

# QIKJS-Part.V.B

## Qualitative Inquiry of Korean Judicial System

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### Data Management and PAKJS

#### Strolls Daily

I occasionally amuse with the music, the kind of hybrid tasted with the classics and pop songs. One of recent enchanting pieces are the title “A lover’s concerto,” whose lyrics and melody had impressed much as sung by Sarah Vaughan. The song actually is very famous title, as received much acclaims. Her nocturnal adventure from a regular public education through the real arena of music competition convinced her talent and interest. The background of music recording is alleged of Bach or Petzold’s original classic. Since I am working on PAKJS, the context hit me about my situation. As a field investigator, I may be posed with the kind of nocturnal adventure, who would predominantly hold a focus on the interview participants or newspaper articles notwithstanding the framework of public education or preordained discourse on the textbooks or class materials. The interest of researcher, likely the detective in the film of *Agatha Christie*, would be only to obtain the honest, detailed, preferably a significant statement that can saturate the researcher. The kind of second nature power impression ascribable to the research investigators of 19th or early 20th geographers or ethnographers certainly are not that of modern researcher. He now is advised not to be arrogant or dominant given the democratic value, such as protection of privacy or equality between the researcher and interviewees, within the research process. Now the higher feel of researcher’s role, perhaps with the errand of Royal Society to solve the curiosity of sovereign, or imposing manner of detectives in the traditional film, has now to be adjusted with the compromise and voluntary participation. Now the image of researcher would be more proximate with the kind of Detective *Columbo* than traditional British imagery. The contemporary researcher has many challenges of this sort in the field experience that I consider reflexive about the implications of method class. Through the daily passion and contemplation of my research topic, the process to deal with the emerging data and recap its trend can only be feasible by good management of studies, so that we can organize and track the data we are collecting from the field work. Since my studies include the perspective and method that we can see as the kind of history event

analysis, I am very thankful to be situated directly within the nation of topic origin. In other words, the data daily emerged abundantly requiring an extensive work, which, however, has to be thematic and ordered. A trove of documents can be available through the libraries and national memorials, and can be revived somehow like the title song, “A lover’s concerto” that was transcribed and developed from the original classic sound. I am afraid if I can make such good with my dissertation project, “deceptively hook laden” or “apogee of Girl Group,” for public appeal and fantasy ascribed to that music sound. Over the iterative process of data collection and analysis, one tip can touch on my body so that the research can foible with the kind of situation, what we professionally speaking “epilepsy connectome.” The work may be exhaustive with various limits from the research plan on one side and elaboration required to the quality of research outcome. This might freeze or encumber a brain function to adhere with the chunks of data, but with an intense work or time limit. The connectome, however, should be strived to the final piece of dissertation. That is an electable process for the researchers to experience, who work on specific topic and with a scheduled plan. To counter this challenge, it might be a good strategy to expand the span or engagement of data collection in some cases. More importantly in my view, the researcher needs to admit himself with a generous mind of regarding the tightened plan as temporal while the errand can continue through his entire life as a professional researcher on the field. Through the time of contemplation, I also realized that the use of software program with the organized and systemic function can be savory to reduce the difficulties and challenges that the qualitative researchers often experience.

### **Strategies on the organizing and tracking the data**

My strategy to organize and track the filed data relates with the classification and categorization of the concepts that eventually leads to the discourse, meanings and suggestions with exploring, analyzing, explaining, ordering, critiquing and so (Kim, 2015a,b,c,d). This process of work can well be aided to save time and energy as well as to enable the convenience or security of storage. The dissertation work can be seminal to open their career as a researcher that can, nevertheless, recourse to the work over his life time once the NVivo or other programs are to be used.

One of my research questions are intended to find a continuous theme of particular geo-political settings of Korea or anti-communism in shaping the public policy of Korean judicial system. According to the temporal structure through the present, three notable events had been agreed to divulge the character of administrations or resulted consequence in terms of justice administration. Three events developed in the classic period of PAKJS, militaristic government, and the post-1987 constitution had been collected as an episode that were stored and analyzed into the story.

The concepts or terms will help to analyze the field data, in which the analyzed result will be developed into hypotheses, propositions and explanation. The characterization and categorization of data, jottings, written materials, or pictures will facilitate the research process

and allows the researcher or audience to come easy with the whole picture of research work. This aspect is related with software programs that the researcher has to decide whether he will use them or can do it hand on work. The software programs, what usually is called CAQDAS, would have strength in my view in terms of data storage and linking among the data, notes and memos. I believe that its use seems especially advantageous of visualization and presentation.

