

The Legal Research and Issue of Death Penalty

KIYOUNG KIM

Department of Law, Chosun University
South Korea

Abstract:

The abolition of death penalty is one commonplace issue over global jurisdictions. Nevertheless, it is also true that a surfeit of research has been dealt either in any specific way of legal research or general method of social science. This tends to create a track of practice that they approach the issue in its own national standard of research or discrete logic and narrative. The author proposes an orthodox of legal research by exemplifying the issue of death penalty. By demonstrating a process of legal research in exemplary concerns of death penalty between Korea and US, the article would raise several implications for the future studies; (i) the orthodox of legal research as compared with the quantitative and qualitative methods (ii) key implications of three traditional sources of legal research, i.e., secondary, primary-statute, and primary-court cases (iii) encouragement of comparative social studies between the parallel nations.

Key words: death penalty, Amnesty International, legal research, US and Korea, primary sources, secondary sources, cruel and unusual punishment, Constitutional Court

I. The Issue of Death Penalty and Social Research Method

The issue of death penalty generally deals with the state criminal law, which is basically state issue in fundament

(Amnesty International, 2014; Hood & Hoyle, 1994). The issue can evolve to embroil a federal constitution in the US, the controversy of which often centers on the due process of law and eighth amendment on the cruel and unusual punishment. In that sense, it could be a federal issue. The issue would involve a human philosophy and societal justice which concerns the deep nature of state justification or questions a due limitation of criminal muscle. It questions the kind of state police power in the ultimatum of life interest which would be fabricated in such sacred attribution, for example, a God's creature or communal justice and national consensus (Abolition Proposal of Death Penalty, 1999; Berman, 2002; Kim, Kiyoung-2, 2015). The policy issue of death penalty in the jurisdiction of Korea would also be characteristic provided if the legal history of nation is short of 60 years and massively imported from the foreign authorities, principally Germany and Japan as well as the US or other developed legal cultures (Amendment of Korean Criminal Code, 2010). This requires of a comparative study of laws or legal questions. It requires the social research, and a number of works can be found, which base their methodology on the traditional method, i.e., qualitative, quantitative or documentary examination. In this article, I intend demonstrate how the kind of socio-legal issues including the issue of death penalty could be more formally made by relying on the prevailing way of American legal research. I also discuss the traits of primary and secondary sources and some advice on the cost-effective research.

II. The Secondary Sources

(a) My research on the secondary sources

In the process of research on death penalty, we would instantly realize that the two major commercial businesses provide a vital convenience for the legal researchers. I utilized the key word search, who simply typed "abolition of death penalty" in the search box of LexisNexis. It signaled that about over 900

documents were retrieved, in which 131 pieces are the law review articles bearing that title within the document.

The classification of 131 articles would allow it effective to frame our search work, which was conducted basically on the titles of article (Cohen, 2007; Murray & Desanctis, 2009; Whisner, 2007). The classification can be grouped in five classes of work. First, the article could be dealt in-depth, which structures the thoughts and messages on the philosophy, socio-cultural perspective and original nature of deliberation. It may develop in many cases, however, into the current law, system and public policy since the article is on legal perspective eventually. Second, the articles may entirely profile and discuss the legal issues, which comprehensively concern the current status of death penalty in the national scale. It could be explicative, comparative and analogical or on criticism and often can include a policy suggestion or discuss the prospect (2009). Third, the article may deal with a specific case or state action to affect the issue of death penalty. Fourth, the issue may be dealt with the empirical evidence which can make it distinctive from the normal jurisprudence. In this case, we may find a usual method employed by the social scientists, which could be compared with a massively documentary basis examination of issues or research questions. Concerning the issue of death penalty, I found only several of empirical studies, which are quantitative or qualitative with the interviews or in-depth contact on research subjects. Fifth, the international lens would characterize an article, which share more than empirical studies, specifically on the death penalty issue. I consider, however, the percents would largely not shift within the scope of legal issues since the comparative or international perspective seems generally patterned in the behavior of legal scientists. The empirical studies in comparison seem to less fare, which basically defines a legal research in some unique nature of qualitative studies. I also consider that the aspect of public policy often comes much entangled to orient a structure,

content, and tone of legal research as well as a basic point of author's focus.

With respect to my research goal, the Korean sources obviously serve resolving a question. A database for the primary and secondary sources could not be located basically within the LexisNexis. In order of this ambit, The Korean Research Information Database would be most effective to collect the documents orienteering and basing the research work. That would, however, be restrictive with one of important secondary sources, i.e., law review articles generally authored by the Korea-based professors of law and social science. Two articles from Korean authors were especially helpful (Joo, 2012; Lee, 2010). One public website, named Law@B and operated on the paid basis, has a coverage to include a pure nature of law review articles, cases of court and constitutional court as well as the statutes and executive regulations. In these characteristics, it can well be said of peer service provider in Korean context which is same with the Westlaw and LexisNexis in nature.

