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Explaining South Korea's Diaspora Engagement Policies*

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Human migration has never been a one-way movement, but over the past several decades, there has been an increasing trend of peoples moving back to their "ancestral homelands." South Korea is no exception. Beginning in the late-1980s, tens of thousands of ethnic Koreans have returned to South Korea, both on a temporary and permanent basis. There are both underlying and explicit processes and factors that make diasporic return possible, of which state policy—and more specifically diaspora engagement policy—is one of the most salient. This paper purports to identify and explain the forces that have shaped that policy using an unconventional approach, namely, foreign policy analysis (FPA). As the term implies, FPA has typically only been applied to clear-cut foreign policy issues, but as we argue, FPA can be usefully and effective applied to an analysis of diasporic engagement policy.

Keywords: *Overseas Koreans Act, Korean diaspora, foreign policy analysis, hierarchical nationhood, uniformity/identity of the government*

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Introduction

Over the past several decades, more and more governments around the world have been attempting to engage with their respective "diasporic communities"; that is, with communities of people who have some ethnic, cultural, or historical link to their homelands or countries of origin. These communities may include first-generation emigrants, or they may be the children of emigrants, and subsequent generations, who have never set foot in their putative homelands. In some cases, engagement between "homeland" governments and diasporic communities have been long-standing; but in many other cases (which includes South Korea), efforts at diasporic engagement are relatively recent. The more recent efforts, it is useful noting, have a largely instrumental purpose, namely, diaspora engagement policies (Gamlen 2006)—also known as extraterritorial citizenship strategies—are designed, first and foremost, to be part of a broader national economic strategy. Diasporic communities, more specifically, are viewed as valuable sources of scarce "global talent" and, in some case, as sources of potential investment. Thus, states use diasporic engagement policies to co-opt this talent or investment to enhance national economic competitiveness in an increasingly competitive global economy (Ho 2011). Accordingly, diaspora engagement policies are typically, albeit not always, targeted toward highly skilled individuals residing in economically advanced or knowledge-based economies. Low- or unskilled workers living in poorer countries, by contrast, have often been excluded; but when they are included, they are typically accorded very limited rights. In other words, in the eyes of national policymakers, diasporic communities are not viewed equally; instead, they see, as a number of scholars have observed, a "hierarchy of nationhood." In this hierarchy, members of some diasporic communities are automatically accorded privileged status, including full citizenship. But other communities, even those whose members have "shared blood" (i.e., a common ethnic-racial identity) and strong historical ties are seen and treated as inferiors or as easy-to-exploit, fully expendable labor (Seol and Skrentny 2009; Seol and Seo 2014; Piao 2017).

South Korea has, on the surface, been no exception to this general trend. As we will discuss shortly, the South Korean government mostly ignored its diasporic communities until the mid- to late-1990s. The key turning point was the 1999 *Act on the Immigration and Legal Status of Overseas Koreans*. The *Overseas Koreans Act* (hereafter, the OKA) was, in many respects, a

watershed as it marked the first major policy designed to incorporate ethnic Koreans—specifically those without Korean citizenship—into South Korean society (Rhee 2001; Seol 2002; Lee, C. 2002, 2003, 2005; Lee, J. 2002a, 2002b; Kim, B. 2002; Chung 2003, 2004). In its original form, it is important to note, this 1999 law reflected the same basic motive behind diasporic engagement policies of most other countries at the time (Ho 2011); that is, it was clearly a policy designed to strengthen the South Korean economy. It was also targeted at a diasporic elite (i.e., high skilled and affluent ethnic Koreans in the wealthiest economies), while, at the same time, it intentionally excluded ethnic Koreans—primarily those living in China—who lacked the desired skills (or capital) the South Korean state deemed vital. This suggests, then, that South Korea's turn toward diasporic engagement was part of a global trend and reflected a generalized process. There is more than a little truth to this (instrumentalist) view of diaspora engagement in South Korea. Still, as we argue, it tells only part of the story. To see why, it is necessary to consider the overlapping contexts within which diaspora engagement policy is not only made, but also put into practice. There is, to be sure, the economic context, but, as with any public policy, there is also a political context, a socio-cultural context, and an institutional context. Even more, because diaspora engagement policy, in general, deals with populations outside the borders of a single country, there is an international/geopolitical and transnational context. On this last point, it is important to emphasize an easily overlooked, but core characteristic of diaspora engagement policy: it is neither a wholly domestic, nor is it a primarily foreign policy. Instead, it falls somewhere in-between. To put the issue more colloquially, diaspora engagement policy is "neither fish nor fowl."

The notion that diaspora engagement policy is neither fish nor fowl is something we want to highlight. For, it suggests that a proper account of diaspora engagement policies in South Korea (and in any other country) requires a consideration of factors, processes, and relationships both inside and outside the borders of the country. This is, we recognize, a somewhat banal assertion. Yet, in analyses of a given country's public policies, there is a tendency not only to assume a sharp distinction between the domestic and the foreign/international, but also to assume that this distinction requires different frameworks of analysis. We argue, however, that the line between domestic and foreign policy, in general, has always been blurred, and has become even blurrier in an era of globalization and transnationalism. This is especially true for those public policies that clearly include both an international or transborder element, as is the case with diaspora engagement

policies. This suggests, in turn, that an integrated framework—one that can bring together domestic and foreign policy analyses—may be needed. Fortunately, such a framework already exists, namely, foreign policy analysis or FPA.

Explaining Diaspora Engagement Using a "Foreign Policy" Approach

The term "foreign" in foreign policy analysis is potentially very distracting, since it suggests that FPA is limited to an analysis of *foreign* policy. And while it is certainly true that FPA scholars focus almost exclusively on foreign policy, in principle, there is no reason why FPA cannot be applied to other types of public policies, including and especially those that are neither fish nor fowl. In the very short discussion that follows, then, our intent is simply to provide a bare-bones overview of the FPA approach as a useful framework of analysis for examining South Korea's diasporic engagement policy—*not,* to reiterate, as a type of foreign policy, but instead as a public policy with obvious international and transborder implications.

