

Dynamics Among Domestic Institutions in the Development of Korean Foreign Worker Policies

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The purpose of this study is to investigate the dynamics among various actors in the policy-making process of foreign worker policies(FWPs) in Korea. Interests of employers, non-governmental organizations, politicians strongly supported the development of foreign worker policies in Korea. The puzzle of this study arises from the relationship between economic recession and foreign worker policies. Though during or after an economic recession states tend to close doors to foreign workers, the number of foreign workers in Korea increased by and large despite the financial crisis of 1997. Unlike other countries who had experienced restrictive foreign worker policies with the economic recessions, the Korean government took rather expansionist policies. This study asks what factors caused this anomaly, what kinds of actors worked and in what processes they have taken. Taking both historical institutionalism and constructivism, it argues that employers(small- and medium-sized industries), human rights Non-governmental organizations(NGOs), political leaders and government officials have strongly supported the adoption of foreign worker policies, especially Employment Permit System(EPS). The convergence of their new interests and identities in accordance with the changing global trend was the strong driving force in the development of foreign worker policies. Though they have different backgrounds and reasons, they were identically in favor of accepting the foreign worker policies. This study reveals how their interests were different from and similar to each other and what kind of dynamics among those actors accelerated evolution of Korean foreign worker policies.

Key words _ Korean foreign worker policies, Constructivism, Immigration, Industrial Technical Training Program, Employment Permit System

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한국 외국인 노동자 정책의 발전 과정 연구: 국내 행위자 간의 협력과 대립 구조를 중심으로

고 근* **

본 연구는 한국 외국인 노동자 정책의 발전 과정을 국내 행위자 간의 협력과 대립의 구조를 중심으로 분석하고 있다. 이는 한국 외국인 노동자 정책의 형성 및 발전 과정에서 영향을 미친 요인들을 밝혀보고자 하는 목적에서 시작한다. 1990년대 이후 국내 노동시장의 수요 증가로 인해 한국으로 유입된 외국인 노동자의 수가 급격히 증가함과 동시에, 외국인 노동자에 대한 정책이 새롭게 사회적 이슈로 대두되기 시작하였다. 1990년대 초 도입된 산업기술연수생 제도에서 2000년대 고용허가제 도입까지의 일련의 외국인 노동자 정책의 발전 과정 속에서 여러 국내 행위자들의 이해가 상충하기도 하고 수렴하기도 하면서 제도 및 정책의 형성에 큰 영향을 끼쳤다. 본 연구는 이와 같이 산업기술연수생 제도에서 고용허가제로의 변화 과정에서 주요 정책의 입안 및 도입과 얽혀있는 각각의 중요한 시기마다 주요 행위자들의 이해관계 및 정체성이 어떻게 변화하고 정책에 반영되는지를 역사적 제도주의와 구성주의적 측면에서 설명하고자 하였다. 관련 정부 부처, 시민단체 및 비정부기구, 중소기업 관련 단체 등과 정당의 정치인들은 그들 자신의 이해관계 및 정체성에 따라서 외국인 노동자의 성격의 변화에 제각기 다른 주장을 가져왔다. 예를 들어, 중소기업과 인권 관련 비정부기구 및 시민단체, 그리고 노동부 등의 정부 부처와 정치인들은 외국인 노동자 제도의 도입을 찬성하는 입장이었으나, 산업기술연수생 제도를 유지할 것인지, 고용허가제를 도입할 것인지에 대한 의견은 달랐다. 또한, 외국인의 출입국을 담당하는 정부 부처인 법무부와 당시 통상산업부 등 역시 외국인 노동자 정책에 대해 각기 다른 입장을 가진 상태였는데, 이는 행위자 자신의 정체성과 이해관계의 영향과 동시에 기존의 시스템과 제도에 기인한 것으로 볼 수 있다.

주제어 _ 외국인 노동자 정책, 역사적 제도주의, 구성주의, 산업기술연수생 제도, 고용허가제

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I . Introduction

In the Republic of Korea, foreign workers were not introduced as ‘workers’, but as ‘industrial trainees’ in the 1980s and the 1990s. Trainees could not enjoy the rights of workers though their duties were those of workers. The Korean government and the Korea Federation of Small and Medium Business (KFSB) took advantage of the ‘industrial trainees’ labor force while not extending them rights in the interest of cheap labor. However, with the intervention of various actors and factors, Korean society has recognized these people as “foreign workers.”

The development of foreign worker policies in Korea has not been easy. For instance, before the Employment Permit System (EPS) was finally signed in 2003, the Ministry of Labor tried to implement it but failed for around 8 years. This shows that there had been lots of conflict among policymakers and interest groups. Without the efforts of politicians, government officials, and civic organizations, it would not have been possible to abolish the problematic industrial trainee program and adopt the new EPS.

By reviewing three different Korea foreign worker policies including the last EPS, this study hopes to elucidate the dynamics among various agents in Korean political and social institutions and the key factors that at last enabled the enactment of the EPS in 2003. This work attempts to offer new insights into state-society relations and the possibilities of policy innovation in foreign worker policies. Taking a historical-institutionalist analysis of the history of Korean immigration politics, this study puts emphasis on the interactions of governing institutions, social forces, and immigration. It also wants to reveal the broad patterns and transformations of Korean immigration policy over time, which have been shaped considerably by processes of national political development. In addition, by understanding the importance of agents and their ideas and interests, this study hopes to explain the factors that brought about critical changes in Korean foreign worker policies stage by stage. To accomplish these goals, this research project examines the politics and policymaking processes regarding foreign worker policies among various actors, including the Korean governing institutions, employers’ organizations, professional experts (elites), and civic groups.

II. Theoretical framework: Taking Both Historical Institutionalism and Constructivism Seriously

Globalization has broadened the range of national interest and blurred the lines between domestic interests and international interests. International trade, global security, international migration, and foreign worker issues are all strongly related to national interest. International migration is one of the most important dynamics of globalization, though it existed long before the current globalization. Despite its long history, it has only recently been paid attention to in the field of political science and international relations, since it was dealt with more widely in the fields of sociology, geography, anthropology, history, and economics earlier.