***[Three Events Compared and Contrasted]***

**Data 1:** Death Penalty of B.A. Cho in the Classic Period of PAKJS

**Forms of Data:** News paper articles, column stories, interview results, memoirs, field notes, articles and books of Korean author, and pictures.

**Data 2:** Death Penalty of N.S. Park in the Militaristic Reign

**Forms of Data:** News paper articles, column stories, interview results, memoirs, field notes, articles and books of Korean author, and pictures.

**Data 3:** Court Proceeding of D.Y. Song in the period of liberal constitutionalism and globalization

**Forms of Data:** News paper articles, column stories, interview results, memoirs, field notes, articles and books of Korean author, and pictures.

**Step 1:** Import of data into NVivo program

**Step 2:** Organizing and Analyzing the data

**Step 3:** Link the data and written materials including the analyzed results

**Step 4:** Constructing for the write-up with various functions of NVivo, such as word frequency, characterizing and categorizing of information, bracketing of author's point of view, explanatory notes, suggestive writings and on.

**Step 5:** Exploring the best way of presentation

**One Exemplary Showing of Analyzed Results into the NVivo**

***Works cited also had been imported in the form of Pdfs within the NVivo, which will be developed as in-text citations and reference list later in the final write-up.***

*[Transcription of analyzed result]*

The information gleaned from the sources of data generally supports the hypotheses that the charismatic leadership chills the judicial independence, but as less known or sensible by the public of that times. This corroborates with the policy process theory that deals with the environmental system as determinative factor. It is, to some extent, universal that replicates nation to nation. The evidence shows that the public support of President Lee, the leadership of first period, had continued to his end for involuntary step-down with the revolutionary ebb and confrontation of rising mob. It vindicates the strong culture against the communism and northern regime. The period can be defined of the intensity of cold war terms internationally, so that the United States also had a twin attitude as one of ally to administer the anti-communist act. While many new born states might go their way for ideology, the most strong vanguard post can be found in the triad of allies aligned with the US, Japan and South Korea in east Asia. The bitter Korean War in 1950 endured three years and the atrocities are notorious amongst the war history. The political influence as combined with the financial grants along the proposition of political scientist, so-called nuclear umbrella, had firmly consolidated their spirit of unity for the balance of power in the region. Hence it seems hardly defied that the econo-political relationship with the US can be a major environmental system in understanding the PAKJS.

Japan would be culturally dominant to affect the administration of Korean judicial system. In most cases, the writers of law and public policy tend to have learnt from Japan. The Japanese modality has largely been copied to produce the basic laws, such as civil and criminal codes. A dominant number of bureaucrats had an educational and career background from the imperial Japan, which lately aroused a national reaction to address the collaborators or betrayers as the kind of perpetrator of treason.<sup>1</sup> The context of classic period had to be transformed, but with the failed mission of democratic revolution in 1960. The military coup brought an upheaval against the expectations of Korean people that has long been contended about its accomplishments and wrongs by the Korean authority of national history. The kind of economic discourse had begun to particularize the Korean history and context. So-called state led capitalism had earned its ground in the nation, so that many other public values or ideals

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<sup>1</sup> One notable figure, D.S. Noh, representing this misfortune of nation had been spoken out loudly, who had been argued later that must be condemned and executed. However, he was provided a shelter from President Lee. This could be understood in view of charisma impressed with Lee on one hand. On the other, the episode of his treatment shows that the bureaucracy hardly can be made a part of national system or quasi-government without the professional distinction, such as learning with the formal or lifetime education and specialized talent or skills within the career field. Mr. Noh was a skilled and career intelligence police officer who persecuted and tortured a number of patriots or national independence leaders. He was such notorious that featured frequently within the film or novel stories. He was pointed out that was included in the name roll prepared to address the past wrongs of imperialistic period by the 1956 special committee of national assembly. He was turned to be released with the cause and under the allegedly political influence of then President Lee stating that the technocrats or learned professionals are an element of government.

can be surpassed by the logic, metaphor and public spirit from that discipline. The leadership can be seen charismatic, but in other senses. The classic period was the kind of grant- based economy from the western countries, principally from the US, and hardly said of modern capitalism. The economy and culture would be the kind of residue from the Japanese rule although the glory of national independence was congratulated by the public. Hence the leadership of Lee is based on the social ethos, in which we can class him as one of internationalist, hero politician or familial affinity. Anthropologically speaking, L. Strauss' alliance theory can be properly ascribed to then policy environment than the kind of structuralism or functionalism. In view of structuralism, only the anti-communist aura of nation was managed solid in confrontation with the northern enemy, one time perpetrator of world renowned war. It really seems dark if Korea could rise and function. The Korean public had been the kind of enclaves dominated by the charismatic leadership, who were yet familial and national with the diverse of domestic dissidence.<sup>2</sup>

