new concept of rights with the prophylactic understanding suggested by Dorf and Sabel. Given the growing intensity of political strife between the right and left in Korea, those areas of constitutional progress may well be found to be indebted to the paradigm of TCGDE in advancing the administrative state and effective constitutionalism on DE. The new concept of rights through constitutional adjudication requires a flexible understanding through experimental learning by monitoring, and adaptation to face new challenges from the increasing volatility and diversity of the community. Focused on progressive thought and incrementalism with a pragmatic approach to reach an understanding of rights or interests that transcends their historical justification, TCGDE can help to support the Korean community's task of redefining the balance between social justice and individual rights in the newly highlighted areas of constitutional development. The prophylactic rules of rights, for example, can only be made feasible and successfully implanted by public officers and judges who are committed to play their roles as social change agents. A framework that delineates a new role and responsibility for each of the three branches within the discourse of TCGDE supports Korea's need for educated public officers who strategically response to both social congruence and the growing multiculturalism of the community

If TCGDE is developed to face the contemporary constitutional crisis in South Korea, it possesses a weight of influence to support the constitutional reform by gravitating its essential ingredients to cover learning by monitoring with the centralized and decentralized forms of public sector organization, national frameworks of constitutional government, and a new concept of rights. The central research question is answered with the view that DE does not pursue to replace conflict with consensus, but (i) to change the reasoning and evidence produced by public debate, (ii) to create the conditions for participation in civic life, (iii) for the disputatious democracy to be made effective and instrumental for public problem solving. As K9CD helps us to discuss top priorities in Korean constitutionalism and democratic experimentation, TCGDE supports the evolutionary progress of reform beyond the epochal account of Korean constitutionalism – often either a constitution or democracy marred by radicalism – and avoiding overemphasized cataclysms and the resulting particular forms of popular mobilization at the expense of incremental change.

### **Limitations of the Study**

This study has had a dramatic effect on the level of detail and the scope of my research inquiries generally. One study pointed out that with the rise in virtual work teams, flexible work arrangements, and personal electronic devices in the workplace, the opportunities for cyberloafing — using the Internet for non-work activities — are plentiful and creating serious problems for many enterprises. Before this study, I must certainly have been the kind of person that deviated from the research theme, contexts, and stories, or failed to deeply reflect on the data or been able to glean important

fundamental truths therefrom. I might have been like the typical trouble maker for the supervisors or a passive anemone in the sea of data that could not adequately handle a qualitative research project of this scope. I realized that the stage of qualitative inquiries in a tightened timeframe from the data collection, analysis, write up and the interview protocols through the coding process and write up could not be passive or involve the kind of idle time on internet research that would be akin to cyberloafing (Cherryholmes, 1988). The qualitative method used here has needed analytical focus, to avoid a tendency to flexibility, subjectivity, and diversity as demonstrated by the underlying assumptions of open-ended questions and semi-structured interviews. As professors, we often structure questions, such an exam to test the preparation and learning of students using two forms (i.e., multiple choice or objective questions and essay questions to test if students are prepared for their job responsibility after the schooling or able to apply their learning to their private or public lives for a more decent standard of living). A considerable number of researchers would take a more casual inquiry method (maybe because they already are convinced of the results and are busy with many lecture hours). Although the US and other developed countries with advanced curricula for a junior researcher or continuing training program offer research method classes, I am not sure that is the case for others, including Asian countries. As a comprehensive and thoughtful exam is essential for the scope of students' learning, the knowledge of the best research methods is essential to augment the general genre of disciplines, such as the introduction to sociology, economics or politics, American legal system and so on. Although we stress the importance of an explorative mind for elementary, high school, and college students,