From the perspective of political science, two types of theory offer predictions for the changes in Korean foreign worker policy. One looks to social pressures as an explanation for policy and the other looks to international influences. Of the two, the former dominates the study of Korean foreign worker policy. The extensive analysis of foreign worker policy from the sociological perspective was conducted by Seol (1996; 1997; 2000). His studies focus on the structural backgrounds of international labor migration to Korea, the migratory processes of foreign workers, and their adaptation to Korean society. Some scholars focus more on particular agents (Moon 2002; Seol and Yi 2006). Agents, such as civic organizations, are regarded as influential actors in the development of foreign workers' human rights and, hence, the development of Korean foreign worker policies.

The alternative approach used by other scholars considers the movement of foreign workers as an international issue and looks to international structure as the determinant of state interest (Kim 2004). It argues that border-crossing of foreign workers shows the division between core and periphery among states, and mostly foreign workers move from developing countries to developed countries. With a rising economic gap between developing countries and developed countries, more and more people are crossing borders to find better lives.

This study argues that neither of these approaches captures the dynamic in the development of foreign worker policy in Korea. Both approaches envision the government as a conduit translating either group pressure or international demands into state policy. Neither approach looks at the institutional arrangements

through which domestic demands and international constraints are filtered. In this article, state structure is used to explain policy. State structures are historically influenced and they reflect the biases of decision-makers present at their creation. What is critical in decisions concerning foreign worker policy is the evaluation of the state that is heavily influenced by social actors. What the law designates as a legitimate claim for the development of foreign worker policy has varied systematically over time. This study explains the origins and scope of the types of legitimate claims for the development or revision of foreign worker policy in Korea (see Goldstein 1988: 180). It wants to take a look at the mid-range domestic structure or the dynamics among domestic institutions and agents, not just solely focusing on agents or international structure.

In other words, this account wants to understand change and continuity in foreign worker policies by applying the useful tools of historical institutionalism (HI). The historical institutionalism approach is distinguished from other social science approaches by its attention to real world empirical questions, its historical orientation, and its attention to the ways in which institutions structure and shape political behavior and outcomes (Steinmo 2008: 150). For historical institutionalist scholars, social science was growing within a broader political and historical context (Steinmo 2008: 153). This approach takes history and politics as dynamic processes that are constantly evolving.

In addition to the importance of history, the roles and the importance of institutions should be considered. Historical-institutional analysis focuses on the interplay of dynamic governing institutions, policy alliances, expertise, and international crises to illuminate broad patterns and transformations of immigration policy over time (Tichenor 2002: 18). As Ikenberry argues, institutional setting is the outcome of a confluence of historical forces that shape and reshape the state's organizational structure (Ikenberry 1988). From this point of view, he also maintains that it is important "to uncover the historical dynamics" that construct the "organizational structures of state and society" and that influence societal and governmental actors within institutions and structures. The assumption behind this approach is that the relative importance of specific variables is time-bound and theories regarding foreign worker policy must therefore be placed within a larger historical and institutional framework (Ikenberry 1988: 222-223).

Historical institutionalism conceives of public policymaking and political change as discrete processes, characterized by extended time periods of considerable stability - referred to as "path-dependency" - interrupted by turbulent, "formative moments" (Peters, Pierre and King 2005: 1276). In this approach, Thelen (1999: 384) argues, "path dependency involves elements of both continuity and (structured)

change, and institutions are perceived in relational terms” (Immergut 1992; Katznelson 1997: 104). Hence, institutional arrangements cannot be separated from the political and social setting around them (Thelen 1999: 384). So, Thelen and Steinmo (1992) argue that institutional analysis allows scholars to examine the relationship between political actors as objects and as agents of history. It means that not only can institutions shape and constrain political strategies in important ways but also that they are the outcomes of deliberate political strategies of political conflict and of choice (Thelen and Steinmo 1992: 10). Based on these strengths of historical institutionalism, this study will try to reveal the complex policymaking processes and factors regarding Korean temporary foreign worker policies.

However, one of the criticisms given to historical institutionalism is that it emphasizes the determinism of institutions so much that it is not easy to explain how institutions change. Due to these problems, it views agents as highly constrained by their institutional environments. To overcome issues of path-dependency and the resultant emphasis on exogenous shocks to explain change, some scholars argue that this dilemma can be addressed by “introducing an agency-centered approach that investigates how agents within institutions might use rules or institutional resources to help effect change and offset the potential costs of moving off the path” (Harty 2005: 65; Bell 2011: 896). That is why this study wants to take not only historical institutionalism but also constructivism seriously.

The tendency to see agents as deeply embedded or constrained by institutional environments does not help us to see the broader and more comprehensive picture of foreign worker policymaking. What should be added are a “role for agency” and some kind of plausible analysis for the “interplay between agency and institutional contexts” (Bell 2011: 885). Constructivists contend that agents do not exist independently of the constraining and enabling power of structures whilst structures “do not exist independently of the knowledgeable practices of social agents” (Price and Reus-Smit 1998: 266-7). By “putting agency back into institutional change” (Schmidt 2008: 316) and emphasizing “strategic actors” (Hay 2006: 603), scholars hope to provide a better alternative (Bell 2011: 887). Agents and environments mutually interact and shape each other (Bell 2011: 892). Within institutional settings, agents have preferences, interpretations, and discretion and these can change institutions. The behavior of agents can reproduce or transform institutions. And, in the formation process of preferences and discretion of agents prior to their behavior, ideas matter.

The ideational and inter-subjective discursive perceptions allow agents to construct their realities and fields of action (Bell 2011: 886). Ideas give substance to interests and determine the form and content of new institutions (Blyth 2002: 15), since the meaning and construction of contextual structures is dependent

on ideas and agents' interpretations.

Hence, agents, institutions, structures, and ideas are all mutually constitutive to each other in a dialectic manner (Marsh 2009: 679-96; Bell 2011: 891). Institutional structures alone are an insufficient explanation for Korean foreign worker policies. Also critical is the belief system of those individuals who make and enforce laws. There is a vast and growing literature on the role of ideas, cognitions, values, norms, and ideologies in the political process. In this account, ideas refer to shared outlooks (Goldstein 1988: 182). It emphasizes the political influence of the content of an idea. Ideas are important in the explanation of foreign worker policy in two ways. First, they are critical independent variables that explain why different laws and policies arise in different historical periods. Second, the ideas, interests, or beliefs of those who make and administer the laws affect outcomes. Ideas and institutions are always operative and are isomorphic with state needs (Goldstein 1988: 186).

