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Politics of Refugee Reception in South Korea:
Liberal Norms and Restrictive Institutions

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by

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The Dissertation of Angela Yoonjeong Choi is approved, and it is acceptable in quality and form for publication on microfilm and electronically.

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DEDICATION

For Charlie

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LIST OF ABBREVIATIONS

APRRN: The Asia Pacific Refugee Rights Network

COI: Country-of-Origin Information

DHS: Department of Homeland Security (of the United States)

EXCOM: UNHCR Executive Committee

GNP: Grand National Party (also known as Hannara Party)

ICA: Immigration Control Act (of South Korea)

IRB: Immigration and Refugee Board (of Canada)

MOJ: Ministry of Justice (of South Korea)

RRR: Refugee Recognition Rate

RSA: Refugee Status Applicant

RSD: Refugee Status Determination

UNHCR: Office of the United Nations High Commissioner for Refugees

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ABSTRACT OF THE DISSERTATION

Politics of Refugee Reception in South Korea:
Liberal Norms and Restrictive Institutions

by

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Doctor of Philosophy in Sociology

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Professor David S. FitzGerald, Chair

As of 2020, there are a staggering 26 million refugees worldwide. While most refugees live in poor- and middle-income countries in the Global South, few get a chance to be granted asylum in rich liberal democracies in the Global North. Even in the Global North, however, the refugee recognition rate (RRR) varies widely, with countries at the low end of the spectrum, namely South Korea and Japan, granting asylum to less than 2 percent of applicants compared to the 19 percent average among the top-ten OECD countries from 2014 to 2018.

My dissertation addresses why South Korea, a wealthy democracy that is a signatory to major international treaties on refugee protection and human rights and that has an independent

domestic legislation on refugee protection, accepts an extraordinarily low number of refugees relative to its Western counterparts with comparable economic, political, and social capacity. In complicating the traditional narratives that elusively point to the exclusionary national identity as the source of Korea's restrictiveness towards refugees, I show how the Korean bureaucratic and judicial agencies adjudicating asylum claims make it nearly impossible for asylum-seekers to win their cases. This, I argue, is due to the tightly embedded internal norms of the domestic decision-making institutions that remained largely unchanged by the adoption of supranational liberal norms and their corresponding domestic legislation on refugee protection. For example, even after Korea became a signatory to international treaties protecting refugees in 1992, judges were rarely given an opportunity to be trained in refugee law, as they continued the preexisting practice of applying much higher evidentiary standards that were imported from civil law – rather than the lower standards in international refugee law – upon reviewing asylum claims. This lack of change in institutional norms, I suggest, is underpinned by insufficient political attention, a disinterested public, negative media, and a relatively weak civil society. My findings indicate *how* laws are executed and by *which* state institutions matter in the effective implementation of the laws just as much as the ratification of the laws themselves.

I support my arguments using data I gathered in Korea (2018–2019), including 35 in-depth interviews with lawyers, advocates, and former government employees; 60 hours of participant observation of asylum hearings and professional workshops; 8,000 court verdicts on refugee litigations; and various documents from the government, media, and NGOs.

CHAPTER 1

INTRODUCTION

From 2015 to 2016, a staggering 2.5 million migrants sought asylum in Europe. In March 2016, speaking of this "European refugee crisis," the then-U.S. secretary of state John Kerry reassured the German foreign minister that managing refugees is a "global challenge." "It is not somebody else's problem," Kerry declared, "It is a test for all of us." Kerry's statement, while meant to express U.S. support, raises a long-time conundrum of how nation-states can equitably contribute to the protection of refugees.

For seven decades, nation-states around the globe have agreed that international cooperation is necessary to ensure effective responses to the needs of refugees. The two distinct ways in which nation-states can contribute to refugee protection are through providing protection to refugees who reach their territory (asylum), and by contributing to the protection of refugees who are on the territory of another state through resettlement or financial donations ("burden-" or "responsibility-sharing") (Betts 2009, 87). The importance of international cooperation has been articulated in a variety of documents since the creation of the global refugee regime (Milner 2016) including the Preamble of the 1951 Convention Relating to the Status of Refugees[1], almost 90 General Assembly resolutions, and nearly two-fifths of the Conclusions on International

[1] The 1951 Convention notes, "the grant of asylum may place unduly heavy burdens on certain countries, and… a satisfactory solution of a problem…cannot therefore be achieved without international co-operation."

Protection of UNHCR's Executive Committee (Triggs and Wall 2020). These articulations, however, have no power to bind states to share the responsibility of protecting refugees (Goodwin-Gill 1996). This means that, notwithstanding the broad agreement, the degree and type of contribution to the global refugee regime is at the discretion of each contracting nation-state.

Given the absence of binding commitments from nation-states, perhaps it is no surprise that the rates of asylum and responsibility-sharing are unequally divided among the countries around the world. In fact, they are highly uneven. In terms of resettlement, for example, 86 percent of the world's refugees are being hosted by developing countries, and 39 percent are being hosted by just five countries – Turkey, Colombia, Pakistan, Uganda, and Germany (in descending order) – as of 2020 (UNHCR 2020a). In terms of financial donations, 85 percent of the total contributions are made by only 15 donor countries out of more than 140 donors, as of 2020 (UNHCR 2020b). The rate of refugee recognition is also unbalanced, with countries at the low end of the spectrum, like Japan and South Korea, granting asylum to less than 2 percent of refugee status applicants compared to the 19 percent average across the top-ten OECD countries in recent years.

Previous works on the distribution of responsibility for refugees have explored the discrepancy between countries in the Global North (read West) and Global South, as well as between the member states of the European Union from a policy and ethical standpoint (Arar 2017; Bauböck 2018; Boswell 2003; Cuéllar 2006; Gibney 2015; Noll 2003; Schuck 1997; Thielemann 2003, 2006, 2018; Toshkov and de Haan 2013). Amid heated debates about asylum and responsibility-sharing, a geographic region that is largely missing from the conversation is

East Asia.[2] To be clear, most of the Asia-Pacific, including Central, South, South East, and South West Asia[3], has long been considered a refugee producing or transit region. As of 2021, Asia is home to 9.2 million people of concern to the UNHCR. At the beginning of the 21st century, Asia had the most individuals seeking asylum at a single UNHCR branch office (Malaysia) and the second highest number of individuals claiming refugee status from any single country (Myanmar) (Davies 2006). Two countries in East Asia, namely Japan and South Korea, however, are anomalies in the region in that they are two of the most developed democracies that are classified as part of the Global North under a range of measures, including their GDP, degree of integration into the global economic system, and level of political and economic freedom. Moreover, unlike the majority of Asian countries that reject the 1951 Convention Relating to the Status of Refugees and 1967 Protocol Relating to the Status of Refugees – the international legal instruments that set standards to guide state responses to refugees and asylum-seekers – Japan and South Korea are signatories to both. As active and cooperative participants in the international community, they also donate significantly to the UNHCR, ranking as the 4th and 15th highest country donors, respectively, in 2020 (UNHCR 2020b).

What most distinctly sets Japan and South Korea apart from other Western countries in the Global North is the exceptionally low number of asylum-seekers and refugees they physically host relative to other countries with comparable political, economic, and social

[2] East Asia constitutes China (including Hong Kong and Macao Special Administrative Regions), Japan, and South Korea, as per the UNHCR classifications.
[3] Central Asia constitutes Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan; South Asia constitutes India, Nepal, and Sri Lanka; South-East Asia constitutes Bangladesh, Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Mongolia, Myanmar, Philippines, Singapore, Thailand, Timor-Leste, and Vietnam; and South-West Asia constitutes Afghanistan, Islamic Republic of Iran, and Pakistan, as per the UNHCR classifications.

capacities. While all rich liberal democracies in the world fiercely and willfully evade providing protection to refugees and asylum-seekers (FitzGerald 2019), the cases of Japan and South Korea are extreme outliers even amongst the nation-states in the Global North.

In this dissertation, I question why South Korea (henceforth Korea) is an extreme outlier amongst the countries in the Global North from a sociological institutional perspective. Korea is a particularly peculiar case in that while it is a latecomer to the global refugee regime and a nation-state known for its racial and ethnic homogeneity (like Japan), it has actively embraced the policies on "selective multiculturalism" since the early 2000s in an effort to counter its low birthrate and rapidly aging society (unlike Japan) (Chung 2010; Lie 2014). Moreover, unlike Japan, which does not have an independent legislation pertaining to refugees and asylum-seekers, Korea's refugee and asylum-seeker management and treatment are guided by "The Act on the Status and Treatment of Refugees etc." (2012), which, upon its passage was widely celebrated as the "first law dedicated to the status and entitlements of refugees and asylum-seekers among East Asian countries" (Kim 2012, 2).

Throughout the dissertation, I show that Korea's relatively low refugee recognition rate (RRR) stems from the internal norms and practices of the bureaucratic and judicial institutions conducting refugee status determination (RSD) – the legal and administrative process that decides whether a person in search of protection is a refugee under the law. I argue that Korea's RSD institutions have remained unchanged and restrictive, even after the adoption of the more liberal international and domestic laws on refugee protection. Broadly, my findings suggest that (1) *how* the laws are executed and by *which* state institutions matter in the implementation of the laws as they are intended, just as much as the ratification of the laws themselves, and relatedly (2) the adoption of laws do not necessarily lead to changes in institutional norms, which can be

durable and lasting. Ultimately, I show that the push for liberal norms concerning refugee protection by a small group of politicians and activists clashed with the restrictive administrative institutions in charge of RSD, with the end result being that Korea's RRR has remained low.

In this chapter, I first elaborate on the uneven distribution of support towards refugees across nation-states, situating Korea in a global context. Juxtaposing Korea with other comparative cases clearly reveals that Korea is indeed an outlier in the global refugee regime and a puzzle to be further investigated. Second, I review the extant explanations on why Korea receives relatively few refugees, many of which highlight Korea's national identity as the source of restriction. Third, I outline the extant arguments known as the "liberal constraints thesis" that explain why liberal democracies accept unwanted immigrants, including refugees and asylum-seekers, and assess how Korea fits into the existing theoretical model. In concluding that the liberal constraints theses do not adequately explain the Korean case, I suggest a new approach rooted in sociological institutionalism to examine the state decision-making institutions that are responsible for conducting asylum adjudications to address the empirical question at hand.

[1.1] Uneven distribution of support towards refugees around the globe

Among the most prominent discussions on responsibility-sharing is the stark difference in the type and degree of responsibility between the Global North and Global South, in which the latter hosts the vast majority of the world's refugees while the former makes most of the financial contributions to the UNHCR and donates to the states in the Global South to assist with their refugee-hosting efforts (Milner 2016).[4] This unequal system of global refugee management

[4] While the world is not neatly divided into the North-South dichotomy, this conceptual dualism captures an important dynamic of the global refugee regime (Betts 2008). In the context of the global refugee regime, the North is comprised of rich, industrialized democracies located outside refugee-producing regions of the world. The South, on the other hand, is comprised of

that has emerged between states in the Global North and Global South has been described as a "grand compromise." According to Cuéllar (2006), who coined the phrase, it is "…a *compromise* because it is not perfect from anyone's point of view, perhaps least of all the refugees…[and it is] a *grand compromise* [because] the system has nonetheless achieved considerable legal and political feats" (622). Previous works have pointed out that the system of grand compromise works to protect the sovereignty and national resources of advanced countries in the Global North at the expense of less developed countries in the Global South (Arar 2017; Cuéllar 2006). A more equitable responsibility-sharing agreement has been a central goal in the series of recent international frameworks on refugee protection such as the 2016 New York Declaration for Refugees and Migrants and 2018 Global Compact of Refugees (Doyle 2018); however, their effectiveness have been limited at best, especially without an enforcement mechanism obliging nation-states to comply and cooperate (Triggs and Wall 2020).

Besides the North-South divide, discussions on asylum and responsibility-sharing of refugees have focused heavily on the European Union (Bauböck 2018; Boswell 2003). The discrepancy in the number of refugees recognized by different EU member states has been a major source of both regional contention and call for solidarity, especially since the European "refugee crisis" that reached its peak in 2015 (Agustín and Jørgensen 2019). As shown in Figure 1.1, the number of recognized refugees varied significantly across the EU member states as recently as 2019, with Greece, Austria, Germany, France, and Luxembourg leading the way. Greece, in particular, has struggled with a disproportional share of the responsibility as a gateway state to Europe (Valenta et al. 2019). In an effort to alleviate this regional challenge,

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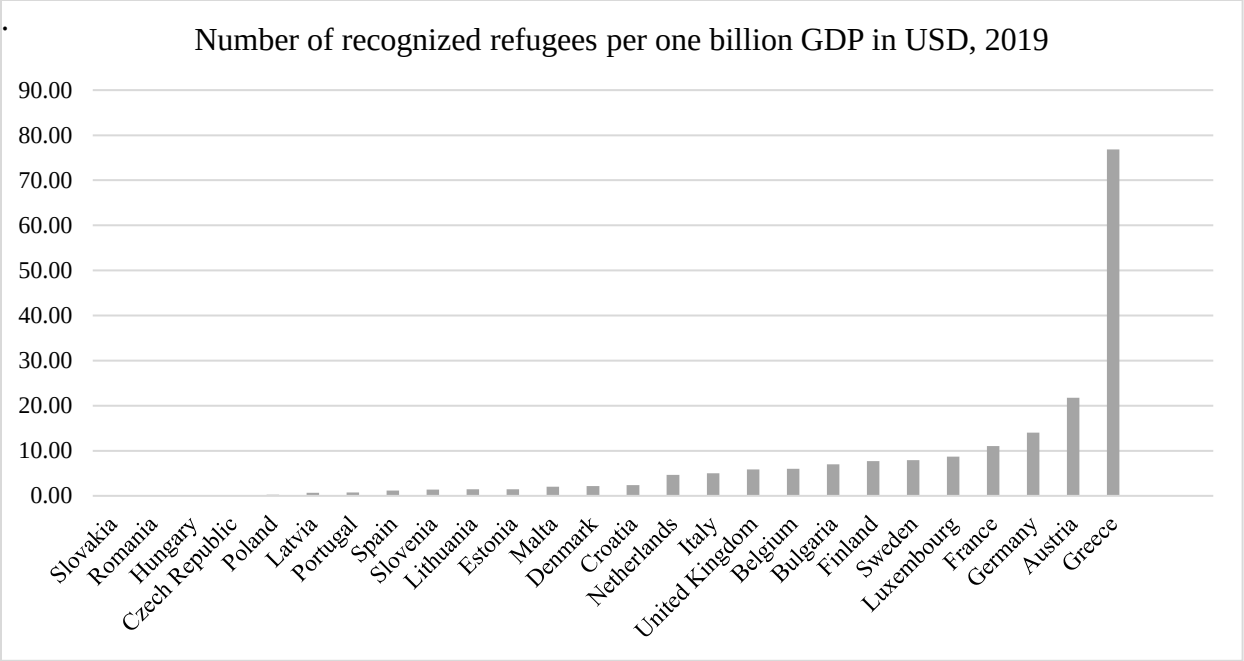
developing countries that produce refugees or are near refugee-producing countries that serve as countries of transit or of first asylum due to the "accidents of geography" (Hathaway and Neve 1997, 141).

since 1999, the EU has worked toward creating a Common European Asylum System (CEAS), a legal framework that "sets out common standards and co-operation to ensure that asylum seekers are treated equally in an open and fair system – wherever they apply" (European Commission 2021). Despite years of attempting to adopt common minimum standards and achieve harmonization, however, it is debatable whether the EU has a common asylum policy given the continually large and systematic cross-country differences in refugee inflows (Henrekson, Öner and Sanandaji 2020).

In contrast to the high volumes of scholarly and policy discussions on the North-South divide and the burden disparities in the EU, there has been very little work dedicated to examining the burden disparities across rich, liberal democracies in the Global North as a whole. In particular, the literature has largely overlooked the roles and participation of developed countries in the East Asian region in the global refugee regime. In a comparative perspective, Korea is an outlier in the Global North in terms of the number of refugees it recognizes (Domínguez 2014). In 2019, for example, Korea recognized a mere 0.3 percent (38 individuals) of the total number of processed refugee status applicants as refugees. Compared to other OECD countries with comparable GDPs and populations, Korea's low RRR is even more glaring. As shown in Figure 1.2, in 2019, Korea ranked second to last in RRR, recognizing 0.02 refugees per one billion GDP USD, while Canada and Germany recognized 15.7 and 14 refugees per one billion GDP USD respectively. Similarly in 2019, Korea recognized 0.7 refugees per one million people, while Germany and France recognized 649 and 448 refugees per one million people, respectively.



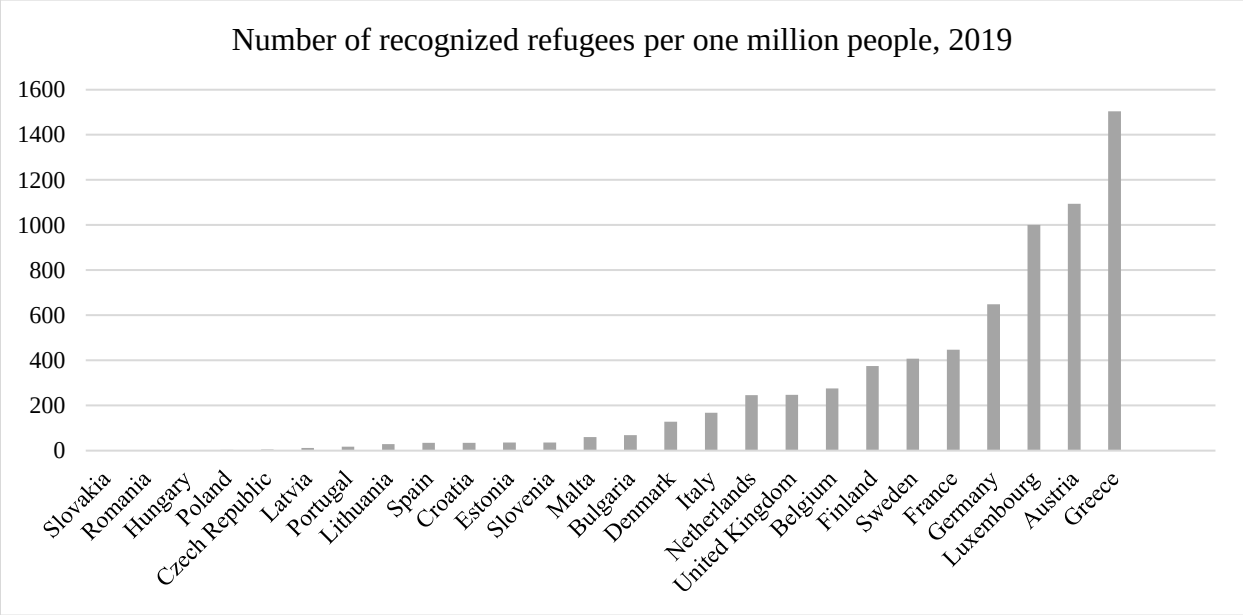
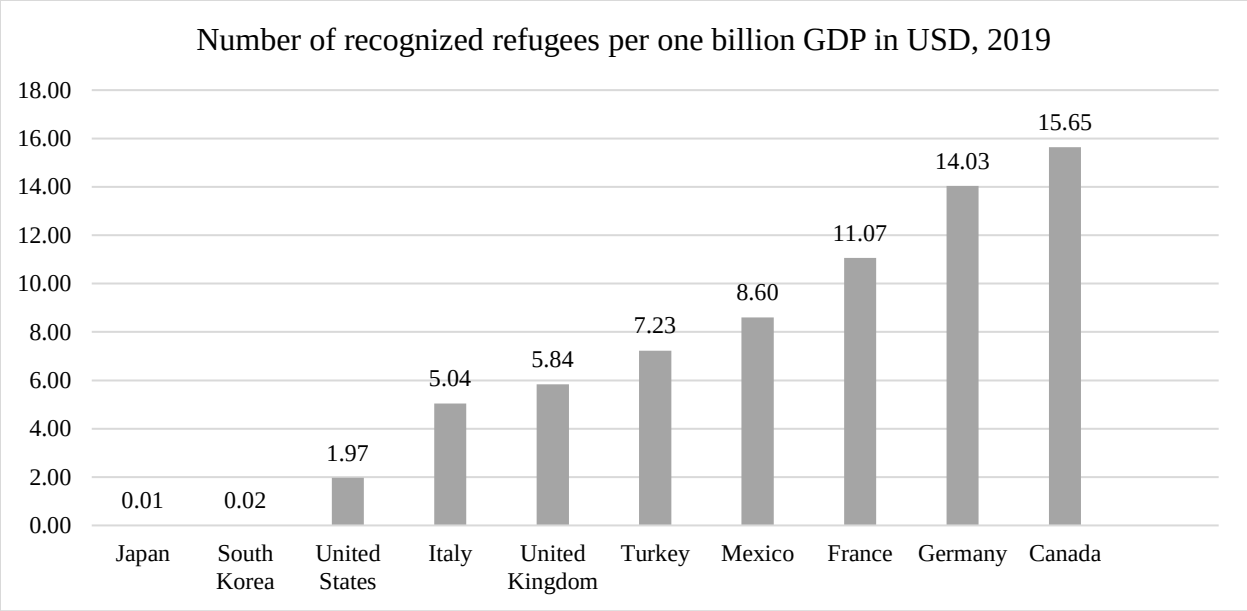


