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Reconfiguring the *Deserving* Refugee:

Moral Boundary Work and Decision-Making in US Asylum Policy

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ABSTRACT

This dissertation seeks to investigate how social policy is made and implemented where established scripts and institutionalized schemas do not align with complex subjects and cases: how do policymakers classify subjects and cases when they cannot default to established categories, what are the implications of engagement in forms of evaluation that are not amenable to routine processing, and how do administrative and justice systems under strain attempt to regulate these spaces of ambiguity? The dissertation examines these questions through the study of US asylum policy in the post-Cold War period. Using multiple sources of data, including archival policy documents, case law, media sources, interviews and administrative data on asylum decisions, and applying mixed methods (historical/documentary analysis, ethnography and quantitative analysis), it investigates *how* asylum officials make policy and implement rules when they cannot default to preestablished categories and patterns of classification, *why* frontline actors operating under time constraints and limited resources decide to devote extra time and resources to cases for which they cannot readily supply known characterization, and to what extent does the ambiguity inherent to classificatory regimes provide structural opportunities for change? This research contributes to existing asylum scholarship by examining two central, albeit largely overlooked, aspects of the asylum determination process: the role of embedded distinctions of worth in the formation of asylum policy during periods of policy upheaval, and the conditions that enable asylum officers to engage in moral deliberation, and to devote time and resources in order to assist applicants whom they perceive as worthy of asylum but whose experiences of harm do not squarely fit within agency standards for determining asylum eligibility. The contributions of this thesis are not limited to asylum. The thesis offers a new conceptual framework for identifying the conditions that lead to shifts in frontline actors'

disposition from rule-bound bureaucrats to moral deliberators, and links institutional and moral dimensions of decision-making to delineate the process through which embedded categories of worth influence implementation of policy when established patterns of practice are suspended, and agents can no longer rely on institutionalized policy scripts.

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INTRODUCTION

Individuals and organizations depend on categorization in order to make sense of the complexity, contradictions and messiness inherent to every-day social interactions. Frontline officials working within classificatory regimes often have to draw sharp distinctions – even where arbitrary – between groups and individuals and to categorize persons in terms of limited sets of attributes (Prottas 1979; Lara-Millán 2014; Heimer 2012, 1999). When these distinctions are institutionalized, their meanings tend to be viewed as self-evident and normalized, and their roots in particular historical trajectories are obscured. They serve as the largely invisible background rules that guide decision-makers in how to draw categorical distinctions (Scott 1998). At the same time, formal categories can never fully represent the complex and ever-changing social reality nor does the institutionalization of categorical schemes imply their automatic reproduction (Sewell 1992, Fligstein 2001, Binder 2007). Rather, existing classificatory schema often fail to account for real life complexities and decision-makers are regularly confronted with atypical cases and unfamiliar frames that don't neatly fit within the existing categorical order.

These moments of incongruence, when the attributes of a given case do not align with established legal categories, are at the heart of my dissertation. My working assumption is that rather than outliers or exceptions they constitute a central, even if often overlooked, aspect of decision-making and state governance. Classificatory systems depend on these spaces of ambiguity (Star and Bowker 2000); situations of discordance between established categories and social life are an integral part of frontline work. To date, however, scholarship has stopped short of providing a systematic analysis of the ways policy is made in these spaces of incongruence. Questions concerning how policymakers classify subjects and cases when they cannot default to

established categories, the implications of engagement in forms of evaluation that are not amenable to routine processing, and how justice systems under strain attempt to regulate these spaces of ambiguity, remain largely unanswered.

US asylum policy provides a natural experiment for exploring these moments of incongruence between established categories, and complex cases and subjects. The modern institution of asylum, which took form in the post-Cold War period, was designed as an alternative to the ideologically driven screening process prevalent during the Cold War. If during the Cold War refugee admissions were explicitly designed to advance US foreign policy interests and thus determined in accordance to applicants' country of origin (only nationals of communist-dominated countries were eligible to apply for asylum), the newly formulated asylum screenings were intended to provide an ideologically neutral adjudication process based on human rights and international law in which the individual's plight served as the determining factor for the granting of asylum (Martin 1990; Reimers 1992; Loescher and Scanlan 1998). At the same time, the asylum agency is under strain. Hundreds of adjudicators process tens of thousands of cases on a yearly basis while operating under conditions of limited resources. Increasing backlogs and time constraints pressure agency actors to streamline decisions in a time efficient manner and to default to well-established categories and patterns of classification (Heimer 2001: 48; Gilboy 1991; Emerson 1983; Sudnow 1965).

Under asylum law, to be eligible for asylum an applicant must establish "a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion." A central part of the asylum adjudication process is thus categorizing claims into one of these five enumerated categories of persecution. Of the five grounds, "membership in a particular social group" poses a distinct challenge to adjudicators. In contrast

to the meanings of race, religion, nationality and political opinion, which are rooted in US political culture and quickly became institutionalized in the context of asylum policy, "membership in a particular social group" was not part of the collective imagery of asylum and was considered to be an open-ended term not amenable to institutionalization and routine processing. The contested meanings of the category 'particular social group' bring to the forefront a tension inherent to justice systems under strain between growing incentives to streamline decision-making and to default to well-established patterns of classification on the one hand, and the pretension to provide a context-dependent analysis of applicants' claims on the other. While the open-endedness of the 'particular social group' category allows for the context-dependent and individually centered adjudication process that the new asylum administration was designed to guarantee, it is also viewed as disruptive to a time-efficient processing of asylum claims.

It is my contention that there is much to be gained theoretically and empirically by focusing on moments of incongruence between formal policy and complex reality, where decision-makers are not able to default to established categories, and routine application of cases is disrupted. The category 'membership in a particular social group,' which in the context of asylum screenings functions as an "other" category, provides a unique opportunity to examine how policymakers and adjudicators negotiate these spaces of ambiguity. Each of the three chapters of my dissertation, written as standalone articles, attempts to examine a different aspect of these situations of incongruence.

The first chapter seeks to understand *how* agency actors make policy and implement rules when they cannot default to preestablished categories and institutionalized patterns of classification. In the context of asylum policy this question became ever more central in the

1980s, when the normative and programmatic legitimacy of the existing classificatory scheme upon which asylum policy was based collapsed, and an alternative policy paradigm had not yet come to replace it. Specifically, policy makers were confronted with implementing asylum law in lack of a clear understanding of who is a refugee and what is the scope of asylum protection. Where they could, policy makers continued to rely on policy prescriptions rooted in Cold War politics. At the same time, the collapse of the Cold-War policy framework created situations where decision makers could no longer apply established policy scripts. It is my contention that in these situations policymakers fell back on embedded cultural distinctions of worth as criteria for how to assess, evaluate and determine the eligibility of individual cases and persons. By categories of worth I am referring to cultural assumptions of deservingness that are visible but remain largely accepted and unquestioned during periods of political consensus and routine processing (Campbell 2002). In the case of asylum, "worthy" refugees are considered to be those people who are persecuted on account of traits that are either immutable or fundamental to their individual identity, whereas the "unworthy" asylum seekers are those people who were targeted for traits that are either mutable or not fundamental to their personhood. In the post-Cold War period, this cultural distinction shifted from background to foreground policy debates and served policy makers as a template for accommodating conflicting political pressures and shaping how new interests would be translated into cognizable asylum claims.

In the second chapter, I seek to understand *why* frontline actors operating under time constraints and limited resources decide to devote extra time and resources to cases for which they cannot readily supply known characterizations. That is, given the incentives and pressures to streamline cases and default to established categorizations, why do frontline actors decide time and again to defy agency pressures to streamline decisions and to engage in creative deliberation

that requires critically reflecting upon the categorization process itself? My core argument is that we can better understand when and why low-level public employees, working on the frontlines of administrative agencies that are under strain, transition between modes of decision-making governed by routinization to ones governed by deliberation, if we account for situations in which embedded distinctions of worth reside in tension with institutional patterns of classification. In these situations, which I term *encounters of schematic discordance*, understandings of worth do not align with institutional scripts and constitute a source of considerable frustration; as frontline actors work to resolve this discordance, their disposition changes from that of rule-bound bureaucrats to moral deliberators with implications for the type of gatekeeping roles they adopt as well as for how eligibility for asylum is determined. I develop this framework and illustrate its value through an investigation of how asylum officers process and evaluate cases falling under the category 'particular social group.' These claims, which typically involve non-governmental and gender-based forms of harm, resonate with deeply embedded understandings of worth, but do not squarely fit within the institutional scripts on which agents rely for determining asylum eligibility.

Finally, in the third chapter I examine the extent to which the ambiguity inherent to classificatory regimes provides opportunities for change. This chapter empirically traces developments in the interpretation and implementation of the open-ended screening category 'particular social group' between 1995 and 2014, with the purpose of advancing our knowledge of the ways conflicting pressures to streamline decisions on the one hand, and to pursue individual-based adjudications on the other, are negotiated. Questions concerning what groups of applicants are able to secure asylum protection under this category, changes in the overall number of claims categorized as 'particular social group, how different formulations of the

'particular social group' category have developed overtime and in relation to distinct national groups, and what we can learn from differences between them about the challenges of implementing this unsettled category, are the focus of this chapter. Using multiple sources of data, including interviews and administrative data on the universe of applications categorized as 'membership in a particular social group' between 1995 and 2014, I show that even though the category "membership in a particular social group" is viewed as disruptive to a time efficient processing of claims, the number of claims processed under this category has grown significantly over the past two decades. Data suggest that external legal players such as lawyers make it more probable for agency actors to recognize and accept new scripts which have not yet undergone institutionalization.

My analysis of asylum policy focuses on the transition from a Cold War programmatic framework to a post-Cold War regime and draws on a variety of sources including archival policy documents, case law, media sources, interviews and administrative data. Specifically, I examine all Board of Immigration Appeals precedent decisions concerning the meaning and intended application of the category "membership in a particular social group." The Board of Immigration Appeals is the highest administrative body for interpreting and applying immigration laws. Board member judges are politically appointed by the Attorney General. Their decisions constitute binding precedent on all lower-level asylum adjudicators in the country. In this respect they have a central role in both the formulation and implementation of asylum policy. Analysis of case law is supplemented by legislative debates, agency training manuals and memos issued on the meaning of particular social group for the development of asylum policy. This results in hundreds of pages of policy documents that reveal efforts to cast meaning into, and demarcate, the meaning of asylum in lack of a clear programmatic framework. Interviews

with the former Chair of the Board of Immigration Appeal (1995 and 2001), the former Director of U.S. Citizenship and Immigration Services (2013-2017), immigration lawyers, and former USCIS asylum officers, further illustrate how policymakers drew on institutionalized understandings of worth when applying asylum law to new and unprecedented cases. Finally, I analyze administrative data on affirmative asylum applications which I obtained by filing a Freedom of Information Request in June 2015 to USCIS which yielded case-specific information on the universe of asylum applications decided between fiscal year 1996 and through March 2015. These are the most comprehensive data ever analyzed on affirmative asylum claims. The data are based on information recorded in the Refugee Asylum and Parole System (RAPS), which tracks the processing of affirmative asylum applications. For each principal applicant filing an asylum claim, basic socio-demographic information is recorded in addition to information on the legal status of the case. I apply mixed methods - historical/documentary analysis, ethnography, and quantitative analysis - to situate my empirical findings within broader political, historical and institutional contexts, and to advance our knowledge of the factors shaping the making and implementation of US asylum policy.

Specifically, my research makes three distinct contributions to current scholarship on asylum and immigration policy. First, my analysis sheds new light on an often overlooked, albeit central, policy episode that cannot easily be resolved by existing theoretical perspectives: the increasingly inclusive approach to a new group of gender-related harms at the same time that greater restrictions were imposed on immigrants and asylum seekers, and the public sentiment towards asylum seekers became increasingly hostile. I show that gender asylum is a product of policymaking during a period characterized by a policy breach, when established policy prescriptions ceased to apply and shared moral distinctions shifted to forefront policy debates.

Specifically, where lawmakers could no longer default to established policy prescriptions, they drew on shared moral distinctions to demarcate differences between "undeserving" Central Americans fleeing civil wars in their home countries, and "deserving" women subjected to gender violence. I contend that a framework centered on the role of categories of worth in periods of policy upheaval advances understanding of central changes in asylum policy and expands scholarship on the role of worth in processes of institutional change. As asylum takes up an increasingly central place in current global and domestic affairs, questions concerning how classifications between genuine refugees and "illegal" immigrants are made, and how the boundaries of the institution are regulated, are of utmost importance, and contribute to our understanding of the core processes through which the institution of citizenship is regulated.

Second, this research sheds new light on the factors shaping frontline decision-making within the Asylum Office, the body which carries out duties assigned to the executive branch by the Refugee Act of 1980 (Schoenholtz, Schrag, and Ramji-Nogales 2014).[1] I show that notwithstanding pressures to streamline decisions and default to routine application of existing scripts, asylum officers also engage in moral deliberation, devoting time and resources in order to assist applicants whom they perceive as worthy of asylum but whose experiences of harm do not squarely fit within standard agency definitions of asylum eligibility. These distinct evaluative processes have significant implications for the type of gatekeeping roles performed by asylum officers, as for those seeking asylum. When screenings follow a routinized course, officers define

[1] When the Asylum Office was originally created it was logged in the Immigration and Naturalization Service (INS). When the Department of Homeland Security was created in 2002, as part of the attempts to strengthen border security after 9/11, the Asylum Office was moved to the new department along with the border patrol and Immigration and Customs Enforcement (ICE) officers.

their job as policing the authenticity of those claiming membership within the established category. In the process the validity of institutional standards is reaffirmed while the trustworthiness of the applicants is questioned. In contrast, when routinized screenings are disrupted, the core of the evaluation process turns to the meaning of the categorization process itself. Here officers become "judicial entrepreneurs," critically deliberating the intended application of existing agency standards (as opposed to focusing on the credibility of those claiming membership within them). Asylum officers' focus on adjusting agency standards, typically leads to a more trusting dynamic between officers and applicants with real-world effects on who actually gets asylum.

Finally, my dissertation uses new, and to date, unpublished data on asylum applications processed by the Asylum Office between 1995 and 2014 to provide the first empirical account of how asylum policy developed through asylum officers' application of the "particular social group" category. My findings indicate that notwithstanding pressures to streamline decisions, there has been a consistent increase in the number of asylum claims based on the category 'membership in a particular social group.' Increasing numbers of Central American applicants are gaining protection under this category, as activist lawyers and asylum officers pursue spaces of ambiguity despite agency pressures to avoid and regulate their use. Under the legal category of 'membership in a particular social group,' new types of harms including female genital cutting, tribal clan violence, discrimination on account of sexual orientation, domestic violence and child soldiers, to mention just a few, formerly considered to fall outside the scope of asylum status, are now recognized as eligible for asylum protection.

The contributions of this thesis are not limited to the field of asylum and immigration policy. My research links institutional and moral dimensions of decision making to show that

contrary to mainstream depictions of bureaucratic systems as rule-bound, technocratic and impersonal, bureaucracies also generate conditions for moral deliberation that cannot be attributed to mere discretion but are rather a product of the decision-making process itself. I propose a new conceptual framework for expanding our understanding of these acts of moral deliberation that constitute an integral part of frontline decision-making. My framework identifies two modes of bureaucratic encounter that are distinguished from one another by the degree to which there is resonance between embedded distinctions of worth, and predefined agency categories for determining eligibility. The first mode, which I term *encounters of schematic accordance,* occurs when there is a good fit between institutionalized agency scripts defining eligibility and embedded categories of worth. The second, which I term *encounters of schematic discordance*, occurs when understandings of worth do not align with institutional scripts. Whereas accordance between worth and policy encourages frontline actors to follow routinized screening patterns, discordance between the two constitutes a source of considerable frustration; as frontline actors work to resolve this discordance, their disposition changes from that of rule-bound bureaucrats to moral deliberators with implications for the type of gatekeeping roles they adopt as well as for how eligibility for asylum is determined. To date, we know little about situations in which officials have been shown to devote extra time to cases for which they cannot readily supply known characterizations. When such situations are accounted for they are either chalked up to discretion or dismissed as outliers. While the narrative sections of existing studies make passing reference to moments in which frontline actors change dispositions from rule-bound bureaucrats to moral deliberators, the theoretical frameworks used to explain decision-making typically emphasize the importance of other factors (Lara-Millán 2014; Baker 2013; Maynard-Moody and Musheno 2003).

Second, I draw on theories of institutionalization and decision-making and extend this research using work in the sociology of culture to delineate the process through which embedded categories of worth influence implementation of policy when established patterns of practice are suspended and agents can no longer rely on institutionalized policy scripts. To date we know little about the ways policymakers draw on categories of worth during policy episodes veiled in uncertainty. Going beyond existing studies, I use the case of asylum to show that where a breach in the prevailing programmatic policy framework prevents policymakers from relying on established policy prescriptions, embedded cultural categories of worth take on a constitutive role: policymakers draw on embedded cultural distinctions of worth as criteria for how to assess, evaluate and determine the eligibility of individual cases and persons. Rather than providing explicit and coherent meaning systems (Swidler 1986), cultural categories of worth function as structural templates detached from specific policy prescriptions. In the process, distinctions between high and low worth are heightened. As new policy scripts are institutionalized, new meaning is cast into cultural categories of worth, ultimately changing how worth is understood and applied. This results in a reiterative process whereby the dissolution of policy prescriptions leads to a reification of the conceptual distinction of worth, in turn shaping the formation of new policy scripts which then work to reconfigure the very meaning of worth.

Finally, my findings highlight the nuanced role of the “other” category in administrative agencies under strain. On the one hand, time constraints and heavy workloads result in officers deliberately avoiding applications of unsettled formulations of the ‘particular social group’ category. Claims that do not fit within established categories will more often than not either be reframed to ‘fit,’ or referred to immigration court – not because the claim is without merit but because justifying a grant on the basis of ‘particular social group’ imposes various administrative

hurdles and requires the investment of considerable time, a scarce resource at the asylum office. In practice, this means that certain narratives of harm gain precedence over others, shaping the very meaning of asylum status and eligibility. On the other hand, the ambiguity inherent to the 'particular social group' category generates structural opportunities for change.

Asylum is one of the central global issues of our time. Applicants who are granted asylum typically obtain citizenship within several years after applying, whereas those denied are deported and often left stateless, rendered without the "right to have rights." Asylum thus constitutes a core arena through which state agents demarcate the boundaries of legal membership and citizenship. My dissertation research attempts to further our knowledge of the process through which state officials, charged with formulating and implementing existing rules and policies, decide who is deserving of membership and who of deportation, by focusing on moments of discordance between established scripts, and the complexities of real cases and subjects.

CHAPTER 1
CULTURAL CATEGORIES OF WORTH AND THE MAKING OF REFUGEE POLICY

Introduction

In the early 1990s, a new and previously unrecognized group of claims involving gender-related harms has gained recognition and prominence in the field of asylum adjudications. These claims, which include harms such as rape, female genital cutting, domestic violence and forced marriage, do not typically involve standard forms of government-sponsored persecution of well-recognized political, religious and ethnic minorities. The increasingly inclusive approach towards this new group of claims posits a puzzle to immigration scholars: at the same time that there was growing support by lawmakers and public officials across the political spectrum towards this class of novel claims, greater restrictions were imposed on immigrants and asylum seekers, and the public sentiment towards asylum seekers became increasingly hostile. Existing studies contend that the recognition of a new entitlement to asylum, grounded in the protection of girls and women from sexual violence, has legitimated the exclusion of non-white men as barbaric, uncivilized and violators of women's rights (Fassin 2013; Ticktin 2011), indirectly contributing to a conservative and carceral political agenda of the neoliberal state (Bernstein 2008; Brennan 2008) and justifying US international defense and diplomacy (McKinnon 2016; Grewal 2005). To date, however, existing studies mostly leave unaccounted how enforcers of asylum policy initially made sense of these new types of claims and incorporated them within the existing classificatory scheme.

Going beyond existing studies, this chapter shows how gender-based harms, once considered to fall outside the realm of asylum protection, were translated to fit within the existing classificatory scheme and to eventually reshape the very meaning of the "deserving"

refugee. I argue that critical to the development of gender asylum and the subsequent reconfiguration in the meaning of worth is the fact that gender-asylum gains precedence right as the prevailing cultural assumptions concerning the meaning and scope of asylum protection are called into question. That is, gender asylum is a product of policymaking during a period characterized by a policy breach, when established policy prescriptions ceased to apply and shared moral distinctions shifted to forefront policy debates. In the 1980s, state experts, activists, academics and lawmakers challenged the normative and programmatic legitimacy of the existing Cold War centered classificatory scheme upon which asylum policy was based. During the Cold War, refugee status was mostly restricted to persons fleeing communist-dominated countries residing outside the United States. This provided the United States with more control over whom to admit and whom to exclude and also generated a conceptual and legal distinction between "refugees" and undocumented "economic" immigrants. The Refugee Act (1980), which codified the UN definition for a refugee, repealed the prior communist-centered definition. Under the new law, a refugee was defined as any person who has a well-founded fear of persecution on the basis of "race, religion, nationality, membership in a particular social group or political opinion." Eligibility was now to be determined not by applicant's country of origin but rather by a careful assessment of whether a given claim fit or not within one of the recognized grounds of persecution. Moreover, the Act ordered the Attorney General to develop new procedures for asylum screenings for applicants already on U.S. territory (before the Refugee Act of 1980 applicants could only apply from outside the United States). During the 1980s, the number of immigrants arriving on their own accord to the United States and applying for asylum grew substantially. These changes worked to upend the former classificatory system and to undermine the very conceptual and legal distinction between "refugees" and "illegal" immigrants.

It is my contention, that in lack of a clear alternative programmatic framework, lawmakers drew on shared moral distinctions of worth (institutionalized cultural understandings about who is deserving and who is undeserving of protection) to conceptualize differences between a growing number of immigrants lacking proper documentation who had a formal right to apply for asylum under the new law, and "genuine" refugees "deserving" of protection. In the 1980s, moral distinctions between worthy and unworthy refugees centered on the concept of *immutability*: the idea that certain human traits are not chosen or blameworthy and thus should not be the basis for discrimination. Specifically, the low worth of Central Americans fleeing civil wars in Guatemala and El Salvador during the 1980s was attributed to the fact that the harms they experienced were on account of traits that are either mutable or not fundamental to their individual identity. Conversely, refugee advocates mobilized on an emerging feminist discourse, which framed sexual violence as a form of domination that is inflicted on women because of their (immutable) gender, to cast women, children and sexual minorities, as victims of harms that they are unable, by their actions or as a matter of conscience, to avoid. As scripts involving gender-based violence came to embody the meaning of immutability in the context of asylum, the meaning of worth was reconfigured: the focus shifted from the motivation of a person to flee (motivation for political and religious freedom versus motivation for economic prosperity) to the (immutable) trait on account of which a person was persecuted. Thus, while foreign policy and political interests continued to influence which groups of persons were deemed deserving or undeserving of asylum, moral distinctions of worth provided a template by which to frame their deservingness, with implications for how lawmakers extend rules to new cases and how worth in the context of asylum was reconfigured.

This analysis has implications for current scholarship on asylum and immigration policy. Existing studies mostly overlook the ways shared understandings of worth influence and constrain the shape of contemporary asylum policy. Asylum is one of the central global issues of our time. It is through asylum decisions that the state demarcates the boundaries of legal membership and citizenship. Asylum provides a clear path to citizenship, a circumstance that helps to explain its contemporary political relevance. Applicants who are granted asylum typically obtain citizenship within several years after applying, whereas those denied are deported and often left stateless, rendered without the "right to have rights." As asylum takes up an increasingly central place in current global and domestic affairs, questions concerning how classifications between genuine refugees and "illegal" immigrants are made, and how the boundaries of the institution are regulated, are of utmost importance. Understanding how notions of worth came to be reconfigured in U.S. asylum policy advances not only our understanding of changes in asylum policy but also contributes to our understanding of the core processes through which the institution of citizenship is regulated. This study also expands and offers support for contentions that institutional change is multiple and uneven, with destructive and constructive changes happening simultaneously (Orloff 2017). It suggests that in periods of policy upheaval, policymakers rely on shared distinctions of worth to formulate new policy prescriptions which in turn redefine the very meaning of worth, shaping the development of policy in unanticipated ways.

The chapter examines asylum policy in the transition from a Cold War programmatic framework to a post-Cold War regime in which individual human rights figured a more prominent role, at the same time that increasing numbers of immigrants arriving to the United States on their own accord enhanced anxieties about national security and border control. I am

interested in understanding how policymakers negotiated these conflicting political pressures when applying asylum law in the absence of a clear programmatic framework. Methodologically, my analysis focuses on how sectors of the state involved in formulating policy through court decisions apply the category "persecution on account of membership in a particular social group" to new claims. The Refugee Act of 1980 defined a refugee as any person with a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion. Whereas policymakers continued to rely on well-established policy prescriptions when applying the categories of "race," "religion," "nationality" and "political opinion," they initially had little to rely on when applying the category of "membership in a particular social group." Examining how policymakers defined the meaning, scope, and content of *membership in a particular social group* thus provides a unique empirical opportunity to examine how policymakers apply rules in the absence of established policy prescriptions.

The analysis is built on a review of case law, legislative debates, agency committee transcripts and administrative guidelines and memos, in addition to interviews and media data sources.

Specifically, I examine all Board of Immigration Appeals precedent decisions concerning the meaning and intended application of the category "membership in a particular social group." The Board of Immigration Appeals is the highest administrative body for interpreting and applying immigration laws. Board member judges are politically appointed by the Attorney General. Their decisions constitute binding precedent on all lower-level asylum adjudicators in the country. In this respect, they have a central role in both the formulation and implementation of asylum policy. I supplement analysis of case law with legislative debates, agency training manuals and memos issued on the meaning of particular social group for the development of asylum policy.

This results in hundreds of pages of policy documents that reveal efforts to cast meaning into and demarcate, the meaning of asylum in lack of a clear programmatic framework. Interviews with the former Chair of the Board of Immigration Appeal (1995 and 2001), the former Director of U.S. Citizenship and Immigration Services (2013-2017) and immigration judges and lawyers who played an active role in the formulation of the category "membership in a particular social group," further illustrate how policymakers drew on institutionalized understandings of worth when applying asylum law to new and unprecedented cases. This combination of data allows for a more sophisticated understanding of the ways deeply embedded categories of worth shape and influence the making of asylum policy.

The chapter proceeds as follows. I first review existing accounts on the role of ideas and values in policy-making; I build on and extend, their insights to propose a framework for understanding the interrelations between worth and policy-making during periods of policy upheaval. The chapter then proceeds to demonstrate the utility of this framework for understanding changes within the institution of asylum: namely the growing recognition of a whole range of previously unrecognized gender-based claims. The chapter shows how embedded distinctions of worth provided lawmakers with a template for translating conflicting political pressures: attempts to curb illegal immigration on the one hand and calls for broader protections to victims of human rights violations on the other. Specifically, distinctions of worth based on immutability, worked to legitimate the exclusion of Central Americans fleeing civil wars in their home countries and to justify the inclusion of women and sexual minorities subjected to forms of gender-based violence. The chapter concludes with a discussion of the implications of this study for immigration scholars as for theories concerned with the role of culture in institutional change.

