QIKJS-Part.IV.I

Qualitative Inquiry of Korean Judicial System

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The Qualitative Research and Conceptual Framework

In the qualitative approach, the conceptual framework can be used to meet the challenges arising through various stages of research operation. Its use could change to meet the emerging need for the researchers, who have to conduct a reiterative journey for the data collection and analysis, through a write-up. Therefore, it can help to frame a thought of researchers with the ideas, terms, concepts through paragraphs and chapters, but is not necessarily pre-orderly that can be modified and revised with the progress and to the end. Since the theory is constantly referred for and interconnected with the substance and content, it generally defines the magnitude and directions to structure the content cohesively and with a scholarly focus and balance dealing with the variables. In this understanding of theory for the qualitative studies, the researchers may not prefer to borrow the theory as a whole, instead work on the conceptual framework, and can begin even without a theory, as well as construct his own to explicate, discuss, argue and suggest. As in my case, this trait will be denser when the researcher plans on the GT approach since it finally can aim to develop a theory for the better understanding of research object.

The PAKJS and Conceptual Framework

A conceptual framework to deal with the PAKJS (public administration of Korean judicial system) has been developed with the in-depth interviews and heuristics or hermeneutics of texts and public documentations. The framework has triple pillars of structure and can be developed into a mosaic of connections and relationships to construct the stories, themes, politics, ideals and values, and alternatives (Kim, 2014a,b; 2015a,b). The three pillars encompass various concepts from the discipline of PPA, major phenomena or themes to be explored, as well as the some diagnosis to conclude on the phenotype and policy side implications of PAKJS. At this stage, the preliminary survey was conducted with 15 law professors and attorneys, who were asked to list the major problems and events relating with PAKJS. A focus group was readily arranged for one and half hour lunch meeting that helped to reinforce the initial findings earned by the preliminary survey. Over time, my critical

reading was practiced extensively on the Korean texts, articles, conference materials, which amount at hundreds of pieces considered as exhaustive to guarantee the validity and credibility of my research. Since both data and sources are in Korean version, the translation has to be authenticated to verify the narratives as well as my understanding and interpretations. Hence the general standard of data analysis techniques had been applied, and two sophisticated ways of processing the literature of basically foreign sources are to be expected to restore a rich and dense information to construct the better picture of PAKJS. The use of NVivo was very helpful with the frequencies of words and other meaningful statistics that develop to determine the key concepts, their relationships and interconnections. Although the sources to gather information for the content of dissertation are massively available with the Korean version, the tools of analysis and elements of PPA will be indebted to the work of scholars, say, mostly those of English speaking countries, France, Germany and so.

The concepts from the framework I are necessary to delineate the policy side analysis of PAKJS, which are denoted as the elements of PPA.

1. Philosophy or political and social morality is generally foundational to discuss the agendas and issues arising as a matter of public policy. This concept is not only useful, but can finely replicate with the historical realism in addressing the characteristic of PAKJS.
2. Agenda setting or PET theory seems to be a reincarnation of allegedly moral consensus that generally will be determined at the practical level and underlying power relations.
3. For understanding of the policy side PAKJS, we have to borrow the traditional concept of public policy that will distinct of three forms of policy network, say, formal institution, subsystem or policy actors and judicial actors. The judicial actors had been neglected, but an increasing awareness of their importance had been verified over the contemporary policy research. The importance of judicial actors can be reinstated with two rationales. First, the research topic of mine is concerned of PAKJS, in which the judicial actors themselves are a principal player to shape the public policy of Korean judicial system. I have defined it as the role of judicial actors *a priori*. Second, the judicial actors often exercise a decisive power to determine many areas of public policy. For example, any rigorous policy to sanction the violation of monopoly act by large companies may be frustrated with the judges of liberal advocacies or apprehended with the value of Wall Street. The issues and controversies on PAKJS itself also disclose this kind of power relations that was historically evidenced. For example, the law school reform is being disputed in the constitutional court to argue on its unconstitutionality. The intractable issues of society can be remedied at one event of constitutional adjudication that can be a important refreshment for the policy actors. This also does not mean that the judiciary is absolute, but the practice affirms its final authority and oversight role within the separation of powers principle.

