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(eds.)

Lost and Found in *Translation*

Circulating Ideas of Policy and Legal
Decision Processes in Korea and Germany

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Introduction

*"Policy moves, across time and space and in a number of other ways, too.
It is made in words, and words which move are translations."*
(Freeman)

It has by now become almost commonplace in academic literature to note that processes of circulating knowledge, or *epistemai*, as well as dynamic transformations of institutions occur all over the world, and that they are more and more interactively connected to one another. There is a burgeoning research literature on internationalizing, globalizing, and supernationalizing ideas, knowledge, policies, and institutions. The field of operational research, in particular, has recently seen some very fruitful endeavors dealing with the question of how to describe, analyze, and explain the worldwide diffusion of ideas and knowledge on policy issues.

As is well known, previous academic literature attempted to approach these phenomena by understanding them as processes of "copying," "transferring," "teaching," "learning," "transmitting," or "transplanting." Recently, such approaches to analyzing the dissemination of policy ideas and policy decisions – in the form of policy transfer, policy learning, legal transplantation, and knowledge diffusion – have been challenged by the analytical concept of policy *translation*. The rationale behind this post-positivistic, conceptualized perspective is to improve on existing approaches by widening the scope of analysis to include dynamics and mechanisms that have not, so far, been properly addressed in spite of forming part of the dissemination process. Most of the still scarce literature on the translation concept bases its argumentation on a constructivist understanding that emphasizes aspects such as interactivity, intersubjectivity, and contingency. In so doing, this literature tries to go beyond understanding the complex process of dissemination merely as a phenomenon of "donating," "receiving," or "arbitrarily utilizing" policy ideas, norms, and laws. It speaks of the importance of *context* in trying to understand the manner in which ideas travel and in which they become modified, particularly when it comes to the manner in which their journey is connected to, and shaped by, wider political struggles.

What is *policy translation*, and what is it good for? What contribution can the concept of "translation" make to explaining the emergence of policy ideas and their travel across borders? Most importantly, how effective can it be in analyzing

actual cases of policy dissemination? The chapters of this book will deal with these questions both on a general, theoretical level and within the context of policies and laws that have traveled in actual fact, namely between South Korea and Germany. South Korea is widely considered a typical example of a reforming country “receiving” policies and ideas from “more advanced” countries. It thus promises to be an especially interesting case for testing the applicability of the translation approach.

This book is based on contributions to a conference titled *Lost or Found in Policy Translation?*, which was held in Berlin from March 29 to 31, 2012 under the auspices of the Institute of Korean Studies at Freie Universität Berlin. The conference formed part of a research project called “Circulation of Knowledge and the Dynamics of Transformation: Korea and Beyond,” a project jointly conducted by the Institute of Korean Studies at Freie Universität Berlin and the Institute of Korean Studies at Ruhr-University Bochum, with funding provided by the Academy of Korean Studies (AKS)¹. The project is led by professors Dr. Eun-Jeung Lee (Berlin), Dr. Marion Eggert, and Dr. Jörg Plassen (both Bochum).

The conference aimed to analyze the phenomenon of various actors in various contexts and settings adopting different interpretations of one and the same idea, with a particular focus on examining the degree to which the concept of “translation” could prove useful to such analysis. The first chapter of this publication sheds light on existing conceptions of policy translation, on their implications, potentials, and limits, while the second chapter examines the dynamics of the Korean social welfare system through the analytical lens of “translation.” The third and final chapter of this book focuses on the dissemination and implementation of legal ideas, policies, and norms as a form of “translation.”

I

Eun-Jeung Lee's contribution opens the book's discussion by dealing with the introductory, yet fundamental, topic of “Transfer of Knowledge as a Matter of Translation” in the context of unification policies in Germany and Korea. Discussing the exchange of knowledge and ideas on German unification between Korean and German politicians, scientists, and (other) policy actors, Lee challenges the notion that the difference in the situations of the two countries stands in the way of mutual cross-fertilization between Korea and Germany. More specifically, she sets out to examine whether it is “really true that there is no such

1 AKS Overseas Leading University Program for Korean Studies, AKS-2009-MA-1001.

thing as a successful transfer of policy between two countries with different traditions, institutions, and cultures.”

