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**THE REFUGEE CONVENTION AND THE POLITICS OF
DOMESTIC RULE MAKING IN 44 DEMOCRACIES:
WHERE AND HOW DO INSTITUTIONS MATTER?**

by

SEAN CHRISTOPHER ANDERSON

DISSERTATION

Submitted to the Graduate School

of Wayne State University,

Detroit, Michigan

in partial fulfillment of the requirements

for the degree of

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2016

MAJOR: POLITICAL SCIENCE

Approved By:

Advisor

Date

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DEDICATION

To my mom. Thank you for everything.

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Many people have cheered me on, and many others have had their hands on this project. Without their encouragement and input, it would certainly have taken a much different form.

Thanks first to Thomas Bellows and Boyka Stefanova. You were there at the very beginning of the model that would be reimaged and reworked into what would eventually form the core of this dissertation. Second, to all of the reviewers and conference discussants who provided reassurance as various components of this work took shape. Most encouraging were your words, Emily Ritter. At our 2013 MPSA panel, you told me I had something big – something that wasn't just about the phenomenon of political escape, but something that could potentially change how scholars think about institutions. Third, to George Connor, for seeing to it that I had a department home for my year in Missouri.

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CHAPTER 1 – INSTITUTIONS AND THE DOMESTIC POLITICS OF COMPLIANCE WITH INTERNATIONAL REFUGEE LAW

Of the debates central to comparative politics, one of the most foundational addresses the conditions under which and the mechanisms by which the rules that individual state actors have implemented can be used to explain differences in outcomes among them. Rules enacted domestically toward any given policy aim are instituted so as to define and delimit the state's actions with regard to the relevant aim. Yet the question persists – under what conditions is the key to observed differences in outcomes among states to be located within these rules, and by what processes do differences among these rules explain the variations in observed outcomes? Put somewhat differently, when and how do institutions matter?

Within successfully consolidated democracies, a second question follows – how do elites nest the rule construction game within the overall game of electoral survival? Are different institutions constructed with a mind only to the procedure to be defined, or does the possibility exist that states actively shape institutions based on the relative weights that elites may assign to factors such as the salience of the procedure at question, their own ability to shape public sentiment on the procedure at question, and the likelihood that they will be called on to pay any costs associated with overly “generous” institutions?

To address both the importance of and the mechanisms behind the construction of domestic institutions, I examine variations in implementation of international human rights law. Toward an answer to the first question, that of the institution's relevance to observed outcomes, I look at human rights treaty adoption and domestic implementation. In adopting a particular convention, signatory states agree to afford protections in their role as donors toward a particular public good. Some of these protections are defined within the text of the convention itself, while more specialized protections will vary according to particulars of the legislative, bureaucratic, and

judicial procedures implementing the convention at the domestic level. Because an international convention may be held as a constant factor in analysis of the differences among state outcomes, variations in domestic rules regarding any given international human rights convention may be of use to analyze the means through which domestic institutions govern the differences observed with regard to how the relevant norm is pursued among different states. Under what conditions is it the institution that matters to compliance outcomes, and under what conditions do logical or temporal priors create structural hierarchies that effectively preempt the importance of the rule-making process to these outcomes?

Toward an answer to the second question, that of the specific forms that the institution will take as a result of political competition, I observe the domestic interplays informing the different shapes that relevant rules have assumed across states. Whether or not the institutions to be drawn will be of importance to outcomes, what is the end goal of the drafters' process, and how will the competitive political environment affect the specific instruments that elites will employ to achieve this goal?

As a test case, I examine the 1951 *Convention Relating to the Status of Refugees* and its 1967 *Protocol* (UN 1951, 1967). The text of this convention and its protocol prove particularly useful to address the questions of domestic institutions for two reasons. First, whereas signatory states are obligated to provide many protections, such as immunity from prosecution according to the laws of the state from which the migrant has fled, and rights to reside, work, associate, and hold property within the country of refuge, to those deemed eligible, Article 16, Section 1 of the convention stipulates that decisions regarding which claimants will be eligible to receive these protections are to be determined by the domestic law governing the state to which the claimant has fled. Here exists the possibility that elites may adopt instruments intended to broadcast full

compliance with the *Refugee Convention* and its *Protocol* while simultaneously erecting institutions that have the very real effect of manipulating the number of recipients to whom these instruments may be extended. Second, this legislation is particularly amenable to addressing domestic-level questions of political salience, goods provisions, and cost acceptance vs. cost avoidance because the recipients of the good to be accorded (asylum) are, by definition, outsiders who may exercise no direct effect on the electoral survival of the elites charged with forging domestic institutional frameworks. This fact permits the researcher to hold constant an important, yet otherwise potentially confounding variable – the presence or absence of potential goods claimants among domestic electorates.

Because this study aims to contribute to the dialogue through an examination of institutional variation as an effect of elite concerns regarding their own political survival, I hold several further variables constant. First, I consider only multi-party, consolidated democracies. The objective is to examine inter-party contestation as a means to uncover the differences observed among state-level domestic institutions. Second, I consider a temporal domain spanning the two most recent pre-2010 election cycles within each state. This permits examination of the process of the construction of rules that remain in place to date within the majority of countries observed. Third, of the multi-party democracies considered, I examine only states housing electorates of over 1-million. This permits the exclusion of microstates and states such as Malta, where the high number of potential asylum claimants may exercise highly disproportionate influence relative to that observed in other states due to the small number of voters. Finally, I examine only democracies with laws permitting access to the asylum adjudication process within the country's territory, as opposed to the ability to file claims only at ports of entry. This permits a minimum standard of similarity in process among the state cases considered. Additionally, this limits the study to states

where the provisions of the *Convention* apply to the greatest number of potential asylum claimants. Holding all potential state observations to these standards permits evaluation of the mechanisms at play within 44 countries.

In framing my study in this manner, I intend to contribute to the dialogue in three important ways. First, I intend to speak to the domestic political interplays informing legislation defining the institutions behind asylum processing within democracies. How do the rule makers nest the compliance game within the overall game of electoral survival? Second, and more broadly, I intend to speak to the phenomena of cost acceptance vs. cost avoidance with respect to the implementation of human rights law in general. Are issues of public sentiment, direction of influence, and salience more accurately predictive of elite decisions on the final forms that full implementation will take across democracies than the current literature would suggest? Finally, I intend to speak to the still broader question – under what conditions and by what mechanisms can the rules of the game in question be shown to explain the game’s outcomes? To address these questions first requires a reconciliation of three separate dialogues within the literature: that addressing comparative compliance law, that addressing the pull and push factors at work within democratic asylum receiving states, and that addressing the role of electorate response to narratives as framed by those attempting to achieve or maintain power within the democratic context.

First, I briefly examine questions of comparative compliance with international human rights law. Of note is the fact that the primary questions that I consider are not questions of compliance politics, per se. The states I observe are generally agreed to be in full compliance with the instruments of the *Convention* and its *Protocol*, and where compliance observably lapses, informal mechanisms become erected on an ad hoc basis toward international-level shaming of the

non-compliant state.¹ Instead, the question at hand regards the domestic-level determination of individuals as worthy recipients of the good afforded through the international convention and of the types of institutional machinations that, to varying degrees, inform effective levels of disimplementation of the provision of the good in question through domestic legislation that complies in full with the international normative standard.

Debates within the compliance politics literature notably address questions of democratic influence on norms adoption and implementation, the potential effectiveness of cost signaling, and the use of international human rights law as a “lock in” device at the domestic level. I begin from the premise that arguments surrounding compliance cannot be held as conceptually limited only to questions of ratification, accession, and implementation with the convention itself, but these arguments may also be extended to particular state-level determinants of domestic implementing procedures at the legal, bureaucratic, and judicial levels. Extension of these arguments to the *Refugee Convention* becomes particularly illustrative because of the extensive latitude granted per Article 16-1 to states in their determination of those worthy of asylum, as this is a process left solely to the domestic laws of each signatory state, notably without regard to any question of full compliance.

Next, I examine the literature on the determinants of levels of asylum adjudication within democracies. Although this second body of literature assesses questions of forced migration patterns, of the varying tools that states use toward the goal of limiting the presence of the outsider while complying with human rights norms, and of the determinants underlying where asylum seekers will land and where they will likely be granted refugee status, these assessments are made

¹ Examples of these mechanisms are discussed in detail in Chapter 3 as they relate to Greece and within Chapter 4 as they relate to Belgium. At this point, it is sufficient to note that these mechanisms significantly alter either the expectation of compliance (as in Greece) or the specific form that full compliance will assume (as in Belgium).

almost exclusively with an eye to their implications at the international level. In large part, predictions fall in line with subsequent observations concerning mass movements.

Third, I examine the literature on issue salience, policy framing, and direction of influence within the multi-party context. This third strand of literature becomes important insofar as it serves to frame the treatment of domestic political contests between those candidates and incumbents advocating for individual procedures, as this treatment is nearly absent from dialogues addressing the institutional importance and reach. To what extent may those in power score points with domestic electorates while still placating international bodies observing measures of compliance with the terms of what may be an unpopular obligation?

Brief Literature Review*

The idea that the level of effort a state will expend toward the goal of honoring its international commitments will increase as a function of its level of democracy is well established in the literature. Smith (1998) and Fearon (1994) attribute a state's ability to generate audience costs to vary with regard to the escalation of international disputes in a manner concomitant with and relative to indicators of the functioning of its democracy, and the premise that this ability to generate real costs both at the domestic and the international levels can be useful to explain outcomes varying from political survival to the democratic peace (Bueno de Mesquita et al 2005, Dixon 1994). For Dixon in particular, we see the beginnings of a logical argument – democracies will be less likely to escalate disputes because of their commitment to international norms.

Landman (2005) demonstrates observed limitations to the effectiveness of human rights law on state practice can only be observed when state levels of democracy, wealth, and

* Parts of this literature review also appear in the author's MA thesis. Anderson 2011. *Lingering Indeterminacy: The Domestic Political Causes of Global Asylum Seeker Distribution Levels*. MA Thesis. University of Texas at San Antonio.

international interdependence are held constant, leading to the conclusion that rich, interdependent democracies are more likely both to commit to and to honor commitments to international norms. Landman attributes this to the fact that increases in these important variables combine to create domestic conditions that make a state better able to protect individual rights. The argument takes on an even more normative tone in Mitchell and Hansel (2007), who argue that the two primary factors informing levels of compliance are domestic state-level openness and transparency and propensity for enforcing peace, and that both of these factors are more likely to be present within democracies.

Enter empirics. Democratic states do not show greater levels of ratification of or compliance with international law. For example, Powell and Staton (2009) show that among democratic state signatories to the *Convention Against Torture*, 78% had violated terms of the agreement in the very year of its ratification. Given the observation that democracies may not be prone to take on or live up to obligations, several arguments have been proposed toward the reconciliation of observed ratification / compliance levels to the arguments from logical induction, above. Moravcsik (2000) attributes differences between expected and observed outcomes to domestic “lock-in” mechanisms, whereby state ratifiers will agree to oversight on internal activities in order to ensure that the actions preferred by the sitting government are written into domestic law while they are still in power. Farber (2002) and Mansfield and Peevehouse (2006) argue that democracies find the fact of treaty ratification to carry the expectation among other states that the signatory state will comply. This expectation signals an image of legitimacy on the international stage. Because of this, ratification becomes a signal of cost significant to encourage the type of trust among other states to inform greater levels of trade and investment, whereby fostering domestic economic growth.

By contrast, Hathaway (2002) finds that mere ratification is a signal without real cost, and that it may instead be used as a tool to relieve international pressure with regard to changes to be made at the domestic level. As a logical consequence, instances of ratification or accession and measures of compliance must be held as conceptually separate because they are used toward different goals. Because undertaking an international obligation may constitute a signal without cost, states may accept provisions of treaties that they are institutionally incapable of upholding, thus providing means for states that may never intend to comply to forestall castigation through the implementation of cheap talk. The value associated with the decision to adopt the norm in spite of a state's real ability to effect its intended outcome is shown to increase as its domestic enforcement ability decreases (Hathaway 2007, Powell and Staton 2009).

Although the literature above speaks specifically to the processes of ratification or accession and compliance, nothing inherent to the logic as developed speaks to a conceptual distinction between treaty compliance and procedures enacted domestically toward the implementation of the treaty. An understanding of this premise permits the examination of differences between domestic means of distributing goods in accordance with the text of an international convention and the domestic political interplays informing differences in compliance outcomes among state signatories. I take each in turn as it relates to issues concerning audience cost and preference signaling, to the uses of domestic policy toward locking in preferences, and to ensure political survival.

Domestic procedures instituted toward the processing, hearing, and adjudicating asylum claims have not been systematically analyzed. Instead, scholarship has evolved along three distinct lines. In the US, authors have preferred to examine the phenomenon through an international relations standpoint, with an eye to the use of the asylum decision process as signaling device.

Herein, asylum decisions, and refugee and asylum law in general, reflect the specific goals of a receiving state as it attempts to negotiate with other states on the international stage. Much work addressing instrumental aims of this type focuses on casting patterns of positive or negative decisions on individual asylum cases as political calculations – states attempt to signal policy preferences, both to the expatriate’s state of origin (Rosenblum and Salehyan 2004), and to the international community at large (Salehyan and Rosenblum 2008, Teitelbaum 1984). During the Cold War, this trend was easily demonstrable, both in law (Rosenblum and Salehyan 2004) and in practice (Lai 2003, Teitelbaum 1984), as the US and the USSR both provided political refuge to expatriates of states aligned, almost exclusively, with the rival coalition.

Fearon (1994) proposes that in order for preference signaling of this type to be effective, states that engage in the practice must be able to generate audience costs. The author’s logic is that talk is cheap – unless elites within a state can demonstrate that it would prove electorally costly for them to act according to the state’s adopted line, the state’s adopted line is significantly diminished in credibility and consequence. Because of a seated government’s vulnerability to changing views of its electorate, preference signaling through domestic policy gains credence relative to its level of democracy (Smith 1998). By extension of Fearon’s logic, asylum decisions cannot serve as effective signaling devices because they do not generate public attention outside of the isolated communities in which asylees settle. The literature challenges this logic on three grounds.

First, the decision to grant asylum suggests a pronouncement on the part of the receiving state that the sending state has acted in violation of international humanitarian norms (Salehyan and Rosenblum 2008, Pace 2006). The very ideal of asylum interferes with the nationality principle – those who seek asylum seek status beyond the reach of their state of origin, and immunity against

that state's claim to exercise jurisdiction. In weighing asylum claims, a host state must make two judgments: what is the general political situation of the state of origin toward the group of which the applicant claims to be a member, and does the applicant belong to this group (Thomas 2008). In deciding the initial question, the receiving state is called to form a judgment on the internal policy of the state of origin, and the weight of this decision is well known to those charged with adjudication. Pace (2006) notes that such decisions become exceedingly difficult in states such as Austria and Switzerland; in order to be granted asylum in these states, the petitioner must prove country-of-origin complicity in his persecution. That a host state would offer such a pronouncement against the internal policy of another state, thereby calling its jurisdictional authority, and by extension, its sovereignty into question, cannot be dismissed as inconsequential.

Second, although electorates may afford little attention to domestic asylum policy, asylum policies and decisions are noted and acted upon through internal domestic policies of other states. For example, because of the strain of refugee and asylum-seeker inflows into Greece dating back to the late 1990s, its government has been unable to handle the number of asylum claimants present, and has violated the principle of nonrefoulement, pushed asylum seekers over its northern border into the Former Yugoslav Republic of Macedonia and its eastern border into Turkey, and has adopted harsh treatment practices toward those claimants remaining in the state awaiting asylum determination. In response, both Sweden and Finland have violated terms of the *Dublin II Accord* by refusing to return asylum seekers to their state of signatory community entry, in cases involving those who first entered the community through Greece (Amnesty International 2009). Subsequent ruling by the European Court of Human Rights (*M.S.S. v. Belgium and Greece* 2011) has vindicated these state practices, based largely on Greece's inability to deal effectively with its disproportionate levels of inflow. Also, Australia regularly places asylum seekers in detention until

their claims are heard, and this practice has invited international disapproval and debate on the floor of the United Nations General Assembly (Newmann and Taylor 2009). The 1990 debate in the US Congress over the fate of Chinese students' return to China to face potential persecution after their visas had expired was decried by the Chinese government; the US was judged to be meddling in the state's internal affairs (Weiner 1990).

Third, the possibility of implementation of asylum procedures toward the furtherance of a state's domestic aims must be taken into account because it has been so blatantly and publicly advocated. For example, Teitelbaum (1984) notes that in his 1980 acceptance of the Republican Party nomination, Ronald Reagan spoke of the need to accept those fleeing communist regimes. Teitelbaum argues that although Reagan's speech was couched in a rhetoric of American exceptionalism, his thinly veiled goal was the public-arena embarrassment of Haiti, Cuba, and the USSR. The first five years of the Reagan presidency saw a continuation of a stated policy, whereby refugees were defined as those fleeing from communist oppression.

Although not explicitly stated following the Cold War, similar considerations have continued to play a role in US asylum decisions. Rosenblum and Salehyan (2004) note that throughout the 1990s, applications from those fleeing non-U.S. trade partner states were approved at a significantly higher level than from those fleeing U.S. trade partner states. The authors conclude that the U.S. continued to observe the potential for public-arena embarrassment of states, and exercised extreme caution in cases in which a breakdown of trade relations could result.

For Pace (2008), this view of asylum decision practice is seen as a mere holdover of Cold War era policy. In fact, it is only within the literature specific to US asylum policy that this trend is still examined, although similar means for informing decision trends have been noted by human

rights organizations in countries such as South Korea.² For the vast majority of receiving states, domestic concerns far outweigh concerns of the signal to be sent from receiving to sending state.

While the literature on US asylum decisions continues along these lines, a second strand of literature has evolved over the past decade. Political economists have written extensively on the factors informing the destination preferences of asylum seekers within subsets of states (Hatton 2009, Moore and Shellman 2007, Neumayer 2004). Whereas Hatton and Neumayer focus on the EU-15, finding the most significant determinants to be a state's prior history of positive first-instance asylum grants and per capita GNP, respectively, Moore and Shellman focus on a broader subset of advanced post-industrial democracies, finding the most significant determinant to be the state's year-over-year GDP growth. A third strand in the political geography and political sociology literatures observes the prevalence of state-erected impediments to grants of asylum. Mountz (2010) demonstrates several examples of "long tunnels" – geographic spaces primarily in Canada, but also in Australia, that are declared ports of entry upon immigrant arrival or interception. Domestic protections, such as access to a state's asylum adjudication process, are no longer applicable on the basis that the migrant has not reached the state's sovereign territory. Weiner (1996) attributes policy stances similarly hostile to the forced migrant to the emergence of or gains made by right governments within receiving states.

Although useful to the assessment of the decision preferences of and challenges faced by forced migrants, none of these strands of literature attempts to examine domestic determinants of asylum indeterminacy – the factor most significantly affecting the distribution of those counted as asylum seekers within various state borders. To answer this question, I look at domestic policies of individual receiving states as outcomes of state-specific processes, both at the level of interplay

² South Korea is shown to reject a disproportionate number of claims initiated by Chinese asylum seekers in order to avoid diplomatic tensions with China (Lee 2010).

between states, as suggested in the first and second strands of the literature, and at the level of government / electorate interplay, as suggested in the third.

Essential to determine which pursuit elites will perceive to be more beneficial toward their electoral survival is an understanding of which course each state will value more highly – will those charged with the construction of the relevant rules judge it more expedient to score points at the international level or at the domestic level? At its heart, this may be framed as a direction-of-influence issue; where masses are more receptive to elite cues on issues of asylum, we should expect for the respective government perceive it less costly to play to the international crowd.

Zaller (1992) proposes a framework by which responses to elite cue giving may be understood. Here, in such cases that a party in power is able to present to potential voters a unified stance on an issue of salience, individuals will take cues as a positive function of their level of political understanding. Levels of political understanding, or more specifically, of civic education, are also fundamental to the formulation of Kam (2005) and Slothuus and de Vreese (2010). In contrast to Zaller, the authors argue that with increased levels of education, voters are less likely to blindly accept frames set by the elite, but more likely to consider the overall ideological stance of the authors or proponents of these frames. Here, both elite frames and elite party affiliation (used as a proxy for ideological stance) serve as intellectual shortcuts for voters who are unwilling to investigate political claims – the less aware take the cue; the more aware take a decision on the cue based on the party affiliation of the cue giver. By contrast, Gabel and Scheve (2007), find no significant correlation between levels of civic awareness and electorate malleability, assigning less importance to authors following Zaller, on the basis that their models do not accurately capture mass predilections to adopt an understanding of issues as framed. Common to all three is the understanding idea that preference framing is inherently a top-down process.

Party affiliation, or more specifically, party left-right orientation is at the center of Warwick's (2011) contribution. The author argues that cue giving works in the opposite direction as opposing parties and coalitions shift their dialogue in pursuit of the median voter. Voter preferences are not shaped by the political discourse; instead, the political discourse is shaped by the elite according to estimates on the stance of the ever-elusive median voter. Carrubba (2001), does not attribute this bottom-up process to a pursuit of the median voter, but instead interprets elite convergence to weakly held mass preferences as potentially less costly than attempts to shape public opinion in the case of EU convergence. Carrubba finds support for Stimson's (1991) "policy mood" theory, according to which elite perception of mass impartiality serves as sufficient to indicate that they are taking policy actions within parameters acceptable to the masses; crossing these boundaries would inform a decrease in public complacency in spite of low levels of civic education, so the elite must always be receptive. What the literature fails to consider is the idea that under various conditions at different points in time, any given electorate may be more or less prone to view issues as they are framed by those vying to assume or to retain power.

Serious questions arise for which models gauging cross-electorate quantifiable measures of mass predilections to elite cue giving would prove highly instructive at best; at worst, the absence of such measures is sufficient to cast a shadow of doubt on the conclusions of many studies. As an example of the best case, Bueno de Mesquita, Smith, Siverson, and Morrow (2003) argue that primary among the aims of political leaders is the desire to maintain power. To this end, leaders within democracies must provide public goods to citizens who are apt to wish to hold onto these provisions insofar as possible; mass preferences are merely assumed in order to maintain the simplicity of the model, and this assumption poses no threat to the model's internal logic. Yet at the same time, elites are protective of the way they (and by extension, the states that they are

perceived to represent) are viewed within the international community. Powell and Staton (2009), find that states will take whatever action is necessary to effect de jure compliance with the norms set forth in international law in order to avoid pariah status within the community of states. The key here is that states will willingly sign onto human rights treaties with full knowledge that implementation of the terms of the treaties will prove fiscally untenable. Powell and Staton conclude that states will willingly encode the normative standard while intending to rely on internal weakness in order to bring about de facto noncompliance with the standard.

Here, following Zaller's logic, the implication is that within states whose governments are able to present a unified front and are more protective of their status as proponents of international normative standards, the seated government will suffer greater electoral losses from attempts to bend to public sentiment than they would from attempts to shape public sentiment. Therefore, the provision of public goods may prove to be of secondary concern to political elites whose primary goal is the retention of power, and this calculation can only be taken under the condition that state actors are able to weigh the cost of attempts to frame the human rights dialogue in a manner that would permit them to save face internationally versus the cost of attempts to bend to public preference.

A growing body of work within the international relations and comparative politics literatures has established itself following from the assumption that mass opinion is equally malleable across the universe of electorates within multi-party democracies. For most (e.g., Bueno de Mesquita et al 2003), this condition results from the necessity to simplify models of political behavior, and the error in logic is of little consequence to the results obtained. In other cases, this condition is fundamental to the logic of the model itself. For example, in his study on the conditions under which ethnic cleavages result in the outbreak of violence worldwide, Wilkinson (2004)

reports data on the timing of elections, fractionalization of populations, and numbers of riot deaths in order to test hypotheses drawn from his overall theory – that political elites manipulate potential voters to incite instances of violence, and that these manipulations are based on elite calculations of the salience of the preexisting ethnic divide and the relevance of the potential victim group to the electoral survival of the party in power. The error here is in the underspecification of the model – in order for results to obtain, each electorate must respond in the same manner to elite calls to instigate. Failure to control statistically for this factor suggests that each electorate is assumed equally amenable to calls to initiate violence in response to the same cues. Had the means to obtain such a measure existed, authors pursuing research incorporating similar leaps in logic may have plugged this measure into their regression equations, controlling for varying levels of electorate malleability. The literature, instead, is virtually silent on the question.

To speak to this void requires an examination of three theoretically distinct, but interrelated possible input factors as suggested in the existing literature – electorate satisfaction with (or mere complacency with regard to) the party in power, electorate satisfaction with its role in government, and voter turnout. Anderson and Guillory (1997) propose that the first two concepts are inseparable. Voters who identify with parties to have recently lost majorities within elections are generally more disaffected by the mechanisms unique to their democracy; however, this disaffection varies according to the type of electoral model employed within their state. Voters in majoritarian systems, where winners are in more of a position to implement changes, will perceive less of an injury than those in consensual systems, where winners face a comparatively diminished practical mandate. However, when all voter preferences for their state-specific manifestation of democracy are taken into account, those in proportional representation systems register higher levels of satisfaction. Norris (1999) draws to a contrary conclusion – voters in majoritarian systems

tend to be the most satisfied, if not with the outcome of a specific election, than at least with the workings of the government itself. But more important to a measure of disconnect, these voters are much more satisfied with their role in government. The absence of a consensus is of little consequence, as both studies point to both the conceptual distinction and the inherent interconnection between these two variables.

Therefore, it follows that, depending on internal weaknesses inherent to a specific government, the perceived political instrumentality of policy framing (as a function of issue salience) and the direction of elite-mass influence, generosity in provision of the good of asylum may be artificially manipulated by political elites – while these same elites maintain full compliance with the *Refugee Convention* – toward the goal of retaining influence and power at home.

Operationalizing Compliance: Length of Time to Final Status Determination

When playing to competing, and often, ideologically opposed audiences, hypocrisy is likely the most rational, most cost-avoidant strategy elites can take. This idea is captured in the title of Krasner's (1999) work *Sovereignty: Organized Hypocrisy*. For Krasner, a state will perceive the greatest benefit to actions that trumpet the existence and importance of an imagined sovereign ideal, while simultaneously acting to undermine the ideal as domestic and geopolitical calculations place this sabotage within leaders' own domestic interest. This sabotage is possible because sovereignty itself is a fuzzy term, devoid of actual empirical meaning throughout its entire history of use, yet to invoke the term plays well to audiences both at home and abroad. The simultaneous embrace of and interference with the imagined sovereign ideal permits elites to avoid any cost that would be associated with the abandonment of the sovereignty myth as well as any other potentially important cost that would be associated with non-involvement in the internal

affairs of other states.

Full compliance with the instruments of the 1951 *Refugee Convention* and its 1967 *Protocol* permits a mechanism for advancing a parallel hypocrisy. Whereas signatory states have agreed to provide access to the domestic adjudication system set up for granting claims, to provide a minimum standard of benefits to those whose claims remain pending, and to issue decisions on all claims heard, these states have assumed no international obligation to provide the determination of refugee status within a specified window of time. So, states may fulfill their international obligation by providing access, benefits, and eventual decisions, while simultaneously placating domestic electorates who may hold varying degrees of nativist sentiment by taking one of two courses of action – by denying claims, or by erecting or maintaining mechanisms that effectively extend the median applicant’s time in awaiting the final determination of asylum status.

Execution of this first course of action proves prohibitively impractical for two reasons. First, decisions to be rendered by courts or by bureaucratic review fall outside the purview of legislative action or executive decree, and second, each asylum case must be decided on its own merit. Although executives have taken action to reconstruct legal codes so as to make a positive affirmative asylum claim much more difficult to prove (as will be discussed in Chapter 3 in the case of Austria), executives and legislatures are forbidden within the text of the *Convention* from setting quotas on the number of affirmative claims to be granted.³ Therefore, only the judicial branch or other civil service branch charged with deciding asylum claims may exert real control over the number of claims that are granted after they are heard, and per the *Convention*, this is must be done on a strict, case-by-case basis.

³ Lists of safe countries are permitted in international law, although they are forbidden under the domestic law of some countries (notably Canada). For example, within the community of state signatories to the *Dublin Accord*, no potential claims for asylum status may be heard from applicants fleeing any of the fellow signatory states, Australia, Canada, or New Zealand.

By taking the second course of action – extending the wait time to final status determination – a state avoids both of these obstacles. This is true even among states observed to be in full compliance with their obligations under the *Convention*.⁴ Also, because the relevant domestic procedural protocols must precede any individual asylum case, the restriction that state action must be taken on a case-by-case basis does not preclude the implementation of these protocols. Therefore, it is only through the use of this second mechanism, the creation and/or maintenance of institutions that have the effect of increasing wait times to final status determination, that a state may reap the benefit of full compliance while scoring points with domestic audiences who may prefer institutions that ensure a low year-over-year number of asylum grants.⁵

Preliminary Hypotheses

The following hypotheses point to directional preliminaries. Following the establishment of these preliminaries in Chapter 2, these hypotheses will be restated based on the results of the theoretical model and its implications.

I begin from the assumption that, in some states, the legislation adopted at the domestic level will significantly influence the time to final status determination within the state, whereas in other states, logical and temporal priors will create hierarchies that effectively render the institutional output irrelevant to the median applicant's wait time. In Chapter 2, I lay out the case that these priors are discretely structural – not as they point only (or even primarily) to differences in material wealth, but also as they work to create very real gradations both within and among

⁴ Within each of the states registering totals over 3.0 on the “Where should the institution matter?” axis and above the origin on the “How should the institution matter” axis to be developed in Chapter 2 (Austria, Canada, France, Greece, South Africa, Switzerland, and the United States), this course has been established on the basis of legislative action (in Switzerland), executive action (Austria, France, and the United States), or action by the fused executive-legislative branch within the strict parliamentary governments.

⁵ I do not argue that the number of asylum grants needs to be politically important in *its own right* within any country. Instead, I argue that domestic audiences may prefer the maintenance of institutions that lead to low numbers of asylum grants *for other reasons* that may be of politically important. I develop this argument further as through the cases of Greece and Austria in Chapter 2, and of Belgium and South Korea in Chapter 3.

potential destination states in the exercise of power, the provision of benefits, and the access to appeals processes. Where does institutional output affect observed outcomes, and where does institutional output demonstrate no effective role beyond mere “superstructure”? Within the context of this question, structure is not understood strictly, or even primarily, in materialist terms. Instead, “structure” is used in reference to various types of hierarchical orderings within and among individual receiving states as these may render the rules far less relevant to observed outcomes. This definition of “structure” is entirely consistent with the classification of such authors as Gramsci, Poulantzas, as Bourdieu as theorists of structure, as each characterizes the decision-making procedure informing outcomes as nearly irrelevant to outcomes in light of hierarchies of dissemination, power, and capital in its various forms, respectively.

H1: Along the continuum of states where historical, legal, and geopolitical factors indicate an increasing relevance of structural hierarchies, domestic procedural instruments passed and enforced in implementation of the 1951 *Refugee Convention* and its 1967 *Protocol* will prove progressively less predictive of the length of time to final status determination. An increase in the effect of the domestic legislation will be observable and measurable as either a positive or a negative function of the length of time over which the median asylum claim remains pending.

The process by which the outcomes observed within the two classes of states – where the domestic institution is judged to be predictive of length of time to final status determination vs. where the domestic institution is judged not to be predictive of length of time to final status determination – must be measured differently because the goals within the state may be understood as different. It is only where the domestic institution is predicted to matter to outcomes that either the prolongation or reduction of wait times to status determination becomes the factor of interest, as

these outcomes are uniquely attributable to the rules of the game (here, the relevant domestic legal, bureaucratic, or judicial codes) within the observed receiving state. The rules themselves may contribute to two discrete outcomes, and the outcome to which the legislation aims may be understood in terms of the political instrumentality of cost acceptance through the more immediate expansion of provisions vs. that of cost evasion through the more incremental expansion of provisions.

H2_a: Among states where the domestic legislation is predicted to influence strongly the median applicant's wait time to final status determination, and where the configuration of calculations suggests the tactic of cost avoidance to prove more expedient toward the goal of elite political survival, institutional procedures will display the effect of lengthening the period of time over which the median claim will remain pending.

H2_b: Where the configuration suggests the tactic of cost acceptance to prove more expedient toward the same goal, legislation with the effect of diminishing the wait time to final status determination will be observed.

Each potential configuration of calculations is embedded within a process. Therefore, discrete measures of individual input factors will prove uninformative. In first disaggregating the question of distribution levels into two separate questions – where does the rule matter, and what does the environment of electoral competition tell us about the type of rule that will be drawn, maintained, and enforced – I take the first step in correcting this weakness within the literature to date, while also contributing to the larger dialogue on the importance of and the workings of institutions in general. I address this weakness by situating these two processes within two discrete decision-making frameworks. I report the specific decisions taken by each state within both processes by estimating the utility attached to each decision as a function of revealed preferences.

I map the summed estimates along two dimensions of analysis. This step permits the view of clusters of states as configured according to decisions taken within each process and to draw preliminary, testable conclusions regarding the pertinence of and the motivations behind the institution constructed.

Plan for chapters to follow

In Chapter 2, I situate these mechanisms within two simultaneous processes. The first is presented in the form of a six-stage, revealed preference decision sequence, which I model after the median applicant's asylum claim process within each of 44 democratic countries. This permits identification of the presence and relative strength of factors that create relevant hierarchies among state decision makers. I establish each of these factors as inherently structural, insofar as each creates a type of hierarchy that I show to render the specific domestic institution more or less relevant to the outcomes observed. At its essence, it is a test of structure vs. institution at the cross-national level – where are factors that create hierarchies of a durability sufficient to negate the effect or the importance of the rule-making process on observed outcomes, and where can the rules themselves significantly influence observed outcomes? To effect a parallel examination of the domestic interplays within the 44 multi-party democracies, I construct a concomitant six-stage sequence examining issues of state ratification of / accession to the relevant convention (here, treated as an element prior to state-level decision making), public sentiment, political salience, policy framing, and electoral outcomes over the two most recent pre-2010 election cycles.

I map the outcomes of these two processes onto a two-dimensional model. This permits identification of both the domestic political considerations among states adopting similar institutions but with vast differences in outcome due to the relative importance of structural determinants (the x -axis), and the motivations underlying the construction of the institution within

states where the rules are predicted to matter (the y-axis). The horizontal dimension identifies states where similarities in the domestic implementing legislation lead to very different results; The vertical dimension elucidates the division of states where the institution is predicted to matter most strongly to outcomes into two quadrants – the first identifying those states in which elites interpret instrumental cost avoidance through incremental gains as the more politically expedient outcome toward their domestic survival, and the second identifying those states in which elites interpret cost acceptance through more immediate gains as the more politically expedient instrument toward their survival.

Among the states where the domestic institution *should* matter, this division proves instructive toward an understanding of the length of time over which the mean asylum claim remains pending within the democracies observed, whereas among states where the institution *should not* matter, no similar prediction is possible. I examine the domestic legislation and provisions granted therein informing relatively longer wait times vs. relatively shorter wait times to final asylum status determination. The fact that domestic legislation produces real effects toward both numbers of pending claims across many cross-sectional measures and the amount of time over which asylum claims remain pending permits the possibility for a powerful examination of the question – under what circumstances is it the institutions that matter, and under what circumstances are structures that serve as logical priors to domestic-level rule making the determining factors?

Examination of state-level input factors across both dimensions of analysis permits three preliminary conclusions. First, where the maintenance of policies less hospitable toward outsiders can be of use toward elite political survival, a state will implement mechanisms that have the effect of lengthening wait times for the median claimant's final status determination. Second,

where advocacy for more generous procedures can be of use toward aims that are more relevant to the electoral survival of elites charged with the creation and maintenance of the relevant institution, a state may implement mechanisms that effectively reduce observed wait times for the median claimant's final status determination. Third, where the convergence of domestic economic, geopolitical, and procedural considerations are sufficient to inform a strong likelihood that the state will be called upon to assume the costs inherent to its adopted instruments of compliance, the state will be more likely to adopt procedures in line with the predictions of the two postulates above; where these considerations converge to inform a likelihood that the state will not be called upon to assume the cost of generosity, the state will consider only the relative weights of the two considerations above toward their political survival as a function of domestic sentiment toward the outsider and the political salience of issues regarding the outsider. Under this second condition, elites within a state may be understood to have implemented more or less generous instruments into the relevant institutions as a form of cheap talk where they may expect that such cheap talk will not undermine their survival in office. Here, the domestic institutions become largely irrelevant, and structural priors serve as the primary determinants of levels of continued indeterminacy of final status.

I orient each of the three subsequent chapters within its own discrete theoretical context, through which I identify two ideal-typical poles of action. In Chapter 3, I examine avoidance of cost through two opposing mechanisms – instrumental action, and instrumental inaction. In Chapter 4, I first establish that only instrumental action may be of use to understand the phenomenon of cost acceptance, and that this action may be understood to follow more or less strongly from one of two discrete ideal-typical motivations – as a result of pressure from the international community, and as a result of pressure from the domestic electorate. In Chapter 5, I

examine differences in the manners through which similarly benign legal, bureaucratic, and procedural rules are sold by elites and are received by electorates and the international community under the condition that the institution is predicted not to matter strongly to compliance outcomes – either in response to the impetus to exert more liberally driven instruments, or in response to exert more conservatively driven instruments.

In Chapter 3, I identify two states that exemplify action toward the more common and more intuitive motivation in domestic institution building – instrumental cost evasion. Wait times to status determination are effectively increased by separate mechanisms, each driven by a discrete logic of expected consequences. While Greece funnels claimants through complicated bureaucratic institutions, in which asylum seekers effectively become lost in the process, Austria permits unlimited appeals of negative first-instance decisions over a ten-year period, during which time the claimant is granted the opportunity to live and earn a livelihood within the state's borders, but are at the same time prohibited by a multi-lateral treaty agreement from leaving the state's territory – both informing separate means of lengthening the time to determination for asylum claims. Here, the issue at question regards the domestic institution in its role to shift the cost of full compliance away from the state through the effective increase in wait times to final status determination.

Chapter 4 pairs two states that have in recent years implemented extremely generous provisions (all exceeding the minimums stipulated in the *Convention*), including guarantees of state-paid housing, translation and legal services, and medical benefits. I observe the phenomenon much rarer among democratic potential receiving states – the calculation of cost acceptance as the instrument judged more expedient toward elite political survival. While Belgium has adopted this tactic largely in response to international pressure in the effort to restore its status as protector

of human rights norms, South Korea has adopted guarantee in order to incentivize the filing of claims, whereby asserting control over its land and sea borders and its undocumented immigrant population within these borders.

In Chapter 5, I contrast two states for which I predict the institution to hold far less importance to observed outcomes. In Chile and the United Kingdom, comparatively benign configurations in institutional procedures and protections yield outcomes contrary to the predictions on the “how should the institution matter” question, if taken in isolation. Here, the contrast of interest concerns the ways that these effectively toothless measures are sold and understood – both by the domestic public and by international human rights observers. Here, institutions assume the form of cheap talk, which is sold and received at opposing poles; Chile is seen to set the example for liberalization in institutional output throughout Latin America, while in separate dialogues, the United Kingdom is judged to trail much of the developed world through the deployment of remarkably similar instruments. These configurations of institutions without cost are shown not to affect outcomes because both the instrumental output and the selling procedure itself are employed as if under the common understanding that structural hierarchies – not institutional output – will be the predominant determinants of differences in outcomes.

Chapter 6 relates lessons drawn from each of the three country-case comparisons back to the broader discussion of institutions. Although institutional analysis has numerous advocates across the social sciences, is the institution always the thing that best points to causal explanations? And if not, how can the concept of the relative level of importance of the institutional analysis be reconciled to the decision-making process itself? To what extent have the three separate decision calculi observed within Chapters 3, 4, and 5 created path dependencies that are of use to understand current debates surrounding asylum status, specifically as they are

playing out in 2016? Can the decision-making process be rendered uninformative toward and understanding of short-term outcomes for some potential decision takers, yet highly informative toward an understanding of similar outcomes to others in a similar environment? And if this is possible, can either outcome become informative toward an understanding of the path dependencies that these create within states over time? Asked differently, does analysis of the institution remain relevant, if not in terms of wait time to final status determination (as in the first case), then across cases in terms of the legacies of encoded procedures on the political importance of questions of asylum today?

CHAPTER 2 – INSTITUTIONS: WHERE AND HOW?

The foremost aims of this work are to highlight and to lend some conceptual clarity to the questions of when and how institutions matter. In answering this question, I intend also to unite various research traditions within the comparative politics literature through examination of the titular question of Lichbach's 2003 work – *Is Rational Choice Theory All of Social Science?* To do so requires a brief explication of the manner I use to organize these traditions through an understanding of the components of the rationality assumption.

Demarcation of Research Traditions

Lichbach and Zuckerman (1997) examine three primary research traditions – rationality, culture, and structure. Lichbach, both in the essay concluding the 1997 compilation, and in his 2003 work, holds that the distinctions among these three schools is located in the various philosophies governing authors' conception of science, assigning each to a position as it conforms more or less strongly to one of the three ideal-typical exemplars. For Parsons (2007), this means of demarcation among the research traditions proves less than ideal for instruction for two primary reasons. First, it lacks clarity to such a degree that its primary result reads as unnecessary, if clearly unintended obfuscation. Instead, Parsons proposes that the only question important to an understanding of the delineation among research schools is the mechanism by which the independent variable(s) influences movement on the dependent variable(s) under consideration. Second, the Lichbach and Zuckerman framework completely ignores other theoretically possible explanations of causality. Only works focusing on solitary decision makers fall under the rationalist umbrella, works focused on culture are assigned to their own tradition at the expense of other ideational explanations of causality, works in the structuralist tradition encompass non-materialist explanations which would be more accurately relegated to the rationality paradigm, and the possibility of explanation based on "psychological" motivations is completely ignored. From

this understanding, Parsons develops a four-pronged method of delineation among the research traditions, including the institutional (roughly equivalent to Lichbach and Zuckerman's school of rationality, but permitting the possibility that a decision maker may not be identifiable), the ideational (corresponding to, but expanding on Lichbach and Zuckerman's cultural designation), psychological (proposing that under any configuration of conditions, any possible decision maker would react in the same manner, thus making only analysis of pre-existing conditions necessary to understand causation), and structural (including only materialist explanations of structure). With this work, I begin to propose a distinct method of demarcation among the major research schools in comparative politics. The aim is to propose a key toward the resolution of the commensurability problem common among researchers working across different traditions. Following Parsons, I hold that the distinction among research schools can be best understood through the identification of the theoretical mechanism through which x is proposed to cause y .