Park in the second period would be the nationalist in view of his propensity, career and educational background. Kim Ku, another independent leader and political rival against Lee, can also be viewed as the nationalist. He was admired much for his courage and leadership of foreign-based independence movement. Nevertheless, he can also be properly viewed as the kind of feudal or conservative character. His foreign background was mainly China, which is considered a father land of Korea for the feudal conservatives. This aspect can be made distinct from Lee, who was educated in US and with the highest academic degree as well as made his base in the US organizing and collaborating for the independence movement. Park would be a nationalist, but with modern education and experience of modern Korean military, generally considered one of most well systemized public organizations in the nation. National defense is any keener field of public policy and administration as illustrated with the fact that the US continued to evince with its enormous budget and expenditure. This tendency is no less applicable to many nations in the global community. The military personnel often would be one of most intelligible group of society as J.P, Kim, the writer of most read periodical in one major newspaper of Korea, simply shows. They had a college level education, one of most competitive schools in the nation, and continued to learn throughout his career as a military officer about the public organization and leadership. They would be a group, who should be

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<sup>2</sup> This generally proves the hypothesis that the militaristic government also must be seen charismatic, but the domestic dissidence could hardly survive. The extent may not be quantifiable, but could be simply conjectured by the burden of two leaders. The Lee's administration was unilaterally political in which their only purpose is to prolong their seizure of government. The Park's administration had to be challenged by dual aims that he pursued a longer or eternal government under his control and that he also would like to be the kind of divine leader for national education and economic development. Therefore, the market of free ideas was foreclosed even before the dissemination of new ideas and causes of liberty besides the awkward institutionalization of presidential election. The economic, cultural, and intellectual environment could be seen safer in the first administration although Lee and his followers had to be responsible for several corrupted presidential elections.

most patriotic of their homeland. In case where the nation is not so rich and traditional, the military group can be most afforded class in the society as we hint, to some extent, from the 1960's through the 1970's, and even 1980's social stratification of Korean community. Therefore, the leadership of Park and his personality may not deserve one type of clarification, but can adequately be viewed as an adventurous rationalist with nationalism, direction and control. Given same extent of charisma, Lee would not be such shrewd to "divide and rule" as Machiavelli proposed in his treatise as the essential quality of monarchy.<sup>3</sup> That had not been the case of Park, but continually through the same mottos against the communism or northern enemy. This generally supported their prolonged rule as the nationalist of organization and rationality or as an internationalist of heroic imagery that eventually resulted in the virtually similar extent of social control. This seconded with our thesis that the environmental system, especially coming to the terms of international or geo-politics, is very affectionate to make the policy leadership of different character to converge.

Then what impact had they made on the PAKJS? Let me advance some further on the last period to the present. The striking change of policy environment is simply convinced by the newspaper stories. The frequency of topic would be predominant with the legal service market once the liberal constitutionalism was *symbolically* embarked with new constitution and begun to be practiced *practically* by the soft imagery and profile of militaristic leader, President Noh. A past theme would be the independence of judiciary against political power, in which it had not been unusual to be embroiled with the control, pressure and persecution of judicial people by the political branch. In this case, the executive branch had to be made a spectacle given its administrative power. The congress, though political in nature, would only convene, debate and vote for the national agenda. Given the intellectual nature of business on the tripartite branches, two branches are mainly explorative and contemplative, and often finalized with their task that are with gorgeous letters and provisions given the written expression of political will, notwithstanding the congressional acts or court opinion. Therefore, the kind of theatre, historically depicted in the era of honorable revolution through Cromwell's cruelty, can well be the kind of scenario that the three branches confronted, but with an egregious imbalance with the executive. The modern constitutional principle on the check and balance among the brother branches merely would be an ornament or even only legible across the provisions of constitution. Then the intelligence police officer in second period would be any most effective policy tool to forge their practice of dictatorship, which would be more

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<sup>3</sup> Machiavelli, therefore, generally is considered as the originator of modern political science, whose theory signaled a separation from the Catholicism or Christianity. Given the beneficence, hospitality, and universalism, the Catholicism could be a spirit and political center of feudal Europe, but never be science due to its naïve-ness and unitary belief on divinity. The idea on "divide and rule" as well as his sophistication of monarchy, the government in modern terms, would be inchoate of modern discourse on the government and public administration.

organized or perhaps extended with the peerage of military family than Lee's.