Having introduced some historic cases of successful intercultural transfer of knowledge and policies, Lee discusses the existing academic discourses on policy transfer. She then looks into the concept of “policy translation,” characterizing the act of translating a policy as a process consisting of four steps: problematization, selection, reduction, and mobilization. In her conclusion, Lee states that once policy transfer is interpreted not as a simple act of transfer, but rather is seen from the point of view of cultural translation, intercultural policy transfer becomes a real possibility, which, in the case of Korea, opens up the prospect of drawing on the German experience of unification in a meaningful manner.

II

Paul Stubbs’ contribution “Translating Welfare Assemblages in the ‘New’ Eastern Europe: Re-domaining the Social?” adapts the notion of “assemblage” so as to enrich the concept of translation in the literature on policy decision making. Referring to authors of various strands, Stubbs submits that the concept of “assemblage” is homologous to that of “translation,” thereby deepening the notion to include meanings such as “complex becoming and multiple determinations [...] sensitive to time and temporality in the emergence and mutation of phenomena that should never be reified as final or stable states.” He attempts to develop a vocabulary, epistemology, and methodology that emphasizes “the interactions, the complexity, and the liminality of encounters between actors, sites, scales and contexts.” According to him, the concepts of “policy translation” and “assemblages” capture well the ways in which policy meanings are being constantly transformed, translated, distorted, and modified.

Stubbs proceeds in three steps: first, he builds on Kingfisher’s ideas, whilst questioning whether the ideas of “horizontal” and “vertical” movements can be rescued from their underlying objectivist ontology, and discusses in broad terms the usage of this framework in social policy and social welfare; second, he discusses aspects of the social dimension of the “great transformation” in Central, Eastern, and Southeastern Europe, revisiting some of his own, and others’, contributions; and lastly, he makes some general remarks regarding future research agendas and enters into a tentative discussion on how to build “an ethics of translation” into social and development policy interventions.

In his contribution “The Making of the Welfare State in Korea: Policy Discourses and Strategies,” *Yun Tae Kim* deals with the competing discourses and strategies

that have influenced the development of welfare systems and the expansion of welfare expenditure in South Korea. He argues that social policy in Korea has developed the unique characteristics of the welfare state, and that it has been transformed into a more comprehensive welfare state since the late 1990s. Kim then goes on to evaluate the institutional consequences of welfare reform in Korea and analyzes the underlying nature of welfare state transformation in relation to Western experiences. Finally, he considers Korea's future prospects of sustaining its developmental social policy goals and of providing all its citizens with social security.

Kim's overall assessment of the situation in South Korea is that, while European countries have moved closer to the East Asian productivist tradition of social spending, there is, in fact, pressure in East Asia to expand social spending in a manner reminiscent of directions previously taken in Europe. According to him, recent developments in South Korean welfare institutions have raised issues with a view to equality and social justice. A considerable proportion of the workforce presently find themselves in unstable, non-standard employment, and a high proportion of unemployed people and pensioners remain uncovered by national pension systems. It should be noted that social spending is relatively low and directed in ways that have little impact on poverty among older people or people of working age. The problems involved in addressing inequality suggest that social investment strategies need to be set in a context where there are benefits to support the poor of working age, the elderly, and disabled people.

In a contribution titled "Micro-Policy Translation and Policy Entrepreneurship in the Transformation of Korean Welfare Capitalism," *Myung Joon Park* attempts to apply the analytical concept of "translation" to decision-making processes in South Korean welfare policy. To this end, he has carried out an empirical analysis of the emergence of the Employment Insurance System (EIS), a social insurance program established in the wake of democratization designed to guarantee the livelihoods of workers in times of unemployment. As the first comprehensive mechanism to protect workers against unemployment, its establishment had epoch-making implications for the institutions of Korean welfare capitalism. Park analyzes the discursive contests over the creation of the EIS in what can be understood as an act of macro-policy interpretation. Analyzing the process of emergence of the EIS from the perspective of policy translation, his study focuses on the role of policy experts, i.e., those who were exposed to the experiences of other advanced countries and who accordingly developed an alternative concept for reform. According to Park, the activities of these policy experts can be understood as a form of policy entrepreneurship. In other words, the experts' role as policy translators in establishing the EIS contained elements of the kind of role typically played by policy entrepreneurs.