Figure 1.1. Number of recognized refugees by EU nation-states by GDP and population, 2019
Source: UNHCR Refugee Data Finder



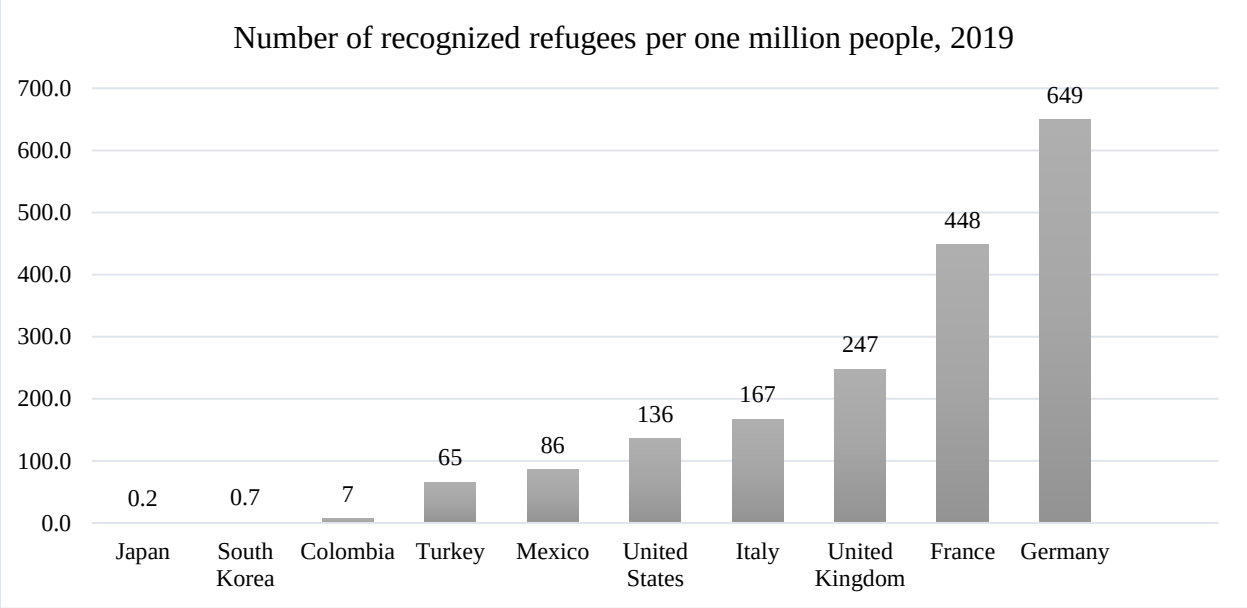


Figure 1.2. Number of recognized refugees among OECD countries with highest GDPs and population, 2019
Source: UNHCR Refugee Data Finder

In terms of resettlement, Korea ran a pilot program in 2015–2017, during which the government resettled 86 Myanmar refugees from camps in Thailand (UNHCR 2017). All in all, Korea resettled 166 refugees as of 2020 (Nancen 2020). While the UNHCR welcomed Korea's

newly established commitment toward refugee protection, the number of refugees that Korea has committed to settle remains comparatively miniscule. The number of resettlement departures to Italy, for instance, topped 2,000 in 2015–2020, while the number to Canada exceeded 60,000 over the same period (UNHCR 2021).

[1.2] Existing explanations on why Korea receives relatively few refugees

In 2009, Seol and Skrentny (2009) wrote, "Literature on refugees in Korea is almost non-existent because there are so few" (585). As of 2021, studies on forced migration in Korea – especially those written in English – are still few and far between,[5] although this trend is slowly beginning to change due in part to the steadily rising number of asylum-seekers in Korea and the expanding public and political interests following the 2018 Yemeni refugee "crisis" – a wave of arrivals of Yemeni refugees in Korea's Jeju Island, an incident that sparked unprecedented public and policy debates on refugee acceptance.

There are a handful of explanations and conjectures in the scholarship on the broader patterns of immigration, nationalism, and development in Korea and greater Northeast Asia on why Korea recognizes comparatively few refugees. The majority of these explanations point to cultural and historical uniqueness of the Korean nation-state as the source of the country's relative closedness, such as Korea's strong ethnic national identity, one based on the sense of shared bloodline and ancestry (Shin 2006; Strausz 2014); its elite political culture of the "developmental state" that sacrifices individual rights for economic growth in the name of national interest (Seol and Skrentny 2009); the "Korean mindset" that, despite the onset of globalization, has failed to seek ways to "live cooperatively with the world" and that "does not

[5] The recent works in English dedicated to the topic of refugees in Korea include Kim 2021; Schattle and McCann 2014; and Wolman 2013.

care for others" (Chung 2009, 221); and its connection to North Korea and a large pool of potential defectors (Moon interviewed in Domínguez 2014).

In the existing works, the explanatory variables are difficult to concretize – one of the most prominent being Korea's nationhood or national identity (Ha and Jang 2014; Jeong 2016; Kim 2015; Kim and Park 2016). Strauz (2014), for example, writes, "Scholars with an interest in the politics of sovereignty and national identity might examine South Korea's… reluctance to admit refugees despite [the] economic incentive to do so in an era of low birthrates." He then asks, "Is the issue here the way that … South Korea define[s] [its] national identit[y] and, if so, why have ethnic conceptions of national identity been particularly influential?" While the notion of nationhood certainly affects politics surrounding asylum and relevant policymaking, there is much to unpack as to what it is, and how exactly it plays a role and to what degree (Hathaway 2013). Methodologically, pinning down Korean national identity as an independent variable is challenging, as it can change over time depending on historically inherited characteristics, present needs, and future aspirations (Campbell 2015; Parekh 1995).

To avoid the methodological challenges and potential analytical pitfalls that may arise from working with abstract independent variables, I begin my analysis by asking *who* the actors are involved in the decision-making process regarding refugee recognition, *how* they make their decisions, and *why* they arrive at the decisions they make. The starting point of my analysis rests on the assumption that there are multiple players within the Korean "State" that are responsible for Korea's low refugee recognition. In so doing, I move away from the simplistic and essentialist notion that the state (and its identity) is a monolith, instead perceiving it as a composition of different elites, bureaucrats, and political leaders with varying goals, agendas, and institutional norms. In this regard, I agree with Sammers (2010), who writes, "the state is not

monolithic; that is, the state is not a 'thing' with one voice; it is not simply a one-room chamber of expert sages that churn out policy. Rather states are complex apparatuses which contain many levels and different 'branches' or 'wings', often in conflict with each other" (quoted in Semmelroggen 2011, 2).

While I focus primarily on state decision-making institutions in this dissertation, I fully acknowledge that decision-making institutions are not isolated in a vacuum. They influence and are influenced by actors with different motivations that occupy different social fields (Fligstein and McAdam 2012), such as the public, media, civil society organizations, policymakers, and supranational institutions (Figure 1.3). However, ultimately, the responsibility of deciding who, and how many, can be granted refugee status lies with the administrative and legal bodies of the state, who, until a new law or amendment to the existing law passes, remain the most direct authority overseeing the process and results of asylum adjudications.

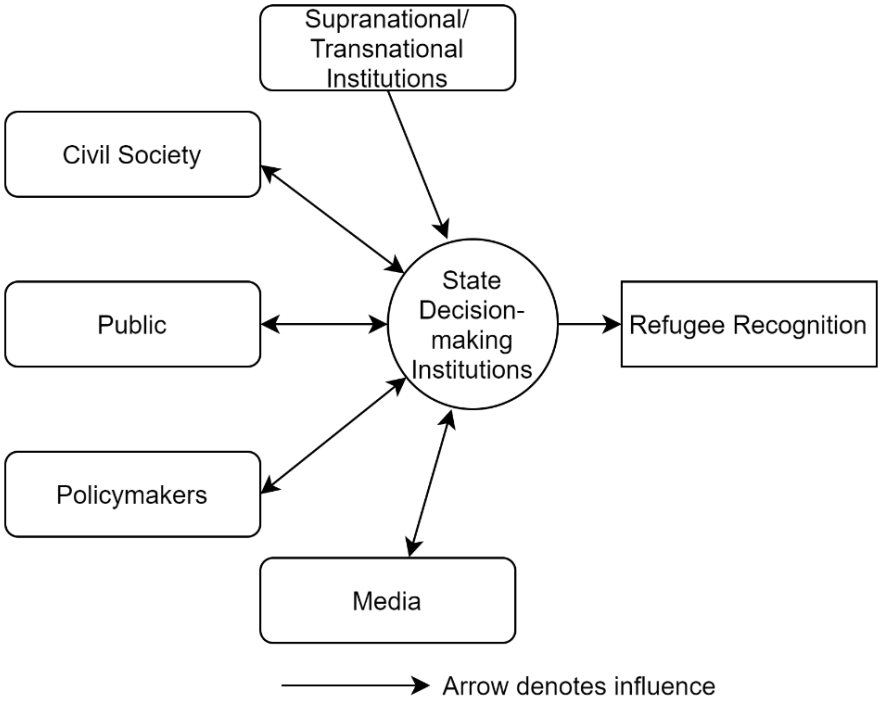


Figure 1.3. Social and institutional determinants of refugee recognition

[1.3] Liberal constraint thesis and its application to Korea

Beyond Korea, why do other liberal democracies accept (or reject) refugees and asylum-seekers? Discussions on why nation-states in the Global North accept unwanted migrants, including refugees and asylum-seekers, have traditionally been predominated by two variations of the "liberal constraint thesis" of the neo-institutionalist school (Hollifield 1992), which identifies liberal institutions as the source of openness against the state's restrictionist tendencies. The first variation, sometimes called the global-institutionalist perspective (Surak 2008), examines the relationship between the state and international system in migration policymaking. Specifically, it suggests that liberal norms concerning immigration, foreigner rights, and citizenship originate from international institutions and frameworks that champion universal human rights, and that such supranational standards compel nation-states to grant entry and rights to unwanted immigrants (Jacobson 1996; Sassen 1996; Soysal 1994). The second variation, called the liberal-democratic perspective, focuses on the relationship between the state and domestic institutions. In questioning the effectiveness of supranational institutions on domestic policy- and law-making, this perspective explains the persistence of unwanted immigration in liberal democracies by looking for the institutional source of openness from *within* the nation-state (Guiraudon and Joppke 2001; Joppke 1998a, 1998b).

Global-institutionalist perspective

The global-institutionalist understanding of society is discussed in the literature on world society/polity (Cole 2017), which contends that nation-states and organizations are embedded in, and influenced by, globally institutionalized models and norms – a phenomenon that has become greatly pronounced in the aftermath of World War II (Meyer et al. 1997). The applicability of the global-institutionalist perspective on migration has been considered most markedly by the

scholarship on postnationalism, which downplays the value of national citizenship as the source of membership and rights, and instead highlights post-war international human rights norms as the legitimizing basis for identity and rights for all individuals, including non-citizen migrants (Jacobson 1996; Sassen 1996; Soysal 1994). The implication of the postnationalist thesis is that nation-states provide access and grant rights to refugees and asylum-seekers because they are constrained by supranational institutions and their human rights framework.

Although postnationalism has been criticized by some as lacking steady empirical and conceptual foundations (see Hansen 2009 for a comprehensive critique), it is nevertheless highly pertinent to the discussions on the status of refugees in a world governed by the principle of state sovereignty. Indeed, refugees are protected by supranational institutions and their discourses grounded in human rights.[6] The international system of refugees is arguably the most robust and formalized form of multilateral cooperation in the contemporary global migration governance, making it a "notable exception" to the politics of international migration that is otherwise operated by the rules of nation-states (Hollifield and Wong 2014, 233). The establishment of this system dates back to 1950 when the office of the United Nations High Commissioner for Refugees (UNHCR) was created as an umbrella organization of the United Nations, with a mandate to "save lives, protect rights and build a better future for refugees, forcibly displaced communities, and stateless people." The key documents that form the basis of the UNHCR's work are the 1951 Convention and 1967 Protocol Relating to the Status of Refugees, international treaties that define a "refugee" and outline refugee rights as well as the legal obligations of nation-states to provide protection. The fundamental principles that underpin the

[6] The Article 14 of the 1948 Universal Declaration of human rights recognizes the right of persons to seek asylum from persecution in other countries.

Convention and the Protocol are non-penalization and non-refoulement, which stipulate that refugees should not be punished for their illegal entry or stay, and that refugees cannot be expelled or returned ("refouler") against their will to a territory where they fear threat to life or freedom. In the global-institutionalist understanding of the world, these principles suspend state sovereignty and offer protection to forcibly displaced people who otherwise have no legitimate claim to be present in the host state territory. As of 2021, there are 148 state parties to the Convention and/or the Protocol.

Liberal-democratic perspective

The supporters of the liberal-democratic perspective explain the persistence of unwanted immigration in liberal democracies by looking for the source of openness from *within* the nation-state. A liberal state is a constitutional state (*Rechtsstaat*), and in it, the liberal norms that protect human rights are not derived externally but are embedded domestically in constitutional orders and provisions (Hollifield 1992). These domestically derived norms are exercised and reinforced by independent and activist courts, which are more insulated from negative populist sentiments toward immigration than other branches of the government (Guiraudon and Joppke 2001; Hampshire 2013, 45; Joppke 1998a, 1998b, 2001). Accepting unwanted immigrants, in other words, is "inherent in the liberalness of liberal states" (Joppke 1998a, 292).

In his classic comparative work on asylum policy, Joppke (1998b) writes that the United States and Germany, unlike Britain, are the "world's biggest magnets for asylum-seeking" because they possess "strong domestic constitutional provisions to be invoked by asylum-seekers: in the United States, an expansive Constitution, which protects the procedural and substantive rights of aliens, not just of citizens; in Germany, a unique constitutional right of

political refugees to be granted (not just to enjoy) asylum" (113).[7] In particular, in the case of the United States, the activist courts have challenged the legislative and executive impetus to restrict immigration by expansively interpreting and protecting migrant rights. Starting in the 1980s, in what Joppke calls the "court-driven liberalization of asylum," the U.S. judiciary granted a series of legal victories to asylum-seekers by limiting the executive power of deportation and detention, and easing the burden of proof for refugee status claimants (Ibid., 119, see also Anker and Blum 1989; Zuker 1983).

Weaknesses of the Liberal Constraint Thesis: Its Application to Korea

Neither variation of the liberal constraint thesis fully explains why Korea accepts relatively few refugees. Apropos the global-institutionalist view, Korea's RRR has remained consistently low despite its participation in various supranational institutions and frameworks on human rights and refugee protection. Korea has been a signatory to the 1951 Convention and 1967 Protocol Relating to the Status of Refugees since 1992, and ratified a series of core international human rights treaties in the 1980s and 1990s. Moreover, it was a member of the UN Security Council in 1996–1997, during which it focused on humanitarian assistance to refugees, and was a member of the UNHCR Executive Committee in 2000 (Koh 2000; Schattle and McCann 2014). To be sure, Korea's ratification of the Refugee Convention and the Protocol led to immediate changes to the national law on immigration to incorporate legal and institutional measures to receive and process asylum applications. These changes, however, had little impact on Korea's RRR. In fact, the first refugee recognition in Korea occurred in 2001, nine years after the ratification of the Refugee Convention and the Protocol, indicating that the initial changes in

[7] In Germany, the right to asylum for politically persecuted individuals is a fundamental right that is enshrined in article 16(a) of the Basic Law. In 1993, amendments were made to the law to significantly narrow down the asylum application eligibility.

the domestic law were largely superficial and had little practical bearing on the RSD process.

Similarly, the liberal-democratic view does not explain Korea's low RRR. It would actually predict the opposite – that Korea would be expansionist in its policies regarding refugee protection – considering that Korea has a liberal-democratic system of government. Indeed, by multiple working definitions, Korea, as of 2021, is a liberal state committed to democratic and constitutional order. Polity Data Series, one of the most prominent indices measuring a nation-state's degree of democracy, scores Korea an 8 out of 10, where 10 signifies the maximum value a country could receive as a democracy (Marshall 2014). Likewise, Freedom House, in its *Freedom of the World* annual report, designates Korea as "free" with an aggregate score of 83 out of 100 (Freedom House 2020).[8] Furthermore, the independent and specialized Administrative Court of Korea, where most refugee cases are disputed, was founded in 1998 as an integral part of judicial reform to hear cases on administrative dispositions against the government (Ginsburg 2006). The establishment of the Administrative Court is believed to have not only "[expanded] the opportunity of judicial review to citizens," (Lee 1999, 9) but also "[effected] separation of power between the executive and the judiciary" (ibid., 11).

The inability of the liberal constraint thesis to explain Korea's low RRR informs us that the countries in the Global North that have ratified supranational treaties on refugee protection and have an independent, activist court can still be restrictive with regards to refugee protection. Beyond Korea, the evidence of rich, liberal democracies strongly avoiding responsibility of refugee protection has in fact been well-documented (FitzGerald 2019). Pointing to the antithetical practices of Western states that both continue publicly to stick to the principle of asylum, and make enormous efforts to ensure that asylum-seekers never reach the territory of

[8] For comparison, the United States scored 86 and North Korea 3 in the same study.

asylum, Gibney (2004) writes, "A kind of schizophrenia seems to pervade Western responses to asylum-seeker and refugees" (2). Moreover, the liberal constraint thesis fails to tell us why some liberal democracies accept more refugees compared to others. In other words, while it may be able to identify some of the sources of openness and closure, it is not able to predict the *degree* of openness and closure. As such, I argue that a more complex and nuanced analysis is required by focusing on how such liberal constraints are applied (or not applied) on the ground where asylum decisions are processed (Boswell 2007).

[1.4] In-depth study of RSD institutions and their effects on asylum outcomes

International law provides nation-states with a common definition of a refugee, and with guidance on how asylum-seekers asking for refugee status should be treated. This said, however, when it comes Refugee Status determination (RSD) – the legal and administrative process that decides whether a person in search of protection is a refugee under the law – there are no universal or enforceable standards that regulate the contracting states of the Refugee Convention and the Protocol.[9] This means that in the Global North, the implementation of RSD is left up to the discretion of the states receiving asylum applications and, more specifically, the states' administrative and judicial bodies that are responsible for conducting RSD. This further implicates that RSD outcomes depend, in significant part, on the domestic institutions that adjudicate asylum claims.

Previous works on RSD institutions have explored the roles of various state decision-

[9] Neither the 1951 Convention nor the Statute of the office of the UNHCR says anything about how RSD should be conducted. For this reason, RSD processes can differ vastly across contracting countries in the Global North; however, a general consensus is that core elements of RSD should entail an in-person interview with, or a hearing of, the asylum-seeker by a state agent and an opportunity for a rejected administrative decision to be reviewed ideally by an independent appeals body and/or the courts (Jones and Houle 2008).

makers, including immigration and asylum officials and caseworkers (Bhatia 2020; Dahlvik 2018; Jubany 2011; Liodden 2019; Schittenhelm and Schneider 2017; Schoenholtz, Schrag, and Ramji-Nogales 2014) as well as judges and legal officers (Johannesson 2018; Miller et al. 2015). While these works provide invaluable insights on who the RSD administrators are and the inside operations of asylum bureaucracy, they seldom discuss the effects of RSD institutions on RSD outcomes, including RRR. As a result, we know substantially less about whether, and which if any, RSD institutions are potential sources of liberalization or restriction and why, than about the collective characteristics of the so-called "street-level bureaucrats" in charge of asylum adjudications (Lipsky 1980[2010]).[10] Moreover, these works rarely review the RSD process as a whole, thereby failing to uncover what in reality is a complex web of administrative and legal proceedings involving multiple, interlinked, and hierarchical state institutions.

Perhaps one of the most compelling works on RSD institutions that addresses some of these existing limitations is that of Hamlin (2012, 2014), whose concept of "RSD regime" – defined as the multiple state institutions conducting RSD and their relational dynamics – highlights the fact that "RSD outcomes are part of a larger system that must be studied holistically, rather than by comparing isolated elements, such as parallel exclusionary policies or high court decisions on similar questions" (2012, 935). Unlike most studies on RSD, Hamlin makes a connection between asylum adjudicating bodies and RSD outcomes by arguing that a country's RRR depends on the power dynamics among its RSD institutions, specifically, on "the

[10] While the judicial branch is separate from the executive branch that manages federal bureaucracies, there has been an increasing trend in the sociolegal and migration literature to deem the roles of judges as equivalent to those of street-level bureaucrats (Asad 2019; Jain 2019; Johannesson 2018; Miaz 2017). In this manuscript, I, too, consider judges as street-level bureaucrats given their engagement with other administrative agencies regarding asylum claims and their direct contacts with asylum-seekers.

institutional players that end up dominating the process, the level of contention among actors, and the degree of centralization within the decision-making processes" (2014, 10). As a case in point, Hamlin shows that Canada's RRR is higher than the United States because of the high level of insulation that protects the country's administrative agency from political tinkering and judicial review. The U.S. administrative decisions on asylum, on the other hand, are unshielded from contentious political and judicial oversight, resulting in a relatively lower RRR.