In sum, I successfully narrowed down my scope of search which includes three law review articles, several cases in timeline and one case brief, two statutes, which are from both countries, but largely from the US source. The cases could be identified in which I utilized the law review articles to locate specific cases (Olson, 2014). The statutes could also be identified in the same way, in which I considered the powerful role of law review articles to structure a whole of research operation (Patterson, 2006). A citation of cases and other primary sources fortunately provided a fit within a schema of research. In respect with the court cases, I have introduced those which are perceived important and controlling in understanding the Supreme Court policy. I added one case brief. As the statutes generally stem from the state authority in this area of concern, the location of useful statutes would not be gone simply from one article which requires some more work to endeavor on the selection. But my focus on search was given to

the federal statute since we conduct a comparative analysis between the US and Korea (Kim, Kiyoung-1, 2015). One article bears a title to deal with the acculturation and death penalty, and other articles dealt in the international context and with the statutory way of approach on the issue. The three articles were considered to meet my purpose most finely to narrow my search on the statutes. From the articles, one international treaty and one federal statute were played out to provide a useful point to ascertain the policy preference of US.

(b) Reflections on the secondary sources

The secondary sources are useful for the legal researchers on the policy issue. They are especially working to expose the researchers to the background knowledge, basics of an issue concerning the legal terms and viewpoint, interdisciplinary meanings and implications, historical and comparative evaluation as well as policy recommendations. In many cases, the newspaper articles could help to shape a direction of research. Once I had been much indebted to Korean sources of the kind when I was required to investigate North Korean issues (The Nuclear Threat, 2013; Seo, 2014). Often the policy or reform-oriented researchers would have a stronger need to refer to a wider source of document while the lawyers on a specific dispute and placed within the trial setting or other adversary nature of proceedings would churn on the most direct and authoritative authority, such as precedents and statutes. In this sense, it could be compared with the usual practice of lawyers, who are responsible to the clients for the specific issue at law and contended more intensely on the standing laws. Of course, the difference would be a matter of extent that both researchers would eventually obtain an insight and content of relevance from the two sources. For example, the trial lawyers could complement to increase his persuasion of argument by illustrating the law review articles, legal encyclopedia, and part of treatise, which could support his views and legal opinions. The lawyers or assistants for the policy makers would pursue

his work more realistically by developing his initial undertaking with the secondary sources. Hence, the two sources would mutually be reinforcing to serve the needs of researchers. One useful point would be that the secondary sources could help to frontier the issue at matter and ignites the whole process of research operation. They provide a basic definition of legal terms and socio-historical development or implications, which can help to derive the useful search terms and form the sense of justice or interdisciplinary structure of views for the specific issue (Olson, 2014). The researchers would be asked by the employing congressman to prepare for a brief on the reform of immunities and privileges of congressmen in the course of his official duty. He would be facilitated in the initial stage that he needs to look up the legal encyclopedia, hornbooks on the constitution, and law review articles to deal with the issue academically or in the interdisciplinary perspective. He may be available of a scope of terms or theories involved, which was initially instinct or constrained. He now has a sense that many terms need to be explored or searched and the secondary sources on the issue could be considered, which cover, for example, the immunity and privileges, parliamentary and presidential system of government, debate and speech clause, arrest and detention, history and democracy, comparative law of constitution, tyranny and congress, and so on (The Constitutional Privileges, 2014). Of course, the research work on the secondary sources would serve one important purpose that leads to the researchers into the next stage of research progress on the primary sources, such as constitution, cases, statutes, executive orders and other (Murray & Desanctis, 2009). For example, the North Korean issues can be studied with a scope of primary sources if oriented from the reference of secondary sources (Export Administration Regulations, 2014; North Korean Human Rights Act, 2004; North Korean Sanctions Act, 2014; Nuclear Non-Proliferation Controls Act)

III. The Statutory Primary Sources

(a) My research on the statutory sources

As the issue involves an international character and civil rights, we generally expect that the International Covenant on Civil and Political Rights (ICCPR) has come into play in shaping the issue in any normative way. The ICCPR is a multilateral treaty adopted by the UN General Assembly in 1966, and monitored by UNHRC. It came into force from 23 March, 1976, and the Covenant has 74 signatories and 168 parties. It is one of peer covenants of UN, others of which are the International Covenant on Economic, Social and Cultural rights and the Universal Declaration of Human Rights. The United States and South Korea are signatory state of this Covenant that entered the treaty in 1992 and 1990 respectively. The ICCPR deals with the issues, i.e., (i) rights to physical integrity (ii) liberty and security of person (iii) procedural fairness and rights of the accused (iv) individual liberties and right to life, (v) torture and slavery; freedom of movement, freedom of religion, freedom of thought, freedom of speech, freedom of assembly and freedom of association (1976). The Covenant is composed of preamble, 6 parts and 53 articles, and the Second Optional Protocol to the ICCPR is directly committed to the abolition of death penalty. Therefore, it is generally called the “death penalty treaty,” and both countries have not yet signed this protocol. The second optional protocol is a side agreement to the ICCPR, and was created in 1991. It entered into force on 11 July 1991, and has 81 state parties in April, 2014. The Protocol commits its members to the abolition of the death penalty within their borders, though Article 2.1 allows parties to make a reservation allowing execution "in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime". Some states, i.e., Cyprus, Malta and Spain, initially made such reservations, and subsequently withdrew them. Azerbaijan and Greece still retain this reservation on their implementation of the protocol,

despite both having banned the death penalty in all circumstances (1976).

