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Theorizing Why States Confer Rights and Protections to Itinerant Populations: Moving Beyond State Interests and International Norms and Thinking about the Social Construction of Deservingness¹

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Introduction

The movement of people across national borders is a highly politicized issue as it primarily entails the physical entrance (and often residence) of foreign nationals within a territory that is theoretically aligned with a governance structure tasked with governing and redistributing limited resources over a populace with which there exists a reciprocal social contract. Under such a polity, a distinction is inevitably made between citizens and non-citizens, and with this, access to various rights, freedoms, opportunities, and limited resources is differentially conferred.

Although social and institutional networks combined with cumulative causation effects do allow for the circumvention of restrictive entry policies (Massey et al.1993), if the globally-sanctioned and institutionalized prerogative of nation-states is to exercise their sovereignty, why is there so much variance in the inflows and treatment of various types of itinerant populations³ across receiving countries? A cursory survey of the extent to which states confer codified protections and rights to itinerant populations reveals stark variation. If we look at OECD countries' levels of policy openness to various types of migrants, we see that there is variance across countries and population types. Even when we focus solely on the policy openness of the control element of immigration policies or the aggregated openness of a state's immigration policy as a whole, we see that the story is the same – a diversity across countries. If we shift our focus to internationally displaced individuals such as recognized refugees, asylum seekers, and humanitarian

protections recipients, the story holds with variance across states and subgroups. For trafficked persons, states also vary substantially across both their disaggregated levels of prosecutorial, protective, and preventative measures against trafficking as well as in their aggregate anti-trafficking efforts.

In sum, not only are there notable differences in codified protections and rights for itinerant populations across states, but different itinerant sub-populations receive codified protections to varying degrees. Why is there such cross-national and cross-population variance? Is it just a matter of state will and capacity in the face of exogenous pressures and individuals lining up *en masse* at the door? In other words, how much can be explained by a state's desire and actual ability to prioritize its own interests and accordingly control who enters under what conditions and duration, and the extent of rights and protections that are conferred; and how much reflects an active commitment or acquiescence to internationally and externally imposed pressures? In this paper, I suggest that state interests and receptivity to international norms are shaped by socially constructed logics of deservingness on *both* the national and global levels. To understand why states exercise sovereignty only to make exceptions for certain groups, and why the international community institutionalizes protections for some groups more than others, require an understanding of the logics under which states and the international community determine deservingness. For the logic of deservingness at the global level, insights from sociological neoinstitutionalism point to how the Modern World Culture (more on this below) effectively legitimizes agentic individual choice while delegitimizing arrangements that deprive persons of such self-determination. At the state level, insights from philosophical debates over distributive justice and the theory of luck egalitarianism help explain the logic under which by virtue of (in)voluntary choice, groups and individuals are socially deemed more (or less) deserving of rights, protections, and state/welfare assistance. Both offer an explanation as to how and why ideas of deservingness are socially constructed at the state or global levels, ultimately manifesting in combinatorial effects on how states respond to and treat itinerant populations that arrive at their doors.

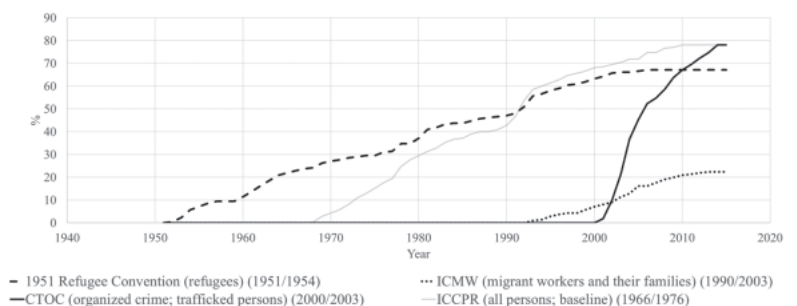
In this paper, I first introduce empirical evidence on both cross-population and cross-national variances in codified protections and rights for itinerant populations to establish

the contours of the empirical puzzle that drives this paper’s theoretical interest. The second section draws on the extant literatures in immigration studies and international relations to discuss how state interests and international norms – which are respectively endogenous and exogenous to the state and domestic polity – can often shape the extent to which a particular population is conferred codified protections and rights. The third section extends this discussion by introducing insights from sociological neoinstitutionalism and philosophy to theorize about the social construction of logics of deservingness at the state and global levels to unpack why states vary in their conferral of codified rights and protections across different itinerant populations. The paper concludes with a heuristic for future research.

The Empirical Puzzle 1: Cross-population Variance

The explosive growth of international organizations, laws, and treaties in the post-war period is remarkable, with institutionalized protections extending to various minority and vulnerable groups (Koenig 2008). To illustrate this, Graph 1 below plots trends in the cumulative percent of countries that have ratified international instruments that specialize in the protection of specific itinerant populations.