Necessary to begin this examination is an understanding of the term "institution" as it is used throughout this work. I speak of institutional research as research that seeks not only to interpret causal mechanisms through an understanding of "the rules of the game," but also through an understanding of the creation or choice among available rules. When understood in this manner, a reconciliation of Lichbach's "rationality" paradigm and Parson's "institutional" paradigm becomes clear through an understanding of what rational choice theorists call the "rationality assumption." In its most basic form, the rationality assumption consists of three elements: the decision maker's prior endowments (to include beliefs, values, capabilities, and limitations), the decision maker's menu of possible choices among available instruments, and the decision maker's expected or desired outcomes.

Proceeding from the philosophy that the goal of a scientist is the uncovering of causal

mechanisms behind observed empirical regularities, I substitute the term “institution” for the term “instrument” where the choice among available instruments takes the form of the choice or construction of rules that are intended to define or delimit future action.

With this understanding, identification of the form of analysis followed begins with the question – is the choice among possible rules of play useful toward an understanding of the outcome observed? And if not, why not? Where the decision-making process itself is of use to understand the causal mechanism behind the regularity we wish to explain, we have the role of institutionalism. Where analysis of the decision-making environment is not of use to understand the causal mechanism behind the regularity we attempt to explain, why is this? Where analysis of the decision-making process is uninformative due to certain cultural or otherwise ideational factors that will cause possible decision makers to act in a certain manner based on their uniquely held predispositions, or where such analysis is uninformative due to the fact that the configuration of endowments is sufficient to explain outcomes, we see two schools of research roughly corresponding to Parsons’s ideational and psychological, respectively. Where the decision-making process is uninformative because causation may instead be located within factors that create pre-existing hierarchies among possible actors within the decision-making environment, we see a school of research corresponding to Lichbach’s (although, not Parsons’s) structuralist school.

Table 1. Research programs understood with reference to the rationality assumption

| | <u>NO</u> | <u>NO</u> | <u>NO</u> | <u>YES</u> | <u>YES</u> | <u>YES</u> |
|---|---|---|---|---|--|---|
| Are the three elements of the rationality assumption used toward an understanding of the causal mechanism studied? | The decision making process will be uninstructive because any actor taking a decision would select the same instrument if all preliminary endowments were equal | Ideational elements attributed to the actors by the author render the decision making environment uninstructive | Structural hierarchies present within the community of decision makers render the decision-making environment uninstructive | Information on any two of the three elements permit the prediction of the third element | The historical selection of instruments remains useful to understand observed outcomes, even where the endowments informing this selection may no longer be in place | Analysis of the identity of the individual decision maker within the community of decision makers facilitates understanding of the institution chosen |
| Type of analysis being conducted | Psychological | Ideational | Structural | Rational-Choice Institutional | Historical Institutional | Sociological Institutional |

Proceeding from here, an important goal of this work is the creation of a framework useful to an understanding of the conditions under which and the means through which the creation of the rule is of use to the interpretation of the outcome observed. Further following Lichbach, I hold that the tools of rational choice – here, the redefinition of the rationality assumption to substitute the term “institution” for “instrument” – may be successfully implemented toward an understanding of the conditions under which the rules matter to the outcomes observed.

Unlike Lichbach, I develop a conceptual framework that relies heavily on the “as-if” assumption. This permits the imputation of the three elements of the rationality assumption even

to those questions for which no single decision maker is taking calculations. In turn, this imputation permits the estimation of utilities for each actor based on empirical observations “as if” there were a single decision maker acting according to these calculations.

I estimate possible utilities attached to answers to a common framework of theoretical questions for each of the country cases I observe, and I base subsequent decisions taken within this framework on the utilities estimated for each country case. This permits the placement of the mechanism of causation as either structural (reliant on a hierarchy among actors that will render the institution to be constructed irrelevant to the outcomes to be observed) or institutional (where the choice of and construction of the rules to be set in place to define and delimit future action and decision are of import to the outcomes to be observed). Thus, working from Lichbach’s (2003) suggestion, I begin by using the tools of institutionalism to determine the cases for which the elements of the institution to be developed will most likely be shown to matter.

At its heart, this first dimension of analysis highlights the competition between the two research schools that rely differently on the fact that potential decision makers exist within closed communities of decision makers. The core question is one of the community’s role. Is the decision maker’s placement in a hierarchy of the community sufficient to explain the observed outcome, regardless of the institution to be drawn? If so, the decision maker’s placement is to be understood as structure, and analysis of the institution becomes less instructive to the uncovering of the causal mechanism behind the regularities observed. Alternatively, does the actor’s position within the community lend to a situation within the decision-making environment in which the actual construction or choice of the institution can be of greater use to understand the outcomes observed? If so, analysis of this rule-building procedure becomes the purview of institutional analysis.

Whereas the first dimension of analysis I introduce is basically a test of structure vs. institution toward an answer to the question of *where* the institution should matter, the second dimension of analysis proves potentially useful toward an answer to the question of *how* the institution should matter. I submit each of the country decision makers to a simultaneous decision-making environment, which I map along a second dimension of the model. The question here becomes one of the type of institution we should expect to see. In cases for which structure should matter more than institution, we should expect no prediction of the type of institution in place to be predictable based merely on markers of ideation. By contrast, in cases for which institution should matter more than structure, ideational analysis, here captured through preferences revealed through decision-making process itself, should lend insight into the type of institution that has been created through an understanding of the type of game that the institution-builder is playing. Thus, where the institution should matter, analysis of the decision maker's ideation will permit the identification of the type of rule that the institution-builder will construct toward its goal.

Experimental Framework

The passage of non-self-implementing legislation⁶ at the international level permits an interesting, yet to date untested framework for analysis of the conditions under which and the mechanisms by which institutions matter. This framework is most clearly testable where signatory status is nearly universal, yet wide variation exists among the examples of domestic legislation drawn across signatory states. On its face, this permits examination of the question of the reasons behind differences among domestic laws in implementation of the same treaty. With the passage of time, this framework also permits examination of variation in the effects of the rules enacted at the

⁶ By definition within several states, all treaties entered into at the UN level are self-implementing. However, many treaties require action at the domestic level toward their implementation. For the purpose of this work, I speak of "non-self-implementation" as the condition under which the terms of a treaty itself are not sufficient to bring about meaningful action toward the goal of the treaty without legislation to be written and passed at the domestic level. This distinction is important to the current work only as it relates to the country-case study of South Korea in Chapter 4.

domestic level – where do the rules matter, and where does the observed outcome seem to be independent of the rule constructed? Where is the issue covered within the convention politically important of its own right, and where can the legislation drafted be used toward ends not addressed within the convention?

Furthermore, restriction of the study to democratic states permits analysis of data within a construct in which elites charged with forging institutions are doing so with a mind to a common goal – the retention of political power. Following Bueno de Mesquita et al, I use this common goal as a control for the possible influence of psychological motivation. As each decision is taken by player within the state is held to be informed by a motive to maintain personal, party, or coalitional survival against the backdrop of a competitive, consolidated democracy, separate psychological motivations, such as those held by elites functioning within authoritarian, totalitarian, or unsuccessfully tested or consolidated democratic systems are excluded from the decision-making environment.

To conduct this test, I examine conditions within successfully consolidated, multi-party democracies in implementation of the 1951 UN *Convention Relating to the Status of Refugees* and its 1967 *Protocol*.⁷ Legislation following from this convention proves particularly useful to examine questions of the role of institutions within democracies for two primary reasons. First, although the text of the *Convention* itself outlines many responsibilities to be undertaken and observed within signatory states to those both seeking and having been granted asylum, the entire

⁷ All state signatories to the 1967 *Protocol* are bound to the terms of the 1951 treaty, regardless of signatory status to the *Convention* itself. The United States and Venezuela, although not signatories to the 1951 *Convention*, assumed all responsibilities under the *Convention* as ratifiers of the 1967 *Protocol*, and many states to have accepted responsibility under UN oversight for compliance with the terms covered within the *Convention* have since 1967 acceded only to the *Protocol*. Examination of Madagascar and Turkey, the only two state signatories to the *Convention* not to have adopted the *Protocol* remains outside the scope of the current work, as neither state meets the criterion of fully consolidated democracy for inclusion in this study.

process for determining which claimants may be recognized as asylum seekers and which recognized claimants will be granted permanent or temporary status (and whether temporary status may even exist within the state) is left completely to the state signatory to determine through its own legislation. Second, the potential claimant or recipient of asylum within each state is, by definition, a non-citizen who may exert no direct influence over the electoral process within the democracy. This permits examination of the unique condition under which elites forge institutions that may be more directly linked to questions other than asylum status.⁸

To identify states meeting the best possible criteria for inclusion, I first create an index of potential receiving states using the list of multi-party democracies identified by Freedom House (2009). I then cross list this index with the list of states achieving scores of 7.5 and higher on Economist Intelligence Unit 2008 Index of Democracy (2009) in order to limit examination to only those states with proven legacies of interparty play and successfully consolidated democracies. Following the logic set forth in the U.S. case study in Salehyan and Rosenblum (2008), to restrict the examination to multi-party democracies permits a cross-the-board examination of states for which domestic inter-party play may influence the variables identified as causal to asylum-seeker inflows in Hatton (2009), Moore and Shellman (2007), and Neumayer (2004). Of these states, I examine only those hosting populations over 1 million. In restricting the examination to this subset, I am able to exclude state cases for which small population size may more significantly influence asylum policy preferences. Although many small states (e.g., Malta) do host disproportionately large numbers of forced migrants, a look at these states would necessitate analysis according to variables informed by the size of the population and the

⁸ This condition will be examined fully within Chapter 4 of this work; at this point, it is sufficient to point out that the question of *how* institutions matter may best be examined under the condition that those charged with forging the domestic legislation may judge themselves to be involved in the construction of rules to a different game.

government. Such an examination falls outside the scope of the current work. I further restrict the selection of cases to those permitting access to the asylum adjudication process within their borders, as opposed to permitting access only at ports of entry. This criterion is important to the distinction of those covered under the *Convention* and its *Protocol* vs. those explicitly not covered. Access within a country's borders allows for the expectation that a potential claimant may have availed himself to domestic legal representation after arrival in the potential host state; where this is not the case, to seek legal advice prior to entry blurs the line between negotiated and un-negotiated crossing of the host state's border, and under the condition of negotiated entry, many of the terms of the *Convention* and its *Protocol* do not apply. The list of 44 states follows.

I report data on each of these countries along two dimensions of analysis. Toward the question of where the domestic institution should matter, I report data on variables useful to an understanding of the embeddedness of a configuration of structural determinants that may or may not preclude the relevance of the institution to be drafted. Toward the question of how the domestic institution should matter, I report data on electoral and procedural outcomes that serve to determine the type of politically important outcome the drafters of the institution may be understood to have pursued.

I estimate the utility that each state maker would assign to each of a series of decisions along two common sequences "as if" each state were taking decisions on each question as a single actor adhering to each sequence. I then map the sums of estimates for each state along both sequences onto complementary axes. Placement along the horizontal axis represents the degree to which the domestic legislation should affect length of time to final status determination; placement

States meeting all criteria for inclusion.

| | | |
|--------------------|-------------|---------------------|
| Australia | Greece | |
| Austria | India | Poland |
| Belgium | Indonesia | Portugal |
| Brazil | Ireland | Romania |
| Bulgaria | Israel | Slovakia |
| Canada | Italy | Slovenia |
| Chile | Jamaica | South Africa |
| Costa Rica | Latvia | South Korea |
| Czech Republic | Lithuania | Spain |
| Denmark | Mauritius | Sweden |
| Dominican Republic | Mexico | Switzerland |
| El Salvador | Netherlands | Trinidad and Tobago |
| Estonia | New Zealand | United Kingdom |
| Finland | Norway | United States |
| France | Peru | Uruguay |

along the vertical axis represents the degree to which the question of the length of time to final status determination accurately represents the outcome pursued by the potential host state.

Where Should the Institution Matter?

I create a decision sequence useful to understand the process by which pre-existing structural hierarchies may preempt the importance of the domestic implementing legislation within the 44 states observed. The question underlying each decision is an examination of a factor that creates a hierarchical ordering that is relevant to the issue of asylum determination status within the community of potential receiving states. Whereas orderings according to measures of material wealth are understood to form the foundational exemplars of structuralist argument, justification for the placement of each subsequent measure under the structuralist banner accompany the

respective question in the paragraphs to follow. I model the decision sequence after the process undertaken by the potential asylum seeker within each potential host state. The sequence is represented in Figure 1.⁹

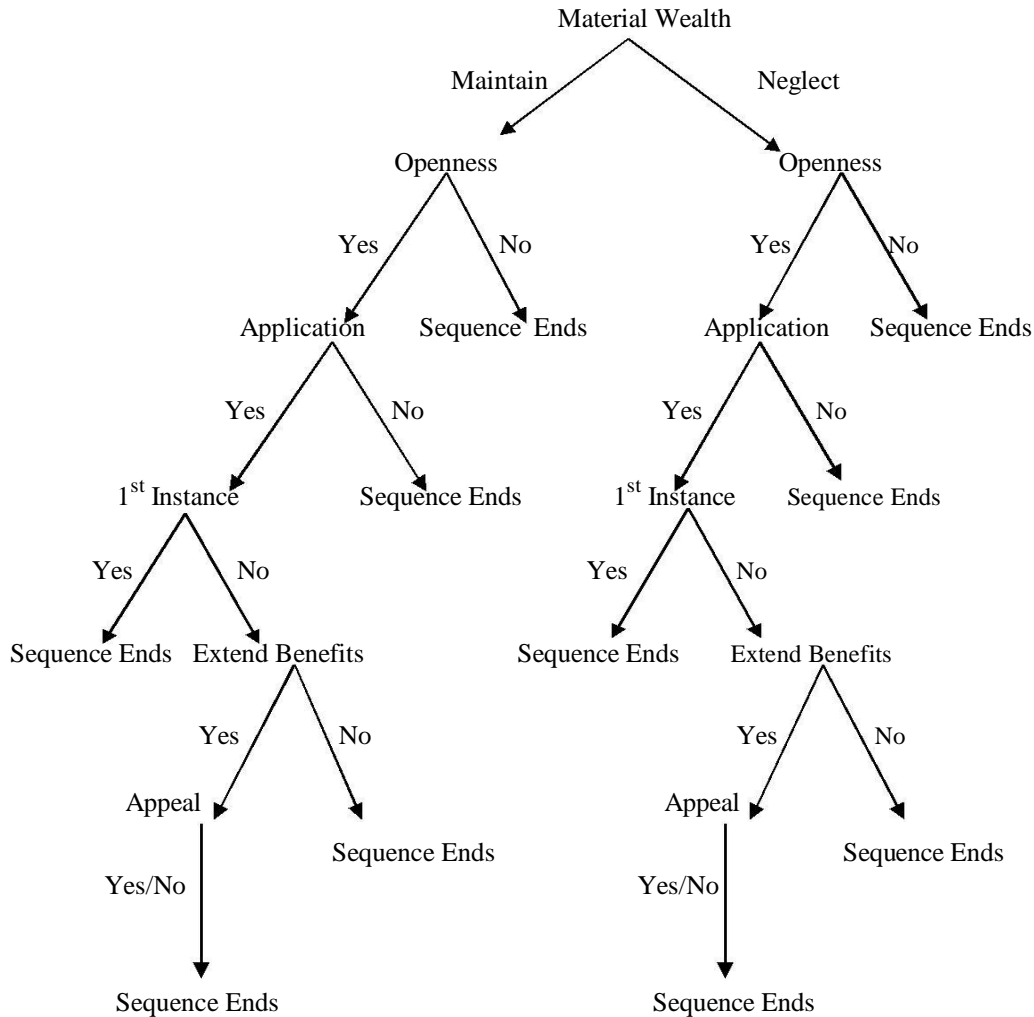


Figure 1. Decision sequence. Where should the institution matter?

⁹ For the purpose of explicating the model, I include only brief descriptions of and justifications for the use of each variable. More detailed treatments of each input factor, to include the precise mechanisms by which these input factors work toward the understanding of indeterminacy of status, are presented in the Chapters 3, 4, and 5.

To estimate utilities at the first node, material wealth, I consider the factor shown Neumayer to assert the strongest influence on asylum seeker inflows – adjusted per capita GNP, as reported in March 2011 \$US by World Bank (2011). I recreate the structure inherent to a ranking each of the 44 potential receiving states according to these figures, and report for each its percentage of the highest observed figure (Norway, at \$US 55,420). The value each state places on the maintenance of its position within the material structure is reported as the value it assigns to its decision—to maintain or to neglect its current position. This is estimated as $\text{Log}(\text{percent of } \$\text{US } 55,420)$.¹⁰ For states reporting percentages at 50% or greater, the move to maintain yields a payoff equal to the value of its resources; for states reporting percentages at 49.9% or less, the move to neglect yields a payoff equal to the value of its resources. Estimates for each state follow as Table 2. The move to maintain is labeled M; the move to neglect is labeled X.

With the second decision, state players consider the openness of their borders. These decisions necessarily imply a hierarchical relationship within the community of potential receiving states; borders that are more open will permit higher levels of entry, regardless of the instruments written into the domestic legislation in implementation of the relevant treaty. Although a more perfect examination would consider levels of military and police spending on the protection of borders and the numbers of seats on international flights entering each state annually, such data are not available for many of the potential receiving states that I consider. In order to estimate a score migrants present in January 2011 whose resettlement had not been negotiated by the UNHCR or other human rights organizations. This number permits the consideration of the number of forced migrants who entered the state legally, as opposed to the number who entered illegally, and

¹⁰ For decisions taken at most nodes, where the logic of a decline in marginal payoffs permits, I estimate utilities along a logarithmic curve.

Table 2. Material Wealth**Move I: M**

| | |
|----------------|-------|
| Australia | 1.842 |
| Austria | 1.841 |
| Belgium | 1.820 |
| Canada | 1.828 |
| Denmark | 1.845 |
| Finland | 1.804 |
| France | 1.787 |
| Greece | 1.716 |
| Ireland | 1.775 |
| Italy | 1.760 |
| Netherlands | 1.856 |
| New Zealand | 1.700 |
| Norway | 2.000 |
| Spain | 1.755 |
| Sweden | 1.837 |
| Switzerland | 1.929 |
| United Kingdom | 1.811 |
| United States | 1.916 |

Move I: X

| | |
|---------------------|-------|
| Brazil | 1.263 |
| Bulgaria | 1.379 |
| Chile | 1.384 |
| Costa Rica | 1.295 |
| Czech Republic | 1.635 |
| Dominican Republic | 1.165 |
| El Salvador | 1.064 |
| Estonia | 1.538 |
| India | 0.383 |
| Indonesia | 0.668 |
| Israel | 1.688 |
| Jamaica | 1.115 |
| Latvia | 1.502 |
| Lithuania | 1.495 |
| Mauritius | 1.379 |
| Mexico | 1.403 |
| Peru | 1.166 |
| Poland | 1.519 |
| Portugal | 1.638 |
| Romania | 1.419 |
| Slovakia | 1.601 |
| Slovenia | 1.679 |
| South Africa | 1.258 |
| South Korea | 1.692 |
| Trinidad and Tobago | 1.654 |
| Uruguay | 1.367 |

as such, serves as a proxy for the openness of each state's border. I report the ratio of illegal entrants to the total of all registered entrants as a percentage of the highest observed ratio (Greece, at 99/100). For those reporting percentages in the lowest third, thus suggesting stricter border controls, I assign the optimal payoff to the decision to deny entry; for the remaining states, I assign the optimal payoff to the decision to permit entry. I estimate each state's payoff as $\text{Log}(\text{percent of})$

99).¹¹ Utilities are reported in Table 3. A move of Yes is labeled Y; a move of No is labeled N. The sequence is terminated for those states taking a decision of No at this node.

Table 3. Openness of Borders

| Move I: M Move II: Y | | Move I: M Move II: N | | Move I: X Move II: Y | | Move I: X Move II: N | |
|---------------------------------|-------|---------------------------------|-------|---------------------------------|-------|---------------------------------|-------|
| Austria | 1.586 | Australia | 1.179 | Brazil | 1.233 | Chile | 1.171 |
| Belgium | 1.715 | Denmark | 1.210 | Bulgaria | 1.319 | Costa Rica | 0.287 |
| Canada | 1.383 | Italy | 0.840 | Czech Republic | 1.493 | India | 0.309 |
| Finland | 1.298 | Netherlands | 1.182 | Dominican Republic | 1.884 | Jamaica | 0.000 |
| France | 1.301 | New Zealand | 0.944 | El Salvador | 1.518 | Lithuania | 0.921 |
| Greece | 2.000 | United Kingdom | 0.781 | Estonia | 1.321 | Mauritius | 0.000 |
| Ireland | 1.568 | | | Indonesia | 1.868 | Mexico | 1.052 |
| Norway | 1.385 | | | Israel | 1.265 | Poland | 1.091 |
| Spain | 1.630 | | | Latvia | 1.653 | Portugal | 1.209 |
| Sweden | 1.276 | | | Peru | 1.283 | | |
| Switzerland | 1.332 | | | Romania | 1.451 | | |
| United States | 1.360 | | | Slovakia | 1.575 | | |
| | | | | Slovenia | 1.455 | | |
| | | | | South Africa | 1.885 | | |
| | | | | South Korea | 1.834 | | |
| | | | | Trinidad and Tobago | 1.902 | | |
| | | | | Uruguay | 1.253 | | |

For the third decision, the applicant (in a move by nature) decides whether to initiate the asylum adjudication process. A move of Yes yields the optimal payoff for the potential seeker; this is reflected in the report of the utility attached to a decision of Y as $\text{Log}(100)$. This is shown in Table 4.

¹¹ I do not suggest that there is an observable empirical difference between states registering totals at 33.3% and 33.4% of the baseline total. Detailed treatment of the justification behind the 1/3 threshold follows in Chapter 5.

Table 4. Initiate Adjudication Process**Move I: M****Move II: Y****Move III: Y**

| | |
|---------------|-------|
| Austria | 2.000 |
| Belgium | 2.000 |
| Canada | 2.000 |
| Finland | 2.000 |
| France | 2.000 |
| Greece | 2.000 |
| Ireland | 2.000 |
| Norway | 2.000 |
| Spain | 2.000 |
| Sweden | 2.000 |
| Switzerland | 2.000 |
| United States | 2.000 |

Move I: X**Move II: Y****Move III: Y**

| | |
|---------------------|-------|
| Brazil | 2.000 |
| Bulgaria | 2.000 |
| Czech Republic | 2.000 |
| Dominican Republic | 2.000 |
| El Salvador | 2.000 |
| Estonia | 2.000 |
| Indonesia | 2.000 |
| Israel | 2.000 |
| Latvia | 2.000 |
| Peru | 2.000 |
| Romania | 2.000 |
| Slovakia | 2.000 |
| Slovenia | 2.000 |
| South Africa | 2.000 |
| South Korea | 2.000 |
| Trinidad and Tobago | 2.000 |
| Uruguay | 2.000 |

For the fourth decision, the judicial or bureaucratic body responsible for adjudicating asylum claims issues formal ruling on the applicant's case. As Hatton (2008) demonstrates, a state's history of asylum grants on first-instance is predictive of both the number of applications it will receive in subsequent years and its tendency to approve affirmative claims in subsequent years. Following this logic, a record of past formal judicial or bureaucratic rulings will be useful to estimate a state's utility in granting affirmative asylum.¹² I rank states according to average observed first-instance recognition rates, beginning in 2001 (the first year for which data are available) through the year of the first pre-2010 election observed for each state, as recorded in

¹² I consider only affirmative asylum claims, which are defined as those initiated by the applicant following entry and not initiated as a result of deportation action on the part of the state.

UNHCR annual statistical yearbooks. I report each state-level payoff as $\text{Log}(\text{percent of } 96) - \text{the first-instance approval rating for Israel, the highest-ranked state. Utilities are reported in Table 5.}$

The sequence terminates for the five states taking a decision of Y at this node.

Table 5. First-Instance Decision

Move I: M

Move II: Y

Move III: Y

Move IV: N

| | |
|---------------|-------|
| Austria | 1.235 |
| Belgium | 1.248 |
| Canada | 1.694 |
| Finland | 0.810 |
| France | 1.051 |
| Greece | 0.248 |
| Ireland | 0.273 |
| Norway | 1.378 |
| Spain | 1.055 |
| South Africa | 0.774 |
| Sweden | 0.947 |
| Switzerland | 1.552 |
| United States | 1.680 |

Move I: X

Move II: Y

Move III: Y

Move IV: N

| | |
|---------------------|-------|
| Brazil | 1.600 |
| Bulgaria | 0.598 |
| Czech Republic | 1.338 |
| El Salvador | 1.665 |
| Estonia | 1.416 |
| Latvia | 1.148 |
| Romania | 1.097 |
| Slovakia | 0.831 |
| South Korea | 1.278 |
| Trinidad and Tobago | 1.148 |
| Uruguay | 1.173 |

Move I: X

Move II: Y

Move III: Y

Move IV: Y

| | |
|--------------------|-------|
| Dominican Republic | 1.995 |
| Indonesia | 2.000 |
| Israel | 2.000 |
| Peru | 1.771 |
| Slovenia | 1.821 |

The state then takes the decision whether to grant benefits to the denied applicant. I begin with the process taken in UNHCR's annual Statistical Yearbooks for reports of each state's per capita GDP. Following from the logic that a state with higher levels of per capita assets will be able to support higher numbers of asylum seekers, UNHCR reports for each state the number of asylum seekers present per US\$1 per capita GDP. Because per capita GNP has been shown a more significant indicator of the distribution of asylum seekers, I first take the number present per US\$1 of this figure. I rank each potential receiving state in descending order. South Africa emerges as an obvious outlier; whereas all other states derive a score between 0 and 2, South Africa derives a

score of 22.85. For this reason, I exclude South Africa from the calculation. I report each state's score as a percentage of the score for the second highest state (Greece, which I report as 100; I use the score of 100 for South Africa as well). Following UNHCR logic, higher figures will correlate to higher monetary costs associated with granting benefits, but at the same time, these higher figures will correlate to greater costs imposed by the international community for not granting benefits. For this reason, I divide the list in two, differentiating the states reporting per capita GNP at or above the mean from states reporting per capita GNP below the mean. I assume that states in the first list, because of higher income, will display a greater concern toward the maintenance of humanitarian norms, whereas states in the second list will find this concern more costly. I again make an exception in the case of South Africa. Because of its history of pariah status in the community of states, and because of the reforms it has taken to guarantee the de jure rights of asylum seekers (Consortium for Refugees and Migrants in South Africa 2009), I count South Africa among the high per capita GNP states. For the states in the first list, I report the logarithmic function of the derived percentage; for states in the second list, I report the logarithmic function of 100-minus the derived percentage. For Jamaica and Mauritius, which held no asylum seekers in January 2011, and therefore, for which no log could be calculated, I report a score equal to that of Estonia—the state for which I observe the lowest function of the low per capita GNP states. I estimate each state's reported function as the value it places on a positive decision to grant benefits. This is represented in Table 6.

For the final decision, I mirror the applicant's procedure for proceeding with a denied claim with a report of each state's utility in granting an appeal to the denied claimant. Because the right to appeal is embedded within the text of the *Convention*, I report a total equal to $\text{Log}(100)$ for each state signatory. This is shown in Table 7.

Table 6. Extend Benefits**Move I: M****Move II: Y****Move III: Y****Move IV: N****Move V: Y**

| | |
|---------------|-------|
| Austria | 1.538 |
| Belgium | 1.412 |
| Canada | 1.850 |
| Finland | 0.478 |
| France | 1.869 |
| Greece | 2.000 |
| Ireland | 0.904 |
| Norway | 1.066 |
| Spain | 0.649 |
| South Africa | 2.000 |
| Sweden | 1.403 |
| Switzerland | 1.151 |
| United States | 0.852 |

Move I: X**Move II: Y****Move III: Y****Move IV: N****Move V: Y**

| | |
|---------------------|--------|
| Brazil | 0.647 |
| Bulgaria | 0.741 |
| Czech Republic | 0.362 |
| El Salvador | 1.097 |
| Estonia | -1.568 |
| Latvia | -0.808 |
| Romania | 0.140 |
| Slovakia | -0.205 |
| South Korea | 0.131 |
| Trinidad and Tobago | -0.675 |
| Uruguay | -0.795 |

A state's summed total of estimates will be of use to an understanding of the conditions under which the institution in place within the state should permit an understanding of the asylum outcomes within the state, specifically as these relate to the median applicant's wait time to final status determination. The summed utilities are centered on the mean and reported in Figure 2, below.

Table 7. Appeal**Move I: M****Move II: Y****Move III: Y****Move IV: N****Move: Y**

| | |
|---------------|-------|
| Austria | 2.000 |
| Belgium | 2.000 |
| Canada | 2.000 |
| Finland | 2.000 |
| France | 2.000 |
| Greece | 2.000 |
| Ireland | 2.000 |
| Norway | 2.000 |
| Spain | 2.000 |
| South Africa | 2.000 |
| Sweden | 2.000 |
| Switzerland | 2.000 |
| United States | 2.000 |

Move I: X**Move II: Y****Move III: Y****Move IV: N****Move V: Y**

| | |
|---------------------|-------|
| Brazil | 2.000 |
| Bulgaria | 2.000 |
| Czech Republic | 2.000 |
| El Salvador | 2.000 |
| Estonia | 2.000 |
| Latvia | 2.000 |
| Romania | 2.000 |
| Slovakia | 2.000 |
| South Korea | 2.000 |
| Trinidad and Tobago | 2.000 |
| Uruguay | 2.000 |

How Should the Institution Matter?

Along this dimension of analysis, the goal is twofold. Among states registering the highest sums of expected utilities on the “where does the institution matter” scale, measures of adoption of the relevant convention, electoral outcomes, and the means incorporated within each state toward the implementation of its goals will be of use to determine the specifics of the implementing legislation enacted at the domestic level. Among states registering the lowest sums of expected utilities on the “where does the institution matter” scale, no similar prediction of instruments to have been employed within the domestic legislation should be possible. The decision sequence is represented in Figure 3.

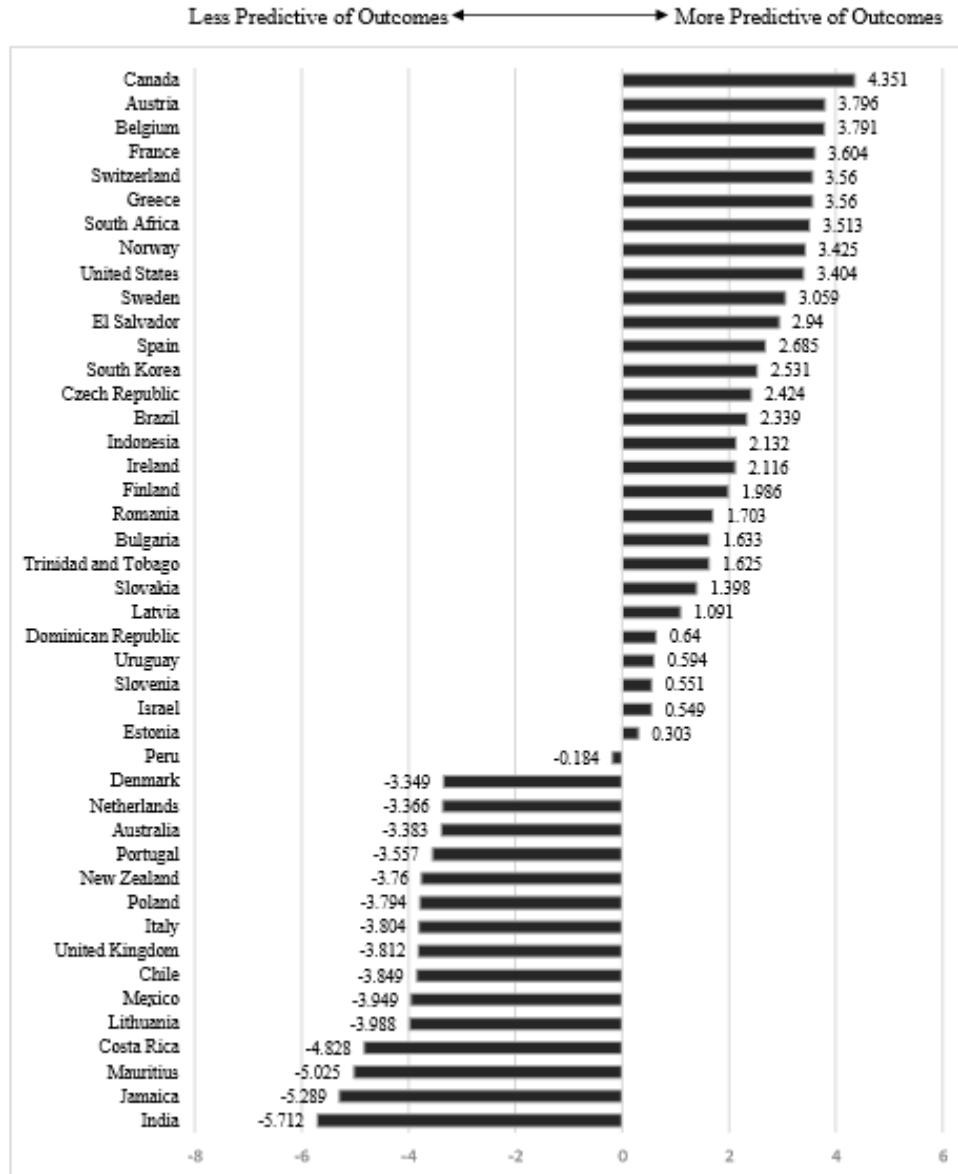


Figure 2. Where Should the Institution Matter? Estimates are centered on the mean value.

At the initial node, I assign to the seated government within each of the 44 multi-party democracies states a payoff estimated as $\text{Log}(100)$ according to its ratification of or accession to either the 1951 *Convention* or the 1967 *Protocol*. I hold further decisions taken only by state signatories to either of the two UN directives to inform the state's position relative to others as one of asylum. Therefore, I continue the sequence into the second node only for states collecting the

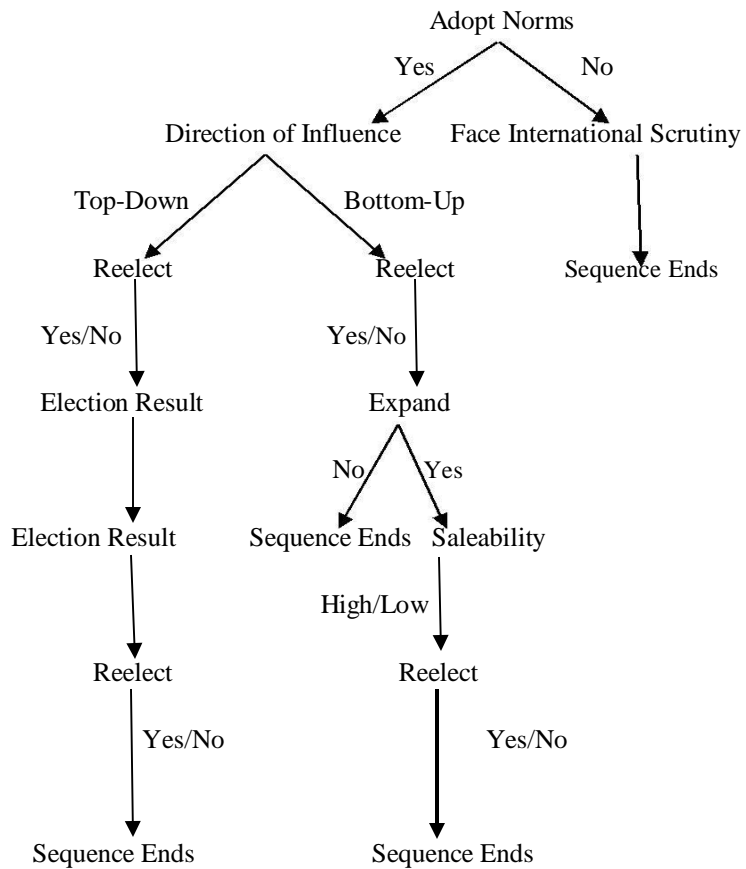


Figure 3. Decision sequence. What Institution Should We Expect?

optimal payoff for the decision to maintain signatory status.

For the 41 states remaining to take a second decision, I assign a payoff to each government according to its tendency to elite cue giving. A state will, *ceteris paribus*, prefer not to increase the number of asylum applications because of the fiscal and potential diplomatic costs of hosting escapees. However, the government level decision at this node depends greatly on the ability of the seated government to shape the view of the electorate in accordance with its own preferences.

Table 8. Commitment to the Adoption of Norms.**Move I: Y**

| | |
|---------------------|-------|
| Australia | 2.000 |
| Austria | 2.000 |
| Belgium | 2.000 |
| Brazil | 2.000 |
| Bulgaria | 2.000 |
| Canada | 2.000 |
| Chile | 2.000 |
| Costa Rica | 2.000 |
| Czech Republic | 2.000 |
| Denmark | 2.000 |
| Dominican Republic | 2.000 |
| El Salvador | 2.000 |
| Estonia | 2.000 |
| Finland | 2.000 |
| France | 2.000 |
| Greece | 2.000 |
| Ireland | 2.000 |
| Israel | 2.000 |
| Italy | 2.000 |
| Jamaica | 2.000 |
| Latvia | 2.000 |
| Lithuania | 2.000 |
| Mexico | 2.000 |
| Netherlands | 2.000 |
| New Zealand | 2.000 |
| Norway | 2.000 |
| Peru | 2.000 |
| Poland | 2.000 |
| Portugal | 2.000 |
| Romania | 2.000 |
| Slovakia | 2.000 |
| Slovenia | 2.000 |
| South Africa | 2.000 |
| South Korea | 2.000 |
| Spain | 2.000 |
| Sweden | 2.000 |
| Switzerland | 2.000 |
| Trinidad and Tobago | 2.000 |
| United Kingdom | 2.000 |
| United States | 2.000 |
| Uruguay | 2.000 |

Move I: N

| | |
|-----------|-------|
| India | 2.000 |
| Indonesia | 2.000 |
| Mauritius | 2.000 |

In order to estimate a measure of this ability, I consider two scores for each state as reported in Economist Intelligence Unit Index of Democracy 2010, which I compound with measures of electoral participation as reported by International Institute for Democracy and Electoral Assistance (2009).

This permits a ranking of states which yields the highest scores for those observing the lowest level of disconnect between the electorate's satisfaction with its participation rate, and its actual observed participation rate. In the absence of more precise measures of electorate malleability and of the salience of issues pertaining to forced migrants present within each country,

I assume that states with higher scores will host populations less averse to elite cue giving in general, and therefore, respective governments will incur less of a cost for enacting policies, either friendly or unfriendly to asylum seekers. Elites in these states may then implement action toward the construction of institutions under the expectation that electorates will understand asylum issues as framed.

For each state, I calculate a percentage of the high score (Italy, at 88.43). In an atmosphere in which the political survival is primary goal of the elected government, the ability to act in defiance of public preference must be reserved for those states for which only the highest scores are reported. I assign the optimal utility for the decision not to increase applications in all states for which scores do not reach 95% of Italy's reported score. I assign the condition of top-down direction of influence only to the five states (Italy, plus Austria, Denmark, Latvia, and New Zealand) meeting the 95% threshold. Because the system of preferences here varies according to a state's status as holder of top scores, the logic of a decline in marginal utilities cannot apply. I report each state's optimal-move utility as the derived percentage, multiplied by 0.02. This is reported in Table 9.

For the third decision, the electorate chooses whether or not to reseal the government. I observe the second pre-2010 election campaign in each of the 41 remaining multi-party democracies. Of these, 32 are parliamentary democracies; I estimate state-specific payoffs as a function of a party's resulting representation in office. Because the emergence of right governments has been shown to correlate positively to measures of nativist sentiment (Weiner, 1998), where specific policy pronouncements are not available, I consider election of right parties and coalitions over left parties and coalitions in such states for which coalitions containing nativist parties hold no legislative seats. This permits the continuation of the decision sequence for all

Table 9. Direction of Influence**Move I: Y****Move II: T-D**

| | |
|-------------|-------|
| Austria | 1.942 |
| Denmark | 1.939 |
| Italy | 2.000 |
| Latvia | 1.921 |
| New Zealand | 1.903 |

Move I: Y**Move II: B-U**

| | | | |
|--------------------|-------|---------------------|-------|
| Australia | 1.602 | Mexico | 1.468 |
| Belgium | 1.649 | Netherlands | 1.794 |
| Brazil | 1.702 | Norway | 1.753 |
| Bulgaria | 1.794 | Peru | 1.853 |
| Canada | 1.461 | Poland | 1.507 |
| Chile | 1.622 | Portugal | 1.607 |
| Costa Rica | 1.732 | Romania | 1.701 |
| Czech Republic | 1.819 | Slovakia | 1.817 |
| Dominican Republic | 1.697 | Slovenia | 1.768 |
| El Salvador | 1.555 | South Africa | 1.891 |
| Estonia | 1.645 | South Korea | 1.482 |
| Finland | 1.727 | Spain | 1.779 |
| France | 1.660 | Sweden | 1.843 |
| Greece | 1.897 | Switzerland | 1.055 |
| Ireland | 1.646 | Trinidad and Tobago | 1.692 |
| Israel | 1.691 | United Kingdom | 1.652 |
| Jamaica | 1.644 | United States | 1.452 |
| Lithuania | 1.612 | Uruguay | 1.649 |

states observed. For the nine presidential democracies, I estimate government payoffs according to outcomes of the second pre-2010 legislative election. Of the states I observe, only Brazil, Chile, Mexico, United States and Uruguay host bicameral legislatures; I consider election to the lower house in each of these cases.