As we noted, the criminal policy of nation tends to implicate a multifaceted deals with the social ethos, passion, and sensibility of community. The 9.11 terrorism and occasions of terrorist attack had created a plausible backdrop for the anti-terrorism act. The US has expressed a firm commitment to counteract the terrorism in ways that modifies a vertebra of criminal justice system and peacetime institution, such as habeas corpus, period of appeal, and so. The act entered into force as of date April 24, 1996, and its citation for the published form of act would be “Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214.” The legislative objective of act was notoriously pronounced that the Senate and House of Representatives assembled and enacted it to deter terrorism, provide justice for victims, provide for an effective death penalty, and for other purposes. The titles, subtitles, and sections are extensive in coverage, which reflects a shock and adequate measure for the terrorism. The title I deals with the habeas corpus reform, and title II spells out the affords and provisions for the victims, which include a mandatory victim restitution and assistance to victims of terrorism. Especially, the act sets forth a jurisdiction for the lawsuits against terrorist states, which recover the funds to compensate for the victims. The act also includes the provisions and requirements to be concerned of prohibitions of international terrorism, i.e., prohibition on terrorist fundraising, prohibition on assistance to terrorist states, prohibition on assistance under the Arms Export Control Act for countries not cooperating fully with the United States antiterrorism efforts. The other titles deal with such important reforms, i.e., terrorist and criminal alien removal and exclusion (title IV), nuclear, biological, and chemical restrictions (title V), implementation of plastic explosives convention (title VI), and criminal law modifications to counter terrorism (title VII). The act generally supports my argument that (i) the death penalty or criminal punishment is

affixed with the culture and passion of community (ii) the US would likely be consistent to put emphasis on the state or national authority in managing the criminal justice system

(b) Reflections: The legislative process and legal research

The legal researchers tend to face with any usual chance to seek the legislative sources to progress on their research plan. In this case, we would be assisted with the basic perspective on the scope of reference. One thought, as exemplified with the view of Justice Scalia, would consider the final message from the legislature would suffice the role and responsibility of judiciary (Olson, 2014). This means that the statutes standing in force only would be a source to be focused in terms of judicial reference. This idea would champion the stern adherence to the constitutional structure and institutional independence among the branches. In his implicit assumption, the judiciary is placed in the independent chapter of constitution, bred in the inherent suspicion of political process, and delegated a separate authority of sovereign people. Other thought is granted to recognize the importance of legislative history as a source of reference, hence “...see no reason why conscientious judges should not be free to examine all public records that may shed light on the meaning of a statute (p. 110, 2014)” This view espouses the benefit of legislative history,...”to correct drafting errors, to provide information on specialized meanings or terms, or to identify the purpose of a statutory phrase” (p. 110, 2014).

Given the abstractness of both thoughts, we still see an extent of sharing on the importance of legislative history in the stage of legal research. This drives the research student of law who needs to understand the legislative process and different stage of legal sources on the same topic. The bicameralism would lead to the separate nature of sources, bills and joint resolution, for example. The presidential power to veto the bills presented from the congress would temporarily and constitutionally stall the effect of bills as an enforceable US law

(Kim, Kiyoung-3, 2014; Lee, 2011). Given a signing of president into the bills, the name to indicate the products would change to be code or statute other than bill, which perhaps would confuse the researcher on the identity of product if without a due understanding of legislative process. You will find a shelf of legislative materials in the law library or other venues, which bears a different title with the same or proximate content. A lacking to understand the legislative process and library system would lead to the ineffective or inefficient deals in your search work. The demand of legal research, especially involving the public policy aspect, may require his horizon of search to touch on the presidential speech or annual instructions which implore on the key national agendas and collaboration of congress. An adequate understanding of legislative process will breed the effective lens to appreciate the nature of different materials in name or character (Murray & Desanctis, 2009). For example, the session laws would be most expositive among the various titles of same legislative product. The code would be a final form of official effect, but could not excel the content of session laws for the researchers in that need. A need to expedite the research process on the legislative history would procure some distinct business of the D.C. based law firms, which exploit their locality to provide a professional service on the research of legal history. Given that the understanding of legislative history is consequential in terms of legal research, we may know such popular websites on the scope of information, such as the US Congress/Thomas (The Library of Congress: THOMAS, 2014). Within the website, we can be exposed to the scope of pending bills referred to the legislative process.

IV. The Case Laws

(a) My research on the case laws

As the death penalty is an essential ingredient of state criminal policy, it is not surprising that the federal case laws would not be a direct source to consult its policy implications or in terms

of enforceable law. As surveyed in the article, it is indeed true that the death penalty is surely a matter of state criminal justice system through the beginning of 1970. The first case profiled in the Supreme Court of US, *Furman v. Georgia*, in 1972, and the cases in this issue has followed over time. *Gregg v. Georgia* was decided in 1976 four years thereafter, and *Coker v. Georgia* one year after in 1977. The constitutional ground to review the cases generally raises a concern on the Eighth Amendment and Fourteenth Amendments. From the provisions, the state government could not administer a cruel and unusual punishment, and be prohibited from depriving a life, liberty or property without a due process of law. In *Furman*, the first case on this issue and leading to a *de facto* moratorium on capital punishment throughout the United States, the court rules on the requirement for a degree of consistency in the application of death penalty. The impact of this ruling has ended in *Gregg* decided in 1976, in which the court specified two essential guidelines on which the state government should base their system of capital punishment in order to meet the Eighth Amendment challenge on the cruel and unusual punishment. Both cases, in principle, sustain the general or theoretical comport with the legitimacy of death penalty, but the control of state practice was infused for a lawful engagement. In *Coker v. Georgia*, the Court ruled that the rape crime could not be a basis to impose the death penalty (1977). The Court opined that rape alone does not cause serious injury, and made a highlight on the proportionality jurisprudence on this issue and decision on objective evidence. In *Enmund v. Florida*, the proportionality principle once again contested if it is constitutional to impose the death penalty on the crime of certain quality (1982). The court, by slim majority, decided that it disproportionately prejudiced a criminal to make the statute inconsistent with the due process of law. The crime was found heinous, atrocious, and cruel, but with no statutory mitigating factors leading a defendant to the death penalty, who was the driver of a getaway car in a robbery-murder of an