Graph 1. Trends in Cumulative Percent of Countries Ratifying the Main International Human Rights Treaties Pertaining to Itinerant Populations (1951-2015)



Source: created by author using datat from United Nations (2015)

Of the four international instruments presented in Graph 1, the Convention Relating to the Status of Refugees was adopted in 1951 and entered into force the earliest in

1954. States have gradually and consistently ratified the Convention over the past 60+ years, and the cumulative percentage of state ratifications as of 2015 was 67.6%. The International Covenant on Civil and Political Rights (ICCPR; broad protections pertaining to all persons [included in this graph as a baseline]) was adopted a bit later in 1966 and entered into force in 1976. ICCPR state ratifications follow a similar pattern to the 1951 Refugee Convention in that ratifications have been gradual and consistent. However, the cumulative percentage of ratification for the ICCPR was higher at 78.1% in 2015. The other two treaties – the United Nations Convention against Transnational Organized Crime (CTOC) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) – were adopted and entered into force much later. The CTOC was adopted in 2000, entered into force in 2003, and saw rapid ratification over the next decade; the cumulative percentage of ratification as of 2015 was 82.9%. The ICRMW, however, was adopted a bit earlier in 1990, and entered into force the same year that CTOC did (2003) but saw more limited and gradual subsequent increases in ratification; the cumulative percentage of ratification as of 2015 was 22.4%.

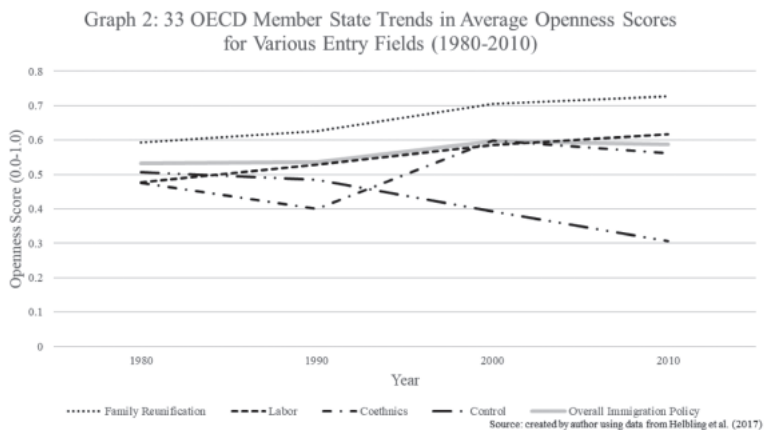
The treaty that saw the highest cumulative percentage of ratification was the CTOC – a treaty that applies to trafficked persons – and the least ratified treaty with the most stunted growth in ratifications pertains to migrants – a group that is highly politicized and carries the “baggage” of being a potential threat to national security and order. There seems to be a general pattern concerning which groups experience the institutionalization of protections on a global scale.

Trafficked persons as well as refugees are groups that could be socially constructed as involuntary, and economic migrants is a group that could be socially constructed as voluntary. From the data in Graph 1, we see that the treaties that protect socially constructed involuntary groups such as trafficked persons and refugees have relatively high cumulative percentages of ratification, regardless of when the treaties were adopted and entered into force. Why is there such variance in ratifications across treaties that institutionalize protections for different itinerant populations?

The following three graphs – Graphs 2 through 4 – plot longitudinal trends in average policy openness or quality scores and pertain to each of the itinerant groups

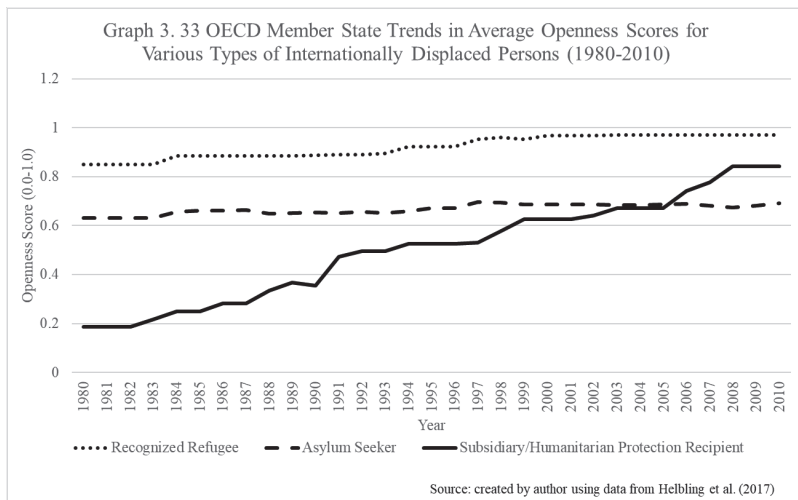
included in Graph 1: migrants, internationally displaced persons, and trafficked persons, respectively. Policy openness and quality levels are disaggregated in these graphs to illustrate variance across subpopulations and subdimensions.

Using the Immigration Policies in Comparison (IMPIC) dataset (first wave; Helbling et al. 2017), which measures policy restrictiveness⁴ across 33 OECD countries over the 1980 to 2010 period, Graph 2 plots the longitudinal trends in average policy openness scores for various migrant entry fields (or routes). Migrants entering for the purpose of family reunification, work, and co-ethnic ties all experienced gradual or overall increases in policy openness, suggesting that over time, imposed restrictions have loosened. However, over the same period, immigration control measures have become more restrictive across these countries. Although in aggregate, overall immigration policy looks as if openness has increased over time, it is important to note that hidden within this aggregate increase is a simultaneous strictening of regulations at the border.