While Hamlin reveals *which* state decision-making bodies have the power to influence RSD outcomes, however, she ultimately stops short of investigating *why* different RSD agencies operate the way they do. For example, it is not explained why Canada's Immigration and Refugee Board – the first-instance administrative tribunal that "enjoys a lot of flexibility and freedom to develop its own procedures and create its own jurisprudence" (Hamlin 2012, 960) – tends to be more generous and responsive to their applicants compared to other countries' counterparts. Likewise, Hamlin does not elaborate on why the Board of Immigration Appeals of the United States, an administrative appellate body that reviews cases rejected by immigration judges, seldom decides in favor of asylum applicants.

In filling this gap in the literature, this dissertation explores not only *which* RSD institutions influence RSD outcomes but also *why* they lean towards restriction in their determination of refugee status. Rather than assuming that the adjudicators' restriction is derived from their personal proscriptions and biases, as some of the previous works have argued (Bhatia 2020; Jubany 2011), I aim to show that the norms of the RSD institutions play a critical role in shaping the calculations and judgements of the adjudicators of asylum claims. My approach is rooted in sociological institutionalism of the neo-institutionalist school, which focuses on the institutional and social norms that structure or "constitute" social actors, defining their goals and

identities (DiMaggio and Powell 1983; Meyer and Rowan 1977). Examining institutional norms is crucial to understanding why institutions (and their constituted actors) behave the way they do. In particular, institutional norms govern the "logic of appropriateness" (March and Olsen 1989, 1995), the concept in social theory that suggests organizational decision-making is driven by "rules of appropriate behavior" that are deemed by the decision-makers as "natural, right, expected, and legitimate" (March and Olsen 2009).

[1.5] Data

I draw on four separate forms of data in this dissertation: in-depth interviews, notes from participant observation, court verdicts on asylum claims, and materials from the Korean government, media, and NGOs.

For six months in 2018-2019, I conducted fieldwork in different cities in Korea, including Seoul, Jeju, Gwangju, Ansan, and Busan, during which time I interviewed 35 individuals from the near universe of central organizations that have worked with, or are currently working with, refugees. This was possible due to the relatively small number and concentrated geographic base of such organizations. The interviewees included lawyers and activists working for migrant and refugee rights NGOs, religious NGOs, and non-profit foundations; lawyers engaged in private, for-profit practice, some of whom had formerly been employed by the Ministry of Justice (MOJ) as legal officers; former district judges; academics with experience in migration policymaking; and a current public servant who had worked in the MOJ's Refugee Division from 2012 to 2017 during the pivotal time of Korea's refugee resettlement program development.

I identified my interviewees through media outlets, social network services, government reports, and the "Korea Refugee Rights Network," a coalition built by NGOs supporting

refugees. When I began collecting data for this project in August 2018, the issue of refugees was especially sensitive politically and socially, as Korea had just experienced its first "influx" of refugees a few months prior, when more than 550 Yemeni refugees arrived in Korea requesting asylum. This led to a series of national anti-refugee movements for the first time in Korea's history, dominating the news headlines and political discourse for the remainder of 2018 (Hirst 2018). As a foreign academic doing research on an issue that had just become nationally sensitive, I had to be creative and flexible in recruiting my interviewees, many of whom were overburdened by the sudden and unprecedented attention from both domestic and foreign media and inquisitors. I began by cold-contacting the law firms where the interviewees worked, direct-messaging the advocacy organizations via Facebook, and attending as many public seminars as I could that were sponsored by a refugee NGO to establish face-to-face contacts and mutual trust. These attempts eventually led to snowball connections and invitations to other pertinent events. Despite the initial difficulty accessing the interviewees, my positionality as an ethnic Korean fluent in the Korean language who had previously worked with immigrant populations helped to facilitate smooth and candid interview sessions. All interviews were semi-structured, conducted in the Korean language, and lasted for an average of one hour. My interview questions were aimed to address the practitioners' views on Korea's refugee policy and RSD process, as well as their personal experiences at their jobs.

While I successfully identified and interviewed lawyers from almost every central NGO providing legal service to refugees and asylum-seekers, it was difficult to locate for-profit lawyers who have worked with asylum-seeker clients, mainly because this industry is small and not widely advertised. Additionally, I decided to interview former government employees rather than current ones because they were much more accessible and could speak candidly about their

experiences. This was especially true following the aforementioned Yemeni refugee "crisis" when many government officials were hesitant to speak openly about Korea's refugee policy given the event's high sensitivity.[11] Despite these shortcomings, the individuals I talked to have a wide spectrum and many years of experience with regards to Korea's RSD process, and by the end of my interviews, I had reached a saturation point (Guest et al. 2006).

In addition to conducting interviews, I attended various sites as a participant observer including local seminars aimed at increasing public awareness, workshops tailored for legal practitioners and advocates working with refugees, real-time asylum hearings at the Seoul Administrative Court where most first-instance judicial decisions on asylum cases are made, public anti-refugee protests, and a private meeting for lawyers advocating refugee plaintiffs. The seminars, workshops and the closed meeting with lawyers provided invaluable information about the inner workings of RSD institutions, and the trips to the Administrative Court allowed me to observe the dynamic of decision-making in close quarters. All in all, I spent more than 60 hours as a participant observer.

Other than the fieldwork data, I web-scraped summaries of judgement documents on refugee-related litigations uploaded on www.w4refugee.org, a public website run by APIL, one of the most prominent public interest law firms that does advocacy work for refugees and asylum-seekers in Korea. The web-scraping effort yielded 2,862 summaries of judgements made

[11] When I had inquired about the possibility of interviewing current government employees responsible for RSD, most of my informants told me that it would be highly unlikely that a current MOJ employee would agree to an academic interview regarding the topic of refugee recognition. For example, a former MOJ legal officer-turned-lawyer frankly said current MOJ officials would not speak with me because, "if they say something wrong [to the author], it would be absolutely terrible… because there is always a danger that their statements could turn into MOJ's official statement, which would lead to public and political repercussions" (Author Interview 5/14/2019).

by administrative and district courts of Korea from 2001 to 2018. I was also able to gather an additional 5,000 court judgements made between 1999 to 2018 from the same organization. This data is used to analyze how asylum decisions are made in the courts, the details of which are presented in Chapter 4 of this dissertation.

Lastly, I substantiate my fieldwork findings and court judgement analysis with documents from the government, media, and NGOs. The government materials include the annual statistical reports on immigration published by the MOJ, the Courts of Korea yearbooks, and the MOJ's website that contains messages from the chiefs of immigration centers across Korea. The media accounts and NGO reports are used to provide descriptive information on Korea's RSD and social climate regarding refugees.

[1.6] Dissertation outline

In chapter 2 of the dissertation, I describe Korea's entry into the "global refugee regime" and its effects on the domestic landscape of refugee protection, and proceed to discuss how the Refugee Act came to pass, as well as the Act's major provisions. I end the chapter by reviewing the impacts of the Yemeni refugee "crisis," the most recent and pronounced incident that some believe to have tested the Refugee Act.

In chapter 3, I delve into the details of Korea's RSD and RSD institutions – the Ministry of Justice and the administrative and district courts. Using the fieldwork data, including interviews and participant observation notes, as well as documents from the government, media, and NGOs, I discuss why Korea's RSD institutions yield restrictive asylum results, despite the adoption of liberal international and domestic laws on refugee protection.

In chapter 4, I utilize the web-scraped court verdict document summaries to explore who actually wins the lottery that is Korea's RSD. The aim of this examination is to shed light on

how refugees are defined by Korean judges both legally and extralegally, and by extension, how such legal and extralegal interpretations of refugees contribute to Korea's relatively low RRR. In this chapter, I first outline the international legal definition of a refugee, how RSD is conducted in practice, and then discuss how Korean judges determine who a refugee is and why.

I conclude the dissertation with chapter 5, summarizing the main findings of the dissertation and suggesting future research ideas and directions.

Acknowledgement

Chapter 1, in part, has been submitted for publication of the material. The dissertation author was the primary researcher and single author for this paper.

CHAPTER 2

SOUTH KOREA'S DEVELOPMENT INTO A REFUGEE-HOSTING STATE, 1992–2018

"The enactment of the Refugee Act was a bit of a surprise…. It just kind of happened."

- Author interview with a public interest lawyer (May 2, 2019)

[2.1] Korea's entry into the "global refugee regime" and its effects on the domestic landscape of refugee protection

The refugee population in Korea has been absent from the public discourse on Korean immigration, not only because of its actual miniscule number – just 943 as of 2018 – but also because most Koreans were unaware of the fact that Korea could be a destination country for refugees (Moon 2017). Contrary to this popular assumption, however, the history of Korea's refugee processing dates back to the 1960s during the Cold War era, when political asylum-seekers from communist China and the Eastern bloc arrived in Korea, albeit with a clear intention to move to another country of their preference, most often Taiwan or the United States (Schattle and McCann 2014, 320). Starting in the late 1970s, Korea received Vietnamese refugees fleeing the aftermath of the Vietnam War, including those escaping by boat. From 1977 to 1989, over 1,300 Vietnamese "boat people" landed in Korea, every one of whom was denied resettlement and sent off to a safe third country (Chung 2009, 204). Ironically, it was in 1992, amid the Vietnamese refugee departures, when Korea became a party to the 1951 Refugee

Convention and its 1967 Protocol, agreeing to comply with the international standards of refugee protection (Kim 2021).

Korea's membership in the international refugee regime officially transpired in the early phase of its "globalization" (*segyehwa*) initiative of the late 1980s and 1990s, a willful effort by the state to enhance its national competitiveness and reputation on the expanding global stage (Shin 2006, 211-14). Following the tumultuous decades of economic development and democratization in the 1970s and 1980s, Korea kicked off the new decade with a successful debut in the international community of advanced nation-states by becoming a member of the United Nations in 1991 – a historic feat that elevated Korea's status in the international arena. Korea's joining of the UN not only demonstrated how far the country had come from its war-torn past, but also signaled its commitment to internationalism. In his 1991 national speech, the then-President Roh Tae-Woo stated, "As a member of the UN, [Korea] will not only confidently speak up about problems affecting the Korean nation, but will also contribute to world peace and welfare of mankind," as he acknowledged that "…the realization of human dignity, right, freedom and peace is the obligation of all member states as defined by the Charter of the United Nations" (Roh 1991).

Beginning with the Roh presidency (1988–1993), *segyehwa* became the most prominent national slogan and remained as the centerpiece of the subsequent administrations of Kim Young-Sam (1993–1998) and Kim Dae-Jung (1998–2003). It was against this political backdrop that Korea ratified a series of international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR) in 1990; Convention on the Rights of the Child (CRC) in 1991; Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or

Punishment (CAT) in 1995; and the Refugee Convention and Protocol in 1992. President Roh's keynote address at the 47th Session of the UN General Assembly in 1992 once again confirmed the message of Korean commitment to alleviating global problems including human rights abuses and refugee resettlement:

> The Republic of Korea will actively participate in the UN's leading efforts and fulfill its role. Even today when freedom and human rights are prevailing, we are still witnessing systematic human rights violations. The suppression of human rights cannot be justified for any reason, and it is the common responsibility of the mankind to prevent it. *International relief and support for the numerous refugees produced by war, civil war, and poverty must further be strengthened* (Italics mine) (Roh 1992).

Korea's international profile continued to rise as it became a member of the OECD in 1996, a member of the UN Security Council in 1996-1997, during which it focused on humanitarian assistance to refugees, and a member of the UNHCR Executive Committee (EXCOM) in 2000 (Koh 2000; Schattle and McCann 2014).

Korea's ratification of the Refugee Convention and the Protocol and other international treaties affected the domestic landscape of refugee protection in two important ways. First, legally, it directly enabled changes in the existing national law on immigration to include clauses regarding refugees. In 1993, the Korean government revised the Immigration Control Act (ICA) – the law that regulates matters relating to border control and stay of foreigners in Korea – to integrate the Refugee Convention into its domestic legal system, incorporating the definition of a "refugee" and concept of "refoulement" as specified in the Convention. In July 1994, Korea began to officially receive refugee applications under the new directives. The changes to the ICA were significant in that it created legal and institutional avenues through which asylum-seekers could apply for refugee status for the first time in Korean history.

Despite the legal amendments, however, in practice, not a single asylum-seeker was recognized as a refugee for the following seven years. The first refugee was recognized only in

2001, not coincidentally a year after Korea served as a member of the UNHCR EXCOM, and following the government concern that "not having any refugees does not fit with the status of a UNHCR EXCOM member state" (quoted in Kim 2021, 16). While the number of refugee applicants has grown significantly over the past two decades, however, the number of recognized and resettled refugees in Korea has remained stagnant, never exceeding 150 annually from 2001 to 2020 (Figure 2.1).

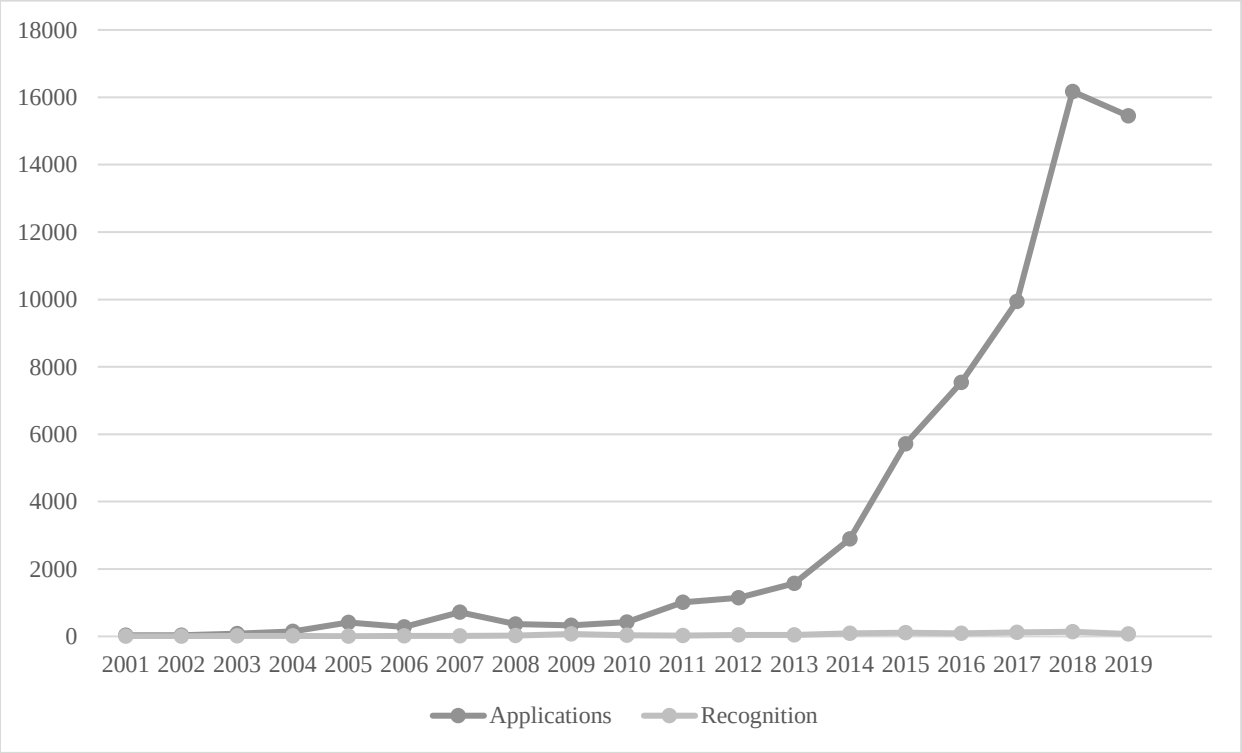


Figure 2.1. Number of refugee applications and recognitions by year in Korea, 2001-2019
Source: Nancen 2020.

Second, Korea's ratification of international treaties mobilized the domestic supporters of liberal refugee admissions and treatment policies with a powerful tool to legitimize and expand their advocacy work (Hafner-Burton and Tsutsui 2005). The group of "first-generation" Korean refugee advocates that emerged around 2000 was composed mostly of public interest lawyers

and activists (Author interviews 5/28/2019, 5/8/2019; Yang 2019). Over time, they and their protégés have established themselves as experts on refugee related issues in Korea, and since 2000, have been actively involved in a variety of activities intended to raise awareness of the public, specialists in different disciplines, and lawmakers. These activities range from academic research to media appearances, public seminars, organization of public protests for refugee rights, and refugee film festivals. Beyond domestic activities, the advocates have also been involved in transnational collaborations – most notably through their participation in the Asia Pacific Refugee Rights Network (APRRN), a global network organization whose mission is to advance the rights of refugees in the Asia-Pacific region (Choi 2019; Nah 2016).

The advocates' agendas are firmly grounded in, and buttressed by, the principles outlined in the 1951 Convention and 1967 Protocol. Korean refugee NGOs often invoke the fact that Korea is a party to multiple international human rights treaties to push for reform of the domestic Refugee Act, and to denounce the country's low refugee recognition rate (RRR) as an evasion of global responsibility. For instance, a leading activist opined in a public interview,

> Korea has an international responsibility… because it has agreed to share the burden of refugee protection twenty-five years ago [by signing the Refugee Convention and other international treaties]… but in practice, Korea is not fulfilling those [promises]. We need to establish institutions based on the Refugee Convention. Refugee status determination (RSD) should be conducted faithfully… and [the applicants] should be treated properly during the RSD process (quoted in S. Jeon 2019).

This kind of strategic invocation of the Refugee Convention and international human rights treaties is common among the Korean refugee NGOs countrywide.

Perhaps the most significant accomplishment that resulted from the mobilization of advocates was the draft and passage of the independent and comprehensive domestic law that is "intended to stipulate matters on the status and treatment of refugees pursuant to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of

Refugees." Named the Act on the Status and Treatment of Refugees, etc. (the Refugee Act), the law was enacted on February 10, 2012, and went into force on July 1, 2013. The passage of the Refugee Act was met with great enthusiasm and celebration, as national and international media outlets rushed to praise it as "the first law dedicated to the status and entitlements of refugees and asylum-seekers among East Asian countries" (C. Kim 2012, 2). The UNHCR Representative in South Korea, too, released a statement welcoming the passage of the new law: "The enactment of the independent Refugee Act is a significant step forward for the systematic development of the refugee protection in Korea," the statement read, "It is all the more meaningful and timely because… 2012 marks the 20th anniversary of Korea's accession to the Convention" (Yonhap 2012).

The following section outlines the detailed process of how and why the Refugee Act came into being.

[2.2] The curious case of the emergence and passage of the Refugee Act

One public interest lawyer I spoke with described the 2012 enactment of the Refugee Act as a surprise that "just kind of happened." Indeed, superficially, the proposal and passage of the Refugee Act seemed to have emerged out of nowhere. At the time, there were no particular focalizing events relating to refugees in Korea, and a majority of the public were unaware of the fact that Korea could be a destination country for refugees (Moon 2017). In the absence of stronger political or public support (or opposition), what made the passage of the Refugee Act possible was a combination of a persistent push from civil society organizations and a motivated and powerful lawmaker, Hwang Woo-yea, who served as the floor leader and eventually chairman of the conservative ruling Saenuri Party (formerly Grand National Party (GNP)) from 2011 to 2014.

The first formalized discussions on the possibility of establishing an independent Refugee Act began in 2004, when three NGOs, Minbyun[12], The Refuge pNan[13], and Goodfriends[14] – sponsored by the National Human Rights Commission of Korea – released a publication titled "Report on the Human Rights Status of Foreign Refugees in Korea," based on the survey results and interviews of 70 refugees and asylum-seekers. The Report concludes by recommending an enactment of an independent legislation on the treatment and recognition of refugees. A year following the release of the Report, a forum was held under the title "Situation of refugees in Korea and measures to improve the refugee system" at the National Assembly's Human Rights Forum, where Rep. Hwang was the leader at the time. The attendees at the forum formed "The Refugee Support Network"[15] and began organizing monthly meetings to draft a new refugee law.[16] These monthly meetings led to the draft of the "Act on the Status and Treatment of Refugees, etc," which was filed as a legislative petition in 2009 by the Seoul Bar Association. On May 25 of the same year, Rep. Hwang proposed the Act to the National Assembly (Kim 2019; Lee 2012).

[12] Minbyun, a shorthand for Minjusahoereul wihan byeonhosa moim, is translated as Lawyers for a Democratic Society. Established in 1988, it is an NGO that aims "to further the development of democracy in Korea through litigation, research, and investigation" (Minbyun 2021).
[13] The Refuge pNan is one of the oldest existing refugee advocacy NGOs in Korea. As a Christian NGO established in 1999, The Refuge pNan "protects and assists North Korean and international refugees seeking asylum in Korea and abroad" (The Refuge pNan 2021).
[14] A Buddhist-based NGO Goodfriends works to advance the peaceful reunification of the two Koreas "through reconciliation and cooperation, humanitarian assistance and human rights improvements for North Koreans, and cooperation with overseas Koreans" (Goodfriends 2021).
[15] It is the predecessor of the current Refugee Rights Network (Nancen), one of the major refugee NGOs in Korea.
[16] The main leaders of the draft of the bill include Hwang Pil-gyu, a lawyer at a public interest law firm Gonggam; Jeong Hyun-jung from UNHCR Korea, Choi Won-geun from Amnesty Korea, Kim Jong-chul, a lawyer at a public interest law firm APIL, and Lee Ho-taeg, the Executive Director of The Refugee pNan.