the professional researcher often is bred in the research methods of whatever graduate programs they experienced. Therefore, the mode of research interaction usually differs little from the seminar type inquiry prevalent for instruction or exchange of ideas and opinions, which is why, for example, a term paper is often more preferred than offering an empirical test for graduate students. This aspect is essentially designed to encourage research methods that show creativity and originality, which is seen as being essential for their career progress. In this context, classes on empirical research methods need to be reinforced in Asian and Oriental universities for graduate training (Crotty, 1998). We must stress in greater emphasis the practical consequence of the fact that research in the social sciences is necessarily interdisciplinary. We also compare their reality to sailors on a vast multidirectional sea of knowledge, a kind of symbolic impression describing the open-minded holistic approach of a cosmopolitan research community and academia. As a researcher, I have enjoyed the *Bada*, meaning sea in Korean and the name of a female singer, and have made time to enjoy the trumpet piece, *Le concerto de la mer*, played by Jean-Claude Borelly. On this vast sea, the horizon of diverse methods and outlook, the research must not just use the particular method commonly resorted to by the social scientists of a unique disciplines as if they are worn out scholars satisfied to trace the study of economics in arrears. This feel of sharing must be comprehensive and of primary importance to improve perception and interdisciplinary outlook of the researcher.

Most of all, I had long been queried how brilliantly the Korean or Asian social scientists and authors perform. It remains a kind of mystery particularly because they do so without a formal training in NVivo or methodology classes and they are generally

qualitative in their research (Patton, 2002). Due to the limited scope of useful courses at Walden, I struggled through the barriers of the doctoral journey often only resolved through long hours “hanging around” contemplating my topic and research questions. Then I realized the gradual emergence of themes and delved into the stories derived from the data and analysis. Although my neighborly Korean or Asian scholars may not receive instruction in the research methods, the sequence, I suppose, certainly reflects the scholarly process through meditation, articulation and into the final write-up. The lessons learned through conducting this research project simply dissected the streams of consciousness devoted to the research and written articulation. In sum, it showed that the qualitative method is more likely universal over the two planes of intelligence, including methods used in the West and the Orient, rather than a purely quantitative one (Patton, 2002). This finding applies in other contexts also, such as with the medical intelligence of both traditions, where basic anatomy was the foundation and the starting point for the modern medical science, which had not been the case – at least lately -- in the oriental practice of medicine. In this sense, I hope to be more prepared and more positively inclined through the learning points for this final study, and proud of the presentation and later dissemination of findings. Along the endeavor on this study, I also was impressed by how westerners like to describe their research experiences and keep recording or journaling. I further wonder if this attitude of introspection might bring to the East the current prosperity of western civilization, although at the innermost, the trait of the two planes of scholars must essentially converge, as stated above. Nevertheless, there is a point to be learned by oriental peers who hope to be more explorative and prefer the

empirical. The past passivity may in a sense be reflexive and require proactive change. It would be simply good idea if we were to engage in a daily practice of diary writing and make ourselves accustomed to journaling.