Our first point is this: FPA is an analytical framework that posits an interactive and mutually constitutive relationship among factors at three basic levels of analysis: the individual, the domestic, and the system or the macro-structural. A lot has been written about these three levels of analysis, so we will not go over that same ground (for a classic discussion, see Singer 1961; for a more recent analysis, see Hudson 2014). Instead, we will highlight the key aspects of our FPA approach, which begins with an actor-centered orientation. A focus on actors—both state *and* nonstate—is important for one basic reason: (abstract) structures, systems, institutions, regimes, and larger processes cannot make policy; only people can. Human intervention, and, therefore, human agency, is always necessary in an examination of the policy process (Hudson 2005). At the same time, our approach recognizes, as we have already emphasized, that decisionmakers (and other actors) do not and cannot act in a vacuum: every public policy decision is inescapably made within different domestic- and system-level contexts or structures, which have a major impact on what actors can and cannot do, as well as on the choices they ultimately make. Still, as we have already argued, context or structures do not dictate decisions or control outcomes. In his regard, our FPA framework sees these contexts/structures as creating "circumstances of choice" that constitute the environment of decisionmaking and action

(Bakalova 2013).

This leads to our second major point: a big part of FPA analysis revolves around both analyzing the circumstances of choice in which decisionmakers and others are enmeshed and explaining the relationship between the circumstances and choices that are made. Rather than discuss these two issues in abstract terms, we will instead lay out a few basic and interconnected issues or assumptions—based on our FPA approach—for examining South Korea's diaspora engagement policy. First, given the larger patterns and trends on the establishment of diaspora institutions and the increasingly strong movement toward diaspora engagement across the globe (Gamlen 2014), it is almost undeniable that the actions and behavior of decisionmakers in South Korea reflect shifting system-level conditions and dynamics. These system-level conditions include geopolitical shifts (e.g., the end of the Cold War), global economic dynamics—most notably, the expansion and deepening of neoliberal capitalism—and the embedding of a new, transnational normative regime on human rights. The task, again, is to analyze and assess the influence of these big-picture phenomena on and within South Korea. Second, while system-level (and regional-level) conditions are dynamics are undeniably important, it is imperative that they be linked to the intentions, interests, and power of individual and collective actors (Carlsnaes 1992). In other words, policies are not only actualized only through the decisions and actions of people, but also through their interactions (and struggles) with each other. Process and politics, simply put, matter.

This leads to a third, tightly connected issue. In examining process and politics, FPA is strongly concerned with the domestic-level policymaking context. For, no matter what, every public policy, at some level, is subject to or mediated by country-specific legal, institutional and bureaucratic arrangements, which privileges certain actors (e.g., the president or prime minister, bureaucratic leaders, national or state legislators, or nonstate actors). These arrangements also suggest the degree of power domestic actors have, as well as the manner in which that power is exercised. In the FPA approach, therefore, domestic policymaking arrangements are generally considered a vital part of any explanation of public policy, whether foreign or domestic (Hamilton and Tiilikainen 2018; Kegley and Wiffkopf 1983). In South Korea, the president and the state bureaucracy play a particularly prominent role in the formulation and implementation of public policy in general, which partly reflects the legacy of the developmental state (Yoon 2016). As we will show, this was very much the case with South Korea's diasporic engagement policies

specifically. Our analysis, we should note, will focus most strongly on the role of the bureaucracy, which has clearly had the biggest hand in shaping South Korea's diasporic engagement policies. At the same time, it is important to understand, the state bureaucracy does not exist on or as an island: it not only interacts with other actors, both inside and outside of government, but it also interacts with itself, so to speak, in that it is not a single collective actor, but is composed of many different sets of actors. On this last point, in other words, it is crucial to disaggregate the state in general and the state bureaucracy more specifically.

Finally, in examining the circumstances of choice, it is essential to incorporate subjective or intersubjective factors—i.e., culture, identity, and norms must be taken into account. Indeed, FPA embraces the incorporation of such factors into explanations focused on the making and development of policies, as all facts—including the institutional and structural facts—are necessarily mediated through a cognitive process. In other words, all facts (even seemingly purely objective ones) are given meaning as a "consequence of being perceived, reacted to, and taken into account by actors" (Carlsnaes 2012, p. 126). It is worth noting, too, that intersubjective factors are themselves the product of changes in and interactions at all three levels of analysis. In South Korea, as we will argue, norms on human rights, democratic governance, and social justice—which simultaneously operate at the global/transnational, domestic, and personal-cognitive levels—have intersected to shape the country's diasporic engagement policies.

A Very Brief Discussion of the Relevant Literature

Our FPA approach, we should note, is designed to fill what we consider to be a significant gap in existing studies on South Korean diasporic engagement policies and especially the OKA. That gap, again, is the lack of integrated, multi-level analyses of public policies that are neither "fish nor fowl." Previous studies, both in English and Korean, have tended to be largely descriptive (Kim, B. 2002), or focused primarily on instrumental factors, i.e., the rational economic interests for incorporating diasporic communities (see, for example, Choe 2006), or on legal-institutional issues (Chung 2003; Choi 2018). Others focus strongly on combination of state power and geopolitical conditions (Park and Chang 2005), or on broader "macroregional transformations" (Kim, J. 2009). We believe that there is immense value in all these approaches, but that their analytical scope is too narrow. It is crucial, in our view, to connect domestic-level and international/transnational factors

into a coherent framework of analysis, while also giving serious attention to agency. This is exactly what our FPA approach purports to do.

With the foregoing discussion in mind, this paper will focus on, albeit not exclusively, the origin and development of South Korea's principal diaspora engagement policy, which, to repeat, is the OKA, originally passed in 1999 but later amended many times, including a major revision in 2004. Our overarching objective is to show that the OKA is a complex mix of instrumental motivations, identity-based and discursive politics, bureaucratic and organizational processes, and regional and global dynamics.