The purpose, here, is to show the value of studying the institutional, agent-centered, and cognitive bases for Korean foreign worker policy. Neither the economic needs of foreign workers nor the rise of interest group activity fully explain the pattern of foreign worker policies in Korea. This approach offers an alternative method for understanding Korean foreign worker policies by combining historical institutionalism and constructivism. This study does not deny the validity of either of these approaches. Rather, they alone are insufficient in their explanation of Korean foreign worker policies. This study looks to a dominant role for ideas, as embedded in institutional design and laws and the change of interests of central decision-makers as an additional explanation for policy (Goldstein 1988: 214).

III. Case Study: Three Stages in the Development of Korean Foreign Worker Policies

State and social actors interact in a number of different "games" concerning foreign worker policies. These games vary in their rules, and they also vary according to the interests of various actors. Based on this variation, actors decide to receive one type of foreign worker policy rather than another. This variation encourages actors to pursue particular strategies (Goldstein 1988: 186). The development of Korean foreign worker policies is also based on this kind of calculation and the strategies of various actors and institutions.

From the 1980s up until the late 2000s, there have been various foreign worker policies in Korea. They are largely categorized into three stages: 1) Industrial Technical Trainee Program, 2) Post-training Employment Program, and 3) Employment Permit System.

1. Stage 1 (the 1980s – the early 1990s)

The reason why Korea created a restrictive foreign worker policy at the early stage was due to in the high degree of bureaucratic isolation within the context of a developmental state and the dominating role of the most conservative governmental branches, such as the Ministry of Justice (MOJ) and the Ministry of Trade and Industry (MTI), in the Korean government. Further, without any political coalitions between the bureaucrats and social actors such as pro-migrant NGOs, it was almost impossible to expect any changes in foreign worker policy.

In Korea, the Ministry of Trade and Industry (MTI), the Ministry of Justice (MOJ), and the Ministry of Labor (MOL) dominated the process for foreign worker policymaking. While the Ministry of Trade and Industry approached the problem of foreign workers in order to provide cheap labor to some industrial sectors that suffered chronic labor shortages, the Ministry of Labor treated it as a labor relations issue that definitely belonged to the MOL. The MOJ also argued that the problems of foreign workers had to be dealt with as one of the issues regarding immigration control, which was under the jurisdiction of the MOJ (Lee 2010: 170).

In the early debate over foreign worker policy, the MTI took the initiative in launching the Industrial Technical Trainee Program (ITTP) and in revising ITTP into the Post-training Employment Program. They further opposed the change into the Employment Permit System, claiming that it would put a greater financial burden on small and medium-sized industries. Other economic ministries including the Ministry of Finance and Economy Plans(MFEP) took the side of the MTI with the rationale that the ITTP would reduce labor costs for companies and it would be beneficial for the sake of national interests. The MOJ also opposed the new system from a perspective of immigration control and social order. It assumed that the introduction of the EPS would result in preventing Korea from preserving social order due to the massive flow of foreign workers, their overstaying, and an increase of crimes committed by foreigners.

The MOL has opposed the position of MOJ and the MTI since 1993. It was more “sensitive to Korea’s international image since it had been tasked with monitoring human rights violations” (Cornelius et al.

2004: 499). It also supported the front-door policy toward foreign workers while the MOJ had been against the EPS and attempted to maintain the ITTP with Korean Federation of Small Business (KFSB). As Seol and Skrentny mention, “According to Choi Tai-Ho, Deputy Director of the Employment Policy Division in the MOL, the MOL holds the position that migrant workers should have legal worker status for a specified period, and also that an objective assessment is needed to determine the overall number of migrant workers needed in the labor market..... The Justice Ministry and KFSB, on the other hand, feel that the current trainee system should be maintained” (Seol and Skrentny 2004: 499).

〈Table 1〉 Important Actors and Their Positions about the ITTP

<p>Important Actors:</p> <ul style="list-style-type: none"> – Government: Ministry of Labor (MOL), Ministry of Justice (MOJ), Ministry of Trade and Industry (MTI) – The legislature – Interest groups: association of small and medium-sized industries, labor unions, media, civil organizations, scholars
<hr/> <p>Positions of Actors about adopting ITTP:</p> <ul style="list-style-type: none"> – Pro: MTI (and Ministry of Finance and Economy Plans), MOJ, KFSB, media, – Against: MOL, labor unions, civic organizations – Passive: the legislature, scholars <hr/>

1) The Industrial Skill Trainee Program for Overseas-invested Firms (1991)

From the late 1980s when the 3D (dirty, dangerous, and difficulty) industries, including the small and medium-sized manufacturing and construction businesses, began to suffer a shortage of low-skilled manpower, the Korean government introduced the Industrial Skill Trainee Program for overseas-invested enterprises in November 1991, under which these firms could import foreign trainees through their overseas subsidiaries and use their labor. The industrial skill trainees were to be given, in principle, a six-month residence permit for training in Korea, but the period could be extended for another six months (Yoo and Lee 2002).

2) The Industrial Trainee Program (1993) / the Industrial Technical Trainee Program (ITTP)

While the main beneficiaries of the Industrial Skill Trainee Program were large overseas-invested enterprises, the small and medium-sized businesses still could not find a legitimate means of using foreign labor. Therefore, the Korean government introduced the Industrial Trainee Program for foreigners in November 1993 to help small businesses solve their problem of manpower shortages. The Industrial

Trainee Program is a system under which foreigners are introduced as trainees for small and medium-sized manufacturing firms with 300 or less employees for a period of one year, and where necessary, the training period may be extended for another year. A total of 20,000 industrial trainees were introduced for the initial year of the Program for small and medium-sized manufacturing businesses. However, the number increased steadily because the manpower shortages in the small and medium enterprises were so serious that the Program beneficiaries had to be extended to include the coastal fisheries in 1996 and the construction industry in 1997. Thus, the Program became the core of Korea's foreign labor policy until 2003 (Yoo and Lee 2002).