Theoretical Discussion

Much has been written about the development of refugee and asylum policy in the United States, with scholars documenting how foreign policy interests (Reimers 1992; Loescher and Scanlan 1998), political bias (Schoenholtz, Schrag, and Ramji-Nogales 2011, 2014; Miller, Keith and Holmes 2014), and administrative structure (Hamlin 2012) influenced the development of asylum policy. Notwithstanding important differences between these diverging accounts, they all generally agree that the institution of asylum is founded on the cultural assumption that some people are more deserving of protection than others. To date, however, existing studies have overlooked the central role of shared culture notions of worth in shaping asylum policy after the Cold-War.

In recent decades a burgeoning literature has demonstrated the influence of shared categories of worth on social action and the formation of social policy. Scholars have shown that people draw on cultural categories of worth to make sense of, and justify, institutional constraints and established strategies of action (Boltanski and Thévenot 2006; Lamont 1992, 2000; Swidler 1986, 2013). The orders of worth agents draw on to make sense of their judgments and commitments have been shown to vary across lines of nationality, race, socio-economic status, and gender (Saguy 2003; Lamont and Thévenot 2000; Amiraslani, Dezalay, and Levi 2017). Cultural categories of worth also influence social action through their contribution to, and reinforcement of, established scripts and patterns of classification. People are influenced by internalized moral-cultural schemas in ways they are largely unaware of and unable to articulate (DiMaggio 1997; Vaisey 2009).

This scholarship informs how we understand the processes of state regulation, governance, and policymaking. The state is more than a bureaucracy with rules and procedures.

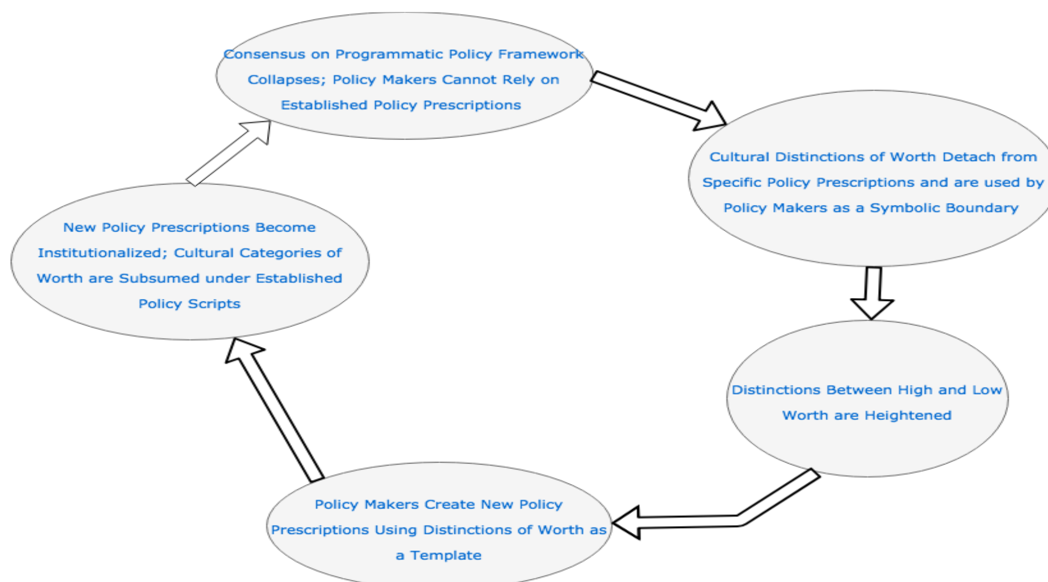
Officers, magistrates, guards, social workers, mental health specialists also act on the basis of values; in this respect social policy both creates and reflects patterns of moral classification (Fassin 2015). Economies are shaped by moral categories as much as they are by numbers and techniques (Fourcade and Healy 2017; Zelizer 2000), and institutions cannot be reduced to mere economic interests; instead, moral ideas develop economies and institutions to sustain themselves (Livne 2014). Accordingly, a growing number of scholars have attempted to examine the role of normative ideas in policy-making. From this perspective, social policy must resonate with embedded categories of worth if it is to be enduring and legitimate (Lamont 2000, Steensland 2006, Skrentny 2006, Campbell 1998).

Scholars generally agree that in periods of significant social transformation the relationship between worth and action changes. Specifically, during "political episodes veiled in uncertainty" when the "truth is elusive and knowledge vacuums" arise, policymakers place greater emphasis on social values (Campbell 1998), worth shifts from the background to foreground policy (Steensland 2006) and has a direct effect on action by providing "explicit, articulated, highly organized meaning systems" (Swidler 1986). Situations in which policymakers cannot rely on established policy prescriptions can occur as a result of institutional displacement (the removal of existing rules and the introduction of new ones), but also on a smaller scale, where existing policy scripts do not suffice for distinguishing between otherwise equal subjects and cases (Mahoney and Thelen 2010).

Drawing on these insights, I contend that to understand recent developments in asylum policy we have to account for the role of categories of worth in the creation of new policies where there is a breach in the prevailing policy paradigm. Specifically, an examination of contemporary asylum policy, suggests that where possible policymakers rely on institutionalized

scripts when making sense of new cases. However, in the absence of established policy prescriptions upon which to rely, policymakers draw on institutionalized distinctions of worth as a symbolic boundary (Lamont and Molnar 2002). Rather than providing explicit and coherent meaning systems (Swidler 1986), cultural categories of worth function as structural templates detached from specific policy prescriptions; as political interests and culture inform how categories of worth are applied, the very meaning of worth is redefined with implications for the formation of subsequent policy prescriptions. This results in a reiterative process [see figure 1] whereby the dissolution of existing policy prescriptions leads policymakers to rely on shared distinctions of worth as classificatory criteria. In the process, distinctions between high worth and low worth are heightened, with implications for the formation of new policy scripts which subsequently cast new content into the underlying structure of worth.

Figure 1. The Relation between Categories of Worth and Policy Prescriptions in Periods of Change



Set Up and Background

While surprising from today's vantage point, the Refugee Act of 1980 was not intended as a revolutionary change (Hamlin and Wolgin 2012). Quite to the contrary, policymakers involved in the drafting of the Act, believed it to be "an extension of the Cold War by other peaceful means."[2] During the legislative debates preceding the Act, Congress did not define the meaning of the phrase "persecution on account of race, religion, nationality, membership in a particular social group or political opinion." Judge Einhorn, who participated in the drafting of the Act, explains that this silence was due to the fact that despite the new legal terminology, at the time no one perceived the law as introducing a substantially new definition of a refugee. Among the drafters "the widespread conception was … that the great majority, the

[2] Interview with Bruce J. Einhorn, Immigration Judge, January 2017.

overwhelming majority of those that would come under would be those that would flee Soviet-style oppression or the oppression of Soviet client states."[3] Judge Schmidt, who between 1979 and 1981 was acting general counsel of the Immigration and Naturalization Service (INS), recalls that during the proceedings leading to the enactment of the new Refugee Act of 1980, the guiding assumption of the drafters was that "we will get to select the people we want" and that while "there might be a small number of diplomats getting stuck here, or students that their government changes and they want to apply... people were [not] thinking of the mass migration with individuals ending up on the U.S. border … A lot of the assumptions were based on: 'we will be the country that helps countries of first asylum. We will get to select the people we want.'"[4]

The reality, of course, ended up being much different from the one the drafters had anticipated. Almost as soon as President Carter signed the Refugee Act of 1980 into law, boatloads of Cuban asylum seekers began to arrive to the shores of Florida. Over that summer almost 130,000 fled in an exodus that came to be known as the Mariel Boatlift. In 1980, President Carter used his parole power to admit Cuban asylum seekers on a temporary basis, but the numbers continued to rise and were significantly higher than they were during the 1970s. According to INS official statistics in 1984, only 24,291 claims were received while in 1989 as many as 101,679 claims were received (Martin 1990). A growing politics of human rights, which increasingly challenged the preferential treatment of persons fleeing communist countries as discriminatory (Cmiel 1999), in addition to the mobilization of the formal rights accorded to

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[3] *Id.*

[4] Interview with Paul W. Schmidt, Immigration Judge, February 2017.

Haitians and other immigrant groups under the new law (Hamlin and Wolgin 2012), gradually worked to dismantle the consensus over the legitimacy of Cold-War policy prescriptions. According to Beyer, the head of the INS in 1990, asylum was the "wild card" of immigration, uneasily controlled: "Asylum seekers show up any time, from anywhere, in any numbers, as individuals, and as groups, and make claims which are difficult to confirm or deny immediately… Little thought was given during consideration of the Refugee Act... to the difficulty inherent in making the individualized and fine-grained determination of likely persecution which the UN definition seems to require." Asylum adjudications, Beyer concluded, "rest on uniquely elusive grounds" (Beyer 1992: 264-268).

Under the new asylum determination process lawmakers were required to determine, often based on applicant testimony alone, whether applicants' experiences of harm fit within one of the recognized grounds of persecution: race, religion, nationality, membership in a particular social group or political opinion. Where possible, lawmakers relied on established political knowledge when applying the new law to an ever-growing number of asylum applications. Judge Schmidt explains that even though prior to 1980, Congress and the courts had never formally defined the terms "race," "religion," "nationality" and "political opinion," their meanings were well established within U.S. political culture and garnered wide-political support.[5] Specific fact patterns such as being persecuted for publicly voicing one's political opinion, holding a particular religious belief, or being harmed because of skin color or national/ethnic affiliation – often triggered use of ordained schemes without government representatives and adjudicators having to spend considerable time on the meaning of the screening categories themselves.

[5] Interview with Paul W. Schmidt, Immigration Judge, February 2017.

Interviews with asylum officers and immigration judges suggest that when applying the grounds of race, religion, nationality and political opinion, asylum officers, and immigration judges typically relied on the "organic," "natural" and "self-evident" meanings of these terms, which associated refugee status with state-sponsored persecution of religious and political minorities prevalent during the Cold War. In this respect, rather than signaling a sharp break from Cold War refugee policy, the new regime drew from, and to a certain extent preserved, understandings of refugee status formed during the Cold War.

Conversely, lawmakers had little to rely on when it came to the meaning of the category *membership in a particular social group*. The term was first introduced during the Conference of Plenipotentiaries on the Status of Refugees and Stateless persons (1951), which was convened for the purpose of completing the drafting of the Convention Relating to the Status of Refugees. Stating that it was "essential that the text be as clear as possible" the Swedish representative introduced an amendment to include a reference to "persons who might be persecuted owing to their membership of a particular social group…"[6] At the time, no attempt was made, either by the Swedish representative or by any other state representative, to define the meaning and scope of the proposed category. The conference adopted the amendment by a vote of 14 to 0 with 8 abstentions (Jackson 1999). The legislative history of the 1980 Refugee Act similarly sheds little light on the social group aspect of the refugee definition. Thus, when it came to decisions concerning how to apply the standard of "membership in a particular social group," policymakers faced the challenge of applying the new legal standard in the absence of established policy scripts and a clear programmatic framework upon which to rely. A close

[6] *Id.* at 14.

reading of policy documents and case law, supplemented by interviews with government officials, judges and lawyers suggest that officials drew on moral distinctions of worth as a template for the creation of new policy scripts in a period of policy upheaval.

Formulating Asylum Policy in the Absence of Established Policy Prescriptions: The Case of Particular Social Group

The first time the Board of Immigration Appeals decided to take on the issue of *particular social group* was in 1985, in a case known as Matter of Acosta (1985). Acosta is one of the most cited decisions in asylum law, setting the shape of particular social group jurisprudence not only in the United States but in other principle asylum receiving countries (Hamlin 2012). The case involved a claim filed by a Salvadoran applicant who was persecuted by guerrillas on account of his profession as a taxi driver who refused to participate in the guerrilla-sponsored work stoppages. Accordingly, he argued that the persecution he suffered was inflicted upon him on account of his membership in a group comprised of "CO TAXI drivers and persons engaged in the transportation industry of El Salvador" (1985:233).

The Board opened its decision by stating that its primary goal in defining the meaning of the term "particular social group" was to "preserve the concept that refuge is restricted to individuals who are either unable by their own actions, or as a matter of conscience should not be required to, avoid persecution" (1985: 234). Emphasizing that "dissent or disagreement with the conditions in another country or a desire to experience greater economic advantage or personal freedom in the United States…" does not suffice for refugee status, the Board held that an applicant is "worthy" of asylum if he or she is persecuted for an attribute the *applicant cannot change or should not be required to change* (1985: 221-222). Accordingly, the Board interpreted the phrase "persecution on account of membership in a particular social group" to mean

"persecution that is directed toward an individual who is a member of a group of persons all of whom share a common, i*mmutable* characteristic, i.e., a characteristic that either is beyond the power of the individual members of the group to change or is so fundamental to their identities or consciences that it ought not be required to be changed" (1985: 233). This interpretation of "particular social group" diverges from prior definitions which emphasize similar background, habits, interests, values and social status as defining factors of particular social groups for asylum purposes (Goodwin-Gill 1983; Grahl-Madsen 1972).[7] Referencing these sources, the Board held that they do not provide a *workable* definition of membership in a particular social group and proceeded to establish its definition centered on the concept of *immutability*.

The Board's demarcation of refugee status through the use of the immutability concept signals a shift in the logic underlying early 20th-century uses of the term, which emphasized applicants' motivation to flee rather than the trait on account of which they were persecuted.[8]

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[7] See also UN General Assembly, Meeting on Refugees and Displaced Persons in South-East Asia, convened by the Secretary-General of the United Nations at Geneva, on 20 and 21 July 1979, and subsequent developments: Report of the Secretary-General, 7 November 1979, A/34/627, available at: http://www.refworld.org/docid/3ae68f420.html [accessed 10 July 2018].

[8] Analysis of reports of international refugee conventions dating back to the interwar period suggests that initially an individual's motivation to flee was applied as a defining marker of worth. The first time that reason of flight was introduced as a defining marker of worth was on July 4, 1936, when the High Commissioner for Refugees organized an Inter-Governmental Conference with the purpose of establishing a system of legal protection for refugees coming from Germany. During the Preparatory Conference, held in Geneva on July 2nd and 3rd, the Netherlands Representative proposed the addition of the words "political or religious reasons" in the definition in order to exclude persons who have left Germany for economic reasons. In 1936, these proposed words, however, were not included in the final text. Two years later, on February 1938, the International Conference proposed a draft refugee definition which included one important qualification: namely that "persons who leave Germany for reasons of purely personal convenience are not included in this definition" (Jackson 1999: 20). Following the foundation of the United Nations and the International Refugee Organization (IRO), the majority of proposals addressing the refugee problem,

The concept of immutability first appeared in the Supreme Court's equal protection jurisprudence *Frontiero v. Richardson* (1973) where a plurality of the Court reasoned: "Since sex, like race and national origin, is an immutable characteristic determined solely by the accident of birth, the imposition of special disabilities upon members of a particular sex because of their sex would seem to violate the basic concept of our system that legal burdens should bear some relationship to individual responsibility." Less than a decade later, in 1981, Douglas Laycock expanded the concept to include also characteristics that individuals have a fundamental interest in not changing them. The logic behind the immutability standard is that certain traits such as race, sex and national origin as not blameworthy 'on account of being accidents of birth," reflecting the moral intuition that it is unjust to discriminate against someone because of a trait that bears no relationship to individual responsibility (Clarke 2015). This moral intuition, that it is unjust to discriminate on account of traits beyond the control of a person to change, was central to U.S. jurisprudence at the time. While the Board did not directly cite the *Frontiero* decision, the language it uses is reminiscent of this very logic. The Board rationalized its new emphasis on immutability on the well-established doctrine of ejusdem generis ('of the same kind'), stating that membership in a particular social group should be understood in light of the other four enumerated categories of race, religion, nationality and political opinion, all of which describe "persecution aimed at an immutable characteristic (1985: 233). Nothing that "whatever the common characteristic that defines the group, it must be one that the members of the group either cannot change, or should not be required to change because it is fundamental to their

associated refugee status with involuntary flight on account of race, religion, or political beliefs.

individual identities or consciences" (1985: 233), the Board drew a moral distinction between "worthy" refugees escaping forms of harms for which they are not to blame and those unworthy of refugee status, who are targeted for traits that either may be changed or are not central to individual identity.

An examination of asylum policy in the decades following the Acosta decision suggests that starting in the second half of the 1980s, policymakers drew on this moral distinction to create the asylum seeker as an essentially distinct subject from that of the illegal immigrant. Differences between illegal immigrants and "genuine" asylum seekers were phrased in moral terms: asylum seekers deserved protection, in contrast to other immigrants seeking legal membership, because they were targeted for traits over which they have little control. In this respect, immutability became the template policymakers drew on to demarcate the boundaries of refugee status where preestablished policy prescriptions ceased to apply.

Constructing a Hierarchy of Harms Centered on Immutability

In 1985, "immutability" was still a rather vague and undefined concept in the context of asylum law. In *Acosta*, the Board held that neither the characteristic of being a taxi driver or refusing to participate in guerrilla-sponsored work stoppages is immutable "because the members of the group could avoid the threats of the guerrillas either by changing jobs or by cooperating in work stoppages" (1985: 234). According to the Board, while "[i]t may be unfortunate that the respondent either would have to change his means of earning a living or cooperate with the guerrillas in order to avoid their threats… because the respondent's membership in a group of taxi drivers was something he had the power to change he has not shown that the conduct he feared was "persecution on account of membership in a particular social group" (1985:234). Subsequent to the *Acosta* decision, the BIA denied protection to

Guatemalans and Salvadorans claiming persecution on account of their membership in groups defined by characteristics such as place of residence (urban versus rural) economic status, profession (military experience), under the rationale that these are not the type of factors that are immutable or fundamental to individual identity or conscience (*Sanchez and Escobar* 1987; *Maldonado-Cruz* 1988). In these cases, Central Americans were constructed as ineligible for asylum on the ground that their flight was not out of absolute necessity.

During this early period, policymakers had not, however, formulated policy prescriptions defining the types of attributes that are *immutable and fundamental to identity* in ways that warrant asylum protection. In the early 1990s, asylum advocates drew on an emerging feminist discourse which framed sexual-based violence as persecution inflicted on women on account of their gender, to argue for the recognition of gender-based violence as a basis for asylum.[9] Accordingly, gender-based violence was gradually incorporated into mainstream refugee scholarship and law as a classic example of persecution inflicted on account of a trait (i.e., gender) that is both immutable and fundamental to individual identity. In this respect, the narrowing of institutional boundaries towards one group of claims led to a broadening of institutional boundaries towards another.

Gender-based Persecution

The idea that gender-based harms should be framed as persecution on account of membership in a particular social group was voiced within international circles starting in the early 1980s. In 1985, the UNHCR Executive Committee issued directives titled the "Conclusion on Refugee Women and International Protection" (1985), which provided that "states are free to

[9] Interview with Karen Musalo, Immigration Attorney, March 2011.

adopt the interpretation that women asylum seekers who face harsh or inhumane treatment due to their having transgressed the social mores of the society in which they live may be considered as a particular social group." In 1991, the UNHCR issued official Guidelines on the Protection of Refugee Women (1991), that reiterated the position that women who transgressed social mores could be considered a "particular social group." In the United States, however, the few federal courts that addressed the relation of gender to a claim of persecution did so under the political opinion theory.[10] It was only in the early to mid-1990s, that "particular social group" became institutionalized as the ideal and preferred framework for gender-related harms. This was in large part due to an emerging feminist discourse that framed gender-based harms around the concept of immutability.

In the early 1990s, the idea of women's rights as universal rights started gaining traction within feminist circles engaged in human rights and international criminal law. One of the chief visionaries of this idea was Charlotte Bunch, founder of the Center for Women's Global Leadership at Rutgers University. Bunch's (1990) article "Women's Rights as Human Rights: Toward a Re-Vision of Human Rights," argued for a human rights approach to gender persecution. According to Bunch, harms suffered by women remain marginalized and unaccommodated for because they are viewed as vehicles of some other (cultural/political or religious) form of persecution. Women's rights, argued Bunch, will only be protected once harms inflicted on women are seen as persecution in their own right: persecution on account of

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[10] During the 1980s there were two district court decisions which directly addressed the relation of gender to persecution: *Lazo-Majano v. INS* (1987), *Campos-Guardado v. INS* (1987). Both claims were adjudicated under the political opinion theory. Lazo Majano was granted asylum and Campos-Guardado was denied.

gender. In 1993, Bunch and seventy-five other signatories brought the campaign of women's rights as human rights to the United Nations Center for Human Rights and by the mid-1990s a global movement emerged claiming hundreds of thousands of members in the promotion of women's human rights (McKinnon 2016). In 1993, the Senate Subcommittee on International Security, International Organizations, and Human Rights, together with the House Committee on Foreign Affairs, held a hearing titled "Human Rights Abuses against Women? During the hearing, Chairman Lantos specifically mentioned the increasing number of women requesting asylum in order to escape various forms of gender-based persecution (McKinnon 2016: 41). During that very year, Canada became the first asylum receiving country to issue Gender Guidelines. The Guidelines identified four broad categories of women refugee claimants but did not provide a clear legal framework for addressing these claims and seemed to suggest that "particular social group" is more of a residual category to be considered only after consideration of the more specific grounds (Young 1994).

In 1992, the Women's Refugee Project, a joint project of Harvard Law School's Immigration and Refugee Clinic and Somerville Legal Services, was founded for the stated purpose of providing legal assistance to women asylum seekers. A premier goal identified in the work of the Women's Refugee Project was to establish a theory of membership in a particular social group, based not on shared acts or opinions but on the immutable trait of gender (Goldberg 1993; Kelly 1993; Anker 1995). Drawing on the *Acosta* definition of particular social group, they portrayed women as victims of a form of persecution inflicted on account of that which is both immutable and fundamental to individual identity – their gender and/or sexual identity. Over the course of a few years, the Project became a major setting for policy making on gender asylum; first through its central participation in the development of the Considerations for Asylum

Officers Adjudicating the Asylum Claims of Women (1995), and later in its engagement by the Department of Justice in the training of immigration judges, asylum officers and supervisors on issues related to women's asylum claims.

During this period, the number of law journal articles on the topic of gender asylum proliferated. In 1993, an article published in the Georgetown Immigration Law Journal asserted that evaluation of gender-related cases under the social group category would yield more accurate results than their evaluation under the political opinion category. According to this view, "speaking out against and opposing the social structure of society is political; but women are not persecuted for their beliefs that they should be free from violence. Nor is violence directed at them for personal reasons. Rather it is because of their gender" (Bower 1993). This new framing of gender-based violence appeared in multiple prominent law journals with legal scholars increasingly advocating for a re-conceptualization of women asylum claims as victims of their own gender.

In 1996, the Board issued its first precedent decision on how to adjudicate gender-based asylum claims. The case involved a 19-year old native and citizen of Togo by the name of Kasinga, who testified that she fled coerced female genital cutting and forced marriage. Kasinga was denied asylum by an immigration judge who claimed that female genital cutting is part of a tribal culture and thus does not constitute persecution under asylum law. Laily Bashir, a third-year law student at American University who had worked on the case for months and clerked for the Lawyer Kasinga's cousin had retained, was deeply troubled by the outcome of the case and sought help from Karen Musalo, acting head of the Human Rights Clinic at American University, who agreed to handle the appeal pro bono. Musalo notes that when she first agreed to

take on the case this was a relatively new area of law."[11] Shortly after becoming involved in the case, Musalo turned to Surita Sandosham, executive director of Equality Now, a women's rights organization and a leading player in the anti-FGM campaign.[12] Sandosham agreed to work the organization's media and political contacts to bring attention to the case, leaving Musalo in charge of the legal advocacy on behalf of Kasinga. In the coming months, there was a steady progression of very positive media in favor of Kasinga including a sympathetic article on the front page of the New York Times, passionately tracing Kasinga's story, her life in Togo, her flight to the United States and the horrific conditions of her detention (New York Times, April 15, 1996).

Musalo recalls that "the day the New York Times article came out, my phone started ringing from 6:00 am in the morning asking how we can help, why are we doing this to women..."[13] The huge public out roar in response to the NYT article led to further mobilization of numerous human rights and women's rights organizations as well as concerned congress members to petition for Kasinga's release from detention.[14] Within days of her story appearing in the New

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[11] Interview with Karen Musalo, Immigration Attorney, March 2011.

[12] *Equality Now* was founded in 1992 to work for the protection of the human rights of women around the world. In 1995 *Equality Now* led a national campaign against Egyptian Government efforts to medicalize female genital mutilation. In the mid-1990s female genital cutting came to be at the center of global feminist campaigns for women's rights. The United Nations officially adopted the term "female genital mutilation" as a sign of its contempt for the practice and in 1995, the Beijing Conference, the Fourth World Conference on Women, condemned female genital mutilation as a human rights violation.

[13] Interview with Karen Musalo, Immigration Attorney, March 2011.

[14] A select number of the human rights organizations which took part in the advocacy for Kasinga were Equality Now, The Catholic Immigration Network and Amnesty International. Other examples of advocacy include: Congresswoman Cynthia Mckinney sent a supporting letter to release Kasinga from Jail; Representative Patricia Schroeder, together with twenty-five other

York Times, the government agreed to release Kasinga and she walked out of the York County Prison to find hordes of reporters and photographers (Coffman 2007).

Less than two months later, on June 13, 1996, the Board of Immigration Appeals took the highly unusual step of setting the case for en banc consideration, something that occurs only a handful of times each year out of the tens of thousands of cases the BIA decides. In a nearly unanimous decision, the Board held that the practice of female genital mutilation can constitute persecution on account of membership in a particular social group, granting Kasinga her request for asylum (Matter of Kasinga 1996: 367). In its ruling, the Board cited Nahid Toubia, an advisor to the World Health Organization and director of the Global Action Against FGM Project at Columbia University School of Health, and various other human rights health organizations, to determine that female genital mutilation is not merely a cultural practice. Rather, the Board held, "FGM is a form of sexual oppression that is based on the manipulation of a woman's sexuality in order to assure male dominance and exploitation . . . practiced, at least in some significant part, to overcome sexual characteristics of young women of the tribe who have not been, and do not wish to be, subjected to FGM. The Board then went on to state that the "characteristic of having intact genitalia is one that is so fundamental to the individual identity of a young woman that she should not be required to change it." On this basis, the Board concluded that female genital mutilation is persecution on account of membership in a particular social group (*Matter of Kasinga* 1996: 367)

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members of Congress, appealed to the Attorney General for the release of Kasinga and expressed concern that the immigration judge in her case did not accept the principle that FGM constitutes a form of persecution that qualifies someone for political asylum. See Center for Gender and Refugee Studies Website, available at: https://cgrs.uchastings.edu/ [accessed 10 July 2018].