The proposal, however, sat dormant for a couple of years. "After we came up with the bill [on the Act on the Status and Treatment of Refugees, etc.], there was no momentum," Activist A, who served as one of the central drafters of the bill, told me in an interview. "There was no one pushing for it [to pass] or motivated to push for it. We [the drafters] just waited for about two years, during which time there was no progress. We didn't know whether it was going to work." He continued, "There were things that civil society organizations did, but ultimately, [the Refugee Act] wasn't a law that too many people were interested in… or found worthwhile to oppose" (Author Interview 5/28/2019).

What ultimately facilitated the bill to pass the plenary session of the National Assembly on December 29, 2011, was Rep. Hwang's felicitous ascension to the post of floor leader of the ruling GNP in May 2011. According to Lee (2012), Rep. Hwang, upon becoming the floor leader of the GNP, "…had a clear will to finalize the refugee law before the end of the year [2011] and end of his tenure… As the government transitioned to [prepare for] the general election [in 2012], the momentum to enact the refugee law was almost lost… but Rep. Hwang was eager to wrap it [the refugee law] up before the end of the year" (22). Thanks to Rep. Hwang's motivation, the Refugee Act was eventually enacted in February 2012 and went into effect on July 1, 2013.

While the enactment of the independent Refugee Act was generally considered a feat for the civil society actors involved, the final product was significantly different from the initial proposal prepared by the advocates, due in large part to the resistance from the Ministry of Justice (MOJ) in the latter stages of the legislative movement (Kim and Kim 2012). Since as early as 2004, the MOJ's Refugee Division, in tandem with the NGOs' efforts, had launched task

forces like the Refugee Act Enactment and Revision Committee to draft bills on management and treatment of refugees and asylum-seekers. Activist A told me,

> I always say that in the [early] process of revising and refining the refugee law in Korea, the Ministry of Justice worked relatively hard and had an open mind. In the early stages, it was not that the Ministry of Justice was extremely defensive against the NGOs' efforts… we [the NGOs] didn't have a lot of [experience with] refugee cases so the ideas and opinions of the Justice Ministry practitioners who actually handled refugee applications were in fact more real and lively. Those were the people who formed the Ministry's task force and who first came up with the draft of the bill. I think we have to acknowledge that this was an incredibly meaningful thing (Author Interview 5/28/2019).

In this way, the MOJ, at least in the early phase, had cooperated with the NGOs and shared similar, innovative visions. The bill, however, gradually became watered down to serve the convenience of the bureaucrats in charge of asylum adjudications, and developed to center largely around the prohibition of potential "fake refugees" abusing the new system, as it passed through the MOJ's Immigration Service and a series of the ministry's internal meetings (Author Interview 5/28/2019; Kim and Kim 2012; Lee 2012).

The elements of the final draft the Refugee Act that have elicited most concern from the advocate drafters include the expedited RSD procedure (Article 8 Clause 5)[17] and application process at ports of entry (Article 6 Clause 3).[18] The advocate drafters adamantly opposed the

[17] Article 8 Clause 5 reads: The Minister of Justice may omit part of the determination procedure provided in paragraph 1 for a refugee status applicant to whom any of the following applies: 1. If the refugee status applicant concealed facts in the application through means that include, but are not limited to, the submission of false documents or false statements; 2. The refugee status applicant re-applied for refugee status without a material change in circumstances after a previous application was denied or previous refugee status recognition was cancelled pursuant to Article 22; or 3. If the refugee status applicant is an alien who has stayed in the Republic of Korea for one year or longer and who applied for refugee status when the expiration of the permitted period stay was imminent, or is an alien subject to forcible removal who applied for refugee status for the purpose of delaying the enforcement of the removal order.

[18] Article 6 Clause 3 reads: The Minister of Justice shall decide within seven days of the submission of a refugee status application whether to refer the application to the refugee status

inclusion of the expedited RSD procedure, which applies to applicants who have concealed facts, reapplied without significant changes in their evidence, and/or apply for the refugee status right before the expiration of their legal stay in Korea or while undocumented and for the purpose of "delaying the enforcement of the removal order."

This clause, advocates argued, is prone to potential abuse by asylum adjudicators (J. Kim 2012). First, it has been well-documented that asylum-seekers' traumatic experiences can take a toll on their ability to present their claims in a coherent way. This does not mean, however, that asylum-seekers are not telling the truth and thus, as recognized by the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status*, should not be considered as "a reason for refusal of refugee status… it is the examiner's responsibility to evaluate such statements in the light of all the circumstances of the case" (Paragraph 199). Second, advocates contended that asylum-seekers who reapply for refugee status without changes in their evidentiary materials should not be subject to the expedited RSD procedure, mostly because the expedited RSD procedure would not allow the adjudicators to reassess the conditions of the applicant's country-of-origin to see how the applicant's situation had changed. Third, advocates claimed that many, if not most, asylum-seekers are often unaware of how to apply for asylum in Korea, which could easily lead to application delays. The application that has been submitted right before or after the expiration of legal stay, in other words, does not indicate that the applicant is abusing the system.

Another element of the Refugee Act that caused concern amongst advocates was refugee status application at Korea's ports of entry. The Act stipulated that, unlike the asylum-seekers applying from within the territory of Korea, those arriving through a port of entry and wishing to

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determination procedure, but if the Minister of Justice fails to decide within this period, the applicant's entry into the country shall be permitted.

apply for refugee status must clear an additional hurdle before they become eligible for an interview. Asylum-seekers arriving through a port of entry must file for an application with the chief of the port of entry, who decides whether to refer them to the standard RSD process. If the referral is approved, the asylum-seeker is allowed entry into Korean territory. If denied, the asylum-seeker can appeal the decision to the courts from inside the port of entry, but this process has proven to be extremely difficult and ambiguous (Sung 2015). The lack of concrete regulations on how the asylum-seekers at the port of entry should be treated during the referral process has later proven to be a grave blind spot of the law, affecting the livelihoods of tens of refugees stuck at the Incheon International Airport while waiting for the referral results.[19]

Despite these disagreements, overall, the Korean government welcomed the passage of the Refugee Act, framing it as yet another step closer towards conforming with the norms of the international community. "Korea is the first Asian country to join the Refugee Convention to enact and enforce a separate law on the recognition and treatment of refugees," the MOJ claimed. "Through the enforcement of the Refugee Act, Korea's international status as a nation of human rights will be further enhanced" (quoted in Kim 2013).

[2.3] The Refugee Act: A close look

The Refugee Act differs from the refugee-related provisions of the ICA in several significant ways (Kim and Kim 2012; Wolman 2013). Most prominently, the Act clarified critical terms such as "refugee status applicant" and "humanitarian status holder" (Article 2); incorporated a whole chapter on the treatment of refugees, refugee status applicants (RSAs), and

[19] One of the most recent, notorious cases is the case of the Lulendo family, a family of six (parents and four children) from Angola who were trapped at the Incheon International Airport for nine months from December 2018 to September 2019, until the high court ruled that the family should be allowed to apply for asylum from within the Korean territory (G. Jeon 2019).

people holding humanitarian status (Chapter 4); allowed individuals to apply for refugee status at the port of entry (Article 6); permitted resettlement of refugees (Article 24); established Korea's RSD regime by detailing the roles of different institutions at varying stages of adjudication; and outlined the applicant's procedural rights including rights to legal aid, interpretation, and access to written records of interview and other relevant materials (Article 12~Article 16).

Like many countries of refugee reception in the Global North, the Korean RSD procedure is separated into administrative and judicial levels of adjudication. The principal institutions that constitute Korea's RSD regime, as specified in the Refugee Act, are the Ministry of Justice and the courts. There are a variety of state, semi-state, and nonstate actors that operate within these institutions, including government workers at the port of entry who make decisions regarding RSD referrals, immigration officers conducting initial interviews, experts on the Refugee Committee, judges reviewing administrative decisions, interpreters, legal officers representing the MOJ, and lawyers representing asylum-seekers. Besides these domestic actors, there is an UNHCR office in Seoul, which has been collaborating with state and nonstate organizations since its opening in 2005.

Under Article 5 of the Refugee Act, foreigners in the territory of Korea who wish to be granted refugee status submit the refugee application form to the chief of an immigration office, head of an immigration branch office, or chief of an immigration processing center. Upon submitting the application, the asylum-seeker may undergo up to five separate decision-making stages, depending on his/her RSD decision at each stage. First, the RSA is interviewed by an officer at the Immigration Office. If the applicant is denied refugee status, they may move on to the second stage of the RSD process, upon which they can appeal to the Minister of Justice for reconsideration of the application. The second stage is overseen in a closed hearing by the

Refugee Committee, a non-permanent organization that is composed of up to 15 government officials and civilian experts including law practitioners and professors, all of whom are appointed by the Minister of Justice. If the appeal is denied at the second stage, the applicant has a choice to proceed with administrative litigation, requesting that the Administrative or District Courts revoke the decision made by the MOJ. If the applicant objects to the decision of the first instance courts, they may appeal to the High (Appellate) Court and, finally, to the Supreme Court. The detailed information about Korea's RSD procedure for those applying from within the Korean territory is illustrated in a flowchart in Figure 2.2.

[2.4] Testing the Refugee Act?: The Yemeni refugee "crisis"

While the Refugee Act received much fanfare upon its passage, the public and political interest on refugees and asylum-seekers soon dissipated and remained constantly low – that is, until June 2018 when the news media erupted with coverage on the spontaneous arrival of 561 Yemeni refugees in Jeju, a subtropical resort island located in the southern coast of the Korean peninsula. This incident, dubbed the Yemeni refugee "crisis," became immensely politicized and controversial, as the media sensationalized refugee arrivals and as politicians from both progressive and conservative parties scuffled to propose restrictive amendments to the Refugee Act (Kim 2018).

The Yemenis could land in Jeju due to the island's tourist-friendly visa policies, which, prior to June 1,[20] allowed people with Yemen nationality to arrive in Jeju without obtaining a visa. What triggered the mass arrival of the Yemenis in the first half of 2018 was the creation of a new direct, budget flight by an airline from Kuala Lumpur, Malaysia – home to almost 3,000

[20] On June 1 2018, the MOJ added Yemen to a short list of countries excluded from Jeju's no-visa policy.

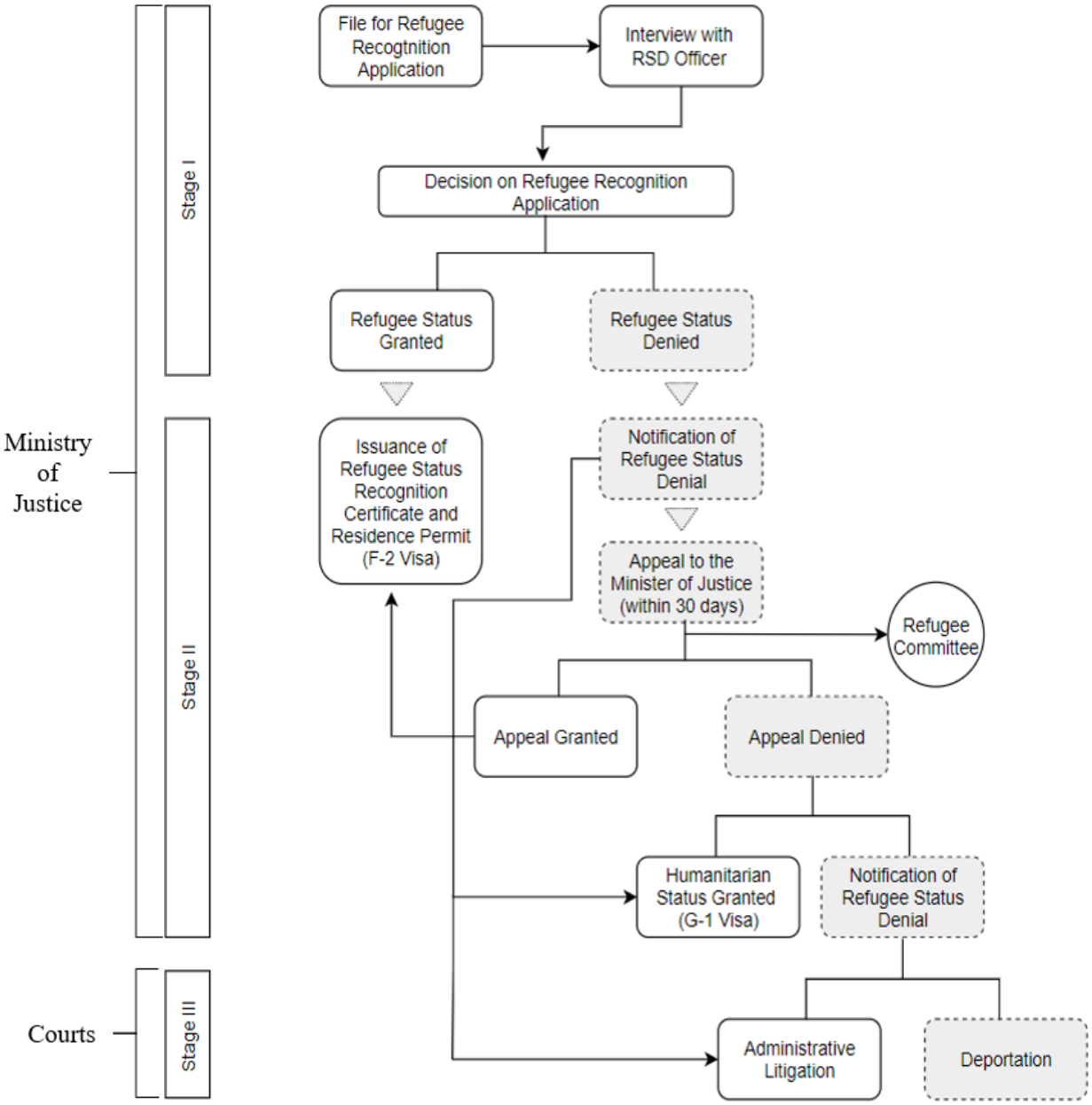

Figure 2.2. South Korea's Refugee Status Determination process for individuals applying from within the Korean territory (as of 2020)[21]
Source: Adapted from Ministry of Justice 2015.

[21] The RSD process shown in this chart does not apply to a small minority of detained migrants seeking refugee status. Also, the figure omits the RSD referral process for those seeking asylum at the port-of-entry in Korea. When applying for asylum at the port-of-entry, asylum-seekers

Yemeni refugees and asylum-seekers. Since Malaysia is not a signatory to the 1951 Convention or the 1967 Protocol, and does not grant refugee status, some of the Yemenis stationed in Kuala Lumpur flew to Jeju, hoping to apply for asylum in Korea. Among the Yemeni asylum-seekers, over 95 percent were men 18 years or older, many of whom fled their home country to escape the civil conflict that international organizations have called the "world's largest humanitarian crisis" (UNICEF, WFP and WHO 2017).

The Korean public received the news of the Yemeni arrival with unprecedented interest toward the asylum-seekers, which evolved to general curiosity toward "refugees" as a category of migrants. Figure 2.3 shows the relative popularity of the keyword *nanmin* ("refugee") searched in *Naver*, Korea's biggest web portal and search engine – commonly known as the Google of Korea – from January 1, 2018 to October 15, 2018. In looking at the ten-month trend of the level of popularity of the keyword "refugee" as searched in *Naver*, it is clear that the interest in the topic of "refugee" among the Korean public is almost non-existent in the first five months compared to the next four months. The interest suddenly spikes in June and remains relatively high throughout.

In general, the Korean public reacted with disapproval at the news of Yemenis in Jeju island. Rumors spread through the internet like wildfire, further heightening anxiety and fear. In online communities of mothers in Jeju, for example, numerous posts were shared on how people from the Middle East are trying to "Islamize" other countries by moving there, and they pointed to the Yemenis as being part of the scheme. Many others expressed concerns about a potential increase in sexual or child-related assault, as they made unsubstantiated accusations against the

must get a referral from the chief of the port-of-entry before becoming eligible to proceed with the standard RSD process. This population consists only 3 percent of all RSAs (Nancen 2019).

Yemenis of being criminals or terrorists. In June, an online petition to Korea's Blue House, demanding that the government abolish Korea's Refugee Act and remove the asylum-seekers from Jeju, garnered more than 714,000 signatures – the highest number since the Blue House began its online petition system in August 2017 (Park 2018). According to a poll conducted in the same month, 49 percent of the Korean public opposed accepting asylum-seekers from Yemen, while 39 percent showed support. Out of the 49 percent of those who opposed, a little less than half (23.4 percent) answered that they were "ardently opposed to" Korea accepting the Yemenis (Realmeter 2018).

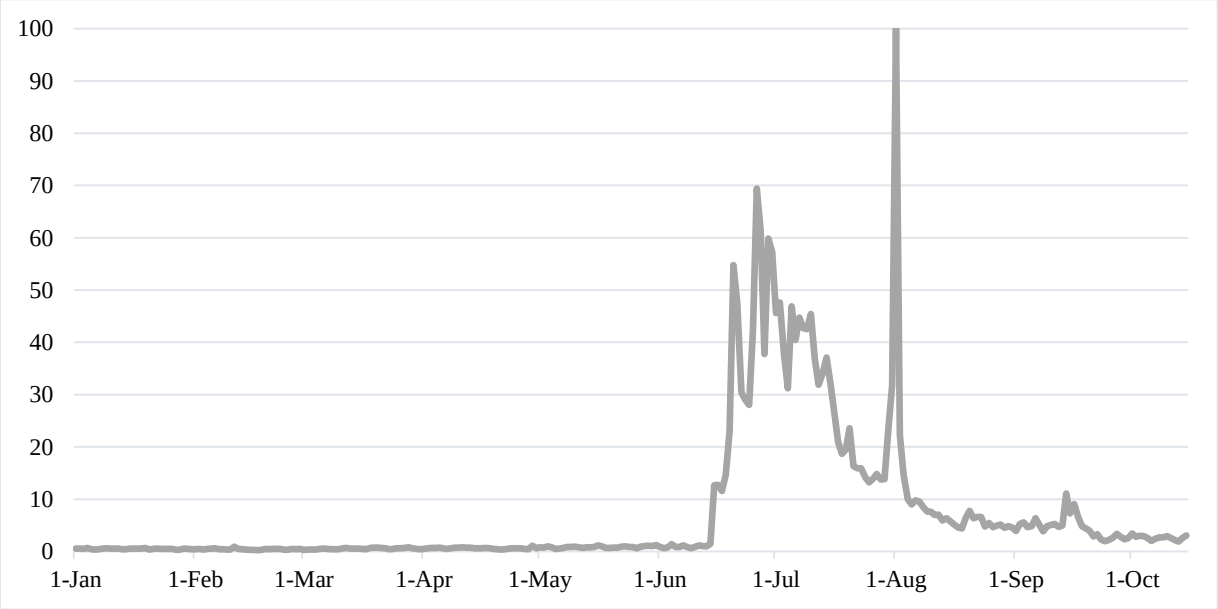

Figure 2.3. Relative popularity in the search keyword *nanmin* ("refugee") in *Naver*, January 1, 2018–October 15, 2018

In parallel with the reaction from the public, politicians from both conservative and progressive parties proposed various amendments to the Refugee Act. On July 1, 2018, Rep. Kwon Chil-seung from the liberal Democratic Pary of Korea proposed "The Refugee Application Abuse Prevention Act" to effectively "separate real and fake refugees." On July 8,

Rep. Kang Seokho from the conservative Liberty Korea Party proposed a bill that strengthens the RSD process and prosecute "fake refugees." On July 12, Rep. Cho Kyoungtae from the Liberty Korea Party proposed a bill abolishing the Refugee Act altogether, stating that "the safety of our people is more important than any refugee." On July 19, Rep. Lee Un-ju from the conservative Bareunmirae Party proposed a bill that bans asylum-seekers from applying for refugee status if they entered Korea under the visa-free system. On July 20, Rep. Kim Jin-tae from the Liberty Korea Party proposed a bill aimed to strengthen the RSD process and standards and prohibit asylum-seekers from receiving any kind of aid (housing, medical care, education etc.) from the Korean government while waiting for their refugee status applications to be processed.

Despite the flurry of restrictive proposals from the lawmakers and oppositional voice from the public, no amendments were made to the Refugee Act, and the sensation surrounding the Yemeni refugees eventually fizzled. All matters pertaining to Yemeni refugees, however, stayed a top priority for the MOJ, the ministry in charge of immigration and refugee control. By December 14, 2018, the MOJ granted refugee status to 2 Yemeni asylum-seekers, rejected 56, and granted humanitarian status (1 year visa) to 412. In their official statement, the MOJ emphasized the strict and heightened screening procedures employed to determine the Yemeni asylum-seekers' refugee status: "In the process of screening [the Yemeni asylum-seekers], we focused on… strictly fact-checking the asylum-seekers' testimonies; verifying country-of-origin information; verifying [the asylum-seekers'] identities to [make sure] they are not related to terrorist organizations; strict drug testing and investigating domestic and foreign criminal history" (Ministry of Justice 2018).