The context of this sort would be a unique concern of public and intellectuals, which otherwise would quite differ in the last period as the experience of frequency simply shows through my longitudinal observation on the public media and intellectual sources, such as articles or books in this field. I conclude in this aspect that the PET theory can be applied in terms of most conspicuous and obvious transformation within this policy area. The other implications would be a "lapsed impact" that the immediate community people in time would not be strongly unsympathetic with the kind of political judgment and for such renderings executing Cho and Park. The public awareness and arousal could only be instituted within the new policy environment as late as 1990's and on. This can be interpreted in dual ways. The government of dictatorship and societal control can be a factor on one hand. In other words, the kind of first amendment freedom embedded on the modern liberal constitutionalism had lost their due treatment through the administrations. Notwithstanding its order in the amendments as first, yet to be no less irrelevant as seen by many lawyers and social scientists, inattentiveness or practical distortion of its application to the real world would leave many regrets and public resentment with which the policy makers are most seriously woven against. The other version would be that the public generally are innocent and less duly informed about the nature and quality of tragic events.

That would be otherwise against the intelligent group and bureaucrats. It also can be corroborated with the assumption and discourse of PPA discipline about the theory of Weberian bureaucracy dealing with the ruling technocrats on learning, distinction and professional ethics. The lesson would be that the understanding of power relations, ideals and values through the civilized concept of self reflexivity or self-government, perhaps with the kind of critical theory approach (CTA) as inculcated by Foucault and many post-modernist critiques, has largely been omitted for reasons less clear, but highly probable with the chilled social atmosphere of controlled patriotism. Most importantly with my theme and approach, the phenomenon on the elements explored thus far would not be discontinued, but still persists notwithstanding the three temporal assumptions on the transformation of KJS.

First, the continued struggle between the right and left would dominate the discourse and practice of contemporary Korean politics between *Saenuri* and two opposition parties.<sup>4</sup>

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<sup>4</sup> Recently S.J. Han, a principal advisor of third opposition party, had made a public speech that Lee deserves a public respect as the founding father of nation in the memorial tribute. It happened within the public place of Lee's national cemetery. The repercussion was wide and highly toned with various interest groups and voluntary associations of Korea. The public media also casts enormous coverage to discuss the issue. In other words, the traditional actors in the policy network would never be hesitant to respond vigorously. This thrust broad implications in terms of PPA, such as more informative society and importance of political trend as a policy environment or factor.

Second, the policy area would respond not always same depending on the role and responsibility of concerned organizations. Simply, the agricultural or industrial policy may still distill distinctly from its basics amongst the five years of governmental transition while the PAKJS continues to have same challenges in its basics after the 1987 post-constitution initiative. Nowadays, the farmers would be lousy if the FTA with China had to controvert fundamentally the interest of farmers. The industries may grumble with the youth employment policy or issue of contingent workers and labor union, or tax policies. The contention in other policy areas generally would face continued challenges of various sorts amongst the administrations of democratic character, which would be less common to the PAKJS in terms of issue diversity and five years of time term. Third, the tendency proves a lapsed reaction of policy redress within PAKJS, such by means of SCPW (Special Committee for the Past Wrongs), that comes in contrast with the hypothesis of immediateness and directness within other general areas in terms of policy effect.

An overall impact on the PAKJS from the factors, such as leadership of each administration and points of distinction within the policy area, should be complicated, but with some extent of simplification to the field data, such as interviews and field materials or sources of Korean academy. Most confirmable would it be that the basic agenda setting could be differentiated as explicated above. Now the structural issue or even important constitutional question can no longer attract the public and policy makers, to say, the independence of national judiciary.<sup>5</sup> Instead, the market theories would govern the policy discourse through the 1987 post-constitution development. On the other, a distortion from the modern value of liberal democracy can take a little different form depending on the character of leadership.

First, the distortion within the classic period can be same in extent that the political dissident could even be executed, at least with the implied aura or political pressure. The case, Cho and Park, could come to be same in quality also in that they had been trapped to be a communist activist as a matter of National anti-communist act. The difference would be that the reach of government in the second period had been extensive to show the development of national intelligence service. Park was a career professor of international law at the University of Cambridge, who was admired much about his prospect as a great scholar. An insight would