Legally, foreign industrial trainees were treated as trainees, not as workers, in the initial stages, so that they were not protected by the labor-related laws. From March 1, 1995, however, they came to be covered by the Industrial Accident Compensation Insurance and the National Health Insurance and were protected by some provisions of the Labor Standards Act, such as the provisions concerning the prohibition of forced labor and the prohibition of violence. Industrial trainees were also protected by the Minimum Wage Act starting on July 1, 1995 (Yoo and Lee 2002).

However, as side effects, the ITTP generated a great amount of human rights violations for foreign workers. It ended up a failure, as the program became a site for generating undocumented foreign workers, thus exposing more foreign workers to human rights violations. A significant number of trainees escaped from their designated worksites to become undocumented foreign workers whose wages were much higher than industrial trainees and almost close to native labor market prices (Lee 2010: 196-197). This policy clearly shows the discrepancies between the goal and the reality of the ITTP. Moreover, more and more corruption and crimes around the trainee selection process had occurred.

2. Stage 2 (the early 1990s – 2000)

In order to fix the problems of the ITTP, the ruling New Korea Party and the opposition party, National Congress for New Politics, submitted a bill calling for the Employment Permit System (EPS) to the National Assembly in 1997. It was intended to reduce human rights abuse and the labor exploitation of foreign workers. The MOL and the pro-foreign worker civic organizations, such as Joint Committee for Migrant Workers in Korea(JCMK), supported the bill to protect foreign workers' rights and to end discrimination against them.

Interestingly, however, the MOL and pro-foreign workers civic organizations needed each other for different reasons. Since the MOL did not have a powerful influence over the new EPS policy and it faced critical opponents within the government including the MOJ and other economic branches, the MOL sought to find its coalition partner in civil society in order to achieve its policy goal. Civic organizations tried to find a channel to pressure the government directly through the MOL.

However, it was not simply about just being in favor of or against the foreign worker policy itself. More complicated and sophisticated interests and ideas were involved in deciding whether to adopt new EPS or not. All actors seemed to accept the need of foreign workers in Korean society and agree that the current ITTP had a lot of problems that had to be resolved. However, not all of them agreed to adopt EPS. To some, it seemed too early to adopt EPS. Instead of adopting EPS, they decided to revise the current system. It clearly shows how the power and the interests of KFSB was still influential. Besides, more various discourses on foreign worker policy had appeared.

〈Table 2〉 Important Actors and Their Positions about the EPS

<p>Important Actors:</p> <ul style="list-style-type: none"> – Government: Ministry of Labor (MOL), Ministry of Justice (MOJ), Ministry of Trade and Industry, Small and Medium Business Administration (SMBA) – The legislature – Interest groups: KFSB, KEF, labor unions, media, civil organizations (human rights and religious groups), scholars
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<p>Positions of Actors about adopting EPS:</p> <ul style="list-style-type: none"> – Pro: MOL, KCTU, civil organizations (human rights and religious groups), FKTU – Against: SMBA, KFSB, KEF, MOJ – Third position (supporting revising the current ITTP rather than adopting new EPS): MTI

The policy divergence over foreign worker policies was critical in terms of intra-governmental competition in Korea. In the Korean government, the key ministries in the immigration or foreign worker policymaking regime are the MOL and MOJ. Whereas the MOJ represented the interests of business and controlling the border on the conservative side, the MOL opposed the stance of MOJ. More interestingly, the MOL was the only ministry that supported the EPS whereas all other related ministries and agencies in the government represented the interests of small and medium industries. In terms of this imbalance of power among ministries, the Korean civic groups held a more favorable position in which to engage in foreign worker policy debates. This cleavage within the government opened political opportunity structures

to Korean civic groups (Lee 2010: 30).

The cleavage between the MOJ and the MOL took place in the context of the Korean government's attempts to find a balance between economic interest and human rights concerns. Along with the increase in the number of foreign workers, human rights violations had become widespread. Due to this, the emerging politics of immigration and foreign worker policies has largely been marked by splits between an economic interests coalition and a human/labor rights coalition (Lee 2010: 195). The economic interests coalition consisted of the KFSB, the Ministry of Commerce, Industry, and Energy, the Ministry of Justice, and the Small and Medium Business Administration, while the human/labor rights coalition was made up of the Ministry of Labor, the National Human Rights Commission, labor unions, and religious and civil society organizations, such as the Joint Committee for Migrant Workers in Korea (JCMK).

The policy core of the economic interests coalition was to guarantee corporations' interests. Hence, their main goal was to maintain the current trainee program. At the discourse level, they argued that the EPS would not only increase financial burden (wages would increase by 20-30 percent) but also reduce flexibility of employment. In addition, they claimed that the EPS would cause an unstable relationship with foreign workers and encourage the permanent settlement of foreign workers in Korea, which would bring about social problems and increase social welfare costs. They also asserted that foreign workers would gradually penetrate labor markets for domestic workers.

The human/labor rights coalition established their policy core as guaranteeing human and labor rights for foreign workers. They contended that the current trainee system keeps violating human rights and is generating undocumented foreign workers. They were concerned that these problems would lead to damaging Korea's image internationally (Lee 2010: 196).

1) The Post-training Employment Program (2000)

Many industrial trainees, however, left from their workplaces, as they did not enjoy full legal protection under labor-related laws due to their status as "trainees," not as "workers," even though they were actually offering labor. Moreover, the limited number of trainees introduced under this program could not meet the demand for foreign workers of the manpower-hungry small and medium businesses. To rectify this

situation, the Post-training Employment Program was introduced in April 2000. Under this program, an industrial trainee who worked at a firm for two years without interruption should be qualified to reside and work in Korea for another year in his capacity as a “worker,” not as a “trainee.” In 2002, the training period of two years was shortened to one year, while the post-training working period was extended from one year to two years.