Acknowledgment

Chapter 2, in part, has been submitted for publication of the material. The dissertation author was the primary researcher and single author for this paper.

CHAPTER 3

NOT A REFUGEE UNTIL PROVEN A REFUGEE: REFUGEE STATUS DETERMINATION THROUGH THE LENS OF LAW AND ORDER

Lee Wan-young: The most important issue right now are the refugees in Jeju Island, correct?

Park Sang-ki: Yes.

Lee: The public interest on this issue is very high. This is also your understanding, right?

Park: Yes, that's right.

Lee: More than 700,000 Korean people signed the [Blue House] petition rejecting the Yemeni refugees [in Jeju] just in one month… Are you aware of this too?

Park: Yes.

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Lee: I was part of the Intelligence Committee… the Republic of Korea is a target country for the Islamic State. Yes?

Park: Yes.

Lee: You are aware?

Park: Yes.

Lee: The Korean people are very worried about that. Upon recognizing their refugee status, do you also closely examine whether [the refugees] would pose danger to our people?

Park: The protection of our people is [the Ministry of Justice's] top priority, above all else… We need to consider both the domestic law and our obligations as a signatory to the international [Refugee] Convention when dealing with the refugee problem.

- Exchange between the Minister of Justice Park Sang-ki (2017-2019) and a National Assemblyman Lee Wan-young at the Legislation and Judiciary Committee meeting regarding the Yemeni refugee "crisis" (July 19, 2018)

International law provides nation-states with a common definition of a refugee and with guidance on how asylum-seekers asking for refugee status should be treated. However, determining the refugee status of individuals requesting asylum – a process known as refugee status determination (RSD) – at the border of, or within the territory of, nation-states is entirely

at the discretion of the nation-state receiving refugee status applications. This implicates that the states' administrative and judicial bodies that are responsible for conducting RSD – which I collectively call RSD institutions – play a vital role in deciding what types of, and how many, refugees get accepted.

Previous works on RSD institutions have explored the roles of various state decision-makers, including immigration and asylum officials and caseworkers (Bhatia 2020; Dahlvik 2018; Jubany 2011; Liodden 2019; Schittenhelm and Schneider 2017; Schoenholtz et al. 2014) as well as judges and legal officers (Johannesson 2018; Miller et al. 2015). Many of these studies reveal that those in charge of asylum adjudication are oftentimes proscriptive, partial, and inconsistent. For instance, in her ethnographic research, Jubany (2011) shows that immigration officers conducting the initial screening in the United Kingdom and Spain make their judgements based less on regulations or laws and more on their own values and categorizations. In another influential study, Ramji-Nogales and colleagues (2009) find that asylum grant rates among U.S. immigration judges can vary drastically, ranging from under 5 percent to over 80 percent, even when examining applicants from the same country.

While these works provide invaluable insights on who the RSD administrators are and the inside operations of asylum bureaucracy, surprisingly, they seldom discuss the effects of the RSD institutions on RSD outcomes including the refugee recognition rate (RRR). In other words, RSD institutions have rarely been considered a liberalizing or restricting force of their own, as the existing literature on the determinants of refugee recognitions has traditionally been overshadowed by studies on the effects of legislative and executive branches (Rosenblum and Salehyan 2008); foreign and domestic interests of a monolithic "state" (Kate 2005; Rosenblum and Salehyan 2004; Rottman, Fariss and Poe 2009); and liberal supranational norms (Jacobson

1996; Sassen 1996; Soysal 1994). While Joppke (1998b) has considered the courts as a liberalizing force in asylum, this argument needs to be updated and buttressed with more details, as we still lack knowledge on the "inner logic that guides the court's asylum decisions" (Johannesson 2018, 1163). Moreover, the existing works on RSD institutions seldom review the RSD process as a whole, thereby failing to uncover what in reality is a complex web of administrative and legal proceedings involving multiple, interlinked, and hierarchical state institutions.

Perhaps one of the most compelling works on RSD institutions that addresses some of these existing limitations is that of Hamlin (2012, 2014), whose concept of "RSD regime" – defined as the multiple state institutions conducting RSD and their relational dynamics – highlights the fact that "RSD outcomes are part of a larger system that must be studied holistically, rather than by comparing isolated elements, such as parallel exclusionary policies or high court decisions on similar questions" (2012, 935). Unlike most studies on RSD institutions, Hamlin makes a connection between asylum adjudicating bodies and RSD outcomes by arguing that a country's RRR depends on the power dynamics among its RSD institutions, specifically, on "the institutional players that end up dominating the process, the level of contention among actors, and the degree of centralization within the decision-making processes" (2014, 10). More specifically, she shows that the more centralized, insulated, and powerful the administrative agency conducting RSD is, the higher the RRR of the country. As a case in point, Hamlin shows that Canada's RRR is higher than that of the United States because of the high level of insulation that protects the country's administrative agency from political tinkering and judicial review. The U.S. administrative decisions on asylum, on the other hand, are unshielded from contentious political and judicial oversight, resulting in a relatively lower RRR.

Like Hamlin, I focus on RSD institutions as a critical force in determining RSD outcomes. My examination of the RSD institutions as gatekeepers that stand on their own, and by extension, as key players in the domestic politics of asylum subverts two commonplace myths that (1) international standards have power over domestic asylum adjudication proceedings and (2) asylum decision-making is executed by some monolithic state.

Going beyond Hamlin's arguments, I not only reveal *which* RSD agencies have the power to influence RSD outcomes, but *why* they lean toward restriction in their determination of refugee status. In Hamlin's work, for example, it is not explained why Canada's Immigration and Refugee Board – the first-instance administrative tribunal that "enjoys a lot of flexibility and freedom to develop its own procedures and create its own jurisprudence" (Hamlin 2012, 960) – tends to be more generous and responsive to their applicants compared to other countries' counterparts. Likewise, Hamlin does not elaborate on why the Board of Immigration Appeals of the United States, an administrative appellate body that reviews cases rejected by immigration judges, seldom decides in favor of asylum applicants.

In the Korean case, I find that RSD outcomes depend not only on the interconnectedness between administrative agencies and courts in the RSD regime, but also on the internal norms and logic of appropriateness that guide the decision-making processes of RSD institutions (March and Olsen 1989, 1995). I show that while the adoption of international laws and supranational norms on refugee protection directly caused tangible, liberal changes in the Korean domestic law on refugee reception and treatment, they failed to penetrate the domestic institutions that have been tasked with implementing the very law. The internal norms of the Korean RSD institutions, in fact, have remained firm and steady throughout various policy changes on refugee reception and treatment.

[3.1] Korea's RSD process: Which institutions are in charge?

Like many countries of refugee reception in the Global North, Korea separates its RSD procedures into administrative and judicial levels of adjudication. The principal institutions that constitute Korea's RSD regime, as specified in the Refugee Act, are the Ministry of Justice (MOJ) and the courts. Broadly put, the MOJ supervises the first two stages of RSD: (1) the initial interviews conducted at immigration offices, and (2) the appeals process carried out by the Refugee Committee, a non-permanent group that is composed of up to 15 government officials and civilian experts – all of whom are appointed by the Minister of Justice – that examines rejected asylum cases after the initial decisions. The third RSD stage is overseen by the Administrative and District Courts of Korea, which have the power to revoke the negative asylum decisions made by the MOJ, if the Refugee Status Applicant (RSA) chooses to appeal the MOJ's decision through administrative litigation. The decision made by the first-instance courts can be appealed again at the High Court and, finally, at the Supreme Court.

Most asylum-seekers whose applications are denied by the MOJ file an administrative lawsuit (Lee 2019, 34). This is unsurprising given that there are few structural constraints on filing a lawsuit. The Refugee Act also grants rights to residence to RSAs until their RSD procedure is finalized (Article 5 Clause 6) as well as rights to employment six months after filing the refugee recognition application (Article 40 Clause 2). These provisions incentivize asylum-seekers to draw out their RSD process and thereby lengthen their stay in Korea (Kwak 2014). Since the execution of the Refugee Act, the number of cases involving refugees at Korea's Administrative and District Courts has increased dramatically from 425 in 2014 to 3,893 in 2017 – a more than nine-fold increase in just three years (National Court Administration 2015, 2018). The increase is especially pronounced at the Seoul Administrative Court where most refugee

cases are received. In 2016 and 2017, refugee cases outnumbered all other types of administrative cases at the Administrative Court, accounting for 26.4 percent and 28.9 percent of all administrative cases, respectively (Figure 3.2). The high number of refugee cases at the courts, however, stands in sharp contrast to the number of refugee plaintiff victories. From 2014 to 2018, the plaintiff average victory rate for cases involving refugees was only 0.7 percent, compared to that of 12.3 percent for all other administrative cases processed over the same period (Figure 3.3).

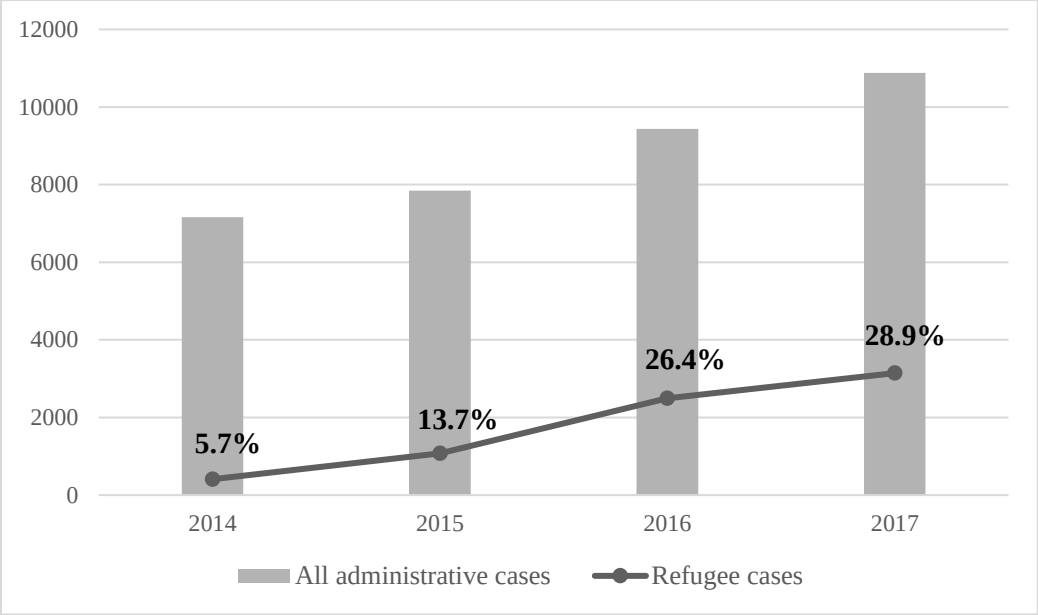

Figure 3.1. Share of refugee cases out of all administrative cases received at the Seoul Administrative Court, 2014-2017
Source: The Courts of Korea Yearbooks, 2014-2017

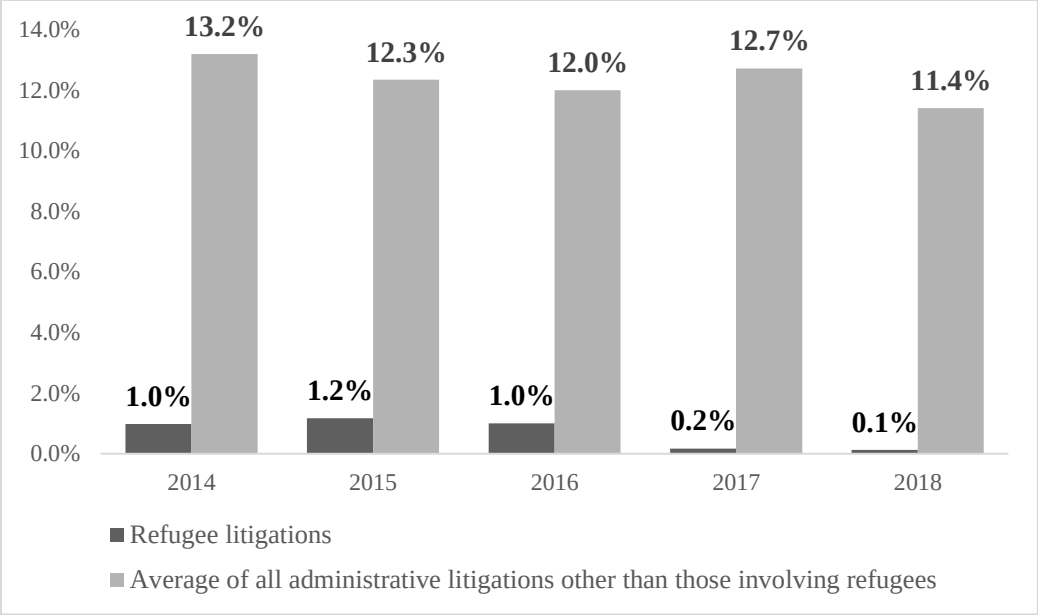

Figure 3.2. Rate of asylum-seeker plaintiff victories in administrative litigations in Korea, 2014-2018
Source: The Court of Korea Yearbook, 2015-2019

The fact that the first-instance courts rarely overturn the asylum decisions made by the MOJ, despite its positional capacity to offer checks and balances to administrative power, may suggest that the courts are a compliant player in the RSD process and that the administrative agency ultimately holds the power in asylum decision-making, like some other refugee-hosting liberal democracies. In Canada, for instance, the Federal Court plays a relatively minor role in the RSD procedure, paying deference to the decisions made by the Immigration and Refugee Board (IRB), which is Canada's centralized administrative tribunal that conducts initial asylum hearings. Only about 1 percent of the claims that are rejected by the IRB end up being successful at the Federal Court (Hamlin 2012, 950). Pointing to the Canadian example, Hamlin (2012, 2014) concludes that a relatively high RRR results from a lack of judicial interference in administrative decision-making, as she argues that the power dynamics between RSD institutions are what affect RSD outcomes.

Hamlin's arguments about the effects of RSD institutions on RSD outcomes, however, do not explain the Korean case because the relationship between the MOJ and courts is extraneous to Korea's low RRR. Unlike Canada, where the relatively more generous IRB holds the cards over the courts in asylum adjudication, or the United States, where there are constant turf wars between the federal courts and administrative agencies over who gets the ultimate say in asylum decisions, in Korea, it is unclear which RSD institution is more dominant, or whether such a power struggle even exists (Law 2010; Soennecken 2013). What is clear from the data is that the MOJ and courts have been in unison when it comes to asylum decision-making, that is, extremely and consistently restrictive. While this could be interpreted as the courts showing judicial deference to the MOJ (Kim and Kim 2020), my in-depth interviews with lawyers, former judges, and former legal officers show that the reasons for judicial restrictiveness towards asylum-seekers lie elsewhere. As I demonstrate in the next section, the key to explaining Korea's low RRR lies in the internal institutional norms of the MOJ, which views the RSD process through the lens of keeping order, and the embedded practices of the courts, which apply the Korean civil law evidentiary standards to asylum cases.

[3.2] Why do Korea's RSD institutions yield restrictive asylum results?

The Ministry of Justice stance towards asylum-seekers

The stance of the MOJ towards asylum-seekers is largely one of caution, vigilance, and suspicion. This was made especially clear following the 2018 arrival of the Yemeni refugees, when Park Sang-ki, the then-Minister of Justice, claimed during a heated exchange at the Legislation and Judiciary Committee meeting (introduced in the beginning of this chapter), "The *protection* of our people is [the Ministry of Justice's] top priority, above all else…" (italics mine), overtly suggesting that refugees could impose a threat to the Korean people. He further

remarked, “We will strictly look over the [asylum-seekers’] reasons for persecution, test them for drug use, infectious diseases, and examine whether they have violent criminal histories” (quoted in Sung 2018). Around the same time, Kim Seung-kyu, the former Minister of Justice (2004-2005), asserted, without evidence, that “There are a little over 230,000 illegal foreign residents in Korea who are misusing the refugee law as a way to extend their legal stay” (quoted in Cho 2018).

To understand the MOJ’s restrictiveness towards asylum-seekers, it is vital to examine the institutional mission that guides the MOJ. The MOJ is a cabinet-level body that is tasked with preserving law and order, enforcing the Constitution, and supervising prosecution. When it comes to immigration, the MOJ is primarily concerned with *control* of Korea’s migrant populations through a “thorough and efficient border management,” and creating a “safe society for citizens and foreigners” (Korea Immigration Service 2021). For the MOJ, the RSD procedure is a vetting tool to sift out “real” refugees from “fake” ones for the sake of Korean society. For example, on the webpage of the Seoul Immigration Office (2021), one of the largest offices that processes refugee recognition applications, the message from the Office Chief reads, “We will take the lead in Korea’s border management… through strict law enforcement for immigration offenders, such as illegal immigrant workers, fake refugee applicants, and foreigners suspected of terrorism, who are taking jobs away from common [Koreans]” – a surprisingly stern statement that reflects the MOJ’s perception of its mission. Similarly, other immigration offices across the nation highlight “establishment of law and order” and “fairness” as parts of their institutional goals.

The public legal advocates I spoke with unanimously agreed that the MOJ’s institutional priority in conducting RSD is not the protection of refugees whose lives may be at risk if

refouled. One public lawyer told me, “The MOJ prioritizes immigration control and monitoring, and because of this, refugee rights [at the MOJ] are always secondary” (Author Interview 5/21/2019). Others added that the MOJ’s focus on law and order inevitably leads the decision-makers at the MOJ to “find ways to more efficiently filter out non-refugees and kick them out of Korea, rather than aim to build a systematic structure to protect [refugees]” (Author Interview 5/1/2019). Whereas the public lawyers I interviewed denounced the MOJ’s way of conducting RSD as a “filtering-out” process of “fake” refugees, private lawyers, some of whom had formerly worked for the MOJ as legal officers, described the very “filtering-out” process as part of the job. One private lawyer explained, “The legal officers at the MOJ are driven by a sense of duty and passion to identify ‘real refugees’… This doesn’t mean [the MOJ officers] are evil by any means – they are just taking their jobs, […the job of which is to maintain order by strictly preventing ‘fake’ refugees from staying in Korea] very seriously” (Author Interview 5/3/2019).

Despite the passage of the Refugee Act, the MOJ has failed to adapt its organizational norms, logic, and structures to fully comply with the Act. This lack of adaptation is reflected most explicitly by the limited resources and expertise dedicated to handling the ever-increasing RSAs in Korea. Whereas Article 8 of the Refugee Act requires RSD officers to carry out initial interviews with RSAs “without delay,” in practice, this has been unachievable mainly because there have not been enough officers assigned for the job. For instance, between 2015 and 2018, there were only 5 to 38 public officers nation-wide responsible for conducting the initial interviews, while more than 39,000 asylum-seekers submitted their applications during the same period (Nancen 2019).

The public officers conducting interviews also suffer collectively from a lack of qualifications. According to Article 6 of the Enforcement Decree of the Refugee Act, RSD

officers must be bureaucrats "in charge of immigration affairs," who have had "a refugee-related job for at least two years," and who have "completed the refugee screening officers education course as determined by the Minister of Justice." In practice, however, gaining experience and expertise has been difficult for RSD officers for two main institutional reasons. First, while the officers have the option to take online and offline training courses to increase their understanding of conducting RSD, a 2017 study reveals that the existing training offered by the MOJ does not satisfy the officers' needs for knowledge on the topic. One RSD officer featured in the study states,

> There are [courses] available on topics such as refugee status adjudication, the Refugee Act, and refugee litigation, but they are only rudimentary – which is fine in the beginning, but there are no higher-level educational programs [that we can take]. So, we ask around informally and get help individually from staff who have more experience (quoted in Gahng 2017, 207).

Second, the institutional expertise is affected by a widespread structural feature of the Korean government called the job rotation system, a human resources management method that involves frequent position changes among bureaucrats. As bureaucrats, the public officers conducting RSD, too, are regularly replaced and transferred in and out of the immigration office. The job rotation system, which has often been criticized as "undermining the accumulation of expertise" among Korean civil servants (Kim 2008, 62), similarly undercuts the accumulation of institutional expertise on RSD. According to an RSD officer interviewed by Gahng (2017), there is little shared knowledge among RSD officers on how to carry out tasks involving asylum-seekers. He elaborates, "I was ordered to [work as an RSD officer]. So, I was responsible for refugee-related duties, which I knew nothing about, and no one knew anything about" (206).

The lack of resources also affects the Refugee Committee, an appeals body under the auspices of the MOJ that meets four to six times a year to review an exorbitant number of cases.