In order to standardize state-level scores without regard to the specific decision taken, I estimate government payoffs as a function of the positive or negative gain in legislative seats within each state. For the electorate within states which moved at the previous node according to a low propensity to elite cue giving, I compound the percentage of the vote with a 1-100 score derived as the percentage of citizens who identified immigrants and foreign workers among those

whom they would not wish to have as neighbors as reported in the Four Waves Aggregate of Values reported by World Values Survey. For these states, I report mean values where survey data are not available. The compounded figure is reported as a percentage of the highest observed total (Romania, at 21.8%), and the payoff is reported as $\text{Log}(\text{percent of } 21.8)$. This is shown in Table 10.

Table 10. First Election Cycle / Xenophobic Sentiment

Move I: Y

Move II: T-D

Move III: Y/N

| | |
|-------------|-------|
| Austria | 1.475 |
| Denmark | 1.591 |
| Italy | 1.545 |
| Latvia | 1.230 |
| New Zealand | 1.691 |

Move I: Y

Move II: B-U

Move III: Y/N

| | |
|--------------------|-------|
| Australia | 1.125 |
| Belgium | 1.602 |
| Brazil | 0.962 |
| Bulgaria | 1.850 |
| Canada | 1.207 |
| Chile | 1.438 |
| Costa Rica | 1.420 |
| Czech Republic | 1.749 |
| Dominican Republic | 1.660 |
| El Salvador | 1.567 |
| Estonia | 1.856 |
| Finland | 1.390 |
| France | 1.572 |
| Greece | 1.502 |
| Ireland | 1.041 |
| Israel | 1.052 |
| Jamaica | 1.999 |
| Lithuania | 1.735 |

| | |
|---------------------|-------|
| Mexico | 1.846 |
| Netherlands | 1.423 |
| Norway | 1.262 |
| Peru | 1.468 |
| Poland | 1.979 |
| Portugal | 1.043 |
| Romania | 1.842 |
| Slovakia | 1.693 |
| Slovenia | 1.787 |
| South Africa | 2.000 |
| South Korea | 1.511 |
| Spain | 1.184 |
| Sweden | 0.944 |
| Switzerland | 1.239 |
| Trinidad and Tobago | 1.552 |
| United Kingdom | 1.511 |
| United States | 1.240 |
| Uruguay | 1.467 |

Along the two branches down which the sequence continues to the fourth node, separate considerations are taken by potential receiving states. For those states having reelected governments under the condition of top-down influence, the decision at this node is based solely on electoral data. By winning seats in the legislative body, elites casts may gauge the level at which

their frames have been accepted by the voting public. The state's utility, having first been calculated as a function of its propensity to influence public sentiment, is validated as a result of the election. This is reported as the confidence of the electorate in the government as measured by the number of legislative seats won by parties holding similar positions, as a percentage of the greatest electoral victory. For those states having reelected governments under the condition of bottom-up influence, the decision at this node is one of mechanism: does the state perceive a practical ability to avoid the cost of full compliance through the expansion of its bureaucracy?

I embed the assumption that states that have established histories of using the public sector to foster job growth will prefer to reap the dual benefit of appearing to comply with humanitarian norms while essentially losing the potential asylum claimant within the very machinery it implements to create jobs. I report the percentage of the vote-eligible public employed by the public sector, as calculated as the average of totals reported annually from the year prior to the first observed election through 2009 by International Labour Organization. Because measures of the efficiency of a state's bureaucracy are shown to correlate positively to the number of years it has been in place and to contiguity with states successfully utilizing the public sector, I compound this percentage with a dichotomous variable, derived according to the following procedure.

For states whose public sectors were successfully consolidated or which share a land border with states whose public sectors were successfully consolidated according to the criteria set forth in Gunther, Puhle, and Diamandouros (1995) in the year of the first observed election, I assign a score of 0.5; for states meeting neither criterion, I report a score of 1.¹³ I assign the optimal payoff to the decision to impede progress toward final status determination for those states whose scores meet or exceed the mean reported score. For states at or above the mean score (65.1% of

¹³ Calculations and criteria considered in calculating this dichotomous interaction variable are discussed in Appendix 2.

Lithuania's 30.1%, held by Costa Rica), I report the optimal payoff as $\text{Log}(\text{percent of } 30.1)$; for states registering totals below the mean score, I report $1 - \text{Log}(\text{percent of } 30.1)$. This is shown in Table 11. Because the perception of a practical means to avoid the full potential cost of compliance through the expansion of the public sector is comparatively absent within states at the lower end of this measure, I terminate the decision sequence for these states.

Table 11. Election Data / Ability to Expand Bureaucracy

Move I: Y

Move II: T-D

Move III: Y/N

Move IV: E

| | |
|-------------|-------|
| Austria | 1.475 |
| Denmark | 1.591 |
| Italy | 1.545 |
| Latvia | 1.230 |
| New Zealand | 1.691 |

Move I: Y

Move II: B-U

Move III: Y/N

Move IV: -

| | |
|----------------|-------|
| Belgium | 1.821 |
| Czech Republic | 1.719 |
| Estonia | 1.826 |
| Finland | 1.838 |
| Jamaica | 1.745 |
| Lithuania | 2.000 |
| Netherlands | 1.828 |
| Norway | 1.957 |
| Poland | 1.857 |
| Portugal | 1.745 |
| Romania | 1.771 |
| Slovakia | 1.845 |
| Slovenia | 1.883 |
| South Korea | 1.745 |
| Sweden | 1.896 |
| United Kingdom | 1.745 |

Move I: Y

Move II: B-U

Move III: Y/N

Move IV: X

| | |
|---------------------|-------|
| Australia | 1.768 |
| Brazil | 1.857 |
| Bulgaria | 1.738 |
| Canada | 1.710 |
| Chile | 1.908 |
| Costa Rica | 1.813 |
| Dominican Republic | 1.861 |
| El Salvador | 1.946 |
| France | 1.768 |
| Greece | 1.859 |
| Ireland | 1.730 |
| Israel | 1.760 |
| Mexico | 1.823 |
| Peru | 1.858 |
| South Africa | 1.748 |
| Spain | 1.785 |
| Switzerland | 1.784 |
| Trinidad and Tobago | 1.826 |
| United States | 1.770 |
| Uruguay | 1.767 |

For the fifth decision, the sequence also continues along two separate branches. For those states meeting the criteria for top-down influence, the decision is merely whether to maintain stated policy. Utilities reported at the third node are duplicated. For those states whose governments have moved according to a perception of the practical ability to avoid cost through the expansion of bureaucracy, the decision at this node is reported as a function of the perception of the saleability to the electorate to implement this course of action. Because the most saleable benefit to the electorate within a country to have established a history of utilizing its public sector to create jobs, I operationalize this payoff as the logarithmic function of the state's average observed

Table 12. Election Data / Saleability of Expansion

Move I: Y
Move II: T-D
Move III: Y/N
Move IV: E
Move V: E

| | |
|-------------|-------|
| Austria | 1.475 |
| Denmark | 1.591 |
| Italy | 1.545 |
| Latvia | 1.230 |
| New Zealand | 1.691 |

Move I: Y
Move II: B-U
Move III: Y/N
Move IV: X
Move V: X

| | |
|---------------------|-------|
| Australia | 1.230 |
| Brazil | 1.410 |
| Bulgaria | 1.646 |
| Canada | 1.466 |
| Chile | 1.448 |
| Costa Rica | 1.489 |
| Dominican Republic | 1.755 |
| El Salvador | 1.575 |
| France | 1.375 |
| Greece | 1.743 |
| Ireland | 1.360 |
| Israel | 1.337 |
| Mexico | 1.483 |
| Peru | 1.516 |
| South Africa | 2.000 |
| Spain | 1.917 |
| Switzerland | 1.059 |
| Trinidad and Tobago | 1.360 |
| United States | 1.382 |
| Uruguay | 1.561 |

unemployment level, beginning in the year of the party's reelection, and terminating in the year of the subsequent election, as reported by International Labour Office. I report for each state its percentage of the highest observed unemployment level (South Africa, at 22.3%) and report its payoff as $\text{Log}(\text{percent of } 22.3)$. This is shown in Table 12.

Table 13. Second Election Cycle

Move I: Y

Move II: T-D

Move III: Y/N

Move IV: E

Move V: E

Move VI: Y/N

| | |
|-------------|-------|
| Austria | 1.442 |
| Denmark | 1.572 |
| Italy | 1.643 |
| Latvia | 1.554 |
| New Zealand | 1.577 |

Move I: Y

Move II: B-U

Move III: Y/N

Move IV: R

Move V: X

Move VI: Y/N

| | |
|---------------------|-------|
| Australia | 1.437 |
| Brazil | 1.554 |
| Bulgaria | 2.000 |
| Canada | 1.616 |
| Chile | 1.585 |
| Costa Rica | 1.721 |
| Dominican Republic | 1.923 |
| El Salvador | 1.628 |
| France | 1.529 |
| Greece | 1.576 |
| Ireland | 1.364 |
| Israel | 1.906 |
| Mexico | 1.395 |
| Peru | 1.387 |
| South Africa | 1.617 |
| Spain | 1.571 |
| Switzerland | 1.606 |
| Trinidad and Tobago | 0.000 |
| United States | 1.404 |
| Uruguay | 1.475 |

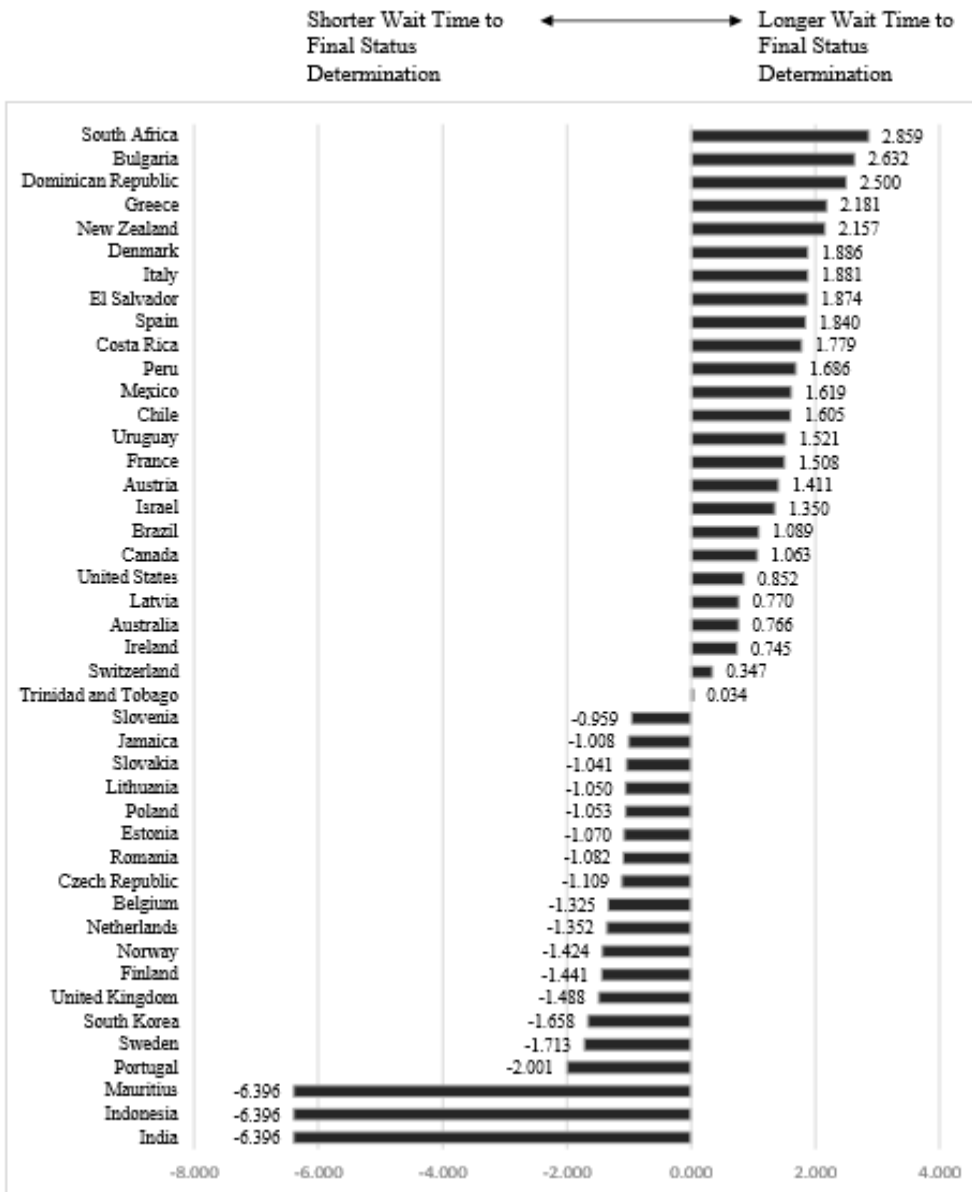


Figure 4. If the institution were to matter, how would its effect be measured? Estimates are centered on the mean value.

At the final node, I calculate positive or negative gains made by the parties observed in the first election cycle again for the second election cycle. I report each state's utility as the logarithmic function of each remaining state's percentage of Bulgaria's 2.79-fold increase in right government across parties observed. This is shown in Table 13; adjusted sum of state estimates along this

dimension of analysis is shown in Figure 4.

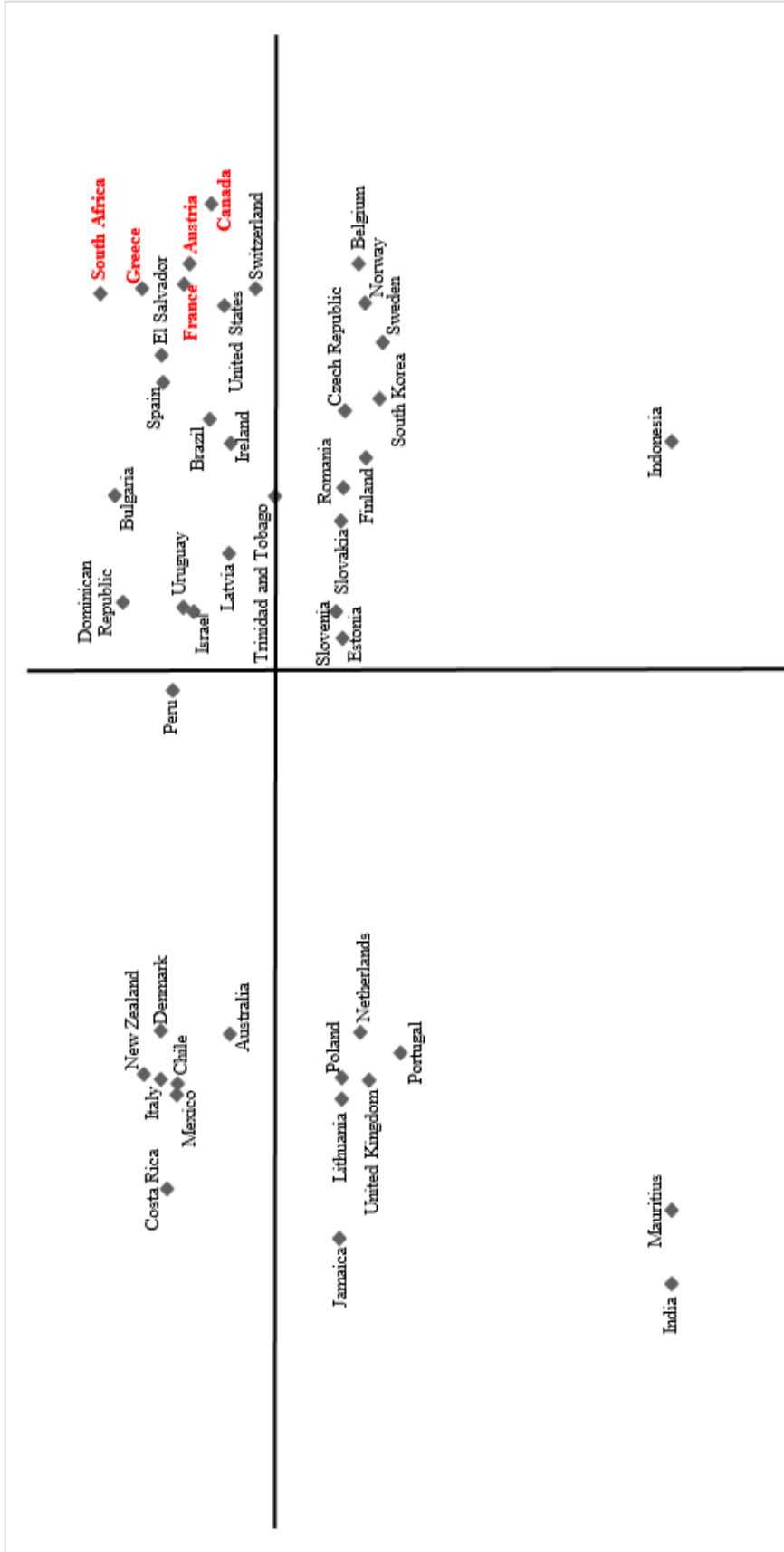
I map the summed total of payoffs collected following each decision onto a two-dimensional model in order to assess the determinants of each state's status as one of asylum. I subtract the mean of summed payoffs from the optimal strategy to be pursued by each state. This permits a shift of the origin to the mean payoff calculated according to all state-player strategies. Along the horizontal axis, I place adjusted scores estimated according to dyadic measures traditionally examined in the literature to explain the movement of forced migrants. Structural determinants of material wealth are examined alongside measures of border openness, histories of positive affirmative asylum decisions, and the issuance or denial of state-provided benefits during asylum appeals processes as a conceptualization of the first question – where will domestic institutions matter. Along the vertical axis, I place adjusted scores as estimated as functions of each respective state's electoral process and outcomes as a conceptualization of the second question – what types of domestic implementing procedures can be expected.

Preliminary Observations and Assumptions: Where and How Should Institutions Matter?

States appearing in Q1 and, to a lesser extent, in Q2 share relatively lengthy processes toward final status determination for asylum applicants; processes are generally much more expedient in states in Q4, and to a lesser extent, in Q3. States with the highest summed expected utilities in the “where should institutions matter” sequence display much greater variation with regard to the specific determinants of their scores. South Africa, Bulgaria, Dominican Republic, New Zealand, and Greece top the list. The only inputs common to four of the five are the strengths of domestic nativist sentiment and the gains made by right parties. Lowest on this vector are India, Indonesia, and Mauritius – the three non-signatories to the relevant UN conventions.

Q1: —————> Institution Should Predict Outcomes;
Longer Wait to Final Status Determination

Q2: No Prediction on Wait to Final Status Determination Should be Possible
Based on Institution in Place



Q3: No Prediction on Wait to Final Status Determination Should be Possible
Based on Institution in Place

Q4: —————> Institutions Should Predict Outcomes;
Shorter Wait to Final Status Determination

Figure 5. State placement on where (x axis) and how (y axis) domestic institutions should permit prediction of length of time to final status determination. Origin set to mean value along both axes.

States hosting over 25,000 undecided asylum claims at 2009-year end (UNHCR 2011) are indicated in **red boldface** type.

However, the explanatory power of this sequence lies not in its extremes; it lies near the mean value, where it serves the purpose of separating the states that process claims quickly from states that do not. I focus specifically on the 10 states for which the highest scores on the horizontal axis are reported. Here I locate the states with the highest numbers of pending asylum claims. Resolution of status prevails below the mean; indeterminacy prevails above the mean.¹⁴

Of the three states registering scores below the mean, Belgium, Norway, and Sweden, each hosted over 12,000 active asylum cases as of January 2011. Although these states have all proven a preference to deny asylum status, claims are heard and decided comparatively quickly. According to the criteria considered, each state employs an effective, consolidated bureaucracy and, none meets the criteria introduced to suggest the condition of top-down direction of influence. Furthermore, of the three, only Belgium experienced a move to the right in government orientation for the first observed election cycle. “As if” informed by the utility estimates reported here, the three states have taken moves to offer state-paid housing, translation, and legal assistance to all claimants, and to ensure that claims are heard within months (or in Norway, sometimes within weeks).

States registering values above the mean offer no such guarantees. Six of the seven states took a decision at the third node according to reported low susceptibility to elite cue giving. Of these six, all perceived the ability to avoid the full potential cost of Convention compliance through the expansion of the state bureaucracy. Therefore, all seven continued the decision sequence into

¹⁴ Although H₂ asserts that we should be able to predict the demarcation between states that process asylum claims quickly and states that do not process claims quickly according to the criteria considered among states where the institution *should* matter, the clustering of the ten states hosting the highest numbers of pending claims at the positive end of the “where do institutions matter” sequence as of January 2011 was not predicted and cannot be explained by the theory outlined with this work. At this point, it is sufficient to note that with these ten states excluded from the calculation, there is no discernable correlation between the prediction that the institution should matter and the overall number of claims awaiting decision within the state. For this reason, I treat this clustering as unexplained and as incidental to the findings I attempt to explain. Further work will examine the question of this observed clustering as it is noted only at the upper extreme.

the final node. Five (Canada, France, Greece, South Africa, and Switzerland) experienced right shifts in government in the second observed electoral cycle, while the left gains made in Austria and the United States were comparatively small.¹⁵

Common to all of these states is that once inside, the seeker is not provided housing outside of immigrant detention facilities. The resulting lower cost of hosting the seeker creates conditions in which pressure to process claims quickly is reduced. States holding the greatest number of seekers pending decisions on their asylum claims clearly fall within Q1, where a discrete cluster groups all states according to positive scores on the “how do institutions matter” sequence, and scores exceeding 3.0 on the “where do institutions matter” sequence. Here, the conditions that inform high levels of uncertain asylum status are met; they are met at no other point on the model.

In Chapter 3, I examine two states found within Q1, where the institution in place should not only matter, but should be implemented with the effect (whether intended or unintended) of lengthening wait time to final status determination. I do not argue that it is the goal of states to burden courts and police departments as in Greece or to manipulate legal codes to leave tens of thousands of claimants awaiting final status determination for years on end as in Austria. Instead, I demonstrate that both mechanisms embedded within the domestic implementing legislation serve these goals, and by extension, also serve the twin goals of avoiding scrutiny of the international community and placating voters who have voiced significant measures of nativist sentiment.

In Chapter 4, I examine two states found within Q4. Both have adopted legislation incorporating significant elements of the Swedish law, which is viewed historically as the exemplar of generosity in asylum provision. The matter at question with the Belgian and South Korean domestic institutions regards not a “logic of appropriateness” vs. “logic of expected

¹⁵ As I discuss in Chapter 3, left gains in parliamentary seats Austria were accompanied by rightward moves on issues relating to asylum by both center-right and center-left parties in grand coalition.

consequences” argument, as would possibly be instructive only in the cases of Sweden or Norway, and would do little to advance an understanding of the conditions under which the rules of the game should matter. Instead, the analysis treats the formation, passage, and implementation of the rules, not as instruments toward further goals on asylum outcomes, but as intermediate ends in themselves, yielding payoffs within other games that are nested within state-specific determinants of political expedience and survival.

In Chapter 5, I examine two states where the specifics of the domestic implementing legislation are predicted not to matter. As hypothesized in Chapter 1 (H_1), where configuration of structural determinants preempt the importance of domestic legislation toward the length of time to final status determination, we should expect for the rule-building process to produce outcomes that are not predictable based on the predictions of the “how should the institution matter” dimension of analysis. UK and Chile are observed to have constructed legislation that has little effect on asylum outcomes, but the terms of the two states’ legislation were sold in manners that directly contradict the predictions summarized in Figure 4 if taken in isolation. I lay out the case that where states perceive that the domestic implementing legislation may not matter in light of structural priors, elites are freed to draft legislation unencumbered by the prospect of needing to project simultaneous embrace of humanitarian norms and embrace of hostility toward outsiders – the primary impetus driving states that have taken effective action to increase wait time to final status determination.

CHAPTER 3 – COST AVOIDANCE AND INCREMENTAL GAINS: INSTRUMENTAL ACTION VS. INSTRUMENTAL INACTION

The primary theoretical question of this work considers the conditions under which an understanding of the rules in place may be of use to an understanding of the outcomes observed. Toward an answer to this question, I construct a framework that places competing manners of forging causation arguments within a mutually exclusive context using a modified system of classification based on Parsons (2008). Holding constant factors indicative of treatment under the psychological approach, I use markers of structure to point to answers to questions concerning *where* the institution should matter, and I use markers of ideation to point to answers to questions concerning *how* the institution should matter.

To test this framework, I place state decision makers within a theoretic construct with reference to the 1951 *Convention Relating to the Status of Refugees* and its 1967 *Protocol*. By restricting observations to fully democratic states, I hold constant the possibility of competing motivations inherent to classification under the psychological approach. The framers of the relevant institutions within each country are presumed to take calculations guided primarily by the impetus to remain politically competitive and electorally viable within successfully consolidated democracies with demonstrated histories of multi-party contestation. Further controls for psychology include population size exceeding 1-million and the presence of a domestic legal framework that permits access to asylum adjudication within the country's borders. The result is that actors within all countries take decisions and execute actions within environments in which they must seek reelection from a distance imposed by a large population and within which that they must oversee an asylum system that may be reached from the inside. From here, I submit state decision makers to series of questions along two dimensions of analysis.

The first dimension considers questions of structure, here understood through the presence

and durability of hierarchies within the community of states taking decisions that will result in the construction or enforcement of the institution to be drawn or maintained. A state's placement within these hierarchies will be of use to determine whether questions of asylum were, under the period of consideration, likely to have been sufficiently important and pragmatically answerable as discrete issues. If so, the rules in place should be of use to understand observed outcomes. Under the alternate condition, elites may take action "as if" under a perception of the opportunity to construct compliance institutions without mind to the question of whether they would be called upon to pay the cost to be associated with any generosity that may be extended. Here, the rules instituted can be best understood as epiphenomenal and of little use toward an understanding of observed outcomes, and this dimension of analysis will be of use toward answers to two separate questions. Where is placement within these hierarchies sufficient to explain outcomes regardless of the institution drawn, and how does the politics of electoral survival suggest the specific forms that institutions will take under the condition that decision makers may be engaging in what is, essentially, the construction of signals without cost?

The goal of the second dimension of analysis is twofold. Among states where questions of structure do appear sufficient to determine, to understand, or to predict a relative lack of importance on the part of the domestic institution, questions of political ideation, elite-mass influence, electoral platforms, and electoral outcomes serve to demonstrate the intended audience to which the state intends to signal its intent through the implementation of effectively benign and ultimately costless institutions and elucidates decisions taken within states where placement within structural hierarchies is likely to be sufficient to understand or predict asylum outcomes. This outcome is discussed in Chapter 5. Among states where structural hierarchies are predicted to be insufficient to explain the institution in place, the institutions themselves *should* be of use to

understand asylum outcomes. As I outline in Chapter 1, this importance should be most easily understood in terms of its influence on the length of time to final status determination. Within these states, this second dimension aids in an understanding of the type of institution that should be in place.

Under the scenario that is less intuitive and less likely, questions of asylum may not be politically important as ends to the rule-building game in themselves. Here, the game of drafting the relevant institution will still be important for two reasons. First, the rules become important because, unlike in countries where structural hierarchies should prove likely to preclude the importance of the institution, the rules will be drawn with the understanding that they are going to display measurable effects on outcomes. But second, because issues of avoiding cost in the construction, maintenance, and enforcement of the relevant institution are comparatively less important to elected decision makers, those charged with forging the rules may perceive the opportunity to nest the rule-construction game within the greater electoral survival game in ways that may seem counterintuitive. Instead of the impetus to evade the full potential cost of treaty compliance, rule-makers may perceive an incentive to incorporate compliance instruments that will cause the state to effectively surpass these minimum costs, possibly even by great margins. The rules, once in place, will have the effect of reducing the wait time to final status determination if doing so will simultaneously permit the elected rule makers to avoid greater costs on other, possibly even seemingly unrelated issues that may be of greater salience within domestic electorates. This outcome is discussed in Chapter 4. For states where the institution is predicted to matter, this second dimension of analysis serves to divide the states falling within this category from those for which the more likely and more intuitive motivation behind rule making is observed – cost avoidance.

The purpose of this chapter is to aid in an understanding of this more intuitive and the more frequently observed scenario – that the institutions drawn and maintained toward compliance with the *Refugee Convention* and its *Protocol* should be of use to understand asylum outcomes, and that they should result in processes that result in an avoidance of the full potential cost of treaty compliance, which will be observable through the comparatively lengthy wait time for the median applicant awaiting status determination.

The existing literature fails to address the conditions under which the rules enacted at the domestic level should be predictive of asylum outcomes within democratic states. Because this literature forms an insufficient springboard for questions of whether and how institutions affect outcomes, for the purpose of this chapter, I reorient the discussion with reference to the literature on the expansion of rights through means that clearly demonstrate the reality of the motivation to evade payment of the full cost of granting and enforcing these rights. I then examine two states where the institution is predicted to matter and where the institution serves the purpose of instrumental cost avoidance through different means. Using the case of Austria, I lead the reader through the domestic political situation surrounding the construction of a unique configuration of rules, all politically motivated, but often motivated toward ends related only tangentially to questions of asylum. I narrate Austria's perfect political storm of unrelated decisions, promises, and mass appeals as these have converged to create conditions un conducive to the final issuance of decisions on asylum cases, resulting in thousands cases remaining open for a decade or longer. In Greece, the country that from the outside would appear to have the greatest incentive to overhaul its system for processing asylum claims due to the practically unmanageable number of potential claimants within its territory, I demonstrate that, by contrast, no reframing of the relevant legal, bureaucratic, or judicial institutions is observed over the period of time considered, and that this

lack of action is shown to have proven politically beneficial to actors on all sides of the relevant debates.

Incrementalism and the Expansion of Rights

The literature examining the causal mechanisms behind instances of compliance and non-compliance with human rights norms within democracies (Farber 2002, Hathaway 2002 and 2007, Mansfield and Pevehouse 2006, Moravcsik 2000, Powell and Staton 2009) focuses specifically on two processes: ratification or accession, and compliance. Do democratic states sign on to follow the rules, and do states follow through with their signaled intentions after the sign-on process? One goal of this work is to expand this line of scholarship to incorporate discussion of the varied forms that full compliance actually takes within democracies, the domestic political conditions that influence these forms, and the degree to which the procedures in place within an individual democratic state can exert a meaningful influence on its compliance outcomes.

Because this literature proves uninformative toward an examination of the types of domestic mechanisms that are in place under the condition of full compliance, I turn to a literature addressing the diffusion of economic and social rights across states. This review is not intended to be exhaustive; instead, the goal is to set up the discussion of the expansion of rights through the avoidance of costs to be borne by elites whose ultimate goal is the retention of political power, and to introduce varied means of cost avoidance into the discussion of domestic human rights treaty compliance.

In *The Crisis of Dictatorships*, Poulantzas (1976) examines the 1970s replacements of the Regime of the Colonels in Greece, the Salazar-Caetano regime in Portugal, and the Franco regime in Spain with their current democratic counterparts. The dictatorial regimes are first placed within the context of the world capitalist economy. Increasing interdependence inherent to the expansion

of capitalism created conditions under which ideological isolationism could not thrive and would become less sustainable over time. Simultaneously, domestic class divisions created environments in which several factors converged to render the regimes ineffective and increasingly irrelevant. Decision makers within each state preferred short-term, relative gains over long-term, absolute gains – a defining characteristic of the Poulantzas view of capitalism in general. Economic classes and cross-class interests acting under this condition both acted within environments in which factionalization became less costly than unity under the regime.

Additionally, the process of diffusion already noted with regard to each regime's place within the world capitalist economy was being reproduced on smaller scales domestically. *Subjects* would demand rights that would be afforded to them if they were, instead, *citizens*. The final end could not be continued dictatorship because the dictatorships as they had come to exist by the early-1970s had become unsustainable. However, the dissolution of the state could not be the end either, as this would require focus on longer-term goals, not on the day-to-day operations of the country. Achievement of short-term goals would prove ultimately more important than the preservation of the dictatorships in place. For this reason, the end most in line with the conditions already in place within the world of the 1970s was the continuance of the state under what Poulantzas held to be broader, West-European values.

Several points from this analysis are of help to begin the construction of a framework useful to understand the phenomenon of cost avoidance as it regards the expansion of political rights. First, no state acts in isolation. Leaders within Greece, Portugal, and Spain acted within a world environment that held rules that were vastly different from their own, in which others granted degrees of rights that they did not. Second, the interplay of domestic factions created situations in which elite self-preservation necessitated shifts in focus from long-term gains (here, the

preservation of the regimes) to short-term gains (here, the day-to-day maintenance of governmental grip on political and economic power). Third, people demanded rights that they had come to know that their neighbors enjoyed.

These conditions converged to create domestic environments in which those in power would pay less of a cost by ceding power than by retaining it. The restoration of the Greek monarchy became impractical in light of new calls for democratic rule following the detention of the Colonels, Caetano was opposed by his military (the world's largest relative to its population size at the time), and therefore, the regime lacked the means that would have been necessary to quell the Carnation Revolution, and prior to his death, Franco had already begun to set up institutions that would prove inadvertently to be more conducive to democratic rule than to dictatorial or monarchical rule. In each case, a bloody revolution was forestalled through elite concession to demands for rights. One of Poulantzas's conclusions from these cases (albeit a frequently overlooked conclusion) is that democracy, including all of the rights that it entails, is diffuse – through elite action to give up a limited measure of rights in order to avoid costs associated with a focus on the long-term maintenance of dictatorial power, each state will become increasingly democratic. In an environment of ever-increasing state interdependence, this fact would manifest itself within non-democratic states across the globe, thus leading to the expansion of political rights worldwide.¹⁶

The Economic Origins of Dictatorship and Democracy (Acemoglu and Robinson 2005) considers the idea that democracy, including the rights that it entails, may not diffuse as quickly or as certainly as a reading of Poulantzas would suggest. Elites *may* maintain power while avoiding

¹⁶ For Poulantzas and scholars of Poulantzas, the more important conclusion was that this type of concession by the state will forestall the expansion of communism, and will morph the ideal into what has become known as "Eurocommunism."

the cost of full compliance with democratic norms by ceding incrementally to popular pressure. This course of action toward the expansion of rights may impose the lowest level of cost to elites repeatedly over the short term, and this outcome is demonstrated through the long course of ever-expanding rights in Britain.

However, the course suggested by Poulantzas and demonstrated here in the case of Britain is only one among four possible elite strategies of cost-avoidant action, and country-specific ideational and economic conditions may combine to create a situation in which one of the other three courses of action will prove less costly in the short term. As demonstrated in the case of Argentina, actions of those who would wish to take effort to overthrow a non-democratic government are shown to have been quelled by elite promises of action that would prove untenable over the long term as domestic social and economic conditions changed. Boons in wealth would be met with democratic advances, yet high levels of inequality that would cause alliances to shift as promises were broken in times of scarcity would leave the door open for the overthrow of the government by factions with little opposition from the majority, disenfranchised poor. Where income inequality is even more severe, and where elites judge that a revolution could prove both successful and imminent unless drastic measures are taken, elites are shown to have calculated the least costly course of action to entail the enactment of near universal oppression, as is demonstrated in the case of apartheid-era South Africa. Finally, in richer, more egalitarian states, elites are shown to have judged a democratic revolution highly unlikely under the condition that their actions may keep the masses both wealthy and incognizant of the comparatively minor income differences among them. This is demonstrated through the case of Singapore.

The framework I develop differs from the Acemoglu and Robinson framework in two important ways. More readily apparent, in legislating human rights conventions at the domestic

level, the idea of something akin to revolution is absent from the calculation. Action through what prove to be wealth-dependent promises to the masses, through repression, and through the promotion of a national mythology of wealth and equality will be of no use toward the avoidance of the cost of treaty compliance. Costs are imposed not only at the domestic level, but also by bodies that observe treaty compliance at the international level, including the United Nations and its constituent bodies, national and international courts, national and international human rights organizations, and the international press. So, in legislating treaty compliance mechanisms, elites seek not only to appease the masses within their borders, but also to signal intention to comply with the international normative standard to those watching from outside. Second, with the introduction of successfully consolidated, multi-party democracy as a condition for inclusion in this study, I hold constant elements of psychological motivation that would permit parallel differences as demonstrated the three alternative cases. All elites act so as to retain political power, but they do so within states that have retained democratic ideals over the entire temporal space under observation and are predicted to retain democratic rule into the foreseeable future.

Instead, the Acemoglu and Robinson framework is important for two reasons. First, it presents the idea of instrumental cost avoidance in a manner that avoids much of the Poulantzas emphasis on social class and the world capitalist system. Focus is instead placed on the expansion of rights to a degree not found in Poulantzas. Second, and more importantly, it presents the framework of incrementality as a means of evading the full potential cost of granting rights, but it does not propose this incrementality as the sole, unavoidable means of cost management, as does Poulantzas.

From here, the contrast I draw between the cases to be discussed in this chapter vs. those to be discussed in the following chapter is fundamentally different. The focus can be understood

as one of the content of domestic legislation, procedural rules, and enforcement mechanisms in terms of incremental gains (i.e., cost evasive strategy) as opposed to abrupt gains (i.e., cost acceptant strategy). In forging rules governing asylum, the expectation is that decision makers within most states will seek to avoid cost on matters pertaining to asylum. At the same time, it is entirely reasonable to expect that decision makers within some states will enact legislation that they judge to be politically important toward the avoidance of *overall* electoral costs, to include costs potentially not addressed within the content of the *Refugee Convention* or its implementing legislation. Under this condition, it becomes necessary to allow for the possibility that implementation and enforcement of these rules may greatly exceed the minimum cost of normative compliance. This chapter examines the former condition; the following chapter examines the latter. In short, within states to enact cost-avoidant instruments toward *Convention* implementation, these instruments create conditions under which applicant wait times to final status determination can be quite long (exceeding a decade in some instances), and these waits are only lengthened with further amendments to and revisions of mechanisms in place toward the enforcement of the relevant domestic legislation; within states to enact cost-acceptant instruments, these instruments may demonstrate the effect of drastically shortening the period of time under which the median asylum case remains pending.

In most states where the institution should allow us to understand observed outcomes, the rules drafted should accomplish the goal of instrumental cost avoidance. To follow, I show how this strategy works through examination of two exemplary case countries. I first present a brief history as it is useful to understand the background against which cost-avoidant strategies have played out differently within the two focus countries – through instrumental *action* in Austria, and through instrumental *inaction* in Greece. I then lay out the case that the specific configuration of

structural considerations inherent to the community of all states taking decisions will lead to the conclusion that the institution to be drawn, maintained, and enforced should be of use to understand asylum outcomes within these states. I expand on the domestic political considerations surrounding the fulfillment of the prediction of strategies of cost evasion – why is the issue of asylum grants sufficiently important in its own right to permit the prediction that both Austria and Greece will erect institutions toward the avoidance of cost on the issue of convention compliance, and not on another, potentially more salient issue, and how do Austria and Greece exemplify these two ideal-typical paths toward evasion of the full cost of normative compliance?

A Short History of Forced Migration in Austria*

In the years preceding Austria's 2006 parliamentary election, the most recent (2001) census data reveals that of a population of nearly eight million, more than 730,000 were foreign residents. This high level of in-migration was not a new development and was widely accepted as forming part of a long, yet intermittent trend of acceptance and integration of the foreign born into the population.

During the years of the Austrian Empire (1804-1867) and throughout the hold of Austria-Hungary (1867-1918) migration within the land area that fell under the Hapsburg monarchy (including today's Austria, Bosnia and Herzegovina, Croatia, Czech Republic, Hungary, Slovakia, Slovenia, the northern territory of Serbia including Belgrade, and parts of northern Italy, northern Moldova, and southern Ukraine) tended strongly to flow from the eastern territories to the western territories, with the large proportion of immigrants taking residence in the urban and centers of Prague and Vienna, and with the massive rebuilding following its 1910 earthquake, also Ljubljana.

Within the empire, migrants' residency rights were based on their municipality of birth.

* All data within this section are taken from Jandl and Kraler's 2003 report for the Migration Policy Institute, "Austria: A Country of Immigration?" Much of the narrative structure follows that of applicable sections of the report as well.

The municipalities to which they had migrated held and often exercised the right to expel those deemed “alien residents,” often popularly viewed to take more from society than they were capable of contributing. Their legal status within their new homes was always under threat of revocation. In spite of this, by 1900, the populations of Prague (at around 80 percent) and Vienna (at around 60 percent) were comprised largely of within-empire migrants. In fact, despite large population shifts to Germany, Switzerland, and the Americas throughout the pre-WWI period, no area within the republic’s boundaries was more affected by emigration than by these internal movements. For this reason, migration policy was almost exclusively drafted and implemented with the aim of regulating and enforcing in-migrant status, as opposed to addressing questions of entry to, exit from, or movement within the territory.

With the end of WWI, the monarchy was dissolved. New European states were formed, and populations shifted as successor states sought to define themselves in terms of national narratives. New states became progressively more homogenous in terms of ethnicity. Economically depressed Austria expelled nearly all of its 310,000 non-German-speaking “immigrants,” the vast majority of whom had come from other municipalities within Austria-Hungary, and more than half of whom had fled to Austria’s urban and semi-suburban centers during WWI. With the onset of WWII, more than 80,000 Austrians left the country for the Americas, while many Jews fled to Palestine, many Communists fled to the USSR, and prior to Germany’s 1938 annexation of Austria, many Nazi supporters fled to Germany.

With the annexation, the remnants of the Hapsburg-era migration laws were replaced by then-current Nazi German legislation. Austria’s population evolved to become even more ethnically homogenous, in large part as a result of the murder or expatriation of nearly 192,500 Austrian Jews. Still, at the conclusion of WWII, nearly 1.4 million foreigners remained within

Austria's borders. Among this number were foreign laborers, prisoners of war, war refugees, and ethnic Germans who had resettled from across [mostly Eastern] Europe. Most of non-German descent were quickly repatriated, while most ethnic Germans were absorbed into the population.