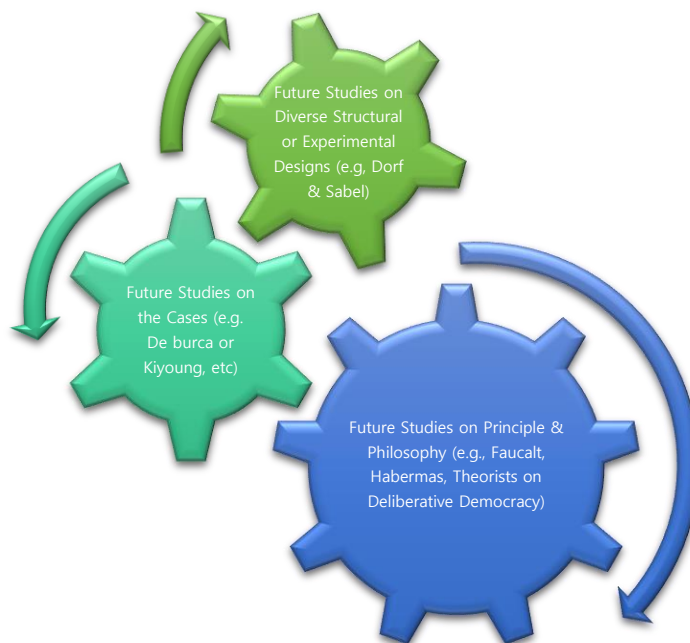
### **Recommendations**

The concept of CGDE was used as the conceptual framework for this study. CGDE includes the knowledge of many of scholarly disciplines to build a framework for deliberative democracy, a concept that is widely recognized to provide a forum for the participation of individuals, on equal basis, in reasoned discussion, regarding various topics of public interest for the development of solutions for the public good. Along the lines of Dewey's theories on education and democratic government, the main concern is akin to Habermas' (1970) ideal speech theory as expanded into four elements by Rostbøll (2005). The core of the idea emphasizes no limitations, no coercions, and equal and symmetrical participation through communicative democracy that brings global pattern of justice notwithstanding the variants of space, time, topics, reasons or information. This raw base of communicative democracy has to experience some modifications to allow professionals to responsibly communicate media with its objective limitations and elected representatives to do the same for selective limitations. Nevertheless, there is a consistent amount of scholarly treatment of the subject to rely on to develop the ideas of the deliberative standard. According to Jo-Anne Everingham, the standard is strongly verifiable as a robust trend towards a consistent term, and Habermas' (1970) ideal speech as the base criteria of evaluation, despite several authors arguing that there is no consistent definition. Scholars also call for future research to develop and refine how



deliberation works in areas of concern (Fung, 2005; Levine et al., 2005; Rosenberg, 2005): (a) individual's ability to participate in deliberative forums and forums' benefits; (b) design and structure of deliberative actions and levels of deliberative requirements in order to meet the goals of deliberative democracy theory; (c) ways to measure the structural elements of deliberation. A number of authors also share a concern about what is happening within the deliberative setting, emphasizing the following research to look into that aspect with a focus on who participates and how that participation is accomplished. Fung (2005) notably suggested five vantage points, (i) the quality and quantity of participation. (ii) the act of informing officials and citizens, (iii) the act of building citizenship skills, (iv) the effect on governmental responsiveness and individual efficacy, and (iv) the creation of citizen action. Given that the success of constitutional government depends on the communication of participants, the framework helps to provide answers to key question on the role of Korean politics and political culture in shaping the ideal of Korean constitutionalism with realistic reform. Within this

understanding, I would suggest three directions of future research as shown in Figure 6.



*Figure 6.* Key areas for future study.

### **Implications**

In the matrix on the Table 19, I have checked with a V marking the concepts that are thought to be relevant to the potential of positive social change as identified in this research project and post-project study activities. Below are a number of comments to complement the social change matrix.

While formulating the recursive themes on the issues of social change for my research project to fulfill the success of my doctoral studies and post-study career, I attempted to present some of the current connections and prospective expansion networking implications of the study along with the nodes of social change in the matrix.

Applying a systems thinking, the CGDE is operative within the formal procedures of the constitution and public laws, in which the actors are crucial, however, to shape the

public policy (Bohman, 2013; Coase, 1960). In other words, we have two planes – a rigidly legal and an informal subsystem-- that could influence the CGDE, the interplay of which creates the policy that improve governmental practice. The social change could be brought about firstly within the informal soft plane, the actors of the subsystem including groups that advocate and others that criticize, and then expand and consolidate into the statutory or constitutional reform possibility. One drawback of Korean practice lies in the conventional retreat that defers as a default to the formalistic process of system making. While the congress and the executive and administrative units of judicial or quasi-judicial branches are important players in the subsystem, the additional soft power from civil groups, law professors, and journalists also importantly complement their sagacity to provide public attention and opinion. Collective knowledge and wisdom can be generated and augmented in this inclusive way.

Collaboration should be systemized given the importance of two developments that are relevant avenues to effectuate the ideas and understandings of this research project (Patton, 2002). The Participatory Democracy of Korea (PDK) launched a branch division in 1993 entirely devoted to monitoring and reforming the constitution and government practice in the civic initiative. One other development is that the Supreme Court of Korea established the Judicial Policy Research Institute (JPRI) in 2014 staffed with researchers and a cadre of judicial posts, which represent the voice of the government (Resnik, 1982).<sup>47</sup> The two organizations are considered important

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<sup>47</sup> The webpage of the 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 - new solution plans by

*ThinkTanks* that need to interact to make a social change. They regularly hold helpful academic symposiums and conferences and publish reports, articles, and books.

Project planning requires qualitative studies for better understanding of Korean constitutionalism, democratic experimentation and successful government, and reflection is a critical part for meaningful social change (Creswell, 2013; Patton, 2002). Often efforts in the past in Korea have been narrowly confined to comparative studies of various constitutional systems, particularly focused on issue or agenda-specific comparisons, which has largely foregone the contemplation of the processes and inimitable theses, philosophy, and practice of the Korean democratic experience. A cohesive understanding on the CGDE that reflects knowledge based on empirical data would inculcate policy makers and involve stake and interest holders that facilitate scholarship and practice in this field.