In 2017 and 2018, for example, the Refugee Committee reviewed between 470 to 1,077 applications and 398 to 663 applications per meeting, respectively (Nancen 2018, 24; Nancen 2019). While the Enforcement Decree of the Refugee Act states that the Refugee Committee, if necessary, may call upon RSAs and/or expert witnesses for additional hearings, this rarely happens due to the sheer number of applications that need to be processed in a limited amount of time. The lawyers I talked to uniformly called the Refugee Committee no more than a "formality" – an administrative step before the cases are eventually brought to the courts. One lawyer told me, "The Refugee Committee doesn't work. There are just too many applications they have to review" (Author Interview 5/20/2019). Another said, "While the Refugee Committee can call upon applicants for further hearing, in my experience, this hardly ever happens. I know one applicant [who got called upon to testify], but this was after [the applicant's] lawyer actively requested for her client's case [to be heard]" (Author Interview 5/8/2019).

In sum, the MOJ's mission on preserving law and order clashes with the Refugee Act, the bottom-line intention of which is to pursue the liberal goals of the Refugee Convention and the Protocol. This clash is reflected in the public statements made by the MOJ officials on their perceptions of refugees; interviews with the lawyers who are familiar with the MOJ protocols on refugees; and the MOJ's general lack of institutional compliance with the Refugee Act – as shown by the limited number and training of individuals in charge of RSD and continued observance of the job rotation system.

The Administrative and District Courts' approach to asylum adjudications

Similar to the MOJ, the Korean Administrative and District Courts yield restrictive RSD outcomes due in large part to the institutionalized norms and practices that are in conflict with

the supranational standards of refugee protection as put forth by the UNHCR and the international refugee law. In this section, I first detail the supranational standards of refugee recognition, then discuss how and why the Korean courts diverge from those standards.

Eligibility for refugee protection under the Refugee Convention requires the RSAs to have a well-founded fear of persecution for the reasons of race, religion, nationality, membership of a particular social group, or political opinion if returned to their country-of-origin. In principle, the burden of proof of establishing this eligibility falls on the RSA. Most scholars of refugee law concur with the UNHCR that the evidentiary standards in RSD should not be too strict, not least because applicants fleeing from persecution often have the barest necessities and may not be able to support their claims with documentary or other proof (Gorlick 2013; Hathaway and Hicks 2005). The UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* explicitly acknowledges the unusualness of the standard of proof required in RSD hearings (Paragraph 196), further stating that "it is hardly possible for a refugee to 'prove' every part of his case and, indeed, if this were a requirement the majority of refugees would not be recognized. It is therefore frequently necessary to give the applicant the benefit of the doubt" (Paragraph 203). The UNHCR holds that the adjudicator should consider the applicant's fear well-founded if there is a *reasonable possibility* that the applicant would face some form of harm if refouled (UNHCR 2005). Numerically, the U.S. Supreme Court determined in *INS v. Cardoza-Fonseca* (1987) that the reasonable possibility standard threshold is less than 50% chance, meaning that an individual can be deemed to experience "a well-founded fear of an event happening when there is less than 50% chance of the occurrence taking place."

The Korean Administrative and District Courts, however, experience difficulty applying the reasonable possibility standard to administrative cases brought forward by refugee plaintiffs because the judges have been trained in, and are accustomed to, the standard of proof required in the system of continental civil law (Pyo et al. 2017, 92), which ranges from the "more likely than not" standard to "the "(full) conviction of the judge" (Schweizer 2016, 218) – the decision threshold of which, according to some measurements, ranges from over 50 percent to as high as above 90 percent, respectively (Ibid., 220). While Korean judges are aware that a lower standard of proof should be employed for asylum cases, in practice they are reluctant to judge in favor of the RSA who fails to present tangible evidentiary materials (Lee 2019, 40). For example, in a recent decision, the Seoul Administrative Court rejected the refugee plaintiff's request to overturn the MOJ decision of refugee status denial, reasoning that "The plaintiff has no materials to back up his claim" (*2017GUDAN31890 decided January 9, 2018*; see also, Lee 2019). This kind of reasoning for rejection of asylum requests by the courts is common and accepted.

My interview with a private lawyer, who at the time of the interview was representing several refugee clients, reveals that first-instance judges usually require tangible evidence:

> As you know, according to the Refugee Convention, if an individual is in danger of being persecuted, s/he [has the potential] to be granted asylum; but, what the judges want are the facts that the asylum-seeker *had* been persecuted…They want us [lawyers] to submit [material] evidence. Of course, we argue that because the individual arrived as a refugee, it's difficult to do that… we emphasize the unusualness of the standard of proof for asylum cases, but judges still require the [proof that meets their standards] (Author Interview 10/10/2019).

In an interview with an experienced former district judge, I asked what makes cases involving asylum-seekers difficult and different from other administrative cases, in the eye of Korean judges. He answered,

> [Korean] judges get trained as they preside over general civil and criminal trials. So, the fundamental framework in which civil and criminal trials are conducted prescribes the judges' mind-set, like listening to both sides, seeking evidence… But refugee litigations are not all like that… When [judges] approach [refugee litigations] like approaching general civil and administrative litigations – like, looking for evidence that supports what the asylum-seeker is orally claiming – it's hard not to feel all asylum cases lack enough evidence, [therefore] not approvable. In this kind of situation, judges have a very difficult time making decisions about granting asylum. They have an extremely difficult time, as they must make decisions based on the framework that's different from the one they are trained in.

He continued,

> Judges are bureaucrats, too, so they want to make things easy… instead of putting in effort to filter out a [small percentage] of pure refugees… it's less risky to just dismiss them as impure ones. There seems to be fear of making mistakes, among the judges (Author Interview 10/21/2019).

Another former district judge with 24 years of experience in the courts told me,

> Refugee litigations are boring litigations for judges, [because] all [refugee] cases are automatically regarded as losing cases from the get-go… In evaluating evidence for refugees, the unusualness standard of proof applies – you know, the international standard of proof that applies to [refugee status applicants] – but, [in reality judges dismiss the cases as] fake… not enough evidence… always saying, 'I can't believe them.' Winning refugee cases is like asking for the moon (Author Interview 05/08/2019).

As the quotes show, the overall unfamiliarity with cases involving refugees, together with the established judicial practices, lead the judges to be risk-averse in going against the evidentiary norm when reviewing asylum cases. In this regard, the Korean judiciary is like the MOJ in its institutional rigidity, impeding changes brought by the supranational and domestic laws of refugee protection, and instead sticking to the familiar internal norms and logic of appropriateness.

Similar to the MOJ, which has been slow to provide resources towards advancing the RSD process, the courts, too, have been denying the RSAs' rights to legal aid (Kim 2017). Legal aid refers to a program under which the court, by application or *sua sponte*, defers or waives the

payment of certain costs required for trial. Foreigners, including RSAs, are entitled to receive legal aid if they are unable to pay, and are deemed by the courts to have a winning chance at their lawsuit (JIFI 2017). The RSA's right to receive assistance from an attorney is also specified in Article 12 of the Refugee Act. Since mid-2015, however, due to the rise in the number of refugee cases and the budget shortage, combined with less than 1 percent of plaintiff wins, most RSAs have been denied legal aid (Pyo et al. 2017, 84) – a consequence of which has been a disproportionately high number of self-representations. Past studies on legal representation show that having a legal counsel dramatically increases the chance of being granted asylum (Ardalan 2015, 1003). The denial of legal aid, therefore, can lead to negative results for RSAs, many of whom are unable to afford a lawyer on their own.

In sum, the courts' appropriation of evidentiary norms from the domestic civil law in place of those of the international refugee law has resulted in low RRR at the judicial appeals stage of RSD. Despite the legal understanding that the evidentiary threshold should be lower for RSAs in proving their claims, the lower standard has not been employed by the judges whose prescribed logic of appropriateness has remained sturdy. The overwhelming number of losses at the judicial appeals stage has negatively affected the RSAs' ability to obtain legal aid, which in turn, has only worsened the RSAs' chance of asylum in Korea.

[3.3] Conclusion

This chapter demonstrates that the state agencies in charge of RSD, which have stayed restrictive despite the adoption of the supposedly more liberal international and domestic refugee laws, have been cautious and risk-averse when it comes to granting asylum. This tendency towards restriction, I argue, is due in large part to the embedded norms and practices that shape the actions of RSD institutions. The MOJ, which oversees the first two stages of RSD, is driven

primarily by the institutional mission of protecting domestic security rather than human rights. Similarly, the judiciary, which makes decisions on asylum cases that were rejected by the MOJ, continues to treat asylum cases like other administrative cases such as those on tax disposition or land expropriation, expecting refugee plaintiffs to provide proof that they will, at least more likely than not, experience a well-founded fear of persecution if refouled.

Theoretically, my findings indicate that policy changes do not automatically occur following the adoption of relevant laws but require commensurate considerations and adaptations from the domestic institutions that implement the laws, which ironically have little direct say in the ratification of said laws. As exemplified by the Korean case with regards to RSD, the MOJ and judiciary have remained constant in their administrative and judicial norms, practices, and logic of appropriateness – the effect of which has made Korea's RSD regime among the most restrictive in the Global North. In this regard, the findings from this chapter add to the existing studies in the refugee and migration literature that focuses mostly on the dynamics between RSD institutions (Hamlin 2012, 2014), or on the level of deference the judiciary pays to the administrative agency (Kim and Kim 2020).

The question of if and how Korea's RSD institutions can adapt to embody the spirit of the refugee laws is an enduring and difficult one that has been at the heart of refugee policy debates. Restructuring the Korean RSD regime – for example, through dedicating more resources in manpower and training programs; easing job rotation requirements; expanding the expert pool of the Refugee Committee; lowering the threshold of evidentiary standard for asylum cases; or revamping the legal aid system for asylum-seekers, just to name a few – is a costly, time-consuming, and onerous endeavor that requires political and public support, of which Korea has little as of this writing. Not coincidentally, reforming the RSD process and increasing public

awareness have been two of the most central agendas of the small but active group of Korean civil-society actors advocating refugee and asylum-seeker interests (see Chung 2020 for civil-society involvement in immigration matters in East Asia).

I suggest future research to investigate the internal norms and logic of appropriateness of RSD institutions in other liberal democracies to explore why some institutions lean towards restriction (and others towards liberalization), and ultimately, how they contribute to the RRR of the country in question. A quick glance at RSD institutions outside of Korea suggests that they, too, play a critical role in restrictive RSD outcomes. For instance, in Japan, another liberal democracy with exceptionally low RRR, the RSD process is managed by the Ministry of Justice that, like Korea's MOJ, is "mandated to both protect refugees and police irregular immigration" – two conflicting objectives that "[plague Japan's refugee] recognition system" (Wolman 2015, 412). Likewise, in the United States, the Department of Homeland Security (DHS) is tasked with both asylum application screening[22] and immigration control, which is a point of ongoing policy reform debate. For example, in 2019, presidential candidate Senator Bernie Sanders vowed to "break up" different wings of the DHS and redistribute them to other federal executive departments, stating that officers tasked with processing asylum-seekers and refugees should be "recruited and trained for a humanitarian mission, not a law enforcement mission" (Da Silva 2019). These examples indicate that the arguments in this chapter have analytical purchase beyond Korea, and that cross-examinations of RSD institutions may help shed light on the problem of "burden-sharing" of refugee protection in the Global North.

[22] Only those migrants who are not in removal proceedings can apply for asylum through the U.S. Citizenship and Immigration Services, an agency of the DHS. Those who are in removal proceedings request asylum at the immigration court, housed within the Department of Justice.

Acknowledgement

Chapter 3, in part, has been submitted for publication of the material. The dissertation author was the primary researcher and single author for this paper.

CHAPTER 4

CLAIMS OF VISIBILITY, DILIGENCE, AND SUFFERING: HOW THE COURTS DETERMINE REFUGEE STATUS

"Refugee status determination is a human process; it is not an exact science."

- Michael Kagan in "Is Truth in the Eye of the Beholder? Objective Credibility Assessment in Refugee Status Determination" (2003, 375)

As I showed in chapter 3, the first-instance courts of Korea sided with asylum-seeker plaintiffs an average of only about 0.7 percent per year from 2014 to 2018 (Figure 3.2). In this chapter, using a novel, web-scraped dataset, I examine who these 0.7 percent of applicants winning the lottery that is Korea's RSD are, and how they differ from the over 99 percent of unsuccessful refugee status claimants. The aim of this examination is to shed light on how refugees are defined by Korean judges both legally and extralegally, and by extension, how such legal and extralegal interpretations of refugees contribute to Korea's relatively low RRR.

I show that the refugee status claimants who won their cases at the administrative or district courts are much more likely than those who lost their cases to possess four distinct characteristics, as deemed by the courts. The winners tended to be relatively more visible in the public eye; have a diligent, consistent, and active résumé of past activities that led to persecution (or that will likely lead to future persecution); have experienced past suffering; and be on the radar of their persecutors. These characteristics, I argue, serve as important proxy measures of the refugee litigant's degree of credibility.

[4.1] A “refugee” in the law

According to the 1951 Convention Relating to the Status of Refugees, a refugee is someone who,

> owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

The Convention definition of a refugee has formed the cornerstone of the international response to forced migration since the end of World War II (FitzGerald and Arar 2018). While there have been constant debates about whether the grounds for refugee status should be expanded or remain focused on persecution based on the five protected grounds (race, religion, nationality, social group membership, and political opinion) (Hathaway 2007; McAdam 2012), the Convention definition of a refugee in its current written form is, as Steinbock (1992) puts it, arguably “one of the most widely accepted international norms” (735) by refugee-hosting nation-states. As of 2021, the 1951 Convention has been adopted by 146 countries worldwide. This indicates that the legal understanding of a “refugee” should, in theory, be universal and similar across the country parties to the Convention.

Despite the globally circulated and adopted Convention definition of a refugee, however, defining who qualifies as a refugee is a challenging task. In particular, with the absence of any legally binding international standard on conducting determination of refugee status, the qualifications of becoming a refugee can vary greatly in practice from country to country, within one country, and across time (Hamlin 2012, 2014; Ramji-Nogales, Schoenhotlz, and Schrag 2009; Shiff 2020). This suggests that the legal category of “refugee” is ultimately a human

construction that can be shaped by multiple variables that exist beyond the black letters of the law (Kagan 2003), including but not limited to the domestic political landscape of the refugee-hosting country, legal interpretations, procedurals rules of the law(s) on refugee protection, and decision-maker characteristics.

Refugee eligibility criteria, standard of proof, and credibility assessment

First and foremost, to be recognized as a refugee, the applicant must establish that s/he is experiencing a "well-founded fear" of persecution if refouled to the country-of-origin (Gibney 1987). Judging whether an applicant's fear is "well-founded" is notoriously difficult, not least because applicants often lack tangible, document-based evidence to corroborate their fear of persecution on the basis of the five reasons outlined in the Convention, if such evidence even exists (Goodman 2013; Noll 2005). Indeed, the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* recognizes that in the majority of cases, "a person fleeing from persecution will have arrived [in the host territory] with the barest necessities and very frequently even without personal documents" (Paragraph 196). Due to this reason, adjudicators often only have applicants' oral testimonies to refer to in determining their refugee status, which means that from the perspective of an asylum-seeker, successfully convincing the adjudicators that his/her oral claims of fear are credible becomes of utmost importance in increasing the chance of being granted asylum. Conversely, from the perspective of adjudicators, correctly assessing the applicant's credibility becomes of utmost importance in deciding whether the applicant should be recognized as a refugee (Bohmer and Shuman 2009; Kagan 2003; UNHCR 2013).

How, then, do adjudicators "correctly assess" the applicant's credibility? As outlined in the international regulations, a credible testimony should meet three criteria. First, it should be internally consistent, meaning that the testimony should be cohesive and provide details of the

applicant's accounts of fear of persecution. Second, it should be externally consistent, meaning that the details of the testimony should line up with known facts. These "known facts" most often refer to the applicant's country-of-origin information (COI) as informed by a variety of formal and informal sources like government and NGO reports and expert testimonies (Gibb and Good 2013; Good 2014). Lastly, it should be plausible, which means that judges should deem that there is some chance that the claimed events have occurred (Sweeney 2009).

Considering the very humanitarian principles underlying the refugee law, and that a misjudgment of one's asylum eligibility is potentially a matter of life and death, scholars of refugee studies have long insisted that adjudicators ought to lean toward a "liberal interpretation" when evaluating relevant facts of the RSA's claims (Goodman-Gill 1983: 22).[23] The UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* states that an applicant's fear of persecution should be considered well-founded if he "can establish, to a reasonable degree, that his continued stay in his country of origin has become intolerable…" (Paragraph 42). This "reasonable degree" threshold in the standard of proof indicates that, inasmuch as evidence is concerned, refugee claims are different from criminal cases or civil claims in that the level of proof needed to establish one's eligibility to be recognized as a refugee, as defined in the international law, is far below the criminal standard of "beyond reasonable doubt" and the civil standard of "the balance of probabilities" (Figure 4.1). Numerically, the U.S. Supreme Court determined in *INS v. Cardoza-Fonseca* (1987) that the reasonable possibility standard threshold is less than 50% chance, meaning that an individual can be deemed to experience "a well-

[23] In RSD hearings, the applicant bears the burden of proving eligibility for asylum and must demonstrate that, as per the law, h/she has suffered past persecution or has a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion (UNHCR 1998).

founded fear of an event happening when there is less than 50% chance of the occurrence taking place." The Korean Supreme Court, too, employed the reasonable possibility rule in the famous 2008 "Narcisse decision" (*2007DU3930*), in which the Court held that a Congolese refugee named Narcisse should be recognized as a refugee despite the lack of "enough objective evidence."

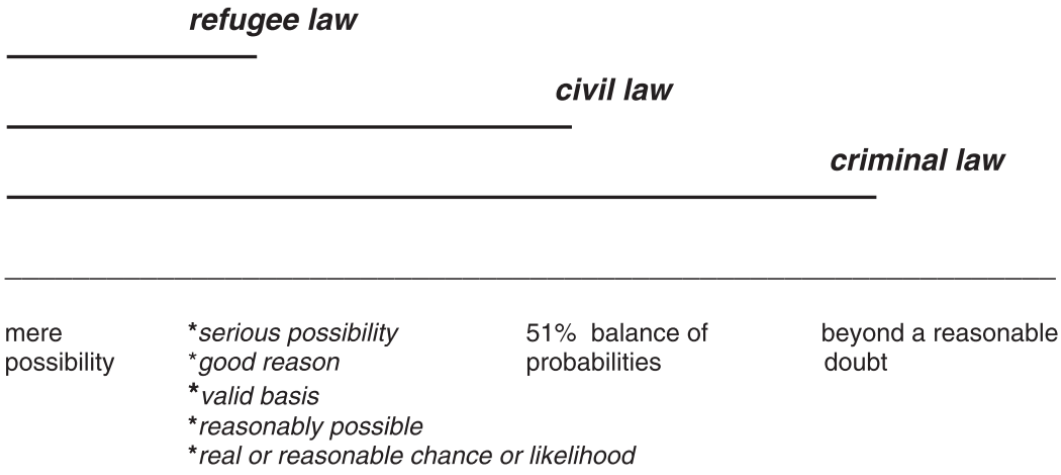

Figure 4.1. Evidentiary standards required in the refugee law, civil law, and criminal law
Source: Gorlick 2003

In sum, at least in principle, research on the legal interpretations and administrative procedures of refugee laws shows that the single biggest factor determining the RSA's asylum eligibility boils down to the credibility assessment of the RSA; although, as Sweeney (2009) acutely puts it, credibility assessment "does not tell us *how* internally consistent, *how* externally consistent, or *how* plausible the applicant's story would need to be in order to be 'credible'" (701). The very determination of *how* credibility is assessed and to what degree, in other words,

is a construction that is up to the decision-makers in the refugee-hosting country (Wikström and Johansson 2013).

[4.2] Data and Method

Information on how many people, and from which country of origin, have applied for refugee status and have appealed the Ministry of Justice decision to the Refugee Committee is publicly available at an aggregate level (from 1992 to 2019) as of May 2020, thanks to the Refugee Rights Center, an NGO dedicated to advancing the rights of refugees in Korea (Nancen 2020). The MOJ, too, releases basic aggregate-level statistics about Korea's refugees and RSD via its Yearbook. However, broadly speaking, Korea's refugee-related data that is available to the public is extremely volatile, incomplete, and difficult to access. In particular, as far as I know, data on asylum litigations is unavailable, as the courts do not release (or keep track of) information on refugee-related litigations except for how many refugee-related litigations get processed each year and their aggregate-level verdicts (see Figures 3.1 and 3.2). Moreover, the data that is available through the Refugee Rights Center and the MOJ does not provide details on the characteristics of individual applicants, including their claims or evidentiary factors. This kind of data limitation, however, is not unique to Korea. As Neumayer (2005) and Keith and Holmes (2009) contend, individual-level immigration decision data is very rare in general. For this reason, Keith and Holmes (2009) write, "…only a few studies in the literature, to our knowledge, have used individual-level data and none have been able to include evidentiary factors or applicant characteristics" (225).