The Kasinga decision was an explicit act of policymaking with significant implications for the future development of asylum law. Judge Schmidt, chairman of the BIA in 1996 and the author of the majority opinion in Kasinga, explains that "Kasinga wouldn't have come down the way it did but for the fact that David Martin (the General Counsel for the INS) basically stripped the case of controversy… and David Martin wouldn't have argued that position unless (Attorney General) Janet Reno agreed with it. You could argue that the decision was a function of Martin and Reno."[15] The decision itself was orchestrated as a highly publicized event and the Board had to make unprecedented arrangements for media presence in the courtroom and for a bank of cameras outside the building to film comments of the parties immediately after the argument. The case was covered in all of the major media outlets including the New York Times, the Nation, the Washington Post, the Los Angeles Times and USA today. Ted Koppel devoted his entire Nightline show on the evening after the BIA hearing to an interview with Kasinga, a graphic background piece of FGM and a review of the legal arguments in the case. Kasinga also appeared on CNN, CBS and was interviewed by dozens of newspapers (Martin 2005).

Following the Kasinga decision, Karen Musalo founded the Center for Gender and Refugee Studies at Hastings University, the first center devoted to providing national guidance on how to adjudicate claims involving gender-based harms from women. According to Lisa Frydman, an attorney at the Center, "Kasinga was the catalyst for gender asylum. This is not to say that no one ever thought about it but Kasinga was really a catalyst. I mean, Kasinga is why this center started. After the Kasinga case, Karen was contacted by tons of attorneys saying, now

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[15] Interview with Paul W. Schmidt, Immigration Judge, February 2017.

I am going to file a gender case. What shall I do. And this is why the center came up."[16] Accordingly, the framing advanced in the Kasinga decision, of FGM as a form of sexual violence inflicted on women in order to overcome the "sexual characteristics of young women" became a template for all sorts of gender-related harms including domestic violence, forced marriage, bride burning and rape.

For three years the BIA was silent on the issue of gender based asylum claims but in June 1999 it issued another precedent decision, *Matter of R-A*-(1999),in which it held that the framing used in Kasinga for female genital mutilation cannot be extended to domestic violence because unlike female genital mutilation "in cases of spouse abuse the husband does not target his wife because she is a member of a social group of women or wives," nor is it motivated solely by a quest for male domination. Rather, "its roots lie in such things as the Latin American patriarchal culture, the militaristic and violent nature of societies undergoing civil war, alcoholism and sexual abuse in general." The case, filed by Rodi Alvarado Pena, a citizen and native of Guatemala who testified to have experienced extreme abuse at the hands of her husband, sparked a decade-long bi-partisan campaign, for the recognition of domestic violence as a basis for asylum protection. Karen Musalo became sole counsel for the case, and domestic violence became the heart of CGRS's work on gender asylum policy reform. Over the course of a decade following Alvarado's appeal, a remarkably diverse coalition of social activists and policy makers, including abolitionists, feminists, evangelical Christians, and both conservative and liberal government officials, formed in support of Alvarado's grant of asylum.[17] Despite their

[16] Interview with Lisa Frydman, Immigration Attorney, March 2011.
[17] Groups involved in the coalition include the U.S. Conference of Catholic Bishops, the Episcopal Migration Ministries, The Lutheran World Relief, the Anti-Defamation League, Concerned Women for American and World Relief (an arm of the National Association of

divergent ideas about sexuality and gender, conservative-minded organizations came to work together with liberal feminist groups and human rights activists. Congress members and Senators from the political left and the political right wrote joint letters and published collective statements demanding the recognition of violence against women in general and domestic violence more specifically as a basis for granting asylum. On August 5, 1999, Republican and Democratic representatives sent a letter to all House members asking their support in asking the Attorney General to reverse *Matter of R-A-*. On Dec. 2, 1999 Senators Robert Torricelli, Mary l. Landrieu, Edward m. Kennedy, Paul Wellstone and Patrick Leahy published the following statement: "Where persecution is inflicted, at least in part due to a woman's gender, there has been an emerging consensus that the persecution is due to a woman's membership in a particular social group…"[18] On February 14, 2000 Senators Patrick Leahy, Sam Brownback, James M. Jeffords, John F. Kerry, Edward M. Kennedy, Russell D. Feingold and Charles E. Schumer sent a letter to the Attorney General asking her to reverse the BIA's decision in an honor killing case, referring to Matter of R-A- and expressing concern that the "BIA's decision here contradicts its own landmark 1996 opinion granting asylum to Kasinga.[19] Later that year, fifty-seven members of the House of Representatives and eight members of the Senate again signed letters in support of Alvarado (McKinnon 2016: 29). International human rights groups also put pressure on the

Evangelicals), the Leadership Conference on Civil Rights, the Hebrew Immigrant Advocacy Society, the Washington Lawyers' Committee for Civil Rights and Urban Affairs, among others. See Center for Gender and Refugee Studies Website, available at: https://cgrs.uchastings.edu/ [accessed July 10, 2018].

[18] Center for Gender and Refugee Studies, available at https://cgrs.uchastings.edu/our-work/matter-r-a- [accessed July 10, 2018].

[19] *Id.*

government to reverse its decision and to recognize domestic violence as an eligible basis for asylum protection (McKinnon 2016). The underlying consensus shared by members of this growing coalition was that women, targeted on account of their gender, were deserving of asylum because of their inability to avoid persecution.

In response to the growing pressures to grant Alvarado asylum, in December 2000, the Department of Justice (DOJ) published proposed regulations in an attempt to provide an analytical framework for gender-related asylum claims "in the area of domestic violence as well as in other new claims that may arise" (Proposed Rules 2000). The proposed rules specifically noted that while the Board was right to conclude that Alvarado was not persecuted on account of her political opinion it was wrong to conclude that she was not persecuted on account of her membership in a particular social group. Specifically, the proposed rules instruct that where the victim of domestic violence can establish that "the abuser is motivated to harm her because of her gender or because of her status in a domestic relationship," she can establish that she was persecuted on account of her membership in a particular social group since "marital status could be considered *immutable*" (Proposed Rules 2000: 76593). On January 19th, 2001, Attorney General Janet Reno vacated the BIA's decision and ordered the BIA to issue a new decision in Alvarado's case after the DOJ's issuance of proposed rules on the subject of gender asylum.

As the proposed rules were never finalized, in 2003, Attorney General Ashcroft referred Matter of R-A- back to himself for review and provided an opportunity for additional briefing. In a fascinating move, the Department of Homeland Security (DHS) provided an analytical framework of its own for adjudicating claims of domestic violence from women. Consistent with the analytical framework laid out in the proposed rules, the DHS reiterated the idea that political opinion theory is not suitable for adjudicating claims of domestic violence while particular social

group theory is. The brief then went on to discuss how to best apply the social group theory to domestic violence claims. According to the DHS brief, the immigration judge had miss-defined Alvarado's particular social group when she characterized the group by the respondent's fear. Instead, the particular social group should be defined by the respondent's (immutable) status within the domestic relationship. "Married women in Guatemala who are *unable* to leave the relationship", stated the DHS brief (2004), meets the requirement for a particular social group and accurately defines why the persecutor chose to persecute his victim. In response to the supporting brief and growing public pressure, Attorney General Ashcroft remanded *Matter of R-A-* back to the Board in 2005, directing it to reconsider its decision once the proposed rule was finalized. In 2009, in the absence of a final rule, Attorney General Mukasey referred *Matter of R-A-* back to himself for review, lifted the stay previously imposed on the Board and remanded the matter for reconsideration. In response to a request for an additional briefing, the DHS submitted an additional brief which reaffirmed the framing proposed in the DHS Brief (2009). Interestingly, in the 2009 brief the DHS did not confine its analysis to the specific Alvarado case and instead presented it as a more general framework applicable to various claims involving spouse abuse. A year later, on December 10, 2009, Alvarado was at last granted asylum. In 2014, the Board issued its first precedent decision on whether domestic violence can constitute in certain instances a basis for membership in a particular social group (*Matter of A-R-C-G* 2014) The Board held that "marital status can be an immutable characteristic where the individual is unable to leave the relationship" (393). In a subsequent unpublished case from 2015, the Board broadened its 2014 holding in A-R-C-G to also include domestic abuse among non-married

couples.[20] The Asylum Officer Training Guidelines on Membership in a Particular Social Group similarly note that abuse serious enough to amount to persecution can also occur within other domestic relationships that are not spousal-like.[21]

Discussion and Conclusion

Political and foreign policy interests, changes in geopolitics and an emerging coalition of progressives and conservatives mobilized around the idea of women's rights as human rights, all contributed to the development of asylum policy in the post-Cold War period. It is my contention that lawmakers drew on moral distinctions of worth to translate these new interests and values into cognizable asylum claims. Where law-makers could, they relied on preestablished scripts rooted in Cold War understandings of refugee policy. However, where preestablished scripts did not apply, as was often the case with particular social group, lawmakers drew on moral distinctions of worth to recreate the asylum seeker as a substantially distinct category from that of the illegal immigrant. Specifically, to be eligible for asylum under the particular social group category an applicant had to establish him or herself as a victim of a form of persecution inflicted on account of an attribute which under no circumstances can or should be changed. This framework was amenable to an emerging feminist discourse which portrayed harms inflicted on women as harm's targeting women for their gender. Consequently, the act of female genital mutilation portrayed as a crime that violates the most fundamental and definitive attribute of a woman's sexuality – her genitalia – became the ultimate example of the type of persecution

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[20] Nexus-Particular Social Group: Training Module" Refugee, Asylum and International Operations Directorate, USCIS, 7/27/2015, p. 30, on file with author.

[21] *Id.*

protected under the standard of membership in a particular social group. This, in turn, created a template according to which a whole range of new claims was to be understood.

Over the years, the standard of "membership in a particular social group" has been broadened to include not only various gender-based harms but also non-gendered forms of harms including family membership (*Gebremichael v. INS* 1998), clan membership (Matter of H 2017), as well as individuals with physical or mental disabilities (*Tchoukhrova v. Gonzales* 2005; *Temu v. Holder* 2014*).* These cases all emphasized the victim's immutable condition and consequent inability to avoid persecution. This has had real implications on who can get asylum. Data obtained by submitting a Freedom of Information Act Request from the U.S. Asylum Office suggest that in the last decade, gender-related claims pursued under the particular social group category, are the primary means for gaining asylum from certain Western African countries including The Gambia, Guinea, and Mali. In all three countries, the majority of asylum claims are framed as "persecution on account of membership in a particular social group." The fact that in all three countries the vast majority (90%) of all particular social group applications recognized and granted are filed by women, strongly suggests that in a majority of cases, these applications involve claims based on female genital cutting and other gender-related harms.[22]

Despite the broadening of the particular social group category towards a whole range of previously unrecognized harms, gender asylum is far from a story of unidirectional progressive expansion. Immigration and government authorities issued provisions protecting women from a whole range of previously unrecognized gender-related harms, at the same time that they enacted laws restricting the entry of refugees from political and religious persecution. Central American

[22] USCIS database, on file with author.

immigrants have seen their protection options contract while female victims of sexual violence have received protections not available to them a couple of decades ago. In 1996, the same year the government expanded asylum law to include female genital mutilation as a basis for asylum, it passed the Illegal Immigration Reform and Immigration Responsibility Act, which placed many new restrictions on immigration and on refugees in particular (Illegal Immigration Reform and Immigration Responsibility Act 1996).

The development of asylum policy is thus indicative not of a move toward greater inclusion but rather of a reconfiguration in the very parameters of worth; that is, in how policymakers, government representatives, applicants and their advocates conceptualize differences between those "deserving" of asylum and those considered "undeserving" of asylum protection. In 2006, the numbers of applicants from Mexico and the Northern Triangle countries in Central America started to rise, with the most significant increase occurring since 2009.[23] The majority of applicants escaped persecution by gangs and presented claims that largely fell outside the scope of conventional forms of government sponsored persecution. Reports issued by the State Department and various NGOs have documented the escalating violence, the unprecedented number of civilian killings, the extortion, the impunity for those who commit the crimes and most significantly the complete inability of the government to grant effective protection to its citizens. As early as 2006, major media and news outlets including the New York Times, the Washington Post and the Boston Globe, to mention just a few, started publishing articles on the increasing numbers of Salvadorans, Hondurans and Guatemalans entering the United States illegally and applying for asylum. In an interview conducted with

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[23] USCIS database, on file with author.

Leon Rodriguez, DHS director at the height of the crisis in 2014, he explained that the sharp increase of applicants from Mexico and the Northern Triangle countries seeking asylum on the basis of gang violence imposed not only an administrative strain on the system – demanding the hiring of more asylum officers and immigration judges - but also a "conceptual strain" given the non-traditional nature of a majority of these claims.[24]

The majority of claims from Central America, however, are unsuccessful, with adjudicators rejecting most of the proposed social groups defined by gang violence. Fears of floodgates, racism, domestic politics, and foreign policy interests, led the administration to adopt a hostile and suspicious approach towards persons fleeing gang-violence in Central America and Mexico. Analysis of case law and policy directives suggests that immutability provides a conceptual template by which to frame their ineligibility. Starting in 2007, the BIA issued a series of decisions in which it concluded that applicants persecuted on account of attributes such as socio-economic status, profession, and level of education, did not deserve protection under the Act because they failed to show they were persecuted on account of traits immutable or fundamental to their identity. Such for example, The DHS training guidelines on particular social group state that groups persecuted on account of their wealth or socio-economic status are not eligible for protection "because wealth is not immutable," (*Matter of A-M-E- & J-G-U-* 2007*).* just as groups defined by professional status are not protected because this [owning a small business] is not "the kind of group characteristic that a person either cannot change or should not be required to change."[25]

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[24] Interview with León Rodríguez, Director of U.S. Citizenship and Immigration Services (2013 – 2017), May 2017.

[25] Nexus-Particular Social Group: Training Module" Refugee, Asylum and International Operations Directorate, USCIS, 7/27/2015, p. 36.

Conversely, courts and government representatives have been much more receptive to gang-related claims involving gender-based violence.[26] Lawyers working with asylum applicants note that claims involving sexual violence by gang members tend to be more successful and are more often recognized as bases of particular social groups.[27] This framework has also opened asylum to gang-related claims based on family membership with courts stating that "family constitutes the prototypical example" of a particular social group.[28] According to the DHS training manual, family relations are immutable and "the right to have a relationship with one's family is fundamental," such that the nuclear family would qualify as a particular social group.[29] This has consequently led to rather absurd cases where persons persecuted by gangs for their profession, socio-economic status, and resistance to recruitment among other reasons, were denied asylum protection and subsequently killed, while their family members, not yet physically harmed, were considered eligible for protection.[30]

The analysis put forth in this chapter suggests that while conventional categories of persecution rooted in the interwar period such as persecution based on political opinion or religion continue to shape contemporary asylum policy, a breach in the prevailing communist-

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[26] An immigration judge in Baltimore, for example, granted asylum to an El Salvadoran woman who was repeatedly gang raped by MS-13 members. The judge found cognizable the social group of "Salvadoran women who are viewed as gang property by virtue of the fact that they were successfully victimized by gang members once before" (Frydman and Desai 2012: 8].

[27] Interview with Maria Baldini-Potermin, Immigration Attorney, September 2016.

[28] Nexus-Particular Social Group: Training Module" Refugee, Asylum and International Operations Directorate, USCIS, 7/27/2015, on file with author.

[29] *Id.*

[30] Interview with Milan Sundaresan, Immigration Attorney, May 2016.

centered framework created situations where policymakers had to apply asylum law without being able to default to established policy prescriptions. In these situations, policymakers drew on shared moral distinctions of worth. Whereas initially distinctions of worth centered on the immigrant's motivation to flee, in the mid-1980s lawmakers imported the concept of immutability from equal protection jurisprudence to redefine deservingness as a matter of being persecuted for an immutable trait that bears no relationship to individual responsibility. Distinctions of worth centered on immutability provided a conceptual template for reorganizing differences between "deserving" refugees and "undeserving" illegal immigrants; women and sexual minorities were defined as worthy of asylum protection because they were targeted for a trait both immutable and fundamental to their individual identity: their gender. Conversely, Central Americans fleeing the civil wars in the 1980s, and gang violence in the 2000s, were constructed as unworthy because they were targeted for traits that are either mutable or not fundamental to their individual identity. In turn, a hierarchy of harms was created whereby harms of a sexual nature, targeting a person's sexuality or other physical and mental attributes considered to be not blameworthy, took precedence over harms targeting a person because of socio-economic status or professional status – traits framed as either mutable or not fundamental to individual identity.

These findings are important. Asylum constitutes a core arena through which state agents demarcate the boundaries of legal membership and citizenship. Yet, the world's attention usually turns to asylum policy at times of crisis and we know little about how state officials charged with formulating and implementing existing rules and policies decide who is deserving of membership and who of deportation. This chapter suggests that in recent decades there has been a significant reconfiguration in the meaning of worth in the context of asylum: starting in the

1980s, when lawmakers faced a breach in the prevailing policy paradigm they drew on moral distinctions of worth centered on the concept of immutability to make sense of new claims and demarcate the boundaries of refugee status. Examining the process through which the boundaries of asylum eligibility are demarcated thus advances our understandings not only of U.S. asylum policy but of the very processes through which the symbolic boundaries used by majority groups to construct notions of "us" and "them" are shaped and regulated (Bail 2008).

This study also contributes to our understanding of the role of cultural categories of worth in processes of institutional change. Existing studies show that social policy must resonate with embedded categories of worth if it is to be enduring and considered legitimate (Campbell 1998; Lamont 2000; Skrentny 2006; Steensland 2006), yet to date we know little about the ways policymakers draw on categories of worth during policy episodes veiled in uncertainty. I identify a reiterative process through which categories of worth influence policy-making in the transition from routine processing to situations where the consensus on the prevailing programmatic framework collapses. Where there is a clear and established programmatic policy framework, cultural categories of worth are subsumed under established policy prescriptions. Worth is used to justify or rationalize an existing classificatory scheme, not to constitute it. Quite to the contrary, where the consensus around the prevailing programmatic framework collapses, and a new alternative policy framework has not yet come to replace it, frontline actors draw on embedded distinctions of worth in order to make sense of the new reality. In this context, social actors use cultural categories as a conceptual template for categorizing persons and cases. While political interests, power relations, and local culture, influence which groups will be placed on which side of the binary, underlying cultural distinctions of worth, shape how the eligibility/ineligibility of these groups will be framed. In the process, the very meaning of worth

is redefined in ways that have unanticipated policy implications. This study suggests that cultural categories of worth play an important role in how social actors bridge emerging gaps between rules and complex cases and apply laws to new cases when faced with knowledge vacuums.

On June 11, 2018, Attorney General Jeff Sessions issued a decision (*Matter of A-B- 2018)*, in which he asserted that the "particular social group" category would no longer be used as a basis for protection for victims of domestic violence and gang violence perpetrated by non-governmental actors. The decision is expected to have significant implications on thousands of immigrants worldwide and from Central America in particular; in recent years claims involving domestic violence and gang violence constitute the majority of applications from Mexico, El Salvador, Guatemala, and Honduras.[31] The significance of this decision, however, is not only in the detrimental effects it is expected to have on the lives of those seeking asylum. The current administration's attempt to significantly curtail lawmakers' discretionary use of the 'particular social group' category signals that we might be transitioning into a period characterized by a lack of permissive political context. My analysis suggests that in order to understand how these changes will affect the future development of asylum policy we have to pay attention to the ways anxieties about illegal immigrants are mediated through embedded distinctions of worth, which while influenced by political interests are not reducible to the latter. In today's climate of suspicion and increasing restrictions toward immigrants, I contend that there is much to be learned from examining how lawmakers draw on shared cultural understandings of worth when applying laws to new cases for which established policy prescriptions do not apply.

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[31] USCIS database, on file with author.

CHAPTER 2
RECONFIGURING THE DESERVING REFUGEE: ENCOUNTERS OF SCHEMATIC ACCORDANCE AND SCHEMATIC DISCORDANCE IN ASYLUM ADJUDICATIONS

Introduction

Asylum Officer Linda recalls her encounter with Melissa, a Salvadoran asylum applicant who was raped by gang members. Under asylum law, this form of abuse does not fit within any of the established grounds for asylum, yet Linda decides not to refer Melissa's case to immigration court. In spite of time pressures and pushback from her supervising officer, she invests time in the case to help Melissa.

Time is of essence at the U.S. Asylum Office and the stakes for asylum seekers and adjudicators are high. Asylum officers are rewarded for efficiency and often reprimanded for failing to complete their caseload within the allotted timeframe. The high degree of uncertainty associated with asylum determinations, the rapidity with which officers have to make decisions, and the chronically inadequate resources relative to the tasks workers are asked to perform, encourage officers to default to routine application of existing scripts in order to manage the complexity of their work tasks (Feldman and Pentland 2003; Heimer 2001; Hawkins 1994). And yet, Linda's story is by no means extraordinary. In my interviews with asylum officers, they recall time and again instances where, notwithstanding organizational pressures to prioritize efficiency over quality, they decided to invest time and resources to assist an applicant whom they perceive as *worthy* of asylum but whose experiences of harm do not squarely fit within established categories.

Existing scholarship on decision-making provides us tools which are limited in their capacity to make sense of encounters, in which the routine application of institutionalized classificatory schemes is suspended, and the actions of frontline agents do not align with mainstream depictions of bureaucrats as rule-bound and impersonal actors who have little

discretionary power to transcend agency rules. A robust literature documents how bureaucrats operating under the pressures of a large volume of cases and limited resources will typically rely on established categories in order to ensure efficiency (Lempert 1992; Gilboy 1991; Emerson 1983), yet we know little about when and why frontline bureaucrats abscond from routinized patterns of classification. Does this create structural opportunities for moral deliberation, and if so, how? While a growing number of studies document situations in which bureaucrats choose to make their jobs harder and even put themselves at risk for clients they deem *deserving* (Lara-Millán 2014; Baker 2013; Maynard-Moody and Musheno 2003), the frameworks used to explain decision-making typically overlook how these moments of moral deliberation are also a product of the decision-making process itself.

This chapter has two complementary aims. First, it offers a new theoretical framework for expanding our understanding of these acts of moral deliberation that constitute an integral part of frontline decision-making. I argue that we can better understand when and why bureaucrats, working on the frontlines of administrative agencies that are under strain, transition between modes of decision-making governed by routinization to ones governed by deliberation, if we account for situations in which schemas of worth (shared cultural understandings about who is deserving and who is undeserving of protection/benefits/resources) reside in tension with agency rules. I build on research on frontline decision-making, and extend it, drawing on recent advances in the sociology of culture. The primary questions addressed by this framework are: (1) when do embedded cultural categories of worth resonate with agency rules in ways that instigate automatic versus deliberative forms of decision-making? and (2) what are the implications of these different forms of decision-making on how frontline actors define their gatekeeping roles? Core to my argument is that frontline workers in service-oriented professions draw on embedded

schemas of worth when determining how to assign benefits to individuals. As routine patterns of classifications emerge, cultural categories of worth and agency rules become enmeshed together in the form of policy scripts to which frontline actors can default. But too often overlooked are situations in which decision-makers encounter cases in which the characteristics either do not fit within established legal categories *but* resonate with shared definitions of high worth *or* fit within legal categories but are attributed low worth. In these situations, established policy scripts fail, generating opportunities for deliberation. Specifically, I identify two prototypical modes of bureaucratic encounter that are distinguished from one another by the degree to which there is resonance between schemas of worth and established legal categories. The first mode, which I term *encounters of schematic accordance,* occurs when there is a good fit between established categories and schemas of worth. The second, which I term *encounters of schematic discordance*, happens when schemas of worth and established categories do not align. Whereas accordance between worth and established legal categories enables frontline actors to follow routinized screening patterns, discordance between the two constitutes a source of considerable frustration; as frontline actors work to resolve this discordance, their dispositions change from that of rule-bound bureaucrats to moral deliberators with implications for the type of gatekeeping roles they adopt as well as for how eligibility for benefits is determined.

Second, I develop my framework and illustrate its value through an investigation of the asylum decision-making process in the United States after the Cold War, with the aim of providing an original empirical analysis of how determinations of asylum eligibility are made. The case of asylum decision-making particularly suits the analytic purposes of this chapter due to the existence of a built-in "garbage" category: an ambiguous category for things that you otherwise do not know how to handle (Bowker and Star 2000). This provides a unique

opportunity to study empirically how government-employed agents working on the frontlines of administrative agencies that are under strain, evaluate fact-patterns that align with schemas of worth but not with agency practice.

Towards the late 1980s, the geopolitical framework that guided refugee admissions in the United States throughout the Cold War collapsed, leading to the emergence of a new screening process. State officials were now required to differentiate applicants not in accordance to (communist) country of origin, as was the case during the Cold War, but in accordance to subjective experiences of persecution (Zucker and Zucker 1987; Tempo 2008; Wolgin 2011). In the process, they drew on shared cultural distinctions of worth rooted in early 20th-century political culture: the "deserving" refugees were considered to be those persons who fled their home countries *out of necessity* because of persecution, whereas the "undeserving" were considered to be those who left their home country *willingly* to enhance personal gain (Jackson 1999). Going beyond existing studies, this chapter shows that the relationship between shared cultural distinctions of worth and established agency rules influences the nature of the asylum evaluation process in significant ways. In the majority of cases, embedded distinctions of worth and agency rules are enmeshed together in the form of specific policy prescriptions on which agents can draw, encouraging a form of routinized decision-making. At the same time, the individually-centered screening process generated situations where shared distinctions of worth and agency rules did *not* align, leading to a sharp shift in officials' practices: when asylum officials attributed low worth to an individual whose claim met agency definitions of eligibility, the focus of the evaluative process turned to policing the credibility of the applicant's claim to fit within the said category. In the process, the validity of institutional standards is reaffirmed while the trustworthiness of the applicant is questioned. Conversely, when officials were presented

with fact patterns that did not fit within established legal categories but did align with embedded understandings of high worth, the meaning and scope of agency screening standards become the focus of inquiry rather than the credibility of the applicants claiming membership within them. Here asylum officials became "judicial entrepreneurs," critically deliberating the intended application of the existing classificatory scheme.

A framework of decision-making centered on the relation between schematic definitions of worth and established agency rules has three central implications. First, it contributes to a burgeoning scholarship on how frontline bureaucrats engage in their work, what motivates them to ignore, expand or defy agency rules and when beliefs about fairness and appropriate action trump incentives to streamline decisions and default to known categories – questions that to date remain unanswered within the literature. Second, it builds on and expands existing theories of institutional change by focusing on moments, integral to the decision-making process, where individuals' schemata break down. Specifically, this study provides new analytic terminology by which to identify the organizational conditions that constrain or enable agency. Third, by linking institutional and moral dimensions of decision-making, this study advances understandings of the role of racialization and stigmatization in the production of social inequality. Most often, scholars approach worth as a proxy for racial and gendered biases. From this perspective, policymakers' implicit biases shape their interaction with individuals and their perceptions of who is deserving of benefits. This study suggests that the influence of racial and gender biases on frontline decision-making is mediated by situations of schematic accordance and discordance; while biases play a role in shaping which groups will be considered worthy and which groups unworthy of benefits, their direction of influence on the decision-making process is also determined by the tension between attributed worth and agency practice.

