

QIKJS-Part.0.J

Qualitative Inquiry of Korean Judicial System

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Theoretical Frameworks & Application

Introduction

According to Patton, identifying elements to study and establishing their relevance and relationships is premiere in structuring a dissertation plan, which is an important predicate to produce a coherent and persuasive piece of research with the empirical and scientific ground (2002). This can be achieved with the effort of investigators, who integrate their ideas, the observation of others, the research literature and their own research (Kim, 2015a,b,c,d). In this effort, the earlier studies come into play as grist and guide to develop the theoretical frameworks that the researchers could field on a continuum as lens of analysis about the topic and subtopic they plan to explore. The networks, connections and processes would be one basic frame that can be commonly applied to the policy studies. In the majority of cases, theoretical frameworks are used in quantitative studies, and conceptual frameworks are used in qualitative studies as Dr. Barrett advises. It depends, however, upon the nature of your study and the amount of literature that exists on your current topic. If there is very little data about your current topic or overarching theories, then your topic will be explored conceptually. Creswell, Corbin and Straus also do not encourage theoretical frameworks to be used in grounded theories because the whole purpose of doing a grounded theory is to develop a theoretical explanatory framework (2013). Given my studies would be a grounded theory approach, the theoretical frameworks I would employ to study the topic of PAKJS (Public Administration of Korean Judicial System) can be understood to employ their terms, concepts and key elements of two theories, which are thought as most effective and productive tools that integrate my ideas through three stems or sources of stories and empirical data.

Table 1

Key Concepts and Terms from the Philosophies and Theories

Political Philosophy or Ideology	Diffusion of Innovation	Agenda	Setting or Punctuated Equilibrium
<ul style="list-style-type: none">Political Liberalism/Communism/Alternative with the Communitarian Philosophy	<ul style="list-style-type: none">Elements of Policy Diffusion (e.g. Characteristics of Innovations as most salient)	<ul style="list-style-type: none">Kingdon/Baumgartner & Johns/Gersick: Punctuated Equilibrium Theory or Agenda Setting	

<ul style="list-style-type: none"> ● Bureaucratic Tradition in General and with National Particulars ● Western Economies/Successful Economies from the colonial experience/Resilient Group with Colonial Experience 	<p style="text-align: right;">Theory</p> <ul style="list-style-type: none"> ● Stages of Policy Diffusion ● Mechanisms of Policy Diffusion (e.g. Learning or Imitating v. Virtual Coercion or Competition) ● Judicial Actors/Congressmen Administrators/Lobbyists/Scholars/ Different Context of Roles by Judicial Actors (Impact as a Priori and Posterior) <ul style="list-style-type: none"> ● Policy Process/Subsystem/Venue shifting/Incremental Stasis ● Policy Monopoly/Agenda Setting or Change/Issue or Conflict Expansion/Congress as a Battlefield/ Jurisdictional or Interest and Stake-Oriented? ● Governing through Institutional Disruption/Punctuated Equilibrium and Disruptive Dynamics ● Judicial Actors by R.S. Wood (Impact as a Posterior)
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Frameworks, Ideas, Concepts, and Perspectives

The research literature in this line of concerns often deals with the important historical event or turning stages to investigate the essences and transformation of Korean judicial system. This necessarily brings a critical need to contemplate on the hypotheses and propositions of previous studies for constant comparison and zigzag process of data collection and analysis to be toned and acculturated with the two theories and philosophy. For example, a plethora of research deals with the conditions that punctuated equilibrium occurs or how the issue attention and agenda setting are made to impact the policy making process. While the studies of PAKJS is distinct from the characteristic of research object leading to the constitutional level of analysis, the ideas and ways of approach with the two theories provide a useful reference to yield a meaning and implications of my study. Some difference in subtlety could be perceived as duly expected of such unusual object that the dialogue and perspective tend to be heavily influenced with the discourse on the political philosophies. This context will be adapted with the two basic sources of understanding that would help to cultivate the underlying policy implications and catalyze the theme or stories on the topic and subtopic of research. The concepts, terms or frames of thought on the policy diffusion provides an important assistance that will be applied to the research, which includes subsystem, policy process, incrementalism and new agenda setting or congress as a battle field, institutional disruption or dynamics and governance and so. They could be connected to elucidate the policy process of PAKJS, and constant comparison will be practiced to explore the commonality and variations among the research literature, empirical data including the observation, and my own ideas. For example, Baybeck, Berry and Siegel empirically