South Korea's Diaspora Engagement Policies and the 1999 Overseas Korean Act

For most of its short history, as we noted above, the Korean diaspora was mostly ignored. Indeed, prior to the 1990s, there was little to no official effort to directly engage with the Korean diaspora. Instead, to the extent that the South Korean state dealt with its diasporic communities, it mostly did so in an ad hoc and diplomatic fashion. The character of this engagement is reflected in two early policies related to overseas Korean communities: the 1961 Technical Assistance Agreement with Germany (which was related to the dispatch of Korean nurses and miners), and the 1965 Korea-Japan Agreement on the Legal Status and Treatment of Koreans Residing in Japan (Song 2017). Both policies were the product of government-to-government negotiations and involved no input from members of the Korean diasporic communities in Germany and Japan respectively. To be sure, there were other, more direct efforts at engagement. During the period of rapid industrialization under Park Chung Hee, for instance, the government established the Korean Institute of Science and Technology and the Korea Development Institute "for the purpose of inducing the return of foreign-educated (mostly in the United States) PhDs in engineering and economics ..." (Young 2003, p. 76). In addition, under Roh Tae-woo (1988-1993), the government allowed ethnic Koreans from China to visit South Korea on a travel certificate, rather than a visa (Choi and Lee 2015). Still, between 1948 and the early-1990s, official engagement with the Korean diaspora was rare or very narrowly constructed.

The election of Kim Young-sam (KYS), who served as South Korea's president from 1993 to 1998, however, marked the beginning of a gradual, but major political shift. In his inaugural address, KYS spoke of the "creation

of a new Korea," which included more "active and inclusive policies" toward the Korean diaspora (Yoon 2017, p. 287). The primary product of KYS's initiative was the establishment of the Overseas Koreans Foundation in 1997, a minor but auspicious step as it provided an institutional basis for ongoing engagement with the Korean diaspora. The impetus for KYS to consider a formal diaspora engagement policy, it is worth noting, initially came from the Korean-American community, which called for South Korea's Nationality Act to be amended to allow for dual nationality. "Those who rallied for such an amendment", according to Chulwoo Lee (2003), "emphasized the need to entice talents and successful businessmen of Korean descent to return to contribute to development back home." The KYS administration, however, "decided to rule out the idea" in 1996 (Lee, C. 2003, p. 108). In rejecting the demands of the Korean-American community, the KYS government went out of its way to stress that overseas Koreans should focus on becoming "decent and respectable citizens of their host states" (cited in Lee, C. 2003, p. 108).

The failure of this first effort is instructive, as it provides a useful perspective for assessing the passage of the 1999 legislation, which moved forward very quickly. Indeed, when Kim Dae Jung (KDJ) took office in 1998, progress on a diaspora engagement policy was virtually immediate. One reason for this is fairly clear: unlike his predecessor, KDJ had strong personal and emotional connections to the Korean-American community (with which he had developed strong ties when he was an opposition leader during the authoritarian era[1]) and was, therefore, much more sympathetic to their appeals. As president, moreover, he had the capacity to turn his individual interests into actual policy. To appreciate the analytical relevance of KDJ's personal and emotional interest, consider a counterfactual question: What if KYS had been similarly (personally) motivated to establish a diaspora engagement policy? While it is impossible to answer this question, it is not hard to imagine that the apparent lack of personal interest on the part of KYS played a key role. After all, without the support of the president, let alone active resistance, it was far more difficult for appeals from the Korean-American community to gain political traction. Certainly, though, it is not enough to assert that individual interests and motivations were the only things that mattered. That is decidedly not the argument we are making.

[1] KDJ spent several years in the United States during the early 1980s. During his time in the US he visited church groups, students, and large gatherings of Korean-Americans. KDJ also received a significant amount of financial support from the Korean-American community, which generally viewed him quite favorably (Ungar 1984).

Instead, as we emphasized at the outset, it is crucial to adopt an integrative multi-level (FPA) approach, which requires us to consider the circumstances of choice, as well as the roles that other actors (including institutional actors) necessarily played, both in the formulation and implementation of the policy. Still, it is reasonably clear that the impetus for the OKA came from KDJ, who, shortly after taking office, directed the Ministry of Justice to draft a bill that would grant overseas Koreans, including nationals of foreign states, rights not available to aliens of non-Korean descent (Lee, C. 2003). Of course, presidents do not write laws themselves; instead, bureaucrats do. This tells us that, in an analysis of the OKA, we need to shift our attention to the South Korean bureaucracy.

Importantly, as we already suggested, FPA tells us that the modern state bureaucracy should *not* be conceived of as a unitary collective actor motivated by a single overarching interest, namely, the national interest. Instead, a state's bureaucracy should be understood as a complex institution composed of many associated, but also discrete units or agencies, with competing agendas and differential levels of political power, as well as different procedures, personnel, and perspectives. Such is certainly the case with the state bureaucracy in South Korea. Before examining the political process and dynamics inside the South Korean bureaucracy, however, it would be useful to say just a few words about its especially prominent role in South Korea's policy process.

Bureaucratic Power and the Legacy of the Developmental State

As many observers know, the South Korean state (along with other states in East Asia) has long been viewed as the quintessential developmental state. While the term "developmental state" has been subject to much analytical abuse over the years (Weiss 2000), one of its most uncontroversial—and also most enduring—features revolves around the establishment of a very strong and extensive bureaucracy with a significant degree of autonomy and insulation from both parliamentary and societal pressures. During South Korea's authoritarian period, not surprisingly, presidential power and autonomy was an even more prominent feature of the developmental state. Together, the legacy of bureaucratic and presidential power and autonomy—while often overstated even during the years of authoritarian rule (for a discussion of this point of view, see Lim 2001; Woo-Cumings 1991, 1999)—underscores a key and virtually undeniable fact about policymaking in South Korea: it has long been dominated, or at least disproportionately influenced,

by a relatively narrow range of state actors. To be sure, the transition to and ultimate consolidation of democracy in South Korea since 1987 has invariably had a meaningful and significant impact on the policymaking process inside South Korea, allowing for a more pluralistic process in which the legislature, political parties, interest groups, media, and nongovernmental organizations (NGOs), or civil society more broadly, have come to play increasingly significant roles. Still, deeply embedded legacies are hard to uproot completely. Recent research by Jiso Yoon (2016) provides strong empirically-based evidence of this last point: Yoon convincingly demonstrates that bureaucratic (and presidential power) continues to occupy an outsized role across a range of (largely domestic) policy issues in South Korea. We will not provide details here, and simply note that Yoon's analysis shows that bureaucratic and executive influence is significant at all stages of the policymaking process, from advocacy, to shaping policy alternatives and outcomes, to implementation, and finally to policy revisions, both minor and major.