Asylum is one of the central global issues of our time. It is through asylum decisions that the state demarcates the boundaries of legal membership and citizenship. Asylum provides a clear path to citizenship, a circumstance that helps to explain its contemporary political relevance. Applicants who are granted asylum typically obtain citizenship within several years after applying, whereas those denied are deported and often left stateless, rendered without the "right to have rights." As asylum takes up an increasingly central place in current global and domestic affairs, questions concerning how classifications between genuine refugees and "illegal" immigrants are made, and how the boundaries of the institution are regulated, are of utmost importance. My findings suggest that contrary to mainstream policy predictions, it may not always be in the applicant's best interest to present a claim that squarely fits within established agency categories. When officers are presented with case scenarios they can easily translate into established categories, the focus of evaluation most often turns to policing the credibility of applicants' claims to fit within the said category, leading to greater suspicion toward these applicants. Surprisingly, it is often encounters with "atypical' claims which encourage officers to shift dispositions from rule-bound technocrats to moral deliberators. These findings are nonetheless specific to a particular historical period in which officials are allowed a level of discretion, which is subject to political control. Recent political developments, including the Attorney General's latest attempt to curtail asylum adjudicators' discretion (See *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018)), signal that we might be transitioning into a period characterized by a lack of permissive political context. In today's climate of suspicion and increasing restrictions toward immigrants, I contend that there is much to be learned from how

state agents occupy their regulatory role in situations of conflict between established agency rules and embedded distinctions of worth.

In the remainder of the chapter, I proceed as follows: I first discuss scholarship on the conditions that instigate change within routinized patterns of classifications and the role of understandings of worth in these processes. I next explain how a framework that accounts for the relation between embedded categories of worth and institutionalized scripts provides new analytic tools for explaining why decision-makers shift dispositions from "rule-bound bureaucrats" to "moral deliberators" when operating under conditions of limited resources and time constraints. After briefly describing the asylum screening process, I draw on over thirty interviews with asylum officers to demonstrate the utility of my analytic framework in the case of asylum decision-making in the contemporary United States. I conclude by summarizing the implications of my framework and suggesting its usefulness for analyzing frontline decision-making in other bureaucratic systems that are under strain.

Theoretical Background

Sociology of Schematic Discordance

In recent decades a robust literature has developed on the factors that shape how frontline actors use their discretion. Existing studies provide us with two somewhat conflicting accounts of these core processes of the state which affect citizens in life defining ways. According to one account, frontline actors engage in rule-bound forms of decision-making with limited capacity to depart from institutionalized patterns of classification. From this perspective, the high degree of uncertainty due to the complexity of the subject matter – people – and the frequency with which actors have to make decisions, encourage frontline actors to rely on established categories to determine the initial direction of questioning and case disposition (Gilboy 1991; Emerson 1983;

Sudnow 1965). Accordingly, as categories are institutionalized, they dictate what information is considered relevant, enabling decision-makers to "streamline [their] work and eliminate the noise from differences not central to the tasks" being performed; cases are determined to fit or not to fit depending on whether they possess these factors (Heimer 2001: 48). This often leads to officials deciding cases similar in relevant particulars in similar ways, resulting in 'subjectively binding precedent' (Lempert 1992: 227).

In contrast, other scholars claim that far from being rule-bound with limited discretion, frontline actors are "principled agents" (Dilulio 1994), "ethical problem solvers" (Zacka 2015), and "institutional entrepreneurs" (Fligstein 2001: 105), with the capacity to use the categories available to them in innovative ways such that the reproduction of scripts is never guaranteed. Critical of the portrayal of organizational actors as bounded by institutional frameworks that define the ends and means by which decisions are determined, these studies contend that frontline actors do not just seamlessly enact preconscious scripts valorized by the institution; rather, they "play with them, question them, combine them with institutional logics from other domains, take what they can use from them, and make them fit their needs" (Binder 2007: 568). Bureaucratic practice is thus depicted as at least potentially creative and unpredictable and organizational actors as having "rival normative systems" (Heimer 1999), "transposable schema" (Sewell 1992), or "complex repertoires" (Swidler 2001), for thinking about the tasks they are expected to perform. Analysts of gradual institutional change similarly claim that there is a dynamic component built in institutional arrangements which provides openings for agency. Rules can never be precise enough to cover the complexities of real-life situations, and when new developments confound existing rules, institutional officials may change the rules in practice to accommodate the new reality (Mahoney and Thelen 2010; Streeck and Thelen 2005).

Although these accounts identify critical components of bureaucratic processes, existing theories do not provide us with tools for choosing between them or reconciling their conflicting accounts of frontline decision-making. That is, under what conditions do frontline actors operating with limited resources seamlessly enact established policy scripts and under what conditions do they become entrepreneurs who strategically apply existing scripts to new schemas in unpredictable ways? Why is it that in certain instances the complexities of real-world situations are strategically ignored, while at other times agents invest time and resources to accommodate them? And what are the implications of engagement in forms of evaluation that are not amenable to routine processing on frontline actors' general disposition and relation to the bureaucratic apparatus?

Some scholars have suggested that organizational actors cease taking institutional scripts for granted when these can no longer provide guidance for dealing with new social, economic or political problems, a situation that is most likely to occur during periods of social transformation – "unsettled times" – when routinized ways of acting come to be placed under scrutiny (McNamara 1998, Jepperson and Swidler 1994, Swidler 1986, Campbell 1998, 2002). From this perspective, when standardized state categories can no longer accommodate social and political developments, they yield confusion and inconsistent responses, providing actors charged with their implementation opportunities to contest them openly and eventually to undermine the legitimacy of the classificatory regime itself (Thompson 2016, Loveman 2014). This is, in essence, the basis of Bourdieusian approaches to political power which define change as what is accomplished through struggles in which agents clash over the meaning of otherwise taken-for-granted categories (Bourdieu 1991). These studies provide valuable insights about the conditions that instigate change during critical junctures but are not well-suited to explain what prompts

actors working within highly stable bureaucratic settings to defy agency pressures to streamline decisions in the absence of fundamental shifts in institutional structure, nor do they discuss the implications of these shifts on frontline decisionmakers' dispositions and gatekeeping roles.

To answer these questions, we have to pay close attention to situations in which schemas of worth do not align with established agency rules, and to the ways these situations of discordance generate conditions that encourage moral deliberation. Frontline agents operating within bureaucratic agencies that are under strain, draw on schemas of worth *and* established legal categories when determining how to allocate resources and/or benefits to diverse subjects. I rely on recent work in the sociology of culture to define schemas of worth as non-declarative forms of culture which are learned and shared (Wood et al. 2018; Patterson 2014). Policymakers define and cast content into schematic templates of worth through their encounters with diverse subjects and agency rules. Racialization, gender bias, criminal status and stigma shape which groups of persons are perceived as trustworthy, emotional and weak, or deceiving and criminal, in turn determining whether or not they will be deemed deserving of benefits and care (Pryma 2017; Lara-Millán 2014). Over time, group-specific policy prescriptions are formed, and frontline actors default to these when processing voluminous and conflicting information. Conversely, where schemas of worth and established rules reside in tension with one another, routine processing is disrupted, and conditions amenable to deliberation are generated. Thinking of the decision-making process as comprised of situations which differ in the extent to which worth resides with institutionalized rules advances our understanding of the conditions that make it more likely for agents to engage in moral deliberation in highly bureaucratized settings.

Shifts in Bureaucratic Dispositions and the Relation between Worth and Policy

Schemas of worth have long been recognized as central to the formation of social action and the development of policy (Steensland 2006; Campbell 1998; Skocpol 1992). Boltanski and Thévenot (2006) show that individual action is motivated by a requirement to provide moral justification. Individuals, they argue, justify their positions by drawing on embedded orders of worth which specify what things count, how and in what hierarchy. From this perspective, the state is more than ‘a bureaucracy with rules and procedures.’ State actors draw on categories of worth to make sense of complex persons in ways that cannot be reduced to self-interests (Fassin 2015). The orders of worth agents draw on vary across lines of nationality, race, socio-economic status, and gender (Saguy 2003; Lamont 2000; Lamont and Thévenot 2000).

A central insight of this literature is that social policy must resonate with schemas of worth if it is to be enduring. People typically have a hard time justifying provisions that fall outside the scope of collectively shared distinctions of worth. In her study of working class men in France and the United States, Lamont (2000) contends that policies are more likely to succeed if they resonate with the moral boundaries working class men in each country draw between themselves and other sectors in society: the unemployed poor and the upper-middle class. Steensland (2006) argues that the guaranteed annual income proposals during the 1960s and 1970s failed because they threatened to cross existing cultural categories of the deserving and undeserving poor. According to Skrentny (2006), US policymakers were able to pass affirmative action legislation (which granted privileges to minorities and women) during the Cold War because it resonated with deeply held normative beliefs that this was the right thing to do (see Campbell 1998).

Accordingly, embedded categories of worth have been shown to shape not only the formulation of policy but also how it is implemented. Lower-level public employees who interact directly with citizens in the course of their jobs, and who have substantial discretion in the execution of their work, draw on schemas of worth when deciding what information to prioritize, what information to disregard, and how to allocate benefits and impose sanctions (Lipsky 1980). In organizational settings in which resources are limited, agents deploy categories of worth when standard screening criteria do not suffice for distinguishing between two otherwise eligible clients. Caseworkers responsible for allocating economic sustenance to low-income families (Watkins-Hayes 2009), pharmacists deciding whether to provide “abusable” medications (Chiarello 2015), and nurses in the waiting room of a public hospital charged with determining which patients are deserving of a bed (Lara-Millán 2014), implement policies by relying on shared assumptions concerning the deservingness of various groups to receive assistance. These accounts provide considerable insight into the ways actors draw on schemas of worth to cast content into, and complement, agency standards. They nonetheless overlook how decision-making proceeds in situations in which a case’s attributed worth fails to align with established agency practice. In these situations, a person deemed *worthy* of benefits may fail to present a claim that squarely fits established definitions of eligibility, generating a tension between worth and standard practice.

Bureaucratic Practice as a Function of Differing Degrees of Accordance Between Rules and Schemas of Worth

Frontline actors in highly bureaucratic systems rely on established patterns of classification to process large volumes of cases in a time-efficient manner. These patterns of classification are dependent on there being a certain degree of *accordance* between cultural

distinctions of worth and established rules. Accordance between worth and agency rules occurs in one of the following two situations: (1) when the characteristics of a case squarely meet established definitions of eligibility *and* resonate with shared cultural definitions of high worth; or (2) when the characteristics of the case under evaluation do not meet agency standards of eligibility *and* resonate with shared cultural definitions of low worth. Existing studies on frontline decision-making abound with examples of these two scenarios (Pryma 2017; Lara-Millán 2014; Steensland 2006; Maynard-Moody and Musheno 2003). In both situations, worth and agency rules become enmeshed together in the form of policy scripts to which frontline officials can default to for the purpose of processing large volumes of cases in a time-efficient manner. Actors disregard information that does not fit within an existing script and attest to "knowing" what to do with the case without having to critically deliberate the meaning of the screening process itself (Gilboy 1991). Gaps in the story are filled by method of deduction. Rather than viewing cases as isolated events they evaluate them by reference to what is thought of as expected for a given classificatory scheme (Sudnow 1965; Emerson 1983). In these situations, frontline actors identify as "rule followers" and adopt an orientation of neutrality towards their subjects. Encounters of schematic accordance constitute a central focus of mainstream organizational theory, yet they do not account for a range of situations, no less integral to frontline work, where categories of worth and agency standards do not align.

Figure 2. Encounters of Schematic Accordance and Schematic Discordance

Modes of Bureaucratic Encounters	Relation Between Worth and Rules	Mechanisms of Decision-Making	Gate-Keeping Roles	Case Disposition
High Fit/High Worth or Low Fit/Low Worth	Accordance	Routinization Deductive Inquiry: individuals are assessed by how well they fit or not within established scripts. Information that does not fit is disregarded.	Rule Followers	Neutrality
High Fit/Low Worth	Discordance	Deliberation Routine processing of cases is disrupted. Critical inquiry into the trustworthiness of the individual claiming to fit within an established category.	Guardians of the Integrity of the Institution	Suspicion
Low Fit/High Worth	Discordance	Deliberation Routine processing of cases is disrupted. Inductive inquiry Critical inquiry into the meaning and scope of the existing classificatory scheme.	Judicial Entrepreneurs	Trust

In contrast to encounters of schematic accordance in which agency standards and shared definitions of worth are enmeshed together, encounters of schematic discordance reveal there to be a gap between the two, creating a dissonance which impedes default to routinized screening patterns. Discordance between worth and established agency categories typically occurs in one of two situations. The first is where the case under evaluation meets agency standards for eligibility *but* is considered undeserving of care. The second is where the matter under evaluation does not meet established eligibility standards *but* is attributed high worth.

The narrative sections of studies on bureaucratic decision-making provide illuminating examples of both situations. In their study of frontline public service workers, Maynard-Moody and Musheno (2003) tell the story of an encounter between a vocational rehabilitation counselor and a quadriplegic by the name of John who is seeking counseling and help in acquiring various disability benefits. John is eligible for disability benefits under agency standards, yet the counselor deems John to be mostly *undeserving* of these benefits. According to the counselor, John's "mom and dad have money. . . John got a big insurance settlement at the time of his accident . . . Everything has fallen in his lap, more than most people dream of" (141). In the eyes of the counselor, John's wealth and lifestyle render him "undeserving" of government assistance even though formally he met all the legal requirements.

Conversely, in his study of ER admission decisions, Lara-Millan (2014) discusses the encounter between a head nurse by the name of Melinda and a sick patient awaiting a bed in the ER waiting room. Initially, Melinda proceeds routinely to process the patient. The patient's vitals "are perfect," she states, which under ER policy would mean that the patient is ineligible for a bed (876). But something about the encounter with the patient pushes Melinda to return to the case. The fact that the patient is a young married woman whose 'hard-working" and "loving"

husband has been waiting with her all night, differentiates her from the *undeserving* (whom she identifies as African American drug addicts) who deliberately fake symptoms merely to obtain narcotics. The patient's marital status, gender, and general demeanor construe her as deserving of care even though her vitals don't qualify her for a bed.

The authors do not investigate the discordance that emerges between attributed worth and rules as a motivating factor in the decision-making process, yet the interview data they provide suggest that it is precisely this discordance which influences how workers evaluate their clients. In the first case, the counselor gets emotionally involved in the case when faced with the discordance between John's eligibility under legal standards and attributed low worth. He views John as selfish "John pushes the wire, you know . . . if you give him two hours he wants ten," and expresses frustration at the fact that John is formally eligible for what he does not "deserve" (Maynard Moody and Musheno 2003: 139). As a result, rather than just granting the benefits for which John would presumably be eligible under standard agency policy, the counselor deliberately looks for justifications to deny them. In the second case, the discordance between the high worth attributed to the patient and her failure to formally qualify for a bed frustrates Melinda who subsequently goes over to the computer and "ponders the patient's record" and again "looks at her labs" (Lara-Millán 2014: 876). At the end, Melinda decides to overlook standard agency policy and to admit the patient before six other people on the list. Frustrated at what she believed to be a mismatch between ER admission policy and the patient's deservingness to be admitted, Melinda questions not the patient's attributed worth but rather the agency standards themselves: "when we can't tell if something is going on, that doesn't mean something ISN'T going on" (876). As these examples well demonstrate, in both situations, embedded distinctions of worth stand in tension with established rules, becoming "visible" and

subject to deliberation. However, if in the first scenario (high fit/low worth), the evaluative process centers on the trustworthiness of the client, in the second scenario (low fit/high worth), frontline bureaucrats engage in a critical investigation of existing legal standards and their intended application.

The distinction I propose between encounters of schematic accordance and schematic discordance is a heuristic tool for analytical purposes; in practice encounters of schematic accordance and discordance should be seen as being on different ends of a continuum (see Brubaker 2016). Where a case scenario clearly fits within established legal categories but resonates with definitions of low worth or vice a versa (i.e., does not fit within established legal categories but is attributed high worth), the discordance will be stronger and harder for frontline actors to ignore. Conversely, where the fit within agency rules and/or categories of worth is more ambiguous, the discordance may be less apparent and consequently less disruptive to routine processing of cases. Even where the discordance between legal fit and worth is high, certain attributes of the screening process shape how frontline actors will respond to the dilemma of discordance; these include opportunities for appeal, past experience with discordance, the implications of making a wrong decision, and the freedom frontline actors have to use their discretion, which often depends on professional background (Watkins-Hayes 2009), power-relations within the organization (Heimer 1999), and internalized professional missions (Marrow 2009). Notwithstanding these mediating factors, I contend that conceptually distinguishing between these modes of bureaucratic encounter allows us to identify better the conditions that encourage frontline actors to at times strategically ignore the built-in ambiguity within rules, while at other times to defy agency pressures to streamline decisions to account for complex cases. In the following sections, I apply my framework to the case of asylum decision-making

with the dual purpose of exploring its utility and examining understudied aspects of US asylum adjudications in the 21st century.

Data and Methods

In this chapter I aim to develop a framework for analyzing when and why frontline actors shift dispositions from rule-bound technocrats to moral deliberators. A case study approach is well suited for this goal of theory development as it generates detailed knowledge of one such bureaucratic system (Espeland and Sauder 2007). I selected the asylum corps, housed by the Department of Homeland Security's (DHS) Office of Citizenship and Immigration Service (USCIS), and comprised of asylum officers who evaluate asylum applications and interview applicants. Asylum officers are lower-level public employees charged with applying rules to real-life cases (Steinmetz 2017). I focus on asylum officers because they, more than the heads of state and upper level officials, are responsible for routinely enforcing agency rules. It is in the gaps formed between rules and the complexities of real-world situations, that situations of discordance between worth and rules become most apparent.

The empirical analysis draws on multiple sources of data, including original data collected from extensive fieldwork. I conducted thirty semi-structured interviews averaging about ninety minutes each with former USCIS asylum officers, accounting for ten to fifteen percent of the total number of asylum officers employed during a given time period. This is the first empirical study to interview more than a handful former US asylum officers. Officers were secured by a snowball sampling method. I interviewed officers from seven asylum offices: Arlington, Chicago, Los Angeles, Newark, New York, New Orleans (a sub-office of the Houston asylum office), and San Francisco. Fourteen officers had worked at the asylum office for periods ranging from a year to five years between 2010 and 2015. Seven officers worked at the asylum

office between 1995 and 2001. The rest worked for varying time periods between 2002 and 2009. Three of the asylum officers I interviewed also served as supervisors during their time at the asylum office. Of the thirty officers interviewed, there are twenty-two women and eight men. All except three of the officers have a law degree. Those without a legal degree either worked with refugees before coming to the Asylum Office or had other advanced degrees. While having a JD is not a requirement for becoming an asylum officer, the majority of incoming officers have a law degree and some prior legal experience.

Asylum hearings occur behind closed doors. The agency does not permit observations of the interview process. Practicing officers are subject to confidentiality agreements and are generally prohibited from publicly speaking about their work. Officers' written decisions are also subject to confidentiality agreements and are not available for public view. Interviews with former asylum officers constitute one of the only ways to gain a glimpse into the "black box" of routine asylum decisions. In this chapter, I aim to identify differences in how asylum officers describe their gatekeeping roles, with the purpose of learning about the boundary work, cultural ideas and classification systems they engage with. Interviews are the method best-suited for this purpose. Interviews can reveal the imagined meanings people attribute to their activities as well as their self-concepts and categorization systems – information that is critical to our understandings of the dilemmas inherent to evaluative processes and that generally cannot be obtained without asking (Lamont and Swidler 2014).

To protect confidentiality, I use pseudonyms and refrain from noting officers' workplace and dates of employment. I conducted interviews with an adaptive format. This format enabled me to adapt my questions to officers' diverse experiences and to pursue observations about a process on which we currently have little empirical data. Because I did not ask officers identical

questions, I coded their statements for general themes that focused on the work routine at the asylum office, their relations with supervisors, and officers' understandings of their roles and responsibilities. I was especially interested in understanding when and why officers decided to engage in a time-consuming analysis of cases under the contested 'particular social group' category in spite of pushback from supervisors, as well as the factors that motivated them to refrain from such an analysis.

Along with open-ended interviews with asylum officers, I transcribed and analyzed footage of interviews conducted by Michael Camerini and Shari Robertson for their two documentary films "Well-Founded Fear" (2000) and "Practicing Asylum Law" (2000). Both films provide footage of conversations with asylum officers on the complexities of the asylum evaluation process, including fourteen asylum interviews which offer concrete examples of officers' experience in the course of ascertaining applicants' credibility, the challenges of translating applicants' experiences into recognized legal grounds, and the factors that officers have to weigh when making such difficult decisions. I analyzed data from these interviews to supplement my interview data. Once my analysis of interview data yielded consistent patterned findings, I considered these to be valid statements about mechanisms informing behavior in the asylum context (Luft 2015; Small 2009).

Behind the Scenes of Asylum Adjudications

Much has been written about the development of refugee and asylum policy in the United States, with scholars documenting how foreign policy interests (Loescher and Scanlan 1998; Reimers 1992), political bias (Schoenholtz, Schrag, and Ramji-Nogales 2014, 2011), and administrative structure (Hamlin 2012) influenced the development of asylum policy. Notwithstanding important differences between these divergent accounts, they all generally

agree that modern asylum policy has been shaped by the deeply embedded notion that some people are more deserving than others of asylum protection. Individuals' motivation to flee started being used as a central moral boundary for differentiating those deserving of refugee status from those undeserving, during the interwar period, when the deteriorating situation in Germany and the increase in the number of refugees worldwide led to attempts at arriving at a refugee definition centered on the individual rather than the state (Jackson 1999).

For much of the Cold War, distinctions of worth between those fleeing out of necessity and those leaving willingly were subsumed under a programmatic policy framework which restricted eligibility to residents of communist-dominated countries. Following the collapse of the Cold-War framework, embedded distinctions of worth moved to forefront policy discussions and became ever-central to the implementation of the new refugee law. According to the new refugee definition, any foreigner who finds his or her way to the United States may apply for asylum, subject to certain limitations. A refugee is defined as a person who has a well-founded fear of persecution on the basis of "race, religion, nationality, membership in a particular social group or political opinion" (Public Law 96-212. 94 Stat. 103-118. 17 March 1980). Eligibility was now to be determined by a careful assessment of whether a given claim fit (or not) within one of the five recognized rubrics of persecution. Moreover, the Act ordered the Attorney General to develop new procedures for asylum screenings for applicants already on US territory. These changes gradually worked to upend the former system, introducing in its place a fundamentally new classification scheme based on case-by-case assessments of individual testimonies of harms.

Throughout the 1980s, efforts were devoted to creating and implementing a new administrative apparatus, staffed with personnel trained in human rights law (Beyer 1992). The

final regulations for the new administration were promulgated in July of 1990, setting up two formal routes for asylum: the affirmative application process, which is the focus of this paper, and the defensive application process. Affirmative asylum decisions are administered by the USCIS asylum corps and limited to applicants who have not yet been placed in removal proceedings in immigration court. The defensive application process is administered by Department of Justice immigration judges who evaluate claims by individuals who were apprehended and placed in removal proceedings before they had a chance to apply for asylum (Schoenholtz et al. 2014).

The affirmative asylum process officially begins when an applicant files form I-589 and delivers it with any additional supporting documentation to a Service Center, which then forwards the file to the appropriate Asylum Office. Form I-589 requires applicants to provide detailed demographic information in addition to biographical information about their *reason for flight*. Form I-589 instructs applicants to check the box with the name of the category – race, religion, nationality, particular social group or political opinion - that best fits their claim. Nowhere in the form is there any explanation as to the meaning of these terms. Subsequent questions are open-ended and require the applicant to provide a "detailed and specific account" of the harms experienced or feared. This application serves as the basis for the oral interview during which the applicant has an opportunity to explain his or her claim. The assignment of cases for interviews is typically done at random. Depending on the asylum office, cases either get preassigned to officers several days before the date of the interview or on the day. Before each interview, officers are required to review applicants' I-589 form on top of security checks

and country of information reports.[32] Asylum officers typically interview for four days a week, leaving one day to write up their decisions. Before a decision letter is served, the Supervisory Asylum Officer reviews the case for procedural and substantive correctness. If the supervisor and asylum officer are not able to resolve their differences, the supervisor elevates the issue to the director of the office. The director at his or her discretion may decide to refer the case to Head Quarters for further review.[33]

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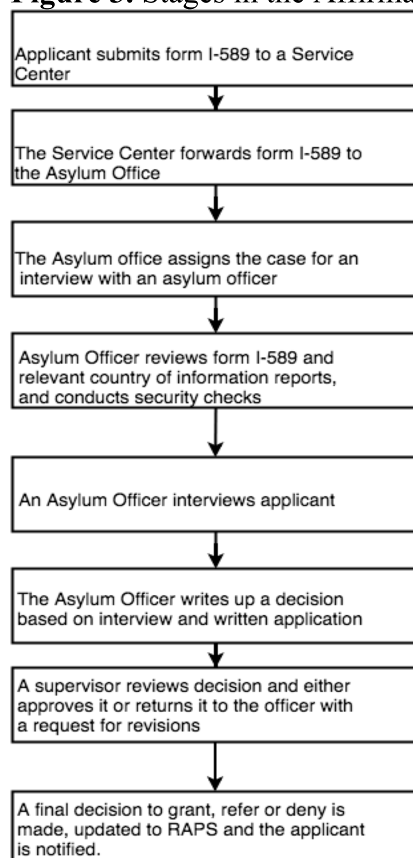
[32] Affirmative Asylum Procedures Manual, Refugee, Asylum and International Operations Directorate (RAIO), USCIS, May 2016, available at Affirmative Asylum Procedures Manual. Retrieved May 20, 2018 (https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/AAPM-2016.pdf).

[33] Id.

Figure 3. Stages in the Affirmative Asylum Determination Process



The mandate of the newly founded asylum office was to implement a screening process guided by human rights principles that would serve as an alternative to the group-based admissions process during the Cold War, which had centered political concerns about communism. In my interviews, officers talked about their professional mission to protect the most vulnerable of persons and often distinguished themselves from officials working in other branches of the government. Officers generally agreed that the asylum office is the "friendliest agency within the INS [now DHS], an anomaly that creates tension with the more law enforcement minded officers and supervisors," and often contrasted themselves to the older generation of employees "people with no background in human rights… some of them with

enforcement background with years of experience in immigration and doing solely enforcement" (Tom, Interview, 2016).