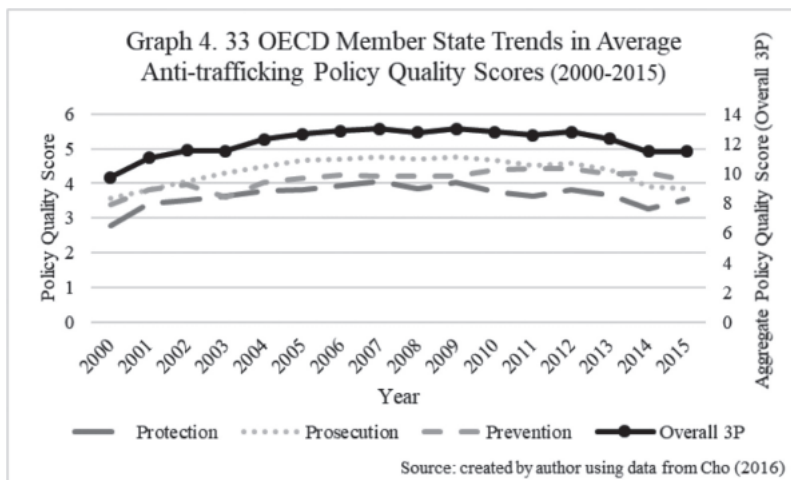
Graph 3 uses the same IMPIC dataset but plots the longitudinal trends in average policy openness scores for three subpopulations of internationally displaced persons: recognized refugees, asylum seekers, and recipients of subsidiary/humanitarian protections. Although the policy openness scores for asylum seekers and recognized refugees remain relatively consistent throughout the time period, the consistent and gradual increase in policy openness level for asylum seekers who did not qualify for

recognized refugee status but were allowed to stay within the receiving country due to humanitarian concerns, is quite striking and warrants further investigation.



Finally, Graph 4 uses Cho’s (2016) most recent update to her 3P Anti-trafficking Policy Index dataset which measures the quality of policies in 3 sub-policy areas (on scales of 1 to 5 [or 3 to 15 for the aggregate scale of all 3 policy areas additively combined]) across 189 countries⁵ throughout the 2000 to 2015 period. The sub-policy areas are protection, prosecution, and prevention. According to Cho (2015b:658), the prosecution sub-policy area “evaluates the criminalization of human trafficking and enforcement efforts,” the protection sub-policy area “focuses on granting amnesty for victims, as well as legal, medical, vocational, rehabilitative, and other assistance,” and the prevention sub-policy area “measures preventive policy actions, such as awareness campaigns, training governmental officials, and internal and international coordination.” The qualities of anti-trafficking policies are evaluated on a five-point scale with 1 indicating “no efforts” and 5 indicating “full commitments” (Cho 2015a:88).

The three subdimensions follow similar trajectories over the data’s time period, but it is interesting to note that between 2013 and 2014, the policy quality score for prevention overtakes that of prosecution, potentially suggesting an overall policy shift from criminal prosecution towards effective preventative antitrafficking measures.

