

QIKJS-Part.I.H

Qualitative Inquiry of Korean Judicial System

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Elements of Public Policy and Public Administration of Korean Judicial System

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

PAKJS and the Nature of the Study

The Research Questions, Methodology and Alignment

The research questions to address my topic are comprised of three overarching questions and four sub-questions under the third question. Since my studies is intended to

generate a theory of PAKJS, the research questions are required to compass comprehensively the elements of public policy, major events and occurrences as well as scholarly analysis with the empirical data through the processes, actions and interactions of subsystem. (Brause, 1999b). The three areas of conceptual framework used in the studies have been with the capital letters beside each research question.

First, how do we properly understand the common and different strands over the three major periods of PAKJS? **POLITICS AND ENVIRONMENTAL SYSTEM**

Second, how are the major phenomena or events in each period developed in terms of public policy elements? **SUBSYSTEM/AGENDA SETTING/POLICY DIFFUSION**

Third, how do we understand the phenotype and meaning of PAKJS in view of the social science perspectives? **PHENOMENOLOGY AND THEMES**

- (i) In view of political history, culture and morality?
- (ii) In view of socio-economic history and status?
- (iii) In view of comparative judicial system?
- (iv) In view of types of public organization?

For the studies of PAKJS, the best approach for the study will be a qualitative method and especially beneficial with the grounded approach. The selection of research method is best tested by asking, “What does the researcher really like to know?” It also has to contribute to fill the knowledge gap in the specific field of academic interest. The qualitative inquiry most adequately informs and benefits this research since the judicial system is familial and requires a deep inquiry that would be less generalizable with the quantitative information. The kind of research questions can best be investigated by employing the in-depth interview of policy makers and administrators, civic leadership including law professors. The empirical evidence massively is qualitative along the interview data, public record, newspaper articles, memos, personal writings and on. The grounded theory approach will be employed that the concepts, terms, and essences will be directly consequential to frame my dissertation project. As advised, it generally depends upon the nature of study and the amount of literature between the theoretical and conceptual frameworks. Since there is very little data about the topic or overarching theories, my method will be explored conceptually and on the grounded theory research (Creswell, 2013). Since the whole purpose of doing a grounded theory is to develop a theoretical explanatory framework, the studies of PAKJS can be best fitted by employing the terms, concepts essences and key elements of public policy theories and philosophies (Corbin & Strauss, 2007).

Table 1 Alignment

| Three Areas of Conceptual Framework | Mind Map to | Substance | A Rationale for the |
|--|--------------------|------------------|----------------------------|
|--|--------------------|------------------|----------------------------|

| | Generate a Theory | Selection of Method | |
|---|---|---|--|
| POLITICS AND ENVIRONMENTAL SYSTEM SUBSYSTEM/AGENDA SETTING/POLICY DIFFUSION PHENOMENOLOGY AND THEMES | “Fanatic with Chaos” Period? (1945-1948) Decent or Uncultivated? (1949-1961) Dead or Dormant? (1962-1987) “Liberal with Contention and Inexperience” (1988-Present) Period? | Three Coding Strategies from the GT Approach Public Documentation and Record/Survey and Interview Data from the Legal Historians, Senior and Junior Attorneys, Law Professors and Civic Leadership | <ul style="list-style-type: none"> ● The knowledge of PAKJS would be underpinned distinctively with the qualified and professional context ● Too costly with the extensive plan of public survey or inadequate as a matter of topic’s attribute. |
| | Actors within the Formal and Informal Policy Process | Three Coding Strategies from the GT Approach | <ul style="list-style-type: none"> ● The research questions inquire of the dimension of <i>how</i> |
| | National Politics with the Judicial Agenda Setting Assessment of Policy Diffusion | Public Documentation and Record/Survey and Interview Data from the Senior and Junior Attorneys, Law Professors and Civic Leadership | <ul style="list-style-type: none"> ● Purported to build upon a theory that comprehensively exposes the picture and phenotype of Korean judicial system |
| | Phenotype and Meaning of Korean Case within the Broad Context | Three Coding Strategies from the GT Approach Findings with Identification of the Pattern and Theme. | <ul style="list-style-type: none"> ● The area of interest is particular in terms of participant quality (knowledgeable and track or expertise in the field studied) |