elderly Florida couple. In *Atkins v. Virginia*, the Supreme Court ruled on the constitutionality of executing the mentally retarded individuals (2002). The case dealt with a specific issue of execution than the prescription of statutes, and set forth the first kind of rule to outlaw a certain context of execution. However, the Court reserved a scope of leniency with the state authority in defining the "mentally retarded" element. In *Thompson v. Oklahoma*, the Court was called upon to review if the execution of minor under the age of fifteen or fewer was permissible under the current constitution (1988). The court found it unconstitutional, but later, the scope of age faced with some limitations in *Stanford v. Kentucky* (1989). The Court, in this case, upheld the constitutionality of applying the death penalty to someone who was seventeen years of age at the time of the crime. Interestingly, the issue of involving an execution of minor seems adjudicated on the evolving Eight Amendment standard. Hence, the decision in *Roper v. Simmons*, the Court found the execution of those under the age of 18 at the time of the crime to be unconstitutional (2005). We can note some implications from these several cases that the Supreme Court generally perceived the state authority as primary in detailing the requirements of death penalty or its execution on one hand, and the Court turned on the "national consensus," or evolving standard of justice on the other.

(b) Reflections: A comparative view on the primary sources

The case law is a most direct nature of primary sources since it provides a precedent. A doctrine of precedent or *stare decisis* generally is a major attribute to define the common law legal system. The judicial branch other than political organs would be deemed distinct to generate what the common law lawyers and people of that tradition recognize or sense as a law. The concept is a judge-made law the notion and passion of which have been embedded in the legal tradition. We can see earlier history of common law court, which began with the conquest of

Duke William in the 11th century and evolved over the centuries (Glendon, Gordon, Osakwe, 1994). The heritage and tradition would be profound in its struggle with the monarchy and on the later frame of higher law or constitutional review. Politically, the glorious revolution, Independence of US as well as French revolution would be a direct factor to create the modern form of democracy or Republicanism. The judiciary and thought of jurists or legal thinkers could support idealistically the right foundation of democratic government and rule of law. The insulation and independence from the politics could enable their mediation on humanity, individual and social justice and philosophy of government (Newman, 1947; Siegel, 2005; State Bar of Michigan, 2009). We may recall on this point, for example, with the Bickel's least dangerous branch to deal with a highlight of judicial branch on its propriety of constitutional review, the thesis on distrust of politics or anti-majoritarian difficulty. The trait of common law system may be paired in points of comparison that the continental laws of Europe may be based on the kind of codification initiative from the rule of Napoleon and subsequent emergencies in Germany or Switzerland. Between the statutes and case laws, we could find the differences of origin, history and foundation concerning the two major legal traditions (Glendon et al, 1994). The French people concerned of basic function that the state could not dispense away some years after the Revolution. It led to the codification of five modern basics of law including the civil law and civil procedure. In other continent, the US constitution had inaugurated as the foundation of new Republic which is public in nature to deal with important national matters. In this development, we can note that (i) the constitution and statutes are political and centralized response with the legal affairs of nation; (ii) they could be epochal and often be seen more ready as a national uniformity of law; (iii) it would contain a somewhat abstract nature of provisions requiring the interpretive issues; (iv) their historical wake could offer an

insight on the mode of interaction within the three branches of government, which is institutional basically.

The implication from these points would come in our work on legal research, concerning the recognition of laws and legal system as well as the theoretical ground of legal effect. The case laws are generally considered as a law for the common law lawyers. Their basic training in the law school would begin with the case books and should have to surf onto three years of time in the sea of case laws or logic, analogy and distinguishing of similar cases. The *stare decisis* rule, perhaps, would always be harbored as an intellectual pillar and standard of profession (1994; Trolley, 2003). They prefer an inductive reasoning to devise the law, and made their work of research suited with the similar and distinguishable cases. The case laws would be a playground to endorse, reject and appeal to the prior court decisions. This shapes their mind, perspective and attitude to deal with the legal question. Simply for example, they more conveniently recognize the civil code of continental traditions as a quasi-constitution beyond the statute. They would be disgruntled with the abstract nature of code if he or she works on the drafting of important contract for the big clients. It would be awkward perhaps if the Congress would enact such comprehensive civil code besides the piecemeal revamp of public problem, as we illustrate juvenile laws on the liquor shop against the general theory of tort case laws. The remains other than this vein or mainstream of legal culture would be the kind of mediate endeavor as we find in the Restatement, SCJ, general nature of work on the encyclopedias, and so. The international initiative on the uniform laws, particularly, private law areas, would be notable about the codification ways of dealing. Not internationally alone, we can identify a uniform law domestically, what we now cheer as UCC. The effort of American Law Institute and Bar Association should not be neglected on the model laws approach. The uniform penal code would be one example, which is authoritative though not endorsed across the jurisdictions.