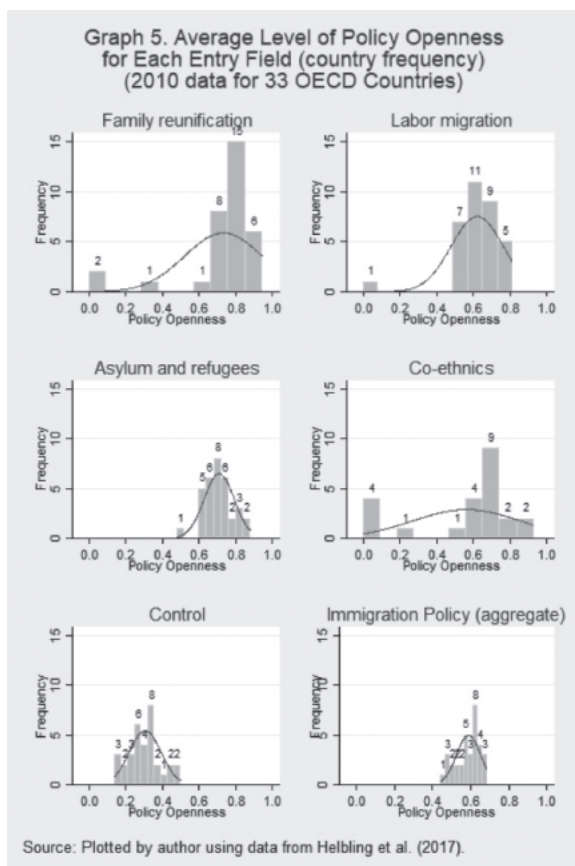


The Empirical Puzzle 2: Cross-national Variance

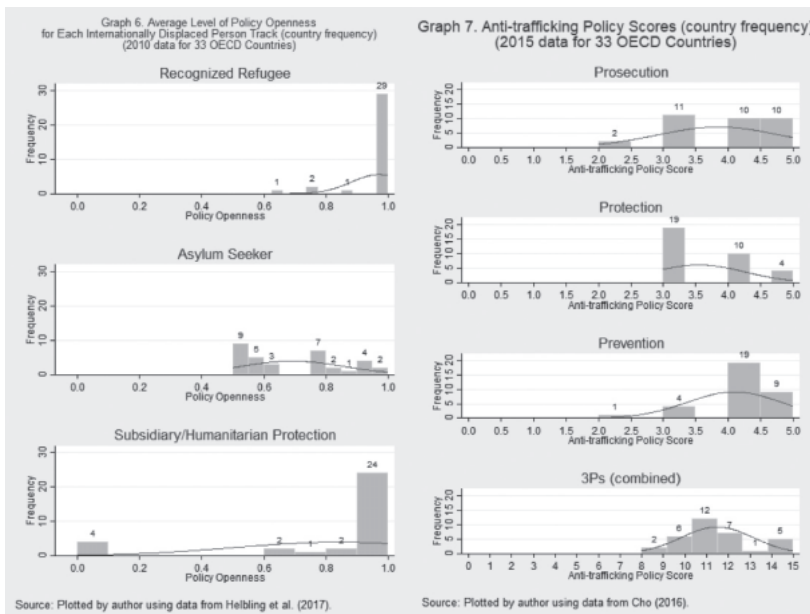
If we shift our focus from cross-population to cross-national variance in codified protections and rights for itinerant populations, the differences are nonetheless notable. Graphs 5 and 6 also use the IMPIC dataset's first wave data (Helbling et al. 2017) on policy openness but draw cross-sectionally on only 2010 data.

Graph 5 includes histograms for various entry fields (i.e., family reunification, labor migration, asylum and refugees, co-ethnics), control measures, and aggregate immigration policy, and each shows the distribution of policy openness scores across the dataset's 33 OECD countries in 2010. Although it is important to note that because these are OECD countries who are on the whole, relatively more affluent than many other countries in the world and are skewed toward the destination end of the movement equation (with some recently transitioning from primarily sending or transit countries to receiving countries), for itinerant populations (especially migrants), it is nevertheless interesting to note the variance in policy openness levels across this subset of countries. Additionally, we can also see that policy openness levels for the four entry fields of family reunification, labor migration, asylum and refugees, and co-ethnics tend to cluster around the 0.7 threshold or above, suggesting that these OECD countries – many of which are

liberal democracies that are embedded in international society – have relatively open policies. However, this tendency for moderately open policies exists in tandem with moderately restrictive policies of control. For example, Hungary’s policy openness scores for the disaggregated entry fields of family reunification, labor migration, asylum and refugees, and co-ethnics are 0.73, 0.51, 0.65, and 0.73, respectively, but its score for its control policies was only 0.17, bringing its overall immigration policy openness score to 0.56 (Helbling et al. 2017). Therefore, like in the case of Hungary, when aggregated, we find that overall immigration policy openness among these OECD countries clusters between 0.5 and 0.6.



Graph 6 plots the same type of data, but for disaggregated groups within the aforementioned “asylum and refugees” entry field, capturing the openness scores for policies pertaining to various types of internationally displaced persons such as recognized refugees, asylum seekers, and those under some form of subsidiary/ humanitarian protection.



We can see that policy openness for recognized refugees is extremely high and almost uniform across these OECD countries. This is not surprising given that the recognition criteria for refugees are highly institutionalized at the global level through the 1951 Refugee Convention which is ratified by all of these countries. However, policy openness levels for asylum seekers are highly variegated, whereas policy openness levels for subsidiary/humanitarian protections recipients are rather polarized with several countries such as Chile, Israel, Mexico, and New Zealand scoring “0” (Helbling et al. 2017).

Graph 7 plots Cho’s (2016) 3P Anti-trafficking Policy Index dataset’s aggregated and

disaggregated anti-trafficking (sub)policy quality scores across 33 OECD countries in 2015. Here, there seems to be a fair amount of variance across countries in all three of the anti-trafficking sub-policy areas. It is important to note that just because a state may have high quality anti-trafficking policies in one sub-policy area does not necessarily mean it has high quality anti-trafficking policies in another. For instance, in 2010, Ireland scored a 5 on preventative measures, but only a 2 and 3 for prosecutorial and protective measures, respectively (Cho 2016). In the aggregate measure of anti-trafficking policy quality (e.g., the “3Ps (combined)” graph), differences across sub-policy dimensions within a state are masked. Notable is the relatively uniform and high levels of prevention policy quality across countries. This sub-policy area includes measures such as “the implementation of campaigns for anti-trafficking awareness; training government and military officials (including peace keepers); facilitating information exchange among relevant authorities; monitoring borders, train stations, airports, etc.; adopting national action plans to combat trafficking in persons; promoting cooperation with non-governmental organizations (NGOs) and international organizations; facilitating cooperation with other governments” (Cho et al. 2014:435), so it makes intuitive sense that sovereign nation-states would tend to prioritize such policies to protect national interests. But it remains an empirical question why there is substantial variance across states in the qualities of prosecution and protection policies.

In sum, why is it that some states – despite their *raison d'être* of maintaining national sovereignty – seem to be more willing or able to confer protections and rights to itinerant populations than others? This is a “big” question spanning multiple itinerant groups over time and space and requires extensive cross-national empirical analyses and theorization in which a single paper cannot do proper justice. However, a more fundamental question that undergirds the question posited above is, “How are logics of deservingness socially constructed to inform state interest negotiations and receptivity to international norms, ultimately shaping who is protected and to what degree?” Because the maximization of one’s own state interests and the coerced or matter-of-fact influence of international norms are two (respectively, endogenous and exogenous) forces through which logics of deservingness can be channeled, in the following section, I first briefly discuss how endogenous state interests and exogenous international norms can both

shape the extent to which a particular population is conferred codified protections and rights. I then introduce how the logics of deservingness that underlie these factors are socially constructed at the state and global levels.