Data Collection, Population and Sampling

Given that my research strategy successfully aligned the components of research design,¹ the next issue will be an operational issue of collecting and analyzing the data. In the grounded theory approach, the common methods include a participant observation, interviewing and collection of artifacts and texts. The methods produce the type of data so

¹ In this early stage, I could find a good fit of research paradigm and method with my own ontological perspective that the PAKJS or research problem could only be appropriately addressed by utilizing the grounded approach and creating a theory.

that this nebulous approach eventually could turn the story into final write-up. The participant observation is one way of dealing with research needs arising from the PAKJS project that I would be immersed myself in the daily lives and routines of those being studied. This often can set the research activities into an extensive engagement as called a fieldwork. A decade of experience and observation with the key actors in my case would enable any more data in the form of journal writings and memos. The interview will also one major form of data in the studies of PAKJS, through which the researcher himself will learn a culture or group by speaking with informants or members of the cultural group. The public documents and records collected from the government departments, national assembly and courts as well as the civic association will be composed as another form of data which will be examined to delineate, support and argue the themes and stories. The materials, such as written protocols, charts, flow-sheets, education handouts, diaries, and journal writings -- used by members of the culture in their daily lives -- will be collected with the consent of subjects, which serves the same purpose.

Under the general principle of GT approach, I devised a sampling strategy to deal with a relatively large number of participants, and organized the plan of focus group interview three times among the different group of interviewees as well as conferences to exploit the field data (Bulawa, 2013). This extended fare of data collection generally facilitates the principles, and also adheres with the normal practice of GT approach researcher.² The access and rapport issue typically arises from locating the homogenous sample as said above, which I find rather easy to keep selecting the key actors with the lived experience of PAKJS. It is important to select the participants to ensure the selection of most information-rich participants, which requires using a set of inclusion or exclusion criteria based upon the research questions generated deductively from my prior knowledge of area and a preliminary review of related literature. Therefore my primary concern is with *who or what to sample* for the questions of PAKJS in view of PPA elements (O'Sullivan, Rassel & Berner, 2008).

The population for my sampling would be targeted that includes the Korean attorneys and other intellectuals. The qualification of target population is significant since the sample population would be defined as the kind of shared knowledge and culturally affected group. They would serve as a judge and supreme court justices, prosecution officers and committee members of KNA, and Blue House staffs in the field of research topic, and leadership of civic group as well as law professors or legal historians, which are the sample pools in my study (Roy, Zvonkovic, Goldberg, Sharp, LaRossa, 2015). The origin of profession in Korea is traced back as early to the 14th *Kingdom of Joseon*, but the national exam firstly was administered in 1903 to select a group of professionals, who played as an agency role for litigation and prepared the civil or criminal complaint. Two years later the exam is noted as attorney exam that the profession publicly earned a current name. According to the Attorney Registration Act in 1906, three attorneys, named J.K., Hong, M.W., Lee and M.S., Jung, had filed the first registration as an attorney. In 1949, one year after inauguration of the First Republic in Korea, the Attorney Act was enacted that still continues to govern the

² As Creswell guides, the interviews in phenomenology would require 5 to 25 people while the GT approach primarily exhausts the interviews with 20 to 30 people to achieve details in the theory.

public matters of attorney (Han, 2014). According to the Act 2.4, the qualification of attorney is statutorily prescribed (i) passage of the national judicial exam and completion of two years of judicial apprenticeship or (ii) qualification as a judge and prosecution office or (iii) passage of attorney exam. In order to act as an attorney, he or she must file a registration with the KBA (Act 2.7). The attorneys are professionally responsible to protect the human rights, promote the social justice, serve the social order and improvement of judicial system (Act. 2.1). He or she is obligated as a matter of law (i) to keep confidential of information acquired through the course of professional practice (ii) not to purchase the pending litigated rights (iii) not to abuse his qualification (iv) not to do the business partnership with non-attorneys (v) not to solicit a paid representation. A fitness and character of profession are known that he or she has the ability to logically analyze the case and to write skillfully and logically his legal reasoning and argument. He is expected to act fairly and with the cause of justice that impresses the credibility and trustworthiness on the client. In the course of his representation, he should be competent to properly act bridging the accused, prosecution officers, civil litigants and judges. His interest is talented to be social and customized, and individual talents, such as reliability, analytical thinking and scrupulousness, generally are favored.