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

The PET (Punctuated Equilibrium Theory) scholars also would provide a valuable idea, ways of thinking and pattern of policy change that will be incorporated as the tools of analysis. For example, F.R. Baumgartner corroborates with the Hall's (i) that the processes typically generate only marginal adjustments but occasionally create fundamental change (ii) that discredit to the status quo may be an unimportant unexplored variables in explaining the ability of policy reformers to enact marginal, substantial, or fundamental policy change (2013). The kind of findings could be connected, for instance, into the judicial reform in Korea if then president really discredited to the status quo of KJS. Green-Pederson & Walgrave have admirably assembled a group of contributors, and bring the tools of policy analysis to bear on the central political features of countries, such as Spain, Netherland, US, Canada and UK (2014). For example, partisan politics and Queen's speech had been explored about its impact on policy change. The kind of idea and perspective between the national politics and policy change could influence the grounded research of PAKJS, which the axial or selective coding can be interplayed with. In this way, new books and articles provide the concepts, terms, perspectives and tools of analysis in conducting the dissertation project (Baumgartner, Frank R. 2013; Breunig, Christian, & Koski, C., 2012; Daviter, F., 2013; Downs, George W., Jr. & Mohr, L.B., 1976). It eventually can produce the meanings and implications with the stories and themes on the PAKJS. For example, I may find that the role and influence of judicial actors are indeed determinative in this arena of public administration, or the congress in Korean context would not be salient in terms of jurisdictional discrepancies or venue shifting while the theme or substantive element of policy change would be more relevant in thinking the extent of influence by the congress. The frame of thought or ideas will also be borrowed from the DOI, which helps to structure the thought and discussion in meaningful way by exploring the phenomenon and occurrences through the networks, connections and processes. The judicial reform and administration of national judicial system often are less exposed to the public attention and public deference had been notable making the story a feat of their own story. Nevertheless, the policy debate or competition often goes deep and intense among the stake and interest holders. The kind of subsystem also is distinct that the legal professionals often exert a decisive role partly because they are important decision makers in three branches of government and the issue is more on judicial expertise and relevant with the understanding and interpretation of

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

Table 2

Structure of Grounded Theory Approach

Preliminary Exposure, Grounded Theory and Differences

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

majority status with many seats in congress (ii) the professionalism or expertise inherent in the system reform or policy change (iii) bureaucratic bum rap and resilience or conservatism to defend their interest. One important characteristic that must draw upon thinking the concepts and terms from the diffusion theory involved with their influence *a posterior* with the judicial supervision, as R.S. Wood argues in his article (2006). Among the major five qualitative approaches, I consider that the grounded theory guides my research design which provides for the generation of a theory complete with a diagram and hypotheses of actions, interactions, or processes through interrelating categories of information based on the data collected from individuals. The approach emphasizes “positivist underpinnings,”¹ “three sociological modes,” “postmodern perspectives,”² and etc. Given the previous research on the PAKJS had often been generated by the legal scholars, their perspective and frame of thought can well be seen from the kind of attitude as “all knowing analysts,” which militates against the generation of creative knowledge and new convivial theories, for example, questioning legitimacy and authority. The mindset and attitude “acknowledged participant” would be an important base of steering the data collection and analysis, leading to the final write-up. This aspect is sheer in my case given I had been a long observer with the concern and interest over the historic transformation and policy changes on the PAKJS. My academic background had been from the discipline of law and the professional career as a judge, attorney, and law professor also situate me as a most productive critique and as merged into the topic as an acknowledged participant.

¹ Clarke and Charmaz seek to reclaim grounded theory from its positivist underpinnings. Clarke goes further than Charmaz, suggesting three sociological modes – situational, social world or arenas and positional cartographic maps for collecting and analyzing the qualitative data.

² Clarke further expands on the thought of post-modernism, in which she highlights the political nature of research and interpretation, reflexivity on the part of researchers and on.

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