At the same time, time pressures required asylum officers to manage high workloads in short periods of time. Erica describes time management as the biggest challenge of being an asylum officer: "you just have to reach a level of efficiency that is crazy" (Erica, Interview, 2017). According to Sara, the tone in the office was "interview and get them out, interview and get them out" (Sara, Interview, 2016). In some asylum offices, officers would have to notify their supervisor if an interview would exceed the typical time frame allotted and would be reprimanded for taking too long. Ellie recalls that "the caseload was crazy, back breaking labor. If you spend any time thinking about a case, you get behind and you get penalized and then you get reprimanded; that was very stressful" (Ellie, Interview, 2017). As a result, officers were generally required to be as efficient as possible, with productivity and efficiency often rewarded over quality. Officers who fell behind would not get promoted and, in some offices, faced losing their job. Time constraints, in conjunction with a high volume of cases in need of processing, encouraged officers to resort to established patterns of classification which determined not only the direction of questioning but also the case disposition. Much like other frontline agencies under strain, officers thus negotiated, on a regular basis, between a service-oriented mission to evaluate applications on their merit, and organizational pressures to streamline decision-making. These conflicting pressures enhanced the dilemma of discordance officers encountered between embedded definitions of worth and established agency practice.

Encounters of Accordance and Discordance in Frontline Asylum Decision-Making

Encounters of Schematic Accordance:

"The worst thing is to finish an interview without having made a decision. Twenty or thirty minutes in I try to find the appropriate category for the case so to be able to pinpoint all the areas for which I need more information to write up the decision."
(Mary, Interview, 2017)

The routine in the asylum office was such that officers typically had to process large numbers of cases in a short time frame. Like other documented cases of decision-making under conditions of limited resources, officers accumulated information about cases and their typical features and formed established scripts for each principal group of applicants. Officers relied on these scripts when attempting to process claims in a time-efficient manner. These scripts provided a detailed description of the social and demographic features of the individuals involved, and typically made use of established understandings of refugee status rooted in the Cold War which associated refugees with distinct political, ethnic and religious minorities suffering state-sponsored persecution. Significantly, these scripts drew on, and reaffirmed, shared distinctions of worth centered on the notion that those "deserving" of asylum flee their home-countries out of necessity because of government-sponsored persecution inflicted upon their ethnicity, religion or political opinion.

Where possible officers would try to categorize a claim within an established policy script. Examples include Egyptian Copts fleeing religious-based persecution, Sikh applicants persecuted by the Indian government, or Chinese applicants subjected to forced abortion or

sterilization by the Chinese government. Officers often commented on how the encounter with established policy prescriptions led to a nearly automatic categorization process that required little reflective thought or deliberation on their part. According to Jade, “a political opinion claim, where the person was speaking out against the government … or religion where it is pretty obvious,” these were “slam dunk cases” (Jade, Interview, 2017). Ellie describes the process of evaluating ‘straightforward’ cases which fit within established scripts of persecution: “When you go into the interview, you ask why they are afraid to go back, and they say that they are scared to be killed. You say by who, and they say the Maoist. A lot of the guys from Nepal would say that, and then you are like, okay, this is going to be a political opinion claim… the traditional ones: religion, race, political opinion, and nationality, are very straightforward” (Ellie, Interview, 2017). Maya similarly explained that “certain fact patterns go into the *easy* category… you can get used to interviewing those types of cases and you can kind of do the same lines of questioning” (Maya, Interview, 2017).

“Slam dunk” cases also included claims that did not fit within established persecution scripts and were simultaneously construed as undeserving of asylum protection. According to Mark, the thought trend in the government was that Mexican applicants were escaping harsh economic conditions and the inability to find decent employment and were thus ‘economic immigrants’ rather than genuine asylees. In the eyes of many, their claim did not resonate with any of the established categories for asylum nor did it *justify* a granting of protection (Mark, Interview, 2016). Accordingly, the attribution of low worth to applicants lacking a clear basis for asylum enabled officers to deny their claims with little critical reflection upon the existing classificatory scheme.

Whether eligible and deserving or ineligible and undeserving, accordance between worth and agency rules encouraged officers to engage in routinized processing of cases; applicants were assessed by how well their claim fit (or not) the persecution script established for their group. Information concerning individual cases would be deemed missing, contradictory or superfluous depending on whether or not it matched the script formed for a given nationality group. In turn, officers approached applicants as abstractions rather than individuals with distinct characteristics. In these situations, explained Martha Louise "we may be turning the applicants into cases as opposed to human beings. Everybody does it. Once you start hearing things that sound the same."[34]

When engaging in encounters of schematic accordance, asylum officers were often frustrated at how little discretion they had. Many felt that all that was left for them to do was to "check the appropriate box" (Melissa, Interview, 2017). According to Nora, "you usually have an assessment template … it is kind of easy to go into autopilot. You can expect this person to say this and then they will say that…" (Nora, Interview, 2017). In turn, officers often described their job as consisting of "rule-following" and themselves as having limited discretion. Erica explained that for these types of cases, "while asylum is a discretionary benefit, meaning that the law allows the officer to have a discretionary component of whether to grant the case or not, in practicality that [discretion] is not exercised in any significant way" (Erica, Interview 2016).

Officers' determinations as to whether a given claim squarely fit or not within an established script were far from objective. Asylum officers worked under extreme time pressures and would often be rewarded for efficiency at the expense of quality. This resulted in officers

[34] Michael Camerini and Shari Robertson, Well-Founded Fear, 2000

deliberately emphasizing aspects of a case that would allow them to place it within an established category. Whereas for some cases the categorical fit (or lack of fit) was obvious, for others it was less so with officers strategically overlooking information or emphasizing specific facts over others. Moreover, institutionalized biases influenced which groups of immigrants were considered trustworthy as opposed to "deceitful." When officers encountered claims that clearly fit within established categories but resonated with shared cultural definitions of low worth, their experience came to be one of discordance.

Undeserving yet Eligible: The Case of China's One Child Policy

> "These (Chinese) cases, on paper they are eligible but in practice, they are all just fraudulently trying to get in. But it takes time and experience to expose the fraud"
> (Lucy, Interview, 2017)

Racial bias, stigma, repetition, and fraud culminated to construe some groups of applicants as *undeserving* of asylum protection despite being formally eligible for it. In these situations, asylum officers experienced a certain degree of discordance between applicants' formal eligibility under agency standards and the low worth attributed to their claims. Chinese applicants claiming persecution under China's one-child policy provide one such example. In 1996 Congress stipulated that people fleeing China's "one-child" policy were refugees eligible for asylum. Accordingly, under the new law, it was enough that applicants establish by testimony alone a well-founded fear of future sterilization or abortion to be eligible for asylum. After its enactment, the number of Chinese applications significantly increased and, in some offices, constituted the majority of applications.[35] Knowledge concerning the Chinese government's execution of its one-child policy quickly solidified leaving officers with little responsibility other

[35] USCIS Data on Affirmative Asylum Applications 1995-2014, on file with author.

than to "check the appropriate box" (Clara, Interview 2016). Instances of documented fraud, institutionalized bias and the encounter with a large volume of repetitive claims, led officers to believe that a majority of Chinese applicants are "economic immigrants" in disguise and thus largely *undeserving* of asylum. Shared understandings attributing low worth to Chinese applicants came to be institutionalized as part of office culture and were the subject of formal and informal discussions among officers. According to Jim, "the Chinese applicants are basically a bunch of farmers and factory workers and they have been practicing some story."[36] Mary similarly explained that Chinese applicants often presented boilerplate applications that always met the legal criteria but were in most cases fraudulent (Mary, Interview, 2016). Nora contended that in most cases, Chinese claims were "fraudulent, and they were formulated to fit into all the categories and check all the boxes that need to be checked" (Nora, Interview, 2017).

While suspicion towards Chinese applicants was at times warranted, officers generally agreed that repetition – hearing the same types of claims from the same region over and over again often led officers to become more suspicious of Chinese applicants' credibility. Biases contributed to officers' suspicion as well. According to Kevin: "when I get someone from China that I know is a PhD I am much more generous with them than I am with some guy that I think is cooking in the back of some kitchen."[37] Chinese applicants were not the only national group viewed as suspect. Officers shared similar experiences about Sikh applicants from India (Jack, Interview, 2017), applicants from Cameroon and Ethiopia (Rose, Interview, 2017) and Haitians (Gary, Interview, 2016).

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[36] Michael Camerini and Shari Robertson, Well-Founded Fear, 2000.

[37] Id.

Whether because of racial bias, confrontation with repetitive claims, suspected fraud, or some combination of the above, asylum officers expressed frustration when confronting cases that formally met the legal requirements but were nonetheless perceived as morally "undeserving" of benefits. In such cases, officers would often opt to invest time to investigate applicants' credibility, even if this meant having to devote more time to a case than would otherwise be warranted. Asylum officers developed techniques for discerning inconsistencies in applicants' testimonies and increasingly relied on medical certificates, expert testimony and other verifying forms of documentation. Ironically, the very centering of evaluations on formal credibility analyses often led to a reaffirmation of officers' initial suspicions. Officers explained how even minor inconsistencies came to be a cause for concern. According to Diana, "you find yourself saying, oh, this was an inconsistency, or this doesn't quite add up here … yet with what I know about memory and trauma it could very well have been true" (Diana, Interview, 2017). Melissa explains "you could over sophisticate yourself, so for Sikhs, we were trying to determine whether they were truly Sikhs… I worry that you start developing tests … that I could not pass, and I was born a Christian… That is the risk – if you get tests to figure who is real and who is not you can end up turning down people who are totally legitimate" (Melissa, Interview, 2017).

The confrontation with discordance between low worth and high legal fit shaped not only how asylum officers interacted with applicants but also how they perceived their gate-keeping roles. For these types of cases, officers often noted that preventing applicants from manipulating the country's laws was a definitive part of their job. As Maya explained: "our job is to be neutral but not dumb. When fraud happens, it clogs the whole system for everybody else. It sounds like people are biased, but after you have done it, you know what issues are out there and what issues need to be addressed" (Maya, Interview, 2017). Others noted how getting better at the job meant

getting "better at discovering the lie" rather than gaining proficiency in the law, its history and intended application (Kevin, Interview, 2017). In cases where legal fit clashed with attributed worth, being able to detect inconsistencies in applicants' claims came to define officers' roles, leading to a general prioritization of forms of suffering that can be documented; as Fassin (2012) puts it, applicants have to use their biology rather than their biography as a resource to win asylum.

Studies on asylum and immigration policy have documented the growing focus on credibility in contemporary asylum adjudications and adjudicators' increasing reliance on experts and documents. Existing accounts typically attribute this to a growing "climate of suspicion" in which adjudicators view asylum seekers as trying fraudulently to take advantage of the receiving country (Fassin and d'Halluin 2005; Lawrance and Ruffer 2015). These accounts, however, overlook how suspicion is in many cases a product of the decision-making process itself. As such, they fail to explain why it is that for some cases (including those involving members of marginalized groups), credibility determinations play a relatively marginal role in the screening process. Specifically, interviews with asylum officers suggest that when officers encountered fact patterns that did not align with established persecution scripts yet resonated with embedded definitions of high worth, the evaluative process came to center on the meanings of asylum standards, often to the exclusion of a critical inquiry into applicants' credibility.

Deserving yet Ineligible: Applying the Standard of "Membership in a Particular Social Group"

> "I would have loved to avoid it [particular social group], but it was really the only way out for a lot of these cases. With a gang-related claim with multiple people in the family injured you just go for it, it is the only way out."
>
> *(Ellie, Interview, 2017)*

I examine when and how asylum officers apply the "particular social group" category as a means to explore how decision-making proceeds in situations in which frontline actors attribute high worth to a claim that does not easily fit within established categories. "Membership in a particular social group" is an unsettled screening category. Whereas the meanings of "race," "religion," "nationality" and "political opinion," are rooted in US political culture and largely associated with government-based persecution of marginalized groups, the meaning of the category "membership in a particular social group" remains contested. In 1985, the Board of Immigration Appeals (BIA), the highest administrative body for interpreting immigration law, issued its first precedent decision, *Matter of Acosta*, concerning the meaning of "particular social group." In *Acosta,* the BIA provided a broad definition of the term, defining "membership in a particular social group" as "persecution that is directed toward an individual who is a member of a group of persons, all of whom share a common, immutable characteristic" (19 I&N Dec. 211, 233 (BIA 1985)). However, as applicants started using the broad *Acosta* definition to claim recognition for new forms of harms, the BIA pulled back from its initial definition, adding various restrictions to narrow the scope of the term. In the absence of a shared understanding of the term, adjudicators provided varying, and at times contrasting, interpretations of these legal qualifications. In practice, this resulted in the creation of multiple sub-formulations of the category. While specific sub-groups came to be institutionalized, asylum officers generally agreed that these did not succeed in 'settling' the general meaning of the term.[38]

[38] The question of which particular social groups have been institutionalized is an empirical one and is beyond the scope of this article. Interview data nonetheless suggest that advocacy groups have played an important role in this process.

Officers faced considerable pushback when attempting to apply the particular social group category to new claims. This was in part due to fears that too liberal a use of the open-ended "particular social group" category would open the floodgates to vast numbers of asylum seekers. Time was also a factor. Writing a decision to grant asylum on the basis of persecution on account of "membership in a particular social group" was a long and often legally challenging task. Courts rejected generalist formulations of the category. As a result, officers had to construct case-specific formulations for each new claim, a process that took time and often required additional research. Melissa explained that whereas for the "routine cases, you already have a paragraph written and all you have to do is change the date once a year, for the non-routine [particular social group cases] you have to write the paragraph anew" (Melissa, Interview, 2017). Similarly, according to Diana:

> "Country conditions are harder for particular social group because people are putting together a claim for asylum for a very specific reason … so you won't have the same information about that as you would let's say for Coptic Christians in Egypt where there is an awful lot more written about what that larger group experiences" (Diana, Interview, 2017).

Given the time-consuming task of writing a particular social group analysis and the repercussions of not meeting the required caseload, officers typically tried to avoid the use of unsettled formulations of the category, even when they knew that doing so meant that the applicant would be referred to immigration court where she or he would more likely than not be deported:

> "I do remember having a case with an attorney who is very well respected, and the client seemed to be mentally ill but then she really contradicted herself. . . I felt really bad, I

wanted to grant just because my heart calls out for the poor woman, but then I was like, this would take me ten hours to figure out, and I was like, I better use my referral power and refer" (Jaya, Interview, 2016)

According to Larry:

"There is no reason to go to particular social group if you don't have to. In fact, avoid it like the plague because it takes time and you don't have time to write your decision, to write a particular social group decision, a tenuous one, one that is on the frames … so if you can go to political opinion or religion then yah, that buys you an hour and a half where you can actually read another case file or god forbid eat lunch" (Larry, Interview, 2017).

The resistance to applying unsettled formulations of particular social group was embedded in office culture. As Mark explained "everyone is trained and begins to frame their claim by let's grant if we can grant on one of the other grounds before you get to social group" (Mark, Interview, 2016). Officers often hesitated to base a claim on account of "particular social group" due to anticipated objections from their supervisors. Supervisors were more inclined to demand repeated revisions of decisions based on "particular social group" than decisions involving the more standard persecution grounds.

The general resistance to the "particular social group" category did not, however, result in officers completely avoiding the term. In some instances, when officers encountered claims that did not fit within the established categories but resonated with shared definitions of high worth, officers would deliberately defy agency incentives to streamline decisions. In these cases, officers described the tension between high worth and low legal fit as a source of great frustration; according to officers, it was this very frustration that motivated them to engage in a

tedious and often time-intensive *particular social group* analysis. Sara, for example, explains that for her, particular social group was like the 'wild card' in that it is by far the most "expansive of the grounds and if you have somebody that does not fit into the other ones, but you *really* feel *deserves* asylum you will do your best to make a social group" (Sara, Interview, 2016). Larry recalled pursuing the particular social group analysis, despite pushback from his supervisor, in the case of an applicant who was persecuted for being a criminal informant. In Larry's view, "it is a horrendous shortcoming of the law … that criminal informants are not a [recognized] particular social group, that they are unprotected." Accordingly, even though it meant falling behind on his caseload and confronting his supervisor, Larry invested time in legal research: "I was like no, this guy informed … this country protects informants … so he should be granted. My supervisor was like, okay – I do not agree with you, but if you want to we can send it up to DC and see what they say. And … they do not like do that. It is a very hierarchal thing. You don't send stuff up" (Larry, Interview, 2017).

For Rose, it was the frustration she experienced at the thought of not being able to grant an applicant whom she believed to be deserving of asylum protection, that motivated her to engage in a time-consuming particular social group analysis. The case involved a Honduran girl who witnessed her brother being murdered by a gang member and was subsequently threatened with death herself. While the girl's claim did not fit within any of the well-established categories of persecution, Rose believed her to be no less deserving than political activists fleeing government-sponsored persecution. Accordingly, Rose invested time in the case and discussed it with numerous colleagues. After some back and forth with her supervising officer, her proposed social group was accepted, and the applicant was granted asylum (Rose Interview, 2017).

Barb recalled a case assigned to her co-worker which involved a boy persecuted because of his autism. According to Barb, her co-worker defied agency pressures to refer the case because she believed the boy was deserving of protection even though autism was not a recognized basis for a particular social group: “she did face a lot of resistance… and she was always saying ‘they did not want to approve the case – they fought me, and I fought them for as long as I can remember.” After a continuous back and forth which included sending the case up to the director of the asylum office, she was able to get the case approved (Barb, Interview, 2017). These examples and others suggest that when officers encounter claims that confound existing policy scripts but nonetheless resonate with cultural categories of high worth, they experience considerable frustration; in these situations, officers critique what they perceived to be the “horrendous shortcomings of the law” and occasionally, notwithstanding resistance on the part of their supervisors, devote time to expand existing legal definitions in order to accommodate these new claims.

Various factors influence how frontline actors contend with the dilemma of discordance including their status within the organization (Heimer 2001, 1999); their professional background (Watkins-Hayes 2009), previous experience with discordant cases, the internalized public service mission of the institution (Marrow 2009), and organizational opportunities to defer responsibility (i.e. referrals). Tom, for example, explained that officers with legal training and experience in the field of immigration and asylum law were generally more willing to defy their supervisors and engage in a creative social group analysis, especially when their supervisors lacked comparable legal experience (Tom, Interview, 2016). How officers respond to encounters of discordance also varies by office culture. Asylum officers working within offices with a

smaller workload and/or a collaborative culture between officers and supervisors, were more likely to bend, creatively apply, or defy agency policy.

My interviews nonetheless suggest that where officers did attempt to confront the discordance between worth and standard agency practice, they engaged in an inductive process of inquiry. Officers evaluated generalized policy scripts by the extent to which they matched the unique characteristics of the individual case. In turn, officers invested time in collecting minute details about applicants. According to Simon, the interview would take longer, and he would generally 'take more interest' in the case and investing more time to 'look into country conditions … I collected tons of newspaper articles and stuff like that" (Simon, Interview, 2017). Kevin recalls researching local newspapers and feeling like "I am like advocating for this person" (Kevin interview). Kim explains that in comparison to the more "straightforward" cases she would have to ask lots of questions about what was said, learning the greater context of the person's life and helping them recall details they may not think are very significant:

> "Being confronted with new claims "just opens everything wider, you are having a longer conversation, asking more questions, you want to understand… You do your interview and then you need to go back to do tons of research to determine whether what the applicant is saying is really consistent with what is going on in that country" (Kim, Interview, 2017).

For these types of cases, the focus of the evaluative process shifted from an inquiry into the applicant's credibility to an investigation into the meaning of the law itself; officers were consequently less concerned with catching applicants in inconsistencies and more with establishing the legal knowledge needed to revise and devise the very standards constituting asylum. According to Tom, encountering fact patterns that did not align with any ordained

screening rubric was "like carving out new law," requiring officers to creatively think about the scope of the group they are defining and what language to use (Tom, Interview, 2016). Sara noted that "if you are crafting a social group … you have to start thinking, well is this too narrow, is this too broad, how am I going to solve this because I know in my gut that this person is a refugee" (Sara, Interview, 2016). Along similar lines, Ellie explains that she was "constantly thinking of how elastic these terms are - the essence of the law" (Ellie, Interview, 2017).

Centering the evaluation process on revisions of agency standards influenced how asylum officers defined their gate-keeping roles. When confronted with "deserving" cases that lacked a straightforward legal basis, officers emphasized the importance of their legal training and experience and regarded the creative interpretation of the law a definitive aspect of their job. As Tom explains: where worth and legal fit collide, "I thought it was really our job to wrestle with a complex legal decision" (Tom, Interview, 2016). This focus on revising existing legal standards created a different set of moral dilemmas centered not on credibility but on the extent to which the boundaries of existing law should be stretched or alternatively preserved. From this perspective, officers saw the integrity of asylum as dependent on their ability to critically apply its core standards and procedures.

Discussion and Conclusion

We know, from the rich literature on state decision-making processes, of many examples of workers engaging in acts of moral deliberation, even when this requires them to ignore, stretch and at times even break existing rules and policies. A midwestern vocational rehabilitation counselor decides to go behind the back of his supervisor, to "write up money" to cover the purchase of a vehicle while reporting the money will be used for clothing and gasoline to help a client of "good character" (Maynard-Moody and Musheno 2003). A public health worker in

Mexico defied restrictions against serving non-citizen immigrants, claiming that he gave an oath to help people, regardless of citizenship (Stone 2004). Educational bureaucrats challenge government policy and enroll undocumented immigrants or offer them financial aid even though this puts them in clear violation of government policy (Marrow 2009).

This chapter provides a new theoretical framework for understanding these moments of bureaucratic deliberation. I argue that moral deliberation is not only the result of the exceptional behavior of individuals with a heightened sense of mission but can also emerge as a product of the decision-making process itself. This finding is of great significance. It implies that eligibility for asylum is determined, at least to some extent, by the character of the regulatory process the state imposes for the purpose of drawing distinctions between eligible and ineligible applicants, and not only by the character of eligibility requirements.

This analysis builds on and expands a broader scholarly movement that seeks to demonstrate that bureaucratic behavior is shaped not only by self-interest but also by professional and ethical norms which are not reducible to, and reside in tension with, electoral pressures and restrictive government policies (Marrow 2009; Jones-Correa 2008, 2005). In her study on bureaucrats' responses to undocumented immigrants, Marrow shows how bureaucrats' service-oriented professional norms push them to "ignore, stretch, bend and if need be, break restrictive government policies" when these collide with beliefs about fairness and appropriate action toward their clients. In eastern North Carolina, the successful incorporation of undocumented youth into higher educational institutions "hinges on extremely service oriented individuals working within or at their margins" (765). From this perspective, bureaucrats are motivated not just by self-interest but also by professional norms which influence their sense of the right thing to do for their clients and institutions (Jones-Correa 2008; Golden 2000). When the needs of

deserving individuals exist in tension with the restrictive limits of rules, bureaucrats often choose to make their jobs harder, and even put themselves at risk, to help clients they deem morally deserving (Maynard-Moody and Musheno 2003).

While these studies illuminate the role of bureaucrats' sense of mission and ethical obligations in the decision-making process, they tend to portray "going beyond routine" behavior as dependent on "extremely service oriented individuals," and often explain bureaucrats' willingness to engage in creative deliberation as a factor of discretion and an internalized sense of "the right thing to do." Significantly, scholars often portray moral deliberation as what occurs *despite* restrictive rules rather than as what emerges from the very discordance between these rules and shared cultural understandings of worth. Thus, we cannot identify how moral deliberation is also a product of the decision-making process itself. Integrating the approach illustrated here into current accounts of bureaucratic decision-making can broaden the explanatory power of existing approaches by refocusing attention on the ways professional service-oriented norms and workers' ethical obligations translate into, and shape, schematic templates of worth which are at times conflated with, but are nonetheless distinct from, established legal definitions of eligibility for benefits and rights. This raises important empirical questions concerning the extent to which the predominance of service-oriented norms in a given situation may work to amplify workers' frustration in situations of discordance between categories of worth and limiting rules. The asylum office, for example, is characterized by somewhat contradictory "service" and "regulatory" missions, similar to the ones faced by law enforcement agencies and courts. While asylum officers have a professional obligation to secure protection for all individuals who qualify under the statute, they also have a regulatory mission to enforce rules and guard the nation's borders. Scholars have suggested that these competing

(regulatory and service) missions weaken legal bureaucrats abilities to defy agency policy and standards (Marrow 2009).

Other factors, such as the nature of the evaluative process, also shape how frontline actors confront situations of discordance between worth and agency rules. The mechanisms of referral and appeal, and the practice of applying legal precedent to new cases, characterize judicial screening processes such as asylum and consequently shape how asylum officers proceed to evaluate cases for which worth and established rules do not align. The consequences of making a "wrong" decision also matter. In the case of asylum, officers may be penalized for admitting an applicant later found out to be a terrorist but typically face no formal sanctions for mistakenly referring to immigration court a "genuine" asylee. Accordingly, the sanctions that certain decisions carry with them constrain frontline actors' willingness to defy standard agency practice. Questions concerning the extent to which these and other factors influence how decision-makers contend with the dilemma of discordance, require further empirical research on how moments of discordance play out across various types of service-oriented and regulatory professions.

A framework of decision-making that accounts for the ways frontline actors contend with tensions between schemas of worth and institutionalized agency scripts, also contributes to current theories of gradual institutional change. Scholars of gradual institutional change generally agree that the process of enforcing rules carries with it the potential for change: because "rules can never be precise enough to cover the complexities of all possible real-world situations," when new developments confound rules, existing institutions may be changed to accommodate the new reality (Streek and Thelen 2005, Mahoney and Thelen). Existing studies propose various mechanisms and models of institutional change, yet these models leave

unanswered the question of why individuals at times choose to exploit the inherent openness of rules to accommodate new developments, while at other times they choose to strategically disregard the complexities of real-world situations. This chapter contends that changing degrees of accordance between schemas of worth and established agency practice may work to constrain or enable agency. Specifically, my analysis suggests that agents will be more motivated to extend, contest or break existing rules when they encounter a case that resonates with deeply embedded understandings of high worth but does not fit within established rules. In the case of asylum, when faced with a situation that resonates with shared moral schema but not with agency rules, officers defied institutional pressures to streamline decisions and opted to pursue a lengthy "particular social group" analysis. In these situations, asylum officers did not deploy schemata automatically but rather deliberated their meaning. These findings show that there is much to be gained by focusing on moments of "schematic failure" and their implications for how we understand the relationship between agency and schemas (Williams 2017; Vaisey and Lizardo 2016, 2010; Sewell 1992; Swidler 1986, 2001).