How State Interests and International Norms Affect Policy

I. Endogenous Factors

Various endogenous (to the state and domestic polity) factors can be hypothesized to affect the contents of policies that affect codified protections and rights conferred to itinerant populations. For instance, economically, level of development may be an important factor. Inglehart (1990) asserts that economically developed countries tend to have citizens that support progressive “postmaterialist” ideas such as individualism, egalitarianism, and human rights, and democratically elected governments are sensitive to their constituents’ demands and expectations. If this is the case, we might expect more economically developed states to codify more policies that ensure the protections and rights of itinerant populations. Furthermore, demographic factors such as population increase and density, age dependency pressures, and the salience of immigrants may also affect how the state and citizens of the receiving society react to the actual and perceived impacts that the inflow and settlement of itinerant populations might have on society, and this may shape policies that outline the rights and protections that are conferred. A sudden increase in population and/or density may exacerbate concerns over the distribution of limited resources (Østby et al. 2011), an aging workforce and high dependency ratio may fuel efforts to secure replacement labor from abroad (Coleman 2008; Ferry & Vironen 2011), and the sheer number of immigrants or an increasing visual presence may trigger fear and loathing among the native populace (Freeman 1997; Kessler & Freeman 2005), resulting in entry and settlement policy adjustments that (re)shape the rights conferred to foreign nationals.

Finally, in terms of domestic political factors, democracy may be a predictor of government respect for rights (Cingranelli & Richards 1999; Richards & Gelleny 2013), and liberal democracies of the West tend to willingly or reluctantly self-limit their sovereign prerogatives through commitments to their own egalitarian constitutions, rights conferred to their constituents that “spill over” to non-national residents, and

court mandates (Joppke 2001, 2005). Furthermore, a state's mode of government and its relationship to the business world and economic actors may also impact how a state molds its policy stance towards various types of itinerant populations. Focusing on the politics of immigration policy in liberal democratic states, Freeman (1995) claims that the immigration policies of liberal democratic states are expansionist and inclusive and can be explained by the interactions between individual voters, organized groups, and state actors. Although liberal democracies are institutions that are characterized by principles of individual rights, competitive party systems, and regular elections in which optimally, immigration policy is and should be the result of "[preferences of] the median voter where voters are utility-maximizers with complete information," (Freeman 1995:883) in reality, perfect information on short- and long-term economic and social benefits are not available to the general public. This is either because official data on immigration trends and government immigration policy are not openly available, or because the effects of migration on society are often only gradually felt and therefore, many individuals are not concerned or directly influenced enough by migration issues and do not attempt to become more informed of its effects. This leads to a split between a general public that is highly fragmented or impartial on positions of immigration, and organized interest groups such as employers of labor-intensive industries who seek to benefit from immigration.

Therefore, Freeman (1995) argues that when the benefits of a policy, such as immigration policy, are concentrated and the costs diffuse, client politics – or interest-group politics – will develop, in which employers and pro-immigration interest groups who have greater incentives to organize than the general public will "capture" the state to fulfill their needs, while the general public is left to bear the social, political, and economic costs of increased immigration (i.e., the collective action dilemma). It is in this way that democratic governments may ironically come to serve the interests of the few over the interests of the masses. Joppke (1998) adds that in addition to interest groups, legal institutions such as courts must be considered as factors that explain why states accept unwanted immigration. Furthermore, he adds that postcolonial and guest-worker regimes vary in their moral obligations to accept immigrants, and we must look at these differences in moral obligations to understand the variation in the way European states

handle immigration.

The international migration literature that focuses on why liberal democracies accept unwanted immigration – or the liberal paradox – provides some important insights into the dynamics involved in how various domestic interests compete to ultimately shape policies that affect who can enter, the duration of stay, and the rights and protections that are conferred. However, the weakness of such arguments is that they assume that state actors exist within a domestic vacuum, and that the political entities who make and shape policies are only influenced by domestic actors and events. Therefore, if any changes were to arise in a state's way of treating itinerant populations, the explanation would be narrowly reduced to domestic factors. To avoid this, next, I turn to factors that are exogenous to the state apparatus and domestic polity.

II. Exogenous Factors: International Normative Effects and a State's Relative Positioning and Identity within International Society

Focusing on Japan, Gurowitz (1999) claims that international norms⁶ have been crucial in changes in the political climate towards foreign nationals, because these standards have provided pro-immigrant actors with the tools necessary to advance their arguments against state resistance towards change and openness. However, she argues that these norms do not automatically diffuse throughout society to neatly materialize into pro-immigrant policy changes, and their permeability varies across time and place. Although international norm pressures may exist and press for changes in government policy, the success of these challenges depend largely on the vulnerability of the government to such norms. For example, the unsuccessful efforts of activists pressuring a government to improve women's rights may suddenly experience success once discrimination against women is officially condemned by an international body, making the improvement of the problem a concern for the government to preserve its own reputation. As Martin (1989:555) states, international law or "soft law legitimates action by actors outside the state in question who press for the observance of the norm involved."