3. Stage 3 (the early 2000s)

One of the reasons for success in enacting the EPS was that the political coalition in support the EPS on the basis of human rights was much wider than before (Lee 2010: 198). For instance, in September 2002, “a consortium of 166 advocacy organizations formed the Common Committee for Opposing Crackdown on Migrant Workers, Abolition of Trainee System and Securing Migrants’ Rights (COCATS)” (Kim 2005: 401). In addition, the two largest federations of labor unions in Korea, the Korean Confederation of Trade Unions (KCTU) and the Federation of Korean Trade Unions (FKTU), sponsored a mass meeting in June 2003 urging the government to implement the Work Permit System though their roles were quite symbolic (Kim 2005: 405; Lee 2010: 198-199).

With the support of civil society, the MOL actively attempted to pass the EPS under the new administration. The MOL reported to the presidential transitional team in 2003 that it would introduce the EPS starting in 2004 (Lee and Park 2005; Lee 2010: 199). Although the efforts to pass the EPS had been blocked by the strong opposition of the economic interests coalition since 1996, the new administration accepted the bill of the MOL. Former President Roh, Mu-Hyun pledged to enact the EPS during his presidential campaign. He stated, “As responsibility and rights are inseparable, the nation, by joining the ranks of advanced countries and the UN human rights conventions, should hold up labor policies meeting international norms and standards not only in name, but in reality.” In support of the Roh administration’s initiative, the National Human Rights Commission (NHRC) critically helped the government’s attempt to abolish the ITTP and to introduce the EPS to protect human rights of foreign workers (Lee 2010: 198). Here, one more important actor that supported the EPS was the National Human Rights Commission (NHRC), established in 2001 as the Former President, Kim, Dae-Jung, was interested in institutionalizing human rights issues. Lee, Jae-Jung, the ruling party’s assemblyman, submitted the bill on behalf of the MOL to the National Assembly on February 19, 2003 and finally it passed on July 31, 2003 (Lee 2010: 199).

〈Table 3〉 Important Actors and Their Positions about the EPS in Stage 3

<p>Important Actors:</p> <ul style="list-style-type: none"> - Government: Ministry of Labor, Ministry of Justice, Ministry of Trade and Industry, Small and Medium Business Administration (SMBA) - The legislature(politicians) - Political parties - Interest groups: KFSB, KEF, labor unions, media, civil organizations (human rights and religious groups), scholars
<p>Positions of Actors about adopting EPS:</p> <ul style="list-style-type: none"> - Pro: MOL, MOU, KCTU, civic organizations (human rights and religious groups), KFTU, politicians, political parties - Against: SMBA, KFSB, KEF, MTI

1) Employment Permit System (2004)

Korean foreign labor policies had so far experienced a series of revisions and changes, but none of them provided a decisive solution to foreign worker problems. For example, the Industrial Trainee Program, the backbone of the low-skilled foreign labor policy, had been criticized for employing foreign workers under the guise of trainees, thus failing to provide adequate protection for their human and labor rights. Because of these defects, the Program could not increase the number of trainees in spite of the sharp rise in demand for foreign workers, ultimately resulting in an increased number of undocumented workers. While the government depended on temporary measures, the number of undocumented foreign workers reached almost 80% of the total migrants at the end of 2002, creating a serious social problem. Under these circumstances, the country needed a new solution to ease the labor shortages of business firms and solve the undocumented foreign worker problem.

The Korean government had been trying to convert the Industrial Trainee Program into the EPS since 1995, but failed to do so because of the opposition of business circles and economic interest coalition. However, a public consensus had grown that it is inevitable that the Korean government would need to implement the EPS for foreign workers in order to alleviate manpower shortages, to cope with the problem of rapidly increasing undocumented migrants, and to protect the human rights of foreign workers. As a result, the “Act Concerning the Employment Permit for Migrant Workers” was enacted in 2003 to institute the Employment Permit System for foreign workers. Even after the EPS was introduced, the existing Industrial Trainee Program remained for a while. The Industrial Trainee Program was being maintained not only out of consideration for the difficult position of the small and medium-sized businesses that actually

benefited from the Program, but also because it was not practically possible to apply the EPS to these smaller businesses instantly.

Under the EPS, anyone who wishes to employ a foreign worker needs to obtain a permit from the Minister of Labor if he is unable to find a Korean worker. The period of an employment contract for a migrant worker shall, in principle, be one year, but may be extended to a maximum of three years. These workers come to Korea through government-to-government agreements. The government has signed Memorandums of Understanding (MOUs) with the governments of eight countries, including the Philippines, Sri Lanka, Vietnam, Thailand, and Indonesia. After the maximum three-year employment period, foreign workers have to leave South Korea and stay outside the country for a one-year period before they are allowed to return for another three-year period. Family members of foreign workers are not allowed to enter, a restriction purposely designed to dissuade foreign workers from permanently settling in Korea. When the employment permit system was introduced, it gave many undocumented workers the opportunity to apply for a permit, depending on how long they had been in the country illegally. At the same time, undocumented workers who did not qualify for a permit were given a chance to leave the country without paying any fines. This amnesty boosted the registered foreign population 73.4 percent between 2002 and 2003. Not surprisingly, some undocumented workers who did not qualify for a permit decided to stay, though it was difficult for them to continue working and to avoid deportation. The government publicized its intentions to enforce the system's deportation provision and to use the police to catch undocumented workers.

IV. Analyzing the Dynamics Among Institutions in the Politics of Foreign Workers' Inclusion and Exclusion

Korean society's reaction to the needs and the existence of foreign workers evolved in various ways. A critical piece of the explanation for this development lies in the changes in interests of agencies and the dynamics among agencies. The purpose of this section is to flesh out what appear to be important agencies bringing about the key changes in the development of Korea's foreign worker policies.

First, the ebb and flow of employers' associations have played a central role in the politics of foreign

workers' inclusion and exclusion in Korea. Due to corruption in intermediary (recruiting) agencies, employers' associations and intermediary agencies lost public support in the foreign worker policymaking process. Employers' associations used to be one of the very critical interest groups who decided the needs of foreign workers. Regarding interest groups, they are seen as legitimate actors in policy formation. Typically, employers, especially of small and medium-size industries, favor the recruitment of foreign workers. The employers' organizations exerted pressure on the government and demanded it solve their perceived labor shortfalls through the recruitment of foreign workers.