Table 2 Korean Bar Association

| Venue/ Jurisdiction | Number of Attorneys | | | Number of Law Firms (Corporate) | | | Number of Law Firms (Limited) | | | Statutory Associates | | Joint Offices | |
|------------------------|---|----------|--------|---------------------------------|----------|-----------|-------------------------------|----------|-----------|--------------------------|-----------|---------------|-----------|
| | Active | Inactive | Total | Firms | Of firms | Attorneys | Firms | Of firms | Attorneys | Public Registry Practice | | Of firms | Attorneys |
| | | | | | | | | | | Associates | Attorneys | | |
| Seoul | 12080 | 2585 | 14,665 | 573 | 2706 | 2223 | 32 | 825 | 1123 | 11 | 59 | 88 | 785 |
| Nation | 16462 | 3435 | 19897 | 873 | 4052 | 2551 | 33 | 832 | 1130 | 31 | 126 | 189 | 999 |
| President | The KBO had been organized in April, 1953, and 47 nationally respected attorneys had served as a president. The organization currently is being led by C.W. Ha, who is a 48th president of KBO. | | | | | | | | | | | | |

Table 3 Key Institutions Relating with the Korean Judicial System

| | | |
|--|--|---|
| KNA (Korean National Assembly) Judicial Committee | 16 Committee members currently led by S.M. Lee | 8 members from ruling party/7 from opposition party/1 from non-affiliation |
| KSC (Korean Supreme Court) | <ul style="list-style-type: none"> ● 15 Supreme Court Chief Justices/currently led by S.T. Kim ● 5 Constitutional Court Heads/currently led by H.C. Park | 5 Appellate Courts/24 District Courts/One Patent Court/Six Special Organs for the Purpose of Court Administration (e.g, Court Library, Sentencing Committee, etc) |
| KPO (Korean Prosecution Offices) | 40 chief prosecutors in history/currently led by J.T, Kim | 5 Higher Prosecution Offices/18 District Offices |
| Civic Leadership | <ul style="list-style-type: none"> ● 5-7 Voluntary Associations committed to improve and monitor the Practice of Judiciary and Prosecution Offices ● National Law Professors Society (25 Law Schools) ● Korean Law Professors Society (68 Pre-law Colleges and Related Departments) | Around 200,000 Senior, Junior Lawyers, Law Professors and Journalists as Active |
| Blue House | <ul style="list-style-type: none"> ● 10 Heads of Aid Bureaus - Policy Adjustment Bureau - Civil Information Bureau (Civil Information/Anti-corruption/Law and Justice/Civil Complaints) ● Ministry of Justice | ● Around 50 Ranked Aids Committed to the Judicial Affairs |

Table 4 Number of Interviewees and Length of Interview

| Number of Interviewees | Length of Each Interview |
|---|---------------------------------|
| <p>Total: 30</p> <ul style="list-style-type: none"> ● Legal Historian : 2 ● Senior Attorneys : 12 ● Junior Attorneys : 5 ● Law Professors : 5 ● Civil Activists : 5 ● Journalist : 1 <p>Three Focus Group Interviews</p> <ul style="list-style-type: none"> ● Legal Historian and Senior Attorneys ● Junior Attorneys/Law Professors/Civil Activists/Journalists ● All 30 interviewees | 2-3 hours |