The legacy of the developmental state, more specifically, is important insofar as institutionalized practices and norms from the past persist to the present. This appears to be the case in South Korea. One of the most important of these legacies, as we have already emphasized, is the relative insulation and autonomy of the executive branch (which includes the bureaucracy), particularly from parliamentary pressures. In practical terms, this means that both the bureaucracy and the president are able to exercise a great deal of policymaking authority largely on their own terms. This does not mean, however, that executive and bureaucratic authority is unchecked. It certainly is not. As in any consolidated democracy, the South Korean Constitution is the supreme law of the land both in principle and in practice; it also provides for a formal system of checks and balances among the three branches of government in South Korea. Thus, while it is fair to say that the executive branch continues to exercise outsized power in South Korea (compared to many other democracies, including Japan and the United States), it is subject to clear constitutional and institutional constraints. This said, it bears repeating that the South Korean bureaucracy is not a unitary or monolithic actor. It is, instead (as it the case with bureaucracies everywhere), functionally divided, which means that the different elements of the bureaucracy may not always share the same vision, interests, and goals. It is to this issue that we turn next.

Diaspora Engagement and the Role of Bureaucratic Politics and Organizational Process

As in any modern state bureaucracy, the various ministries in South Korea have their own interests, organizational procedures, and expertise. They may strongly disagree on the substance of particular policies, particularly in cases where a policy overlaps with or encroaches on the jurisdictional authority of several ministries at the same time. When this happens, each ministry, sometimes in coalition with other ministries or sometimes acting alone, may use whatever resources it has to influence the content and shape of the policy. Even when there is little disagreement on the basic need or rationale for a particular policy, the ministries—including individual leaders or stakeholders within the ministries—will compete with one another to ensure that the final policy most strongly reflects and promotes their specific interests. As Graham Allison (the doyen of the bureaucratic politics approach in FPA) put it, "The name of the game is politics: bargaining along regularized circuits among players positioned hierarchically within the government" (Allison 1971, p. 144). The upshot is this: the process of bureaucratic politics can lead to a result in which narrow or parochial bureaucratic interests ultimately have more sway than a broader national interest.

The interest of the various ministries, it should also be noted, is at least partly embedded in the organizational DNA (i.e., the standard operating procedure, mission, and norms) of each individual ministry. Thus, in South Korea, the Ministry of Justice (MOJ), the Ministry of Employment and Labor (MOEL), and the Ministry of Foreign Affairs and Trade (MOFAT)—which, not coincidentally, were also the ministries most intimately involved in creating the 1999 OKA—tend to pursue fairly predictable or routine paths. This last point reflects a basic principle in what is known as the organizational process model. This model, too, is skeptical of the notion that policymaking is entirely or mostly rational process whereby the costs and benefits of each policy choice is carefully weighed in relation to a clear-cut national (as opposed to parochial) goal to which everyone subscribes (Welch 1992). Instead, this model suggests that organizational imperatives strongly influence choices and positions well before a policy decision even comes to the table.

In South Korea, it is fairly clear that the bureaucracy in general and the aforementioned ministries, more specifically, played a central role in developing the 1999 OKA. More importantly, it is clear that their respective positions were, at least to some degree, pre-defined by their bureaucratic

missions and routines. In the initial deliberations, for example, MOFAT was very quick to object to including ethnic Koreans in China in the OKA, despite the fact that a few years earlier, in 1996, it had defined overseas Korean "compatriots" as anyone of Korean descent, irrespective of nationality or citizenship (*Korea Times,* September 30, 1999). MOFAT's objection, not surprisingly, was based on its fear that the Chinese government would react negatively to a foreign government (i.e., South Korea's government) attempting to exercise influence, even if only indirectly, over several million Chinese citizens—China has long had the largest ethnic Korean population living outside of the Korean peninsula, estimated about 1.9 million in 1990 (Seol 1998; Kim, S. 2003), a number that has since decreased to about 1.8 million in 2010. MOFAT, in other words, saw the issue through the lens of foreign relations, and was primarily concerned with ensuring that the Overseas Koreans Act would not damage the country's always delicate relationship with the People's Republic of China. On this point, it is useful pointing out that South Korea's "friendly" policy toward ethnic Koreans in China (known as *Joseonjok*) had already irritated China. As we already noted, under the administration of President Roh Tae-woo (1988-1993), the South Korean government treated the *Joseonjok* liberally by allowing them to enter their "homeland" without a visa; instead, they were issued travel certificates. At the time, South Korea had no diplomatic ties with China.

The Ministry of Employment and Labor (MOEL), which was formerly the Ministry of Labor or MOL (the redesignation was made in 2010), was also strongly opposed to an expansive definition of ethnic Koreans, which would have, in principle, allowed ethnic Koreans in China to freely enter the South Korean labor market on the same terms as any South Korean citizen. (The OKA did not confer citizenship on eligible ethnic Koreans, but it came close to doing so since it allowed a special visa status, economic rights, and social benefits, including access to national health care.) Ever since the beginning of large-scale foreign worker migration to South Korea, however, the MOL/MOEL (hereafter, we will only use the current designation of MOEL) had endeavored to manage the "importation" of foreign worker and to control the terms of their employment and residency in South Korea. This is particularly evident in South Korea's first foreign worker employment scheme, the Industrial Technical Training Program for Foreigners (ITTP), which was officially launched in 1991. Under this program, foreign workers were classified as "trainees," which was a transparent effort to institutionalize substandard wages and labor standards for a burgeoning category of low-skilled, but increasingly needed *workers* (Lim 1999; Seol and Skrentny

2004a).