Employers generally regarded foreign workers as "cheap and docile laborers who perform tasks not taken by Koreans" (Seol 1999: 389-390). In terms of interests that employers' associations and the related government agencies had received from the ITTP, the ties between those agencies need to be scrutinized. The ITTP not only provided benefits to the recruiting agencies of employers' associations but also reflected the interests of each government body overseeing them. For instance, the combinations of government bodies and the recruiting agencies include the SMBA-KFSB, the Ministry of Construction and Transportation (MOCT)-Construction Association of Korea (CAK), the Ministry of Maritime Affairs and Fisheries (MMAF)-National Federation of Fisheries Cooperatives (NFFC), and the Ministry of Agriculture and Forestry (MAF)-National Agricultural Cooperative Federation (NACF) (Seol 2012: 213). In addition, the Ministry of Justice (MOJ) is also highly related to the policymaking process since it runs the Immigration Office and implements the Departures and Arrivals Control Act with considerable administrative power (Lee 2010: 152). Due to this, the KFSB and the MOJ used to have strong ties together. Their strong relationship was based on the fact that the KFSB ran the Korea International Training Cooperation Corps (KITCO), the labor recruiting body. The KFSB created the trainee program with the help of MOJ officials, and the KFSB monopolized the privilege to run the trainee program. From 1994 on, all of the KITCO chairmen were officials who had retired from the Immigration Office of the MOJ. "As the middleman in the labor-importing process, the KITCO has made its officials' jobs very lucrative through corruption" (Cornelius et al. 2004: 498-499). There had been several corruption scandals concerning KITCO officials. In 1995, the KITCO's chairman was arrested for bribery. In 1996, its director and manager were arrested and so were its sub-director and various staff members in 1997. In 2002, the former vice president of the KFSB and the head of the KFSB's international cooperation team were arrested for taking bribes, mainly from labor recruiters in sending states (Daehan Maeil, April 5, 2002; Cornelius et al 2004: 499). A series of these corruption scandals clearly showed how much the ITTP had represented business interests in terms of how

to run the trainee program. The KITCO was run by the KFSB as a private organization without interference and supervision from labor or other organized public agencies.

It is understandable that the KFSB strongly opposed the adoption of the EPS because it meant that cost of wages would increase and the flexibility of foreign labor forces would decrease. However, all employers did not show a unified opinion on the abolition of the ITTP and the adoption of the EPS. Small and medium businesses got together and formed their own association. For instance, the Digital Small Business Association (DSBA) argued that the EPS should be adopted and became an independent actor at some distance from the KFSB. The position of the Korea Employers Federation (KEF), the Korea Chamber of Commerce and Industry (KCCI), and the Federation of Korean Industries (FKI) was that, as far as companies suffering from labor shortage can secure a supply of labor force, the kind of foreign labor programs does not matter: they are willing to accept the abolition of the ITTP (Seol 2012: 212). However, the KFSB, the CAK, the NACF, and the NFFC, all of which worked as agencies recruiting industrial technical trainees, strongly opposed the abolition of the ITTP.

It was surprising to see that the DSBA supported the adoption of the EPS. Even under the ITTP, many of small businesses still experienced difficulties bringing in trainees. Hence, they would hire undocumented foreign workers with higher wages in order to solve labor shortage problem. What they wanted to gain from the EPS was to hire foreign workers with lower wages (than what they used to pay for undocumented foreign workers) “in a more stable way”. The MOL paid attention to this voice of small businesses carefully, reflected the interests of these businesses, and strongly pursued the EPS eventually.

Second, the MOL recovered its power through a coalition with other agencies, such as small business associations and civic organizations. When the interests of the MOL and those of small businesses and civic organizations converged, they formed a political coalition against the KFSB and the economic branches. The coalition between the MOL and pro-migrant NGOs especially brought a synergy effect, empowering both in the pursuit of the rights of foreign workers and the adoption of the EPS.

The MOL is responsible for establishing and coordinating employment and labor policies. Hence, when Korea first started discussing the introduction of the ITTP, the MOL opposed it since it was believed to harm the welfare and working conditions of domestic laborers. Basically, the MOL was taking very passive position in terms of importing foreign industrial trainees because it was worried about whether introducing foreign industrial trainees would distort the structure of labor market and cause human rights issues. At the same time, they could not strongly oppose it without suggesting alternatives. Thereafter, with the strong

support of the MTI, the initiative was taken by the MTI, instead of the MOL who technically had taken care of labor and employment issues. In addition, the MOJ earned more power than the MOL in terms of the control over arrivals and departures. As already mentioned, the Ministry of Justice (MOJ) is strongly situated in the policymaking process since it ran the Immigration Office and implemented the Departures and Arrivals Control Act with considerable administrative power. Due to all these reasons, the MOL was perceived as an impotent and powerless agency in the foreign worker policymaking process.

However, with the support of pro-migrant NGOs and the needs of small businesses associations, the MOL recovered its power. Foreign workers had to rely on civic organizations, religious groups, and pro-migrant NGOs to solve a variety of problems from economic and social welfare to legal ones. Civic organizations, religious groups, and activists have advocated for and advanced the rights of foreign workers and it was their effort that helped to change the governments' foreign worker policies.

The most important protest in the history of the foreign worker's movement in Korea was organized in January 1995. Thirteen Nepalese workers staged a protest at the Myongdong Cathedral, the symbolic birthplace of the Korean democratization movement. The Nepalese workers argued that they had never received their trainee allowance for the previous seven months and they could not stand the physical and verbal abuses from their employers any more. Labor exploitation and human rights abuses were revealed to the Korean public through their peaceful demonstration in the cathedral. This protest not only conveyed the terrible working conditions of foreign workers to the Korean public, but also functioned as a catalyst to make a wider network among pro-migrant NGOs as well as other civic organizations. A total of 38 NGOs, including pro-migrant NGOs, civic organizations and labor organizations, formed the Committee for Guaranteeing Human Rights of Foreign Workers. In July 1998, the Joint Committee for Migrant Workers in Korea (JCMK) was established with 10 pro-migrant NGOs to facilitate more coordination among a variety of migrant NGOs. The JCMK forced institutional changes on the government and contributed to improvement of human rights conditions for foreign workers.