Advocacy is not the purpose of this project, given that a study on CGDE is required to be neutral and objective to provide a better world view of the topic (Creswell, 2007; Patton, 2002). Although my focus is only to explore the scholarship, advocacy is no less relevant if the historical mishaps involving a considerable scope of agendas, issues and public criticisms are to be reexamined and corrected. In some cases, a decentralized logic would exert a potent sweep over the discourse of Korean criticism of biased presidentialism (Chang, 2017; Chung, 2007; Kim, 2014). The tradition of defensiveness or nepotism in the bureaucracy would also create public disfavor although

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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.”

any of their legitimate ethics should arguably be respected for reform to reflect the morality of the political community. An unfit or impetuous policy needs remediation through feedback and critical contemplation. Since the exiting constitutional thought hierarchies are fed from philosophy and practice, such contemplation can be no less extensive with, and must be intimately connected to, the story of reform through CGDE (McConnell, 1984; Mckay, 2017; Michelman, 1987; Orbendorf, 2015). The advocacy, scholarship, and humane ethics are necessarily implicated if critical analysis is expected from any interchange in making social progress. Because of its characteristics, the scope and level of results in this study has broadly covered the society, community, and profession and organization. While much learning and sharing are involved, the scope can hopefully further stretch to cover the thoughts and opinions at the group, person-to-persons and individual levels.

Table 19

*Social Change Matrix and CGDE*

Category	Knowledge			Skills		Attitudes
Society	V	V	V			V
Community	V	V	V			V
SO CI- AL /Profes sion	V	V	V	V	V	
Group/ Team				V	V	
Person -to- person				V	V	
Individ						

ual		V		V		V		V
	Schol arship	Syst ems- think ing	Refle ction	Prac tice	Collab oration	Advo cacy	Civic/Political engagement	Hum ane- ethic s
<i>CHANGE</i>								

### **Conclusion**

Dorf and Sabel's theory on CGDE provide an ample theoretical framework to understand and assess the success of constitutional government that will be ideated through the reform effort in Korea. It offers to elucidate the social aspect of the government system and constitutional rules upon which the best practices of constitutionalism stand. Their elements or dual aspects on the constitutionalism and DE bring our attention to the goals of the social change effort, what we need to pursue for a just, healthy, humane and sustainable government for the happiness of the people and the success of politicians and engineers of public office. Regarding their broad theoretical mandate for democratic experimentalism and constitutional government, our important focus is twofold-namely, democracy and the liberation of humanity, the sublime goals arising from the current dilemma faced by Korean politics and constitutionalism. According to Benet's theory on social change, the alternatives suggested by this research study should be to effectively manage prevalent polarities in order to optimize the positive aspects. This endeavor should be reinforced simultaneously by minimizing the negative aspects of each element.

Democracy is theoretically a system of government or a set of ideas and fundamental principles in which the citizens are a source of ultimate power directly or through their elected representative of a governing body. The concept extends through

deliberative democracy into non-governmental organizations as supported by the assumptions of this study identifying the factors that work against fairness and informed decision-making, the notion of identity and critical theory of hypocrite, and emancipation and social transformation. In the society of democracy, people are responsible to make their own decisions for the quality of their public lives or at least have to have recourse to a system of public channels to partake in such decision-making processes, what we call participation and representation in view of CGDE and deliberative democracy. While such fundamentals as human rights, due process of law, majority rule and civilized debate, and judicial independence constitute the core of democratic principles and practices, the reality of global democracy takes different forms and expressions depending on the variants of national politics and cultures. According to Benet as well as Dorf and Sabel specifically on the topic of CGDE, the concept of democracy can be extensive in scope and resilient to be applicable universally to the various communities and organizations including the political culture of South Korea. Their common postulates are designed to overcome the oppression that human beings have experienced and are borne out by critical theory studies and corroborated its philosophical perspectives. Their theories envisage systems to bring about a positive social change to address our political and social challenges. They allow engaging pragmatically with the imperative of struggle within certain value-structures that transform the situation, and which, by analogy, can be adapted to the circumstances of Korean politics and constitutional reform movement.