4. Substantially, various concepts to deal with the question of policy diffusion had made a focus on the policy actors, in which learning, imitation, coercion and so would be an important factor to facilitate or retard the policy diffusion.
5. The concepts enable to delineate a dynamic understanding of policy process, which are input, throughput, and output and prompt to apply to PAKJS. In this case, input has a special meaning that the policy area of judicial system is generally dominated in reliance on the professional knowledge and monopolized systemically by the state endorsement of their qualification. The aspect of throughput was given a focus on the KBA's grading policy for the bench and public prosecutors, which bears an implication to ensure the democratic value of judicial power. My focus on these concepts can be singled out based on the pre-survey and focus group meetings, for example. An output has been analyzed and made into the story and themes as involved with a contentious progress toward the globalization and liberalization of legal service market. This focus also was decided on the preliminary investigation that was developed into my conceptual framework.

The conceptual framework II will be informed by the stories and themes that had been identified and interpreted on the text of Korean sources including articles, books, public documents, other forms of scholarly materials and artifacts, as well as documentaries of TV and columns of newspaper. The concepts or even theories will be derived from the authorities of Korean political and legal scientists, in which we can identify four major sections of historic transformation pertaining to the PAKJS. I consider that these sections will comprise the chapter titles of my dissertation, in which we can delineate (i) the draft of 1948 constitution and ideological chaos of Korean people (ii) charismatic leadership with classic ethos (iii) charismatic leadership with the haunt and control for the national development, (iv) civilian government, globalization and liberal market (v) continuing theme of bureaucratic pathology and political regionalism. The conceptual framework III will be reflexive to characterize the phenotype of Korean judicial system and policy side findings in the grand perspective of social science disciplines.

Table

The Conceptual Framework and Draft Chapters

The Roles of Theory and Its Use for my Research

“The poor get poorer, and the rich get richer” is a usual phrase to describe the legal service market nowadays. This phenomenon charted through the turbulence years of globalization and international commitment to the level playing field is quite a symptom that affects the traditional notion of prestige and economic well being with the privilege of attorney qualification. One job portals of Korea reported the trend of legal market, “the legal profession is hoped by college graduates as one of best job in the nation…many hopefuls take the Judicial Exam or apply for the law schools…nevertheless, the lawyers will be pushed forward to respond with the harsh conditions of changing paradigm within the market, and will hardly survive without a competitiveness.” The report highlighted an increasing number of lawyers as a primary cause of intense competition among the lawyers. It introduced the statistical data compiled by the Korean occupational information agency (KOIA); (i) 60 percents increase in number had been identified from 2008 through 2013 (14,242) (ii) the national quota of law school graduates are 2,000 at ceiling and 75 percents of passage rate plays as a leverage to regulate an excessive provision (iii) the growth of lawyers in number will continue with the termination of Judicial Exam in 2017. The report attempted to provide a solution by citing one law professor of Kwang-un university suggesting two alternatives, (i) development of expertise for diverse legal issues (ii) organizing their work arrangement into the law firm rather than risky solo practice (iii) technological exposure to big data for the expert system now in prevalence within Europe and US. For example, the report stressed that the lawyers could not compete any more without a specialty developed through his career years beyond the general area of legal service, such as civil and criminal disputes. It related the opinion of KOIA about the need of expanding the area of legal practice, such as merge and acquisition, fair trade and anti-competition law, corporate counseling, bankruptcy, international trade, foreign investment, corporate finance, security law, patent, intellectual property, product liability, information technology, maritime law and on.

The most important roles of theory in my qualitative studies is that it is presumed to analyze the field data collected from the interviews and examination of public documents.[1]The analysis of data and interpretation will be conducted by employing the concepts and theories relevant to my research purpose. The concept of meta-capital and habitus from Bourdieu’s socio-economic theory, for instance, will be presumed to evaluate information gleaned from

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[1] Maxwell illustrated an example of using the theory, “….. he used three broad theories of the social organization and control of work… He showed how all three theories provide insight into the day-to-day work of the group he studied, and he drew far-ranging implications for public policy from his results….he also used existing theory in a more focused (and unexpected) way to illuminate the results of his research. …He presented striking similarities between the medical practice he studied and the French peer group structure identified by Pitts. He coined the phrase, “professional delinquent community” to refer to professional groups such as the one he described, and used Pitts's theory to illuminate the process by which this sort of community develops and persists (pp.50-51).”