For his study, Park conducted intensive interviews with three experts in the field of labor markets, including a policy entrepreneur who had played a critical role in creating the EIS. In so doing, Park intended to demonstrate not only that the entrepreneurship of policy experts was crucial in creating the EIS, but also that it formed part of a more comprehensive act of policy translation. In addition, Park explores the utility of the translation approach for analyzing Korean welfare capitalism as part of a new democracy in East Asia. He concludes by finding that the EIS could not have been established without the special efforts and acts of policy translation undertaken by a number of policy entrepreneurs. Among other things, these entrepreneurs creatively changed the name of the program, set up a unit for research and discussion, persuaded opponents to join the program by utilizing their networks, and drew up their concept for reform only after having gathered and analyzed an exhaustive amount of information on the systems of other advanced countries.

III

In “The Transplantation of the German Constitutional Provision on Political Parties in South Korea,” *Seog-Yun Song* analyzes the adoption of the Korean constitutional provision on political parties in the year 1962 as a way of exemplifying the kind of role that the transplantation of Western constitutional provisions played in the modernization of developing countries. In doing so, Song does not content himself with merely comparing and contrasting the respective provisions in the Korean and German constitutions, but takes a closer look at the methods of comparative legal research, in particular at the notion of “legal transplantation.” His approach therefore reflects the necessity to recognize the fact that law is not independent from social development, and that, accordingly, “law in action” should not be overlooked when scrutinizing the phenomenon that is the dissemination of legal ideas and norms.

In analyzing the differences between the German and Korean laws on political parties, Song points to the rather striking differences in the historical circumstances prevailing at the time of their respective creation, namely at the end of the 1940s in the case of Germany, and at the beginning of the 1960s in the case of Korea. While Germany had lost a war and subsequently put behind it years of cruel dictatorship, Korea had experienced liberation from Japanese colonial rule, followed by the Korean War, and had then turned towards dictatorship. To Song, the basic tenet of German post-war democracy was that democracy could never be value-neutral since the parties of both the extreme left and the extreme right had to be kept under equal control. His analysis of the relevant debates in

the German parliament reveals that this rationale served to balance the constitutionally guaranteed freedom of political parties with their constitutional responsibilities. In Korea, on the other hand, the constitution of 1962 proclaimed party monopoly in parliamentary and presidential elections, and the Political Parties Act of the same year laid down very rigid requirements for the registration of political parties as a way of “modernizing” politics. In other words, the political realities and needs of Germany at the end of the 1940s were rather different from those prevailing in Korea at the beginning of the 1960s. Even so, Korean legislators made explicit reference to German law in their drafting of the Korean provisions on political parties.

Based on his analysis, Song concludes that, on the whole, the transplantation of the German constitutional provision on political parties into the Korean context in the name of “political modernization” did not help to build a democratic party system. In fact, he submits, one can hardly deny that individual elements of the imported provisions and theories were overemphasized in a manner apt to legitimize the authoritarian party system. Against this background, Song argues that the danger of such rather crude transplantation could be reduced through a constitutional design in line with socio-legal constitutional thought.

Concluding this book, *Hannes B. Mosler’s* contribution “Legal Translations ‘Made In Korea’” applies the analytical concept of “translation” to the generation and alteration of legal ideas and norms in Korea. Mosler takes the Korean constitution and its provision on political parties, together with other Korean laws related to political parties, to be the most prominent examples in this respect. Having discussed, both in theoretical and empirical terms, the metaphor of the “transplantation of laws” as widely used in legal scholarship, he goes on to contrast “transplantation” with “translation” as a heuristic device for explaining the circulation of legal ideas and norms. More specifically, Mosler reduces the metaphorical concept of “translation” to an operational method for empirical analysis, demonstrating the advantages of the “translation” metaphor and the method derived from it by applying the latter to a number of representative cases.

Mosler maintains that a conceptual shift from the notion of transplantation to that of translation has the potential to further invigorate the already growing literature on policy translation. While he also argues for the usefulness of metaphors such as “legal transplant,” “legal irritant,” or “legal transformation,” he claims that the translation metaphor is conducive to an epistemologically informed appraisal of the phenomena associated with the circulation of legal ideas that offers greater reach and depth than the more established metaphors. Mosler concludes by submitting that Korean policy and law have, translated or not, always been “Made in Korea,” and that the translation metaphor as an analytical

tool is capable of providing valuable clues to identifying, and ultimately meeting, the challenges ahead in making policy and laws in Korea.

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