The exploitative character of the ITTP, we should note, encouraged a large number of foreign workers to abandon or avoid it altogether: many entered South Korea through the program, but quickly left their positions and found work on their own. Others began working in South Korea on an undocumented basis without going through the ITTP. In 1999, for example, undocumented foreign workers outnumbered trainees by a margin of almost three to one (Seol and Skrentny 2004a). While the rise in undocumented workers was clearly not ideal or desirable, from the standpoint of the MOEL, it was tolerable. After all, its goal was clear: meet the needs of the Korean economy—and specifically, the small- and medium-sized business sector—by tapping into a large pool of foreign workers. Admittedly, though, the growing number of undocumented foreign workers was clearly worrisome; thus, in the early 2000s, a new program for foreign workers—the Employment Permit Program for Foreigners (EPP)—eventually took the place of the ITTP (for further discussion of the EPP, see Seol 2005; Kim, M. 2015; Choi and Lee 2015).[2]

The Ministry of Justice (MOJ) was the only major bureaucratic actor that was initially open to a more expansive definition of ethnic Koreans, in part because it was not concerned with bilateral relations or the labor market per se. It is not clear, however, why the MOJ held such an expansive view, except that officials within the ministry took seriously the idea that all Koreans shared a common bloodline, and therefore were entitled to equal treatment (*Chosun Ilbo,* September 24, 1999). Moreover, after being directed by KDJ to draft a policy on overseas Koreans, the MOJ decided to follow in the footsteps of Japan, which had wrestled with the same issue itself about a decade earlier. In the case of Japan, ethnic Japanese living outside Japan, referred to as *Nikkeijin*, were allowed in virtue of their "blood ties," to enter Japan for a period of up to three years (a period that was easily and almost automatically extended) and allowed to work in any capacity, including as unskilled labor (see Goto 2007). The right to take on unskilled work was made exclusive to the *Nikkeijin* among all categories of foreign workers. The

[2] There is a great deal of debate over the rationale for the EPP. As one anonymous reviewer of this manuscript suggested, a major intent of the EPP was to reduce the number of undocumented foreign workers exposed to exploitation. Others—especially immigrant activists themselves—have argued that the EPP did little to resolve the exploitative conditions faced by workers. While this is an important debate, it is beyond the scope of our present argument. Nonetheless, it is fair to say that the EPP has not completely resolved the issue of exploitation and mistreatment of immigrant workers in South Korea.

Japanese case is relevant, in part, because of the proclivity on the part of South Korean bureaucratic actors, in general, to borrow directly from policies adopted by major countries (Japan, the United States, Germany, and the United Kingdom).[3] Accordingly, the MOJ's initial conceptualization of ethnic Koreans did not discriminate between those living in the United States, Europe, or other well-off countries, and those living in China, Russia, or other poorer areas of the world.

Nonetheless, with MOFAT and the MOEL in solid agreement that ethnic Koreans from China not be included in the legislation, the MOJ's initial decision to include *Joseonjok*, as well ethnic Koreans in former USSR (referred to as *Goryeoin*), was clearly on shaky ground. MOFAT's opposition was particularly strong: shortly after the release of the draft bill, ministry officials reacted quickly and vehemently: not without irony, they criticized the draft as a "blood-centered approach" based on a "narrow-minded nationalism" (cited in Lee, C. 2003). MOFAT's position and influence was apparently decisive. Thus, while the final version of the law did not explicitly make any geographical or socioeconomic distinctions, it limited eligibility to ethnic Koreans who "emigrated abroad after the birth of the Republic of Korea, i.e., 1948, and [who] relinquished their Korean nationality, and their lineal descendants" (cited in Seol and Skrentny 2004b). The intent was crystal clear: all *Joseonjok* and *Goryeoin* were summarily excluded from benefiting from the legislation. Tellingly, in explaining the exclusion of *Joseonjok* in particular, the MOJ referred to the objections of both the MOEL and MOFAT. Note, on this point, that the MOJ's evolving position was at least partly a function of the role it was obliged to play in providing legal justification for official policy. Thus, in responding to a case brought before South Korea's Constitutional Court (more on this below), here is what the MOJ argued:

> Provisions in the OKA aim to ease restrictions imposed on economic activities of ethnic Koreans with foreign nationalities based on their preemptive rights in Korea. Therefore, the necessity to apply these

[3] This "proclivity" to borrow directly from policies adopted by major countries is evidenced by the Korean government's practice of commissioning reports that contain extensive analysis of overseas cases. Indeed, it is rare to find government reports that do not include foreign cases. See, for example, Seol, Lee, Yim, Kim and Seo (2004); Seol and Rhee (2005); Kwak and Seol (2010); Kwak, Rui and Chang (2011); Chung, Rho and Lee (2013); Jeon, Gho, Lee and Son (2017). In addition, we might note, one of the authors of this article has first-hand knowledge of the government's strong tendency to borrow from policies adopted by major countries, as he has been involved in preparing reports and advising government officials.

> provisions to ethnic Koreans who emigrated *before* the establishment of the Korean Government is weak because they do not have any preemptive rights in Korea. Simplification of regulations on entry and exit of ethnic Koreans who emigrated before the establishment of the Korean Government could lead to an influx of ethnic Koreans with Chinese nationality, relatively low-waged workers, into the nation's labor market and cause a significant number of social problems .... It is also very likely that the State will face diplomatic frictions with China who *[sic]* is extremely sensitive to nationalism among racial minorities within its border if the Act were to include ethnic Koreans who emigrated before the establishment of the Korean Government as potential beneficiaries of the Act (Act on the Immigration and Legal Status of Overseas Koreans Case 2001).

Of course, it is not always the case that the MOJ would simply yield its organizational interests to provide legal justification for the positions of other ministries. The debate over how an "overseas Korean" was defined, however, was not central to the concerns to the MOJ. If anything, the much more restrictive definition advanced by the other ministries reflected the MOJ's longstanding mission to keep tight control over the immigration process. Thus, the ministry had little to gain from "going to war" against the MOL and MOFAT, the latter two of which had a keen interest in the shape of the OKA and particularly in the definition of an overseas Korean. Even more, MOFAT's position was significantly buttressed by the fact that the OKA had clear and undeniable implications for South Korea's relationship with China and other concerned countries: the possibility of serious diplomatic frictions was hard to ignore or dispute (we will return to this point below). Indeed, when a public policy has clear international implications, MOFAT's position generally takes precedent under the principle of "uniformity/identity of the government" (*jeongbu dongilche wonchik*), which suggests that the Korean government must generally speak with one voice when it comes to issues of diplomatic and security policy (for further discussion, see Lee, G. 2013).

As a result, MOFAT was able to exert outsized influence in this particular case. And because the position of the MOL was complementary—i.e., it wanted a restrictive definition in order to control the entry of overseas Koreans from China, as well as the former Soviet Union—there was less room for the MOJ to maneuver in.