In subsequent years, Austria became one of the main transit countries, temporarily housing around two million migrants, for those fleeing USSR-aligned states for the United States, Israel, and much of Western Europe during the Cold War; a comparatively much smaller number sought asylum status within the country's territory. These included about 20,000 refugees from Hungary following the 1956 revolution, and similar numbers of Slovaks and Czechs in the aftermath of the 1968 Prague Spring and Poles with successive measures to squelch the Solidarity Movement in the early 1980s. The influx of Poles, although initially greeted openly (nearly 20,000 of the 29,100 asylum applications submitted on the part of those fleeing Poland were approved between 1981 and 1982), was met with increasing resistance, and visa requirements were instituted for those entering Austria's territory from Poland. This act would prove to form the starting point for political debates surrounding the current asylum regime within Austria, to be discussed in greater detail later in this chapter.

By the mid-1980s, Austria had become progressively less welcoming of new migrants, and asylum applications fell sharply in subsequent years as its geopolitical location became less relevant as a point of transit for those fleeing communist regimes. The number of applications rose briefly, albeit not to early Cold-War era levels, by the close of the 1980s, with an average number of 20,800 applications per year between 1988 and 1992. The majority of applicants during this period were seeking protection from Hungary, Romania, Yugoslavia, and Turkey, with application levels progressively rising from those fleeing Bangladesh, Iran, and Pakistan over the five-year period. The 1991 *Law on the Reception of Asylum Seekers* slashed the amount of state-provided

benefits for claimants, and the 1991 *Asylum Act* (effective 1992) introduced a list of safe countries of origin for the first time. Sanctions were levied against companies caught transporting undocumented migrants, and a further visa requirement was instituted for those entering Austria from Romania. These actions led to another steep drop in entry by forced migrants. In 1993, fewer than 5,000 asylum applications were initiated, and the number of new claims did not exceed 7,000 for any of the next four years.

The October 1992 repatriation of 42 Kosovo Albanians from Austria and similar actions directed toward Kosovar immigrants by several other European receiving countries was answered with sharp scrutiny from the international community and several human rights organizations on further actions to be taken. The brunt of the castigation fell on Austria. In response, Austria instituted a special legal basis for the admission and residence of conflict refugees from the former Yugoslavia. By 1995, the majority of the nearly 95,000 war refugees from Bosnia and Herzegovina were granted temporary protection in Austria, and by 1999, more than 70,000 had been granted long-term residence permits. The granting of these permissions fell outside of the country's normal asylum procedures, but over time, the issuance of similar permits would become a unique, defining characteristic of the Austrian asylum procedure.

The *Asylum Act* was revised in 1997. The safe country of origin provisions were abandoned, and Austrian policy was reconfigured to fall in line with the terms of the *Schengen Agreement* and the *Dublin Accord*. The liberalization of the asylum framework was met by a sharp increase in the number of asylum claimants, and to date, numbers of claims filed within Austria have not fallen to pre-1997 levels for any subsequent year. In 2001, over 29,000 applications were filed, and in 2002, a then-record number of 36,900 claims were initiated. In response, the Ministry

of the Interior issued an internal order to further restrict access to state-provided benefits for those whose claims were deemed unlikely to be approved.

A Short History of Forced Migration in Greece

Through most of the 20th century, Greece had been a country of net emigration. Many Greeks, most of them from rural areas and low education levels, left Greece to pursue greater opportunity within richer countries, with most arriving Australia, Canada, the United States, and Western Europe. The numbers of emigrants, primarily to Western European countries, increased during the 1967-1974 Regime of the Colonels. By 1985, however, nearly half of Greece's emigrants had repatriated (Migration Policy Institute 2012). These returns to Greece are largely attributable to the popularly perceived view of an increase in opportunity, which was driven in part by the inability on the part of many poorly educated, rural Greeks to assimilate into more traditionally western cultures. This period of incremental repatriation lasted over a decade, which notably encompasses both the country's 1974 return to democracy and 1981 accession to the ECC, and it marks the first point in modern history in which Greece saw near-equal levels of in-migration and out-migration.

The collapse of the USSR and its influence on the politics of Central and Eastern Europe brought about the second modern wave of immigration to Greece, which until this point had still been incorrectly judged by policy makers as a country of mass emigration. This second shift, exacerbated by the movement of people permitted with the 2004 accessions of many poorer countries to the EU, created Greece's status as one of net immigration for the first time in modern history. However, precisely because of its incremental nature, policy makers perceived little pressure to respond to what would prove to be the 21st century Greek reality.

UNHCR Statistical Yearbook (2010) reports that at the point of time that concludes this

study, 48,201 asylum cases remained pending decision. This is the highest number in Europe; at the point of time that concludes this study; greater numbers of pending claims are observed only in Ecuador, South Africa, and the United States.¹⁷ Greek borders became highly porous just as mass migration to Europe from Africa, Asia, and the Middle East began to take place in the early 2000s. Greece's geographic location, its membership in the EU, and the paucity of resources allocated to border control relative to the other European Union states on the Mediterranean converged to cement Greece's status as the country of easiest access to what is seen by many migrants as the fortress that is Europe. Against this backdrop, native-born and immigrant populations began to face what would prove to be an ever-increasing competition for access to resources to include jobs, state-funded social provisions, guarantees of fair wages, and guarantees against discriminatory practices at all levels. Nativist sentiment rose in line with the perceived erosion of "Greekness" and the privileged position that it had ceased to confer, due first to European in-migration, and later (and much more significantly), to non-European in-migration.

Under the *Dublin Accord*, each signatory state assumes sole responsibility for the processing of asylum cases initiated by claimants who first entered the community of signatory states through its own border. Greece, largely because of its status as signatory to the protocol, has received upward of 25,000 asylum applications for each of the past eleven years. Of the 25,113 applications lodged in Greece in 2007, the year of the first election cycle considered for this study, more than 20,000 were given a first instance hearing. At these initial hearings, only eight applicants were granted residence permits over the course of the year, and of the 6,448 applicants to appeal negative decisions, only 155 appeals were approved. In total, fewer than 2.5 percent of claims were

¹⁷ Although Ecuador does not meet the criteria for inclusion in this study, it is of note that both South Africa and the United States have met both the structural and the electoral conditions that permit the prediction of institutions that will effectively increase wait times to determination of final status.

granted, and nearly 5000 claims remained unheard into 2008 (Norwegian Association for Asylum Seekers, Norwegian Helsinki Committee, and Greek Helsinki Monitor, 2009).

The EU (primarily through Frontex – the European border management program), individual member states (notably Spain and Italy, but to a lesser degree, France), as well as net-sending states Egypt and Libya, took measures to restrict undocumented entry to Europe through the militarized policing of the Mediterranean border. The large number of claims, combined with the new pan-European commitment of resources toward the protection of the Mediterranean Sea border, have served to increase migration into Europe through Greece’s land border with Turkey. The Greek Ministry of Citizen Protection (2011) estimates that 100,888 migrants crossed this land border illegally in the first nine months of 2010, the final year under consideration in the current work. Because of Greece’s status as host to the overwhelming plurality of Europe’s forced migrants, many of whom are unable to claim or to substantiate claims to have entered the Dublin II community through another state’s border, Greece has become the primary center for unnegotiated entry to Europe. As a result, Greece has held both Europe’s highest rate of asylum claims and Europe’s second (to Ireland) lowest rate of positive decisions on affirmative claims over the entire period of time considered. Because the framework for processing claims possesses many remnants of an antiquated, net-emigration-era system¹⁸, these factors have also converged to create a situation in which a very large number of asylum cases remain pending over long periods of time.

Each of these developments has unfolded in front of an audience. International human rights observers, immigrant rights advocates, the UNHCR, and international courts have been highly critical of Greece. The near-universal castigation targets Greece not on a lack of action by

¹⁸ I discuss many details of this system later in this chapter.

lawmakers and the civil service bodies responsible to process claims, but on a perceived lack of ability on the part of these groups to process the large numbers of claims with which they are faced. In response, many Dublin II community states have agreed to halt the protocol-mandated deportations to Greece, either of their own initiative following reports of the poor treatment and substandard levels of benefits afforded to claimants (Finland, Norway, and Sweden, prior to the ECHR ruling in *MSS v. Belgium and Greece*), by order of the European Court of Human Rights (Belgium) or by voluntary agreement following the ECHR ruling against Belgium (permanently in Austria, Denmark, Hungary, Iceland, France, Netherlands, Switzerland, and the United Kingdom, and on a temporary order which remained in effect through the end of 2012 in Germany).

In the following section, I lead the reader through the framework of conditions that converge to permit the prediction that the relevant legal, bureaucratic, and judicial institutions drawn should be of use to understand the resultant length of time to final status determination within Austria and Greece. The remainder of this chapter is devoted to the examination of strategies and outcomes of political contestation they are instructive toward an understanding of the drafting or maintenance of cost-avoidant institutions within these two states. The defining feature common to these cost avoidant strategies is the effective prolongation of the median applicant's wait time to determination of refugee status.

Austria and Greece—Why Should the Institution Matter?

As I have outlined in Chapter 2, the variables considered here have proven statistically significant toward answers to other questions. Although each has been employed to explain the distribution of asylum cases within subsets of advanced democracies, studies employing these variables have failed in their capability to reconcile the authors' causation narratives to compliance

outcomes observed within many outlier states.

To address and to begin to correct for this weakness, I disaggregate the overall question – why do large numbers of pending asylum claims exist in their observed configurations – into two separate questions: *where* should legal, bureaucratic, and judicial setups prove predictive of asylum outcomes, and *how* should legal, bureaucratic, and judicial setups prove predictive of asylum outcomes. In Chapter 2, I set out a framework useful to understand where and how the institutions in place within each of the successfully consolidated, multi-party democracies considered should lend insight into the length of time to final status determination for asylum claimants within their borders. Along the x axis, I examine the presence of structural hierarchies inherent to inclusion within this community of states. To follow, I demonstrate how this dimension of analysis works within two exemplary case countries, the paths of which I propose to elucidate two ideal-typical poles of mechanistic cost evasion: instrumental *action* in Austria, and instrumental *inaction* in Greece.

Each stage of the decision sequence captures a state-level prediction of the likelihood that the median asylum claimant will advance to the following stage within the sequence “as if” informed by two input factors: the likelihood that the state will be expected pay the cost of its compliance mechanisms, and the number of fellow claimants among whom the median applicant is taking decisions. Answers to questions of structural hierarchies within the community of states will permit determination of the manner in which the median applicant will behave in interaction with the rules in place, and by extension, whether these rules should be important in their own right toward an understanding of the outcomes observed.

Because this dimension of analysis is concerned with the state-level prediction of how far the median claimant will advance within the process of securing asylum protection under the

Convention, I model this series of decisions after the process undertaken by the claimant in the attempt to access this protection. The first decision examines the question of where the median claimant will be expected to flee, and the second decision examines the question of whether the potential claimant will be able to cross the border into the host state's territory. Subsequent decisions examine questions of claimant access to the asylum adjudication within the host state's border, the state's predilection to approve first-instance asylum claims, the cost to the state to hosting a denied claimant within its borders, and the *Convention*-mandated directive to permit access to the asylum appeals process for the denied claimant.

Where the median claimant is more likely to advance through the decision sequence, states will interpret real costs to be associated with this advance. Here, the compliance mechanisms should be most greatly predictive of outcomes – both because the state will be less able to perceive the ability to enact compliance instruments as costless signals, and because a greater proportion of all forced migrants within these states will be expected to access these instruments over longer periods of time. In subsequent sections, I demonstrate that within these two countries, the institutions in place should achieve and do achieve a common end – instrumental cost evasion through the effective increase in wait time to determination of final status of asylum claims.

First, I consider the hierarchy inherent to the division of wealth within the community of state decision makers, here measured as per-capita GNP.¹⁹ Accounting for the decline in marginal utilities attached to the maintenance of a country's placement within the hierarchical structure, Austria and Greece both register positions logged at the upper end. World Bank (2011) reports this figure for Austria at \$US 46,660, and for Greece at \$US 26,842. In a departure from the Neumayer study, which holds that this figure should prove instructive as a discrete measure, I hold that this

¹⁹ Neumayer (2007) finds per-capita GNP to be the measure of wealth most accurately predictive of wealth of asylum seeker inflows.

figure proves particularly powerful as it permits the cardinalization of a utility useful to understand the first step within a multi-stage decision process. Here, the rule to be instituted, maintained, and enforced within these states is more likely to influence asylum outcomes precisely because it is within states registering totals at the upper end of the hierarchy that elites may take further decisions with the expectation that the institutions in place will impose real costs to be paid by the state. Calculations of state placement within these hierarchies are presented in Chapter 2, Table 2.

Whereas states at the lower end of the per-capita GNP hierarchy will be better able to engage in the construction or maintenance of institutions that may signal intention to comply without the expectation that the resulting costs will be paid in full, because of greater measures of wealth relative to other state decision makers, elites within Austria and Greece will be more likely to perceive that the median claimant will access the state's compliance instruments, and therefore, that the state will be more likely to be called on to pay any costs to be associated with their domestic compliance instruments. As a secondary point, and one holding more closely to the justification of the use of per capita GNP to the Neumayer argument, when measures such as family relations and geographic contiguity and distance are held constant, the median claimant is more likely to find his way across the border of a comparatively wealthier state. For both of these reasons, the rule instituted *should* matter to asylum outcomes precisely because rule makers perceive the increased likelihood that they will be called on to pay any costs that will be associated with the rule. Austria and Greece continue the decision process into the second node.

Next, I consider the hierarchy inherent to relative measures of border openness among states. Where the median claimant is more likely to perceive an ability to enter a country's territory, it becomes more likely that the median claimant will enter the territory. Under this condition, the receiving state will perceive a greater likelihood that it will face calls to pay any costs to be

associated with its compliance instruments. As such, the state will perceive its ability to use any potential outcome of the rule-construction process as cheap talk to be greatly reduced. Additionally, as higher numbers of unnegotiated entrants are reported, the possibility exists that the rule builders will face increasing pressure to construct, maintain, and enforce compliance instruments that should affect electorate perception of governmental action on questions regarding the openness of its borders.

Austria and Greece both register high totals of unnegotiated entrants relative to observed totals of registered entrants, with Greece forming the baseline against which all state totals are calculated (at 99% of all forced migrants). This measure is important as it points to the difference between those forced migrants who must claim protection under the terms of the *Refugee Convention* vs. those for whom entry has already been negotiated and for whom no individual asylum case must be initiated. Two outcomes follow: rule makers will perceive that they cannot use the rule-construction process as a means to signal intention without the expectation that they will be called on to pay any costs associated with the rule, and greater numbers of migrants will be expected to access any instruments to be defined by the rule.

For the next stratifying decision,²⁰ each state weighs its predilection to issue positive decisions on affirmative asylum claims. I treat this measure using a logic that is fundamentally different from the logic that Hatton (2008) uses to justify inclusion of the same variable. For Hatton, the preponderance of positive decisions on affirmative asylum claims is treated as predictive of the number of forced migrants to lodge claims in subsequent years. In states where

²⁰ In order to effect an examination using a number of decisions equal to the number to be taken within the sequence mapped along the y axis, I have introduced moves at the third and sixth nodes, which I refer to for the remainder of this work as “non-stratifying.” At these points in the sequence, all states reap payoffs that do not produce hierarchical orderings; the first captures the utility perceived by median applicant’s decision to initiate the asylum adjudication process, and the second captures the state’s commitment to the adoption of norms as evidenced by *Convention* signatory status.

greater numbers of claims are *granted* at T_1 , a greater numbers of claims will be *initiated* at T_2 and beyond. Instead, I hold that to treat this measure as a discrete variable will prove uninformative toward the question of why the institution built should facilitate an understanding of the length of time to final status determination.

With the exceptions of Dominican Republic, Israel, Peru, Slovenia, and non-*Convention* signatory Indonesia, judicial and bureaucratic bodies within all states have demonstrated histories of denying far more affirmative asylum claims than they approve over the entire period considered in this study. Because bodies within *most* states deny *most* claims, I embed the prediction of claim denial into the logic of the decision sequence, and I continue to calculate utilities only for states that have demonstrated this course of action.

The median claimant will perceive a greater incentive to continue the decision process at greater cost to the receiving state within those states having issued higher numbers of denied claims. This holds because the claimant will be more likely to access the appeals process following a negative decision or deportation order. For this reason, the state will perceive greater costs as the median claimant advances to subsequent stages within the sequence. These increased costs will be associated with the asylum appeals process itself, as well as with the deportation process where it is practiced. Additionally, states will anticipate an increase in the expense of state resources to the denied claimant during the period of time that the appeals process is underway. Finally, states will also perceive inestimable costs as they may be attached to the possibility that a denied claimant will be unable or unwilling to repatriate in the case of a negative first-instance decision that is not appealed. For these reasons, a state's previous record of higher relative numbers of negative decisions on asylum claims will create a unique condition that will not exist under the scenario of lower relative numbers of negative decisions on asylum claims – the state's calculation of its

practical need to pay any potential costs to be associated with a state's compliance mechanisms will increase as state predilection to deny claims increases.

Over 98% of claims were denied over the temporal space considered in this study in Greece, while nearly 83% of claims were denied over the same temporal space in Austria. Because of this, compliance mechanisms in place will be judged by their framers and by those charged with their enforcement and adjudication to impose real costs on both states for three reasons: they will be instituted, maintained, and enforced informed by the predictions that they will engender costly signals, that they are more likely to be accessed by the median claimant, and that this access will be observed and will carry costs to the state over what the state should reasonably expect to be a longer period of time.

For the final stratifying decision, states consider costs to be associated with hosting those who access compliance protections following negative decisions on their asylum claims. Based on the number of claimants present per \$US 1 GNP at the point of time that concludes this study, it is important to note that of the states considered, only South Africa attaches a cost greater than that observed in Greece to hosting these claimants, and only South Africa, Greece, France, and Canada attach costs greater than the total observed in Austria. Elites and electorates become more acutely aware of these costs as these costs increase precisely because the costs are associated with numbers of people among whom the state's wealth is divided. This fact places pressure on elites to create rules that address the division of wealth between the native and voluntary immigrant populations and the claimant population in a manner that will address voter concerns over the "other" within their country's borders. Under this condition, elites may perceive that they will be better able to secure their own electoral survival when these voter concerns are met and addressed.²¹ Because of

²¹ With reference to the question of *where* the institutional output should matter to outcomes, I do not attempt to account for actions demonstrative of *how* elites should be expected to respond to electorate perceptions. Instead, I

this, the institution in place will be much more likely to be useful toward an understanding of asylum outcomes. The rule construction, maintenance, and enforcement processes cannot be instituted toward the conveyance of costless signals for two reasons: because the rule makers will play to voters who will expect for rules to bring results, and because greater numbers of claimants are observed to access the instruments defined within these rules and are expected to do the same into the future.

The Domestic Politics of Rule Construction – How Should the Institution Matter?

Within both Austria and Greece, the specific instruments instituted toward compliance with the *Refugee Convention* and its *Protocol* should be of use to understand asylum outcomes, specifically as they relate to length of time to final status determination for those with claims pending decision. Institutions will be built, maintained, and enforced under the expectations that the state will be relatively more capable to pay associated costs, that rule makers will play to electorates who may be more acutely attuned to the presence of the asylum seeker within their borders, and that legal, bureaucratic, and judicial bodies will expect to extend the costs associated with compliance to greater numbers of claimants over longer periods of time. To follow, I outline the domestic political conditions within both states as these conditions are useful to understand the process by which each has come to settle on what is the more intuitive and more frequently observed rule construction, maintenance, and enforcement scenario – the instrumental evasion of cost through the implementation of cost-avoidant compliance institutions.

Each stage of the decision sequence points to expectations of cost to elites as they strive to achieve or maintain personal, party, or coalitional survival within a competitive democratic environment. Because this is the case, I do not model the logic underlying the sequential ordering

focus here on an additional condition that addresses the degree to which elites may perceive a popular mandate to respond. The “how” question is addressed along the second dimension of analysis.

of decisions after an applicant-specific process. Instead, the sequence follows each state through the run-up process and electoral outcomes associated with the two most-recent pre-2010 election cycles.

At the first node, I account for the state's status as signatory or non-signatory to the *Convention*. This decision does not create a hierarchical ordering; instead, with this decision, I create a binary necessary to exclude further examination of states for which no compliance institutions may be measured because no agreement to forge compliance mechanisms has been undertaken. With this chapter and the following two chapters, I use treatment of this first question to explicate the exact compliance protections that each of the focus signatory states has bound itself to uphold by virtue of its own domestic-level agreement to comply with the UN mandate. I accomplish this through an examination of each focus state's history of action on domestic ratification or accession and of further relevant bilateral state-UN negotiations, from the point in time that the *Convention* was drafted at Geneva in 1951, and leading up to the year of the first observed election cycle. For each focus state, the ratification procedure becomes important because in the process of ratification, each state is observed to have registered reservations in answer to specific items of text within the *Convention*. These reservations enumerate the specific protections from which the state may derogate while still maintaining its status as upholder of the normative standard defined within the text.

In this chapter, subsequent decisions are taken along two separate branches.²² I first report for each state an estimate of elite ability to influence the voting public. Can those who wish to maintain personal, party, or coalitional electoral viability better accomplish this goal by bending

²² The use of two separate means to estimate state-level utilities for the purpose of this chapter results from the fact that Austria and Greece are observed to have taken separate decisions at the second node along the dimension of analysis, to be discussed below. In Chapters 4 and 5, utilities are estimated in an identical manner because the focus states observed take the same decision at the second node.

to public sentiment, or by attempting to shape public sentiment? Where elites may take action “as if” having interpreted the highest level of ability to shape public sentiment (i.e., under the condition of top-down influence), estimates at subsequent nodes are taken based solely on the election and reelection or ouster of parties to have introduced, to have advocated for, or to have voted in favor of strict policies on questions of immigration and the presence of the other within the country’s territory. This outcome and this course of calculating utility estimates from this point forward is observed in only five of the 41 signatory states discussed in this work; this group of five countries includes Austria.

In the majority of countries, elite-mass influence is observed not to meet the strict criteria introduced in Chapter 2 for top-down direction. For Greece, utilities in subsequent sections are estimated based on election data compounded with and supplemented by data on measures of xenophobic sentiment, public-sector employment, strength of bureaucracy, and observed unemployment levels, as appropriate. These factors point to the predilection on the part of the elite seeking electoral survival within the state to reap the dual benefit of being seen to take action toward achieving full employment at home, while also gaining the opportunity to extend the median applicant’s wait to final status determination by essentially losing the applicant within processes inherent to newly expanded, newly complicated legal and bureaucratic systems. At the final node of analysis for both Austria and Greece, I report the electorate’s confidence in its government as revealed as a function of the positive or negative gains made by the parties to have won election during first observed election cycle, for the second election cycle. I follow with a section outlining developments within both Austria and Greece after the second observed election cycle.

1. Austria and Greece at T₁: What Protections Have They Agreed to Uphold?

The period of time considered with this study begins with the run-up to the second pre-2010 legislative election within each state observed. For Austria, I begin with the process leading up to the 2006 legislative election; for Greece, I begin with the process leading up to the 2007 legislative election. At the relevant points in time, both Austria and Greece had signaled intent to comply with the terms of both the 1951 *Convention* and its 1967 *Protocol*.

Both states were among the 26 to present delegates at the drafting of the 1951 *Convention*, and both were among its 18 original signatory states.²³ The *Convention* and its instruments were given the force of law domestically through ratification in Austria in November 1954, and in Greece in April 1960. At the time of domestic ratification, both Austria and Greece communicated and registered reservations to specific items of text within the *Convention*. Those reservations not officially withdrawn at the point of time that begins this study are discussed in the body of the text below; withdrawn reservations are noted in footnote 25.

The Austrian delegation registered its reservation relating to Article 17, Paragraphs 1-2, which outlines conditions to be attached to the possible revocation of the right of those who have been granted asylum to engage in wage-earning employment. Pursuant to the text of Article 17, the right to earn a wage cannot be revoked by the host state if the asylee has resided without interruption within the country's territory for three consecutive years, has become parent to a child holding the host-state nationality, or has been abandoned by a spouse who holds host-state nationality. Austria's reservation stipulated that the three conditions outlined to prohibit the revocation of Article 17 rights would be understood as suggestions, and that these suggestions will

²³ 145 states have ratified or acceded to the *Convention* as of December 2015, with an additional three states having agreed to hold to the terms of the *Convention* by virtue of their status as signatory to the 1967 *Protocol*.

not bind Austrian lawmakers from setting their own more expansive²⁴ criteria for the possible revocation of these rights.

The Austrian delegation also registered its reservation in answer to Article 22, Paragraph 1, which guarantees the right of children of asylees to access any publicly available elementary-level education. This reservation stipulated that acceptance of the instruments defined in Article 22 does not imply the right of asylees to establish private elementary schools.

Austria's reservation relating to Article 23, stipulating that the right to access public welfare assistance protocols must be accorded to asylees on the same level as it is accorded to nationals of the host state, expressed that the prohibition against differentiating between asylees and nationals in the provision of public assistance would only be applicable to public funds managed and paid at the federal level, and not to those funds managed or paid at the level of the Lander.

Austria also registered its reservation relating to Article 25, Paragraphs 2-3, which confers on the state the duty to provide and deliver or facilitate the provision and delivery of "documents and certifications" to any asylee who would otherwise "require the assistance of authorities of a foreign country to whom he cannot have recourse" as would be otherwise necessary for the asylee to access any right outlined in the *Convention*. This reservation stipulated that the language "documents and certifications" would be interpreted to include only refugee identity documents as were already being issued by the state.

The Greek delegation registered reservations in answer to nine instruments defined within the *Convention*, although only one reservation remained in place at the point of time that begins

²⁴ Less expansive criteria for the revocation of Article 17 rights are explicitly permitted in the text of the *Convention*.

this study.²⁵ This reservation is in answer to Article 26, which stipulates that an asylee's freedom of movement and right to choose his place of residence may be "subject [only to those] regulations [that are] applicable to aliens generally." The reservation notes that Greek authorities reserve the right to derogate from the enumerated protections in the event of a national emergency.

Apart from these reservations, Austria and Greece have agreed to be bound by the imperative to uphold all protections defined within the *Convention* and its *Protocol*.²⁶ For the purpose of the theoretical model, these protections are understood to count among the states' "preliminary endowments," as the term is used in Chapter 2 with reference to the rationality assumption. At this point of the sequence, signatory state agreement to uphold these protections does not inform a hierarchical ordering and is understood as a non-stratifying decision. As for all states to have ratified or acceded to the *Convention* and its *Protocol* at the point of time that begins this study, the sequence continues for Austria and Greece.

2. Party Politics and the Ability to Shape Electorate Preferences

For the decision at the first stratifying node, states weigh elite propensity to take action that may or may not reflect the wishes of the electorate. This is an imperfect measure, but a necessary one, and it has been established as a measure that is particularly lacking in the literature relating to electorate reception of elite strategies on dealing with populations of forced migrants. Importantly, Ivarsflaten (2005) finds strong support for the hypothesis that "...a larger proportion

²⁵ In 1978, Greece officially withdrew its reservations to Article 11, relating to preferential treatment to refugee seamen, to Article 13, relating to the right of asylees to engage in leases and contracts, to Article 24, Paragraph 3, relating to the rights of asylees to access any future protections to be defined within bilateral agreements which may later be forged between the host state and a fellow signatory state, to Article 28, relating to the issuance of travel documents, to Article 31, guaranteeing immunity from prosecution on account of illegal entry for the purpose of initiating an asylum claim, to Article 32, guaranteeing due process rights to all claimants under threat of deportation, and to Article 34, conferring the duty upon the host state to expedite naturalization procedures for those granted asylum. In 1995, Greece withdrew its reservation to Article 17, relating to the prohibition against denying an asylee's right to engage in wage-earning employment. Conditions under which Article 17 protections may not be revoked are discussed above in the case of Austria, for which the reservation remains on file.

²⁶ The *Protocol* was ratified without reservation in both states.

of the public will see restrictive immigration and asylum policies as an appropriate response to a larger variety of their concerns if a highly visible elite actor repeatedly argues that such connections exist” (Ivarsflaten 2005, p. 25).

Beginning with this idea, I embed into the sequence the very real possibility that electorates within some states may be more receptive than electorates within other states to respond to these cues. I attempt at this stage to account for the propensity to follow elite cues in general. It is a problematic restriction, and for this reason, I hold only those states scoring in the top 5% (Denmark, Italy, Latvia, and New Zealand, and as important for this chapter, Austria) on this measure as estimated in Chapter 2, Table 9 to further decisions under which this condition holds. For those states that do not register totals within the top 5% of all states (the 36 states remaining to take decisions, including Greece), I permit the possibility that measures of both elite and electorate views of the costs to be associated with the construction, maintenance, and enforcement of asylum policy will hold a greater level of importance than merely the electorate decision to ouster or to reseat the government that has taken action with regard to the relevant policies.

To follow, I outline role of public debates on issues of asylum at the point in time leading up to the 2006 Austrian legislative election and the 2007 Greek legislative election. In the case of Austria, issues of forced migration proved to be highly polarizing, and visible elites did attempt to shape the dialogue. Meyer and Rosenberger (2015) demonstrate that issues relating to migration became progressively more salient, and opinions became much and more polarized over the period from 1995 to 2009. To result was the implementation of a complicated web of policies that had the effect of incrementalizing any progress that would ultimately be made toward compliance with the normative standard through lengthening the wait time to final status determination. In Greece, issues of immigration were neither comparatively salient nor comparatively polarizing, as each of

the two mainline parties had since the mid-1990s engaged in movement toward the political center. By 2007, both ND and PASOK had long been observed to embrace and advocate most loudly for policy stances that were judged to be non-controversial and non-sectarian. Here, by sustaining and reshuffling mechanisms inherent to the unenforceable police and bureaucratic policies that were already in place while simultaneously engaging in de jure liberalization without protest in accord with EU directives, elites within Greece secured for themselves the opportunity to shift the migration dialogue. By taking no action to repair or update an antiquated system for processing claims, and then by blaming the very process of liberalization at the EU level for any problems that the electorate would perceive with regard to the influx of forced migrants, actors within each of the two mainstream parties were able to blame actors within the other for supporting costly EU regulations. This tactic was employed by actors on both sides of the aisle for short-term gain, and its use resulted in the slowing of progress toward the normative standard, also carrying the effect of lengthening the median applicant's wait time to a final decision.

I follow with a treatment of the responsibility of the parties holding power, either as a government coalition member highly vocal on relevant issues (in Austria), or in the majority (in Greece) leading up to T_1 . Toward what political ends and with what political effects were the differing forms of relevant policies established or maintained?

Austria. Zaslove (2004) notes that within most West European countries, including Austria, Belgium, Denmark, France, Germany, and the Netherlands, at least one radical right party had received at least 10% of the popular vote share in one or more national, regional, or local elections between 1990 and 2001. In Austria, the emergence of the FPÖ (Freedom Party of Austria) as a radical right, anti-immigrant, nativist party had begun four years earlier with Jörg Haider's September 1986 defeat of liberal Vice Chancellor Norbert Steger for the party leadership post at

the FPÖ party convention in Innsbruck. By this point in time, Haider had established a long, strong, and vocal record of perpetuating nativist sentiment during his tenure as leader of the FPÖ in the province of Carinthia, and he had written and spoken extensively on his nativist views. The bulk of Haider's nativist rhetoric focused on exploiting fears over immigration (Art 2007).

Prior to the convention, FPÖ had been in government as the minority member in coalition with the social democratic SPÖ; following Haider's election to the party leadership post, SPÖ immediately terminated the coalition and called for new elections. Following the election, FPÖ was excluded from government, but the party began to experience growth in both membership and the number of public offices held. The party's ideology was greatly radicalized under Haider, and as party leader, Haider allowed many with links to right-wing extremist organizations to appear on party lists and to hold office at the local and regional levels. As a result, FPÖ is noted to have met castigation by the mainstream parties as a dangerous right-wing pariah (Luther 2000).

In opposition after the 1986 election, FPÖ was still able to influence the political agenda to suit its post-Steger era aims. Under Haider's leadership, the party forcefully emphasized and intentionally conflated the issues of immigration and crime to the extent that the two issues became fused in the mind of the voting public into the single issue of "immigrant crime" (Zaslove 2004). Immigration was argued to be the cause behind not only growing crime rates, but also behind the creation of slums, the shortage of housing, growing levels of unemployment, and classroom overcrowding. Haider had written as early as 1993 that these developments were

"especially striking in the large cities where one does not know one's neighborhood anymore, where old people must spend the twilight of their lives in complete isolation and loneliness, and where young people satisfy their longing for community too often in criminal gangs and drug circles" (Haider 1993, p. 86; translation in Zaslove 2004).

This quote was used widely within the party – first to call for stricter immigration laws, and later, to call for stricter laws pertaining to asylum in order to put an end to what the party claimed to be widespread abuse of human rights protection procedures.²⁷

The mainstream parties were able to keep Haider's FPÖ out of government for over 13 years. Although SPÖ had long ruled out entering into another coalition with FPÖ, the other mainstream party, the center-right ÖVP (Austrian People's Party) had long been engaged in intermittent, behind-the-scenes talks with FPÖ leadership regarding the possibility of uniting the two parties under a broader, anti-social-democratic banner should the opportunity present itself (Luther 2000). FPÖ emerged as the second most popular party during the 1999 election, followed by ÖVP in third. Following the election and a three-month negotiation procedure, a new FPÖ-ÖVP government was formed despite the SPÖ receipt of the largest overall vote share, and over the president's vocal objection due to fear of the inclusion of a radical-right party in government. The EU-14 (the EU-15 *minus* Austria) and the United States voiced further objections, all declaring that bilateral ministerial contacts would be suspended and that no Austrian candidates would be supported for positions in international organizations. Also, Israel withdrew its ambassador to Austria and banned Haider from entry to its territory.²⁸

During the run-up to the 1999 election, the FPÖ anti-immigration stance was considered to be well known, and it did not figure prominently in the campaign outside of Vienna. In Vienna, however, anti-immigration became one of the party's top issues due both to the calculation that it would play well in the urban center that was home to the majority of the country's undocumented immigrants and to local competition from a new right-wing spinoff party, the DU (The

²⁷ In the same text, Haider argues that Islam cannot be viewed as compatible with West European values, and that immigration and asylum protection cannot be delinked from cultural compatibility (p. 176).

²⁸ By September 2000, all EU-14, US, and Israeli sanctions were lifted (Muller and Fallend 2004).

Independents). Still, 47% percent of FPÖ voters listed the party's anti-immigration stand as a factor important to their decision to cast a ballot for the party (Muller 2000). Luther (2000) reports that party leadership took the calculation that blaming high levels of immigration on industry and its complicity in hiring undocumented immigrants would attract these working class voters. This seems to have turned out to be correct; by 1999, FPÖ membership was disproportionately represented by over 25% of blue-collar workers and over 55% of voters holding only a vocational education (Luther 2000).

This period of FPÖ as party in government saw a continuation of the trend of issues of immigration and asylum becoming increasingly contentious. Public debates became increasingly intense, and policy became increasingly restrictive (Peintinger 2012). By 2005, due to the growing importance of issues of asylum abuse in particular, both the ÖVP and the SPÖ had come to advocate and vote for more restrictive asylum policies. In debate over the drafting of Austria's October 2001 *Law on Integration*, FPÖ leadership argued that protection under the *Refugee Convention* was easily manipulated by criminals, murderers, and terrorists. Haider had personally sought to encode the stipulation that only those of European birth should be permitted to access Austrian asylum protection, while its drafters in the ÖVP objected that such a restriction was forbidden within the text of the *Convention* itself (Zaslove 2004). The FPÖ-ÖVP compromise legislation included the harsh and nearly unprecedented stipulation that in order to be judged worthy of asylum protection, the applicant must meet an additional legal burden – to prove country-of-origin complicity in the applicant's persecution. Prior to the 2001 law, among *Convention* signatory states, this burden of proof on the asylum applicant had been mandated only in Switzerland.

The process of applying for asylum is an administrative procedure that confers the right to

appeal to a judicial body. Until 2003, all negative decisions, both at first instance and on appeal, carried automatic suspensive effect.²⁹ The 2001 *Law on Integration* was amended in 2003 to stipulate that this suspensive effect would no longer be understood as automatic; while still permitted, suspensive effect must be applied for through a separate bureaucratic procedure.

This new bureaucratic procedure became burdensome, and this new burden on the state was addressed in small part with the *Settlement and Residence Act* of 2005. At any point after an immigrant's entry to Austrian territory, irrespective of whether the immigrant has filed an asylum claim, has a claim proceeding, or has been denied asylum at first instance or on appeal, the government may grant to individuals permits for permanent settlement on humanitarian grounds. This became problematic as well due to the fact that no procedure for applying for the permit was written into the 2005 law; accordingly, these permits were granted solely on an ex-officio basis.³⁰ The law passed with overwhelming support of both coalition parties as well as the SPÖ on the basis that the grant of residence on humanitarian grounds would prove to form the basis for later steps to fight fraudulent asylum claims (Rosenberger and König 2011).

In its 2006 Operational Goals for Austria, UNHCR (2006a) listed the imperatives to increase access to Austrian territory for potential asylum claimants, to respect the principle of non-refoulement, and to decrease media coverage of xenophobic statements. Where xenophobic statements were made and covered by media outlets, they were to be answered by commentary that the statements were provocative and problematic. Against this backdrop, the FPÖ saw its membership dwindle to 10% of the electorate. In order to possibly maintain the coalition following

²⁹ "Suspensive effect" denotes the condition under which a decision is considered final pending later appeal. Prior to 2003, negative decisions could not result in deportation orders because it was assumed under the law that an appeal was pending. Following the 2003 amendment, after a negative decision is issued, the denied claimant may still apply for suspensive effect through a separate procedure, but until this effect is granted, a deportation order may be issued.

³⁰ The *Settlement and Residence Act of 2005* was amended in 2009 to outline a new process for applying for protection on humanitarian grounds. This procedure lies entirely outside the country's asylum framework, and is treated under law as a completely separate procedure.

the 2007 election, Haider was able to wrest promises of concessions on issues unrelated to immigration under the tacit understanding that the ÖVP had largely taken over the issue (Muller 2004).

This history established, I use further treatment of the Austrian case to explicate points two through six along the second dimension of analysis as presented in Chapter 2. This treatment begins with the 2007 Austrian legislative election.

Greece. In Greece, PASOK (Panhellenic Socialist Movement) named Kostas Simitis party leader in 1996. Simitis had been an outspoken advocate for moving the party to the center by gradually deemphasizing its earlier socialist agenda in favor of emphasis on EU cooperation and the need for greater interaction between all members of the state in order to achieve goals that would be favored by the entire population. In this effort, Simitis branded PASOK as “the anti-populist party,” and he worked to create and popularize an understanding in which *populist interests* were equated with *sectarian interests*. To those receiving this narrative, members of ND (New Democracy, the previously right party, soon also to move to the center) were to be seen as the populists and sectarians (Spourdalakis and Tassis 2006). Despite clear and pervasive anti-right, anti-ND rhetoric, no attempt was made to reach out to traditionally left parties or their voters through subsequent electoral campaigns or through any discernable pattern of policy promotion or voting in parliament.

In early 1997, ND held its Fourth Party Congress, at which Kostas Karamanlis was elected party leader. Karamanlis was inexperienced, never having held any ministerial post, yet he was unburdened by popular notion of the party’s previous farther-to-the-right past. Over the next seven years, Karamanlis worked to answer PASOK rhetoric with his own party’s move to the center, notably coopting the coupling of the practice of center-policy advocacy with anti-socialist, anti-

PASOK dialogue. Center-policy advocacy included a political program that emphasized education, social order, state efficiency, combatting issues of tax evasion and corruption, and protection of the environment.

In this race-to-the-center environment, both mainstream parties avoided talk on issues that were seen to be divisive. As important to this work, these divisive issues included any possible solutions to questions of high levels of undocumented migration. Members of both parties established talking points that addressed these issues of migration on two grounds – first, that the EU was to blame for Greece’s problems with undocumented migration (largely resulting from the *Dublin Accord* definition of the state responsible to handle a potential asylee’s claim), and second, that members of the opposing party were responsible for allowing the EU to impose its will on Greece. Karamanidou (2015) notes that during debate on Greece’s 2001 *Immigration Law*,³¹ the PASOK Minister of the Interior was quoted as saying that the “mass entry of migrants was proven to be an unviable solution by the unsuccessful policy [concessions to the EU by the] ND in the period 1990 to 1993,” to which an ND MP countered that “the ‘fenceless vine’ was [PASOK’s] construction between 1994 and 2001”³² (Hellenic Parliament 2001, p. 5604; quoted and translated in Karamanidou 2015).

In January 2004, Simitis stepped down as party leader, as polls had begun to indicate that there was no scenario under which PASOK would be able to participate in government following

³¹ 2001 law: (Law No. 2910/2001) Provided a new opportunity for previously undocumented entrants to access asylum protection, under the condition that they could provide proof of 12-months continued residence in Greece.

³² The “fenceless vine” refers to a well-known Greek idiom that relates to an injury that cannot be halted or controlled due to a lack of preparation on the part of those who should have taken care to prevent the injury. The full idiom can be translated to English as “like a dog at a fenceless vine.” It is understood to refer to a situation similar to one in which a vine has grown too close to the ground because no fence was erected on which the vine was able to climb; the injury itself is understood to have been committed by a dog that was, therefore, able to eat all of the vine’s fruits. As it relates here, the immigrants are understood as the dogs, and the lack of needed infrastructure to prevent their entry is understood as the “fenceless vine.”

the April 2004 election. He was replaced by Georgios Papandreou, who was observed to send ambivalent ideological messages and to perform poorly in the pre-election debates, and was therefore unable to reverse PASOK's fate in time for the upcoming election. During the shift in PASOK leadership, ND dialogue focused heavily on social fatigue resulting from PASOK's long tenure of power (Pappas and Dinas 2006). ND regained power in 2004. During this time, 0.9% of asylum claims were approved in 2004; EU member state average for the approval of claims was at 26.4%. In all of 2005, only two asylum claims were granted at first instance; denied claims included those initiated by medically certified torture survivors (UNHCR 2006b).

