

Success in Legal Transplanting

Abstract

The thesis deals with the conceptualization of success in legal transplanting. The thesis identifies legal transplanting as a dominant method of adoption of law in a globalized world. Yet, it points out that there is no agreement as to how to assess whether a legal transplant has been successful or not. Despite the lack of such an agreement, the thesis observes that the literature on legal transplanting suggests a variety of criteria that may be useful to examine or factor in the evaluation of success or failure of legal transplants. Against this background, the thesis strives to dive deeper into the scholarship on legal transplanting to, first, analyze how success or failure in legal transplanting is defined in the scholarship, and second, examine what criteria or benchmarks are used to evaluate such success or failure. To answer those research question, the thesis will first introduce the concept of legal transplantation and set it within the general framework examining the relation between law and society. It will then move to the literature on legal transplanting itself to identify how success or failure is understood in the scholarship. To complement this general and theoretical enquiry, the thesis will also look into specific case studies evaluating legal transplants from different branches of law (both public and private) to see how success or failure was understood in those cases. The main findings of the thesis are that the both the general and case-specific literature agrees that the society and environment in which the transplanted law operates may be at least as important (if not more) than the very text of the law. There is an agreement that the law needs to “fit” the domestic environment to be operative. Yet, the degree of “fit” likely depends on whether the role of the transplant is to conserve the *status quo* or serve as a tool of a legal change. The thesis also highlights that as a result of the relativity of the notions of success and fit any attempt to create an analytical framework to evaluate success of a particular legal transplant shall correspond to the purpose of that evaluative endeavor. Focus on the respective dimensions of success (such as fulfilment of the motivation that has driven its adoption, fulfilment of the general function that law is presumed to play, or fit with domestic culture) may provide more useful insights into the operation of the transplanted law than an all-encompassing analytical framework that would be applicable to all legal transplants alike.

Keywords

legal transplanting, law and society, definition of success and fit of law