The Political and Legal Reaction

The details of the legislative and bureaucratic process are, of course, more complicated than presented here, but the point is clear: the first major diaspora engagement policy passed by the South Korean government was not the product of a unitary state simply writing and then implementing policies designed to maximize economic benefits to the country. Admittedly, it still can be argued that the end result of the 1999 legislation was nonetheless instrumental, even though it was based on different and competing bureaucratic motivations. Crucially, though, the 1999 legislation was not the end of the story. Indeed, the law was almost immediately challenged by the *Joseonjok* and an array of 61 civil society groups inside South Korea (*Korea Herald,* December 4, 1999). Importantly, the *Joseonjok* and their allies in South Korea were already well-versed in the politics of protest and in political activism more generally. This was primarily due to their long-struggle for labor rights as immigrant workers, an issue that has been examined in detail elsewhere (see, for example Lim 1999, 2003).

One of the first protests against the 1999 OKA, before it came into force, was a hunger strike staged at Myeongdong Cathedral (the symbolic site of many protests throughout the decades), which was followed by a direct plea to KDJ to veto the bill. Although KDJ refused, the protests still proved to be at least partly effective. According to Chulwoo Lee (2003), in reaction to the protests, "the government announced 'supplementary measures', which expanded the scope of eligibility to apply for Korean nationality and relaxed entry qualifications" (Lee, C. 2003, p. 109). More specifically, the supplemental measures revised the original requirement to include those ethnic Koreans "who moved to China before August 15, 1948 but are currently or used to be registered on the Korean household register, those who desire to join their siblings in Korea, those who have contributed or are expected to contribute to Korea's national interests, and their spouses and unmarried offspring ..." (Lee, C. 2003, p. 109). Importantly, this fairly significant change did not require approval by the legislature (i.e., the National Assembly), but instead was made via a presidential decree. The presidential decree, it is worth noting, is often an extremely important element of the policy process in South Korea (and is similar to, but more powerful than, an executive order in the United States). Most simply, the presidential decree allows the executive branch to exercise a great deal of control over how a policy is implemented through detailed additions and

revisions to existing laws. As we already noted, these decrees are not subject to legislative approval, but are often quite extensive and far-reaching. The Overseas Koreans Act itself was subject to fully thirteen presidential decrees between 1999 and 2014, more than one of which dealt with the core issue of who qualified as an overseas Korean.

Returning to the key point: despite a more expansive definition of overseas Koreans, political activists were far from satisfied. As part of the early push to challenge the law, three *Joseonjok* went to the South Korean Constitutional Court to plead their case. In its response, the MOJ, representing the government, argued that the case should be thrown out because the complainants were "foreigners with Chinese nationality," and since the law was not concerned with "natural human rights," they had no standing to bring the case. The MOJ went so far as to claim that the complainants could not even prove that they were ethnic Koreans, and thus were not eligible to bring the case based on the prerequisite of "self-relatedness" (Act on the Immigration and Legal Status of Overseas Koreans Case 2001). The Constitutional Court, however, disagreed with the MOJ. The Court argued that the 1999 OKA violated the principle of equality in Article 11 of the Constitution. As a result of the Court's ruling the government was obliged to rework the definition of individuals who qualified as an "overseas Koreans" within the context of the OKA. It was a long process, but on March 4, 2004 (about 27 months after the Court's ruling), the Act was amended, again by presidential decree,[4] to include the following definition for the term overseas Korean: "A person prescribed by the Presidential Decree of those who have held the nationality of the Republic of Korea (including Koreans who had emigrated to a foreign country *before* the Government of the Republic of Korea was established) or of their lineal descendants, who obtains the nationality of a foreign country ..." (Act on the Immigration and Legal Status). The central point: the change was not only dramatic, but also unequivocally against the expressed interests of the MOFAT and MOEL. It bears repeating, too, that the change would not have happened were it not for the challenges mounted by the *Joseonjok* in tandem with South Korea's large and influential NGO community. Obviously, the South Korean courts played a pivotal role, too. It should also be noted that revision was likewise supported by Korea's mainstream press (see, for example, an editorial in the

[4] Prior to the presidential decree and in response to the court's ruling, a group of 23 members of the National Assembly submitted a bill that would grant all ethnic Koreans rights of entry, property ownership, and economic activity regardless of nationality (*Korea Herald*, December 10, 2001).

Korea Herald, December 5, 2001).

The 2004 amendment did not address all the concerns of the *Joseonjok*, particularly since it did little to nothing to resolve the legal status of those that were in Korea on an undocumented basis. However, one year later, the MOJ established a new program—the Voluntary Departure Program (VDP)—designed to provide legal status only to *Joseonjok* who were undocumented. The VDP required undocumented *Joseonjok* to leave South Korea on a voluntary basis, but then permitted them to reenter the country (after one year) to work up to three years (Seol and Skrentny 2009). Then, in 2007, the Korean state created the "Visit and Employment Program," which permitted the *Joseonjok* free entry into and departure from South Korea in designated sectors requiring low-skilled work or simple labor activity (Seol and Skrentny 2009). The key to this policy change was the permission for free entry and departure; other labor importation programs required foreign workers (who were not part of the Korean diaspora) to remain in South Korea the duration of their visas. This new program reversed a long-standing prohibition on the relatively free movement of "simple labor" into and out of South Korea.[5]

None of this is meant to imply that the OKA has somehow transformed into a policy designed to subvert the interests of the Korean state. But the foregoing analysis *is* meant to imply, in keeping with the FPA approach, that the OKA was very much the product of human decisionmaking and agency taking place within South Korea's particular (post-authoritarian and democratic) institutional setting, which included the legacy of the developmental state, an active an influential civil society (both domestic and transnational), and an independent judiciary. Still, as we have made clear, any comprehensive analysis of South Korea's diaspora engagement policy cannot neglect system or macrostructural factors. Indeed, one would be hard put to assert that the OKA was solely the product of individual- and domestic-level factors, or that its timing was disconnected from the larger international shift toward diaspora engagement.

[5] Some issues still remain. For example, the revised version of the OKA only acknowledges up to third-generation *Goryeoin* (ethnic Koreans living in territories of the former Soviet Union such as Uzbekistan) as overseas Koreans who qualify for permanent residency. Fourth-generation *Goryeoin* over 20 must enter Korea on short-term visitor visas and the leave the country every 90 days. As of November 2017, South Korea's National Assembly was still considering proposals to revise the law (see Choi and Kim 2017).