The two of primary sources show the strands within the reservoir of modern leading democratic nations. The views on the kind of historical institutionalism may allow if the insulation and independence of judicial branch would be more safeguarded in the common law traditions. A persecution of the judicial branch in the collapse of *Ancien Regime* can come in contrast. It would be fortunate, however, the modern terms share the indispensable value of independent judiciary within both traditions. The last progeny of democratic judiciary in terms of world history, what we experience within the socialist tradition, perhaps would be least when we consider the merit of judicial independence (1994). While some circle of intelligence questions the virtue of democracy, the views or thoughts on institutionalism or professionalism could save the kind of dilemma. It would be more practically imbrued with our intelligence which should be a fundament eventually.

V. On The Case Briefing

The case brief can be classed in two types, which includes an appellant brief and student brief. The appellate brief is prepared by counsel or attorneys which purports to meet their practical needs. The student brief is prepared to serve the needs of law school classes. Both briefs would identify the elements of case and summarize the gist of court opinion, which deal with “a description of facts, a statement of the legal issues presented for decision, the relevant les of law, the rules of law applied to the particular facts of the case, and policies or reasons to support the court’s decision or holding (Kerr, p. 52, 2007; Quimbee, 2014; Texas Southern University, 2006).” The appellate brief has a purpose to persuade the higher court in the shoes of one party, which, therefore, is aligned to discuss and argue in his client’s favor. This is in comparison with the student brief, which includes the neutral assessment of casebook cases to serve his academic need. The case brief should have a quality, to say, formality in consistence,

conciseness, entirety on its own, and adequate coverage on the essences of case, which could communicate the ideas professionally expressed in the court opinion. As the student brief, the most successful example could be a book of commercialized case brief as we see in the Emmanuel and *Legalines*. The *Barbri* would be a companion to the kind of commercial booklet, which, however, includes the summary articulation of case laws in the jurisdiction in the end of bar exam preparation. Hence, the *Barbri* includes the basic law of US and respective jurisdiction, which is not necessarily a case brief of specific case. For the intensity on the real dispute, the “appellate briefs from both sides are really valuable to the ones, who assess the legal issues raised in a case (Pyle, 1999).” It is indeed true that the legal argument and laws finally delivered by the court would be steered from the counsel or attorneys. It is common between the civil and common law traditions that the court is passive to identify the legal issues or facts, although it could be autonomous or active to recognize and announce the laws. The traditional maxim, “the party knows the facts and the court knows the law” would generally be explicative of adversary paradigm within the court proceeding. The facts, in this understanding, would include an extended nature to include the legal issues. Hence, the court may not grant a murder charge provided if the prosecution merely seeks a manslaughter. The court could not grant the contract damages once the party based his claim restrictively on the tort action. The party autonomy, both in civil and criminal dispute, would often govern that the points of focus brought by the attorney to the consideration would generally be determinative of shape and content on the court opinion. This benefit of appellate brief, however, must be limited since they are rarely published. The Supreme Court is the only court for which briefs are regularly available, and the Landmark Briefs (REF. LAW KF 101.9 .K.8) series uniquely include the full texts which is a very few of many Supreme Court cases (Murray & Desanctis, 2009; Pyle, 1999). The U.S, Supreme Court Reports, Lawyer’s

Ed, 2nd, series (REW.LAW KW 101 .A42) provides summaries of all cases reported (1999). Both sources are available for our reference on the paid basis from the Westlaw.

The case brief requires a deal of many terms and conventional words practiced in the legal profession, which originated earlier from the Medieval Europe. The conquest of Duke William imposed the national court system which altered the old English-based local courts (Kerr, 2007). This calls upon the beginning of common law history, and official language in the English common courts was French through the two centuries ago. The current terms often frequented in the work of case briefing would have a root basis on French, which would be plaintiff, defendant, appeal, tort, crime, judge, attorney, counsel, court, verdict and so on (2007). A familial exposure to use it handily will speed up the case briefing work and increase an efficiency of study on the case note or brief.

The case brief typically would be structured in several headings, (i) Title and citation (ii) Facts of the Case, (iii) Issues, (iv) Decisions, (v) Reasoning, (vi) Separate Opinions, and (v) Analysis (Pyle, 1999). The parties would be indicated in types, say, plaintiff, defendant, appellant and appellee, petitioners and respondents, and especially with the Amicus Curiae. The last name of parties always appears through the end result of cases within the judicial ladder, while the order of name may be reversed to indicate the initiating party within the specific rank of court. In the criminal cases, the plaintiff is a government, which is indicated as State. The Amicus Curiae, as meant a friend of Court in English, is an interested third party, which, however, receives no effect from the specific outcome of case, but can provides insight or views of public interest, for example, the Department of Justice in the habeas corpus action. The facts of case would be important since the judge-made law is pivoted on them (*Conti v. ASPCA et al*, 353 N.Y.S. 2d 288, 1974; Kerr, O. S., 2007). It could be lengthier in some cases or short in others. The similarities or differences of facts led to the adequate law in same or other way, which grounds the role and

working frame for the common law judges. The inductive reasoning is on attribute which requires a comparison or analysis of various cases similar or distinguishable to create a final rule of law fitted within the specific facts at hand. Therefore, the importance of facts in the common law system is hardly overlooked, and the facts in a salient contrast may be found in the separate opinions. The law student, in this context, would do their good job if they imagine as many as hypotheticals to compare with the facts in case (2007).