In a separate but related argument, Gurowitz (2006:311) also mentions that state identity as defined as "conceptions of statehood and nationhood, developed while taking into account the perspective of others," shapes the interests of the government, and

therefore, determines how governments “see the efficacy, legitimacy, and importance of norms, and therefore how governments will respond to pressure invoking those norms.” In other words, norm diffusion is highly contingent on a state’s identity within the international system and how secure or insecure it feels about that identity at the time of norm diffusion. Therefore, states that identify strongly with international society and actively engage as central members in multilateral interactions with members of the international community but feel insecure about their current role in international society, are generally the most receptive to international norms. Furthermore, when a state enters an identity crisis through insecurities about its own position within the international community, it is vulnerable to international norms because the act of acceptance of those norms becomes symbolic of its role within international society (Gurowitz 2006).

As the aforementioned review of the literature suggests, extant studies often focus on endogenous and domestic factors that directly or indirectly affect domestic policies through logics of state interests, or exogenous and global pressures such as international (human rights) norms. Perhaps due to disciplinary siloing, the tendency is to deliberately or naively focus on one or the other. In the next section, I extend this theoretical discussion by unpacking the social construction of logics of deservingness at the state and global levels to better understand why states and international society possess inherent “biases” towards certain groups by nature of a group’s (in)ability to exercise agentic choice. I begin by introducing the global ontological and state-level philosophical assumptions of this assertion.

The Global Ontological Foundations of Deservingness: The Primacy of Agency

One of the assertions I will make is that the logic of deservingness that is widely diffused and shared across the world is grounded in a global culture that espouses agency, the primacy of the individual, and the legitimacy of rationalized individual choice. All persons embedded within this culture are imbued with the right to exercise agentic choice (and with the exercising of that choice, one also incurs responsibilities); and those who are denied that choice are those that deserve and require the global community’s intervention and protection. To drive this point home, I will briefly explain

the content of this global culture.

This global culture – or the Modern World Culture (MWC) – refers to a set of globally institutionalized cultural scripts, norms, and cognitive models that are 1) premised on the fundamental principles of modernization rooted in Enlightenment principles of justice (equality), progress (wealth), rationality and reason, and individualism (Krücken & Drori 2009; Schofer et al. 2012); 2) buttressed, institutionalized, and legitimated by an expansive institutional apparatus of international institutions (Boli & Thomas 1999); and 3) carried/diffused through disinterested others such as professionals, scientists, and consultants (Holzer 2008; Meyer et al. 1997). The MWC is not a coercive force, as it is not imposed on actors (i.e., states, organizations, and individuals) to further any particular actor or actors' interests. Rather, actors' adherence to the MWC is one premised on legitimacy (not power) and institutionalization (Meyer 2009). Actors enact world cultural scripts, norms, and cognitive models unconsciously or to fulfill their interests (which are themselves institutionalized and shaped by the MWC). In other words, actors are constitutive of the MWC, and ontologically, rationalized interests are not *a priori* to the actor, but socially constructed from the wider world culture. This ontological view underlies theorization about the MWC and is one of the foundational assumptions of sociological neoinstitutionalism (or phenomenological institutionalism).

Actors in the social world are agentic and enact behaviors that they deem to be rational (Meyer 2010). Rationality is not an *a priori* objective or universal logic, but one that is socially constructed and institutionalized to be “natural,” desirable, functional, and legitimate, given that the MWC in which actors are embedded, is premised on ideas of scientific rationality and reason (scientific knowledge is rational and knowable, universal and objective, and individually attainable and understandable, given the facilities that all persons [who are equal with inalienable basic rights] possess).

Therefore, under a MWC that espouses rationalization, the individual, and agency/choice, the degree to which a group is socially constructed as deserving of basic protections should be contingent on whether that group's socially constructed identity or status is seen as voluntary (chosen) or involuntary (ascribed). In other words, groups and identities that are socially viewed as being ones that were chosen (and therefore, reap the benefits of, or experience hardships from these choices) are not “deserving”

of assistance, sympathy, or empathy from society or the larger world polity because if one is agentic (and in our current MWC, it is believed that one should be), one should reap what one sows (whether it is “good” or “bad”) because the flip side of choice and action should be responsibility for those actions. This logic, however, operates in the opposite direction for groups and identities that are socially viewed as being ones that are involuntary or ascribed. If a group is stripped of or not presented with the ability to exercise agency and choice to define and construct its own social identity or existence, the group (and its members) is “relieved” of assuming responsibility for its social position (or existence) within society. Therefore, in the case of groups that are socially disadvantaged or marginalized, there is less societal resistance to institutionalizing protections for such groups because they are socially viewed as more “deserving.” This may be why protections for such groups become institutionalized relatively quickly and easily. In sum, and to recapitulate, this hypothesis predicts that whether a group’s status or identity is socially understood as being based on choice (agency) will affect how “deserving” it is socially perceived, and this has implications for how and why certain groups receive extensive institutionalized protections backed by international norms. This logic of deservingness deriving from sociological neoinstitutionalism dovetails with the idea of luck egalitarianism in philosophy.

The State-level Philosophical Foundations of Deservingness: Luck Egalitarianism

Luck egalitarianism – a term coined by Anderson (1992) in her critique of “equality of fortune” arguments – makes the distinction between brute luck and option luck (Knight 2013), in which desert and sympathy are warranted for those with bad brute luck who are involuntarily affected, whereas the voluntariness of bad option luck precludes individuals from deserving assistance or sympathy from others (or the welfare state). For example, if one has bad brute luck in being injured in an accident through absolutely no fault of their own, it would be socially acceptable or even desirable that that individual is compensated for their misfortune. However, if one’s own recklessness is the cause for the accident that results in injury, that individual would have no grounds – in the eyes of society – to claim compensation for the misfortune they naively caused.