The Bigger Picture: The International and Transnational Context

Power relations within the international/regional system played a role in the construction and unfolding of the OKA—specifically, the fear of damaging relations with China (and to a lesser extent, with the United States). As we already clearly argued above, this was directly evident in the role that MOFAT played in the debate over and construction of the OKA. From the very beginning, to repeat, MOFAT officials were strongly concerned with the potential conflict between the provisions of the OKA and the domestic laws of those countries where ethnic Koreans resided. These concerns, it should be noted, became an explicit issue in the relationship between the two countries. For example, in May 1998, China's Ministry of Foreign Affairs (MFA) formally raised questions about the OKA while the law was still being developed. In a meeting between high-level officials in the MFA and MOFAT, more specifically, China formally voiced concerns about the law, and "urged the Korean government to take a cautious stance" with respect to the inclusion of ethnic Koreans in China. The MFA also warned South Korea about the potentially "negative impact of the enactment of the law on Chinese-Korean relations ...", and even suggested that China would delay opening a Korean consular office in Shenyang—a key hub for three northeastern provinces in China where most Korean-Chinese residents live (Goh 1998). In response, MOFAT's deputy minister simply and diplomatically said, "Since the final draft of the related law has not been finalized, we will take note of the position of the Chinese side" (Goh 1998).

Indeed, there is no doubt MOFAT took the Chinese warning to heart, as about five months after China official raised questions about the OKA, South Korea's Foreign Minister Hong Soon-young expressed the ministry's official opposition to the measure allowing for dual citizenship, which was part of the original proposal for the OKA, and specifically cited "possible diplomatic conflicts." Notably, this occurred during a high-level policy coordination meeting between MOFAT and the MOJ (*Korea Herald,* September 17, 1998). In subsequent negotiations over the law, MOFAT officials expressed concern that the OKA would be interpreted as a policy of "Pan-Koreanism," which would "cause reaction and alertness [among] neighboring countries," violate international law, and even create an obstacle to the reunification of the Korean Peninsula (MOFAT 2006). Interestingly, MOFAT also argued the following: "Giving legal preference to ethnic Koreans with foreign citizenship

over foreign citizens who are not ethnically Korean, is incompatible with the obligation to abolish the prohibition of discrimination based on international human rights treaties, including the International Covenant on Civil and Political Rights, and International Convention on the Elimination of All Forms of Racial Discrimination (MOFAT 2006, p. 33). Whether or not violation of human rights treaties was a genuine concern, it is reasonably clear that the international context influenced MOFAT's position vis-à-vis the OKA, and that MOFAT's position, in turn, had an effect on the overall deliberations. Keep in mind, too, that the *Joseonjok* were left out of the original version of the OKA.[6]

More generally, the fact that there was an emerging bilateral relationship between South Korea and China to begin with speaks to an underlying structural process tied to geopolitical and geo-economic dynamics, and to the Cold War order. Very simply put (and leaving out an immensely complex history), the emergence of a geopolitical rivalry between the Soviet Union and the United States created a structural division in the international system, separating the so-called communist world from the capitalist West (and its allies). In this situation, as Jaeeun Kim (2009) insightfully argues, it was all but impossible for South Korea to construct a "transborder Korean nation" that incorporated ethnic Koreans in enemy states, including, of course, the *Joseonjok* in China. The reason was clear: The Cold War order superimposed "geopolitical frontiers onto emerging national borderlines" (Kim, J. 2009, p. 146). Even more, the conflation of geopolitical frontiers and national borderlines led the South Korean state to essentially erase the *Joseonjok* from "its rhetorical practices, bureaucratic routines, and organizational structures for nearly half a century" (Kim, J. 2009, p. 147). The *Joseonjok*, in this view, were only able to "reappear" once the Cold War ended, as the collapse of the Cold War order broke down the once insurmountable geopolitical barrier between South Korea and the communist world.

In the post-Cold War era, it is important to emphasize, structural forces have also been at play. More specifically, the ever-increasing integration of the global economy has brought many pressures to bear on individual states and their societies. From this perspective, it is evident that diaspora engagement policies are a product of the increasingly competitive dynamics of global capitalism. The logic is clear: state leaders use overseas coethnics to stimulate national economic development, usually by encouraging inward

[6] For further discussion on how South Korea's relationship with China impacted MOFAT's position, see Shin (1999), and Lee, J. (2002b).

investment—which some of have dubbed "Diaspora Direct Investment" or DDI (USAID 2009)—or by attracting individuals with sought-after skills or abilities (i.e., "global talent"). As Ho (2011) puts it, "International and national policy-makers regard the new extraterritorial citizenship strategies as a means to benefit national development by 'connecting the dots' to join up and mobilize geographically dispersed emigrant knowledge and investment." These strategies make a lot of sense, from an instrumental perspective, which is a key reason why they have been embraced by a range of countries around the world (Trotz and Mullings 2013).

In South Korea, the economic (or instrumental) utility of the "Diaspora Option" (Pellerin and Mullings 2013) was well understood, and it unequivocally played a central important role in the establishment of the OKA. Indeed, once the MOJ was directed to write the legislation, the policy debate tended to focus mostly on the idea that diasporic community would be a key element South Korea's economic future. This view, for example, was advanced by South Korea's National Security Agency (*Gukga Anjeon Gihoekbu* 1998), which highlighted the relatively large population of overseas Koreans as a tremendously valuable source of human and social capital (also see, Choi 2013; Shin and Choi 2015). The Overseas Koreans Foundation also played an important role in emphasizing the economic importance of the Korean diaspora, both in the initial and subsequent debates over the OKA. One example of this was an analysis commissioned by the Overseas Koreans Foundation in the early 2000s, which estimated that the economic value of the Korean diaspora was $120 billion, or 20 to 25 percent of South Korea's GDP at the time (*Yonhap News Agency*, February 19, 2003). More generally, this is how one observer, Hyun Ok Park (2015), described the policy discussion surrounding the OKA: "The Overseas Korean Act reflected the orientation of a growing chorus of policy makers, legislators, activists, and elites who defined overseas Koreans as economic assets comparable to ethnic Chinese for China and the Jewish diaspora for Israel" (Park 2015, p. 76).