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## Appendix A: Interview Questions

Could you tell me what are most important elements for the success of government as an attorney and why?

Could you describe as much as possible the statements for each element implicated with the successful Korean constitutionalism and government?

Have you ever experienced whether the change of constitutional or government system affects the success of government?

- Could you expand on that point.....(Perhaps many more)

How do you measure the effectiveness and fairness of government practice?

- Could you expand on that point.....(Perhaps many more)

Why do you believe that your alternative to reform or new system is superior to the previous one?

- Could you expand on that point.....(Perhaps many more)

What do you think most contributive to decline the democratic process and constitutional practice in South Korea?

- What else can you say about that? (questions to get more information)

How do you think it symbiotic or mutually reinforcing between the constitutional tradition and democratic experimentation?

- I want to make sure I understand, can you explain more? Or can you give me an example? (questions to clarify a point)

What do you think about the importance of civil society or private sector for the success of constitutional government?



- What else can you say about that? (questions to get more information)

How do you think about the separation of powers principle, current system of government?

- I want to make sure I understand, can you explain more? Or can you give me an example? (questions to clarify a point)

What do you think about the Korean conservatives or strong tradition of law on constitutional rights?

- What else can you say about that? (questions to get more information)

## Appendix B: Some Example of Codes

**First cycle codes**

*Constitutionalism*

*Experimentalism*

*Political Culture*

*Modern Democracy*

*Comparative*

**Pattern codes**

*Decentralization v. Centralization*

*Sharing v. Command to Control*

*Local Government v. Central Government*

*Madisonian v. Administrative State*

*Deliberative Polyarchy v. Top Down and Commandeering*

*Experimentalist Congress v. Delegation Doctrine*

## Appendix C: Interview Schedule

Interview Group	Time	Place
Legal historian	March 24 (10:00-12:00) March 28 (10:00-12:00)	Conference Room (5 <sup>th</sup> floor) at Chosun University Main Library Building
Law professors	March 30 (10:00-12:00/14:00-16:00) April 5 (10:00-12:00/14:00-16:00)	Same as above
Social Scientists	April 7 (10:00-12:00/14:00-16:00) April 10 (10:00-12:00/14:00-16:00)	Same as above
Attorneys	April 15 (10:00-12:00/14:00-16:00) April 20 (10:00-12:00/14:00-16:00)	Conference Room at Gwang-ju City Public Library
Journalists	April 25 (10:00-12:00/14:00-16:00)	Same as above
Post-interview meeting/ accuracy and changes	April 27 (13:00-16:00)	Same as above

## Appendix D: Confidentiality Agreement

**Name of Signer: Kiyoung Kim**

During the course of my activity in collecting data for this research: “Understanding Constitutional Government through Democratic Experimentalism: A Case Study of South Korea,” I will have access to information, which is confidential and should not be disclosed. I acknowledge that the information must remain confidential, and that improper disclosure of confidential information can be damaging to the participant.

By signing this Confidentiality Agreement, I acknowledge and agree that:

1. I will not disclose or discuss any confidential information with others, including friends or family.
2. I will not in any way divulge, copy, release, sell, loan, alter or destroy any confidential information except as properly authorized.
3. I will not discuss confidential information where others can overhear the conversation. I understand that it is not acceptable to discuss confidential information even if the participant’s name is not used.
4. I will not make any unauthorized transmissions, inquiries, modification or purging of confidential information.
5. I agree that my obligations under this agreement will continue after termination of the job that I will perform.
6. I understand that violation of this agreement will have legal implications.
7. I will only access or use systems or devices I’m officially authorized to access and I will not demonstrate the operation or function of systems or devices to unauthorized individuals.

Signing this document, I acknowledge that I, as an interviewer and translator, have read the agreement and I agree to comply with all the terms and conditions stated above.