The point here, is not to argue whether this form of egalitarianism is morally or

ethically acceptable or whether it meets the basic definition of egalitarianism⁷. Rather, it is to suggest that the extent to which luck egalitarian-based logics of deservingness are engrained within a society may help us understand and explain why itinerant population-receiving countries vary in their treatment of these populations depending on their country of origin (e.g., rich liberal democracy or failed authoritarian state), entry route (e.g., labor migration or asylum), and/or entry objective (e.g., tourism or settlement).

For example, consider a hypothetical situation in which a liberal democracy – with finite resources and international obligations – experiences an influx of foreign nationals seeking entry into its finite territory. Among those seeking entry are 1) internationally displaced asylum seekers escaping persecution from a failed authoritarian state; 2) low-skilled economic migrants from a developing region in the world who are seeking work on a 2-year visa; 3) individuals being trafficked, rescued, or resettled; and 4) migrants from a neighboring rich liberal democratic state who are migrating to live closer to family (i.e., family reunification). Without knowing anything about the receiving country, it would be quite easy to hypothesize which of the aforementioned group(s) would be welcomed either openly or with some caution or reservation, and which group(s) would not be openly welcomed or even rejected. We might hypothesize that domestic economic and demographic factors such as overall or sectoral employment rates and labor shortages, economic growth, population density, and dependency ratio; political economic factors such as the aforementioned mode of government; group-level characteristics such as the size of inflows, the projected length of stay (temporary or [potentially] permanent), and the historical and ethnic ties with the host country; and international and global factors such as diplomatic pressures, international obligations, and international norms will affect how a host state would react to different groups. But I argue that lurking in the background and “coloring” how these factors translate into policy, are the aforementioned socially constructed global- and state-level logics of deservingness that shape public and state sentiment on how to treat itinerant populations.

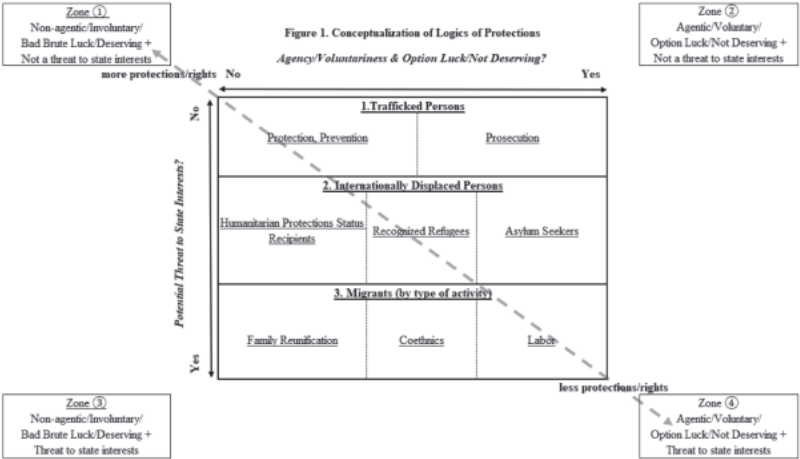
Conclusion: A Heuristic for Research on the Determinants of Codified Protections and Rights for Itinerant Populations

The proposition here, is that deservingness is socially constructed at both the state

and global levels through logics that confer legitimacy to individual agency and choice. By understanding how deservingness is understood by states and their populace, may shed light on how state interests and international normative pressures get negotiated and translated into policy decisions that have implications for the entry, settlement, and conferral of codified rights and protections for itinerant populations.

Additionally, if we heed – however partially – the realist view that states exist in an anarchic world in which survival through military might is of paramount import (Waltz 1979) and the liberal view on complex interdependence and soft power (Keohane & Nye 2001; Nye 2004), we can conceive of a highly interest-based dimension to policy making that prioritizes national security. Furthermore, if socially constructed logics of deservingness at both the state and global levels “mediate” how the aforementioned state interest calculations are made in light of different itinerant populations, we can conceive of a deservingness dimension to policy making that hinges on individual agency, choice, and luck egalitarianism.

Figure 1 plots the former along a “Potential Threat to State Interests” dimension, and the latter along an “Agency/Voluntariness & Option Luck/Not Deserving” dimension. By juxtaposing the two as dichotomous “Yes” / “No” dimensions, we can conceive of a 2 x 2 “Logics of Protections” matrix on which we can locate different itinerant populations.



Itinerant populations that do not pose a threat to state interests and are lacking in agency or choice in the movement they are doing, are involuntary and possess bad brute luck, and are therefore most deserving of assistance, protection, and rights. An example of such a group would be trafficked persons, who are generally smaller than migrant workers or asylum seekers in inflow size, and many are forced or tricked into entering the receiving country. Additionally, if those trafficked are minors or women, there may be additional layers of deservingness that emanate from increased vulnerability, bad brute luck, and deprivation of agentic choice. Such a group would be deemed most deserving of codified protections and rights (see “Zone 1” [Non-agentic/Involuntary/Bad Brute Luck/Deserving + Not a threat to state interests] in Figure 1 above).