Up to this point, both mainstream parties had addressed immigration solely as a security issue, and border controls were advocated as the sole response to immigration issues by both parties. The border control dialogue itself became more centrist, with the more notable shift having taken place by members of the previously-right wing ND. Now in government, ND advanced the 2005 *Immigration Law*, which it framed in terms of ensuring "equal participation of migrants in economic development" (Hellenic Parliament 2005, p. 650; translated in Karamanidou 2015). The *Immigration Law* provided an opportunity for undocumented entrants to access asylum protection mechanisms provided that they could prove that they had entered Greece prior to December 31, 2004. The law also incorporated EU directives regarding family reunification and long-term resident immigrants (Migration Policy Institute 2012).

At the end of 2005, EC Council Directive 2005/85/EC articulated several items in partial response to Greek issues with managing its large number of claimants, as these were not being addressed in Greek domestic law. These include the following, as reported in the *Official Journal of the European Union* (2005):

Chapter 3, Section II, Article 26 – “A country can be considered to be a first country of asylum for a particular applicant if: a.) he/she has been recognized in that country as a refugee and he/she can still avail himself/herself of that protection; or, b.) he/she otherwise enjoys sufficient protection in that country, including benefitting from the principle of non-refoulement; provided that he/she will be readmitted to that country.”

Chapter 3, Section II, Article 27 – “Member states may apply the safe third country concept only where the competent authorities are satisfied that a person seeking asylum will be treated in accordance with the following principles in the third country concerned: b.) non-refoulement; c.) prohibition against cruel, inhuman, or degrading treatment as laid down in international law is respected.”

The goal was not to force Greece to comply with instruments of the *Convention* or the *Dublin Accord*; instead, the goal was to prepare other European states to address shortfalls in the Greek procedures, as no effort to correct these shortfalls was being taken by the Greek parliament.

In March 2006, UNHCR launched a campaign to highlight the difficulties of being an asylum seeker in Greece. The campaign focused on the difficulties that potential seekers face when trying to cross the border and to apply for asylum, the low number of asylum grants, and the lack of measures in place for the protection of vulnerable groups, such as women, children, torture survivors, and land-mine victims.

The situation in both of these countries clarifies the corresponding move within the model I develop in Chapter 2. In Austria, under the condition of top-down direction of influence, and providing support for the Ivarsflaten hypothesis, where a vocal elite argues that immigration and asylum are causal to a wide variety of perceived social ills, the electorate will take the cue. In Greece, where no such vocal elite existed, and under the condition of bottom-up influence, and where issues of immigration and asylum are not perceived as important as discrete issues, the elite face no pressure to respond with policy.

3. Election Results

The Austrian parliamentary election was held on October 1, 2006. At the end of a three-

month negotiation period, the two mainline parties, ÖVP and SPÖ, formed a grand coalition. Although ÖVP and SPÖ had both suffered losses in the number of parliamentary seats (with a loss of 13 seats previously held by ÖVP and one seat previously held by SPÖ) the two mainline parties together maintained 134 of 183 seats. Despite its increase of three seats, the FPÖ was excluded from government. However, anti-immigration and anti-asylum abuse remained important in the minds of voters, and both mainline parties had by this time incorporated aspects of the FPÖ agenda into their party programs. Although this would count by any metric as a left-shift in government, it is important to note that on issues of immigration and asylum, both the left- and right- members of the new government coalition had moved markedly to the right.

The Greek parliamentary election was held on September 16, 2007. ND won its second term of government with 41.83% of the vote despite its loss of 13 of parliamentary seats, followed by PASOK with 38.10% of the vote and its resulting loss of 15 parliamentary seats. Although immigration and asylum issues were not important to voters as discrete issues the increase in vote share for ND does constitute a right-move in government.

For Greece, as for all countries observed in this study for which the criteria set forth for the condition of top-down influence is not met, this measure is compounded for the purpose of the model with a measure of xenophobic sentiment, as captured in the Fourth Wave of the World Values Survey as outlined in Chapter 2. Xenophobic sentiment is measured by a question asking the respondent to identify those whom s/he would not wish to have as neighbors; percentages of those identifying “immigrants and foreign workers” are reported and calculated against Romania’s baseline of 21.8%. Greece did not participate in the Wave Four survey; I report the mean value of all observed states (at 13.8%) for Greece as for all states for which no survey data were available. This estimate is likely a conservative estimate for Greece, and as such, it poses no threat to the

logic of Greek placement on this measure within the model. In its 2007 report, “Racism and Xenophobia in the EU,” the European Agency for Fundamental Rights reports that from 2005-2006, the Greek Ombudsman had “received a substantial number of complaints,” and that of this number in 2005, 47% concerned discrimination on racial or ethnic origin, and that of this number in 2006, 45% concerned discrimination on racial or ethnic origin (EAFR 2007).

Due to the right shift, either in policy advocacy in Austria or in party movement in Greece, and because the country’s holder of a value at or above the mean value of xenophobic sentiment reported for Greece under its condition of bottom-up influence, both states move on to take calculations and collect utilities at subsequent nodes.

4. Following Through with Policy

Following Austria’s 2006 election, the SPÖ-ÖVP grand coalition took control of government. Although both parties had implemented aspects of the FPÖ program into their own programs as they related to issues of immigration and asylum, it is important to note that during the entire first two years of the coalition (between the 2006 and 2008 elections), no new laws were introduced governing immigration or asylum policy. In fact, the period from late 2006 to late 2008 marks the only period during the entire decade in which asylum access was not further restricted. This may be attributed to the fact that during this period, the further-right ÖVP sought to distance itself from its history of cooperation with the FPÖ, and immigration and asylum had long been the issues that defined the FPÖ in the minds of Austrian voters. In 2007, Austria received 11,974 asylum applications; in 2008, Austria received 12,801 asylum applications.

By contrast, in the year of the ND victory in the Greek legislative election, Greece received 25,113 asylum applications, and in the following year, Greece received 19,884 applications (UNHCR 2009b). At this point in time, the process of applying for asylum in Greece involved

lining up outside the Attica Police Department to wait to plead the applicant's case for a first instance hearing. Up to 2000 people would line up outside the police department every Saturday waiting for one of an average of 20 interview slots. Many are reported to have stood in line every week for several months for the opportunity to file their claims and plead their cases for a first-instance hearing. If the applicant was to make it through the line to claim one of the 20 slots, the applicant was to provide a physical address in Greece – a problematic restriction due to the fact that the applicant may not have had the opportunity to have secured housing. Yet failure to provide an address created a situation in which it was impossible for the state to notify the claimant of developments in and deadlines for important procedural steps relating to his or her case; the system had built in no mechanism for dealing with this difficulty (UNHCR 2009b).

As of 2008, despite the *Convention*-mandated access to legal assistance for potential claimants, no provision for access to such assistance was legislated for first-instance hearings. The Greek government did recognize the need for the denied claimant to access legal assistance after an appeal of a negative decision had been filed, although there was no provision for funding this assistance at the state level. As a result, all legal aid not paid for by the applicant was provided free-of charge by NGOs (Karamanidou and Schuster 2012), with the largest share of assistance being provided by the International Committee of the Red Cross.

Creating an additional problem for Greece in dealing with high numbers of undocumented immigration is the allocation of Frontex resources to the Mediterranean Sea border with Europe. In practice, this has forced the majority of people fleeing and subsequently reaching Greek territory to enter through the country's land border with Turkey. Greek authorities have assumed the share of the land-border security work, and have largely ignored the *Convention*-mandated provision barring refoulement. Turning an applicant back across the Turkish border creates problems

stemming from the fact that Turkey, although a signatory to the 1951 *Convention*, has not adopted the 1967 *Protocol*. Importantly, the *Protocol* expanded the *Convention* definition of “asylee” to include potential claimants who are not fleeing war in Europe (originally narrowly conceived, following the end of and potential reemergence of hostilities after WWII) or protection based on tensions stemming from the Cold War (Karamanidou and Schuster 2012). Therefore, those sent back to Turkey are not recognized as holders of standing under the *Convention*, and no *Convention*-mandated protections are applied.

Beginning in March 2008, Amnesty International called on EU member states to invoke the “sovereignty clause” under Article 3.2 of the *Dublin Accord*. This clause allows for the prospect that a state may hear an asylum claim, even if such an examination is not the state’s legal responsibility under the *Accord*, for reasons that include circumventing the possibility that a transfer would result in the applicant’s treatment under unfair asylum procedures or reception conditions. As with the 2005 EC Council Directive, the aim of this call was to place pressure on other European states to address deficiencies in the Greek asylum procedure by allowing applicant access to their own domestic asylum procedures under the condition that the applicant had entered the community *Dublin Accord* signatory states through Greece.

Due to Austria’s selection as one of five states to have met the criteria for top-down direction of influence, the utility reported for its right-shift in policy advocacy at the previous node is duplicated at this node. For Greece, the optimal move strategy is calculated as a function of the percentage of the vote-eligible public employed in the public sector. Greece has demonstrated a history of fostering job growth through provisions that have expanded its bureaucratic and law enforcement institutions, and problems associated with asylum in Greece are due to the maintenance and subsequent understaffing of its police and bureaucratic procedures within the

increasingly overburdened and increasingly archaic net-emigration era asylum procedures. For these reasons, I hold that most viable potential benefit to Greece's increasingly centrist parties can be reaped through promises of addition staff to its already existing public service force. On this measure, a higher score is reported only for Sweden. Both states continue to collect utilities into the subsequent node.

5. Maintaining / Advancing the Party Line

Again at this node, Austria's SPÖ-ÖVP grand coalition maintains power; no new laws on asylum are passed during the two-year period between the 2006 and 2008 elections. However, sensing both the increasing salience of questions relating to the presence of the outsider within Austria's borders and the lack of dialogue being advanced by the SPÖ and the ÖVP in answer to still-rising public concern on the matter, the FPÖ successor party, BZÖ (Alliance for the Future of Austria) begins to step up its rhetoric on issues of asylum.

Headed by Jörg Haider, the BZÖ assumed the FPÖ position in coalition with the ÖVP in 2005 for its last year in government. The party had moderated its nativist views following Haider's death in an automobile accident only weeks after the 2006 election, but later took advantage of the new government coalition's lack of response to mass concerns over the presence of the asylum seeker in Austria. BZÖ rhetoric on asylum took a turn even more public and blatant than predecessor party FPÖ rhetoric had taken with the run-up to Austria's 2008 election; this will be discussed in detail in the following section.

In Greece, the ND government issued Presidential Decree 90/2008. To address concerns raised by the EU in 2005 and by Amnesty International earlier in 2008, this decree proclaimed that the Aliens' Directorates of Attica (Athens) and Thessaloniki, the security departments at all of the country's airports, and Police Directorates within each of the country's 53 counties had now been staffed, trained, and judged "competent ... to receive and register asylum claims" (*Presidential*

Decree 90/2008, quoted in UNHCR 2009b). However, it remained nearly impossible for a potential applicant to file a claim outside of Athens. Sea and land entry points and most police departments remained unstaffed or understaffed, and the Aliens' Directorates remained practically inaccessible to potential claimants, as many had no information on how to reach the relevant Directorates. The Athens airport was staffed with those competent to initiate the asylum claims procedure, but no interpretation services or legal counsel were provided. In practice, nearly 90% of all claims following the Presidential Decree were still to be filed with the Attica Police Department (UNHCR 2009b).

For Austria, the utility reported in the previous two nodes is duplicated at the current node. For Greece, the utility reported is calculated as a second function of the impetus to create jobs within the newly expanded bureaucratic and law enforcement mechanism. As I outline in Chapter 2, because the most saleable benefit for the expansion of these mechanisms is its capacity to create jobs, Greece collects a utility calculated as a function of its mean observed unemployment level for the two-year interim between the two election cycles observed. Among the 12 states still remaining to take decisions at this node under the condition of bottom-up influence, only the Dominican Republic reports a mean unemployment level higher than that observed in Greece. Both Austria and Greece continue to collect utilities into the final node.

6. Keep The Rule Makers in Office?

In the run-up to the 2008 election, the most vocal proponent of anti-asylum seeker sentiment was the FPÖ splinter party, the BZÖ. The BZÖ circulated its own campaign capitalizing on the lack of government attention to issues of asylum during the two-year period of the SPÖ-ÖVP grand coalition (Richardson and Wodak 2009). Examples are seen in Figures 6 and 7, below.

In part as a result of this campaign, the BZÖ won a greater increase in parliamentary seats

than any other party for the September 28, 2008 election. The only other party to experience an increase in seats was a newly reimagined FPÖ. The SPÖ received only 29.26% of the vote share, resulting in a loss of 11 seats in parliament; the ÖVP received only 25.98% of the vote, resulting in the loss of 15 seats in parliament. Although the SPÖ-ÖVP coalition remained in government following the election, the result of the vote was read widely by media observers and political pundits as a referendum on anti-immigration and anti-asylum policy, which the far right had won. The government coalition would use this perceived mandate to further complicate asylum access throughout its term in office, as I discuss in the following section.



Figure 6. “We are cleansing Graz!” Peter Westenthaler & Gerald Grosz. They are cleansing Graz of “political corruption,” “asylum abuse,” “beggars,” and “foreign criminality” (Translation in Richardson and Wodak).



Figure 7. A man named as Amir Z is labeled as “asylum seeker and drug dealer.” Quoted as saying “Please do not vote for the BZÖ because I would like to continue with my business dealings” (Translation in Richardson and Wodak).

In Greece, PASOK replaced ND in government with an absolute but narrow majority in parliamentary seats in what was judged to be a landslide election (Kovras 2009). PASOK won all 13 Greek regions and won an increase of 58 seats in parliament, having earned 43.92% of the vote. ND was popularly seen by this time as highly corrupt, and as a result, lost 61 seats in parliament, having earned only 33.47% of the vote.

In the preceding sections, I have led the reader through the Chapter 2 model with reference to two countries for which the configuration of compliance institutions is most strongly predicted to permit an understanding of asylum outcomes, specifically as these outcomes are understood through the median applicant wait time to final status determination. In both Austria and Greece, these institutions have been constructed or maintained with the end of instrumental cost evasion through the incrementalizing of progress toward the normative goal enumerated within the *Convention*. I have recast many of the input factors previously held as causal to the distribution of pending asylum claims as markers of structure and potentially useful toward answers to questions

of where the institution should matter. Then in subsequent sections, I have outlined the domestic political environments within these two states in order to lend clarity to the model as it addresses a second question – *how* should the institution matter? Through each point along this second dimension of analysis, I have shown how the time-specific debate (in Austria) or non-debate (in Greece) has played out to inform the conclusion that elites within both states have avoided cost through two separate means – instrumental *action* in Austria, and instrumental *inaction* in Greece. In the following section, I discuss developments as they have occurred in both focus countries following the second observed election cycle.

After the Elections: Continued Problems in Austria and Greece

Austria. Following the BZÖ campaign and the rise of the radical right element as a result of the 2008 election, in February 2009, UNHCR launched a campaign to debunk myths about asylum seekers. With the aim to show the helplessness of those who had been forced to flee to Austria, this campaign set out to popularize the slogan “Flucht ist nie freiwillig” (Fleeing is never voluntary; translation in UNHCR press release.) This campaign made use of a 25-second spot, which aired widely on television and radio and was screened in cinemas and during a soccer match in Salzburg. Cards carrying the slogan were distributed across university campuses and in campus-area bars throughout Austria, and billboards displaying the slogan were employed across the country. The campaign ran from mid-February through the end of March 2009 (UNHCR 2009).

In 2010, Austrian police hired officers and assigned to them the sole task of tracking down immigrants and asylum seekers thought to be illegally claiming humanitarian protection. These officers received special training with regard to the conduct of nighttime raids on refugee centers and buildings known to house asylum seekers. To justify the program, ÖVP Interior Minister Maria Fekter is quoted as follows:

“Some of them are operating illegal vehicle workshops. There are some who have registered dozens of vehicles. And so we are investigating the details to see if these people really require aid” (Translation in Skyring).

Fekter estimates the cost of providing basic necessities for the country’s asylum seekers at €100-million (roughly equivalent to US\$ 130-million) per year (Skyring 2010).

I close discussion of Austria with a note on case #S11 408.911/2009/3E (Austrian Asylum Court 2009). Although this discussion is clearly anecdotal, its inclusion here suggests and clearly highlights problems in normative compliance inherent to the Austrian asylum system insofar these problems result from increasing complexities to Austrian investigative, bureaucratic, and judicial processes.

The Austrian Asylum Court heard the appeal of a Chechen applicant and his family who were seeking asylum protection from Russia. The husband’s case had been ordered by the Federal Asylum Office to be out of its scope and demanded the applicant’s case transferred to Poland, while the same ruling had demanded that the case involving the applicant’s wife and two children be transferred to the Czech Republic. The Court’s ruling noted that the bureaucratic mechanisms in place for investigating the husband’s case separately from that of the rest of his family based on their dates of entry to Austria were inadequate and conducted in an arbitrary manner, that the separate determinations were based on investigations conducted by bodies that did not consult with each other during the period of investigation, and that the Asylum Office ruling violated binding EU principles of family maintenance and reunification procedures with regard to asylum seekers.

Following the court’s ruling, the decision on the applicants’ case was remanded to the Federal Asylum Office. Here, the Asylum Office demanded that the husband prove that he was the biological father of his two children by submitting the three to a DNA test; this test was to be

paid for at the husband's expense. The husband appealed this decision, claiming that he did not have the €1000 needed to pay for the test. This appeal was denied. By the time the husband had collected enough money to pay for the test, his wife and two children had already been deported to the Czech Republic. After the tests were conducted (at an even greater expense, due to the distance between the husband and his children), it was determined that the two children were biologically his own, and the wife and children were permitted to return to Austria to initiate a new asylum claim.

This new claim was denied by the Federal Asylum Office, and the decision was again appealed to the Asylum Court. On appeal in the summer of 2012, the family was recognized as asylees in Austria. In total, the procedure from first hearing to final hearing included eight series of interviews, three appeals, three deportation orders, eight separate decisions issued by the Federal Asylum Office, and eight separate decisions issued by the Asylum Court.

Greece. At the end of 2009, the newly elected PASOK government acknowledged problems in processing claims and announced that changes would be necessary. Among the proposed plans were to be the eventual transfer of the decision procedure from the hands of local police departments to the Central Asylum Service (Amnesty International 2010a). This new bureaucracy would only become established in late 2011. Among the changes to be implemented immediately was the abolition of the Independent Asylum Appeals Board and its replacement with a judicial review process before the Council of State. Judicial decisions were merely advisory opinions, pending official decision to be issued following a review of the proceeding by the office of the Alternate Minister of Public Order.

Procedurally, little has changed in Greece. In 2015, the Central Asylum Office implemented a new system that replaced the requirement that the potential asylee wait outside a

local police department for a first-instance claim evaluation with a system that relies on Skype to conduct these evaluations with the office's own representatives. However, access is problematic, and the system itself is understaffed and insufficiently funded (Owens 2016). Internet service is not provided at refugee housing centers; instead, those wishing to keep their appointments for evaluation are given directions to an access point which is, in some cases, over an hour away from where the potential asylee is living. As of May 2016, there are reports of seekers receiving busy signals or waiting on hold for hours at a time to have their initial claims evaluated.

Conclusion: Polar Ideal Types and the Domestic Politics of Cost Evasion

States will perceive that any compliance mechanism to be written into domestic law will carry real and significant costs to the state under three conditions. Where these conditions are met, the content of the state-instituted rules will display the greatest effect on outcomes. First, the rule to be constructed, maintained, and enforced will be more likely to carry real costs because states will be more able to or will be more likely be called on to pay any costs to be associated with the rule. The rule building process itself cannot be used to communicate costless signals because within these states, it is understood that the states will inevitably be forced to pay whatever costs they promise to pay. Second, these costs will be paid to higher numbers in-migrants in states hosting lower ratios of entrants whose presence had not been previously negotiated by UNHCR or other human rights bodies to those whose presence within the country had been either documented or negotiated by these bodies. Third, these costs will be paid over longer periods of time as applicants appeal negative decisions, fight deportation orders, and continue to access state resources while residing in these countries. Given that these states can be understood to have erected institutions informed by the expectation that the outcomes of the rule-building process

would carry real costs, elites are shown to have implemented procedures that would display measurable effects on the length of time to final status determination.

Through the cases of Austria and Greece, I have elucidated the conditions under which the tactic of cost avoidance through an increase in the effective length of time to final status determination can be understood as the most likely course of action in creating, maintaining, and enforcing a state's domestic compliance institutions. These two states exemplify two opposing means of evading cost: instrumental *action* in Austria, and instrumental *inaction* in Greece. Austria has revised its policies numerous times, particularly over the course of the 2000s. These revisions have had the effect of further complicating processes that the potential asylee must undertake, while subsequently permitting suspensive effect on negative decisions and effectively losing many claimants within webs of bureaucratic and judicial processes. In short, Austria was forced to take *action* in order to accomplish these ends, and its domestic political environment facilitated this action. Greece, by contrast, has maintained and further embedded aspects of its net-emigration era system; no action was necessary, and its domestic political environment encouraged this lack of action. Policies regarding the processing of forced migrants were judged not to be particularly salient to Greek voters as discrete issues, and at the same time, both of the main parties are noted to have engaged in race-to-the-center politics during the period of time under consideration. In this environment, instrumental *inaction* is shown to have proven less costly to elites who have been able to retain and strengthen political power by two means: by not explicitly advocating change or addressing the lack of change to the net-emigration era system, and by assigning culpability for the country's high number of potential asylees on the process of EU liberalization and the opposing party's complicity with EU mandated liberalization processes.

Through an understanding of these two poles of cost-evasive behavior, I suggest that future

research will be better able to abstract, measure, and predict practices undertaken toward the goal of cost avoidance on issues of *Convention* implementation, maintenance, and enforcement. Among states seeking to avoid anticipated costs specifically related to issues of compliance, to which mode of cost-evasive behavior will the state comply more fully? Will the greater output of a state's work be better understood through the instrumental enactment of procedures resulting to greater complicate processes that the median applicant must undertake, or will the greater output of a state's work be better understood through the instrumental reliance on strengthening and further embedding existing, yet demonstrably ineffective compliance mechanisms?

CHAPTER 4 – COST ACCEPTANCE AND EXPEDIENT GAINS: INSTRUMENTALIZING PRESSURES FROM THE OUTSIDE VS. PRESSURES FROM THE INSIDE

With the previous chapter, I have discussed the workings of the Chapter 2 model as they relate to two countries for which institutional output is suggested to display measurable effects on the length of time to final status determination for the median applicant awaiting decision on an asylum claim. In Austria and Greece, the more intuitive scenario – cost avoidance – is observed through the construction, maintenance, and enforcement of implementing procedures that have served to lengthen applicant wait to final status determination. The outcome is the diminishment of the effective cost to be paid by the state, and achievement of this effect is demonstrated to have taken form through the implementation of two discrete modes of state behavior – instrumental action in Austria, and instrumental inaction in Greece.

With this chapter, the aim is to present the workings of calculations taken toward the achievement of the opposite effect. Where it is understood that the state's institutional output will prove predictive of the number of pending asylum claims within the host state, but elites within the host state perceive neither the political will nor the practical ability to decrease future payout on costs relating to asylum, elites may seek opportunities to instrumentalize pressures on other issues toward the achievement of policy that results in the reduction of applicant wait time to final status determination. Through action to address these pressures, losses to be assumed through the payout of higher costs on asylum processing may be taken instrumentally toward goals that are necessary to achieve greater legitimacy for elites in the struggle to maintain policy influence and electoral power.

Because the end goal of elites acting under the condition that the avoidance of cost will be impractical necessarily suggests the payout of greater costs, elite behavior must encourage this greater payout. Any decrease in median applicant wait time to final status determination to result

will be achieved through mechanisms that effectively expedite asylum processing. Because of this, instrumental *inaction* through the avoidance of dialogue and action on measures already in place, as observed in Greece in the previous chapter, will not be useful toward elite goals. Instead, the contrast I draw with this chapter involves types of *action* taken through the instrumental use and broadcast of calls to expedite asylum procedures from two discrete audiences – the international community, as I demonstrate through the case of Belgium, and the domestic electorate, as I demonstrate through the case of South Korea.

Belgium and South Korea: A Note on Case Selection

Toward the aim of cost acceptance, two discrete theoretical motivations may be observed. The first speaks to March and Olsen’s (1998) framework delineating differences in state action based on logics of appropriateness vs. expected consequences. Understood with reference to implementation of the *Refugee Convention* and its *Protocol*, I classify possible action resulting from motivation to accept cost because such action is seen as “virtuous,” and therefore, “need not attend to consequences, but ... [attends to] ethical dimensions, targets, and aspirations” (March and Olsen p.951), as an expression of a *second-order* preference – a preference that the decision maker “prefers to prefer.” For the purpose of this work, I hold that explanations of state action based on second-order preferences will prove less than useful to an understanding of where and how institutional output will be predictive of outcomes for two reasons. First, the possible use of institution building, implementation, and enforcement as an expression of “virtue” presupposes a sociological perspective that must be based on the identity of the individual state decision maker within the community of state decision makers. From this perspective, it becomes difficult, if not impossible, to reach generalizable conclusions applicable across large numbers of cases, where these cases are states that each hold a separate perception of self and of that self’s role in the

international community. Second, states to which this logic of appropriateness may apply most obviously to questions of asylum procedure are limited to the cases of Norway and Sweden. The laws of both states have long been held as the historical exemplars of humanitarianism in terms of asylum provision, yet the relevant codes within these states predate the point in time that begins this study.

For this reason, I observe two state cases that I classify under the second possible theoretical motivation – the perceived instrumentally inherent to the nesting of acceptance of the full potential cost of *Convention* compliance within the overall game of electoral survival, as such action may be used toward the achievement of greater legitimacy, either on the international stage or within the domestic electorate. Observation and explication of state cases acting as if in response to this second motivation provides two practical benefits. First, I am able to use the configuration of instruments common to the relevant Norwegian and Swedish legislations as a conceptual constant. This permits the opportunity to explicate the adoption of similar instruments into the state's domestic legislation in cases where a logic of appropriateness may not necessarily be assumed based on the ideational conditions that preceded their implementation. Second, I am able to observe state-specific structural and ideational conditions leading up to the passage of the relevant domestic implementing procedures as these conditions unfolded during the temporal frame observed in this study. I narrate the domestic structural and political conditions of two countries that I hold to adhere to this second motivation – Belgium and South Korea.

Of the 44 states considered within this study, the likelihood of implementing cost-acceptant strategies that will prove predictive of length of time to final status determination is suggested most strongly within four states: Belgium, Norway, Sweden, and South Korea. This is shown in Chapter 2, Figure 5. Because analysis of Norway and Sweden will prove impractical toward the

creation of generalizable precepts addressing questions of the two concepts fundamental to this work – where and how should institutional output matter to outcomes – I have chosen to focus on the institutional output of Belgium and South Korea. In contrast to the cases of Greece and Austria, discussed in the previous chapter, and of Chile and the United Kingdom, to be discussed in the following chapter, the relevant institutions within Belgium and South Korea were encoded and assumed force following the first pre-2010 election cycle within the two focus states. However, the conditions that have led to the suggestion that elites within these two states would seek opportunities to instrumentalize the implementation of cost-acceptant institutions are readily observable during the temporal frame encompassed in this study. For this reason, sections narrating state placement on the Chapter 2 model will not address the institutional output of Belgium and South Korea. Instead, these sections will address structural and ideational conditions as they are useful to understand the prediction that Belgium and South Korea would seek to adopt cost-acceptant compliance institutions *at a later point in time*. Following the explication of conditions that have converged to inform this prediction within both states, I address the cost-acceptant institutional output of these two states in a separate section.

To follow, I present the theoretical framework that guides the remainder of the current chapter and establishes the conditions necessary to suggest that elites within both Belgium and South Korea will implement cost-acceptant strategies toward the condition of full compliance with the *Refugee Convention* and its *Protocol*. How and why should we expect that elites will gain electorally from moves to accept the full potential cost of asylum processing, as opposed to moves to avoid these costs?

Cost Acceptance and Rationality

Fundamental to works employing a rational-choice approach toward the abstraction of

causal mechanisms is the assumption that rational decision makers will act so as to avoid cost *on some level*. Putnam (1988) addresses the difficulty in predicting the stage on which elected rule makers will choose to avoid cost on issues of international agreements. Putnam focuses specifically on the role of negotiators who are playing to two audiences simultaneously. Domestically, these negotiators must answer to pressure groups who are attempting to protect their own interests against the interests of other parties, while internationally, these negotiators must answer to actors who are negotiating on the behalf of other states with their own domestic audiences. Here, gains to be realized at one negotiating table are often characterized as losses at the other. In this environment, the actor will seek to gain the largest “win set” – the outcome that will effect the lowest overall cost to the state, given the necessity of taking smaller losses in order to achieve a final agreement with players acting under the same calculus in the representation of other states.

Tsebelis (1990) also considers the zero-sum nature of gains to be made as negotiators appear at separate game boards, albeit at the domestic level. For Tsebelis, however, these games exist within hierarchies that may not be readily apparent to the outside observer. Unlike the Putnam argument, which suggests that the larger win set will necessarily result from moves to preserve overall gains on the part of one specific constituency (the domestic), Tsebelis suggests that the audience for whom the actor must preserve the largest win set is highly variable, and this variation may be understood through means that are predictable on the basis of measures of the strengths of the constituent group. In short, based on measurable input factors relating to the efficacy, relevance, and ultimate importance of competing constituent groups, some games will be perceived as “larger” than others, and smaller games will be perceived as “nested” within these larger games. Under this condition, players will take action to secure gains on the larger game

board, and this action may necessarily entail taking losses on the smaller game board.

The theoretic argument I draw with this chapter borrows from aspects of both the Putnam argument and the Tsebelis argument. Following Putnam, I hold that the largest win set will be interpreted from gains achieved on the part of the domestic audience, as opposed to the international audience. This holds in the case of *Convention* compliance because the international agreement serves as a temporal prior to the drafting of its domestic implementing legislation within each signatory state; the negotiator is not playing to two audiences simultaneously. While the decision maker (here, conceptualized as the state) must comply with the mandates to which the state has accepted responsibility and oversight, the decision maker is not engaged in a concurrent process of negotiating the terms of the international normative standard. Therefore, all conceivable games of relevance are not games played simultaneously between the negotiator and either the international or the domestic constituent group, but are games played between elites and electorates within the state. Following Tsebelis, I hold that among cases where the configuration of structural inputs is sufficient to permit the prediction that the content of the institution will allow insight into observed outcomes, measurable phenomena will permit determination of which domestic game is “larger,” and which domestic game is “nested” within the larger game.

Within these states, the model I develop in Chapter 2 allows for the possibility of two separate “larger” games. In Chapter 3, I use the cases of Austria and Greece to explicate the scenario that unfolds as the more intuitive and more frequently observed larger game plays out. Here, the game entails the instrumental incrementalization of gains toward the normative standard in order to satisfy the condition of full *Convention* compliance while avoiding its full potential cost. In this chapter, I use the cases of Belgium and South Korea to explicate the scenario that unfolds as a comparatively less frequently observed scenario plays out. In these cases, the larger

game entails the securing for elites an increased perception of legitimacy through the expedition of gains toward the normative standard. This is achieved through losses taken in the smaller, “nested” game of forging compliance institutions through the instrumental acceptance of cost.

The phenomenon I measure in order to permit determination of the type of game in which the state actor is more pragmatically invested (i.e., the larger game) is the perceived ability on the part of the state to expand its procedural mechanisms to accommodate or to further embed instruments that will permit the state to avoid the full potential cost of compliance. Cases in which states have taken decisions in such a manner as if to suggest perception of the *ability* to avoid cost are discussed in Chapter 3; cases in which states have taken decisions as if suggest perception of the *inability* to avoid cost are discussed in this chapter.

The goal I undertake with this chapter is the identification of means through which elites who will be unable to avoid cost may be understood to have nested the game of *Convention* compliance within the larger game of electoral survival. Where elites may perceive a practical inability to avoid costs, yet the issue of costs to be paid by the state is sufficiently salient to suggest that domestic electorates may call elite stewardship of public funds into question, elites may frame the increased expenditure as necessary toward the achievement of other, more important gains. Alternatively, where the issue of increased costs is neither controversial nor important to electorates, but the call to increase costs has been long, yet unsuccessfully advocated on humanitarian grounds, the impetus to remain in power may lead elites who are concerned with making humanitarian gains to seek the opportunity to frame the increase of cost on asylum processing as beneficial to the electorate toward other, more salient issues. I demonstrate the workings of this first scenario through the case of Belgium; I demonstrate the workings of this second scenario through the case of South Korea.

Importantly for the purpose of this chapter, the framework I present with this work considers increased costs exclusively as funds are expended toward the processing of applicants whose claims remain pending. In investing state funds toward claimant housing, translation services, medical benefits, legal assistance, and general welfare aid, the state creates and actively encourages a condition under which it faces financial pressure to decide asylum claims quickly. Importantly, moves to invest in claimant processing do not suggest that the state undertaking these investments will be more likely to approve asylum claims or less likely to deport denied claimants following the exhaustion of all permitted appeals. As I note in Chapter 1, legal decisions on asylum claims must be issued on a case-by-case basis, and therefore, individual rulings fall outside the purview of legislative action.³³ Therefore, reference to action toward gains made to advance the normative standard are not to be understood to imply “generosity” toward the individual escapee, but merely to address gains made toward efficiency in processing claimants and improvement in treatment of those with claims awaiting final ruling.

To follow, I present a brief history as it is useful to understand the domestic backdrops against which debates surrounding the adoption of cost acceptant institutions had started to take shape in both Belgium and South Korea at the point in time that begins this study.

A Short History of Forced Migration in Belgium

For nearly a century, Belgium has retained a status of net-immigration. Occupied by Germany for nearly the entire course of WWI, the country suffered devastating losses in both life and infrastructure. Throughout this period, Belgians attempted to flee (most notably, to the United Kingdom), yet the large numbers of occupying troops and support personnel exceeded the number

³³ As I discuss in the previous chapter in the case of Austria, legislatures may take action to raise the legal burden necessary for the claimant to establish a case for asylum. Actions of this type are taken infrequently within democratic states, and of the focus countries I consider with this work, only Austria has taken this type of action during the time period considered with this study. For similar actions taken in Australia and Canada, see Mountz (2010).

of Belgians who were able to make their way out of the country. With the end of WWI and the exit of German workers, the newly restored government engaged in active recruitment of immigrant laborers, both for the purpose of rebuilding and repairing lost infrastructure, and for the purpose of reestablishing the coal and steel mining industries in Wallonia. Having suffered such great losses during WWI, the Belgian government established a policy of neutrality with the onset of WWII. During the first seven months following the Nazi invasion of Poland and subsequent declarations of war against Germany by France and the United Kingdom, nearly 28,000 German Jews fled to Belgium (Jewish Virtual Library, n.d.). However, the peace hoped for through the declaration of Belgian neutrality was realized only briefly, as Germany would once again occupy the Belgian territory in May 1940.

After even more significant losses to life and property experienced in WWII, Belgium was again in need of laborers. Beginning in the 1950s, the Belgian government actively recruited immigrant workers from Greece, Portugal and Spain. With the rebuilding facilitated by the Southern European immigrants, Belgium began to experience a significant economic boon, which mandated calls for even more immigrant workers. Moroccan and Turkish workers began to settle in the country, and over the course of the 1960s, the number of migrants, especially those from Morocco, incrementally increased. By 1970, more Moroccan laborers than Southern European immigrants were present within Belgium. In 1974, the government stopped recruiting workers. However, it became clear that the majority of those whom the government had brought to the country to work were not intent on returning, and that most had effectively established new lives in the country. The ease of gaining Belgian citizenship encouraged permanent settlement, and the influx of immigrants continued as liberal reunification procedures permitted recruited workers to reunite their families within Belgium (Vangoidsenhoven and Pilet 2015).

Until this point, despite having long been a country of net immigration, few accessed asylum protection within Belgium. Entry to the country and to the workforce was easy due to government efforts to recruit outsiders, and on this basis, practical need on the part of immigrants to invoke Belgian legislative provisions for entry as asylum seekers was rarely realized.

By the 1970s, Belgium had begun to establish a reputation on the international stage as a country of *negotiated* entry. Under the condition of negotiated entry, a government commits to take in a set number of refugees fleeing from a specific country; on behalf of these refugees, no individual asylum claims must be initiated or heard, and protections under the *Refugee Convention* are not invoked. In 1972, 400 Asians were resettled following their expulsion from Amin's Uganda. In 1973, 1,100 Chileans fleeing Pinochet's Chile were admitted, and in 1975, 2,500 boat people from Vietnam and Cambodia were resettled. This pattern of encouraging negotiated entry to Belgian territory continued into the 1990s. The government resettled 200 Bosnians in 1992, and 1,200 Kosovars in 1999 (Resettlement Belgium, n.d.). Belgium's actions to take in disproportionately large numbers negotiated entrants, coupled with its history of highly liberal immigration procedures, created a situation in which the country's system for processing individual asylum claims remained underutilized and largely untested into the early 2000s.

A Short History of Forced Migration in South Korea

Deutsche Welle (2014) notes that East Asian countries tend to display highly restrictionist interpretations of the *Refugee Convention*. South Korea is no exception to this trend. The nearest net refugee sending state, North Korea, is treated under all domestic law as an occupied territory of the Korean Republic, and because of this, potential asylees may exercise no claim to standing under the terms of the *Convention*. At the same time, claims on the behalf of those fleeing China are almost invariably denied. Because of the potential for interpretation of a broadcast of the

Chinese regime's illegitimacy following possible Korean grants of refuge from those escaping China, Lee (2010) attributes this trend to the fear on the part of Korean lawmakers that diplomatic relations will suffer. As a result of both the lack of standing afforded to North Korean escapees and the knowledge that South Korean courts regularly deny claims on the behalf of Chinese escapees, Chinese and North Koreans are noted to defect in large numbers to other states, including Thailand, Mongolia, and Myanmar, as transit countries, and to access South Korean territory on the basis of having fled these third states (Park 2004).

Relative to the other focus countries considered in this study, recognition of the right to take political flight to South Korea is a new phenomenon. South Korea did not accede to the *Refugee Convention* until 1992, and its government did not process its first asylum claim or recognize its first refugee until 1994. In a 2014 interview, University of London Associate Professor Kristin Surak attributes the closed nature of East Asian state borders to asylum seekers to historical factors: "These countries keep their doors largely closed because they didn't respond to the after-effects of World War II and genocide in the same way as their European counterparts when they were drafting the 1951 UN Refugee Convention" (Surak 2014, quoted in Deutsche Welle 2014).

Belgium and South Korea: Why Should the Institution Matter?

To follow, I lead the reader through a treatment of questions taken along the horizontal dimension of the Chapter 2 model. These questions are useful to understand the configuration of Belgian and South Korean inputs informing placement within structural hierarchies inherent to the community of states forging *Convention* compliance institutions. Similar to Austria and Greece in the previous chapter, state placement within these hierarchies permits the prediction that any

compliance institution to be drawn in Belgium and South Korea will be useful to an understanding of asylum outcomes as they relate to median applicant wait time to final status determination.

I use the decision at the first node to address the hierarchy inherent to the division of wealth among the 44 states observed with this study. For each state, I report a measure calculated as a function of its per-capita GNP during the year of the run-up to the first election cycle observed. State placement within this hierarchy is of use to determine a first measure of the degree to which decision makers may interpret that they will ultimately be called on to pay out on any costs that will be associated with the instruments to be embedded within the state's implementing legislation. For the purpose of the Chapter 2 model, I hold that richer states will interpret a greater likelihood that they will face calls to assume the full cost of any legislation to be drafted for two reasons. First, these states will be deemed more capable of paying out on the costs of any procedures instituted. Here, the possibility of compliance implementation toward the goal costless signaling will be greatly reduced. Second, because asylum applicants are more likely to make their way across the borders of comparatively wealthy states, states at the upper end of the hierarchy should expect to pay these costs on the behalf of greater numbers of claimants.

World Bank (2011) reports figure for Belgium at 2011 \$US 36,615, and for South Korea at 2011 \$US 27,269. The mean figure for all states observed is \$US 27,522. The Belgian measure on this indicator falls clearly at the upper end, while the South Korean measure falls just short of the mean. The difference between the measure for South Korea and the measure for New Zealand (the state registering the lowest figure above the mean) is \$US 507. Although this figure is useful to an understanding of decisions to be taken at further nodes, because I interpret no justifiable theoretical basis for differentiating states registering indicators just above the mean from those registering indicators just below the mean, I do not use this measure to create a binary that will

preclude the calculation of utilities on decisions at subsequent nodes for comparatively poorer states. For this reason, all states, including Belgium and South Korea, continue to take decisions on further questions.

For the second decision, I consider the hierarchy inherent to comparative levels of border openness among states observed. As a proxy for border openness, I employ a figure calculated as a function of the ratio of unnegotiated or otherwise undocumented immigrants to all immigrants counted within the state's territory. Figures used in the calculation of this measure are taken from UNHCR (2011) estimates during the year of the run-up to the first election cycle observed with this study. Where it is assumed based on the state's figure on this measure that the median asylum claimant may be present within the state's borders due to higher estimates of practical border openness, I hold that it is more likely that the state will be called on to pay out on the cost of any asylum processing procedure to be implemented.

Because only applicants who have entered a host state's territory under the condition of escape from past, current, or anticipated future persecution may claim access to *Convention* protection, and because those to whom this condition applies will rarely possess legal travel documentation, potential asylum applicants are almost invariably classified as illegal immigrants. In Belgium, 51.36% of all immigrants lacked documentation, while in South Korea, 67.55% of all immigrants lacked documentation. Based on these measures, I hold that state borders are sufficiently open to permit the possibility that a potential asylum applicant is likely to be able access Belgian and South Korean territory for the purpose of initiating a claim. For this reason, both states continue to take decisions on questions at future nodes.