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<sup>5</sup> In terms of judicial independence, the theme would no longer be salient for the modern democracies. It would, however, still be subtle across the jurisdictions if the US judiciary, most advanced and with the system of balanced power among the tripartite branches, even could be attributed as the kind of organs delivering the political justice during the Bush administration of anti-terrorism and Iraqi war, than the normative justice. The arguments had not been infrequent by some circle of scholarly critiques. The critiques often combine their assault with the neo-liberalism in that period that was argued to dismantle the basic commitment of American realism developed and shared over the tradition and history. While the legal theory recognizes the political doctrine as serenaded through the war power and foreign policies, the views to see such criticism as constructive vindicates the importance of academic freedom or first amendment right.

be that the leadership character is less relevant given both are generally same to easily contravene the constitutional commitment, but the national resources of police and development of national diplomacy would be more determinative to facilitate the need of administrations. As said, the provisions of gorgeous commitment in the national constitution would be the kind of ornament, what had been termed into the constitutional theory by the western legal academicians – ornament constitution versus normative constitution.<sup>6</sup> However, the cause to such inhumane political justice<sup>7</sup> had been framed differently by each court. Both victims had been incriminated on the ant-communist act, but Cho was victimized arguably to support the re-election of Lee. Park may be alleged to suit with that point since President Park also faced with such challenges around the reelection possibility. Nevertheless, this explanation would be slim and remote. The scenario may more properly be said of his expanded bureaucracy and competition of loyalty to the president. The kind of Catholicism-like imagery of Lee could be seen limited and domestic, hence very classical, while the Park must have been detailed and known Korean in terms of leadership and management of state, a distinct public organization in my sense. Park's known leadership, quantitatively expansive with the charismatic leadership, must have been more organized and systemic than the intolerance or persecution based on the criminal act had been stretched to more than victims in the second period, which simply could be proven with a number of case names within the files of SCPW.

Another victim very relevant with these cases had once been the interest of Korean public, named D.Y., Song. He was prosecuted on the same nature of criminal act in the 1990's, who had been an active professor of one German university. The case brought an immense attraction that the scholars regularly appeared to argue the utility and disutility of that criminal act. Over the period, the practice of new liberal constitutionalism became dense and generally settled within the society. A globalization and new mood of inter-Korean relationship had created an environment to support its abolition. In my sense of criminal culpability, D.Y. Song seemed to be more active with the intensity of engagement as well as conspiracy or promotion

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<sup>6</sup> In this juncture, it seems adequate to remark on the character of Korean constitutions historically. I believe that the original constitution is most creative reflexive of the Korean wisdom than other 8 subsequently amended constitutions. The constitutions in the second period adopted some most Americanized form. For example, the judicial review was incorporated with one single line of judicial hierarchy, i.e., national Supreme Court. However, the practice was undemocratic with only several occasions of judicial review of legislation through considerable years. This implies of two stronger political branches than the judiciary.

<sup>7</sup> This view is supported by the determination of SCPW, one important government agency in this concern, so that two victims and their family by the political judiciary were restored their honor and declared innocent. This does not mean of judicial process, but was the official findings of Executive branch. In any way, the courts would honor its findings in the judicial process that is expected to order the civil damages and renewed proceedings according to the civil procedure act. Despite the official development, political circles including the voluntary associations and civil monitors would still contend the findings whether the justice would be correct or biased.

of North Korea. Nevertheless, he was penalized with a light punishment vindicating the fundamental transformation of policy environment. The policy environment is any important factor that the technocrats or policy makers had to be attentive. Once again, it is reminded that learning would inculcate again the discursive structure of power relations, critical discourse through the ideals and values, and for the end of reflexivity within each policy actor. The counter-thesis could be posited that the normative discourse still is possible with the kind scholars of Habermas. In some due dimension, we may also be received that the constitution and laws should be an ultimate limitation that the public officers would be expected to act upon. Therefore, the policy actors to be triggered by the scholars of this discipline would be undergone in affectation with the wide interdisciplinary discourse. In emphasis, a constant mind to learn and experiment on the policy development is such demanded. Simply, I may not be incorrect to say that Korea is a particular, perhaps distinct experimental lab amongst the global nations as explored, so that it has to be learned to become the competent policy actors. Their experience would not be solely for Koreans, but could give insights or lessons for the nations of international community. For example, the ideology could be essential in some stage of national pathway, but would be harmful in cases or least a factor for some of productive countries. It tends to be persistent through the age, but in different ways in view of its extent and pattern. It is, for example, ironical that Koreans had continued to be conservative as one political scientist pointed out. However, the consequence would not be serious unlike the first and second periods in my viewpoint, yet still related with the resilience of standing policy package on judicial reform. I simply may illustrate that a personal conservatism from the congressman and policy makers in bureaucracy is making as lagged the resolution of electoral district in the coming election 2016. The inattentiveness and neglect on the judicial reform is needless to say.

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