Finally, this analysis contributes to existing scholarship on the role of racialization and stigmatization in asylum evaluations with implications for the study of social inequality. In the context of asylum, gendered and racial preconceptions of worth have been shown to generate disparities in rejections across and within asylum offices, creating what has been termed a "refugee roulette" (Schoenholtz et al. 2014; Miller, Keith, and Holmes 2014). Parallel work can be found in other organizational contexts of the immigration bureaucracy as well as in the welfare state bureaucracy context (Schram, Soss, and Fording 2010; Katz 1996; Gordon 1991). To date, however, existing studies largely approach the issue of deservingness as a proxy of racial and gendered biases; from this perspective, racialization and stigmatization shape

adjudicators' interaction with immigrants and influence how they evaluate their trustworthiness and eligibility for asylum.

Going beyond these studies, my analysis suggests that while bias and stigma influence how decision-makers evaluate their clients, their influence on the decision-making process is mediated by varying degrees of discordance between embedded schemas of worth and established legal categories. In situations where a subject's low worth stands in tension with its formal eligibility, the focus of the evaluative process on the applicant's alleged trustworthiness enhances preexisting racial and gendered preconceptions while verifying the validity of the categorization scheme itself. Conversely, where officers attribute high worth to applicants whose claims nonetheless fail to meet standardized definitions, the centering of the evaluative process on a critical inquiry into the meaning of existing legal standards, works to reaffirm initial preconceptions of worth. Ironically, in many cases, it is a case's very fit within routinized policy scripts that heightens attempts to scrutinize and interrogate the individual's trustworthiness. Thus, while processes of racialization and stigmatization play a role in shaping how we perceive and evaluate different groups, it is the tension between these shared cultural biases and routine agency practice that determines their direction of influence on the evaluation process. This finding resonates with recent work in cultural sociology that contends that to understand how inequality is produced and reproduced within a given institutional context, we have to focus on how cultural processes such as evaluation unfold in particular social institutions (Lamont, Beljean, and Clair 2014). From this perspective, the degree of accordance (or discordance) between schemas of worth and routine agency practice is a characteristic of the evaluative process that influences how value is negotiated and defined.

On June 11, 2018, Attorney General Jeff Sessions issued a decision titled *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018), in which he asserted that the "particular social group" category would no longer be used as a basis for protection for victims of domestic violence and gang violence perpetrated by non-governmental actors. The decision is expected to have significant implications on thousands of immigrants worldwide and from Central America in particular; in recent years claims involving domestic violence and gang violence constitute the majority of applications from Mexico, El Salvador, Guatemala, and Honduras.[39] The significance of this decision, however, is not only in the detrimental effects it is expected to have on the lives of those seeking asylum, but also in the change it introduces to the logic undergirding current asylum policy. Established in October of 1990, the new asylum corps were designed as an alternative to the ideologically driven screening process prevalent during the Cold War. The goal was to create an adjudication process centered on the individual's plight as opposed to being primarily driven by domestic and foreign policy interests. In this context, the open-endedness of the 'particular social group' category serves an important function. As this study demonstrates, while increasing backlogs, time constraints as well as domestic and foreign policy interests constrain asylum officers' application of the particular social group category, the category's ingrained ambiguity provides adjudicators a means, even if limited, for contending with the dilemma of discordance. It is a place that enables frontline actors to expand existing rules in order to better accommodate changing world circumstances. The current administration's recent attempt to significantly curtail the use of the 'particular social group' category may work to heighten existing tensions between shared cultural understandings of worth and restrictive

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[39] USCIS Data, on file with author.

government policy with possible implications for how officials define their professional roles. In this political context, developing a framework of decision-making centered on moments of discordance between worth and restrictive agency policy, and their implications on the actions of frontline officials responsible for enforcing state rules, is of utmost importance to policymakers and theorists alike.

CHAPTER 3
UNSETTLED SCREENING CATEGORIES AND THE MAKING OF US ASYLUM POLICY

Introduction

This chapter seeks to explore the making of US asylum policy through application of an 'unsettled' screening category: 'membership in a particular social group.' Under asylum law, in order to be eligible for asylum, applicants must establish a "well-founded fear of persecution" in their own countries and that their race, religion, nationality, *membership in a particular social group* or political opinion is at least one central reason for the threatened persecution (Public Law 96-212. 94 Stat. 103-118. 17 March 1980). In contrast to the categories of 'race,' 'religion,' 'nationality,' and 'political opinion,' the meaning of the category 'membership in a particular social group' was never institutionalized and remains convoluted and open-ended. Legal scholars and adjudicators generally refer to the category of 'particular social group' as a 'loop hole', an "other" category used to place things that you otherwise do not know what to do with. The general consensus among legal scholars is that the term was added for the purpose of protecting individuals against forms of persecution based on unforeseen reasons (Grahl-Madsen 1972, Guy Goodwin-Gill 1983). In this respect, the legal category 'membership in a particular social group' constitutes what I shall term an 'unsettled' screening category: a category not amenable to routine application that requires decision-makers to invest time and thought as to its desired meaning and function.

The unsettled nature of the category 'particular social group' brings to the forefront a tension inherent to justice systems under strain between growing incentives to streamline decision-making and to default to well-established patterns of classification on the one hand, and

the pretension to provide a context-dependent analysis of applicants' claim on the other. To a large extent the open-endedness of the 'particular social group' category allows for the context-dependent and individually centered adjudication process that the new asylum administration was designed to guarantee. Established in October of 1990, the new asylum adjudication process was designed as an alternative to the ideologically driven screening process prevalent during the Cold War. If during the Cold War refugee admissions were explicitly designed to advance US foreign policy interests and thus determined in accordance to applicants' country of origin (only nationals of communist-dominated countries were eligible to apply for asylum), the new asylum adjudication process was intended to provide an ideologically neutral adjudication process based on human rights and international law in which the individual's plight will be the determining factor for the granting of asylum (Martin 1990; Loescher and Scanlan 1998; Reimers 1992). At the same time, it is precisely the unsettled nature of the legal screening category which poses a challenge to adjudicators and policymakers. The asylum office is one of the biggest administrative agencies in the United States. Hundreds of asylum officers process tens of thousands of cases on a yearly basis while operating under conditions of limited resources. Increasing backlogs and time constraints pressure agency actors to streamline decisions in a time efficient manner and to default to well-established categories and patterns of classification (Heimer 2001: 48; Gilboy 1991; Emerson 1983; Sudnow 1965). The unsettled category 'membership in a particular social group,' the application of which is not amenable to routine processing, is thus viewed as disruptive to a time-efficient processing of asylum claims.

Due to lack of publicly available data on asylum officers' application of the category "membership in a particular social group," we know little about how these conflicting processes play out in the context of asylum adjudications. Using new and unpublished administrative data

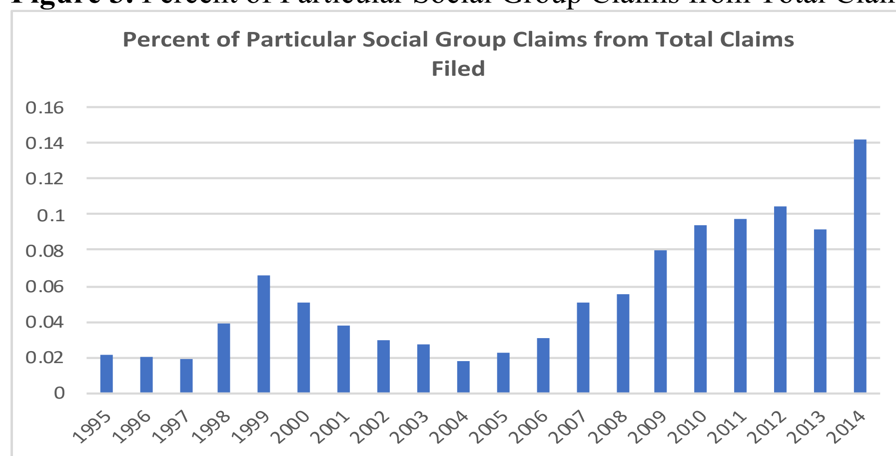
obtained with a Freedom of Information Request from the United States Citizenship and Immigration Service (USCIS), on the universe of cases adjudicated by the US asylum office from 1995 and through 2014, in addition to interviews with asylum officers, lawyers and agency officials, this chapter explores how asylum policy developed through application of this unsettled screening category. Questions concerning what groups of applicants are able to secure asylum protection under this category, changes in the overall number of claims categorized under this category, how different formulations of the "particular social group" category have developed overtime and in relation to distinct national groups, and what we can we learn from differences between them about the challenges of implementing the unsettled category "membership in a particular social group," are at the heart of this chapter.

Specifically, data suggest that the asylum agency imposes constraints on application of the "particular social group" category to new forms of harms that have not yet been institutionalized as eligible bases for protection. This is despite formal policy encouraging asylum officers to apply the law in a context-dependent way that is sensitive to changing geo-political circumstances. Time pressures and organizational constraints lead officers to default to established scripts and categories, often in place of a more fine-grained analysis of applicants' claims. In this respect, asylum seekers are not only called upon by the state to credibly demonstrate their own personal truths, but also to align their narratives with the standardized "knowledges" of conflict formed about their country that are co-constructed by adjudicators at the asylum office, legal representatives and human rights advocates. Deviations from these standardized knowledges are typically faced with resistance and often require the intervention of legal representation. Thus, rather than constituting what scholars often term a "refugee roulette"

(Ramji-Nogales, Schoenholtz, and Schrag 2011), this paper argues that a core stage of asylum adjudications reflects a great deal of uniformity and consistency.

At the same time, and notwithstanding pressures to streamline decisions, there has been a consistent increase in the number of asylum claims based on the category 'membership in a particular social group.' In 1995 only 2% of applications filed were categorized by asylum officers as being on account of the applicant's membership in a particular social group. By 2014 this number had gone up to over 14% with applicants from over 60 countries applying for asylum under this category.[40] Moreover, under the legal category of 'membership in a particular social group,' new types of harms including female genital cutting, rival tribal clan violence, discrimination on account of sexual orientation, domestic violence and child soldiers, to mention just a few, formerly considered to fall outside the scope of asylum which was traditionally limited to political, ethnic or national minorities suffering government sponsored persecution, were now recognized as eligible for asylum protection. In this respect, through the category of "membership in a particular social group" the parameters of asylum have gradually changed.

Figure 3. Percent of Particular Social Group Claims from Total Claims Filed



[40] USCIS Administrative Data, on file with author.

Asylum constitutes one of the central global issues of our time; this paper seeks to contribute to our understanding of the core translation process constituting the current asylum decision-making process through a focus on the development of the category "membership in a particular social group." The contemporary asylum regime was structured so to enable an adjudicatory process that looks beyond country of origin – the assumption being that every individual, regardless of nationality, may have a legitimate claim for asylum. Compliance with humanitarianism in the context of asylum, however, is not only a question of the extent to which norms or policy reflect broader national interests of border control, but of how various legal actors sort through the great diversity and messiness inherent to individual-centered adjudications in order to demarcate the boundaries of asylum eligibility. Data suggest that it is precisely the abundance of messy, uneasily categorizable information, in conjunction with high workload pressures and time constraints that leads to use of default generalizations, resulting in individual claims becoming so enmeshed within particular countries that humanitarian asylum seems to have failed its original intention. At the same time, ambiguity inherent to the classificatory regime itself, provides structural opportunities for policy change.

Analysis of the core translation process underlying asylum adjudications also contributes to our understanding of the ways justice systems under strain operate where routine processing is disrupted, and it is no longer possible to default to established categories. The "unsettled" category, not amenable to routine processing, is by no means unique to the asylum administration but rather constitutes an integral part of the working of administrative agencies. From this perspective, classificatory regimes charged with allocating resources and benefits to individuals are only manageable if some ambiguity is written into them. While the 'unsettled' category, poses a disruptive force to projects of state governance, it is also essential for the

functioning of classificatory regimes and to their capacity to adapt to ever changing environments (Bowker and Star 2000: 150). To date, however, we know little about the way policy is made in these spaces of ambiguity. Existing studies often refer to these places of ambiguity as outliers that prompt 'special consideration' (Sudnow 1965: 274) and have the potential to direct attention to new problems (Snow and Benford 1992) but are generally not treated as integral to the very process of policy-making. This chapter provides an empirical account of the manifestation of the "other" category in the context of US asylum policy with the purpose of advancing our knowledge of the ways conflicting pressures to streamline decisions on the one hand, and to pursue an individual-based adjudication process on the other, are negotiated. Specifically, my findings suggest while the asylum agency imposes formal and informal constraints on asylum officers' ability to apply the particular social group category to new situations, the particular social group category provides applicants and agency actors structural opportunities for policy change.

The chapter proceeds as following. After discussing the historical roots of the category 'particular social group' and its role in contemporary asylum adjudications I use new interview and administrative data to examine how the particular social group category is applied to pursue recognition of groups formerly considered to fall outside the scope of asylum protection. For this purpose, I focus on the three central applications of the category, each one of which was developed in relation to a distinct group of applicants: (1) members of the Somalian Marehan sub-clan, (2) Western African women and girls subjected to female genital cutting and other forms of gender-based violence, and (3) Mexican and Central Americans fleeing gang-related violence. Together these groups constitute over 50% of all applicants categorized as members of particular social groups for asylum purposes between 1995 and 2014. Data on the evolution of

particular social group applications in each one of these cases reveals differences in the degree to which these new scripts were successfully institutionalized.

Mapping the Landscape of the Category "Particular Social Group"

The term 'persecution on account of membership in a particular social group' was first introduced during the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons which was convened for the purpose of completing the drafting of the 1951 Convention Relating to the Status of Refugees.[41] The debates over the meaning and scope of the refugee definition clearly indicate that by the early 1950s, governments were concerned over how to define the scope and limitations of refugee status.[42] Stating that it was "essential that the text be as clear as possible" the Swedish representative introduced an amendment to include a reference to "persons who might be persecuted owing to their *membership of a particular social group.*" The Swedish government, he concluded, "would not be able to accept a text which was not sufficiently limited and precise."[43] Sweden's introduction of the "particular social group category" is surprising in light of its emphasis on a limited and precise definition. At the time, no attempt was made, either by the Swedish representative or any other representative for that matter, to define the meaning and scope of the proposed category. The conference adopted the amendment by a vote of 14 to 0 with 8 abstentions. The record contains no comments on the vote

[41] UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: http://www.refworld.org/docid/3be01b964.html [accessed 18 May 2018]

[42] The Refugee Convention, 1951: The Travaux Preparatories analyzed with a Commentary by Dr. Paul Weis, available at http://www.unhcr.org/en-us/protection/travaux/4ca34be29/refugee-convention-1951-travaux-preparatoires-analysed-commentary-dr-paul.html [accessed 19 May 2018].

[43] Id.

(Jackson 1999). The delegation appeared far more concerned with restricting the geographical and temporal scope of the refugee definition than with discussing the categories of persecution. The final draft of the 1951 Convention defined a refugee as "someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion."[44]

The fact that the category "membership in a particular social group" was unanimously adopted without any further discussion suggests that at the time there was a widely shared consensus as to the meaning of a refugee. According to Paul Weis, who participated in the drafting of the Convention, the legal definition adopted by the Convention drafters was not meant to serve as a qualifying criterion for refugee status but rather "to express in legal terms what is generally considered to be a political refugee. The Convention was drafted at a time when the Cold War was at its height. The drafters thought mainly of the refugees from Eastern Europe and they had no doubt that these refugees fulfilled the definition they had adopted . . ." (Jackson 1999). Thirty years later, during the legislative debates leading to the Refugee Act of 1980, Judge Einhorn, who participated in the drafting of the Act, expressed a similar sentiment, stating that the reason none of the drafters were concerned about defining the particular meaning of the term 'persecution" and the five categories – race, religion, nationality, membership in a particular social group and political opinion – on which it was to be based, is because of a shared understanding among the drafters that refugees were victims of communism and that they would be the only ones in need of protection: "the widespread conception among the drafters was that

[44] UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: http://www.refworld.org/docid/3be01b964.html [accessed 18 May 2018]

… the great majority, the overwhelming majority of those that would come under the protection of the asylum law would be those that would flee Soviet style oppression or the oppression of Soviet client states" (Judge Einhorn, interview, 2017).

Debates over the intended application of the terminology constituting the refugee definition shifted to forefront policy debates only after the signing of the Refugee Act of 1980 on March 17, 1980, when the long-held consensus over the meaning of refugee status gradually started collapsing. During the 1980s, a rising international and US based human rights politics and a growing advocacy movement of activist lawyers mobilized against the discriminatory treatment of the Immigration and Naturalization Service (INS) towards persons fleeing non-communist regimes, gradually upended the Cold-War oriented framework and pressured the agency to establish a professional and ideologically neutral adjudication system centered on human rights principles and international law (Hamlin and Wolgin 2012; Cmiel 1999). It was only then, that for the first time, adjudicators turned to the legal definition of a refugee not as legal marker of a status the meaning of which was well known, but rather as a benchmark for reestablishing the very meaning of who is a refugee.

Throughout the 1980s, efforts were devoted to creating and implementing a new administrative apparatus, staffed with personnel trained in human rights law, capable of processing an ever-increasing pool of applications on a case-by-case basis (Beyer 1992). The final regulations for the new asylum administration were promulgated in July of 1990, setting up two formal routes for asylum: the affirmative application process, which is the focus of this paper, is administered by the asylum corps which are housed by the Department of Homeland Security's (DHS) Office of Citizenship and Immigration Service (USCIS) and are comprised of asylum officers who evaluate asylum applications and interview applicants, and the defensive

application process, administered by Department of Justice immigration judges who evaluate asylum claims in removal proceedings. Whereas the defensive application process is adversary, the affirmative asylum application process is non-adversarial and is limited to applicants who have not yet been placed in removal proceedings in immigration court. Conversely, defensive applications are filed by individuals who are apprehended by federal officials and placed in removal proceedings before they apply for asylum. If DHS does not grant an application, it may be renewed during a removal hearing in a Department of Justice Immigration Court (Schoenholtz, Schrag, and Ramji-Nogales 2014).

The affirmative asylum process officially begins when an applicant files form I-589 and delivers it with any additional supporting documentation to a Service Center, which then forwards the file to the appropriate Asylum Office. Form I-589 requires applicants to provide detailed demographic information in addition to biographical information about their *reason of flight*. Form I-589 instructs applicants to check the box with the name of the category – race, religion, nationality, particular social group or political opinion - that best fits their claim. Nowhere in the form is there any explanation as to the meaning of these terms. Subsequent questions are open-ended and require the applicant to provide a “detailed and specific account” of harms experienced or feared. This application serves as the basis for the oral interview during which the applicant has an opportunity to explain in a non-adversarial setting his or her claim. The assignment of cases for interviews is typically done at random. Depending on the asylum office, cases either get preassigned to officers several days prior to the date of the interview or on

the day. Prior to each interview, officers are required to review the applicant I-589 form on top of security checks and country of information reports.[45]

Regardless of whether a case is granted, referred to immigration court or denied, the adjudicating officer is required to note the basis on which the claim was decided; that is, what is the protected ground on which the alleged persecution is based. Asylum officers have complete authority to determine on what category a claim is based. This may differ from, or be consistent with, the applicant's proposed framing. Determining whether a claim is based on a protected category is a necessary, yet not sufficient, condition for granting asylum. After determining that a claim is based on one of the five protected categories, officers may still conclude that the applicant is not eligible for asylum.

There are three types of decisions. If a decision is a grant, then the decision is final, the applicant receives asylum status and can subsequently apply for citizenship. If the decision is not to grant and the applicant has no legal status in the United States, the applicant gets referred to immigration court where he or she may reapply for asylum and his or her asylum application will be adjudicated de novo. Claims will be labeled as 'denied' only when the applicant is with legal status. Between 1995 and 2014 an average of 19% of cases are granted, 37% referred and 3% of cases were denied. 41% of all cases filed never reached a final decision and were administratively closed (terminated because the asylum applicant discontinued the application or failed to show for the interview).[46]

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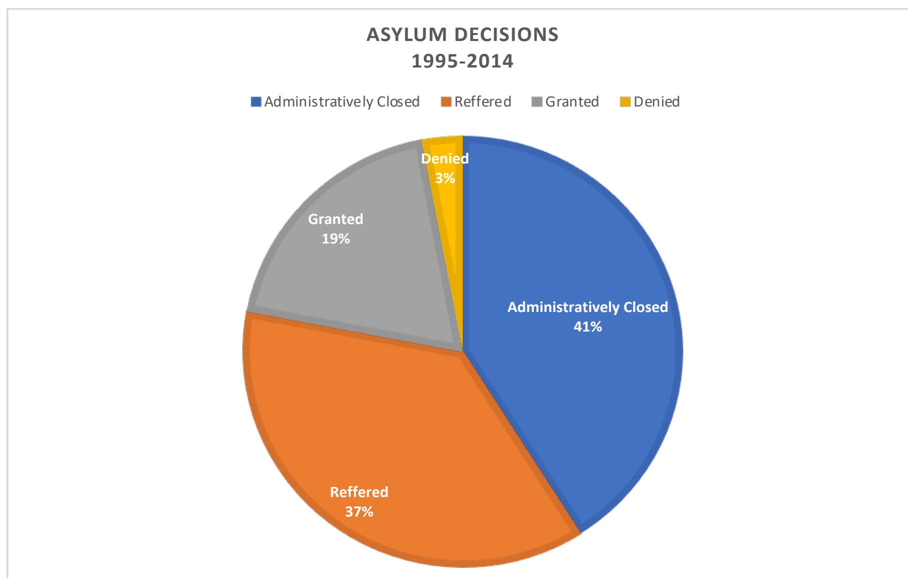
[45] Affirmative Asylum Procedures Manual, Refugee, Asylum and International Operations Directorate (RAIO), USCIS, May 2016, available at: https://www.uscis.gov/sites/default/files/files/nativedocuments/Asylum_Procedures_Manual_2013.pdf [accessed 19 May 2018].

[46] USCIS data base, on file with author.

Figure 5. Asylum Decision Categories 1995-2014



As indicated in Figure 6, the percent of applications determined to be on account of a recognized ground of persecution decreased between 1998 and 2004, with a significant increase between 2005 and 2008. Since 2008, an average of 70% of cases per year are determined to be on account of a recognized persecution category. Changes in the percent of cases granted (of cases determined to be on account of a recognized persecution ground) follow a somewhat similar pattern (Figure 7). While the grant rate significantly dropped from over 50% in 2001 to a little below 30% in 2003 (most likely a result of 9/11), it has since consistently increased reaching 50% in 2014. Grant rates vary widely across asylum offices and by nationality.

Figure 6. Percent of Claims Determined to be on Account of a Recognized Persecution Ground

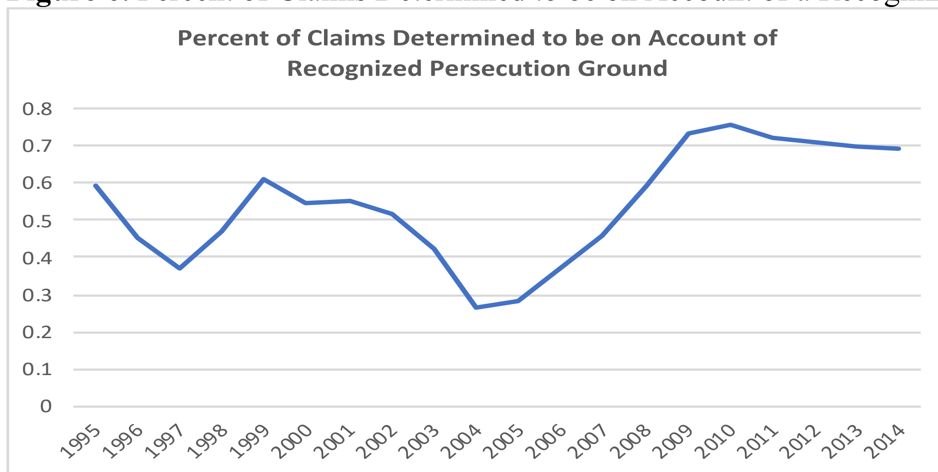
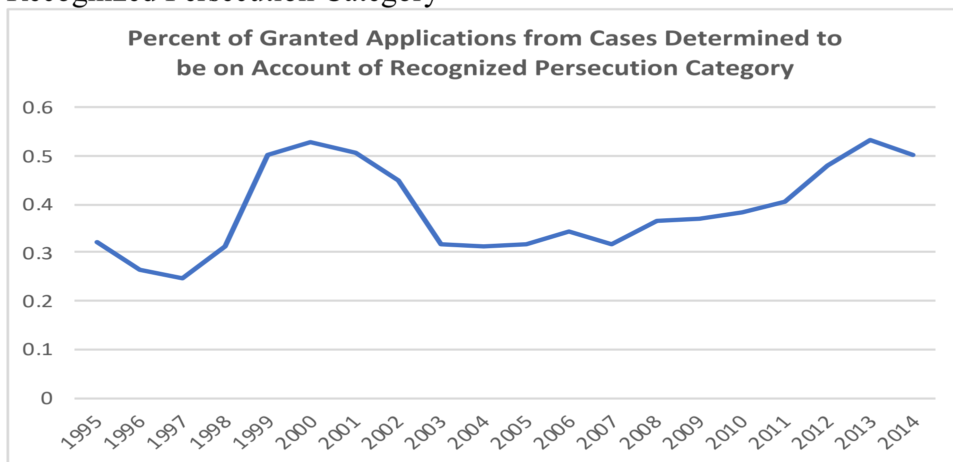


Figure 7. Percent of Granted Applications from Cases Determined to be on Account of a Recognized Persecution Category



Interviews with asylum officers, administrative guidelines and case law suggest that when it came to application of the persecution grounds “race,” “religion,” “nationality,” and “political opinion,” adjudicators typically defaulted to pre-established meanings rooted in Cold War politics. When asked to define the meaning of these grounds, asylum officers hardly ever employed legal terminology, but rather defaulted to anecdotal explanations rooted in US politics

and culture which associated refugee status with state-sponsored persecution of religious and political minorities, prevalent during the Cold War. Accordingly, officers noted that they were rarely conflicted over the general meaning of these terms or their intended application; more often than not officers perceived the scope and intended application of race, religion, nationality and political opinion as well-established.

If officers generally drew on preexisting conventional notions of refugee status when applying the categories of race, religion, nationality and political opinion, they had little to draw on when applying the 'particular social group' category. Membership in a particular social group was not part of the collective imagery of asylum. Asylum officers commonly described the term as lacking any 'organic' meaning of its own, as a catchall category that can potentially apply to everything and nothing at all at the same time. According to Clara, particular social group is a "loophole opportunity, your catchall which is what it was essentially meant to be – it does not fit into this, this and this" (Asylum Officer Clara, interview, 2017).[47] Officers often contrasted what they referred to as the "intuitive" meanings of race, religion, nationality and political opinion with the "non-intuitive," "ambiguous," definition of particular social group, generating "too crazy of an area" with a lot of absurd results (Asylum Officer Jaya, interview, 2017). When asked to define the meaning of the term particular social group, officers invoked legal definitions rather than 'common sense' ones, despite convoluted case law on the subject. Whereas officers approached the categories of race, religion, nationality and political opinion as descriptors of historically recognized harms independent of law itself, they viewed particular social group as a

[47] I use pseudonyms in order to protect the identity of asylum officers interviewed for this project.

legally-constructed concept with no natural referent in the social world. In turn, asylum officers perceived ‘particular social group’ as inherently unsettled, generating considerable confusion as to how best apply the term to new fact patterns.