For the next stratifying decision, I report a measure for each state as a function of its observed propensity to approve first-instance affirmative asylum claims. Where the majority of

asylum claims are denied (a condition that is met within all but four *Convention* signatory states observed in this study), the state will interpret greater costs to be associated with their compliance instruments. This holds because denied claimants will continue to engender payout of costs to the state as they access the state's asylum appeals process and state paid benefits during the period that the appeals process is pending.

Only 16.99% of all asylum claims were approved on first instance in Belgium, and only 18.21% of claims were approved on first instance in South Korea during the period under observation. For this reason, the rule makers within both states may take decisions on further questions as if informed by a strong likelihood that the median applicant will continue to access state resources over a longer period of time. The expectation of greater payout on the part of the state will greatly reduce the likelihood that the state will perceive the practical ability to enact compliance instruments toward the aim of costless signaling. Elites will expect to pay the cost of any rules they may enact, and they will expect that these costs may be demanded on behalf of up to 83% of all asylum applicants in Belgium and on behalf of up to 81% of all asylum applicants in South Korea.

For the final stratifying decision, states consider the costs that they may expect to stem from hosting the denied applicant. To calculate this measure, I adapt the procedure used toward the calculation of a similar measure by UNHCR in its annual Statistical Yearbooks. Both Belgium and South Korea register relatively low totals measured against the Greek baseline of 2.00 pending claims per \$US 1 GNP. The total number of individual claims pending decision is reported for Belgium at 0.52 per \$US 1 GNP, and for South Korea at 0.15 per \$US 1 GNP. These relatively low figures indicate that the domestic electorates within both states may be less likely to demand action on the part of the elite with reference to the presence of the asylum seeker within the host

state's borders.

Despite the seemingly low values of Belgian and South Korean indicators on this measure, it is important to note that of the 44 states considered with this study, only Canada and Austria register higher summed totals of utilities along the “where should the institution matter” dimension of analysis than the total reported for Belgium, and only 12 states register sums exceeding that reported for South Korea.

The Domestic Politics of Rule Construction: How Should the Institution Matter?

I use the following sections to explicate decisions taken by Belgium and South Korea along the vertical dimension of the Chapter 2 model. I demonstrate that the configuration of inputs on these decisions are useful toward an understanding of the condition that cost acceptance through institution building becomes a practical necessity. Under this condition, elites will perceive electoral benefit from opportunities to sell cost acceptant instruments through the instrumental use of calls to make gains on an issue of greater importance to popular view of elite legitimacy. As with the previous chapter, I begin with a section outlining the specific protections that Belgium and South Korea have agreed to uphold as *Convention* contracting states.

1. Belgium and South Korea at T₁: What Protections Have They Agreed to Uphold?

The temporal frame considered in this study begins with the run-up to the second pre-2010 legislative election within each state observed. For Belgium, I begin with the process leading up to the 2003 general election; for South Korea, I begin with the process leading up to the 2004 legislative election. At the relevant points in time, both Belgium and South Korea had signaled intent to comply with the terms of both the 1951 *Convention* and its 1967 *Protocol*.

Belgium was among the 26 states to present delegates at the drafting of the *Convention* and was among its 18 original signatory states. South Korea acceded to the *Convention* in December 1992. The instruments of the *Convention* were given force of law domestically in July 1953 in

Belgium and immediately upon accession in South Korea.³⁴At the time of domestic entry, both Belgium and South Korea communicated and registered reservations to specific items of text within the *Convention*.

The Belgian delegation registered a reservation in answer to Article 15, which mandates the right of refugees and asylees to form non-political and non-profit making associations and trade unions in a manner not to be differentiated from the most favorable relevant treatment granted to nationals of a foreign country living within the host state. The reservation notes that aliens are not granted striated levels of treatment under Belgian law, and that the association rights of refugees and asylees will be treated under the law as equal to all Belgian non-nationals. For this reason, Article 15 would not be understood to apply.

Belgium also registered a general reservation stipulating that the language “most favorable treatment,” as it is used throughout the *Convention* to apply to individual refugees would not be understood to extend to the country from which the applicant has fled. Belgium’s external relations with states from which refugees and asylees had fled would continue to be conducted in a manner completely independent of Belgium’s recognition or non-recognition of refugees and asylees from these states within its territory. Both this general reservation in answer to the use of the language on “most favorable treatment” and the reservation in answer to Article 15 concerning the right of assembly remain in effect throughout the period considered in this study.

The South Korean delegation registered a reservation in answer to the Article 7 language

³⁴ In South Korea, all international agreements become effectively binding immediately upon accession, and no domestic ratification procedure is necessary to effect the binding nature of the agreement. For this reason, in South Korea, all international agreements fall under within a category commonly referred to in the international law literature as “self-implementing.” For the purpose of this work, I employ modified definitions of “self-implementation” and “non-self-implementation.” Here, I discuss “non-self-implementation” as the condition under which domestic legislation is necessary, not for the instruments of the treaty to assume force of law, but for the terms of the treaty to be carried out domestically. This is important to the current work because of the extensive scope of legislation demanded on the part of each signatory state to effect the condition of full compliance, as discussed in Chapter 1.

mandating refugee exemption from legislative reciprocity following a three-year period of residence. “Exemption from legislative reciprocity,” as it is used in the *Convention*, is used to refer to a possible condition in which non-nationals within the host state must be granted favored reciprocal conditions within other states per the terms of any current or future bilateral agreement between the host state and another state. The South Korean reservation noted that Article 7 would not be understood as binding. In the event of any future agreement between the government of South Korea and that of a second state that would grant favorable treatment of Korean non-nationals, to include rights to property, social security benefits, and copyright, while within the second state’s territory, no guarantee of this favorable treatment would be automatically extended to refugees following the three-year term of residence. Although this reservation remained in effect during the period of time that includes the legislative election cycle observed within this study, this reservation was officially withdrawn shortly after the 2008 legislative election, during the drafting of what would become South Korea’s 2010 *Refugee Act*.

2. Party Politics and the Ability to Shape Electorate Preferences

With the decision on the second question, I consider direction of influence. Both Belgium and South Korea are observed not to meet the Chapter 2 criteria established to permit imputation of further utilities based solely on electoral data. Under this condition of bottom-up influence, elites within both states are presumed to assume and to advocate for policy positions in a manner that attends to preferences that are already held within the voting public.

To follow, I outline the role of the public consciousness as it relates to future action on issues of asylum, insofar as this action had begun to take form at the point in time leading up to the 2003 Belgian general election and the 2004 South Korean legislative election. In Belgium, the long established far-right, nativist, anti-immigrant stances espoused by the Dutch speaking Vlaams

Blok (Flemish Block) and the French speaking Front National (National Front) had already resulted in an effective blockade against the possible entry of either party into any future governing coalition. Mainstream parties, as well as the Flemish and Walloon publics, recognized and largely dismissed nativist rhetoric as extremist and racist. At the same time, questions of asylum remained far outside the realm of legislative and popular consciousness, as the country's provisions for access under the terms of the *Convention* had been infrequently accessed due to liberal immigration laws that made entrant protection under the terms of the *Convention* practically unnecessary. By 2004, The South Korean government had begun to face calls by international human rights observers to assume a role of leadership among Asian states in forging and strengthening asylum protections. However, little political will to step into this role existed. As in Belgium, issues of asylum remained largely outside the scope of public debate.

Belgium. No treatment of the workings of political parties in Belgium would be complete, if even possible, without at least a note addressing the bifurcated nature of the Belgian party system. No political parties compete for votes in the federal parliament at the state level. Instead, parties compete either in Dutch-speaking Flanders or in French-speaking Wallonia, and parties representing both the Flemish and Walloon communities compete in the officially bilingual capital region that encompasses Brussels. As a dual result of the linguistic orientation of all parties and the effects of electing MPs on the basis of party lists, there exists a large number of politically relevant parties at any point in time, and divisions in voter support across these parties ensure that no single party will receive a majority of parliamentary seats. During the run-up to the 2003 legislative election, 11 parties held seats in the 150-member Chamber of Representatives, with no party claiming more than 25 Representatives. Therefore, all governments are coalition governments.

Anti-immigrant, nativist parties represented both the Flemish and the Walloon regions. The Flemish Vlaams Blok was formed in 1972, having splintered from the dominant Flemish regionalist party Volksunie. Coffé, Heyndels, and Vermeir (2007) attribute this split to the perception that Volksunie had begun to make an unacceptable number of concessions to the Francophone population. Throughout the 1980s, party leaders noted and were eager to imitate the success of parties in mobilizing large segments of the populations of France and the Netherlands based on anti-immigrant sentiment. Vlaams Blok came to adopt fiercely nativist rhetoric as an aspect integral to the broadcast of its Flemish nationalist identity. The party became increasingly defined by this rhetoric, and in the 1991 federal election Vlaams Blok won 10.3% of all Flemish votes, and as a result, won 2 seats in the Chamber of Representatives. Into the early 2000s, the party received increasing levels of support, albeit primarily in Flemish regional elections. The Walloon Front National was formed in 1985, espousing an ideology of unitary Belgian ultra-nationalism and strong anti-immigration sentiment. In the 1991 federal election, Front National also gained representation in parliament, with one Deputy assuming a seat in the lower chamber. Following the September 11, 2001 terrorist attacks in the United States, the party produced and distributed pamphlets that strongly implied that *all Muslims* were terrorists. Party leader Daniel Feret would later be convicted on the charge of inciting racism on the basis of this and other similar pamphlets. Due to the success of both extreme right parties, following the 1991 election, all remaining parties holding seats in the Chamber of Deputies entered into an agreement encoding their common commitment to exclude Vlaams Blok and Front National from any future government coalition. As a result, neither party has been represented in any subsequent governing coalition. Unlike in the case of the FPÖ - BZÖ in Austria, the party platforms themselves were effectively dismissed as racist, and mainstream parties did not come to adopt anti-immigrant

aspects of either far right party into their agendas during the period under observation. By contrast, immigration remained largely unaddressed as mainstream parties attempted to preempt possible influence of the far right parties on the electorate. For this reason, issues of asylum remained largely outside the public discourse.

South Korea. No anti-immigrant or nativist party has emerged in the history of a democratic South Korea, although fact this cannot be attributed to a lack of anti-immigrant or nativist sentiment. The South Korean party configuration has been characterized by comparatively minor differences among parties aligned with two primary camps, the conservative and the progressive, and only since the early 2000s have members of the electorate begun to interpret programmatic differences between the two camps (Wang 2012). Party platforms were not produced and made available to the voting public until 1997, and until the early 2000s, indicators of voters' places of birth remained the single most important factor in determining party support (Steinberg and Shin 2006).

Issues of immigration had not figured into the platforms of any party leading up to the 2004 general election, and dialogue on asylum did not appear in the legislative record until 2006. In its 2004 Country Operations Plan for the Republic of Korea, UNHCR outlined several reforms needed to the country's asylum system. Among these reforms were the improvement to asylum-seeker living conditions and claimant access to legal support. If the government were to achieve these reforms, South Korea would serve as a regional example in humanitarian protection toward asylum claimants (UNHCR 2004).

Prior to the 2004 election, in 2003, South Korea received its highest number of asylum claims since the government had begun processing claims only 9 years earlier. Still, despite the call by UNHCR to take action, the 139 claims processed was sufficiently small to suggest that no

popular mandate or political will existed to address political escape to South Korea within the legislature.

Because issues relating to immigration and asylum are noted to matter more strongly to elites and supporters of right parties (Weiner 1996), for the purpose of this study, where no anti-immigrant or nativist party is observed to exist, I observe parties of the political right. Specific to the case of South Korea, this criterion permits the tracking of the work of Hwang Woo-yea, former chair of the center-right Grand National Party (known since 2012 as the New Frontier Party), who was the first and most consistently vocal advocate in the National Assembly for the expansion of humanitarian protection to asylum claimants.

As I establish in Chapter 3, under the condition that ineffective asylum processing conditions are not present within a state, in order to avoid cost through the effective lengthening of time to the median applicant's final status determination, government policy must encourage action toward this goal. At the point of time that begins this study, both the Belgian and South Korean systems for processing asylum claimants remained largely untested. Furthermore, the lack of political will to implement action toward the avoidance of cost is demonstrated through the mainstream Belgian party efforts to effectively remove asylum dialogue from the public discourse as part of the effort to silence the Vlaams Blok and the Front National and through the absence of Grand National Party response to UNHCR calls to action based on the virtual unawareness of related issues among the South Korean electorate. These two conditions – the untested nature of the asylum processing system and the lack of will to take instrumental action on issues of asylum – establish a first step toward an understanding of the prediction that Belgium and South Korea will interpret a practical inability to avoid the full potential cost of *Convention* compliance.

3. Election Results

The Belgian federal election was held on May 18, 2003. Vlaams Blok increased its vote share, winning 11.59% of the popular vote. This resulted in an increase of three seats in the 150-member Chamber of Deputies, for a total of 18. Front National also increased its vote share, winning 1.98% of the popular vote. Because this total amounted to more than 5% of the Walloon vote, Front National was able to retain its one seat in the lower chamber. The grand coalition, incorporating parties represented within the liberal, socialist, and green blocs, remained largely unchanged in terms of party composition, although the left parties significantly increased their vote share. After a brief negotiation period, new grand coalition government took office in July 2003. As a result of the cordon sanitaire, both far right parties remained excluded from the government coalition.

The April 15, 2004 legislative election in South Korea marked the first point since South Korea's return to functional democracy that a center-left party had won a majority in the country's 299-member National Assembly. The Uri party won 152 seats, increasing the vote share won in the 2000 legislative election by its predecessor party, the Millennium Democratic Party, by 102. The conservative Grand National Party lost 16 seats, to retain 121 in the National Assembly.

Whereas decisions taken by Belgium and South Korea at the previous node speak to the lack of perception of political will to take action on questions of asylum, decisions taken at the current node suggest a lack of perception to take action that is unfriendly to the asylum seeker. Again following Weiner (1996), I propose that the overall left gains in both states serve as a second indicator that the government will not seek to take moves toward the avoidance of cost toward the normative standard.

4. Following Through with Policy

The measure at the fourth node considers the question of whether the state will interpret the practical ability to take action toward the expansion of its bureaucratic mechanisms in order to avoid cost of compliance by effectively increasing the median applicant's wait time to final status determination. Through treatment of previous decisions taken along the "how should the institution matter" dimension of analysis, I have demonstrated the lack of political will in both Belgium and South Korea to take the necessary action toward this goal. To follow, I demonstrate that such action was not only unnecessary to elite political survival, but that it would also be read as pragmatically untenable.

The question at hand serves to gauge the perceived ability on the part of the government to practically lose the potential asylum applicant within ever-increasing webs of bureaucratic processing mechanisms. As I have shown in Chapter 3, this condition was met within both Austria and Greece. Here, I address how and why Belgium and South Korea are shown to have acted as if under the contrary expectation.

Dahlström, Lapuente, and Teorell (2010) collect data on bureaucratic functioning within 58 countries in order to measure public administrations according to their degree of Weberianism. Weber (1915, translated in Parsons 1947) notes six defining principles of the ideal typical bureaucracy: job specialization, formal hierarchical structure, management according formal rules, impersonality, and career orientation. Dahlström, Lapuente, and Teorell propose that a comparative view of bureaucratic structures leads to the unavoidable conclusion that public administrations cannot be viewed as simply "more" or "less" Weberian because public sector employment within many countries adheres strongly to some criteria, but not to others. These criteria may be understood to coalesce along two separate dimensions of the idealized Weberian

bureaucracy: the “open vs. closed” dimension, and the “professional vs. politicized” dimension.

As important to the measure at this node of analysis, of the 58 countries included in the Dahlström, Lapuente, and Teorell study, only four register totals higher than those observed for South Korea on the measure of “closedness,” and only these four, plus South Korea, measure totals higher than Belgium. Measures of the closed nature of bureaucracy are based on expert surveys of policy and public administration specialists, and include indicators of hiring and advance as based most strictly on meritocratic principles and guarantees of life tenure for bureaucrats. Under these conditions, it will become far less likely that that the state will perceive the practical ability to use public sector employment to foster job growth for two reasons: it will be more difficult for members of the public to meet the standards for bureaucratic employment, and fewer bureaucrats will be expected to abandon their positions.³⁵

Moves taken by Belgium and South Korea on the first three stratifying decisions indicate, respectively, the states’ lack of political will to take *any* action on issues of asylum, the lack of popular mandate to implement procedures that may be judged as inhospitable to asylum seekers, and the presence of impediments sufficient to preclude the practical ability to take action to slow asylum processing. As for all states for which this third condition applies, I terminate the decision sequence for Belgium and South Korea.

After the Election: The Opportunity to Instrumentalize Calls to Cost Acceptance

With the previous sections, I have elucidated through the conditions under which *Compliance* institutions may be most strongly predictive of length of time to final status

³⁵ It is important to note at this point that Greece also registers a high score on the measure of bureaucratic closedness. However, the effect of this score is mediated by the fact that Greece also registers a score near the bottom of the bureaucratic professionalism scale, indicative of the fact that bureaucratic hiring and promotion decisions are often observed to be made toward political ends. Belgium and South Korea, by contrast, both register totals within the upper third of all states observed, indicative of the fact that hiring and promotion decisions within these states are made professionally, not politically.

determination, yet political will and practical inability to forge the types of mechanisms necessary to encourage longer asylum processing procedures are absent. To follow, I demonstrate how elites taking action as if under these two conditions may identify and respond to future stimuli in such a manner as to sell the *necessary acceptance* of cost as a *beneficial assumption* of cost, as such framing may be judged useful toward the ultimate aim of electoral survival. Within both focus countries, elites were able to identify calls to expand humanitarian protections. These calls to action were then instrumentalized in manners that permitted broad, cross-the-board support for the greater expenditure on asylum processing toward the goal of signaling greater legitimacy on the part of the elected rule makers. This legitimacy would be earned on two fronts. First, because actions taken to expand humanitarian protections incurred support across ideological lines, elites would perceive the ability to broadcast records of cross-party and cross-coalitional cooperation. Second, actions to accept and to exceed the full potential cost of compliance would be advocated on grounds that were more important to the country's reputation in the eyes of the international community (in Belgium) or to elite reputation in the eyes of the domestic electorate (in South Korea) than the issue of avoiding costs on asylum processing. Elites would then be able to cash in on this increased perception of legitimacy toward the ultimate goal of continued policy influence and electoral victory.

Belgium. On January 21, 2011, the European Court of Human Rights issued a ruling on Case no. 30696/09, *MSS v. Belgium and Greece* (ECHR 2011). This case had been lodged on behalf of an Afghan national (referred to in the decision under the name "Mr. M.S.S.," or simply "MSS") who had sought asylum protection within Belgium, but had been deported by Belgian authorities to Greece.

MSS had fled Kabul in early 2008. He had traveled through Iran and Turkey, entering the

European Union through Turkey's sea border with Greece. Eurodac authorities collected fingerprints and other information identifying MSS on his arrival on the Greek island on December 7, 2008. He was detained in Greece for one week, and upon his release, he was issued an order to leave the country. He did not apply for asylum in Greece.

MSS arrived in Belgium on February 10, 2009. Here, he presented himself to the Belgian Aliens Office and attempted to initiate the process necessary to claim asylum protection. On his presentation to Belgian authorities, his fingerprints were again taken; an immediate match was identified, revealing that MSS had originally entered EU territory through Greece. On March 10, 2009, the Aliens Office submitted a request that the Greek government take charge for the applicant's asylum request. Greek authorities failed to respond within the two-month period provided for within the text of the *Dublin Accord*, and pursuant to paragraph 7 of the *Accord*, the Aliens Office interpreted this lack of response as a tacit agreement on the part of the Greek government to assume responsibility for the asylum case. During the two-month wait, MSS had been interviewed by Belgian authorities. He indicated that he suffered from hepatitis B, and had been under medical treatment for the condition for eight months.

On April 2, UNHCR intervened on behalf of the applicant. The office sent a letter to Belgium's Minister for Migration and Asylum Policy outlining various deficiencies regarding asylum processing and reception conditions in Greece and recommending that Belgium suspend all applicant deportations to Greece. A copy of this communication was sent to the Aliens Office. Acting against this recommendation, on May 19, the Aliens Office ordered MSS into police custody pending transfer to Greek territory. This order was accompanied by a guarantee by the Belgian Aliens Office that Greek authorities would permit MSS to initiate the asylum application procedure. On May 27, his deportation was scheduled. On the date of the scheduled deportation,

an appeal was filed against the decision to transfer the applicant on the basis of the conditions that had been communicated to the Aliens Office by UNHCR the previous month. The applicant's attorney did not appear at the appeals hearing, and the appeal was denied on the basis that MSS did not have legal representation and was unable to represent himself. The deportation was rescheduled for May 29, but MSS refused to board the aircraft, and was taken back into police custody. A third deportation date was scheduled and appealed, and on this second appeal, MSS was issued a final order to leave Belgian territory. No third appeal was filed with the Belgian authorities. On June 11, MSS's attorney filed a petition to have the applicant's case considered by the European Court of Human Rights.

On June 15, MSS was transferred to Greece. He identified himself to asylum authorities at the Athens airport. He was immediately placed in a detention facility on the airport grounds. Here, he was locked in a small room with 20 other detainees. He was released three days later and presented with an order to appear at the Attica police headquarters for an initial hearing to gauge his standing to lodge an asylum claim. MSS did not appear as ordered, and he took up residence in an Athens park where other Afghan escapees had assembled. On August 1, he was arrested at the Athens airport attempting to flee Greece using a forged Bulgarian passport. On his arrest, MSS noted that he had been beaten by guards during his original detention in Greece, and that he was attempting to escape the country for out of fear of future similar mistreatment at the hands of Greek police. On August 3, he was issued a suspended sentence of to two months' imprisonment for attempting to flee Greece with using forged documents. MSS continued to reside in Greece as an asylum applicant pending final status decision through September 1, 2010, when he again attempted to leave the country. He was transferred to a location near the Turkish land border for subsequent expulsion to Turkey; however, Greek authorities abandoned MSS at this location, and

he did not cross the border to be received by Turkish authorities.

Unknown to MSS, also on September 1, 2010, ECHR first deliberated on the case that had been filed in June of the previous year. By December 15 2010, ECHR had received updated information, including information on issues relevant to the applicant's current situation, and jurists entered a second round of deliberations. The Court issued its ruling on January 21, 2011.

Specifically with regard to MSS's action against Belgium, the court held that Belgium had violated several articles of the European *Convention for the Protection of Human Rights and Fundamental Freedoms* (Council of Europe 1953). Belgium's deportation orders against MSS were ruled in violation of the imperative not to transfer potential deportees where such transfer would result in the subject's treatment under substandard living conditions. The Belgian government was ordered to suspend all future transfers to Greek territory. In concurring opinions, three of the 16 judges note Belgium's overall complicity in the ultimate conditions that MSS faced within Greece.

Almost immediately, the governments of Austria, Denmark, Hungary, Iceland, France, Germany, Netherlands, Switzerland, and the United Kingdom announced that they would also suspend *Dublin Accord* transfers to Greece. And, as if reacting as a result of the injury to its reputation, the Belgian parliament began immediately on the *Law of 19 January 2012 Modifying Asylum Seeker Reception* (Belgian Parliament 2012). The *Law* was enacted on February 17, 2012 with the support of the majority of deputies within every party represented in parliament.

The *Law* delineated and provided funding for several new protections. Most clearly stemming from the *MSS* decision were provisions introducing and funding the "return path." Under the new "return path" provisions, applicants against whom deportation orders had been issued are provided state-paid housing for an initial period of 15 days, assuming that proper procedural steps

have been taken. During this initial 15-day period, return counseling is provided. Each potential deportee is given the opportunity to make arrangements for return to his or her place of origin (or other *Dublin* community state, in the case of *Dublin* transfers), and continues to receive all state-paid benefits afforded during the period under which the case was under review. Financial assistance is also available for the travel process itself. This 15-day period may be extended for up to 20 additional days, during which all benefits and counseling services remain available. Additional time extensions are provided for, to include those permitting family members to retain full benefits while minor children are in school (up to the end of the school year), for the four-month period surrounding the birth of a child, for the duration of needed medical care, or “whenever human dignity demands it.” No action may be taken on a deportation order during the period of time that protections are applied. After the period of protection has ended, if the deportee has failed to repatriate, he or she may still remain in a group detention facility with limited benefits for up to two additional months. Under only two conditions may a deportation order be executed by the state: that the deportee has failed to participate in the “return path” program, or that this two-month period of voluntary detention has expired.

But more important to the purpose of this work are actions taken toward the funding of reception conditions. It is through the *Law’s* funding procedure that the state was able to use calls to advance humanitarian protections for asylum claimants toward the goal of creating the type of pressure on the asylum system that would actively and greatly reduce applicant wait time to final status determination. Funding for similar provisions had been long provided only within Norway and Sweden; with the exception of South Korea only months earlier (to be discussed in the following section), Belgium was the first country to adopt these guarantees outside of Scandinavia.

Upon application, the potential asylee must report a place of residence. If the applicant has

no physical address, the applicant is offered the opportunity to live in an open reception center. In each open reception center, fully furnished individual and family units are provided, both at no charge. Clothing allowances and cash for daily living are provided, and for those living in the reception centers, at least one restaurant is available, and residents are entitled to receive meals at a discount that reflects highly subsidized costs. During the period of residence within a reception center, the applicant is free to take leave without notice to any location within Belgian territory; the only prohibition on movement involves leaving Belgium. During the period of time under which the asylum case is under review, the applicant has the right to work legally within the country. Additionally, legal and psychological counseling services are provided without charge to the applicant throughout the period leading up to final status determination.

These guarantees have pressured the state to expedite asylum processing. Between January 1, 2013 and December 31, 2015, 1/3 of all asylum claims were decided within three months, and an additional 1/3 of claims were decided within nine months.

South Korea. Since South Korea granted its first asylum claim in 1994, civil rights groups, human rights advocates, and medical experts working on behalf of refugees had been monitoring the country's progress on the humanitarian treatment of claimants. By 2006, refugee advocates were well aware of the deficiencies in the still largely untested procedures for reception and processing, and a group of these advocates approached the Seoul Bar Association for assistance in recruiting members of the National Assembly to take up the cause of the asylum seeker. However, due to the lack of political will to implement strategies that would necessarily effect an increase in cost to the state in processing claims, it was difficult to find an advocate in the legislature. Finally in 2009, the Bar Association was able to recruit Hwang Woo-yea to draft and present a version of what would become the *Law on the Status and Treatment of Refugees* (hereafter, *Refugee Law*).

The *Refugee Law* was debated several times, and provisions were added and lifted through the course of several debate sessions, yet it did not come to a vote for nearly two years (Lee 2012, Kim and Kim 2012).

During the two-year period that the *Refugee Law* was being sporadically debated and repeatedly tabled, increasing numbers of undocumented Chinese immigrants began to appear across South Korea. The longstanding view within the country had held “Korean” to be an unadulterated racial category, and the presence of the perceived “other” within had resulted in the wide broadcast of xenophobic sentiments and pervasiveness of racist dialogues particularly targeting people of Japanese, Chinese, and African descent. In 2007, the United Nations Committee on the Elimination of Racial Discrimination had issued a statement indicating its concern over “the emphasis placed in ethnic homogeneity of Korea” in that it “might represent an obstacle to the promotion of understanding, tolerance, and friendship among the different ethnic groups living on its territory” (UNCERD 2007). Despite government efforts to respond through policy (*National Action Plan for the Promotion and Protection of Human Rights 2006, Act on the Treatment of Foreigners in Korea 2007*), nativist sentiment, and more particularly, anti-immigration sentiment continued to pervade over the next several years.

One effect of debate leading up to passage of the *Act on the Treatment of Foreigners* was the broadcast of the idea that verbal persecution of foreigners on the basis of ethnicity was ultimately immoral, even though it was not legally prohibited. By 2010, the public consciousness began to shift its focus from one on the “other” to one on “the illegal” (Kim and Kim 2012). The public had largely retained its long-established view of the “native” vs. the “other,” but had begun to refer to these groups using new names – the “legal,” and the “illegal.”

It was against this backdrop that the first 2011 debates on the *Refugee Law* had begun to

unfold. At a time when the population was becoming progressively vocal concerning the presence of the “illegal” among them, Assemblyman Hwang perceived the opportunity to resell the *Refugee Law*. If incentivizing the asylum claims process would cause more undocumented immigrants to attempt to claim asylum protection, thereby providing documentation of their presence within South Korea, Hwang could expect a greater level of support for the new legislation. The obstacle he faced to the achievement of this goal was the need to create a bill that was sufficiently generous that it could be sold on the basis that large numbers of undocumented immigrants would attempt to access the benefits it would provide.

The bill as it was ultimately passed in December 2011 was extremely generous in terms of provisions of reception to the asylum claimant. The encoded provisions were largely parallel in scope, if not in detail, to those to be passed months later in Belgium. These included guarantees of housing, legal assistance, education benefits, basic livelihood provisions, language training, and the right to reunify families even prior to a decision on the applicant’s asylum claim. Toward the twin goals of expediting applicant processing time to status determination and being seen to take action to keep the labor market open primarily to the native population, the *Refugee Law* included the promise of the opening of the labor market to the applicant in the event that time to final status determination exceeded one year. With these new provisions, the *Refugee Law* passed with wide support from members of parties within the National Assembly holding 250 of 299 total legislative seats.

Conclusion: Polar Ideal Types and the Domestic Politics of Cost Acceptance

Through the cases of Belgium and South Korea, I have demonstrated two separate motivations underlying action taken toward the reframing of the pragmatic need to accept, and even to exceed, the full potential cost of *Convention* compliance instrumentally. In both cases, one

result of this action was the passage of provisions that were extremely generous, if only to the asylum *applicant*, by worldwide standards. A second result was the diminishment of applicant wait time to final status determination. Still a third result, and the result most beneficial to the institutions' drafters, was the ability to broadcast legitimacy to intended audiences as this legitimacy would prove useful toward the ultimate elite aims of electoral survival.

In both states, elites are demonstrated to have acted as if under the assumption that the institution to be forged would display measurable effects on median applicant wait time to final status determination. Also in both states, the ability to accept cost through the effective diminishment of wait time to final status determination would prove unnecessary, impractical, and impossible until *something else* happened. The primary distinction I draw through the explication of the Belgian and South Korean cases in this chapter is the nature of this *something else*.

In Belgium, the government acted as if to restore its reputation following the ECHR ruling on *MSS v. Belgium and Greece*. As home to a large number of human rights organizations, and as home to the de facto capital of Europe, the injury to its reputation within Europe was widely broadcast within the international media, and action with the aim to preempt similar scrutiny by the international community was taken through action to halt *Dublin Accord* transfers to Greece by many *Accord* signatory states. In South Korea, the government at large acted as if to convince its domestic public that it was taking moves to identify and ultimately manage the presence of the illegal immigrant within its territory.

Through an understanding of these two poles of cost-acceptant behavior, I suggest that future research will be better able to conceptualize the instrumentalization of action toward the achievement of larger gains to be assumed through comparatively smaller losses taken on issues of *Convention* compliance. Among states seeking means to benefit from the necessary evil of

increasing costs to the state, under which call to cost-acceptant behavior will the state interpret the greater potential benefit to act? Will elites be able to benefit more greatly from the use of calls to increase view of the state's legitimacy on the international stage, or will elites be able to benefit more greatly from the use if calls to speak to an issue of greater importance than *Convention* compliance to its domestic electorate?

CHAPTER 5 – INSTITUTIONS AS CHEAP TALK: PROMISES OF EXPEDIENT GAINS VS. PROMISES OF INCREMENTAL GAINS

With the previous two chapters, I have focused on the *how* question – by what mechanisms do institutions matter? This is the question more pertinent to the majority of state signatories to the *Refugee Convention* and its *Protocol*. For these states, the model I develop in Chapter 2 suggests that domestic implementing procedures should be of use to understand asylum outcomes as they relate to length of time to final determination of asylum claims. For those states registering the highest summed scores on the “where does the institution matter” dimension of the model developed in Chapter 2, elites within most will perceive the winning strategy to the rule-construction game to entail the creation and / or maintenance of institutions that effectively prolong wait times to final status determination insofar as they are able to implement them. Under this condition, asylum rules will be built with the understanding that they will carry real results, and these results will permit the state avoid payout on the full potential cost of issues on asylum. I show how this scenario plays out with reference to two opposed poles of state behavior as demonstrated through the cases of Austria and Greece in Chapter 3. Within a smaller subset of states where the institution is predicted to display measurable effects on outcomes, elites will perceive a diminished ability to evade the full potential cost of compliance, and under this condition, ideational markers may lead to the calculation that the lower overall electoral cost to elites will entail the creation and maintenance of institutions that effectively shorten wait times to final status determination. Here, institutions are also built to matter, but the state perceives and acts according to both positive and negative incentives to pay greater costs toward achievement of the normative standard. The resulting higher payout is taken as a loss necessary to overall elite winning strategies. I show how this scenario plays out with reference two opposed poles of state behavior as demonstrated through the cases of Belgium and South Korea in Chapter 4.

With this chapter, I address the question of *where* institutions matter. Under the condition that elites may perceive that outcomes will result primarily from state-specific markers of structural hierarchies that had been in existence prior to debates inherent to the rule-building process, the institutions to be forged may assume the role of mere superstructure and prove ultimately epiphenomenal to compliance outcomes. If it is perceived that the rules will not greatly influence outcomes, what latitude will this expectation permit to elected rule makers in the broadcast of promises as they strive to achieve or maintain electoral power and influence? Through an examination of these markers of structure in Chile and the United Kingdom, I demonstrate that where the institution is predicted to be of little effective consequence, elites can be observed to have taken action in a manner that is fundamentally different than the prediction on the “how should the institution matter” scale developed in Chapter 2 would indicate if considered in isolation. Here, where elites are able to forge rules under the prediction that they not going to display measurable effects, the encoded outcome of the rule-building process may be, and will likely be, instituted as mere cheap talk. Under this condition, with which body – the international community, or the domestic electorate – will the elite perceive the greatest opportunity to score short-term gains toward their long-term goal of continued legislative influence and electoral survival? Then, what does the answer to this question tell us about the types of rules we should expect to find in place, and why?

The existing literature fails to address the theoretic possibility that on any given question, within any universe of possible observations, institutional output may be highly useful to an understanding or prediction of outcomes observed within some cases, yet ultimately of little use toward the understanding or prediction of outcomes within other cases. The framework I develop in Chapter 2 with reference to the rationality assumption is, in small part, an attempt to correct for

this weakness. By placing markers of competing forms of explicating causation within a mutually exclusive framework, I am able to initiate a dialogue among schools of argument within the comparative politics literature toward an answer to what is framed with this work as the initial question – where do institutions matter? In the following section, I demonstrate the state of the debate as it exists today. The question as it is has been long discussed is not one of “*under what conditions* do institutions matter”; instead, it is a question that permits much less latitude for nuance in the understanding and prediction of observed rules and their applicability to observed outcomes – “*do* institutions matter?”

Do Institutions Matter? Institutional Endogeneity vs. Institutional Exogeneity

The literature examining the relevance of an understanding of institutions to the understanding of outcomes has long and nearly exclusively focused on the question of *whether* institutions matter. The question is almost invariably framed as one of institutional endogeneity vs. institutional exogeneity. In other words, is the rule written and enforced by the same body that will benefit from its outcomes? If it is, can the rule itself ever be of use to understand outcomes, given that the outcomes themselves had been selected for in the construction of the rule? Under this condition, the institutions are said to be endogenous; the rule makers have chosen their desired outcome, and this outcome must be understood to have served as a logical prior to the construction of the institution. Therefore, as understood within the context of the framework I develop in Chapter 2 with reference to the rationality assumption, endogenous institutions cannot be of use to understand outcomes precisely because any outcomes to be observed will already have been chosen as a result of the institution builder’s preliminary endowments.

In what can be seen as an early contribution to the endogeneity vs. exogeneity debate (although the language of endogeneity vs. exogeneity is not used), in “The Tragedy of the

Commons,” Hardin (1968) demonstrates that rational actors will invariably exploit common-pool resources. In an environment in which others may also exploit the resource, it is only in taking moves to secure more than one’s own fair share that an actor can guarantee to be left any share. The alternative is one in which the actor’s fair play results in the exploitation of the resource by others to the extent that the actor can expect to be left with nothing. Each actor holding a claim to the common resource will proceed under the same assumption. As a cumulative result of all actors’ similar calculations, the common-pool resource will become depleted and ultimately unusable by any actor. Because interested-actor moves taken according to the common calculus are instituted toward the protection of each actor’s own share, no rule endogenously conceived or enforced can solve this problem. All common pool resources will face depletion and degradation unless the rule governing the commons is instituted, enforced, and adjudicated by an actor holding no stake in the allocation of the resources. For a rule to demonstrate any effect on allocation outcomes, it must be drafted and administered by a disinterested party; it must be exogenous.

The above argument suggests that where the rule itself originates is of the utmost importance – only regulation from the outside can impose meaningful effects toward expected and desired outcomes. In this framework, outcomes must be defined with reference to a common interest, and no actor who holds a stake in the outcome can be held capable to construct or enforce a rule that will delineate action toward any effect other than the interested decision maker’s own previously established aims. Coase (1960) introduces a second dimension to this debate – the content of the exogenous rule. In Coase’s formulation, those benefitting from actions that result in adverse effects to others *may* produce the same output without regard to the question of whether the rules governing their actions are of endogenous or exogenous construction. This is because in the absence of transaction costs, market competition will lead to perfect efficiency in output. Here,

the outside mandate of the imposition of fines on the producer of negative externalities is understood as the *exogenous* construction and enforcement of the institution, and the result of market forces is understood as the *endogenous* enforcement of the institution. This stage of the author's overall argument is commonly known as the Coase Theorem. However, in a comparatively overlooked aspect of the overall argument, Coase permits that transaction costs invariably exist, as does the ability to impose *different types* of rules exogenously. Because of this, the goal of an institution's framers *should be* the construction of specific instruments toward the management of these transaction costs. It is not the "who pays" rule that matters; it is the "how do we deal with transaction costs" question that matters, and this question must be solved through exogenous institutions. Here also, for a rule to matter toward the desired outcome, it must be imposed from the outside. The distinction lies in the paradox – some rules imposed from the outside will produce the same outcomes as rules imposed from the inside, which will be indistinguishable from outcomes generated in the absence of a rule.

By contrast, in *Governing the Commons*, Ostrom (1990) outlines conditions under which endogenously instituted rules have been shown to result in equitable distributions of common resources in many areas. Those holding claim to a stake in the common resource can expect to maintain their stake in the absence of exogenous rule creation and enforcement under the following conditions. Where these conditions are met, Ostrom shows that institutions of endogenous creation and enforcement may be sufficient to effect the outcomes desired.

- Boundaries are defined and agreed upon.
- Rules governing the use of the commons are tied to local needs and conditions.
- Those affected by the rules are able to participate in modifying the rules as necessary.
- Violators of the rules expect graduated sanctions.
- The rights of those in the rule-making community to govern the allocation of goods are respected by outside authorities.
- The community monitors the use of the commons according to its own, pre-established rules.
- Dispute resolution mechanisms are in place, accessible, and of low cost to potential participants.
- Where the commons are sufficiently large, responsibility for governance is built in nested tiers.

Przeworski (2004) notes a near consensus in the comparative politics literature, whereby it is very much en vogue to take the prospect *that institutions do matter* as a given. For Przeworski, this now-popular view is short sighted in light of the endogeneity vs. exogeneity debate. In order to arrive at this conclusion, Przeworski takes a further step in logic – for an institution to be understood as endogenous, it must also be understood as epiphenomenal. The rule itself must be held, not only as uninformative toward the determination of causation, but also as ultimately *inconsequential to causation* if its outcome results from preferences that informed its creation. If variations among institutions are to be held to matter toward an understanding of variations in observed outcomes, and if these institutions themselves are going to be held as necessary for the outcome to be achieved, they can only be seen as exogenous; the endogenous institution is irrelevant. Because of this, Przeworski holds that the “intrusion of the institutionalist paradigm” into broad topic areas within comparative politics today is nothing more than “an infectious pathology” that is currently being passed among researchers within the discipline.

Perhaps as a means to lend clarity to this debate, Elgie (2012), undertakes the goal to determine the extent to which exogeneity is present within the drafting of the foundational documents of former French colonial states in Africa. Elgie conducts a content analysis of each

state's constitution and develops a 9-point scale of "Frenchness" in order to serve as a measure of the extent to which each document relies on text within the French Constitution. Higher measures on this scale suggest greater levels of exogeneity. This understanding, however, requires a redefinition of the term *exogeneity* to include cases in which a common outside influence may be recognizable. The terms of this outside influence are not conceptually defined except for the purpose of the limited study. This proves ultimately unproductive to the debate itself for two reasons. First, although the intent is clearly to advance the debate, this aim is only accomplished through a redefinition of its most fundamental terms. Second, Elgie fails to define the context under which common outside influence can be understood as exogenous influence.

This premise is of consequence to studies such as Mearsheimer (1994) for which even the imposition of outside influence (here, in the case of international treaty-making and oversight bodies) is insufficient to suggest exogeneity. Mearsheimer concludes that if actors who are both involved in the rule making process and bound by the rules generated by the process, and are therefore, able to decide what the rule making bodies do, the outside body cannot be understood to exert a true exogenous influence.