To fill in this gap in the existing data, and to fulfill my ultimate goal of investigating how individual asylum-seeker characteristics affect court decision outcomes, I web-scraped summaries of court judgement documents on RSD litigations uploaded on www.w4refugee.org,

a public website run by APIL, one of the most prominent public interest law firms that does advocacy work for refugees and asylum-seekers in Korea. The web-scraping effort yielded summaries of 2,862 court judgements made by administrative and district courts of Korea from 2001 to 2018. The summaries contain information on the case number, country of origin of the refugee status claimant (plaintiff), adjudicating court, sentence date, plaintiff's persecution reason (political opinion, religion, social group, race, nationality, or other), plaintiff's claims, and a short synopsis of the verdict. Apart from the web-scraped data, I was able to obtain 5,000 additional court verdicts on asylum requests made between 1999 to 2018 from APIL.[24] A typical court judgement document is anywhere between 2 and 20 pages in length, and apart from the information covered in the summary, these documents detail the plaintiff's COI, claims, and background information, as well as the judges' reasoning behind the verdict.

Besides the unique individual-level characteristics, what most prominently distinguishes the dataset I acquired from APIL from the previously analyzed aggregate country-level data (Rosenblum and Salehyan 2004; Rottman, Fariss and Poe 2009) or even the smaller dataset on personal characteristics of asylum-seekers (Keith and Holmes 2009) is the extremely detailed accounts of asylum-seeker testimonies, followed by the equally detailed justifications made by judges that either agree or disagree with the asylum-seeker claims. The APIL dataset contains not only basic information about the refugee status applicants, such as their nationality and legal status upon entering Korea and submitting their application, but also their personal descriptions of past suffering and torture, activities that led to persecution at home and abroad, and potential

[24] The difference between the 5,000 verdicts and the summaries of 2,862 court judgements is that the latter is digitized, while the former is not.

future persecution if refouled. The dataset also covers information on whether the judges deemed the applicant claims to be credible, why or why not, and the ultimate verdict.

Admittedly, it is difficult to gauge how representative the web-scraped dataset is of the total number of refugee-related litigations ever processed in Korea, as there is no public information available on the latter. Given this absence, I compared my web-scraped dataset to various datasets released by the Refugee Rights Center and MOJ that could serve as a reference point. For instance, to best measure the representativeness of the countries of origin of asylum-seekers in the web-scraped dataset, I analyzed the data released by the Refugee Rights Center (Nancen 2020) that shows the total number of processed appealed cases (19,935) by the Refugee Committee from 1992 to 2019 (28 years). Among the more than 19,900 processed appealed cases over the 28-year period, 70 percent were filed by applicants from ten countries including Pakistan, Egypt, China, Nigeria, Kazakhstan, Bangladesh, India, Nepal, Russia, and Ghana, in descending order of application numbers (Figure 4.2). In the web-scraped dataset, the top ten countries of origin include Pakistan, Nigeria, Egypt, Bangladesh, Nepal, China, Cameroon, Uganda, Myanmar and Sri Lanka, which together comprise 75 percent of the total number of cases (Figure 4.3). All in all, applicants from Pakistan and Nigeria are overrepresented by 9.7 percentage points and 4.1 percentage points respectively, and applicants from Bangladesh, Nepal, Cameroon, Uganda, Myanmar, and Sri Lanka are overrepresented by 2 percentage points or less in the web-scraped dataset. Conversely, applicants from China, Egypt, Kazakhstan, India, Russia, and Ghana are underrepresented in the web-scraped data by less than 5 percentage points.

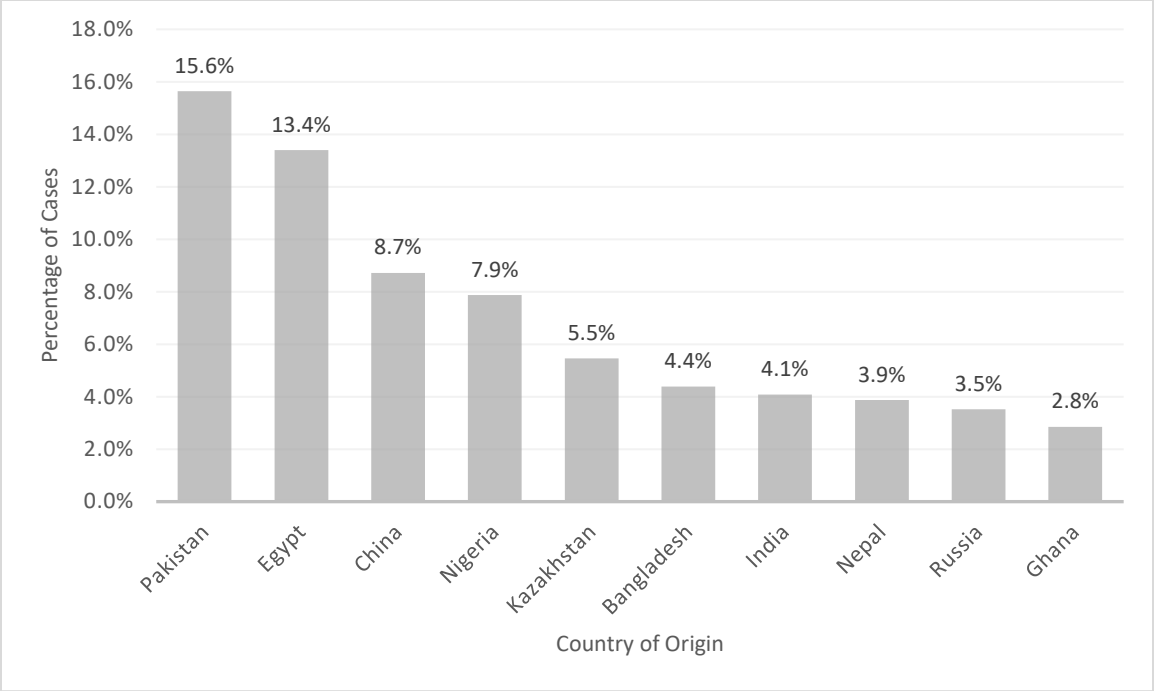

Figure 4.2. Percentage of processed appealed asylum cases (by the Refugee Committee) by countries of origin in Korea, 1992–2019

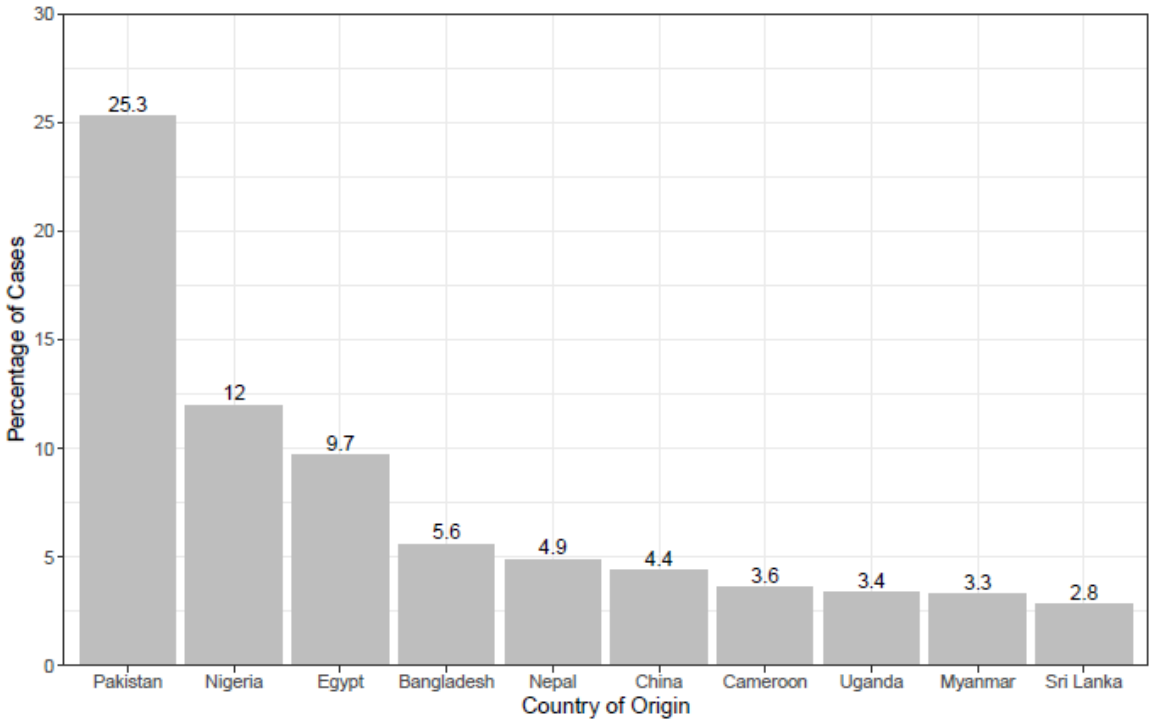

Figure 4.3. Percentage of processed refugee litigations by countries of origin in Korea in the web-scraped dataset, 2001–2018

Besides the applicants' countries of origin, the web-scraped data also contains information on why asylum-seekers filed for litigation. As shown in Figure 4.4, 21.1 percent of the refugee status claimants filed on the basis of persecution relating to political opinion compared to 19.6 percent relating to religion, 4.5 percent relating to social group, 3.8 percent relating to race, and 0.1 percent relating to nationality. There is no public data that has the same information for the entire refugee status claimant population filing for litigation. The closest data available comes from the MOJ and has information on asylum application reasonings for applicants requesting asylum via the MOJ from 1992 to 2018 (Figure 4.5). A quick comparison between figures 4.4 and 4.5 tells us that the web-scraped data is representative to the extent that it shows political opinion and religion are the most cited persecution reasons for requesting asylum.

Lastly, the web-scraped data displays information on where asylum-seekers file for litigation. As shown in Figure 4.6, most of the litigations are processed at the Seoul Administrative Court (78.5 percent), followed by the district courts in Busan (11.2 percent), Gwangju (6.8 percent), and Jeju (1.8 percent). This result matches well with the overall refugee application pattern in Korea, in which most asylum-seekers apply for refugee status in Seoul, Gwangju, Daegu, Busan, and Jeju (Nancen 2019).

Despite the uncertainty in the level of representativeness of the web-scraped dataset of the entire refugee litigant population, the web-scraped dataset provides invaluable, and typically unobservable, insights into asylum-seekers who bring their cases to the courts. Not only does it tell us individual-level characteristics of the applicants and cases, but it also, most notably, tells us who won (and lost) their lawsuits. The web-scraped dataset contains information on 70 winning individuals at the first-instance appeal. This means that, considering that there have

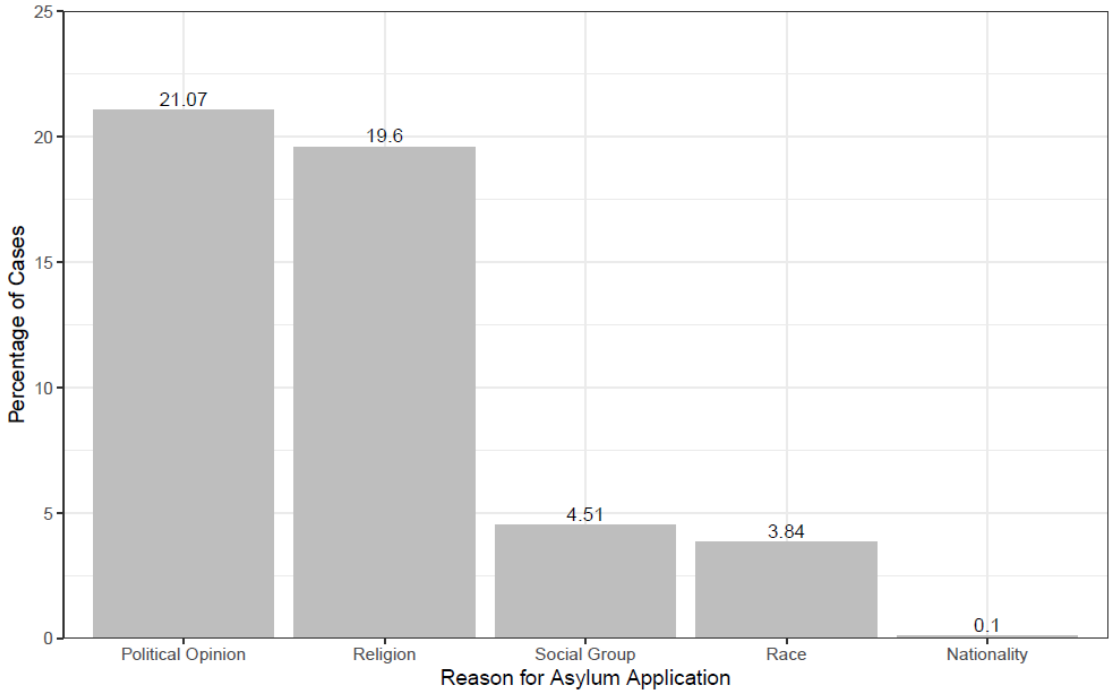

Figure 4.4. Percentage of processed refugee litigations by persecution reasons in Korea in the web-scraped dataset, 2001–2018

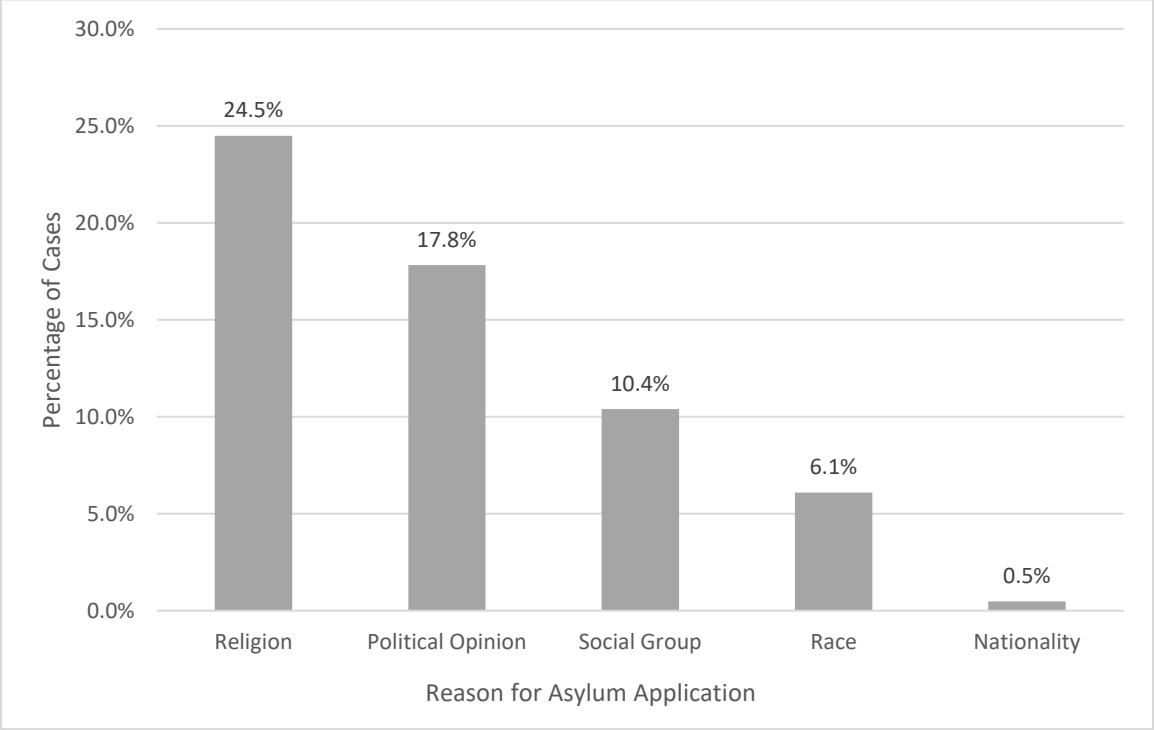

Figure 4.5. Percentage of refugee status applications by persecution reasons in Korea, 1992–2018

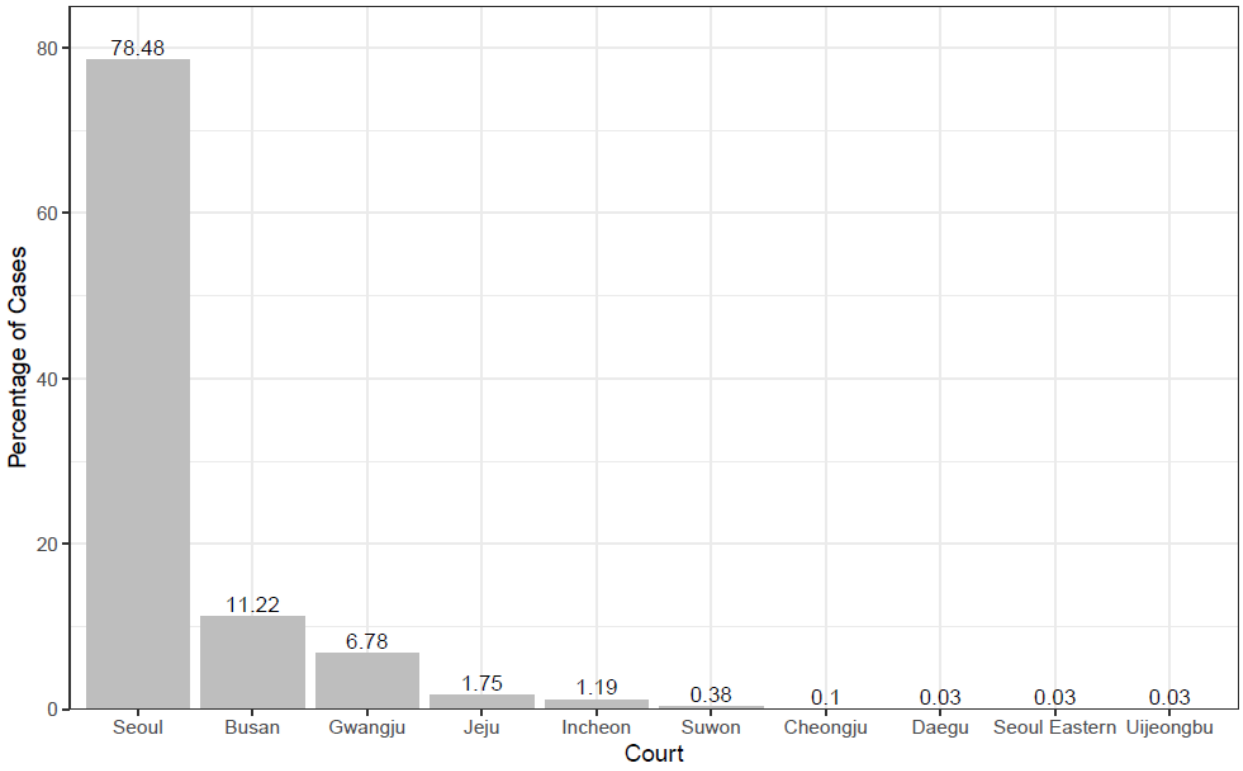

Figure 4.6. Percentage of processed refugee litigations by court location in Korea in the web-scraped dataset, 2001–2018

been 89 individuals who were granted refugee status from 2001 to 2018 at the court stage of RSD, the web-scraped dataset holds information on at least 79 percent of the individuals who won their first-instance appeal from 2001 to 2018.

To investigate how judges make asylum decisions based on credibility assessments, and who gets granted the coveted refugee status, I used a case study approach with a most similar design via matching (Gerring 2007; Seawright and Gerring 2008). As Nielsen (2018) summarizes, most similar case selection proceeds by "(1) defining the relevant universe of cases (2) identifying key variables of interest that should be similar across the target cases (3) identifying a variable or variables that should vary meaningfully across the target cases, and (4) selecting the desired number of cases—often a pair but sometimes more—that have the specified

similarities and differences" (571). Following this approach, I used the web-scraped dataset and my additional court verdict documents (my "universe of cases") to identify and select pairs of cases that are very similar on a number of observable dimensions but differ in their verdict status. In some instances, there were more than one optimal match. In the end, I matched my 70 winning individuals with 109 losing individuals for a total of 179 observations.

I chose which variables to match on based on the existing literature on the determinants of asylum, which suggest the applicant's country of origin, gender[25], year of application (within five years), and reason(s) for application to be determinant variables (see Kate 2005; Nayak 2015; Rosenblum and Salehyan 2004; Rottman, Fariss and Poe 2009). After selecting my cases, I carefully read through all 179 documents, looking for distinctions made by the courts between winning and losing litigants. The key advantage of using the most similar design is that it helps to rule out alternative explanations on asylum outcomes based on the applicants' country of origin, gender, year of application, and reasons for application. By limiting my analysis to only cases that are similar on these observable dimensions (effectively controlling for these dimensions), it allows me to home in on the key factors that affect the judges' assessment of a claimant's credibility and their decisions.