The effort that went in to justifying the economic importance of the Korean diaspora to the homeland can be interpreted in several ways. On the one hand, it suggests that structural pressures essentially compelled policymakers and others to recognize that they had no choice but to tap into any all economic resources in order to remain globally competitive and economically viable; thus, their rhetoric merely reflected economic reality. On the other hand, it might—and, as we argue, does—suggest a more subjective process. After all, compared to most countries that consider the diaspora option, South Korea was economically far stronger, larger, and more

dynamic (in the late 1990s). To be sure, the 1997 Asian Financial Crisis (AFC) had a major impact on the South Korean economy, and almost certainly shaped the debate over the OKA. But by the time the OKA was finally passed in August 1999, the most devastating effects of the crisis had already faded, and the need for the diaspora option was clearly not as strong. Consider, on this point, that the South Korean economy suffered four straight quarters of negative GDP growth beginning in the first quarter of 1998; yet, by the first quarter of 1999, economic growth had recovered to 5.4 percent, while second quarter growth was a very strong 10.8 percent—in the third quarter, growth was stronger still at 12.8 percent, followed by 13 percent in the final quarter of 1999 (cited in Koo and Kiser 2001). Simply put, there was no objectively determined need for the OKA in the waning months of 1999 (the law did not enter into force until December 4, 1999). Even after the law passed, it could have been vetoed or abrogated, once it was clear that the economy had, for all intents and purposes, fully recovered. Still, it is quite likely the immediate and after effects of the crisis—combined with the country's long-lived developmentalist orientation—deeply influenced the *thinking* of South Korea's policymaking establishment. The AFC provided, in this sense, the push that made it possible for South Korea to finally embrace the diaspora option, albeit as an economic strategy rather than a cultural or social policy.

On this last point, it is important to reiterate a basic claim: The OKA was *not* necessitated by economic pressures, but was, instead, *justified* on economic or developmentalist grounds. The distinction may seem slight, but it is quite important, since it tells us that (structural) economic factors influenced but did not cause the initial policy shift. But what about subsequent developments, especially the changes to the definition of an overseas Korean? The changes would be hard to attribute to economic dynamics because they were tied strongly to political activism on the part or on behalf of marginalized groups, and to the judicial system in South Korea. This raises another crucial question: What motivated these two sets of actors? There is an obvious answer in the case of *Joseonjok* political activists, namely, they wanted to protect or promote their "rights." But why did they believe or assume that had any rights to protect or promote in the first place? After all, they were not citizens of South Korea, which suggests that they should not have had any expectation at all of challenging the right of a foreign government to determine its own national immigration policy. It is clear, though, that they were tapping into a global and increasingly well-established discourse on human rights, which, in their view, gave them license to

challenge the long taken-for-granted presumption of (absolute) state sovereignty.

The courts also rejected, albeit implicitly, traditional norms of state sovereignty in ruling, first, that a foreign national (i.e. the *Joseonjok*) can be a "bearer of basic rights," and thus have standing to file a constitutional complaint.[7] And, second, that "socioeconomic and security reasons" alone could not be used as the basis for legislation that discriminated between different groups of foreign nationals (although the basis for its reasoning was that the state itself was at fault because it originally planned to include all ethnic Koreans). While it would be easy to argue that the Court's ruling was premised entirely on domestic norms and practices—on the institutional context of liberal democracy in the post-authoritarian period—the treatment of foreign citizens is highly variable among consolidated democracies. In the United States, for example, Supreme Court rulings has long held that foreign nationals are "persons" within the meaning of the US Constitution; yet, the Court has, at different times (most often, in the period before 1955), constitutionally condoned xenophobic policies.

Given South Korea's long history of exclusionary policies (toward foreign nationals) and given the government's legal argument that the inclusion of ethnic Koreans in China in the OKA represented both a security and economic threat, it is perplexing that South Korea's Constitutional Court ruled against the government. At the same time, the Court's ruling was not particularly surprising: for decades, South Korea has been slowly shifting away from a near-obsessive focus on security and developmentalism toward greater alignment with international (human) rights norms (Schattle and McCann 2014). To be sure, the shift has been uneven within South Korea's political system—as the debate over the OKA demonstrated—but it has been significant. And it has been particular significant for the country's judicial system, which is, for obvious reasons, most closely associated with questions of individual rights (as opposed to state rights).

The upshot is this: the normative structure of international relations or global politics has also had an effect on the choices that different actors made, in large part by shaping or reshaping their dispositions (i.e., values, preferences, and attitudes). Importantly, the choices that emanate from a rights-based structure are, generally speaking, in conflict with the choices created by the geopolitical and economic structures. Thus, from a structural

[7] The original decision that a "foreigner" can have a status similar to a citizen in that both can be the bearer of basic rights was made in 1994.

perspective, decisionmakers are often faced with a dilemma, which enhances the significance of agency. This, of course, takes us back to the starting point of our FPA approach, namely, an actor-centric orientation in which human decisionmakers are understood to be the key point of *intersection* among the various determinants of public policy.

Conclusion

The foregoing analysis is designed to show that South Korea's formal or official engagement with the Korean diaspora (primarily through the OKA) is best understood and explained through an integrated multilevel and multidimensional perspective, which puts human decisionmakers at the center of analysis—i.e., an FPA approach. The FPA approach is not typically used to examine ostensibly domestic policies, but, as we discussed, diaspora engagement policy falls into a nebulous area: it is neither wholly domestic nor foreign policy, it is "neither fish nor fowl." Indeed, applying an FPA approach to "neither fish nor fowl" policies, in general, may be a necessity, for, as we have tacitly argued, it is almost certainly the case that an exclusive focus on either domestic-level or macro-level (international and transnational) processes and factors will provide only a partial and distorted explanation. In the same vein, the neglect of agency is often a glaring, but unrecognized, weakness in many analyses. At the most general level, then, our goal has been to make the case for the utility of the FPA approach.

Of course, we are also centrally concerned with South Korea's diaspora engagement policy. As we have shown, it is a mistake to see the OKA as primarily, still less solely, a product of bureaucratic and organizational politics, *or* of a "developmental state," *or* of domestic politics, *or* of overarching structural factors, and so on. Instead, the OKA reflects the push and pull of a mélange of factors and processes, which can be analytically separated, but which also must be seen as part of an integrated whole that puts human decisionmakers at the center. In this regard, the discussion in this paper does not do justice to the intricacies of the interaction and relationships between and among the various factors. Instead, we have endeavored to provide a meaningful and, we hope, insightful overview.

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