The corollary is that itinerant populations that do pose a threat to state interests and exercise agency or choice in the movement they are doing, are voluntary and possess option luck, and are therefore the least deserving of assistance, protection, and rights. In fact, these groups might be considered to be encroaching on or in competition with the rights and entitlements of the native population. An example of such a group would be labor migrants. Although some labor migrants are individuals seeking refuge from destitute economic conditions in their home countries, the perception of the host society is often one of opportunistic individuals seeking better lives and opportunities on their own accord. This voluntary choice warrants limited sympathy and desert, and even in cases in which such an individual encounters difficult experiences such as exploitation, low wages, or unemployment, they are held accountable for their own choices and option luck that has gone awry. Additionally, the perception is often that labor migrants enter through any number of routes, utilize clandestine brokers to gain entry, enter and occasionally stay irregularly, potentially falsify documents, steal jobs, disrupt social order and safety, alter the social fabric, etc. They may be perceived threats that are not grounded in reality, but they are nevertheless threats to state sovereignty and quotidian life that realistically affect policy decisions. This type of group would be deemed least deserving of codified protections and rights (see “Zone 4” [Agentic/Voluntary/Option Luck/Not Deserving + Threat to state interests] in Figure 1 below).

In the diagonal Zones 2 (Agentic/Voluntary/Option Luck/Not Deserving + Not a threat to state interests) and 3 (Non-agentic/Involuntary/Bad Brute Luck/Deserving

+ Threat to state interests), we could conceive of groups such as certain trafficked persons and non-labor-based migrants (e.g., seeking family reunification), respectively. Furthermore, along the “Potential Threat to State Interests” dimension, we can also conceive of groups that are of medium or contingent threats to state interests, and such groups could be positioned along the “Agency/Voluntariness & Option Luck/Not Deserving” dimension (e.g., asylum seekers and humanitarian protections status recipients). Asylum seekers are individuals who seek refuge and await refugee recognition decisions. Therefore, until refugee recognition, they possess a precarious position within the receiving state – one that neither guarantees the protections accorded to recognized refugees nor the freedom or independence associated with regular entry under a working visa. Yet in many instances, from the perspective of the host society, asylum seekers are indistinguishable from economic migrants. Additionally, some receiving states experience large numbers of asylum applicants, and the sheer number of applicants may raise concerns over national security. Although asylum seekers are individuals seeking refuge from persecution or other dire circumstances in their countries of origin, they may not be perceived this way by the host society, and therefore appear to be potential threats to state interests who are opportunistically attempting to gain entry. On the other hand, unlike asylum seekers, recipients of humanitarian or subsidiary protections have received decisions on their refugee recognition applications. Although not qualifying as a recognized refugee, permission to remain in the country under humanitarian grounds often entails at least some protections and rights in countries that have established pseudo-refugee statuses. As such, if in limited numbers, they are not considered to be high threats to state interests, and their presence within the country is understood by the host society to be involuntary.

In this paper, I have attempted to extend theorization on why states vary in the codified rights and protections they confer to different types of itinerant populations. Anchored in insights gleaned from multiple literatures, this study suggests that there are socially constructed state-level and global deservingness logics that underlie the myriad of endogenous and exogenous factors that shape policy making. Combined with an understanding of the degree to which states take national security and interests seriously, this paper proposes a logic of protections heuristic that collapses the degree of

threat to state interests onto logics of deservingness. Doing so will allow researchers to systematically locate the protection and rights levels of various itinerant groups along a continuum.

However, it is important to recognize that the theoretical assertion and heuristic presented in this paper are grounded in patterns observed in secondary cross-national policy data and theorization in the abstract. In other words, the paper lacks a basis in detailed empirical and case study analyses and warrants further in-depth studies to evaluate the utility of the proposed ideas..

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³ In this paper, I define “itinerant populations” as individuals and groups who physically move – either voluntarily or involuntarily – across national borders to reside in the territory of a state in which the individual does not possess citizenship. Examples include international migrants, trafficked persons, asylum seekers, and refugees.

⁴ “Policy restrictiveness” refers to the “extent a regulation limits or liberalizes the rights and freedoms of immigrants” (Bjerr et al. 2016:17). “Policy restrictiveness” is originally evaluated on a 0 (open) to 1 (restrictive) scale, but the scale is reversed here so that higher values represent less restrictiveness, or more openness. The reversal was applied to intuitively reflect “policy openness” and to achieve directional consistency between the graphs plotting IMPIC data (i.e., Graphs 2, 3, 5, 6) and those plotting Cho’s (2016) anti-trafficking policy quality data (i.e., Graphs 4 and 7).

⁵ Although Graph 4 draws from Cho’s (2016) 3P Anti-trafficking Policy Index dataset which includes data from 189 countries, to ensure comparability across Graphs 2 through 4, I plot the averages of the same 33 OECD countries.

⁶ Norms can be divided into three categories: general human rights and anti-discrimination norms that apply to all persons, regardless of citizenship; minority

rights norms that apply to national minorities; and migrant worker norms that apply to non-nationals within a state (Gurowitz 1999).

- ⁷ For a critique and discussion on this, see Anderson (1999). For a critique of Anderson in defense of luck egalitarianism, see Barry (2006).

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