VI. Some Thoughts on the Cost-Effective Research

The legal research would be financed in various ways, which depends on the status of researcher, nature and purpose of research, and many other contingencies where the researcher is actually situated. The legal research often would be conducted by the lawyers who have a client, and their research plan should be structured under the budgetary restraint. The fees from a client would enable his research, and the ambit of research would be approached practically. Therefore, it would be most accurate as well as neat, whose focus is narrowed and intensified on the outcome and any best strategies to the interest of client. The research would be purported to answer the legal questions and issues involving the client's case (Murray & Desanctis, 2009). The legal research would be distinct from the general one of social science, in which the work "takes eighty percent of a researcher's time to learn about an unfamiliar area and just twenty percent to provide a specific answer." Much time spent could be seen two distinct steps "(i) coming up to speed in the way governing a situation, and (ii) searching for the specific rules that apply" (2009). These require different tasks and different approaches. It is necessary to think like a lawyer and determine the areas of law involved in a particular problem. Hence, the preliminary research is important to define the whole of research project, which would concern an investigation of factual situation, legal issues and

areas of law, jurisdictional focus (federal/state/local), and formulation of tentative issues, and preparation to revise on the research progress (2009; Redding& Shalf, 2001). In this respect, it is notable that a surfeit of public websites in electronic forms would help to facilitate a handy search of legal information (FindLaw, 2014; Law.com, 2014; Onelook, 2014) As the sum of interest varies, the structure and quality of research would be affected in its scope and substantiation. For the hot cases, the law firm may expend special funds to support a research and task teams might be organized to address the sections of research question. Often the attorney's research falls within his special expertise and work hours, which is conducted on the basis of documentary examination. The legal research from a reformer or parliamentary expert staffs would be required of some fundamental thinking and practical point of policy disputes. The interdisciplinary work would be indispensable in many cases which could increase their power of persuasion. In some case, it requires an empirical finding to assess whether to legalize the sales of syringes for IDUs and the extent of effect from new permission laws. It could be more responsive and suit a specialized measure between the inner-city and suburban area of high schools given the empirical studies suggest a different aspect of socio, economic and psychological attributes between two groups (Redding& Shalf, 2001). In these cases, the scope of research would not be limited to the province of law, but collaboration or team-based approach may be necessary. The legal research would be conducted by the law professors and could have a characteristic in same elements as well as in diversity. A professor of legal history must be versed with the knowledge of history and their ways of thinking. The source of funding institutions may be in accordance with his or her expertise and performance. In some cases, the department of culture and tourism may fund the research of legal historians, and the immigration agency may provide a research grant for the investigation of immigration issues, which perhaps requires a joint work with the professors of other discipline.

In most of these cases, the budgetary concern is some critical part of research project which requires a professional way of response (Murray & Desanctis, 2009). Two points seem to come most instant, but likely would be necessary to bear through the end of result. First, the research ethics should be respected. Some reporting would be adequate if the research is funded explicitly from the sources. Second, it is truly for the responsibility of research that processes on most cost-effective ways of research design and operation. The budgetary restraint has been no small barrier in my case, which pushes me to apply a strategy.

First, I would curtail the survey and interviews which was scheduled to create any empirical basis of current status in the death penalty issue. A scope of clergyman, psychologists, prisoners, victims, as well as other related group of people on this issue initially were included to turn the research project as grand and comprehensive. Over the progress, however, my scope of query specifically imparts an emphasis on the law and national as well as international legal system. This could make my research refined as well as cost-effective.

Second, I applied for the research grant which is launched from the Korean government, Department of Justice. It provides a moderate amount of funds to meet the expense of this research. Korea is considered as a rising star in the international community economically, philanthropically and sociologically. A past imagery on state capitalism and stiff feel of developmental control generally seems to disappear. The growth rate turned to be reasonable from a sharp run until the end of 1980's and K-pops assuage global friends with the international hospitality (Kim, 2012). A stewardship of experts in specific field has increased, and the professional service can take a pair with the western states. A national budget to support the UN and international organizations has steadily increased which evinces the increasing profile of Korea in the global village. Most importantly, two Koreas still pose a problem and may be spent with an occasion of concern from the

global public, and the human rights, perhaps not irrelevant with the death penalty, are one of challenges (2012). The reality is that the UN office of human rights would be inaugurated in South Korea this year. In this stream, the research needs on the death penalty and its abolition can take a place, and 3,000 US dollars in award from the government has a purpose to promote a recognition and awareness of the issue.

Third, the publication will be sought with the peers and companions in same concern and professional experience in which my research will take a chapter. A revenue from the publication could complement any excess of research expenditure so as to be restored to balance.