Chile and the United Kingdom – A Different Question

With this chapter, I move beyond the institutional endogeneity vs. institutional exogeneity debate in order to steer the dialogue in a different, and potentially, a more useful direction. The terms of this move entail the satisfaction of two conditions. First, I presuppose a common guiding framework to which all states have explicitly conceded authority – here, by virtue of signatory status to the 1951 *Refugee Convention* and / or its 1967 *Protocol*. The presence of a binding, externally enforced agreement to uphold the terms of a common framework strengthens Elgie's exogeneity proof. Whereas the former French colonial states share many historical and socio-

economic factors in common, there is no externally enforced agreement in place among these states to adopt elements of the former mother country's foundational documents into their own. More important to the step I take for the purpose of this chapter is the second condition – that the question of the institution's importance is treated completely independently of the question of institutional endogeneity vs. institutional exogeneity. Despite the common framework defined within the *Convention*, it is understood for the purpose of this work that *all* relevant domestic institutions are of endogenous construction, yet subject to exogenous enforcement mechanisms. In establishing and satisfying this condition, I hold the endogeneity of institutions constructed under the common framework as a conceptual constant in a manner that no other study on the question on the relevance of institutions does. This permits a shift in focus from one of institution as endogenous vs. institution as exogenous to the question of one on externalities, here captured through markers of structural hierarchies inherent to membership within the community of democratic state signatories. Cases in which these externalities are demonstrated as sufficient to create conditions under which the institution should be of use to understand observed outcomes are discussed in Chapters 3 and 4. This chapter considers the alternate scenario – where markers of the same structural hierarchies permit the prediction that markers of ideation will be insufficient to an understanding or prediction of the institution that will be in place. To accomplish this, I examine the endogenous institutional output of two states, Chile and the United Kingdom.

The framework I develop in Chapter 2 for the identification of cases in which the institution is likely to matter relies on structural hierarchies among members of the closed community of states sharing a similar motivation – the impetus to achieve or maintain elected power and influence within a successfully consolidated democracy. Where markers of these structural input factors are shown to display the greatest limitation on the ultimate expectation that domestic

compliance rules will matter, the rules themselves are predicted to exert the lowest level of effect on observed asylum rules, specifically as these rules influence the length of time to the median asylum applicant's final status determination.

In isolation, a look at questions of how the institution should matter would suggest the prediction that Chile would encode cost-evasive strategies toward full compliance with the normative goal, while the United Kingdom would encode cost-acceptant strategies toward the normative goal. This is shown in Chapter 2, Figure 4. However, because the institution is predicted to be uninformative toward an understanding of compliance outcomes, I am able to demonstrate how and why the opposite result was reached with these two countries. Here, structural and ideational conditions are shown to converge in a manner demonstrative of an outcome that would not be possible if the institution were to be employed toward any aim other than cheap talk – comparatively benign procedures have been instituted within these two countries, yet they were sold to the electorates within the respective countries as *cost acceptant* in Chile and as *cost evasive* in the United Kingdom.

Because the goal of this chapter is fundamentally different than the goal of the previous two chapters, I present the argument in a different manner. In Chapters 3 and 4, I have followed sections outlining brief histories of forced migration within two focus countries with empirical sections outlining how the Chapter 2 model works within the focus countries. First, following the horizontal dimension of the Chapter 2 model, I have examined input factors indicative of the fact that institution in place should permit an understanding of asylum outcomes. Then in subsequent sections, following the vertical dimension of the Chapter 2 model, I have examined questions of how the politics of electoral survival suggest the ultimate forms that the relevant institutions will take. With this chapter, the sections to follow deal with these *where* and *how* questions in mirrored

reverse. I first lead the reader through a much abbreviated treatment of state-specific input factors following the vertical dimension of the model. This permits an understanding of the types of institution that would be in place under the condition that the institution itself were predicted to matter to outcomes. I then lead the reader through the horizontal dimension of the model in order to demonstrate that the configuration of structural hierarchies permits the prediction that the institution itself should not be important to an understanding of asylum outcomes. Finally, I lead the reader back through a second, more comprehensive treatment of the vertical dimension of the Chapter 2 model in order to demonstrate how the state-specific practice of cheap talk through institution building has led to the implementation of rules that have assumed forms that contradict the predictions of the horizontal dimension of analysis if taken in isolation.

To follow, I present a brief history as it is useful to understand the background against which relevant debates have taken form. Why should we expect for elites within Chile to have gained from selling a narrative of cost acceptance, and why should we expect for elites within the UK to have gained from selling a narrative of cost avoidance, even if these narratives would ultimately be employed toward the creation of signals without real cost?

A Short History of Forced Migration in Chile*

The Pacific to its west, the Andes to its east, the Atacama Desert plateau to its north, and the Antarctic to its south, Chile's entire history has been characterized by social and cultural insolation imposed by its geographic isolation. This geographic isolation permitted its European colonizers to assume the role of arbiters of those who would be allowed to settle in Chile, and the colonizers' aims to encourage population growth through the import of white, European men were

* All data within this section are taken from Doña and Levinson's 2004 report for the Migration Policy Institute, titled "Chile: Moving Towards a Migration Policy." Much of the narrative structure follows that of applicable sections of the report as well.

realized through policy that remained in effect into the 20th century. Overall numbers of migrants to Chile remained small relative to the numbers migrating to other, larger South American countries, yet the presence of the high proportion of European immigrants to non-European immigrants defined the country's makeup from its inception in terms of law, culture, and religion.

Selective admissions procedures date back to 1824. At this time, Chile's first immigration act entailed measures to encourage English, German, and Swiss men to establish factories in the country's urban centers and to populate its sparsely inhabited south. Chile's 1854 census data reveal that 30 years after the act, approximately 20,000 people of foreign birth were present in the country, and that the majority of these were German colonists. The Chilean General Immigration Agency in Europe was established in 1882 to provide Chilean land to European settler families. By 1895, an additional 31,000 Europeans had taken advantage of Agency provisions and had settled and populated the southern colonies of Llanquihue and Valdivia; by 1900; Europeans had begun to settle and populate Antafogasta and Magallanes as well. Between 1865 and 1920, over half of all Chile's foreign born were Europeans.

Procedures favoring European immigration ceased during WWI. Lawmakers sought first in 1918 to restrict all immigration, due to fears of a possible influx of refugee flows. With the onset of WWII, Chile took even more extreme measures. No foreigners would be permitted entry to the country without proof of funds sufficient to provide for their sustenance for a period of six months, and only immediate relatives of those who held two years of continued residence in Chile would be permitted to immigrate. At the same time, non-European immigration began to rise. By 1930, migrants (who were mostly undocumented) from Syria, Palestine, and Lebanon accounted for 15% of the foreign born population, and by 1952, this total had risen to over 20%. Despite these increases in non-European migration, over the next few decades, overall immigration to Chile fell

sharply. In early 1972, Chile acceded to the *Refugee Convention* and its *Protocol*, yet no parliamentary action was taken to incorporate the provisions of these documents into domestic law.

Following the 1973 coup that installed Pinochet's military regime, Chile became, for the first time, a country of net emigration. Between 1973 and 1990, more than 500,000 Chileans fled the country, with more than 50% settling in Argentina, Australia, Canada, Venezuela, or Sweden. The net effect of mass emigration was somewhat mediated by the fact that, at during the same period, Pinochet's government actively promoted open-market policies that stimulated foreign investment in Chile. Foreign currencies and technologies were privileged, and this encouraged some (albeit at a comparatively much smaller level of) non-European immigration, notably by those with high levels of education and income from other South American countries as well as from East Asia.

In 1975, Pinochet's government instituted the first provision for entry to Chile as an asylum seeker. The broader aim of the 1975 *Immigration Act* was to limit migration flows to Chile to those potential entrants who would be judged to provide economic benefit to the country; the provision for entry as an asylum seeker was ill defined and practically unusable. Under the *Act*, a petitioner could only be granted asylum-seeker status by way of a visa to be issued prior to the petitioner's entry into the country. Due both to the unworkability of the asylum procedure and to the repressive, brutal nature of the military regime that remained in place until 1990, few took advantage of the relevant provisions of the 1975 *Act*.

This law remained in force and unaltered for many years following the ouster of Pinochet's government and Chile's return to democratic rule. In fact, it was not until 2008, under the center-

left Concertación alliance government and under President Bachelet, herself a former asylee, that the 1975 act was revisited and substantially altered.

A Short History of Forced Migration in the United Kingdom

The United Kingdom has a long history of action relating to forced migration, dating back as far as the British state's highly restrictive 1793 *Aliens Bill*, which sought to limit flight to England by those seeking immunity from persecution following the French Revolution. This act was overturned in 1826, largely in response to a shift in public opinion that had begun to equate asylum to the obligations inherent to protecting individual rights and free trade (Schuster 2003). In 1848, Lord Palmerston spoke of the need to grant guarantees against refoulement after a petitioner had reached British territory, as refoulement would necessarily effect persecution at the hands of the asylum seeker's host state.

"The laws of hospitality, the dictates of humanity, the general feelings of mankind, forbid such surrenders; and any independent government, which of its own free will were to make such a surrender, would be universally and deservedly stigmatised as degraded and dishonoured." (Lord Palmerston 1848, quoted in Open Democracy 2008).

Until the end of the 19th century, entry to Britain was largely unrestricted by the state; by the early 20th century, laws concerning entry had become much more prohibitive. In the late 1800s, many had left the mother country to seek fortune in the colonies or in the United States. With the demand for laborers that resulted from the industrial revolution, easy entry was judged as the best means to replenish the work force. By the early 1900s, however, the British economy had begun to experience a period of high unemployment and overall decline, and popular intolerance toward the presence of immigrants had begun to take shape.

This resulted in the passage of the 1905 *Aliens Act*. Russian and Polish Jews fleeing persecution in Russia had come to settle in Britain in large numbers. The *Act* established criteria against which a potential migrant could be judged as undesirable, and if one of these criteria were

met, even at a later point in time, the potential migrant could assume that entry would not be permitted or tolerated, and that any protection previously extended may be rescinded or retroactively invalidated. Four criteria were introduced: a lack of means for the migrant to support himself and his family, mental instability or physical illness that may progress to necessitate the immigrant's incarceration or hospitalization, the immigrant's previous record of having been found guilty of a non-political crime, and the existence of a previous deportation order against the immigrant.

The intent of *Aliens Act* was to exclude poor, sick, or criminal migrants; however, the *Act* explicitly permitted entry for the purpose of accessing asylum protection.

“But in the case of an immigrant who proves that he is seeking admission to this country solely to avoid persecution or punishment on religious or political grounds ... leave to land shall not be refused on the ground merely of want of means or the probability of his becoming a charge on the rates” (British Parliament 1905).

The opportunity to access asylum protection was to remain available and protected, although the right would become restricted by law in the context of WWI in 1914 to exclude Germans and (later) Austrians from those to whom protection may be extended, and following the war in 1919 to expand future wartime emergency powers to restrict claimant entry. Additionally, the 1919 act further restricted rights of those asylees who were already in Britain, to include prohibitions against jury service and employment in the civil service.

Despite these wartime and post-wartime provisions, the UK remained protective of its long-earned status as a country of potential asylum. During WWII, over 20,000 European Jews were granted asylum protection; following Hungary's 1956 Revolution, over 21,000 Hungarians were granted asylum protection, and following their 1972 expulsion from the country by Amin, over 27,000 Asian Ugandans were granted protection (Wilson 2014). From the early 1980s until

the point in time that begins this study, several parliamentary acts redefined processes inherent to the asylum adjudication system. These will be discussed as relevant in subsequent sections.

Chile and the United Kingdom – What Types of Institution Would We See If the Institution Were Built to Matter?

With this section, I lead the reader through a treatment of input factors that lead to the prediction that if the institution in place were to matter strongly to asylum outcomes, these institutions would be observed as cost evasive in Chile and as cost acceptant in the United Kingdom. I accomplish this through a brief examination of utilities calculated toward answers to questions along the vertical dimension of the Chapter 2 model. Then, following an analysis of the horizontal dimension of analysis toward questions of why the institution should not be predicted to matter to outcomes in the next section, I return to a the “how should the institution matter” decision sequence in order to effect an examination of the political processes that have resulted in the institutions that are in place within Chile and the United Kingdom.

I use the first decision of the “how should the institution matter” sequence to create a binary necessary to separate states to have adopted the *Convention* and its *Protocol* (or to have assumed the responsibilities of the *Convention* by virtue of having adopted of the *Protocol*) from those states not to have adopted the *Convention* into law domestically. On this binary measure, both Chile and the United Kingdom receive the score indicative of the fact the two states have assumed the duties inherent to signatory status, and both states continue to take decisions into subsequent nodes.³⁶

At the second node, I examine the question of direction of influence. Both Chile and the

³⁶ In Chapters 3 and 4, I have used treatment of this first question to enumerate the specific protections that focus countries have agreed to uphold by virtue of the state’s record of registered and withdrawn reservations to the *Convention*. For the purpose of this chapter, I reserve parallel treatment of the domestic government / UN negotiation process for the second, more detailed treatment of questions along the “how should the institution matter” dimension.

United Kingdom receive a score indicative of the fact that top-down influence should not be assumed. Therefore, utilities to be calculated in answer to subsequent questions must account for preferences revealed as functions of input factors other than merely the election and reelection or ouster of parties to have advocated for restrictive policies toward the outsider within their borders.

At the third node, for each state not having met the criteria for top-down influence, I report a measure calculated as the percentage of the vote share earned by conservative or otherwise nativist parties in the second pre-2010 election, compounded with the percentage of respondents to have identified immigrants and foreign workers among those whom they would not wish to have as neighbors in the Wave 4 of the World Values Survey as a percentage of Romania's 21.8% measure where available, logged. Data are calculated using measures of vote share earned by Independent Democrat Union and National Renewal in Chile's 2005 legislative election and the Conservative Party in Britain's 2001 general election. The parties observed received less than 39% of the vote share in Chile and less than 31% of the vote share in the United Kingdom, and scores on the marker of xenophobia do not exceed 2/3 of the baseline total in either country.³⁷

For the decision on the fourth question, I report data indicative of the likelihood that the state will be practically capable to limit the number of year-over-year asylum claims decided through the expansion of its bureaucracy. I report for Chile a score that exceeds that earned by Greece on the same measure. This indicates that if elites within Chile had perceived the mandate to limit the number of decided claims, the state would have read an ability greater than even that observed within the Chapter 3 focus state acting under the condition of bottom-up influence to

³⁷ For Chile, which did participate in the Wave 4 survey, 10.8% of respondents identified immigrants and foreign workers among those whom they would not wish to have as neighbors. For the UK, which did not participate in the Wave 4 survey, the total reported is the mean value of 13.8%. This is likely an accurate, if slightly conservative estimate. The UK did participate in the Wave 5 and Wave 6 surveys and registered totals of 14.2% on this measure in both years.

implement cost evasive strategies. As discussed with reference to Greece in Chapter 3, the ability to create or encourage the expansion of bureaucratic procedures toward the more intuitive aim of cost avoidance on issues of *Convention* compliance creates a condition in which the state is likely to pursue this aim in the building of its institutional framework. For this reason, utilities continue to be calculated at subsequent nodes for Chile. I report for the United Kingdom a score equal to that observed for South Korea on the same measure. This indicates that even under the condition that elites within the United Kingdom had perceived a mandate to limit the number of decided claims, the state would have read the practical opportunity to implement cost evasive strategies only at the level reported for South Korea. As discussed in detail with reference to Belgium and South Korea in the previous chapter, because of the perception of a practical inability to implement cost evasive strategies, even under the condition that the popular mandate to do so may exist, the state will act as if under a perception of the impracticality of cost avoidant strategies. Because perception of the practical ability to avoid costs does not exist, the state will be expected to interpret the need to accept the full potential cost of *Convention* compliance. As with Belgium and South Korea, no utilities are calculated for the UK on further questions.

At the fifth node, Chile is one of the 20 states remaining to collect utilities under the condition of bottom-up influence. All 20 of these states fall within either Q1 or Q2 on Figure 5 in Chapter 2, indicative of the fact that if the institution were to matter to compliance outcomes, cost evasive strategies would be instituted within the relevant implementing legislation. Whereas the decision at the previous node served as a proxy measure of the state's practical ability to avoid cost through its implementing procedures, the decision at the current node serves a proxy for the saleability to the electorate to implement these procedures, as measured through its ability to foster job growth. On this measure, I report a function of each state's observed unemployment level. For

Chile, I report a score near the median, with eight states (Australia, Brazil, France, Ireland, Israel, Switzerland, Trinidad and Tobago, and the United States) holding lower unemployment figures, and the remaining 11 states (Bulgaria, Canada, Costa Rica, Dominican Republic, El Salvador, Greece, Mexico, Peru, South Africa, Spain, and Uruguay) holding higher unemployment levels. The implication is that elites within Chile will perceive a moderate level of saleability to efforts to expand its bureaucracy toward the aim of avoiding the full potential cost of *Convention* compliance.

For the decision at the final node, I report a utility calculated as a function of the positive or negative gains made by the parties observed in the first election cycle, for the second election cycle. In the 2009 election, little had changed in terms of parliamentary representation; in Chile's 120-member legislative body, Democratic Union picked up four seats, and National Renewal lost one seat.

As I note in Chapter 2 and discuss in detail with reference to Belgium and South Korea in Chapter 4, the primary difference observed among states to encode cost evasive instruments into the domestic implementing procedures entails the elite perception of the state's practical ability to avoid cost through the ability to expand the state's bureaucracy. Perception of this ability is not proposed as a sufficient condition, but merely as a necessary condition. Where this condition is met, the institution of further domestic instruments toward the goal of cost avoidance is possible. Achievement of this condition is demonstrated in Chapter 3 through the cases of Greece and Austria, and is demonstrated in the current chapter in the case of Chile. Where this condition is not met, domestic action that will effect the payout of greater costs toward the normative standard may prove uncontroversial and may incur broad, cross-the-board support within the state's rule making body. This is observed in Chapter 4 through the cases of Belgium and South Korea, and its

possibility is suggested here in the case of the United Kingdom.

However, as I outline in Chapter 4, a second condition is also necessary to the prediction of a state's cost acceptant strategy – the institution itself must be predicted display meaningful effects on the median applicant's wait time to final status determination. To follow, I lead the reader through a treatment of the sequence mapped along the horizontal dimension of the Chapter 2 model in order to demonstrate that this second condition is not met in either Chile or the United Kingdom.

Chile and the United Kingdom – Why Shouldn't the Institution Matter?

The first question considers the hierarchy inherent to the division of wealth among the community of 44 states observed. On this measure, I calculate a score as a function of per capita GNP as reported by World Bank (2011) for Chile at \$US 11,925, and for the United Kingdom at \$US 38,790. This measure suggests a hierarchical ordering useful toward the determination of the extent to which elites within each state may gauge that the institution to be built will impose real costs to the state. Richer states may act as if informed by two postulates informed by their measure of wealth: it will create conditions under which they will be more likely to face calls to pay out on the full cost of any legislative and procedural rules to be implemented, and that these rules will be extended to greater numbers of asylum applicants. Although this measure is useful toward an understanding of state decisions to be taken at future nodes for all states, the outcome of the decision does not create a functional binary that differentiates states registering totals at the lower end (as Chile) from states registering totals at the upper end (as the United Kingdom). Therefore, the sequence continues for all states, including Chile and the United Kingdom.

At the second node, I address the hierarchy inherent to relative levels of access to country territory among states observed. The median applicant is more likely to perceive the opportunity

to cross the border into a state for the purpose of initiating an asylum claim where the border itself is either more porous or easily traversed. Unlike the decision at the previous node, the decision based on a state's perception that the median applicant will be able to cross the border is used to create a binary that divides those states with more permissive access to entry from states with more greatly restrictive access to entry. Where elites within the state are able to take action as if under the perception that the median claimant will be unable to access asylum protection, utilities calculated toward decisions at further stratifying nodes will prove irrelevant to outcomes. This holds because a state's prior history of propensity to approve the median claim and the cost to the state in hosting the median claimant will be incalculable under the condition that the median claimant is unable to cross the state's border for the purpose of seeking asylum protection. Because of this, within all states for which the institution is predicted to permit prediction of the length of time to final status determination, the Chapter 2 model stipulates that elites will only be able to take further action informed as if by the perception that the median claimant will be able to access asylum protection.

In order to claim standing necessary to access protection under the instruments of the *Convention*, the applicant must cross the potential host state border under the condition of having fled the country against which he or she is claiming asylum protection, and this flight must be based on the applicant's prior persecution or "well-founded fear" of persecution. Stated differently, a potential applicant may only initiate an asylum claim having entered the potential host country as a means of escape. The text of the *Convention* explicitly notes that under this condition, legal travel documentation will, in most cases, be unobtainable. It is for this reason that, per Article 31, all state signatories are barred from taking legal action against a claimant who has entered the state

without proper documentation.³⁸

In Chapter 3, I examine the cases of Greece and Austria, where during the year of the run-up to first observed election cycle, respectively, 98.99% and 38.16% of all entrants lacked legal documentation; in Chapter 4, I examine the cases of Belgium and South Korea, where during the year of the run-up to the first observed election cycle, respectively, 51.36% and 67.55% of all entrants lacked legal documentation. These figures indicate easier relative practical access for the potential claimant to asylum procedures due to the fact that the illegal, undocumented, or unnegotiated entrant has been relatively more able to access receiving state territory. In Chile, however, only 14.68% of entrants lacked legal documentation; in the United Kingdom, only 5.98% of entrants lacked legal documentation. I treat these relatively low numbers as indicative of the fact that elites may perceive the opportunity to engage in the rule building process as if under the assumption that the median claimant will be practically incapable of accessing the country's asylum protection processes due to the inability to cross the host state's borders under the condition of illegal, undocumented, or unnegotiated entry. This lack of practical access may be attributable to the difficulty faced by the potential applicant in accessing the state's territory due either to geographic isolation relative to net-sending states, as in Chile, or to relatively stricter border controls, in the United Kingdom.

Where it may be interpreted that the median claimant will not be able to access the asylum claims process, elites face the perception that they may construct *Convention* compliance institutions as mere cheap talk. Hathaway (2002, 2007) and Powell and Staton (2009) find that

³⁸ As noted in Chapter 3, the Greek delegation had registered a reservation in answer to the Article 31 prohibition against initiating legal action against a claimant who had crossed the border without proper documentation; this reservation was officially withdrawn in 1978. Apart from Greece, only Moldova (upon its 2002 accession to the *Convention*) had registered a reservation in answer to the Article 31 prohibition. Moldova's reservation explicitly notes its temporary nature pending the rewriting of relevant provisions of its domestic laws. No reservation stipulating that a state may derogate from protections enumerated in Article 31 remains in effect.

states will seize the opportunity to ratify or accede to international human rights treaties as means of costless signaling where conditions may permit the expectation that states may be incapable of enforcing or unlikely to face calls to enforce the terms of the treaty. One goal of the current work is to expand this line of reasoning within the scholarship beyond its application to the ratification or accession procedures to include discussion of the possibility that a country's own domestic rules in implementation of an international treaty may be used toward the same goal.

In the previous section, I have enumerated the conditions that have led to the prediction that if the domestic procedures within Chile and the United Kingdom were to matter to outcomes, these procedures would facilitate a longer wait time to median applicant final status determination in Chile, and a shorter wait time to median applicant final status determination in the United Kingdom. This is attributable primarily to the perception in Chile that elites may assume the opportunity to avoid cost the full potential cost of full compliance through the expansion of its bureaucracy, and the lack of this perception in the United Kingdom, which may force the state to accept the full potential cost of compliance. In this section, I have established that the median claimant is likely not present within Chile or the United Kingdom due to conditions revealed through each state's relatively restricted border access. Because of the greatly diminished possibility that the median claimant may found within either of these two states, I hold that one of the two Powell and Staton (2009) conditions sufficient for the use of institution as cheap talk – that the state will not face calls to pay out on the cost of an international treaty – has been met.

Because nothing inherent to the logic of these studies suggests that such cheap talk may be conceptually limited to questions of ratification or accession, I proceed under the assumption that domestic enforcement mechanisms may be used as instruments toward the same aims. In the following section, I lead the reader through a second, more detailed treatment of the decision

sequence mapped along the vertical dimension of the Chapter 2 model in order to explicate precisely how this institution-as-cheap-talk process can be shown to have worked within Chile and the United Kingdom. Where the institution itself may be judged as ultimately unimportant to outcomes, it may be employed toward the conveyance of costless signals. Where this condition is met, how do elites sell procedures to their electorates toward the long-term gain of political influence and survival?

Institutions as Cheap Talk – What Institutions Are in Place?

Within both Chile and the United Kingdom, the possibility exists that elites may use the rule construction process toward the aim of costless signaling. With reference to the ability to use signatory status to an international human rights convention, Powell and Staton (2009) demonstrate that this possibility captures a condition sufficient to ensure that a state will pursue this course of action. For the purpose of this chapter, I propose that the ability to use the content of domestic mechanisms instituted toward treaty compliance toward the same goal will result in the fulfillment of a condition that is similarly sufficient. With reference to the *Refugee Convention* and its *Protocol*, in order to demonstrate that state-specific ideational conditions should permit no prediction of the implementing legislation in place, I lead the reader through the domestic political environment within Chile and the United Kingdom as it is useful to an understanding of the forms that costless signaling may take. Where cost evasive strategies would be predicted based on a reading of the “how should the institution matter” sequence in isolation in Chile, under the condition of institution as cheap talk, measures were introduced, debated, and sold to the voting public and the international community as cost acceptant strategies. Where cost acceptant strategies would be predicted based on the same measures, under the same condition of institution

as cheap talk, measures that share marked similarities were introduced, debated, and sold to the voting public as cost evasive strategies.

1. Chile and the United Kingdom at T₁: What Protections Have They Agreed to Uphold?

The period of time considered with this study begins with the run-up to the second pre-2010 legislative election within each state observed. For Chile, I begin with the process leading up to the 2005 legislative election; for the United Kingdom, I begin with the process leading up to the 2001 general election. At this point in time, both Chile and the United Kingdom had signaled intent to comply with the terms of both the 1951 *Convention* and its 1967 *Protocol*.

The United Kingdom was among the 26 countries to present delegates at the drafting of the *Convention* at Geneva in 1951 and was among its 18 original signatory states. Chile acceded to the convention in January 1972. The *Convention* was given force of law domestically immediately upon accession in Chile, and in March 1954 in the United Kingdom. At the time of domestic ratification, both Chile and the United Kingdom communicated and registered reservations to specific items of text within the *Convention*. All reservations³⁹ remain in effect at the point of time that concludes this study.

The Chilean delegation registered two reservations relating to Article 17, Paragraph 2, which outlines conditions to be attached to the possible revocation of the right of those who have been granted asylum to engage in wage-earning employment. With regard to the language indicating that the right to earn a wage cannot be revoked under the condition that the asylee has

³⁹ The United Kingdom registered several reservations with particular reference to the applicability of its signatory status to its colonies, protectorates, and overseas territories. Those relating to colonies, protectorates, and territories remain in effect insofar as these the geographic areas named remain part of the United Kingdom. In the cases of territories that have become independent states, most (e.g., Belize [British Honduras], Cyprus, Jamaica) have acceded to the *Convention* separately. Mauritius and Tanzania (which includes the former British protectorate Zanzibar) have not acceded to the *Convention*, and are counted among non-signatory states. Only reservations relating to the mother state are enumerated here.

resided within the country's territory for three consecutive years, the Chilean delegation stipulated that for the purpose of its domestic legislation, this period of time required for continued residence may be extended to ten years. Regarding the language in the same paragraph that deals with abandonment by a spouse that holds host state nationality, due to the then-current Chilean prohibition against divorce, the Chilean delegation stipulated that the prohibition would be understood to apply only in the case of the death of a spouse who held Chilean nationality.

Chile also registered a reservation in answer to Article 34, which assigns to signatory states the duty to facilitate the naturalization of recognized refugees. This reservation stipulates that the Chilean government will not be able to grant refugees "facilities that are greater than those granted to aliens in general, in view of the liberal nature of Chilean naturalization laws."

The Chilean delegation also registered a general reservation, noting that with regard any potential deportation orders to be issued, the state would not be able to grant a longer period for denied asylum claimants to comply than would be granted under any other condition under which an expulsion order had been issued.

The British delegation registered a reservation in dual answer to Articles 8 and 9. Article 8 stipulates that the state may not take action against the person, property, or interests of asylees who remain nationals of a foreign state based solely on the asylee's nationality. Article 9 stipulates that no item within the text of the *Convention* is intended to prevent a state from the application of exceptional measures in "times of war or other grave circumstances" against a refugee if such measures are deemed necessary by the signatory state to its national security. This reservation stipulates that the Article 8 language "action against property" will not prohibit the state from exercising claim to any property acquired under a treaty of peace completed at the conclusion of WWII, and the language "action against property ... or interests" would not prohibit the state from

exercising claim to property or interests that may come under the control of the state in the course of future war.

The British delegation also registered a reservation in answer to Article 17, which enumerates conditions under which the right to earn a wage may be revoked. This reservation stipulates that the period of time of continued residence for the enumerated protections to be considered binding will be increased from three to four years, and that the prohibition against termination of an asylee's right to earn a wage under the condition that the asylee has one or more children possessing host-state nationality will not be understood as binding in British domestic legislation.

The British reservation to Article 24, section 1, subsection b, which mandates that provision of state welfare benefits must be accorded to asylees on the same basis as these benefits are accorded to nationals of the host state, notes that the then current British law would supersede the text of the subsection. The terms of the relevant British law are not noted in the reservation.

The British delegation also registered a reservation in answer to Article 25, which delineates several responsibilities on the part of the host state in the provision of administrative assistance in the procurement and delivery of documentation necessary for a refugee to exercise rights that would otherwise require the assistance of authorities of a foreign country. This reservation stipulates that the British government will not be bound to assist in the procurement or delivery of this documentation, and that any documents or certifications provided directly to the refugee by a foreign government will be given credence by the British state only insofar as British law permits. A note of commentary following this reservation stipulates that no arrangements of the type suggested in Article 25 have been found necessary to secure the rights of refugees in the UK, and that any possible future need for such arrangements "would be met by affidavits."

Aside from these reservations, Chile and the United Kingdom have agreed to be bound to uphold all protections defined within the *Convention* and its *Protocol*. For the purpose of the purpose of the previous two chapters, I have used treatment of this measure toward the explication of the calculation of utilities earned along the “how does the institution matter” dimension of analysis. For the purpose of the current chapter, state decisions based on the calculation of these utilities have been discussed in an earlier section. Instead, the aim of this subsection and the following subsections is to lead the reader through an understanding of the types of rules that have come to be enforced given the understanding that the institution itself will be of little effective consequence to length of time to final status determination. Proceeding from this premise, following subsections will not explicate the calculation of utilities. Instead, the subsections to follow are used to expound the domestic political environments within Chile and the United Kingdom in order to facilitate an understanding of the specific form that institution-as-cheap-talk has taken under the condition that the institution itself can be held to have been constructed as if under the assumption that its instruments could not be employed toward either the evasion or the acceptance of cost related to *Convention* compliance.

2. Party Politics and the Ability to Shape Electorate Preferences

For the second decision, states weigh elite propensity to take action that may or may not reflect the wishes of the electorate. Both Chile and the United Kingdom report scores indicative of the fact that the Chapter 2 conditions outlined for top-down direction of influence have not been met.

To follow, I outline the role of public debates on issues of asylum at the point in time leading up to the 2005 Chilean legislative election and the 2001 British general election. In the case of Chile, issues of forced migration were neither highly polarizing nor highly salient, and these issues did not play any significant role in election processes or results during the entire period

of time observed with this study. In the case of the United Kingdom, issues of forced migration did prove progressively more polarizing among elite actors, but in contrast to the Ivarsflaten prediction, the masses reacted more strongly to cues presented on both legal migration and economic migration, and this reaction has only in 2016 reached a peak comparable to that observed in the course of 2006-2007 in Austria.

Chile. Since Chile's return to democracy, no far right party has garnered popular support. The parties I observe with this study include the center right Independent Democratic Union (UDI) and National Renewal (RN). Both parties had existed during Chile's 16.5-year military dictatorship. In the 1988 plebiscite that resulted in Pinochet's ouster and the country's return to democratic rule, UDI initially supported Pinochet's spot on the ballot, while RN initially called for an alternate candidate to appear on the ballot. However, after Pinochet had secured the spot as the "proposed candidate," RN supported his candidacy.⁴⁰

The 1980 Chilean Constitution remains in place in a highly amended form. As important to this work, during the entire period of time observed, the binomial representation system remained in effect. One result of this system was the disproportionately large representation in parliament of candidates aligned with the coalition winning the second largest vote share.⁴¹ In practice, this resulted in nearly equal shares of center-left and center-right alliance members in the elected legislature during the entire period under observation. Also remaining in effect throughout

⁴⁰ The plebiscite had been called for under Pinochet and mandated in the 1980 Constitution. The two choices presented to the voters were "yes" and "no." A "yes" vote indicated that the "proposed candidate is approved." The Junta would remain in power until the newly elected parliament assumes office in March 1990; A "no" vote indicated that "the proposed candidate is rejected." The junta would remain in power for one year following the vote, and presidential and parliamentary elections would be held three months prior to the junta's departure from power. The "no" vote won with nearly 56% of the popular vote, and presidential and parliamentary elections were held in December 1989. The newly elected government took office in March 1990.

⁴¹ In order for members running within a single coalition to assume both seats within a legislative district, its candidate list was required to receive 2/3 of the vote share; where this 2/3 threshold was not met, one member from each list would represent the district in parliament.

the entire temporal space observed in this study was Chile's 1975 *Immigration Act*, under which an asylum claim could only be initiated under the condition that the asylum seeker had entered Chile on an asylum seeker visa. Due in part to Chile's geographic isolation relative to net asylum sending states and the resulting lack of popular awareness of the provisions in place, and in part to the near equal representation of the right and left in government, there was no political will to change this provision of the *Immigration Act*.

An absence of political debate among the Chilean population has marked its history since the country's return to democracy. The Pinochet regime had actively sought to depoliticize the population in effort to maintain its hold on power, while also promoting a neoliberal economic agenda. Because right coalitions have held nearly 50% of parliamentary seats during the entire period observed, and because parties within these coalitions have continued to emphasize free market economic policies as self-correcting mechanisms toward aims important to the life of the average Chilean, the free market of ideas has been slow to assert hold, and political debate has largely been restricted to the political class (Silva 2004).

In this environment, the center-left Concertación alliance government under Ricardo Lagos (2002-2006) focused its attention on easing restrictions on immigration overall, while simultaneously improving border security (Doña-Reveco and Levinson 2012). During this period, asylees were permitted unrestricted access to the labor market pending a medical checkup and the issuance of a national identity card and access to the citizenship application process following a period of 5 years of continued residence.

United Kingdom. As in Chile, during the time period under observation, no far right or blatantly anti-immigration party has received widespread support or representation in the British Parliament. In the landslide 1997 general election, the Conservative Party saw a loss of 178 seats,

while the Labour Party saw an increase of 145 seats. In this environment, Tony Blair's newly elected Labour government moved markedly to the center of the political space, deemphasizing the party's long held pro-labor orientation toward the promotion of strongly pro-market policy. Policies included within the New Labour platform entailed the move of health, education, and public services to the private sector. At the same time, factions within the newly diminished, newly fragmented Conservative Party moved farther to the right. The fragmentation of the Conservatives was most readily observed with the break of nearly 200 candidates seeking election in the 2001 contest to oppose Britain's entry to the Eurozone.

Gabrielatos and Baker (2008) note that during Labour's first term in office, press coverage on issues of asylum saw a spike between March and May 1999, coinciding with both the war in Kosovo and the separatist movement in East Timor. This spike came at the beginning of a three-year trend, in which the number of asylum applications rose from the 1998 level of less than 60,000, to between 90,000 and 100,000 in 1999, 2000, and 2001. The media dialogue mirrored the political dialogue espoused by the Labour Party, which came to emphasize the idea that the right of an asylum seeker to access the labor market during the period of time that the seeker's claim was pending decision served as a pull factor in attracting illegitimate asylum claims (Robinson and Sergott 2002). Labour's answer to the perceived problem was to advance two aims: to prevent asylum seeker arrival to British territory (Mulvey 2010), and to remove the claimant's right to work. This second goal was written into British law in 2001.

However, the narrative underlying these changes was problematic for two reasons. First, it did not reflect reality. UK Home Office (2001) notes that the majority of asylum seekers had been employed in fields where demand for labor was high, and that comparatively few sought public welfare assistance; Burnett and Peel (2001) note that the median asylum applicant within the

United Kingdom held a higher level of education than the median applicant within any other European country. Second, the asylum dialogue was difficult for the British electorate to process, at a time when they were receiving simultaneous cues regarding both migration from other EU member states and the necessity to adopt a new British national identity in addition to long held separate English, Northern Irish, Scots, and Welsh national identities (Kriesi et al. 2006).

The political environment leading up to the 2005 Chilean legislative election and the 2001 British general election provides a context necessary to understand the condition of bottom-up direction of influence within both states. In a highly depoliticized and largely disaffected Chilean electorate, the center-left Lagos government perceived no popular call to address issues of asylum. Borders were securitized, and more generous provisions for immigration in general were instituted, yet the 1975 Pinochet era provisions for accessing asylum protection remained in place. Here, where the elite interpreted no popular mandate to address asylum issues, no governmental action was taken addressing asylum as a discrete issue. In the United Kingdom, by contrast, the center-left, yet increasingly centrist Labour government did attempt to provide a narrative somewhat hostile to the asylum seeker, but the cues were popularly confounded in the mind of the voting public with competing cues on intra-European immigration to the UK and the creation of a British national identity. In this environment, border security and measures limiting the right of the asylum seeker to earn a living became the only practically saleable actions, and as in Chile, the asylum process itself remained largely unaddressed.

3. Election Results

The Chilean legislative election was held on December 11, 2005. The center-left Concertación coalition remained in government, having received 51.75% of the popular vote and having increased its majority representative share by three, winning 65 seats in the 120-member Chamber of Deputies. The center-right Alianza coalition remained in opposition, having received

38.72% of the vote and having increased its representative share by one in the lower chamber, winning 58 seats. The Chilean presidential election was held on the same day. None of the four candidates presented claimed a majority of the popular vote, and this outcome resulted in a runoff contest between the two highest vote earners. In the runoff election on January 15, 2006, Michelle Bachelet of the PS (Socialist Party, member of the Concertación coalition) defeated Sebastián Piñera of RN, (National Renewal, member of the Alianza coalition) with 53.49% of the vote.

The British general election was held on June 7, 2001. Labour remained in government, having received 40.7% of the vote. Labour lost five seats in the House of Commons, reducing its number of MPs from 418 to 413. The Conservatives remained the second party with 31.7% of the vote, and picking up one parliamentary seat over its number following the 1997 election, for a total of 165. Blair assumed a second term as prime minister.

As a result of the elections, the center left governments – both of which having perceived no popular mandate to undertake adjustments to the processing of asylum claims – remained in office in Chile and the United Kingdom.

4. Policy as Costless Signaling

In Chile, Bachelet assumed the presidency on March 11, 2006. During the first two years of the Bachelet presidency, parliament again took little action to address political escape and subsequent refuge within Chile as a discrete issue. Instead, the act defining Concertación's progress on issues of immigration during the first half of Bachelet's presidency was the 2007 *Amnesty Act*, which normalized the status of 50,705 undocumented immigrants between October 2007 and February 2008 (Doña-Reveco and Levinson 2012). Under the program created by the *Act*, immigrants were granted temporary residence visas for a one-year period, and they were permitted to extend their period of residence by an additional year under the condition that they had been able to find work.

In October-November 2008, Amnesty International's Secretary General Irene Khan visited Chile to conduct an assessment of the country's commitment to the advancement of human rights. The visit concluded with a meeting between Khan and Bachelet, in which a memorandum enumerating several recommendations for the improvement of human rights was presented. This memorandum noted that "[in] a country that has witnessed first hand [*sic*] the tragic consequences of human rights violations, all political leaders and sectors of society share a joint responsibility for upholding human rights," and that "major cultural and institutional changes are urgently needed if Chile is to make a clean break from its past" (Khan Memorandum, quoted in Amnesty International 2008).

In part in answer to the call to address observed human rights abuses through institutional changes, the Bachelet government began to develop policy aimed at the improvement of Chile's asylum process in 2008. Interpreting the state's responsibility to repay its debt to the rest of the world for having received 500,000 exiles (a number that included Bachelet and her mother, following her father's political imprisonment and subsequent prison death) during the period of Pinochet's military dictatorship, the Concertación government began to draft South America's first comprehensive framework for asylum-seeker receiving, processing, adjudication, resettlement, and integration. This act took final form as the 2010 *Law of the Refugee*.

In the United Kingdom, by contrast, Blair's Labour government undertook several attempts to signal the toughening of restrictions on asylum entry. In April 2003, the 2002 *Nationality, Immigration and Asylum Act* (NIA Act) came into force. Restrictive measures included the following. Section 55 stipulated the requirement that if potential asylees did not initiate the claims process as soon as practically reasonable following their entry to the UK, they would not be able to access support under relevant provisions of the 1999 *Immigration and Asylum Act*. These

support provisions included access to state-subsidized housing (Article 4), public welfare assistance in the case that the applicant is judged “sufficiently destitute” to manage the cost of daily living (Article 95), and any short-term support as defined under Articles 4 or 95 in the case that claimant need for this support is judged to be temporary. Section 94 stipulated that negative decisions on asylum claims would not carry automatic suspensive effect and provided a list of safe countries. Claims initiated on the part of any applicant seeking protection from these countries would be certified as “clearly unfounded” pending review by the Secretary of State office.

In 2003, the United Kingdom acceded to the *Dublin Accord*.⁴² This is important because the United Kingdom had until this point opted out of European agreements regarding border security, and had therefore assumed control over its external border to an extent that no other EU member state had. No asylum claim would be heard unless the potential claimant had entered the community of fellow signatory states through Britain’s own border, and due to efforts of and effective allocation of resources to the UK Border Agency, this border was most difficult to cross within Europe.

In 2004, the *Asylum and Immigration – Treatment of Claimants etc. Act* instituted a provision that undermined the spirit, if not the letter of Article 31 of the *Refugee Convention*, which explicitly prohibits any signatory state action against claimants who lack proper travel documentation upon entry to receiving state territory. This provision stipulated that under the condition that an asylum claimant lacked such documentation, the potential asylee would face the burden of providing a “reasonable explanation” for the absence of documentation.

In spite of the prediction that Chile and the United Kingdom would interpret a relative inability to construct meaningful institutions toward the management of cost on issues of

⁴² The *Dublin Accord* is discussed in detail with reference to fellow signatory states Greece (in Chapter 3) and Belgium (in Chapter 4).