Data and Methods

This chapter seeks to trace the development of the category “particular social group” in US asylum law between 1990 and 2014. For this purpose, I utilize open-ended interviews with asylum officers, combined with statistical analysis of administrative data on asylum decisions. A multimethod approach provides for the most comprehensive analysis of this process. Interviews with asylum officers allow me to examine applications of this inherently unsettled screening category. Quantitative analysis of administrative asylum decisions sheds light on the various ways the category of “membership in a particular social group” has been developed in US asylum law and policy.

Interview Data

I conducted thirty semi-structured interviews with former asylum officers over a period of twelve-months, between 2016 and 2017. I interviewed officers from eight different asylum offices: Arlington, Chicago, Los Angeles, Miami, Newark, New York, New Orleans (a sub-office of the Houston asylum office), and San-Francisco. Fourteen officers worked at the asylum office for periods ranging from a year to several years between 2010 and 2015. Seven officers worked at the asylum office between 1995 and 2001. The rest worked for varying periods of time between 2002 and 2009. The majority of asylum officers (26) had JDs. The remaining four had Masters’ Degrees. To protect confidentiality, I use pseudonyms and refrain from noting the name of the officer’s asylum office and the officer’s dates of employment. I also interviewed Paul Wickham Schmidt, the former Chairman of the Board of Immigration Appeals (1995 to 2001),

Immigration Judge Bruce Einhorn (1990-2007) and León Rodríguez, Former Director of U.S. Citizen and Immigration Services (2014-2017) in addition to immigration attorneys. My interviews were open-ended and conducted by telephone. They typically lasted between 45 to 120 minutes. Interviews were conducted with an adaptive format. This format enabled me to adapt my questions to officers' diverse experiences and to pursue observations emerging from the interviews about a process on which we currently have little empirical data. Because officers were not asked identical questions, I coded their statements for general themes that focused on the work routine at the asylum office, the use of settled and unsettled screening categories in the evaluation of applicants, and officers' understandings of their roles and responsibilities. These themes allowed me to identify patterns of variation in officers' evaluative processes.

USCIS Administrative Data

Administrative data on affirmative asylum applications was obtained by filing a Freedom of Information Request in June 2015 to USCIS which yielded case-specific information on the universe of asylum applications decided between fiscal year 1996 and through March 2015. These are the most comprehensive data ever analyzed on affirmative asylum claims. The data are based on information recorded in the Refugee Asylum and Parole System (RAPS), which tracks the processing of affirmative asylum applications. For each principal applicant filing an asylum claim, basic socio-demographic information is recorded in addition to information on the legal status of the case. Cases mistakenly marked to have a decision date prior to a filing or interview date were dropped (4.45% of the total sample size). The final size sample for analysis is 1,181,562.

Analytic Strategy

My analysis of data on affirmative asylum decisions focuses on asylum applications submitted by applicants from (1) Somalia, the (2) Western African countries: The Gambia, Guinea and Mali, and (3) the Northern Triangle countries: El Salvador, Guatemala and Honduras, as well as Mexico. Applications from these countries constitute the majority of claims categorized as "particular social group" between 1995 and 2014. I use descriptive statistics to learn about the specific social group formulations developed for each country and logistic regressions to predict whether the presence of legal representation is associated with an applicant's likelihood of being categorized as a member of a particular social group (Table A, Appendix). In order to examine whether these associations change over time, I include in my logistic regressions an interaction term between the time and legal-representative variables.

Table 1. Descriptive Statistics of the Total Sample

	(%)	**Mean**	**SD**
Dependent Variable			
Particular Social Group	5		
Legal Representation	35.00		
Control Variables			
Asylum Eras			
1995-1998	24.28		
1999-2001	21.48		
2002-2005	24.09		
2006-2009	17.31		
2010-2014	12.85		
Asylum Office			
Arlington	9.65		
Chicago	4.90		
Houston	4.80		
Los Angeles	29.00		
Miami	13.80		

Newark	12.35
New York	15.18
San Francisco	10.14
Female	35.95
Dependents	17.19
Legal Representative	35.24
Marital Status	
Single	45.00
Married	44.00
Divorced/Widowed	5.40
N=1,181,562	

Source: 2016 Dataset on Administrative Asylum Decisions from USCIS

Variables:

Dependent variable. My dependent variable, "particular social group," is dichotomous (1=particular social group, 0= not based on particular social group).

Independent variable. My key independent variable is having a legal representative. The variable is coded as 0-the applicant is not legally represented and 1-the applicant is legally represented.

Control Variables.

Asylum era years were controlled for within the model. There were 19 years ranging from 1995-2014. These 19 years were collapse into 5 categories: 1995-1998, 1999-2001, 2002-2005; 2006-2009, 2010- 2014. Because of the possibility that a different variation of the time variable may affect the association between my main ground variables and the predicted probability of getting a grant, I experimented with four different variations of the time variable: 18 dummy variables indicating 19 years, a continuous variable, a continuous year variable and its squared term and 4 dummy variables to capture 5 separate time intervals between fiscal years 1995 and 2014. While results indicate that the coefficients are relatively stable across all models, suggesting that my models are not sensitive to these variations of the time series, these models

also indicate that time trends were not necessarily linear but rather resulted in two peak curves. I decided to combine consecutive years with similar coefficients resulting in five separate asylum-era categories. These five periods are also consistent with changes in asylum policy, most notably the implementation of the one-year filing deadline in 1998, the enhanced requirements for security checks subsequent to the 9/11 terrorist attacks, the implementation of the REAL ID Act in June 2006 and the significant rise in applications from Mexico, El Salvador, Guatemala and Honduras as of 2009 due to the increase in gang-related violence from these countries and the enforcement on March 23, 2009 of USCIS regulations according to which USCIS Asylum Offices have initial jurisdiction over all asylum applications filed by unaccompanied children (under the age of 18) even if the unaccompanied children have been issued a notice to appear.

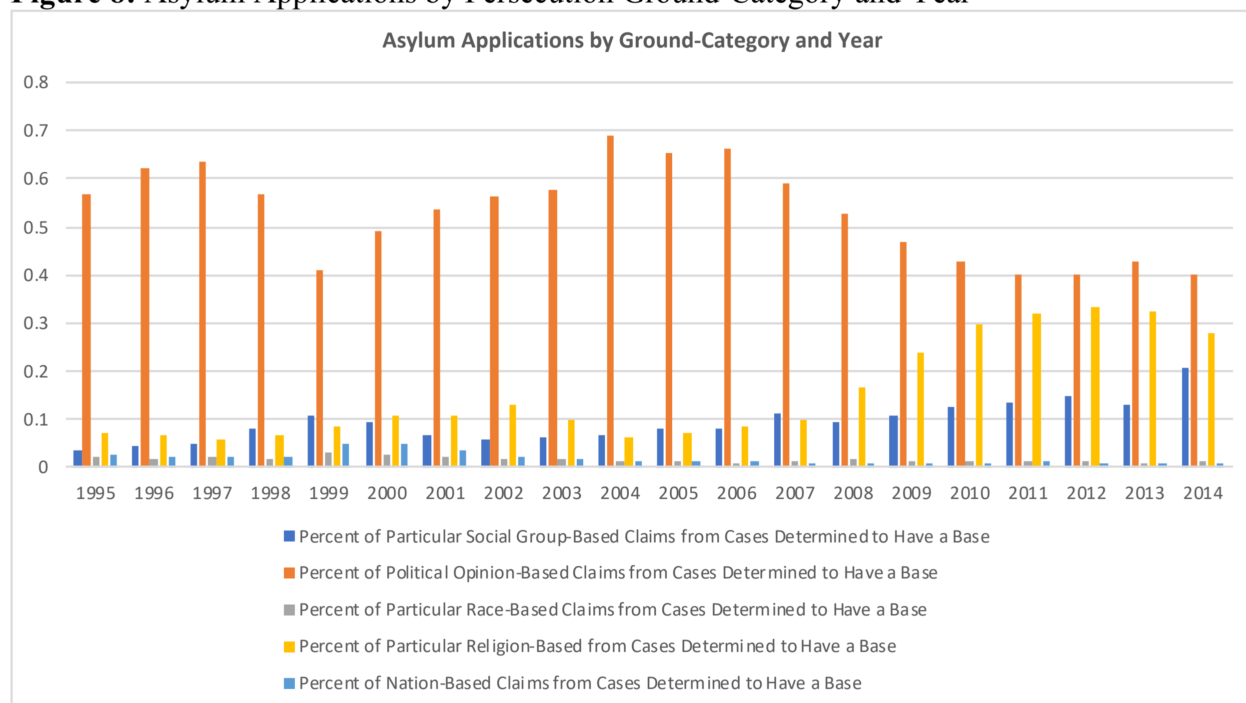
All analyses also control for the following socio-demographic characteristics of applicants: single (1=single, 0=not single), married (1=married, 0=not married), divorced/widowed (1=divorced/widowed, 0=not divorced/not widowed), applicant's sex (1=female, 0=male), whether an applicant has dependents (1=dependents, 0= no dependents), applicants' legal entry status (1=no legal immigration status, 0=valid legal immigration status). A comparison between my base line model and a model without these individual-level controls indicates that the associations of the main base-category variables with asylum grants are suppressed in models that do not control for individual applicant characteristics.

Making Asylum Policy through Application of the *Unsettled* "Particular Social Group" Category

Between 1995 and 2014 there has been a significant increase in the total number and overall percent of applications framed as being on account of *membership in a particular social group*. Figure 8 describes the distribution of asylum applications by base-category during this

period. We can see that by far the majority of claims are based on political opinion with race and nationality consistently accounting for less than 5% of all claims determined to have a base. The number of claims based on religious-based persecution has increased between 2008 and 2013 due to a rise in applications from China and Egypt but since 2013 has started to decrease. Since the early 2000s, the total percent of claims categorized as being on account of "membership in a particular social group" has consistently increased. In almost all principle asylum source countries, the number of claims categorized under this ground has risen significantly.[48]

Figure 8: Asylum Applications by Persecution Ground-Category and Year



[48] Principle asylum source countries are defined as countries from which applicants constitute a minimum of 4% of all applicants filing for asylum. Between 1995 and 2015 the following countries meet this definition: China, Colombia, El-Salvador, Haiti, Honduras, India, Guatemala, Mexico and Somalia. The percent of claims based on "particular social group" has increased in all of these countries with the exception of China.

To date, we have little systematic knowledge on the types of claims that make up the category of “membership in a particular social group:” who are the countries consisting the majority of applications? What specific articulations of the category seem to be gaining precedence and what light may this shed on the working of the asylum administration process more generally? While applicants from over 60 countries have been categorized between 1995 and 2014 as members of particular social groups for asylum purposes, the vast majority of claims are from 11 countries, each of which constitutes a minimum of 2% or more of the total number of claims categorized as being on account of “membership in a particular social group” between 1995 and 2014.[49]

Under current asylum policy, the process of establishing that a given claim of persecution is on account of an applicant’s “membership in a particular social group” consists of essentially two distinct stages: (1) formulation of the particular social group and (2) nexus: establishing that the applicant was persecuted on account of her membership within the said group. Precisely because there is no single agreed upon definition of “particular social group” the adjudicator must first construct and justify why a given grouping meets the requirements for a “particular social group” under asylum law, and only then proceed to assess the nexus - whether the applicant was persecuted because of his or her membership within the group. This is in contrast

[49] The countries from which applicants constitute a minimum of 2% or more of all applications categorized as “particular social group” between 1995 and 2014 are: Somalia (7,000 particular social group claims), El Salvador (5,122 particular social group claims), Mexico (4,984 particular social group claims), Guatemala (4737 particular social group claims), China (2244 particular social group claims), Honduras (1973 particular social group claims), Colombia (1895 particular social group claims), USSR (1404 particular social group claims), Haiti (1394 particular social group claims), Mali (1331 particular social group claims), Guinea (1171 particular social group claims), and The Gambia (1145 particular social group claims).

to the more institutionalized categories of race, religion, nationality and political opinion for which adjudicators are often not required to construct neither the meaning of the category nor the nexus. Sioban Albiol, the director of the Asylum & Immigration Law Clinic at DePaul College of Law, explains the reason for this difference: "with political opinion I don't need to waste time on explaining the particular basis of a claim and many times the nexus. This is not the case with the category of particular social group. No one knows what social group means. This is a ground that can basically mean everything. It is here that you need not only to prove nexus but also what the very ground/basis of claim is" (Attorney Albiol, interview, 2016).

In 1985, the Board of Immigration Appeals (BIA), the highest administrative body for interpreting and applying immigration law issued its first precedent decision, *Matter of Acosta*, concerning the meaning of particular social group. In *Matter of Acosta,* the BIA defined the term particular social group as "persecution that is directed toward an individual who is a member of a group of persons, all of whom share a common, immutable characteristic" (19 I&N Dec. 211, 233 (BIA 1985)). However, as applicants started using the broad *Acosta* definition to claim recognition for previously unrecognized harms, the BIA retracted from its initial generalist definition, adding various restrictions to narrow the term's scope, including requirements that the proposed group be socially distinct (*Re C-A-*, 23 I & N Dec. 951, (BIA 2006)), and defined with particularity (*Matter of S-E-G-*, 24 I&N Dec. 579 (BIA 2008); *Matter of E-A-G-*, 24 I&N Dec. 591 (BIA 2008)). According to the BIA, "the social group concept would virtually swallow the entire refugee definition if common characteristics, coupled with a meaningful level of harm, were all that need be shown" (*M-E-V-G*, 26 I&N Dec. 227, 231 (BIA 2014)). Paul Schmidt, Chairman of the BIA from 1995 to 2001, recalled that in 1985 the BIA did not anticipate that applicants would start creatively using the new definition to gain asylum. The moment they did,

a broad and all-encompassing definition of particular social group became untenable (Judge Schmidt, interview, 2017).

Officers, however, commonly noted that the legal restrictions imposed on the particular social group category resulted in further confusing the term. In the absence of a shared meaning independent of law, adjudicators provided varying, and at times contrasting, interpretations of these legal qualifications. In practice, this resulted in the creation of multiple formulations of "particular social group" defined by nationality, religion, gender and other qualifying characteristics. While certain groupings came to be institutionalized over time within law and policy as legitimate particular social groups, asylum officers generally claimed that these recognized groupings did not succeed in 'settling' the general meaning of the term.[50] A formulation of a "particular social group" established for one national or ethnic group was not necessarily applicable to another. Precisely because the term "particular social group" was viewed by adjudicators as a legally constructed concept with no referent in the natural world, when it came to new fact patterns that did not neatly fit within one of the recognized groupings, the application of the category remained unsettled and resistant to routinization. As a result, the process of matching a given fact pattern to the category of "particular social group" required officers to deliberate on the meaning of the screening category before they could apply it.

The asylum office does not collect data on specific formulations of the 'particular social group' category. Data on each asylum application is collected by the Refugee, Asylum and Parole System (RAPS) which tracks the processing of affirmative asylum cases. Once the I-589

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[50] The question of why certain groups became institutionalized as legitimate particular social groups for purpose of asylum while others have not, is an empirical one, and is beyond the scope of this paper. Interview data nonetheless suggests that advocacy groups have played an important role in this process.

form has been reviewed, Asylum Office personnel enter the applicant's demographic information and other administrative data (i.e. filing date, interview data, presence of legal representation, etc.) into RAPS. Once the asylum officer completes the interview and prepares the decision, he or she is required to enter into RAPS the category upon which the persecution claim is based or to otherwise note that no base-category applies. This consists of checking one or more of five boxes labeled: "race," "religion," "nationality," "membership in a particular social group" or "political opinion." RAPS does not provide a space for officers to record the specific formulation of the "particular social group" category used.

Using a combination of case law, country of information reports, interviews and demographic applicant data, I examine applications labeled in RAPS as "particular social group" from (1) Somalia, (2) the Western African countries: The Gambia, Guinea and Mali (3) the Northern Triangle countries: El Salvador, Guatemala and Honduras, and Mexico. I focus on these countries not only because the majority of 'particular social group' claims between 1995-2014 come from these countries but also because they provide an opportunity for examining differences in the degree to which particular social group articulations have undergone institutionalization and the implications of this on the asylum decision-making process. Specifically, data suggest that in the case of Somalian applicants, agency officials used the "particular social group" category to secure protection for a distinct ethno-national group (members of the Marehan sub-clan) in response to an emerging political situation in Somalia. This articulation of the category was established through case law and quickly came to be institutionalized as a basis for asylum protection. In the case of Western African applicants (from The Gambia, Guinea and Mali), agency officials responded to pressures from constituencies and a growing feminist advocacy movement mobilized against female genital mutilation, to generate

a basis for protection for a whole new class of (female) applicants formerly considered as falling outside the scope of asylum protection. Here the application of particular social group was not limited to a particular country and was subsequently expanded to secure protection for women subjected to FGM and other gender-based harms in various countries in Africa and the Middle East. Conversely, in the case of Mexican and Central American applicants, the asylum agency largely resisted application of the particular social group category as a basis for protection for gang-related claims. While formulations of the "particular social group" category in Somalia and in the Western African countries have undergone institutionalization, formulations of the category involving Central American gang-violence remain largely unsettled and contested. Data nonetheless show that agency pressures to limit the category's application to these new types of harms were only partially successful.

Somalian Clan Membership: An Institutionalized Iteration

From 1996 and through 1999 there was a significant rise in the number of Somalian applications categorized under the rubric of 'membership in a particular social group.' In 1995 only 38 Somalian applicants were determined to be persecuted on account of their membership in a particular social group whereas in 1996 this number spiked up to 600 and by 1999 over 1,600 claims filed by Somalian applicants were categorized under this ground.[51] Case law and interviews with asylum officers, in addition to applicant demographics (the majority of applicants were males) suggest that the rise in the number of "particular social group" applications from Somalia was a direct result of a precedent decision, *Matter of H-*, 21 I&N Dec. 337 (BIA 1996), issued by the Board of Immigration Appeals (BIA). In *Matter of H*, the

[51] From USCIS data on file with author

BIA held that members of the Marehan subclan of Somalia, which share ties of kinship and linguistic commonalities, constitute a ‘particular social group’ for asylum purposes. In its decision the Board cited the 1993 Immigration and Naturalization Service Basic Law Manual on asylum adjudications which states that “clan membership is a highly recognizable, immutable characteristic that is acquired at birth and is inextricably linked to family ties.” The Marehan subclan constitutes less than 1% of the population but ruled the country until a rebellion in 1991. Due to favoritism shown to members of the Marehan subclan during the course of their power, the clans which rebelled against the Marehan subclan thought to retaliate against those who had benefitted from the regime.

As indicated by figures 9 - 11, the percent of claims categorized as “particular social group” from the total number of claims determined to fit within one of the five persecution categories almost tripled from 1996, when only 588 claims were categorized on this basis, to 1999 when as many as 1,679 claims were labeled as being on account of “particular social group.” The majority of claims framed as “particular social group” were granted. The average grant rate during the peak years (1997 through 2002) is around 70% which is higher than the average grant rate in the Los Angeles, Arlington, and San Francisco asylum offices where the majority of Somalian applications were processed.

Figure 9. Number of Particular Social Group Based Claims Filed by Somalian Applicants

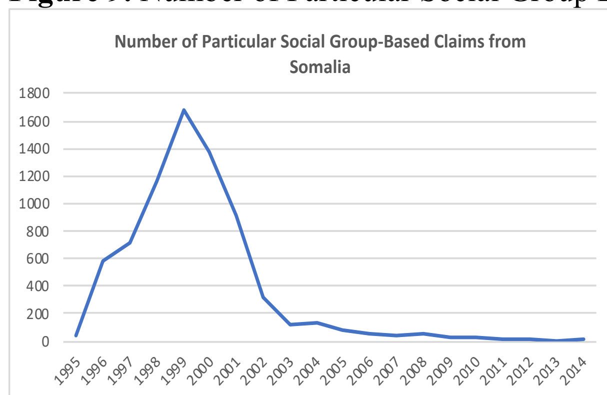


Figure 10. Percent of Particular Social Group-Based Claims from Somalian Applications Determined to Have a Base

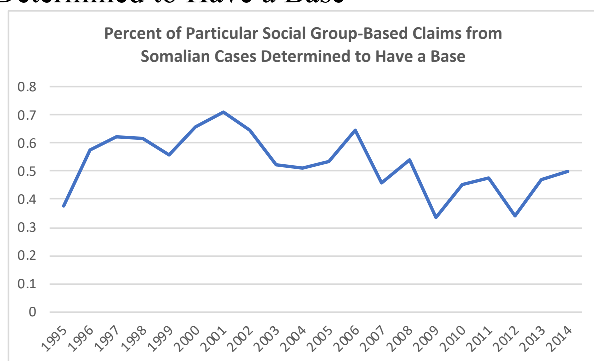
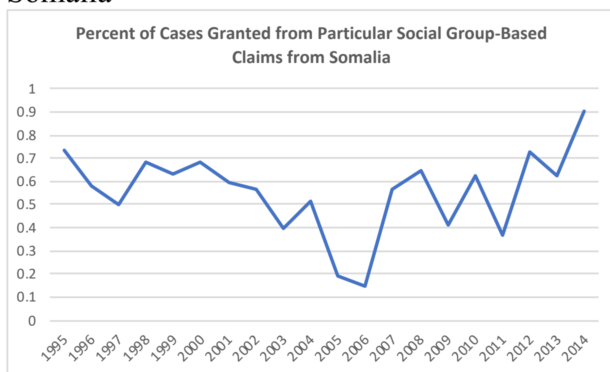


Figure 11. Percent of Claims Granted from Particular Social Group-Based Applications from Somalia



Interviews with asylum officers suggest that following the BIA's decision, membership in the Marehan subclan became an institutionalized script that officers could default to when confronted with Somalian applicants claiming persecution on account of inter-tribal violence. Jack, who was an asylum officer in San Francisco during this period recalls that "clan membership had been determined as a pretty good social group in a BIA case so by the time I got

there it was very well established that clan membership was a ground for asylum" (Jack Asylum Officer, interview, 2017). Subsequent to the Board's decision, official asylum training manuals, administrative decisions, in addition to secondary sources and appellate court documents, referenced clan membership in Somalia as an example of a particular social group, further institutionalizing this formulation. Somalian clan membership thus constitutes an example of how policymakers mobilized the open-ended "particular social group" category to create a new basis for a distinct group of persons in response to an emerging political situation.

Female Genital Mutilation and the Expansion of Asylum Protection to Women and Children

No more than two weeks after its decision in *Matter of H*, the BIA issued another precedent decision, *Matter of Kasinga*, 21 I. & N. Dec. 357 (BIA), on the meaning of particular social group. The case involved a 19-year old native and citizen of Togo by the name of Kasinga who testified that she fled coerced female genital cutting and forced marriage. In 1995, an immigration judge denied Kasinga asylum, claiming that female genital cutting is part of a tribal cultural and thus does not constitute persecution under asylum law. Kasinga's case was subsequently appealed and in 1996 the BIA reversed the immigration judge's decision and held that the "young women of the Tchamba-Kunsuntu Tribe who have not had FGM, as practiced by that tribe, and who oppose the practice" constitute a particular social group for asylum purposes" (11).

At the time of the Board's decision, the anti-FGM movement was at its height (Attorney Musalo, interview, 2011). During the 1990s, progressive feminists, human rights workers but also conservative and religious organizations devoted resources to stop the practice of female genital cutting. In 1996, Congress passed the Illegal Immigration Reform and Immigration

Responsibility Act (Pub.L. 104–208, 110 Stat. 3009-546), which not only placed many new restrictions on refugees but also included a provision specifically illegalizing FGM and sanctioning against countries which condone the practice. As in the case of Somalian clan-membership, in *Matter of Kasinga*, the asylum administration responded to growing political pressures to sanction against the practice and used the 'particular social group' category to expand asylum protection to a group formerly considered to fall outside its scope. Following the Kasinga decision, female genital mutilation became an established basis for social group membership. Case law and interviews suggest that applicants from various Middle Eastern and African countries started applying for asylum on this ground. In 2008, slightly more than a decade after the Board issued its first decision concerning FGM, the Board broadened asylum protection to include not only women who fled their home country for fear that they will be subjected to the procedure, but also women who had already undergone it (*S-A-K- and H-A-H-,* 24 I&N Dec. 464 (BIA 2008)). Following the Kasinga decision, girls and women claiming to be victims of female genital mutilation had a ground on which to base their claim.

Data on applications from the three Western African countries with the highest number of claims categorized under the category of "particular social group," The Gambia, Guinea and Mali, suggest that FGM became a primary means of gaining asylum protection for Western African applicants. Figures 12-14 show that since 1996, and more distinctly as of 2002, the percent of claims based on membership in a particular social group started to increase in all three countries. If in 1995 only 2% of all claims were categorized as "particular social group," since 2006, 50%-60% of all claims are based on this ground. The fact that in all three countries the vast majority (90%) of all particular social group applications are filed by women strongly

suggests that in a majority of cases, applications from Western African female applicants involve claims based on female genital cutting and other gender related harms.