As one of the leading NGOs, the JCMK actively organized a number of protests and a nation-wide campaign calling for the end of discrimination and the adequate protection of foreign workers' rights. For instance, the JCMK drafted its own Foreign Worker Protection Law as an alternative to the problematic ITTP. The JCMK successfully collected over 56,000 signatures supporting this proposal (Kim 2005). The proposal was based on an idea of a Labor Permit System, "which allows foreign workers to obtain 'regular work permits,' renewable each year up to five years" (Kim 2005). Under a labor permit system,

foreign workers would enjoy the freedom to switch workplaces and three basic labor rights as well as four insurances (Gray 2007). Although the government did not fully accept this idea, the JCMK's proposal formed the framework for the Employment Permit System later. The EPS contains a number of significant clauses from the proposed law regarding the Foreign Workforce Policy Committee, the bilateral agreements between Korea and sending countries, language education programs, the application of Labor Standards Law and other labor-related laws, and the right to change worksites under certain conditions. Finally, with the strong help of pro-migrant NGOs and the Korean public's rising interest regarding human rights issues, the MOL took the initiative to introduce the EPS to the presidential transition team in 2003.

Third, the will of presidents was one of crucial leading agents in the government, as it was one of the important factors in resolving intra-governmental competition between political coalitions (Lee 2010: 201). The first challenge to the ITTP was made following the will of the Former President Kim, Dae-Jung. He stated, "we should be ashamed about the discrimination against foreign workers when we are aiming at establishing state safeguarding human rights in global era." The next President Roh, Mu-Hyun's will to enhance human rights as a former human rights lawyer contributed critically to adoption of the EPS. Former President Roh pledged enactment of the EPS during his presidential campaign, and the transition team started working on how to pass the EPS even before the inauguration of President Roh (Lee and Park 2005: 156).

By this time, interestingly, foreign worker policy was an issue not only for President Roh's election campaign but also for Lee Hoi-Chang, the presidential candidate of the opposition party in the sixteenth presidential election in 2002. It clearly showed that the revision of the then current foreign worker policy or the adoption of the new EPS constituted a critical issue for both parties. What was more interesting was the fact that both candidates supported the arguments of the MOL and the pro-migrant NGOs and the adoption of the EPS. Though the opposition party, the Grand National Party, originally took a negative stance on the EPS, it stated that the EPS had to be adopted as a medium-term strategy as well as a long-term goal. It indicated that in 2002 and 2003 a generally widespread consensus among the Korean public had emerged in support of revision of the foreign worker policy in order to reduce the human rights problems of foreign workers. Politicians and presidential candidates could not avoid paying attention to Korean public opinion.

V. Conclusion

This study elucidates how dynamics among various agencies and their changing interests influence the politics of foreign workers' inclusion and exclusion in Korea. Including employers' associations, government agencies, such as the Ministry of Justice, the Ministry of Labor, and the Ministry of Trade and Industry, and civic organizations, various agencies and institutions have been key actors and their changing interests and identities have been also key factors in the development of foreign worker policies. Among those various agents, this study particularly focused on the rise and the fall of employers' associations and their relationship with government agencies, how the MOL gained power with the support of civic organizations and its alliances with other agents, and the will of presidents. By revealing these, this analysis showed how various agents intermingled with each other and exerted influence on the formation and the revision of Korea's foreign worker policies. Especially, by taking constructivism and historical institutionalism seriously, this study revealed the importance of agents' interests, institutions structure, political behavior, and outcomes.

Before closing the paper, it should be noted that, compared to case studies of other countries, this study does not pay attention to two important actors in the development of foreign worker policies: the courts and the trade unions. Generally, in Western countries the judicial branch of the state has played a crucial role in the extension of rights to immigrants (Joppke 1999; Sassen 1998). In contrast, in Korea the courts have yet to assume a significant role in the politics of foreign workers' rights. It does not necessarily mean that the courts have been meaningless and powerless in the policymaking processes of Korean foreign worker policies. What I argue is that the general exclusionary regime that determines the incorporation of foreign workers in Korea has so far precluded the intervention of the judicial system on behalf of the extension of rights. Though the courts' decisions have helped expand rights of foreign workers and immigrants and supported arguments and activities of civic groups and activists, their role has been more normative and prescriptive rather than practical.

The other actor, frequently mentioned as playing a crucial role in the inclusion of foreign workers, especially in Western Europe, is unions (Miller1981). The Korean case, again, proves to be different. Though little by little unions have recovered their voices regarding the rights of foreign workers and the

revision of foreign worker policies, still they cannot be regarded as main actors. The unions have not had sufficient resources or the political will to advocate for foreign workers' rights. That is one of the reasons why civil society and religious groups had to involve themselves in the movements for the rights of foreign workers in Korea. With the support of civil society, the government agencies could mobilize to promote the development of foreign worker policies in Korea. The absence of the courts and the unions in the development of Korean foreign worker policies shows that Korean society still has a way to go in terms of the evolution of foreign worker policy. In the near future, with the increase of foreign workers, their competition with native workers in labor market will become more intensive and there will be more room for the unions to work on the politics of foreign workers' inclusion and exclusion. With the support of civic organizations and foreign workers' increasing need for social rights, the courts will have to become more involved in terms of foreign worker's inclusion and exclusion in Korea. Hence, studying these agents and their roles in the development of foreign worker policy will remain vital issues of study.