**Signature:**

**Date:**

## Appendix E: Excerpts From Researchgate.net (Advice From Peers)

- After narrowing your topic, you can then go back to the ideal way to garner data and to analyze it. I can direct you to open source media (textbooks, tutorials, seminars, even entire courses) if you wish that cover all these issues and more and from which you can select material that seems relevant to your project.
- To answer your basic question, yes, you can use reports or any written documents as a source for a research study. The technique for analyzing this type of data is called content analysis. Here's a good website that describes the process.
- I would suggest you look closely into the qualitative literature on content analysis as that is precisely what this method will enable you to do. Delving into text, however it is compiled and whatever the source may be, can be analyzed to yield substantive findings. Analysis of this data with this method follows the same rigor as other forms of qualitative analysis so stay true to the method and school of thought.
- I used to evaluate newspaper articles for social research purposes, for example a day to day journal of a local election.....content analysis. Focusing on one media source, one topic, one author, one research question. (Just an example) - The last evaluation I conducted took the form of a daily checklist which I tabulated and analyzed at the end of the election. I was searching for author biases toward particular local issues.
- Content analysis is the most appropriate, but you must specify the criteria for the research sample design for greater validation. For example, if you analyze secondary data as interviews in media, you must specify the: time period (last week/month/quarter/year etc); type of media; units of analysis, coding...etc).

- Certainly, you can use a range of organizational and other texts as data. Using organizational texts is a key method used in institutional ethnography. The work by Dorothy Smith may be useful to you here. You may find these references useful, although she is widely cited elsewhere: Smith, D. (2001); Text and the Ontology of Organizations and Institutions. *Studies in Cultures, Organizations and Societies*. Vol. 7, pp. 159-198. Smith, D. (2005) *Institutional Ethnography: A Sociology for People*. Toronto: AltaMira Press.
- Actually, without respondents, it's all up to you, more control, so yes, absolutely.
- Most of the research (thesis) in my university is mostly by interview for qualitative design. Even the class I attended urged all the students to use an interview as part of the research and add some of secondary data. After all the answer given, now I am confident to use a secondary data that I gather from article for two years.

## Appendix F: Steps Taken to Promote Neutrality and Objectivity

There are three phases for the face-to face interviews as explained below, and I firmly confirm that my expertise and perception as a senior scholar will not affect the data collection process, their analysis through yielding the study results.

### **Check Points: BEFORE THE INTERVIEWS**

1. I filled out an assessment of my research plan to identify the overall purpose and outcomes for the interview.
2. I determined the in-depth interviews can be effective and it will run 2 hours
3. I identified 16 participants, developed a list of key attributes to seek in participants based on the purpose I have identified, secured names and contact information, and send invitations.
4. I generated nine questions based on the purpose and goals of the interview, revisited the questions to make sure that they will yield the kind of information I am seeking. The questions are ordered from general to specific.
5. I developed the script, and chose the time and location. The location is comfortable, easily accessible, and ensured to protect the privacy of participants. Food and Snack are available there.

### **6. Check Points: CONDUCT THE INTERVIEWS**

1. Bring materials:
  - a. Notebook/computer or tape recorder to record proceedings
  - b. Flip chart paper if no board is available
  - c. List of participants
  - d. Group script
  - e. Name tags
  - f. Watch or clock
2. Arrive before the participants to set up room, refreshments, etc.
3. Introduce yourself and the note-taker (if applicable) and carry on the face-to-face interview according to the script.
4. Conduct the interview, being mindful of the following:
  - a. Set a positive tone.

- b. Make sure the interviewee is heard.
- c. Probe for more complete answers.
- d. Monitor your questions and the time closely – it is your job to make sure you are on track.
- e. Don't argue a point with a participant, even if they are wrong. Address it later if you must.
- f. Thank participants and tell them what your next steps are with the information.

**Check Points: INTERPRETING AND REPORTING THE RESULTS**

1. Summarize each meeting.
  - a. Immediately after the meeting, the facilitator should write up a quick summary of his/her impressions.
  - b. Transcribe the notes or audio recording of the interview. This should be done as soon as possible after the interview has been conducted.
2. Analyze the summaries.
  - a. Read the notes and look for themes/trends. Write down any themes which occur more than once.
  - b. Context and tone are just as important as words. If comments are phrased negatively or triggered an emotional response, this should be noted in the analysis.
  - c. Interpret the results.
    - i. What are the major findings?
    - ii. What recommendations might you have?
3. Write the report.

The report should include the purpose, outcomes, process, findings, and recommendations.