Data Analysis and NVivo

The data analysis within the GT approach typically will be conducted by means of coding strategies and with the aid of computerized NVivo. NVivo is very effective to process the dissertation project, in which I organize the collected data into computer files that will be brought into the NVivo (Creswell, 2013). The type of data collected would be versatile ranging PDFs, interview results, pictures, other form of word files, and videos. NVivo would enrich the enjoyment of dissertation project by providing a convenience and integrity of data processing. It also is helpful with representing and visualizing in the form of matrix or trees. The automated process helps to increase efficiency by reducing a hand coding work that the contexts, categories and comparisons will be formulated more objectively. The process of NVivo data analysis will gradually emerge those results into themes or meaningful stories. It represents the thought process of researcher and his values or beliefs. I consider the service and facility of NVivo would be tremendous in the data analysis (i) its ability to create the function of cognitive map or many functions on the innate attribution, what we call nodes (ii) its ability to objectify the qualitative data into a quantitative shape or semi-quantitative data and many other functions. In handling my qualitative research plan, the attraction of NVivo would be obvious. It simply provides the function of most convenient data storage and satisfies my circumstances, in which various types of data will be collected and analyzed. Thankfully, the coverage of NVivo use, in terms of data files, is such wide that 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 will arise from coding principles. For example, I will use the Ryan and Bernard's social science queries, that the general goals of discipline – e.g. efficiency or productivity will be constantly consulted. Also the five vantage points would be held through the analytical process that normally are required of qualitative researchers, i.e., (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 (v) how do structure and context serve to support, maintain, impede or change these actions.

Quality Issue and Strategies

The validity and trustworthiness are typically challenging in the qualitative studies (Kim, 2015a,b,c,d). Besides the inherent issues of GT approach in my studies, the general issue of qualitative research concerning the evidence and evaluation of quality clearly will be present that makes it necessary to strategically respond by ensuring it as credible, confirmable, transferable dependable (Bulawa, 2013). As Lincoln and Guba suggest, four elements of post-positivism had been enshrined within the evaluation of qualitative research.

Table5 PAKJS & Quality Issue

Quality Issue and Strategic Points of Plan

| | | | |
|-------------------------------|--|---|---|
| <p>Credibility</p> | <ul style="list-style-type: none"> ● Inquires if the results are believable ● Can only be verified by the researchers & participants | <p>Threat: Personal biases. In the PAKJS 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"> ● Shares the threat and challenges with the participants ● Discusses implications of my status and background that possibly influence the research plan and operation. ● Obtains assistance from the outside experts, who review the data and challenge any of implausible assumptions. |
| <p>Transferability</p> | <ul style="list-style-type: none"> ● The Extent to which the data can be applied to other contexts | <p>Threat : Biases of data collection and possible spoils of data analysis may be present</p> | <ul style="list-style-type: none"> ● Acknowledges the nature of qualitative studies : (i) biases in sampling (ii) dynamic, iterative, and constantly emerging ● Ensures a sufficient depth and relevance of data ● Has 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 |
| <p>Confirmability</p> | <ul style="list-style-type: none"> ● Requires to be as much as objective in the best possible way of research operation | <p>Threat : challenge of description/ against the criterion of bias-free write up/monotony fallacy</p> | <ul style="list-style-type: none"> ● 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 ● Collaborates with other |

researchers to reduce the bias and obtains the respondent validation (e.g., inviting the participants to comment on the interview transcript)

Conclusion

Since the grounded theory approach of PAKJS has two basic purposes (i) that it seeks to instill issues of importance for specific groups of people and (ii) that creates meaning about those issues through analysis and the modeling of theory, purposive or theoretical sampling is typical and also guides my research operation. Theoretical sampling is a central tenet of GT approach, which is essential to the development and refinement of a theory that is grounded in data. For the work of data collection, I crafted a principle that will be applied to the sampling strategy of PAKJS; (i) establishment of trust with the data and theory construction³ (ii) maximization of opportunities to discover variations among concepts and to densify categories in terms of their properties and dimensions (iii) reduction of possible risk from prescriptive approach without creativity and limited conceptualization (iv) reduction of extent to which data are processed deductively⁴; (v) 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.⁵

³ 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.”

⁴ For example, application of 6C coding family in the axial coding is to identify conditions, context, action/interactional strategies, intervening conditions and consequences, in 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.

⁵ Therefore, Hood had suggested that all theoretical sampling is purposeful, but not all purposeful sampling is theoretical.

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