Fourth, the research would be processed on the documentary examination and the basic tip of advice could fulfill my situation in meeting the budgetary restraints since it seems to prevent a redundancy and unnecessary deals of work. In the preliminary concern, a trustworthy secondary source was referenced, such as treatise and law review articles (Olson, 2014). The encyclopedias, such as American Jurisprudence 2d or Corpus Juris Secundum as well as Wikipedia could be used to shape my ideas and approaches. It is advisable not to be discursive over materials, while one document often can lead to a number of other sources. In an in-depth stage of research, the Annotated Codes and key number Digests could help to progress. In this stage, a criterion to self-assess my performance would be that “the in-depth research must be sufficient to give you confidence that your work is based on information that is complete and accurate.”

VII. A Prospect of the Abolition Issue

My expectation is eclectic with mixed ways of policy response. Basically, the current institution would be sustained for a period of time. The death penalty is a lawful punishment to be reacted against any most culpable crimes, such as armed robbery and murder or rape, and treason. Nevertheless, Korean

government has long employed some measure to reserve an execution as a matter of practice and at the discretion of Justice Ministry (Kim, 2012). That is to resonate with the progress of international cause and universal awareness. I would expect that two possibilities of policy progress or shift would be realistic for the future. First, the “death penalty, but reservation” policy would be buttressed to favor the international progress. The stage of execution would arise as a main vehicle to moderate two competing needs; (i) the need of death penalty as a criminal sanction (ii) its cruelty and international consonance. Second, the approaches of death penalty would have a focus on individual factors, such as age and mental state, and ways of execution.

I forecast on the above prospect since Korea is keenly affiliated with the American legal system and national security. As we see, the anti-terrorism act even legalizes the kind of repressive action to increase the role and function of death penalty. The policy makers in Korea often would take a same pace and sharing with the US and be unlikely that the abolition would happen. The constant threat from North Korea would make us analogous with the anti-terrorism countries, notably US. As the criminal policy reflects with the social compassion and culture or history, the argument for civilized approach of abolition would likely be less of option. Koreans experienced a bitter history of Korean civil war, and generally have an attitude and imagery of strong government to exercise the power of capital punishment. The culture and general awareness of Korea as involved with some of atrocious felonies also seem to push for the precedence over abolition advocates. Some may argue that the Korean subscription to the International Criminal Court may promise a progress on the death penalty issue, but the nature of both issues seems not be congruent of one version. It is an international court which is restricted with a narrow scope of crimes. That should not be construed that Korean government would become flexible and liberal to throw away the criminal sovereignty to the

international authority. The US and some major powers would show a reluctance to sign the treaty of ICC, and some can argue that this may be viewed to buttress the difference of two nations in the criminal justice system. I disagree with the argument as the US ambassador made an effective reservation to bar any direct effect of death penalty clauses as discussed above. The ethos and policy attitude highly echo same with the Supreme Court and Constitutional Court of Korea (1972; 1996; 2010). According to the court opinion, the nine justices of CCK would agree to deny any binding effect of that international covenant.

VIII. Concluding Summary

The abolition of death penalty is one commonplace issue over global jurisdictions that the national and international action or controversy has been debated widely. A considerable number of scholarly works dealing with the issue also can be located that creates a basis for the professional research in this area of concerns. Nevertheless, it is also true that a surfeit of research has been dealt either in any specific way of legal research or general method of social science. The quantitative or qualitative method would be their usual practice in presenting an argument and suggestion. This tends to create a track of practice that they approach the issue in its own national standard of research or some discrete logic or narrative. It brings a parochial or piecemeal dealing of national articles in presenting pro-abolition or maintenance stance. In this backdrop, the author proposes an orthodox of legal research by exploring the issue of death penalty, especially in the comparative discussion involving the parallel nations. As the kind of environments surrounded by close nations could factor in some way, it can excite the researchers to expand their practice by coupling nations beyond the general or single national context. Hence, by demonstrating a process of legal research in exemplary concerns of death penalty between Korea

and US, the article would raise several implications for the future studies on death penalty; (i) the orthodox of legal research as compared with the quantitative and qualitative methods (ii) key implications of three traditional sources of legal research, i.e., secondary, primary-statute, and primary-court cases (iii) encouragement of comparative studies between the parallel nations.

REFERENCE

- Abolition Proposal of Death Penalty of 1999. K. Legislative Bill No. 152463 (1999).
- Amendment of Korean Criminal Code of 2010. K. Stat. No. 10259 (2010).
- Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214 (1996).
- Atkins v. Virginia, 536 U.S. 304 (2002).
- Berman, D. A. (2002). Foreword: addressing capital punishment through statutory reform, *Ohio State Journal*, 63, 1-13.
- Cohen, M. (2007). Researching legal history in the digital age. *Law Library Journal*, 99(2), 377–393.
- Conti v. ASPCA et al.* 353 N.Y.S. 2d 288 (1974).
- Edmund v. Florida, 458 U.S. 782 (1982).
- European Convention on the Human Rights (ECHR) (1950). Eur. TS No 114, art 1 and 2.
- Export Administration Regulations. 15 CFR 744.14 (2014).
- FindLaw: Law Dictionary. Retrieved Sep. 8, 2014 from <http://dictionary.findlaw.com/>.
- Furman v. Georgia, 408 U.S. 238 (1972).
- Glendon, M.A, Gordon, M.W., Osakwe, C. (1994). *Comparative legal traditions: Text, materials, and cases on the civil and common law traditions, with special reference to French, German, English*, Saint Paul. MN : West.
- Gregg v. Georgia, 428 U.S. 153 (1976)