■ References ■

- 설동훈(1996), 『한국사회의 외국인 노동자에 대한 사회학적 연구: 외국인 노동자의 유입과 적응을 중심으로』, 서울대학교 박사학위논문.
- 설동훈(1997), “외국인 노동자와 한국사회의 상호작용”, 『노동 문제 논집』, 13.
- 설동훈(1999), 『외국인 노동자와 한국 사회』, 서울대학교 사회발전연구총서. 서울대학교 출판부.
- 설동훈(2000), 『노동력의 국제이동』, 서울대학교 사회발전연구총서. 서울대학교 출판부.
- 설동훈, 이란주(2006), 『외국인근로자지원사업(기관) 제도개선 및 중장기계획 수립을 위한 연구』, 근로복지공단.
- 유길상, 이규용(2002), 『외국인 근로자의 고용실태 및 정책과제』, 한국노동연구원.
- Bell, Stephen. (2011), “Do we really need a new ‘Constructivist Institutionalism’ to explain institutional change?” *British Journal of Political Science*, 41(4): 883-906.
- Blyth, Mark. (2002), *Great Transformations: Economic Ideas and Institutional Change in the Twentieth Century*. Cambridge: Cambridge University Press.
- Cornelius, Wayne A., Philip Martin and James Hollifield. (2004), *Controlling Immigration: Global*

- Perspectives*. (2nd ed.) Stanford: Stanford University Press.
- Goldstein, Judith. (1998), "Ideas, institutions, and American trade policy." *International Organization*, 42(1): 179-217.
- Gray, Kevin. (2006), "Migrant Labor and Civil Society Relations in South Korea." *Asian and Pacific Migration Journal*, 15(3): 381-390.
- Gray, Kevin. (2007), "From Human to Workers' Rights: the Emergence of a Migrant Workers' Union Movement in South Korea." *Global Society*, 21(2),
- Harty, Siobhan. (2005), "Theorizing institutional change" in Andre Lacours (ed.), *New Institutionalism: Theory and Analysis*. Toronto: Toronto University Press.
- Hay, Colin. (2006), "Globalization and Public Policy" in Martin Rein, Michael Moran and Robert Goodin (eds.), *Oxford Handbook of Public Policy*. Oxford: Oxford University Press.
- Ikenberry, John. (1998), "Conclusion: an institutional approach to American foreign economic policy." *International Organization*, 42(1): 219-243.
- Immergut, Ellen (1992), "The Rules of the Game." in Sven Steinmo and Kathleen Thelen. (eds.), *Structuring Politics: Historical Institutionalism in Comparative Analysis*. Cambridge: Cambridge University Press.
- Joppke, Christian. (1999), *Immigration and the Nation-State*. Oxford: Oxford University Press.
- Katznelson, Ira. (1997), "Structure and Configuration in Comparative Politics." in Mark Irving Lichbach and Alan Zuckerman (eds.), *Comparative Politics: Rationality, Culture and Structure*. New York: Cambridge University Press.
- Kim, Joon K. (2005), "State, Civil Society and International Norms: Expanding the Political and Labor Rights of Foreigners in South Korea." *Asian and Pacific Migration Journal*, 14(4): 383-418.
- Kim, Wang-Bae. (2004), "Migration of Foreign Workers into South Korea: From Periphery to Semi-Periphery in the Global Labor Market." *Asian Survey*, 44(2),
- Lee, Byoung-ha. (2010), *Comparing Immigration Policies in Japan and Korea: a Historical-Institutionalist Approach*. Doctoral Dissertation . Department of Political Science. Rutgers, the State University of New Jersey.
- Lee, Yong Wook and Hyemee Park. (2005), "The Politics of Foreign Labor Policy in Korea and Japan." *Journal of Contemporary Asia*, 35(2),
- Marsh, Ian. (2009), "Keeping ideas in their place: in praise of this constructivism." *Australian Journal of*

- Political Science, 44:679-696.
- Miller, Mark. (1981), *Foreign Workers in Western Europe: an Emerging Political Force*. New York: Praeger.
- Moon, Katherine. (2002), "Migrant Workers' Movements in Japan and South Korea." in Craig N. Murphy (ed.), *Egalitarian Politics in the Age of Globalization*. New York: Palgrave.
- Peters, Guy, Jon Pierre and Desmond King. (2005), "The Politics of Path Dependency." *Journal of Politics*, 67(4),
- Price, Richards and Cristian Reus-Smit. (1998), "Dangerous Liaisons? Critical International Theory and Constructivism." *European Journal of International Relations*, 4.
- Sassen, Saskia. (1998), "The de facto Transnationalizing of Immigration Policy" in Christian Joppke. *Challenge to the Nation-State: Immigration in Western Europe and the United States*. New York: Oxford University Press.
- Schmidt, Vivien. (2008), "Discursive institutionalism: the Explanatory power of ideas and discourse." *Annual Review of Political Science*, 11: 303-326.
- Seol, Doon-Hoon. (2000), "Past and Present of Foreign Workers in Korea 1987-2000." *Asia Solidarity Quarterly*, 2.
- Seol, Doon-Hoon. (2012), "Mobilizing public opinion for'against foreign labor olicies in Korea, 1995-2005." in Hee-Yeon Cho et al. (eds.), *Contemporary South Korean Society*. Routledge.
- Seol, Doon-Hoon and John D. Skrentny. (2004), "South Korea: Importing Undocumented Workers." in Wayne A. Cornelius et al. (eds.), *Controlling Immigration: Global Perspectives*. Stanford: Stanford Universty Press.
- Steinmo, Sven. (2008), "Historical Institutinalism." in Donatella Della Porta and Michael Keating (eds.), *Approaches and Methodologies in the Social Sciences*. Cambridge University Press.
- Steinmo, Sven and Kathleen Thelen. (1992), *Structuring Politics: Historical Institutionalism in Comparative Analysis*. Cambridge: Cambridge University Press.
- Thelen, Kathleen. (1999), "Historical Institutionalism in Comparative Policies." *Annual Review of Political Science*, 2: 369-404.
- Tichenor, Daniel. (2002), *Dividing Lines*. Princeton: Princeton University Press.

대한매일(2002. 4. 5.)

코리아타임즈(2005. 8. 19.)

원 고 접 수 일 | 2018년 1월 9일

심 사 완 료 일 | 2018년 1월 30일

최종원고채택일 | 2018년 2월 5일

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2013년 미국 University of Delaware에서 국제정치학 박사학위를 받았다. 논문 제목은 “Issues in the development of foreign worker and immigration policy in the Republic of Korea”이다. 현재 한국국제보건의료재단 전략기획실에 재직 중이며, 주요 관심분야는 글로벌 거버넌스, 이주민정책, 이주와 안보, 개발협력 등이다.