Convention compliance due to the strength of markers of structure relating to the perception that the median claimant would not be able to access the country's territory at this node in the decision sequence, elites within both states did undertake efforts to implement policy changes. These policy changes, however would serve primarily as devices to signal intent without the expectation that the full potential cost of this intent would be paid.

The resulting cheap talk was implemented to signal willingness to expedite gains toward achievement of the normative standard in Chile and to incrementalize gains toward the achievement of the normative standard in the United Kingdom. In Chile, the intent to expedite progress was signaled to the international community, making use of the moral argument that the country owed a debt to the rest of the world. However altruistically intentioned, these institutional reforms would be perceived to cost the state very little. During the four years of the Bachelet presidency, UNHCR (2011c) reports numbers of people accessing asylum protection within Chile at only 338 in 2006, 518 in 2007, 890 in 2008, and 498 in 2009. In the United Kingdom, the intent to incrementalize progress toward the normative standard was signaled to members of the domestic electorate who had begun to grow more aware of the presence of the outsider within the country's territory. Despite the strength of these signals, the measures implemented would display little effect on the actual processing of asylum claims. Because of this, measures implemented would also result in little effective cost to the state, as none displayed an effective change to length of time to final status determination. Year-over-year asylum claims processing wait times remained largely static at a period of around 12 months, although the number of claimants attempting to access asylum protection did decrease steadily during the 2001-2004 period. UNHCR (various years) reports these figures for 2001 at 147,425; for 2002 at 138,905; for 2003 at 108,347; and for 2004 at 77,103.

5. Selling the Procedures

During the run-up to the 2009 elections, The Concertación alliance faced trouble on two fronts. PS President Bachelet held wide popularity, but was barred for holding consecutive terms in office. Concertación endorsed PDC (Christian Democrat) former President Eduardo Frei, whose campaign rhetoric focused not on Frei's former record, but on promises to continue Bachelet's legacy on election. RN candidate Sebastián Piñera had emerged as Frei's likely contender in the event of a runoff election, with the support of Alianza's successor coalition, the center-right Coalition for Change parties, including the RN and IDU. However, due to Bachelet's continued popularity, Piñera's candidacy focused largely on maintaining much of the then-current government policies. While Frei was burdened by a previous and comparatively (to Bachelet's) unpopular 1994-2000 presidency, Piñera faced no similar burden. Piñera spoke out in opposition to elements of a conservative UDI platform by advocating for social stances that were perceived as highly liberal. These stances included measures to ensure availability of the morning-after contraceptive pill and to create inheritance rights for unmarried couples, including same sex couples. Piñera also promised to retain many of the Concertación government's economic policies; the greatest divergence between the anticipated candidate and Bachelet on economic issues was the increased emphasis on law enforcement and crime prevention (Economist 2009). With regard to the parliamentary election, the popular view was that Concertación alliance parties would lose several seats. Ultimately, within Chile's highly depoliticized and disaffected electorate, little difference was noted between the two candidates. As this was the case, both anticipated candidates for a presidency that held wide powers in terms of setting the legislative agenda were in the process of campaigning on the basis of maintaining the most popular elements of the current agenda.

With regard to issues of asylum, the advances made by the Bachelet government were not

politically salient to the masses as discrete issues; instead, they were popularly seen to form only a small part of a highly popular agenda. Because of the perceived irrelevance of political flight and asylum in Chile to voters, the audience to whom the advances were framed consisted of observers within the international human rights regime and the international press. These advances would be largely maintained and strengthened following the 2005 election, to be discussed in a subsequent section.

In the United Kingdom, issues of asylum remained similarly unimportant to the electorate, albeit for different reasons. It was widely perceived that Blair's Labour government would maintain a large portion of its majority in parliament and that Blair would retain the position of prime minister. The dialogue concerning issues of asylum had focused almost exclusively on securitization and the removal of perceived pull factors, and this dialogue was communicated, by contrast, to the domestic electorate. Concrete actions on increased border security and pull-factor removal, although aimed specifically at the asylum seeker, were not popularly understood to apply strictly to the asylum seeker, as these issues were conceptually applicable to all immigrants. For this reason, anti-asylum rhetoric was popularly conflated with competing rhetorics addressing British national identity and intra-European immigration. This resulted in an effective lack of need to continue selling the asylum dialogue. This lack of need to sell is evidenced by the fact that the only legislative action on issues on asylum during the five years to follow was limited to one 2006 bilateral agreement with Switzerland to repatriate potential asylum seekers to Swiss territory (*UK/Swiss Bilateral Readmissions Agreement 2006*) and the 2007 *Border Act*, which stipulated the ability for denied asylum seekers to continue accessing state-paid welfare provisions.

6. Keep the Rule Maker in Office?

Questions of keeping the rule makers in office become largely irrelevant under the condition that the rules themselves have been instituted toward the aim of costless signaling. In

Chile, where the audience for this cheap talk was not the domestic audience responsible for electing the rule makers, but instead, the international community, issues of asylum became consumed under a larger agenda, which both run-off candidates had promised to support following their election. In the United Kingdom, where the audience for this cheap talk was the domestic electorate, issues of asylum became conflated with issues pertaining to issues of nationality and migration in general. This cheap talk itself became increasingly less advantageous to and therefore, less used by elites vying to retain popular support. As if following from the prediction that the median asylum seeker would not be able to find his way across the UK border, no effort was made toward the effective increase or decrease in length of time to final status determination, and as expected following from the predictions of Chapter 1 relating to the operationalization of compliance, no change in period over which the median claim remained pending can be observed following any legislative action on securitization and removal of perceived pull factors.

The Chilean legislative and presidential elections were held on December 13, 2009. Due to the fact that parliamentary seats are awarded by district, Chile's Concertación alliance government, despite having received a plurality 44.35% share of the overall vote, won a slim minority in terms of MPs. Concertación parties suffered a loss of eight seats in the Chamber of Deputies, resulting in a total share of 57 in the lower house. Parties aligned with the Alianza successor Coalition for Change alliance picked up one seat, resulting in a total share of 58 in the lower house. Piñera and Frei emerged as the two highest vote takers in the presidential election and faced a run-off election on January 17, 2010. Sebastián Piñera emerged victorious in the run-off contest, receiving 51.61% of the popular vote. As a result of both elections, Little mandate for overall change was observed, and mandate for either the maintenance of or change on issues of asylum remained completely outside the public dialogue.

The British general election was held on May 5, 2005. Also due to the effects of district voting, despite Labour's share of only 35.20% of the popular vote compared to Conservative's 32.4%, Labour retained a large majority of parliamentary seats. 356 seats were awarded to Labour candidates, while only 166 seats were awarded to Conservative candidates. As party leader, Blair assumed a second term as Prime Minister. The election resulted in Labour's loss of 46 parliamentary seats and Conservative's gain of 33 seats over the parties' respective 2001-2005 shares. Although a mandate for a right shift in government may be observed from this result, because of the irrelevance of issues unique to political flight and asylum to the calculation of policy preferences within the British electorate, no mandate for change to policies that had focused on border security and the removal of pull factors can be interpreted. Furthermore, because these specific policies are noted to stem from issues perceived in the literature as important to electorates favoring right governments (Weiner 1996), even in the event that issues of asylum had proven highly salient, no mandate for change to the 2001-2005 Labour policy would be expected following a right shift in government.

In the preceding sections, I have led the reader through a second treatment of the Chapter 2 model with reference to two countries for which the configuration of compliance institutions is predicted not to permit an understanding of asylum outcomes as these outcomes relate to length of time to the median asylum applicant's final status determination. In both Chile and the United Kingdom, these institutions have been constructed as if following from the understanding that the state would not face calls to pay out on the cost of any institution to be constructed. Chile has used this opportunity to broadcast costless signals to members of the international community, as issues of forced migration were unimportant to a domestic electorate within a country that has not received more than 1000 asylum application in any year observed over the course of this study.

The United Kingdom has used this opportunity to broadcast costless signals to members of its own domestic electorate. These signals, however, proved ultimately unimportant due to the facts that the cues on issues of asylum focused on issues that could be applied conceptually to all immigrants, and that issues relating to *voluntary* immigrants were much more salient in the eyes of the British public.

Through each point in the decision sequence, I have shown how the phenomenon of institution as cheap talk was encouraged and the forms that this cheap talk has taken, resulting in the costless broadcast of two discrete intentions: to expedite progress toward the normative goal in Chile, and to incrementalize progress toward the normative goal in the United Kingdom. These goals diverge from the predictions summarized in Chapter 2, Table 4, and this divergence may only be understood under the condition that the institutional output itself meets the criteria for use of institution as cheap talk. To follow, I discuss developments as they have occurred in both focus countries following the second observed election cycle.

After the Elections: Further Developments in Chile and the United Kingdom

Chile. Following the 2009 election, the Coalition for Change government continued the reforms initially undertaken at Bachelet's initiative under the Concertación government. Under Piñera, the 1975 Pinochet-era *Immigration Act*, having been substantially amended during the Bachelet presidency, was finally supplanted. The subsection permitting entry to Chilean territory as an asylum seeker was replaced and greatly expanded with the 2010 *Law for the Protection of Refugees*. The *Law* consolidated and formally implemented all relevant refugee and asylum international agreements to which Chile was a party, and it also included provisions defining protections for victims of gender-based violence and for unaccompanied minors. The *Law* mandated the creation of a five-member administrative committee responsible for oversight of all

bureaucratic and judicial procedures resulting from asylum claims and included, and as the first instance of any such legislation in South America, a refugee bill of rights. Practically, however, Chile continues not to face calls to pay out on full potential cost of the obligations the state has assumed. Despite the vast increase in numbers of asylum seekers worldwide and the advances made under Piñera and the 2010-2014 Coalition for Change government, Chile has observed a sharp decrease in the number of asylum claims initiated. UNHCR (2016) reports these numbers for 2011 at 305, for 2012 at 168, and for both 2013 and 2014 (the last year for which data are available) at 249. New Majority, the successor coalition to Concertación, regained a parliamentary majority and its government assumed office in January 2014; Bachelet was reelected to the presidency and assumed office in March 2014. Any possible changes resulting from the return of the center-left remain to be measured.

United Kingdom. Following the 2005 general election, the Labour government took little action on issues relating to asylum. As discussed in the previous section, only two laws were enacted, and neither addressed the procedure of an already well-functioning system for processing asylum claims. The Labour government was replaced in the 2010 general election by a Conservative government, headed by David Cameron. *The Guardian* (2015) notes that Cameron's Conservative government has resumed the practice of conflating issues of political flight with other issues migration and national identity, yet the system for processing claims has remained effective and unchanged.

Under the Conservative government, however, this rhetoric has become more widely accepted in the popular dialogue. In 2015, the UK Refugee Council enumerated and responded to counter several myths that had become popularly accepted among British voters with reference to the asylum seeker in the United Kingdom. First among these myths was that asylum seekers make

up a large proportion of new immigrant arrivals in the UK. In response, the Refugee Council noted that between June 2014 and June 15, of the 636,000 people to have arrived in Britain, only 5% had attempted to claim standing necessary to access asylum protection. Second among these myths was that Britain is Europe's top recipient of asylum applications. The Refugee Council document noted that between January and September 2015, the UK had received only around 3% of all asylum applications lodged within EU member states, and that within a single weekend in October 2015, more asylum seekers had reached Greece than had reached the UK between the beginning of January and the end of October 2015 (UK Refugee Council 2015).

In part as a result of the pervasive nature and wide acceptance of these myths as true, popular demand for the UK to reassert control over its external border rose. This rise culminated in the 2016 United Kingdom European Union Membership referendum on June 23, 2016. The outcome of the referendum was the non-binding mandate for Britain to exit the EU.

Conclusion: Polar Ideal Types and the Domestic Politics of Institution as Cheap Talk

Powell and Staton (2009) finds that states will perceive that where they will not face calls to pay out on the full cost of international treaty compliance, they will ratify or accede to treaties for the purpose of costless signaling. Because nothing inherent to the logic of the Powell and Staton argument suggests that this condition sufficient to trigger the use of signatory status as cheap talk may be conceptually limited to the ratification or accession process, I apply this same logic to the passage of state-specific legislative, bureaucratic, and judicial procedures enacted toward the domestic implementation of the international treaty. With regard to the *Refugee Convention* and its *Protocol*, this study holds that under the condition that the median asylum seeker is unlikely to be counted among a receiving state's total of asylum seekers due either to strict measures of border control or to geographic isolation relative to net refugee-sending countries, the receiving state will

be freed to draft legislation toward the aim of signaling whatever intent will prove popular with the audience to which the state intends to broadcast its signal. Under the condition of institution as cheap talk, the type of institution in place will be unpredictable on the basis of utilities earned toward decisions taken on the “what type of institution should we expect?” dimension of analysis presented in Chapter 2.

Through the cases of Chile and the United Kingdom, I have demonstrated that the institution in place may directly contradict the predictions of the vertical dimension of the Chapter 2 model, if taken in isolation. Here, the issue of importance is not the elite-domestic interplay surrounding the construction of the institution, but the specific state of elite-domestic interplay that suggests the type of audience to which the elite focus their costless signaling. In Chile, the audience was one of international human rights and media observers. In a domestic environment in which the voting public paid little attention to asylum as a discrete issue, the Bachelet and Piñera governments were able to trumpet Chile’s status on the international stage as a country highly committed to the normative standard set forth within the *Refugee Convention*, and the governments were able to do this without fear of domestic electorate repercussion. In the United Kingdom, the audience to whom these signals were broadcast was the domestic electorate. Measures were implemented and dialogues were advanced with the aim of making Britain appear to voters as more secure and less attractive to the immigrant, yet none of these measures had the effect of changing the bureaucratic or procedural processes necessary to claim asylum. In effect, the already restrictive level of border security created a condition under which politically important promises could be made to the voting public without fear of reprisal from the international community.

Through an understanding of these two poles of costless signaling behavior, I suggest that further research will be better able to measure and predict state action taken under the condition

that the institution itself can be predicted not to matter to *Convention* compliance outcomes. Among states where institution-as-cheap-talk may be implemented, to which audience will the state choose to broadcast its signals? Will the greater output of a state's signaling devices be geared toward the broadcast of intent to expedite gains toward the normative standard to the international community of human rights observers, or will the greater output of a state's signaling devices be geared toward the broadcast of intent to incrementalize gains toward the normative standard to the domestic electorate?

CHAPTER 6 – CONCLUSIONS AND DIRECTIONS FOR FUTURE RESEARCH

With this work, I have proposed a framework potentially useful to an answer to the question – where and how do institutions matter? Taking advantage of the quasi-experimental framework that results as democratic states construct varying forms of domestic legislation in implementation of the 1951 *Convention Relating to the Status of Refugees* and its 1967 *Protocol*, I have attempted to delineate the conditions under which the rules enacted at the domestic level toward full compliance should prove predictive of compliance outcomes. Where should the rules in place lend insight into the outcomes observed, and where do the rules constitute mere superstructure, having been built primarily toward the goal of costless signaling? Then, where these rules should lend insight into the state’s compliance outcomes, how do these rules – presented as products of the elite quest for electoral survival within individual states – allow us to determine the political motivations underlying the construction of these rules, and what do these motivations tell us about the types of domestic compliance rules should we expect to observe?

The Theoretic Model

The framework I have presented in Chapter 2 is based on Parsons (2008). I recast each of the four methods proposed to expound causation narratives – the psychological, the structural, the institutional, and the ideational – within a clear, mutually exclusive context with reference to the three elements of the rationality assumption. Building from the Bueno de Mesquita et al (2003) framework that presents regime type as indicative of elements of the psychological as they are understood in this work, I hold constant elements of psychology by controlling for regime type. This permits a framework in which all decision makers can be observed to choose actions based primarily on the motivation to achieve or maintain elected office and policy influence within successfully consolidated democracies.

I employ factors indicative of hierarchical orderings within the community of states taking

decisions as markers of structure. I use these structural markers to calculate estimates of elite motivations within the rule-building game – where should elites be expected to forge institutions that will display measurable effects on outcomes, and where should elites perceive the opportunity to use institutions merely as signaling devices, without expectation that these signals will carry real costs to the state? Where costless signaling can occur, the rules drafted should prove uninformative toward an understanding of observed outcomes. Alternatively, where the institution should be of use to understand compliance outcomes, two possibilities exist: that the rules will be drafted toward the aim of cost acceptance, and the rules should be drafted toward the aim of cost evasion.

Then, I address two separate goals using markers of ideation. Where the strength of structural hierarchies is sufficient to allow the prediction that the rules in place should not be important to outcomes, these markers of ideation will serve demonstrate the wide variation in outcomes among states to have forge institutions that are quite similar. I demonstrate this outcome in Chapter 5 through the cases of Chile and the United Kingdom. Where the strength of these hierarchies is insufficient to suggest that the rules will prove epiphenomenal to outcomes, the institutions should matter, and these markers of ideation will permit the prediction of the electoral motivations to have informed those elites involved in the rule construction game. The motivation to accept the full cost of normative compliance is discussed in Chapter 4 through the cases of Belgium and South Korea, and the motivation to avoid the full cost of normative compliance is discussed in Chapter 3 through the cases of Austria and Greece.

Through the application of this model to questions stemming from matters of full compliance with the 1951 *Refugee Convention* and its 1967 *Protocol*, I am able to achieve a second, equally important goal. Since the mid-1980s, authors have tried to answer questions of

asylum outcomes. These questions have been framed, almost exclusively, as questions of why the current distribution of asylum seekers is observed in its present configuration. Authors have attributed these configurations to matters of push-pull factors, of receiving state wealth, of geographic contiguity and distance, and of prior state histories of positive decisions on asylum claims. Each of these attributions is centered on a causation narrative that proves highly lacking in its predictive capability due to the presence of large numbers of outlier cases that cannot be reconciled to the proposed narrative.

By placing questions of *Refugee Convention* compliance within this model, I disaggregate the overall question into two separate questions: *where* should a state's compliance instruments lend insight into the observed configuration of asylum seekers among democratic receiving states, and *how* should a state's compliance instruments serve the same goal? I have advanced the case that the factors that have proven statistically significant toward answers to the current distribution of asylum claims have proven so primarily as they have provided answers only to the *where* question – not the *how* question. I have placed these proposed explanations in a new light by casting each answer as a marker of structural hierarchy. Instead of treating each as a discrete variable and a potential key to an answer to the overall question, I employ each proposed explanation toward the calculation of the state decision maker's space within the hierarchy of all state decision makers. Through this process, I am able to answer the question – where does structure play a sufficiently strong role to suggest that any compliance institution to be built will assume the role of mere superstructure, and where will the compliance institution itself provide the key to answers that have long eluded authors? I then address questions of the degree popular nativist sentiment, direction of elite-mass influence, and electoral propaganda and results to determine how the compliance institution drawn and maintained within each of the 44 receiving

states should lend insight into each state's observed configuration of compliance instruments, and how these instruments themselves should lend insight into the distribution of asylum seekers worldwide.

The Cases: Cost Evasion in Austria and Greece

Through examination of Austria and Greece, I lead the reader through the most intuitive of possible scenarios – that the rules will be built to matter, and that these rules will carry the effect of the avoidance of the full potential cost of *Convention* compliance to the state. Methods employed toward the evasion of the full potential cost of compliance are observed through two discrete paths: instrumental *action* in Austria and instrumental *inaction* in Greece.

In Austria, the procedure for being granted asylum has become increasingly complex, and the judicial bar for proving a claim to asylum protection has been raised to a practically insurmountable level. At the same time, a procedure to allow for the deportation the denied applicant has been encoded, the application of suspensive effect to be applied to negative decisions has been relegated to an extra-judicial procedure, and bodies charged with performing investigations on asylum claims have become increasingly and frustratingly fractured. These developments have unfolded against a backdrop of increasing broadcast of nativist sentiment in political advertisement and progressively right moves in mainstream party platforms on issues of asylum due to the salience of anti-asylum seeker narratives in the public consciousness. Where the issues were important first to the fringe elite, the masses responded; after the masses had become invested, the mainline elite took action. The effect was the avoidance of the full potential cost of *Convention* compliance through the incrementalization of progress toward the normative standard.

In Greece, by contrast, no reframing of the archaic, net-emigration era procedures was enacted. The two mainline parties moderated their rhetoric to exclude discussion of any issue that

may have been seen as controversial or polarizing, including discussion of any potential solution to Greece's unparalleled problems with undocumented entry to its territory. Leaders within each party took no action. Instead, in the race-to-the-center political environment that encompassed the entire temporal space under observation, elite rhetoric on the relevant issues took two forms: hold the EU responsible for the problems of high levels of undocumented entry, and blame actors within the other party for allowing the EU to impose its will on Greece. In this environment, inaction was the means that resulted in the incrementalization of progress toward the normative goal, also achieving the evasion of the full potential cost of *Convention* compliance.

The Cases: Cost Acceptance in Belgium and South Korea

Through examination of Belgium and South Korea, I lead the reader through a process that results in an outcome that is far less intuitive and also less frequently observed. Here, the rules will be built with the understanding that they display measurable effects on outcomes, but instead of being built toward the goal of avoiding the full potential cost of *Convention* compliance, the rules are built toward the evasion of overall electoral costs. The minimum cost of *Convention* compliance is greatly exceeded because elected rule makers have been observed to take action as if having judged payment of these increased costs as losses necessary to their overall winning strategies. This scenario is observed under the condition that the drafters of the relevant institution can be shown to have perceived the opportunity to use losses in the rule building game to achieve greater gains on issues that are ultimately unrelated to *Convention* compliance.

Means of surpassing the effective cost of full compliance are understood through two discrete motivations: to score greater legitimacy abroad as in Belgium, and to score greater support at home in South Korea. Following the ECHR ruling on *MSS v. Belgium and Greece*, leaders within Belgium perceived that the harsh tone taken against the state had been noted and met with

immediate policy action throughout Western Europe. States actively worked to avoid the fate that Belgium had suffered merely as a result of its literal interpretation of the role it was to assume under the terms of the *Dublin Accord*. As the country was seat of the European Union and home to a large share of nongovernmental human rights organizations, elites within Belgium are observed to have taken action as if having reacting to this injury to its reputation. Almost immediately, elements of the Swedish legislation (which had been long viewed as the exemplar of generosity in asylum provision) pertaining to the reception and processing of asylum seekers were encoded into its domestic law by the elected rule makers, with little debate or vocal opposition.

In South Korea, growing concerns over the control of its borders and the presence and participation of large numbers of undocumented immigrants led to a novel solution. By increasing the incentives to apply for asylum, and by granting levels of benefits unparalleled within Asia (and indeed, within most of the world outside of the Nordic countries and Belgium) elected rule makers were able to trumpet their prediction of an end to mass concerns over the presence of the unknown immigrant among them. By incentivizing the asylum application process, fewer undocumented immigrants would be counted among the country's population precisely because a high number of these immigrants would be expected to take advantage of the opportunity to normalize their status in South Korea by initiating individual asylum claims. This reform was also uncontroversial, with wide support from members of parties holding more than 250 of parliament's 299 seats.

The Cases: Signals Without Cost in Chile and The United Kingdom

Through the cases of Chile and the United Kingdom, I examine the condition under which the rules themselves should not matter greatly to compliance outcomes. Discussion of the domestic politics of electoral survival is implemented here, not toward the determination of the type of rule that we should expect to find in place, but toward an understanding of the fact that under the

condition of institution-as-cheap-talk, highly divergent outcomes may result from institutional rules that share marked similarities.

Due to its near geographic isolation relative to potential refugee sending states, Chile is observed to have taken calculations as if under the assumption that the state would never face calls to pay out on any generosity in provisions that may result from its rule-building process. Its provisions, including the first initiative taken by a South American state to resettle refugees and the continent's first comprehensive framework for defining asylum seeker reception, processing, and adjudication, have set the South American standard for action on forced migration. This standard was only later to be matched with similar actions by Brazil and Uruguay. At the same time, it must be recognized that the number of people to whom these provisions may be extended is greatly moderated by the fact that urban centers in Chile are difficult to reach except by air travel or by travel of great distance through Peru. This is important because although Peru does not guarantee nearly as many protections to potential or approved claimants, the state does offer one benefit that remains unmatched in South America – the highest number of positive decisions on affirmative asylum claims. By December 2009, Chile's backlog of pending asylum claims had dropped by over 49% from its January total, leaving fewer than 1/3 of the claims initiated in late-2008 and all of 2009 undecided at the beginning of 2010, and resulting in a median-applicant wait time to final status determination of less than one year.

Over the same period of time in the United Kingdom, the backlog was also reduced as a percentage of overall claimants awaiting final status determination, albeit by less than 9%. This also resulted in a median-applicant wait time to final status determination of less than one year. However, while this figure accounts for cases involving fewer than 500 claimants in Chile, the UK figure accounts for cases involving 12,400 claimants. Here, instead of acting under the impetus to

liberalize asylum laws as a form of costless signaling to outside observers, the UK acted under the impetus to tighten and restrict asylum access as a form of costless signaling to a domestic electorate that was growing weary of the ever-expanding presence of the outsider within its borders. These acts were largely limited to mere rhetoric at the expense of concrete policy, as during the period of time that the rules governing asylum were being legislated, the majority of the British electorate was far more concerned with questions of European migration than questions of non-European migration. A greater score was to be made by conflating varied issues of immigration into a single series of talking points, as opposed to the construction of rules that would address the presence of the asylum seeker.

**Purgatory, Protest, or Paralysis:
Legacies of Contestation, Path Dependent Institutions, and the Current Refugee Crisis**

Institutional setups are products of time. The analysis I have conducted considers compliance institutions with reference to the specific debates that were important to elite electoral survival during the time the rules were being debated, encoded, enforced, and maintained. Future work will examine the question of path dependencies as they relate to these compliance institutions. How will these rules – the legacies of time-specific debates – continue to influence compliance outcomes after the domestic debates have changed with the further passage of time? I suggest that the three paths outlined in Chapters 3, 4, and 5 – cost evasion, cost acceptance, and institution-as-cheap-talk – will lend themselves to three discrete types of outcomes going forward.

For countries that have engaged in instrumental cost evasion, the institutions constructed, maintained, and enforced have led to outcomes in which the median applicant awaiting final status determination has become trapped within legal and bureaucratic mechanisms that can't be easily remedied due both to their complexity and to the number of people whose source of income depends on their continued roles within these mechanisms. For applicants having run to escape

life-threatening conditions, this presents one type of tragedy – a state of purgatory. In this purgatory, the potential asylee is temporarily safe from persecution at the hands of the sending state, and has no real option other than to hope that this refuge will continue indefinitely. But any guarantee of this refuge is long awaited, and the idea that the claimant will never receive permanent recognition is always within the realm of possibility.

For countries that have engaged in instrumental cost acceptance, the potential tragedy is of a different type. Here, where the state has enacted policies that have greatly exceeded the minimum cost of compliance, there exists the strongest potential for protest by the non-refugee population, who may question why state resources are being extended to the outsider living within the country's territory, to the possible exclusion of resources to be extended to the native born population? This outcome has been observed with the rise of nativist parties in the three European countries (Belgium, Norway, and Sweden) to have fallen most strongly under this prediction, and anti-immigrant sentiment can only be expected to rise as a result of the current refugee crisis in Europe and the continued provision of benefits that exceed the minimum required for full compliance.

For countries that have engaged in rule construction as cheap talk, the tragedy is of a third type. Here, the domestic institutions are poorly suited to deal with increases in the population of potential claimants precisely because they were constructed under the assumption that the states would never be forced to pay out on their promises. This presents a sort of paralysis for the state as forced migration numbers increase. Under the condition that the state finally becomes forced to pay out, its own institutions are ill-equipped to manage a situation that was far from the minds of those who had been charged with writing the rules of the game. Especially within Europe, the state cannot move slowly because asylum applicants are entering the country's territory in large,

unprecedented numbers. At the same time, the state cannot move quickly, as human rights observers across the world are acutely aware and understandably cautious following the many deaths suffered by Latin American deportees that resulted from the Obama administration's rush to ameliorate the judicial processes surrounding asylum in the US without having taken the necessary steps to speed the concomitant bureaucratic processes. State policy response will become effectively stalled due to the conflict between the pressure from electorates to take extreme measures to correct shortfalls and pressure from the international community to exercise only cautious movement toward the normative goal. I suggest that this situation will present the greatest problem in the UK. Following the vote to leave the European Union due largely to electorate perception that the state should assert control over its own borders, the UK will be left to address the shortfalls that have resulted from the construction of its own compliance instruments as mere cheap talk at the same time that it must further consolidate its own external border.

Future work will address these legacies and their outcomes – both as they affect domestic legal, judicial, and bureaucratic processes, and as they affect the lives of those who have been forced to flee and have found themselves as unwitting heirs to these legacies of time-specific political debates.

Further Research Directions **Polar Ideal Types: Filling In the Blanks**

With each of the case study chapters, I have identified two ideal-typical poles of state behavior toward the construction and maintenance of compliance instruments. Further work will benefit from the ability to analyze receiving state-specific behavior as it conforms more or less strongly to one of these two poles of action.

Cost avoidance is understood through the instrumental incrementalization of progress toward the normative standard. If a state behaves in such a manner as to permit the prediction of

cost avoidance, how will the state incrementalize its progress? The processes of instrumental action and instrumental inaction, typified by Austria and Greece, respectively, are potentially useful to an answer to this question. Cost acceptance is understood through the instrumental expediting of progress toward the normative standard. If a state behaves so as to permit the prediction of cost acceptance, what motivation informs the expedition of its progress? Completely unaddressed with this work is the question of the manner in which the state-level motivation – either as a response to pressure from outside observers as in Belgium or as a response to pressure from domestic electorates as in South Korea – will be useful to an understanding of the ideal typical form that its cost-acceptant action will take? Further work will benefit from the opportunity to examine this question in much greater detail. Finally, a state may use the rule-building game to signal its responsiveness toward calls either to incrementalize progress as in the UK or to expedite progress as in Chile under the calculation that the actual institutional output will display no measurable effects on compliance outcomes. If the institution is not going to matter, how does the freedom to make sweeping promises with regard to the institution interact with a country's own domestic political environment to permit prediction of the type of institution and/or outcome we should expect to observe?

Further Research Directions

Expanding the Temporal and Spatial Frames: New Data, New Predictions

The model I develop in Chapter 2 and explicate further with reference to six focus countries considers only the two most recent pre-2010 election cycles within each of the 44 countries I observe. However, nothing inherent to the logic of this model suggests that the scope of its predictive capability is limited to two election cycles or only to the 44 states observed. I suggest that future work will be able to apply this model more broadly, to incorporate examination of the interplay between structural hierarchies as they change over time and a temporal space that

incorporates both previous and subsequent election cycles within all states. This will permit analysis of the movement of states from their fixed positions as conditions change over time, allowing for further predictions to be made with regard to the domestic institution – where and how did it matter 20 years ago, and where and how will it matter in 20 years from now. Questions of this type will become increasingly important in light of the post-Arab Spring developments with regard to the movement of unprecedented numbers of people taking political flight, with particular reference to those seeking humanitarian protection within Europe.

Additionally, nothing inherent to the logic of the model suggests that it cannot be applied to smaller states (e.g., Malta), to states where the adjudication process was not accessible from within the country's borders (e.g., Germany), or to states that are observed to be democratic, but had not experienced recent party turnover preceding the short temporal frame observed (e.g., Japan). These additional controls for elements of psychology were introduced to the current study merely to suggest a minimum standard of similarity among country cases observed and to limit the selection of cases to a more manageable number. However, with the construction of a broader dataset to include estimates of revealed preference utilities on all measures, the inclusion of these and many other states can only broaden the scope and strengthen the predictive capability of the model.

Further Research Directions

Where and How Do the Rules Matter? Possible Applications to Other Questions

On more of a meta-theoretic level, I propose that the framework I develop with reference to the elements of the rationality assumption and the resulting model I test with reference to compliance with the *Refugee Convention* and its *Protocol* are both potentially useful toward answers to other, completely unrelated questions of comparative politics. First, by reconfiguring the Parsons framework to place each mode of explaining observed relationships between

independent and dependent variables within a clear, mutually exclusive context, I have demonstrated that elements of psychology, structure, institution, and ideation may be placed in dialogue with each other and ultimately tested against each other toward answers to questions of where and how institutions influence outcomes. Second, with the model I develop, I have demonstrated that performing this type of test can lend new insight into debates, the ultimate answers to which possibly having long eluded researchers. In the attempt to identify a single input variable as the key to understanding causation, many authors have been left with results that have served as the basis for the backformation of causal arguments that ultimately lack explanatory power due to the number of outlier cases that the author's causation narrative is unable to explain.

Further work will benefit from the opportunity to apply this framework to test elements of the structural against elements of the institutional, and to construct tests not only on questions of normative compliance following various UN mandates, but on a broad array of questions for which competing forms of causal explanations exist. Are structural narratives or institutional narratives more accurately predictive of such factors as regime type, level of economic development, likelihood of democratic consolidation, party formation and success, policy outcomes, etc., or does the possibility exist that we may identify specific conditions under which markers of structure may be more accurately predictive of outcomes within certain observed cases, while markers of institution may be more accurately predictive of outcomes within others?

APPENDIX A

Elections and Parties Observed

Australia

Election Years: 2004, 2007

Parties: Liberal Party of Australia, National Party of Australia, Country Liberal Party, One Nation Party

Austria

Election Years: 2006, 2008

Parties: Freedom Party of Austria, Alliance for the Future of Austria

Belgium

Election Years: 2003, 2007

Parties: Vlaams Blok (Flemish), National Front (Walloon)

Brazil

Election Years: 2002, 2006

Parties: Liberal Front Party, Progressive Party, Party of the Reconstruction of the National Order, Republic Party

Bulgaria

Election Years: 2005, 2009

Parties: Bulgarian National Patriotic Party, Citizens for European Development of Bulgaria, Democrats for a Strong Bulgaria, National Movement for the Salvation of the Fatherland, National Union Attack, Union of the Patriotic Forces and Militaries of the Reserve Defense

Canada

Election Years: 2006, 2008

Parties: Conservative

Chile

Election Years: 2005, 2009

Parties: Independent Democrat Union, National Renewal

Costa Rica

Election Years: 2002, 2006

Parties: Homeland First, Libertarian Movement Party, National Rescue Party

Czech Republic:

Election Years: 2002, 2006

Parties: Civic Democrats, Social Democrats

Denmark

Election Years: 2005, 2007

Parties: Venstre, Danish People's Party, Conservative People's Party

Dominican Republic

Election Years: 2002, 2006

Parties: Dominican Revolutionary Party, National Unity Party, Social Christian Reformist Party

El Salvador

Election Years: 2003, 2009

Parties: Nationalist Republican Alliance

Estonia:

Election Years: 2003, 2007

Parties: Estonian Independence, Estonian Reform Party, Party of the Fatherland Union, Union for the Republic, Union of Pro Patria and Res Publica

Finland

Election Years: 2003, 2007

Parties: National Coalition Party, True Finns

France

Election Years: 2002, 2007

Parties: Movement for France, Liberal Democracy, National Front, Rally for France, Union for a Popular Movement, Union for French Democracy

Greece

Election Years: 2007, 2009

Parties: New Democracy

Ireland

Election Years: 2002, 2007

Parties: Fianna Fail, Progressive Democrats

Israel

Election Years: 2006, 2009

Parties: Likud

Italy

Election Years: 2006, 2008

Parties: National Alliance, Social Alternative, Fiamma Tricolore

Jamaica

Election Years: 2002, 2007

Parties: Jamaica Labour Party

Latvia

Election Years: 2006, 2010

Parties: Civic Union, New Era, Party for Fatherland and Freedom, People's Party, Society for Other Politics

Lithuania

Election Years: 2004, 2008

Parties: Homeland Union, National Resurrection, Order and Justice

Mexico

Election Years: 2006, 2009

Parties: National Action Party

Netherlands

Election Years: 2003, 2006

Parties: People's Party for Freedom and Democracy, Party for Freedom, Proud of the Netherlands

New Zealand

Election Years: 2005, 2008

Parties: New Zealand Frist, New Zealand National Party

Norway

Election Years: 2005, 2009

Parties: Progress Party, Conservative Party

Peru

Election Years: 2001, 2006

Parties: Alliance for the Future, Let's Go Neighbor, Peru 2000, Peru Possible, National Unity

Poland

Election Years: 2005, 2007

Parties: Civic Platform, Law and Justice

Portugal

Election Years: 2005, 2009

Parties: New Democracy, Social Democratic

Romania

Election Years: 2004, 2008

Parties: Democratic Liberal Party, Greater Romania, National Liberals

Slovakia

Election Years: 2002, 2009

Parties: Movement for a Democratic Slovakia, Slovak Democratic and Christian Union,
Slovak National Party

Slovenia

Election Years: 2004, 2008

Parties: Slovenian Democrats, Slovenian National Party, Slovenian People's Party

South Africa

Election Years: 2004, 2009

Parties: Congress of the People, Inkatha Freedom, Freedom Front Plus

South Korea

Election Years: 2004, 2008

Parties: Future Hope Alliance, Grand National Party, Liberty Forward, Pro-Park
Coalition

Spain

Election Years: 2004, 2008

Parties: Convergence and Union, People's Party,

Sweden

Election Years: 2003, 2007

Parties: Christian Democrats, Liberal People's Party, Moderate Party, Sweden Democrats

Switzerland

Election Years: 2002, 2006

Parties: Christian Social Party, Federal Democratic Union, Swiss People's Party, Swiss
Democrats

Trinidad and Tobago

Election Years: 2002, 2005

Coalition: People's Partnership – Left coalition containing the major nativist party,
National Joint Action

United Kingdom

Election Years: 2001, 2005

Parties: Conservatives

United States

Election Years: 2006, 2008

Parties: Republican

Uruguay

Election Years: 2004, 2009

Parties: Civic Union, National Party

APPENDIX B

Calculation and Use of Bureaucracy Measure

The figure in Table 11 figure is a compound measure calculated in the following manner.

Log (percentage of highest total figure observed as the product of three input factors below):

1. percentage of vote share earned by parties observed in Appendix A
2. percentage of public working in government
3. dichotomous measure indicating either successfully consolidated bureaucracy (per International Labour Organization [2010]) or shared land border with a country hosting a successfully consolidated bureaucracy (per Gunther, Puhle, and Nikiforos [1995]).

For the following states (all of which taking action under the condition of bottom-up direction of influence), this third input factor takes a score of 1.0:

| | | |
|----------------|-------------|----------------|
| Australia | Israel | Slovakia |
| Belgium | Jamaica | Slovenia |
| Brazil | Lithuania | South Korea |
| Canada | Mexico | Spain |
| Costa Rica | Netherlands | Sweden |
| Czech Republic | Norway | Switzerland |
| Estonia | Poland | United Kingdom |
| Finland | Portugal | United States |
| France | Romania | Uruguay |
| Ireland | | |

For the remaining states taking action under the condition of bottom-up influence, this third input factor takes a score of 0.5:

| | | |
|--------------------|-------------|---------------------|
| Bulgaria | El Salvador | South Africa |
| Chile | Greece | Trinidad and Tobago |
| Dominican Republic | Peru | |

Where the product of the second and third input factors falls below the mean value for all states, I terminate the decision sequence, and no utility estimates are reported on further questions. This results in the termination of the sequence in some state instances for which the report of overall measures exceeds the mean total figure, and the continuation of the sequence in some state instances for which the report of overall measures fall below the mean total figure.

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ABSTRACT**THE REFUGEE CONVENTION AND THE POLITICS OF
DOMESTIC RULE MAKING IN 44 DEMOCRACIES:
WHERE AND HOW DO INSTITUTIONS MATTER?**

by

SEAN CHRISTOPHER ANDERSON**December 2016****Advisor:** Dr. Kevin Deegan-Krause**Major:** Political Science**Degree:** Doctor of Philosophy

I create a revealed preference decision model using markers of structural and ideational input factors informing the writing, passage, funding, and enforcement of domestic legislation in implementation of the 1951 UN *Convention Relating to the Status of Refugees* and its 1967 *Protocol* within 44 democratic states. Where are domestic rules responsible for observed displays of compliance, and where are outcomes attributable to structural factors that render the domestic rule-making process effectively irrelevant? Where the outcome of the rule-making process is predicted to matter, elites may use the content of these rules toward the goal of continued policy influence and electoral survival. Under this condition, I identify two discrete motivations as observable from state action: to avoid the full potential cost of *Convention* compliance, and to accept or exceed its full potential cost. Toward each of these aims, I identify two ideal-typical modes of elite response. Toward the goal of cost avoidance, elite behavior takes form along the polar continuum between instrumental action and instrumental inaction; toward the goal of cost acceptance, elite behavior takes form along the polar continuum between the instrumental uses of calls to increase cost originating from the international community and from the domestic

electorate. By contrast, where the outcome of the rule-making process is predicted not to matter strongly to outcomes, elites will perceive the freedom to construct rules under the expectation that the states they represent will not be forced to pay out on the cost of any promises to be read from the domestic legislation. Resulting rules may then assume the function of costless signaling devices. I identify two ideal typical modes of elite behavior toward the use of institution as cheap talk: the broadcast of promises to commit greater levels of resources toward *Convention* compliance, and the broadcast of promises to curtail costs to be assumed toward *Convention* compliance. I develop exemplary-case country narratives explicating state action toward each of the six ideal typical compliance and implementation patterns observed within democratic destination states worldwide. I apply these answers to one of the primary questions of comparative politics – where and how do institutions matter?

AUTOBIOGRAPHICAL STATEMENT

Sean Christopher Anderson is a Ph.D. candidate in comparative politics at Wayne State University. His study focuses on specific configurations of structural, procedural, and electoral input factors as they are useful to determine conditions under which institutional output may become more or less useful to an understanding of outcomes across democracies. The primary questions driving his work are those of where, why, and how *the rules* matter – both to the electoral survival of the rule makers, and to the specific issues addressed within the rules to be drafted, enforced, funded, and maintained. Toward this interest, he incorporates issues of institutional output and rationality in his teaching across the curriculum. His writing focuses on the implications of these issues toward the varying forms that human rights treaty compliance rules assume, specifically on issues of forced migration, within democratic destination states. He is currently on the market for a position beginning in the 2017-2018 academic year.