[4.3] Results

Carefully reading through all 179 selected cases, I inductively arrived at a conclusion that the winning individuals were more likely to possess four distinct characteristics, as deemed by the judges. First, winning individuals tended to have some kind of public presence, whether it be

[25] While the applicant's gender was not always specified in the court verdict documents, for many cases, I was able to deduce from the context the applicant's gender. For example, the court documents would often detail the applicant's relationship with family members, where the applicant would be named "sister," "son," etc.

through personal online blogs and YouTube channels, or through public interviews conducted by newspapers, magazines, or television. Not all instances of public presence, however, were necessarily voluntary. For many refugees *sur place*, the pictures of them involved in activities that would lead to persecution at home (e.g., protesting) were publicized without their consent. Second, judges agreed with the winning individuals' claims that they have played or still play an active, if not central, role in the political or religious movement that has caused their persecution, or fear of persecution. Third, winning individuals often had evidence of past persecution that were deemed credible by the court, such as arrest records and scars of past torture like gun and knife wounds. If they did not have tangible evidence of past persecution, their oral testimonies of past torture and suffering tended to be extremely graphic. Fourth, judges agreed with the winning individuals' claims that their persecutors are aware of their location.

Winning litigants often met more than one of the above four criteria. For example, active individuals were more likely to be in leadership roles, and thus they also tended to have a greater public presence and heightened likelihood of persecutor awareness. Likewise, those who had experienced severe suffering in the past tended to be an active figure in the movement that had caused persecution. Ultimately, most of the winning individuals who had some combination of these four criteria had well-supported résumés that were lengthy, consistent, detailed, and at times, impassioned.

In contrast to the winning individuals, those who lost their lawsuits very rarely satisfied any of the four criteria, although there were a few exceptions. For instance, a litigant from Liberia claimed that he had gotten physically assaulted by his persecutors at home. While the court agreed with the litigant, the litigant was not granted refugee status partly because the persecution had taken place twenty years ago. In another case, a litigant from the Democratic

Republic of the Congo claimed that she and her sister were raped by the M23 rebels who also murdered her husband and abducted her children. While the court agreed with the plaintiff that she had been persecuted by the rebels, the judge wrote, "[the plaintiff] was only the target of an indiscriminate attack… so even if the plaintiff returned to her home country, there would be no possibility that the M23 rebels would pay special attention to the plaintiff and persecute her." The judge also wrote that the plaintiff could move to another part of the home country to avoid future persecution.

Other than these rare exceptions, however, the individuals who lost their cases significantly differed from winning individuals, as shown in Table 4.1.

Table 4.1. Difference between winning and losing refugee litigants in the first instance lawsuit in Korea, 2005-2018
*p < 0.1; **p < 0.05; ***p < 0.01

	Winning Litigants	**Losing Litigants**	**Difference in Means**
Public Presence	0.44 (0.50)	0.05 (0.21)	0.40*** (0.06)
Active Figure	0.79 (0.41)	0.03 (0.16)	0.76*** (0.05)
Past Physical Persecution	0.54 (0.50)	0.07 (0.26)	0.47*** (0.07)
Persecutor Awareness	0.94 (0.23)	0.06 (0.23)	0.89*** (0.04)

Whereas 44 percent of winning litigants had some kind of public presence, only 5 percent of losing litigants had their records publicized. Similarly, 79 percent of winning litigants were active figures, while only 3 percent of losing litigants were classified as one; and 54 percent of winning litigants convinced the judge that they were persecuted in the past, while only 7 percent

of losing litigants were able to do so. Lastly, an overwhelming 94 percent of winning litigants were deemed to be under the surveillance of their persecutors, while only 6 percent of losing litigants were considered as such. All of these differences are statistically significant in t-tests.

Claims of visibility

One of the characteristics that distinguishes winning from losing litigants is their level of visibility due to their relatively higher public presence. The winning litigants' public presence, in turn, was often due to the applicant's committed engagement with an organization or activity that led to his persecution or fear of persecution. Those who were deemed visible by the court were often leaders of movements who had experience appearing in the public willingly.

For instance, Mr. A from Myanmar, whose litigation took place in June 2012, was granted refugee status after it was deemed by the court that he had a well-founded fear of persecution if refouled, based on his political opinions. At the time of the lawsuit, Mr. A was a member of the National League for Democracy (NDL), a pro-democracy political party in Myanmar led by Aung San Suu Kyi. As a Secretary General of the Korean branch of NDL, he was a central figure in the pro-democracy movement, managing an online blog containing information about the human rights situation in Myanmar. He participated in over 15 rallies in front of the Myanmar Embassy in Korea to protest the military dictatorship and suppression of human rights of minorities of his home country, and produced and released two musical albums about the sorrows of the Myanmar people living under oppression.

Mr. B, whose litigation was held in November 2010, was also part of the pro-democracy movement in Myanmar; however, he was denied refugee status by the same court. Despite his oral claims that he was arrested in Myanmar, and that the police twice interrogated his family members concerning his whereabouts, Mr. B was not granted refugee status because the court

deemed that he was a "lay participant" who did not seem like he would be targeted for persecution if refouled. The explicit way in which the courts weighed Mr. B's risk of being persecuted was through how "visible" he was at the time of the litigation.

While very rare, not all visibility was induced voluntarily. For example, Mr. C from Pakistan, who had resided in Korea for 13 years at the time of application, claimed in 2009 that he would suffer persecution if returned home because of his sexual orientation. A video of Mr. C engaging in homosexual acts was involuntarily recorded and used by Mr. C's persecutors as a tool of threat and harassment. The court ruled Mr. C's fear of persecution credible and revoked the MOJ's rejection decision.

On the other hand, the court rejected the claims of Mr. D, a Pakistani who applied for asylum due to his fear of persecution based on sexual orientation. Mr. D, similar to Mr. C, had resided in Korea for many years (7 years) at the time of his application in 2015. The court explained that the rejection of Mr. D's case was partially due to the observation that "The plaintiff's claims are insufficient to accept as they are, and there is no other [tangible] evidence to support the claims. [The plaintiff] has not submitted any evidentiary material that could support his claims that he is a homosexual." While the court does not explicitly clarify what evidentiary material they were looking for from Mr. D, we can infer from Mr. C's case that a video recording of sexual acts that is (or could become) publicly available may have served as evidence in favor of Mr. D's claims.

Claims of diligence

A second distinguishable trait of winning litigants is that they were often active figures who diligently and consistently maintained a relatively high-level of effort in the movement or activity that caused their persecution or that could cause future persecution.

For instance, Mr. E, an Iranian applicant whose litigation was held in February 2018, was recognized as a refugee after living in Korea for more than 15 years as a migrant laborer. At the time of the lawsuit, Mr. E had been practicing Christianity in Korea for over ten years, after converting from Islam upon immigrating. At the hearing, several witnesses who attended the same church as Mr. E testified that he had been a devout and assiduous Christian for a decade, being baptized earlier on in his Christian life, and had successfully proselytized Christianity to other Iranians in Korea. According to one witness, Mr. E was "incredibly diligent" with his religious exercises, stating, "Even though I myself have been a Christian for 30 years, I cannot say I have been as successful [as Mr. E] in evangelizing efforts."

On the other hand, Mr. F, who was born to a Christian family in Iran, was denied refugee status at a hearing held in the same month in 2018. While Mr. F's Christian faith was clearly acknowledged in the judgment, the denial was based on the supposition that Mr. F "has not participated in externally visible religious activities and seems to have no future plans to engage in evangelism."

In another comparable case, Mr. G, who converted to Christianity upon arrival in Korea, was denied refugee status in March 2010. Like Mr. E, Mr. G was baptized a few years before he applied for refugee status; however, the court deemed him unfit to be a refugee explicitly because he was not diligent in his religious activities. According to the verdict, Mr. G "only attended church on Sundays, and did not know much about the doctrine of Christianity…. [for example] Mr. G [answered incorrectly] that the name of the apostle who betrayed Jesus Christ was Peter [as opposed to Judas]…"

In another example, Mr. H, a Bangladeshi who applied for asylum for reasons of political opinion and race, won his December 2010 lawsuit as he was recognized by the court as

an "active" participant in the ethnic independence movement of Jumma people. The court largely acknowledged the plaintiff's impressive *résumé* of activities, which included becoming a member of the United People's Democratic Front (UPDF), a Chittagong Hill Tracts-based regional political party in Bangladesh that seeks to establish a full autonomy of Jumma people; joining the Jumma People's Network South Korea (JPNK) to get involved in the ethnic independence and human rights movements in Korea; and, most notably, consistently and actively participating in demonstrations in Korea. When the prime minister of Bangladesh visited Korea in May 2010, the plaintiff partook in a JPNK-led protest by the place where the prime minister was staying, calling for the suspension of the oppression and human rights violations of Jumma people. News of the protest, along with the plaintiff's photograph, was published by newspapers in Bangladesh.

In the same month in 2010, Mr. I, who on the surface had a very similar background as Mr. H, also filed for a lawsuit regarding his asylum rejection, but was ultimately denied refugee status by the court. Mr. I, also a Bangladeshi, claimed that he was a member of both the UNDF and JPNK. The court, however, dismissed Mr. I's case, concluding that he is just a "lay participant" whose limited and simple participation in human rights protests did not warrant refugee status.

Claims of past suffering and potential future suffering

Finally, most winning litigants were able to convince the court that they had experienced past physical persecution and were under the surveillance of their persecutors at the time of application, and therefore were at risk of future suffering.

For instance, in the case of Mr. J, a Pakistani litigant, the court deemed Mr. J's scars as objective evidence of his past persecution, stating, "There are scars on the body of the plaintiff,

which are difficult to see as occurring in the course of a normal life." Even if they were not explicitly stated as objective evidence, the winning litigants' oral testimonies of suffering were acknowledged by the court as facts. Such testimonies were often graphic and detailed, with gross descriptions of bodily harm and subjugation. Conversely, in most of the losing litigant cases, the court specifically pointed out the plaintiff's lack of past suffering as a reason that the plaintiff's claims were insufficient to be granted refugee status.

Besides the claims of past suffering, the court paid special attention to the plaintiff's potential future suffering, as measured by persecutor awareness of the plaintiff's whereabouts. The 6 percent of the losing litigants who were deemed by the courts as having a chance of experiencing future suffering if refouled were also those whom the courts deemed could be safe by moving to other parts of the home country, those whose persecuting entities were deemed to be private actors as opposed to government actors, those whom the courts deemed could prove their innocence, or those whose potential future persecution was not deemed to be severe enough. For instance, with regards to the case of Mr. K, a Kenyan who applied for asylum based on his fear that his family may be planning to murder him because of his sexual orientation, the court ruled, "The plaintiff's family is only ashamed of the plaintiff's sexual identity and does not appear to have any intention of killing the plaintiff. Therefore, the plaintiff's claim that his family is trying to kill the plaintiff seems overly exaggerated. Even [if the plaintiff's claims may be true], it appears that the plaintiff will be able to escape from his alleged risk by relocating to a different area within Kenya outside the family's influence."

[4.4] Discussion

A litigant's level of visibility, diligence, past suffering, and possibility of future suffering can all influence the asylum decisions made by Korean judges. To put it differently, the more

visible, diligent, persecuted, and in danger a litigant is deemed to be by the courts, the higher the likelihood that s/he will be granted refugee status.

One possible explanation for why the courts focus on these characteristics when making asylum decisions is that these characteristics serve as indirect, proxy measures of the litigant's credibility. While credibility assessment in RSD is not supposed to be dictated by the amount and types of tangible evidentiary documents that a refugee status claimant can provide (UNHCR *Handbook* paragraphs 203-205, Seoul Administrative Court 2013, 77), as I have shown in chapter 3 of this dissertation, Korean judges look for tangible evidence when reviewing asylum cases as they are accustomed to the higher evidentiary threshold in domestic cases. In this kind of judicial climate, a refugee litigant who is relatively more visible in the public eye and has a lengthy and active résumé comes across as more credible, as s/he is more likely to have a paper trail, witnesses, and supporting documents. For instance, public photos of litigants engaging in protests against their persecutors, or official records of litigants' past activities that led to their persecution, automatically serve as credible documentary evidence of their vulnerable status. The litigant claims of visibility and diligence (and tangible evidence that at times accompany these claims), in other words, are more likely to convince Korean judges of the litigant's credibility.

Similarly, bodily scar marks serve as direct evidence of past suffering, which helps to increase litigants' credibility. As Fassin and D'Halluin (2005) remark in their article, the refugees' body is a place that displays "the evidence of truth." They elaborate, "The refugees' body… becomes the place of an inscription, the meaning of which relates to a double temporarily: an inscription power, through the persecution they suffered in their home country, and an inscription of truth, insofar as it bears witness to it for the institutions of their host country" (598). Quite literally, during asylum hearings, some refugee's bodies are presented as

evidence. In cases where bodily scars are absent, the court focuses on the level of consistency and detail in the refugee litigants' stories of suffering. While it is beyond the scope of this chapter, future studies should investigate the relationship between *how* the stories of suffering are told and credibility (Good 2011)

Another possible explanation for the courts' attention on the characteristics of visibility, diligence, and past and future suffering is that Korean judges have become increasingly focused on several articles in the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* that discuss "potential to draw attention" from persecutors. In Paragraph 43 of the *Handbook*, for instance, it is stated, "In the case of a well-known personality, the possibility of persecution may be greater than in the case of a person in obscurity." Paragraph 96, in discussing refugee *sur la place*, also states, "Regard should be had in particular to whether such actions may have come to the *notice of the authorities of the person's country of origin and how they are likely to be viewed by those authorities*" (Italicized mine).

While the "potential to draw attention" is not a requirement to be recognized as a refugee either by the Refugee Convention or by the Refugee Act of Korea, it has progressively become an important standard. One experienced public lawyer opined at length at a refugee law seminar for lawyers where I participated as an observer,

> In every refugee litigation, the topic of potential to draw attention, or lack there-of comes up. What is a 'lack' of potential to draw attention…? [It means] this person doesn't look important. It doesn't look like this person has been active, [therefore] it's hard to understand why this person is at risk of persecution.
>
> How are we [lawyers] supposed to prove the plaintiff's potential to draw attention? How are we to prove that [our clients] are being surveilled by their home government? … it is impossible. It's impossible. For this reason, if there are pictures of [the clients] protesting, or stories of [the clients] diligently practicing religious activities after conversion become publicized through the media and such, we can argue that the country of origin is now aware of their whereabouts (Participant observation notes, 05/11/2019).

The characteristics that distinguish winning refugee litigants from losing refugee litigants reflect the incredibly narrow judicial definition of a refugee that currently exists in Korea – the definition of which differs greatly from the legal definition of a refugee as enshrined in international and domestic laws. A typical refugee whose legal status is recognized by the Korean courts is not someone who only claims to have a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion" and is unable to return home because of the fear. It is someone who can also convince the judges that s/he has been highly visible in the public eye, has been participating consistently and diligently in activities that led him/her to persecution, has endured torturous past suffering, and will very likely be persecuted if refouled – as these traits serve as proof of credibility and well-founded fear. This is an extremely high bar that is difficult to meet, which further explains the measly 0.7 percent winning rate amongst the refugee litigants in Korea.

Acknowledgement

Chapter 4, in part, is currently being prepared for submission for publication of the material. The dissertation author is the primary researcher and single author for this paper.

CHAPTER 5

CONCLUSION

In this dissertation, I have explored the question of why Korea accepts relatively few refugees from a sociological institutional perspective. I argue that Korea's low refugee recognition rate is due in significant part to the tightly embedded internal norms of the domestic institutions in charge of refugee status determination that remained largely unchanged by the adoption of supranational liberal norms on refugee protection, as well as by the enactment of corresponding domestic legislation. Using my fieldwork data, court verdict documents, and secondary materials released by the government, media, and NGOs, I have traced Korea's development into a signatory to major international treaties on human rights and refugee protection; outlined in detail the provisions of Korea's Refugee Act and RSD infrastructure; and investigated the ways in which the Ministry of Justice and administrative and district courts balance the newly imposed liberal supranational norms with their comparatively more restrictive internal norms.

My focus on RSD institutions as a significant and autonomous force in asylum outcomes (including RRR), as opposed to mere implementing bodies of the law, offers a new perspective to the literature on the politics of asylum, as traditionally, the role of bureaucratic institutions in refugee reception has been overshadowed by that of other state actors. The existing literature on the determinants of asylum has suggested that institutions that affect asylum outcomes mostly include executive and legislative branches of a nation-state and supranational institutions

(Jacobson 1996; Kate 2005; Rosenblum and Salehyan 2008, 2004; Sassen 1996; Soysal 1994). While Joppke (1998b) has considered the courts as a liberalizing force in asylum, this argument needs to be updated and buttressed with more details, as we still lack knowledge on the "inner logic that guides the court's asylum decisions" (Johannesson 2018, 1163). In this regard, we know relatively little about whether the bureaucratic agencies and courts responsible for asylum decisions are potential sources of liberalization or restriction, and why.

As I have demonstrated in this dissertation, the Korean case reveals that the MOJ and courts serve as source of restriction when it comes to asylum decisions, not necessarily out of ill will but because they have been accustomed to upholding their internal missions and practices. This finding parallels more recent works on street-level bureaucracy (Lipsky 1980[2010]) in the public administration literature, which assert that street-level bureaucrats are often limited by formal and informal institutional structures like limited resources, demanding daily workloads, and entrenched social norms – all of which make street-level bureaucrats "far from rogue agents… [but] conservers of institutional norms" (Maynard-Moody and Musheno 2012, S20; see also, Maynard-Moody and Portillo 2010; Portillo and Rudes 2014; Epp, Maynard-Moody, and Haider-Markel 2014).

The RSD institutions' influence over asylum decisions also challenges the power of liberal laws. The Korean Refugee Act is a product of years of effort by a small group of motivated politicians and activists, who in turn were supported by supranational norms already in place. While the enactment of the independent Refugee Act did bring about some important changes infrastructurally and symbolically, ultimately, it failed to generate the liberalization of asylum that was initially expected by the supporters of the law. This not only shows that the adoption of laws does not necessarily lead to changes in institutional norms, which can be

durable and lasting, but also that *how* the laws are executed and by *which* state institutions matter in the implementation of the laws as they are intended, just as much as the ratification of the laws themselves.

The refugee activists I talked to in Korea expressed concern regarding the MOJ being the institution in charge of asylum screenings. One activist told me the agenda that he and his colleagues have been pushing for with regards to asylum screenings:

> Activist: What we are now urging for is the separation of [asylum screening body] from the MOJ…an independent body, or [a body] that is affiliated with the Ministry of Foreign Affairs, perhaps.
>
> Author: Because the Ministry of Foreign Affairs is less restrictive?
>
> Activist: Or better yet, Korea should create an [altogether independent] immigration office… As of now, the [bureaucrats at the MOJ] are accustomed to controlling foreigners, amongst whom are refugees. [The MOJ bureaucrats] are deep in the entrenched perspective that refugees are negative subjects who [illegally] overstay in Korea, [therefore they] need to be controlled.
>
> Author: Is creating an independent refugee screening body a possibility?
>
> Activist: We are pushing for two different types of independence. One way to secure independence is to separate the screening body itself [from the MOJ], or we could independently appoint refugee screening officers so that the officers aren't those who are used to cracking down on [undocumented immigrants] but those who have high-level expertise and knowledge on [refugees]… even if they work for the MOJ.
>
> (Author Interview 12/02/2018).

The idea of establishing an independent asylum adjudicating body is not new. Lawyers, activists, scholars, and policy analysts who are concerned with Korea's low RRR have been suggesting for some time to replace the Refugee Committee with a quasi-judicial institution that reviews immigration and refugee cases (Pyo et al. 2017), separate the Refugee Committee from the MOJ and establishing it into a permanent organization (Song et al. 2017), and create an independent refugee appeals agency in the form of a refugee tribunal (ibid.). Such policy reform

recommendations reflect the unstated understanding that the MOJ's relatively stringent internal norms and practices with regards to asylum screenings serve as a significant factor in Korea's low RRR.

I have focused primarily on RSD institutions in this dissertation; however, I fully acknowledge that their actions alone do not dictate Korea's RRR. While RSD institutions are tasked with adjudicating asylum applications, their decisions are influenced by other political and social actors within and outside Korea. In fact, the very lack of change in the institutional practices of the MOJ and courts vis-à-vis asylum decision-making may in part be due to insufficient political attention, a disinterested public, negative media, and a relatively weak civil society.

To this end, there is much research to be done on the impacts of different political and social actors on Korea's refugee reception. Future research should address the broader roles and interests of policymakers, the public, the media, civil society groups, and supranational institutions in influencing the RSD institutions in their asylum decision-making, as well as the interplay between these actors. For instance, during the Yemeni refugee "crisis," the MOJ received much criticism from refugee advocates for yielding to populist, anti-refugee rhetoric spurred by the media. The MOJ paid a lot of attention to quelling the angry and confused public and media, as demonstrated by their focus on vetting out potential "fake refugees." This shows that the MOJ, despite being a bureaucratic institution, can be swayed by populist sentiments, raising the question of how susceptible the MOJ is to the influence of the public.

Scholars should also explore the effects of domestic and transnational civil society groups on RSD institutions. As I have shown in this dissertation, civil society groups have played a vital role in establishing the RSD infrastructure in Korea. What are some of their strategies in

interacting with the MOJ and courts? How is their relationship with policymakers regarding the issue of refugee protection? To what extent do they coordinate with the UNHCR, APRRN, and other supranational institutions in lobbying for change to Korea's refugee policy? These questions provide fruitful directions for future studies and can help enrich our understanding of Korea's domestic landscape concerning refugee protection.

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