- Hood, R. & Hoyle, C. (2008). *The Death Penalty : A Worldwide Perspective*, Oxon. UK: Oxford University Press.
- International Covenant on Civil and Political Rights. Mar. 23, 1976, 999 U.N.T.S.171
- Joo, H.N. (2012). Abolition of the death penalty and its alternative. *Kyung-hee Jurisprudence*, 47 (4), 591-616.
- Kerr, O. S. (2007). How to read a legal opinion: A guide for new law students. *Green Bag*, 11(1), 51–63.
- Kim, Kiyoung, Concerning the Research and Science (April 10, 2015). Available at SSRN: <http://ssrn.com/abstract=2592858> or <http://dx.doi.org/10.2139/ssrn.2592858>.
- Kim, Kiyoung, Human Rights: Are They Just a Tweak for the Policy Makers or Administrators? (March 3, 2015). *European Academic Research*, Vol. II, Issue 6, September 2014. Available at SSRN: <http://ssrn.com/abstract=2572951>.
- Kim, Kiyoung, The Constitution and Tripartite System of Government: From the Mutiny for the Limited Government Through the Interbranch Subtlety. (September 1, 2014). *International Journal of Advanced Research* (2014), Volume 2, Issue 9, 392-401. Available at SSRN: <http://ssrn.com/abstract=2574711>.
- Kim, D.J. (2012, November 4). Deterrence for the cruel crimes, *The World Daily*. p. 21.
- Korean Constitutional Court, 95 K. Con. Ba 1 (1996).
- Korean Constitutional Court, 08 K. Con. Ka 23 (2010).
- Korean Supreme Court. 74 K. Sup. Do 3323 (1972).
- Law.com. Retrived Sep. 8, 2014 from <http://dictionary.law.com/>.
- Lee, D. M. (2010). A study on unconstitutionality of capital punishment system. *Legal Studies Journal*, 38, 223-231.
- Lee, M. (2011). *Congress vs. the Bureaucracy: Muzzling Agency Public Relations*, Norman. OK: University of Oklahoma Press (2011).

- Murray, M.D., Desanctis, C.H. (2009). *Legal research method*, New York. NY: Foundation Press.
- Newman, F. (1947). How courts interpret regulations. *California Law Review*, 35(4), 509–544.
- North Korean Human Rights Act. 22 U.S.C. § 7801-3, 22 U.S.C. § 7811-17, 22 U.S.C. § 7831-34, 22 U.S.C. § 7841-43, 22 U.S.C. § 7845 (2004).
- North Korea Sanctions Act. H.R. 1771. 1H. 113th Congress (2014).
- Nuclear Non-Proliferation Controls Act. PL 113-165. 22 U.S.C. § 2799aa-1 (2014).
- Olson, K. C. (2014). *Principles of legal research*, Saint Paul. MN : West.
- Onelook. Retrieved Sep. 8, 2014 from <http://www.onelook.com/>.
- Patterson, K.L. (2006). Acculturation and the development of death penalty doctrines in the United States, *Duke Law Journal*, 55, 1217-1246.
- Pyle, C. (1999). *How to brief a case*. Retrieved Sep. 22, 2014 from <http://www.lib.jjay.cuny.edu/research/brief.html>.
- Quimbee: The Case Brief Database. Retrieved Sep. 22, 2014 from <http://www.quimbee.com/>.
- Redding, R., & Shalf, S. (2001). The legal context of school violence: The effectiveness of federal, state, and local law enforcement efforts to reduce gun violence in schools. *Law & Policy*, 23(3), 297–343.
- Roper v. Simmons, 543 U.S. 551 (2005).
- Seo, J.S. (2014). *Modern Korean History*. Seoul. ROK: Wung-jin Knowledge House.
- Siegel, J. (2005). The polymorphic principle and the judicial role in statutory interpretation. *Texas Law Review*, 84(2), 339–394.
- Stanford v. Kentucky, 492 U.S. 361 (1989).
- State Bar of Michigan. (n.d.). *Law school for legislators: Rules of statutory interpretation*. Retrieved November 17, 2009,

from http://www.michbar.org/publicpolicy/pdfs/Legislators_Rules_Stat_Interp.pdf.

Texas Southern University. (2006). *The critical legal thinker's case briefing model*. Retrieved Sep. 22, 2014 from <http://www.tsu.edu/pdf/academic/law/programs/pedagogy/program/briefingModel.pdf>.

The Amnesty International. Retrieved Nov. 11, 2014 from <http://www.amnesty.org/en/death-penalty>.

The Constitutional Privileges of National Assemblyman (August 20th, 2014), *Chosun Daily* p. 12.

The Library of Congress: THOMAS. Retrieved Sep. 31, 2014 from <http://thomas.loc.gov/home/thomas.php>.

The Nuclear Threat of North Korea (August 18th, 2013), *Chosun Daily* p. 14.

The World Daily. Deterrence for the cruel crimes, Nov. 4, 2012, Seoul, Korea.

Thompson v. Oklahoma, 487 U.S. 815 (1988).

Tolley, M. (2003). Judicial review of agency interpretation of statutes: Deference doctrines in comparative perspective. *Policy Studies Journal*, 31(3), 421-440.

Whisner, M. (2007). The pajama way of research. *Law Library Journal*, 99(4), 847-850.