the field data. The lawyers, notwithstanding the senior and new class, now have a common perception; the legal professions are no longer a privileged status insulated from the rules of liberal market, meaning that the kind of habitus had already formed and continues to be inculcated through their self-reflexivity and recurrent experience within the work community. The policy makers interested and empowered to deal with the challenge of different voices also need to have an awareness that they are knowledgeable to respond with the challenge. As the Weber expounds, bureaucratic administration means fundamentally domination through knowledge, and its best practice arises from the rational-legal authority.[2] On the other, the economist, such as Mises, provided a powerful view that the bureaucracy should be universally opposed and noticed that even progressives would not buy such institution. The policy area of judicial institution needs to be differentiated in terms of identifying the policy makers and its addresses. The group of lawyers is not just a group of lobbyists or policy addresses, but importantly involves in the shaping of PAKJS. The senior judges and prosecution officers also do not disregard the voice of lawyers that the profession often is their future occupation in Korea. The policy network generally tends to be communicated by the enclaves of judicial background through the Blue House, judicial committee of KNA, DOJ, and Supreme Court, in which the KBA (Korean Bar Association) plays a distinct role as a quasi-government. The KBA can have same attribute with the civic pressure group devoted to the judicial monitoring, but

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[2] The term is French in origin combining bureau and rule of political power. It was coined by the French economist Goruney in the mid-18th century and found in his letter, "…which bids fair to play havoc with us; this illness is called bureaumania." It was described as a forth or fifth government under the heading of bureaucracy. The notion of Weber is second of hard nuance to Mills' terms in nature and over history. J. Mills perceived it as a distinct form of government, hence most hard - that can be separable from the representative democracy. He interlinked it as an essence of monarchies. This can be interpreted to corroborate even the contemporary practice of constitutional monarchy in Britain, in which the House of Lords actually would be a supreme court of nation. A fusion between the legislative and judiciary in Britain simply implies that the government would be a prototype relating more conceptually with the attribute of bureaucracy than representative democracy. The popular understanding of government nowadays in terms of separation of powers principle and representative democracy, is therefore, related with the public learning and education, which is an essential concept within the discipline of PPA. Karl Marx, another German philosopher, also agreed in his work on the Hegel's philosophy, so that it plays the role of public administration. He juxtaposed it with the corporations in the private society, which are symbiotic as a counterpart for the econo-political aims and structure of exploitation. This notion is moderated in one sense given it is not purely of political power or staticism, but more radical or ideological with the working class revolution. This understanding is proximate with the belief of Wilson that it would be one distinct notion of government and linked with the public administration. A difference arises from the hierarchy of superstructure that the US community is disposed historically and in practice with the constitutional supremacy, in which the liberty and wealth are protected that cannot arbitrarily be violable by the power of government. In this sense, the discourse of Wilson can have a same theme and passion to be compatible with Weber's, in which the rational-legal authority has a centerpiece of concept and ethics so that a loyalty to the government or professional competence is essentially stranded. The understanding of bureaucracy also can be from a sociological elaboration by Merton, in which he perceived in terms of players and as one of cultural group – partly borne with my approach to investigate PAKJS.

officially be recognized as one of participants in shaping the contentious policies.[3] Then we need to surmise how the lawyers shall perceive and interact with the reform of legal service market. We may provide the extreme lens of analysis, perhaps close to the thought line of Marxists or antagonists of neo-liberalization, if the expansion of liberal market may be the kind of conspiracy or plot of major governments that shall be opposed. We can also borrow the approach of epistemological construction through the power relation, politics, ideals, values with the notion of self-government or construction of identity– perhaps Faucauldian. The lawyers in Korea also can seek an alternative for the use of law firms or expansion of expertise by creating a potential clientele. These alternatives may be related with the theories of public administration, say, some conceptual ingredient including learning, participation, communication, network and organizations or division of labor and professional ethics. In this way, the theories contribute to the analysis of field data and ontological discourse of PAKJS.

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[3] Most of all, the KBA is a principal partner to approve and oversee the government-endorsed law schools that will probably be a unique ground to qualify the attorneys. It also enjoys representation in the process of nominating the candidates for the post of Supreme Court justices. On the while, the KBO maintains the grading system for the bench and expanded its ambit reaching out to the public prosecutors, which can affect their promotion and tenure.