Figure 12. Percent of Particular Social Group Claims from Malian Cases Determined to Have a Base

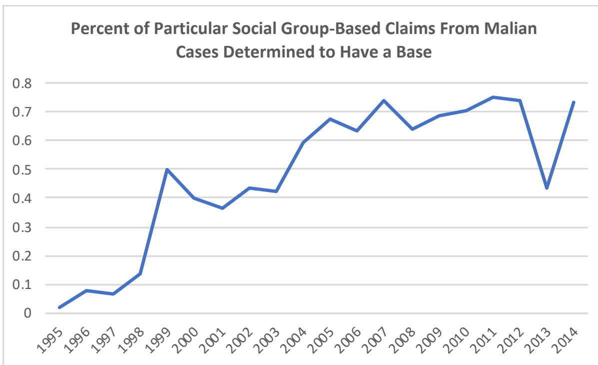


Figure 13. Percent of Particular Social Group-Based Claims from Gambian Applications Determined to Have a Base

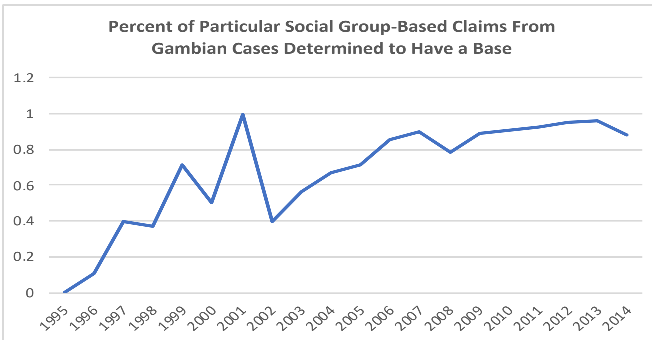
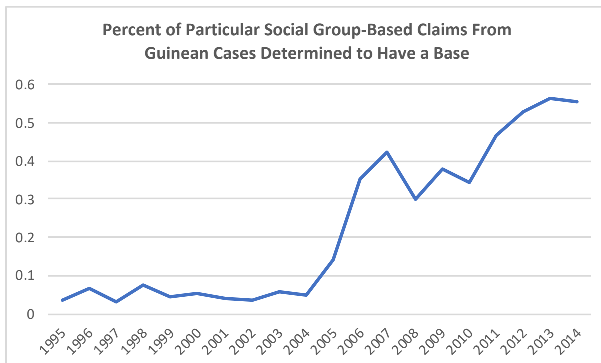


Figure 14. Percent of Particular Social Group-Based Claims from Guinean Applications Determined to Have a Base



Similar to the case of Somalian clan-membership claims, also here asylum officers generally agreed that particular social group claims involving female genital mutilation are well-established and thus "did not pose any particular problem to the system" (Asylum Officer Mark, interview, 2017). According to Kevin, "the FGM cases, no two ways about it. This person has a [social group] claim" (Asylum Officer Kevin, interview, 2017). Asylum officers generally agreed that the process of categorizing female applicants claiming fear of female genital mutilation from African countries or one of the countries in the Middle East, was relatively straightforward and did not disrupt routine processing of cases. The challenge posed by these claims was thus not so much to establish FGM as a basis for membership in a particular social group but rather to establish nexus - that the given applicant was genuinely being targeted on account of her membership in the acclaimed group. Clara contrasted the relatively straightforward process of establishing nexus for the well-established categories of political opinion, race, religion or nationality to that of particular social group: "when it comes to FGM in a small village in Ginny, where you are trying to get affidavits from family members that your husband beat the hell out of you where you did not go to the police.." attaining the supporting documentation and establishing the prevalence of the act in applicant's home country, was much more difficult (Asylum Officer Clara, interview, 2017).

Notwithstanding these difficulties, Figures 15-17 shows that in all three countries there was an increase in the percent of "particular social group" claims granted during the second half of the 1990s, a slight decrease in 2001 (most likely due to 9/11), followed by another subsequent increase since 2006. By 2014, around fifty percent of all social group claims were granted in all three countries. The majority of claims from Mali, Gambia and Guinea are processed by the Newark and New York offices (60% in Newark and between 15-20% in the New York office).

The grant rate for applicants from all three countries has been consistently higher than the general grant rate in both the New York and Newark asylum offices. Significantly, the vast majority of claims granted on the basis of "particular social group (95-100 percent) are filed by female applicants.

Figure 15. Percent of Applications Granted from Particular Social Group-Based Applications from Mali

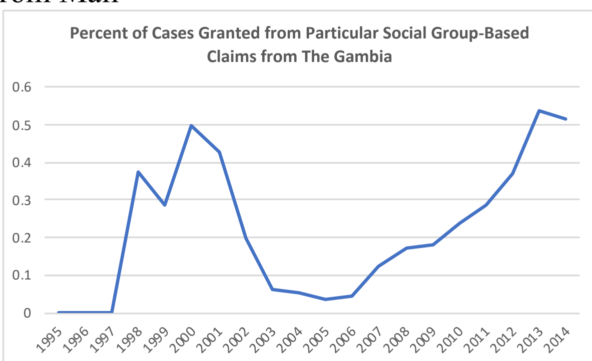


Figure 16. Percent of Applications Granted from Particular Social Group-Based Applications from Guinea

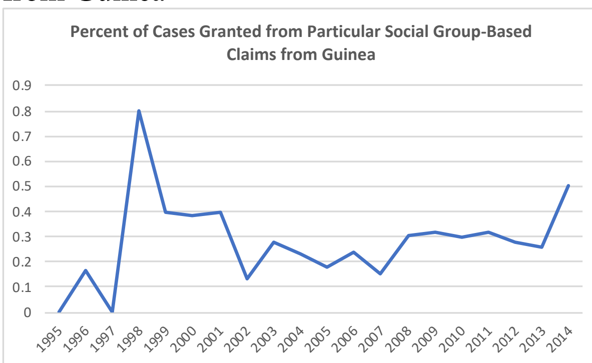
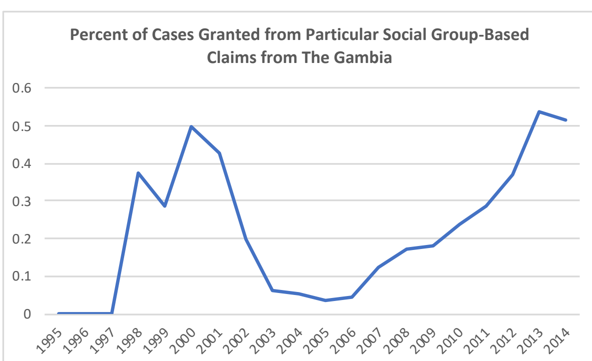


Figure 17. Percent of Applications Granted from Particular Social Group-Based Applications from The Gambia



Tribal clan membership and female genital cutting constitute examples of how policymakers mobilized the category "membership in a particular social group" to secure recognition for types of harms previously considered to fall outside the scope of asylum protection. As these scripts became institutionalized, activist lawyers, applicants and asylum officers consequently extended these formulations to new cases, gradually broadening the boundaries of asylum eligibility. In contrast, in the case of Mexican and Central American applicants, particular social group became a contested battle ground, whereby attempts to secure recognition for victims of gang-violence through articulations of the particular social group category were largely rejected. At the same time, the ambiguity inherent to the category provided a structural opportunity for activists, applicants and frontline adjudicators to push for the recognition of previously unrecognized forms of harms.

Central American Gang Violence: An Unsettled Iteration

Migrants from Mexico and the Northern Triangle countries El Salvador, Guatemala and Honduras started fleeing gang related violence in 2006 with the number of applicants more than tripling in each of the above countries between 2009 and 2014. In 2006, 201 Salvadoran applicants, 588 Guatemalan applicants, 88 Honduran applicants and 1,431 Mexican applicants filed for asylum. By 2014 these numbers spiked up to 2,009, 2,051, 1,234 and 4,170 applicants

from each country respectively. The escalating number of gang-related killings and the economic desperation in these countries has led to an unprecedented number of people to flee their home country and seek asylum in the United States, generating what has often been termed in public media a "border crises."[52] Under regulations issued by the Obama USCIS, Asylum Offices have initial jurisdiction over all asylum applications filed by unaccompanied children (under the age of 18) even if the unaccompanied children have been issued a notice to appear (i.e. placed in removal proceedings). This provision applies to all unaccompanied children who file for asylum after March 23, 2009, as well as to asylum claims filed by unaccompanied children with pending proceedings in immigration court or cases on appeal to the Board of Immigration Appeals as of December 23, 2008.[53] These regulations led to a sharp increase in the number of Central American and Mexican affirmative asylum applications processed by the asylum office. Since 2014 these constitute the majority of claims in most of the offices across the country.

Figures 18-21 shows the percent of cases based on the category "particular social group" for each of the four countries. Notwithstanding differences between each national group of applicants, which may be attributable to a variety of factors, including the culture of the asylum office in which these claims were processed, the quality of representation, and the quality of the claims themselves, the percent of social group claims from each of the above countries has consistently increased as of the early to mid-2000s. In 2014, 80% of all applications filed from El

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[52] https://www.nytimes.com/2016/11/13/world/americas/fleeing-gangs-central-american-families-surge-toward-us.html

[53] Affirmative Asylum Procedures Manual, Refugee, Asylum and International Operations Directorate (RAIO), USCIS, May 2016, available at Affirmative Asylum Procedures Manual [accessed 19 May 2018].

Salvador, Honduras and Mexico and 60% of applications filed from Guatemala, were labeled as falling under the category of “particular social group

Figure 18. Percent of Particular Social Group Claims from Salvadoran Applications Determined to Have a Base

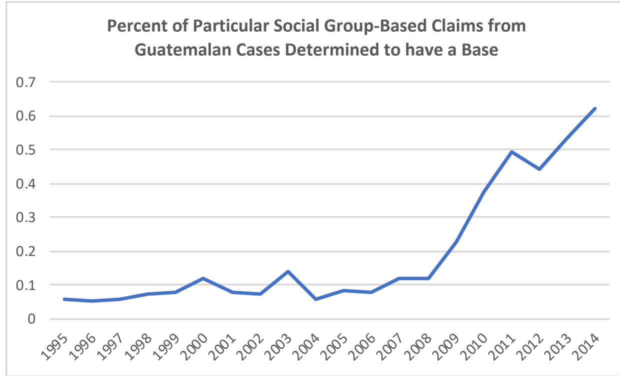

Figure 19. Percent of Particular Social Group Claims from Honduran Applications Determined to Have a Base

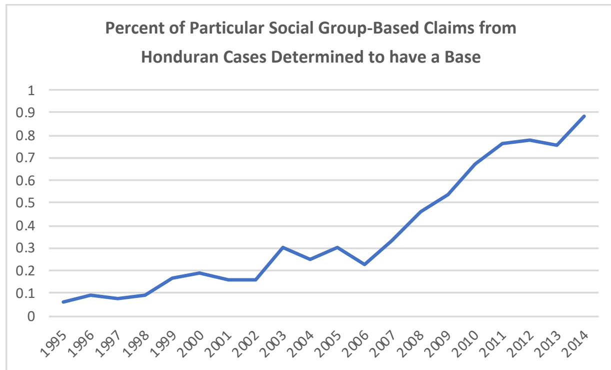

Figure 20. Percent of Particular Social Group Claims from Guatemalan Applications Determined to Have a Base

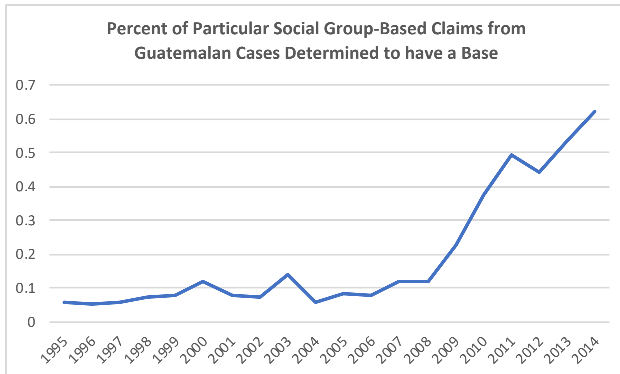

Figure 21. Percent of Particular Social Group Claims from Mexican Applications Determined to Have a Base

In the vast majority of cases Mexican and Central American applicants were not able to claim persecution on account of race, nationality, religion or political opinion: these are countries which are predominantly one religion, one race and one nationality. Asylum officers and lawyers agreed that in most cases political opinion was also considered a stretch in light of the fact that the majority of applicants are kids going to school and trying to live their life. Accordingly, the category "particular social group" was more often than not the only option of securing protection under the Act. Migrants claimed that they were persecuted by gangs on account of their membership in the group of "young Americanized and well-off" persons (*Lizama v. Holder*, 629 F.3d 440, (4th Cir. 2011), "young persons' resistant to gang membership," (E-A-G-, 24 I&N Dec. 591 (BIA 2008)) "wealthy" (A-M-E & J-G-U-, 24 I&N Dec. 69 (BIA 2007)), "male children who lack stable families with meaningful adult protection, who are from middle and low income classes, who live in the territories controlled by the MS-13 gang and who refuse recruitment,"(*S-E-G-*, 24 I&N Dec. 579 (BIA 2008)), and "business owners" (*Ochoa v. Gonzales*, 406 F.3d 1170–71 (9th Cir. 2005)) to list just a few. Yet, fears of floodgates, racism together with domestic and foreign policy interests, led the administration to adopt a hostile and

suspicious approach towards persons fleeing gang-violence in Central America and Mexico, with the courts rejecting the vast majority of these proposals. As a result, formulations of the particular social group category involving gang violence remained largely contested.

Formal asylum regulations instruct adjudicators to apply the law on a case by case basis. The legal requirements for asylum eligibility are vague and are supposed to serve as general benchmarks to be applied in a context-specific manner. In practice, however, both informal and formal sanctions, time pressures and limited resources greatly limited officers' ability to pursue new formulations of the category on a case-by-case basis. Erin, for example, explains that the asylum agency had a list of headquarter approved particular social groups and "if it is not on that list you are screwed … that just blew my mind because when I was starting out I believed that while I have to meet the legal requirements I can make up a new social group … but my supervisor had no concept on that. She was like if it is not on the list you cannot do it" (Asylum Officer Erin, interview, 2017).

Other officers talked about the pressures they faced to streamline decisions which made the time-consuming process of formulating a new particular social group that was not already well-established was extremely difficult. According to Kevin:

> "there is no reason to go to [new formulations of] particular social group if you don't have to. In fact, avoid it like the plague because it takes time and you don't have time to write your decision, to write a particular social group decision, a tenuous one, one that is on the frames, where you are like I really need to grant this because it needs to be granted but it is kind of out there, it is on the margin but within the margin – that is going to eat up the rest of your day. At least for me it was. So, if you can go to political opinion or religion then shit, yah, that buys you an hour and a half where you can actually read

another case file or god forbid eat lunch so you don't go to particular social group if you don't have to…. You avoid particular social group. Particular social group is a freaking nightmare. Just a nightmare" (Asylum Officer Kevin, interview, 2017).

Pushback from supervisors similarly deterred applicants from pursuing unsettled formulations of the particular social group category. Sara explains "If everything I am writing has to get to a supervisor and I have three choices then I am writing the one that is easier to swallow for my supervisor because I do not want any pushback … I can push this to try to make new law or I can service the applicant which is what I am going to do and if there was a way to narrow down that" (Asylum Officer Sara, interview, 2017). Officers complained that supervisors would often overturn their attempts to base claims on particular social group except where these formulations were well-institutionalized. Barb contended that supervisors were less likely to want to 'push the envelope on something that wasn't a normal claim … when it wasn't something clear cut like political opinion, race or religion" (Asylum Officer Barb, interview, 2017).

Several asylum officers recalled that when they submitted decisions to grant on the basis of particular social groups involving gang violence their supervisors would demand repeated revisions of their final decisions. Mark recalls how all claims approved for a grant from Mexico would be reviewed at Head Quarters in Washington: "I think there is a sort of thought trend in the government that Mexican claims are not really valid claims, not because it is not dangerous there but because folks were not too keen on any kind of social group articulation for these claims…" (Asylum Officer Mark, interview, 2017). Erica similarly noted that "Mexican and Central American cases can be challenging because there is tremendous crime and violence, but the case law is not super supportive of granting asylum in many of these cases" (Asylum Officer

Erica, interview, 2017). Thus, while asylum officers faced little resistance when trying to apply institutionalized iterations of the category "particular social group," as in the case of Somalian sub-clan violence or female genital mutilation, unsettled iterations solicited considerable pushback. As Mark explained: "everyone is trained and begins to frame their claim by let/s grant if we can grant on one of the other grounds before you get to social group" unless it is a straightforward FGM, sexual orientation or clan membership claim (Asylum Officer Mark, interview, 2017).

At the same time, data suggest that notwithstanding formal and information sanctions imposed on attempts to pursue protection for gang-related violence through the category "particular social group," the actual number and percent of claims categorized on this basis has significantly increased. This is in part a result of activist lawyers who strategically used this ground to push for the recognition of new claims, but also of asylum officers, who despite pressures to avoid application of the category, pursued analysis of unsettled formulations of the category where an applicant was deemed "deserving" of protection. According to asylum officer Emily: "When the claim is not straightforward social group is kind of where you have to go because it is the most amorphous. There is the most room for argument" (Asylum Officer Emily, interview, 2017). Over time, several iterations of gang-related social groups were accepted including claims involving family-based gang-violence and retaliation for testifying against gang members to the police and in court.[54] Immigration attorney Mary, for example, argues that in

[54] Gender Related Claims, Refugee, Asylum and International Operations Directorate, USCIS, available at file:///Users/taliashiff/Dropbox/asylum%20project/affirmative%20asylum%20adjudication%20process/asylum%20officer%20training%20material/RAIO%20Training%20mannual%20-%20gang%20based%20persecution.pdf, [accessed 19 Nay 2018].

2007 and 2008 judges would tell her that claims from Mexico and Central America “are not asylum cases but as of 2010 the approach has changed” (Attorney Mary, interview, 2017). Asylum officer Jeffrey recalls that whereas initially “the asylum office did not want to approve those cases under any circumstances… and Washington would always say no whenever you tried to do a membership based on gangs …particular social group as a basis for asylum has loosened up a bit in the past few years… [even though] it is still not an easy claim because of fear of floodgates and policy” (Asylum Officer Jack, interview, 2017).

The role of legal representatives within this categorization process sheds additional light on how the asylum agency – through the agents working within it – approaches contested formulations of the particular social group category. Asylum applicants do not have a right to legal representation and must obtain representation at their own cost. An asylum applicant may be represented by an attorney, a Board of Appeals accredited representative, a law student or law graduate not yet admitted to the bar, or a “reputable person who fits certain criteria.”[55] In the affirmative adjudication process legal representatives are allowed to accompany the applicant to the interview but are generally not supposed to intervene in the interview process itself. A legal representative’s role is thus primarily in the framing of the applicant’s claim and the preparation of the applicant for the interview. Jaya explains “the clients do not always understand what parts of their experience are relevant and they may minimize or not even disclose something that is crucial to a grant in their case because their experience of fear is so different than the legal definition of a well-founded fear. The attorney’s job is in telling the story” (Asylum Officer Jaya, interview, 2017). According to Mark, “a totally unprepared applicant just does not know what to

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[55] Affirmative Asylum Procedures Manual (AAPM), Asylum Division, U.S. Citizenship and Immigration Service, May 2016, p. 15.

talk about and in what direction to take the case because they don't really know what is relevant and what is not and spending a lot of time talking about irrelevant things … you know they could have this stream of consciousness type of interview and then say hey well you did not tell me any of the stuff I need to hear to say you are eligible for asylum so…" (Asylum Officer Mark, interview, 2017).

Data on "particular social group" applications from (1) Somalia, (2) the Western African countries: The Gambia, Guinea and Mali, and (3) Mexico and the Northern Triangle countries in Central America, suggest that the influence of legal representation on the probability of a claim being categorized as "particular social group" changes in accordance to the type of "particular social group" claim pursued. Specifically, a logistic regression (Model 1, Table A, Appendix) testing the association between legal representation and the likelihood of a claim being categorized on account of "particular social group" shows that for Somalian applications, while there was a statistically significant association between legal representation and a categorization of "particular social group" in the early years (1995-1997), in subsequent years the relationship ceases to be statistically significant ($p < 0.01$). Applications from The Gambia, Guinea and Mali present a similar pattern whereby the effect of legal representation on a framing of "particular social group" is statistically insignificant during most years between 1995 and 2014. If we look at the coefficients of the interaction terms between legal representation and time period, we can see that the association also becomes less substantial overtime (Models 2-4, Table A, Appendix).

Conversely, in the case of Central American and Mexican applications, legal representation seems to be influential, if not determinative, on an applicant's probability of being categorized as a member of a particular social group. Data shows that between 1995 and 2014, the percent of legally represented applicants whose claims are categorized as particular social

group is significantly higher than the percent of unrepresented applicants categorized on this basis. Logistic regressions run for the Northern Triangle countries (Model 6, Table A, Appendix) and for Mexico (Model 5, Table A, Appendix), indicates that during these years the relationship between legal representation and a categorization of particular social group is both statistically significant and substantial ($p < 0.01$).

Interviews with asylum officers suggest that these differences in the role of legal representation are due, at least in part, to the degree to which a formulation of the particular social group category has become institutionalized and well-established within the asylum office. Mia, for example, explains that "having an attorney is important especially if the claim is not straightforward" (Asylum Officer Mia, interview, 2017). According to Mia, this is especially true in the case of Central American applicants for whom lawyers are critical in terms of how to frame their claims. Conversely, for applicants with straightforward claims, being legally represented is not necessary (Asylum Officer Jules, interview, 2017). When asked about the role of legal representatives in the asylum adjudication process, asylum officers generally agreed that legal representation is important for claims for which officers cannot default to pre-established categories. According to Gary, "Lawyers are less important for cases where the basis of claim and the nexus are very clear. They are much more important for social group because no one really knows what that ground even means. With religion, race, nationality and political opinion the meaning of the base is clear but with particular social group you really need a lawyer. Because for a young former INS officer who is now an asylum officer, while the other four grounds are intuitive and make sense social group doesn't" (Asylum Officer Gary, interview, 2017). Tom recalled that many officers would not even recognize that an applicant had a claim if

it did not fall within an established script. Lawyers were essential because they articulated and brought these new claims to the officers' attention (Asylum Officer Tom, interview, 2017).

Discussion

This chapter focuses on the development of asylum policy through application of the particular social group category between 1995 and 2014. I draw on newly available administrative and demographic data on applications categorized under the rubric of "membership in a particular social group," in addition to interviews with lawyers, immigration judges and asylum officers, to show how asylum policy was developed under the "particular social group" category. Both in the case of Somalian applicants from the Marehan sub-clan and in the case of female applicants from the Western African countries of The Gambia, Guinea and Mali, agency officials strategically used the particular social group category to extend asylum protection to groups formerly considered ineligible for the status. Whereas the particular social group formulation involving members of the Marehan sub-clan was largely limited in its scope and applied mostly to Somalian applicants, particular social groups involving female genital cutting served as a general template for female genital cutting and other forms of gender-based violence in various African and Middle Eastern countries.

Conversely, in the case of Central American applicants fleeing gang violence, agency officials objected to the expansion of asylum protection through the "particular social group" category; asylum officers were encouraged to avoid application of the category to case scenarios which had yet to undergo institutionalization. This is further indicated by the central role of legal representation for (unsettled) iterations of the particular social group category involving gang violence. Interviews with asylum officers suggest that the reason legal representation is associated with a higher probability of a claim being categorized as "particular social group" for

Central American and Mexican applicants, has to do with the extent to which these different scripts have become established within the asylum office. That is, having legal representation makes it more likely for asylum officers to recognize and accept "unsettled" iterations of the particular social group category.

These findings highlight the nuanced role of the "other" category in administrative agencies under strain. On the one hand, time constraints and heavy workloads result in officers deliberately avoiding applications of unsettled formulations of the particular social group category. Claims that do not fit within established categories will more often than not either be reframed to 'fit,' or referred to immigration court – not because the claim is without merit but because justifying a grant on the basis of particular social group imposes various administrative hurdles and requires the investment of considerable time, a scarce resource at the asylum office. In practice, this means that certain narratives of harm gain precedence over others, shaping the very meaning of asylum status and eligibility. On the other hand, the ambiguity inherent to the particular social group category generated structural opportunities for change. Increasing numbers of Central American applicants are gaining protection under this category, as activist lawyers and asylum officers pursue spaces of ambiguity despite agency pressures to avoid and regulate its use.

Star and Bowker contend that some classificatory regimes are only manageable if some ambiguity is written into them. In this respect, while the 'other' category, "where things get put that you do not know what to do with," poses a disruptive force to the project of state governance, it is also essential for the functioning of classificatory regimes and their capacity to adapt to ever changing environments (Bowker and Star 2000: 150). Existing studies have documented this tension. While decision makers typically default to using tools, they know how

to apply, the institutionalization of categorical schemes does not imply their automatic reproduction. Frontline bureaucrats often act as 'institutional entrepreneurs,' (Fligstein 2001: 105), using the categories available to them in innovative ways such that the reproduction of scripts is never automatic; while mediated by power dynamics (Heimer 1999) and shaped by cognitive, normative and affective processes (Sauder and Espeland 2009), the process of categorizing carries the potential for change (Sewell 1992; Swidler 1992; Barley and Tolbert 1997; Scully and Creed 1997; Albiston 2005).

The "other" category is by no means unique to the asylum administration. Various administrative systems charged with allocating resources, benefits or imposing sanctions on individuals, include these spaces of ambiguity. One such example is the legal regulations for social security employment benefits under which applicants must establish "hardship," inability to work and pain – all concepts the meanings of which are context dependent and thus resistant to institutionalization. These spaces of ambiguity highlight a tension inherent to justice systems under strain between a commitment to a case-by-case decision-making process centered on the individual, and organizational constraints which encourage frontline actors to default to established patterns of classification.

Finally, this chapter sheds light on the challenges inherent to implementing humanitarianism as a central tool of governance. Asylum officers' reliance on routinized classificatory schemes, their deliberate avoidance of schemes resistant to routinization, alongside their inability to avoid them completely, is central to how humanitarianism came to be implemented as a new logic defining asylum admissions. My analysis of asylum screenings suggests that there is much resistance to the use of "particular social group" precisely because of its unruly nature; asylum officers were more inclined to fall back on 'settled' conceptions of

refugee status obscuring the individual narratives they were supposed to prioritize. At the same time, the centering of asylum adjudications on individual experiences of harm prevented complete avoidance of the "particular social group category," in turn creating potential opportunities for innovation and expansion of asylum and its standards. The question of when, and as a result of what factors, the asylum office is more inclined to accept new formulations of particular social group is an empirical one and is beyond the scope of this chapter. My analysis nonetheless suggests that centering asylum screenings on the experience of individual applicants demands that a certain zone of ambiguity be written into them.

CONCLUSION

The analysis put forth in this dissertation suggests that spaces of incongruence between institutionalized schemas and established patterns of classification on the one hand, and complex subjects and cases on the other, are central to the formation and implementation of US asylum policy. My findings indicate that situations in which institutionalized schemas fail are core to our understanding of the working of justice systems under strain and have significant implications on how processes of decision-making and evaluation take shape. Specifically, where frontline actors, who operate under limited resources and time constraints, are charged with evaluating a case that resonates with embedded understandings of worth but does not align within established policy prescriptions and categories, the focus of the evaluative process turns to the meaning and scope of the agency screening standards rather than the credibility of the applicants claiming membership within them. This in turn has implications on decision-makers' adopted dispositions and gatekeeping roles: when screenings follow a routinized course, asylum officials define their job as policing the authenticity of those claiming membership within the category. Accordingly, the centering of the adjudication process on an assessment of applicants' alleged trustworthiness often leads to increased suspicion on the part of asylum officers. In contrast, when routinized screenings are disrupted, asylum officers' focus on adjusting agency standards typically leads to a more trusting dynamic between officers and applicants with real-world effects on who actually gets asylum.

This research also suggests that in situations of political ambiguity where established patterns of practice are suspended, and agents can no longer rely on institutionalized policy prescriptions, decision-making cannot be explained merely as a matter of discretion but is rather shaped and constrained by embedded cultural understandings of worth. In the case of asylum,

subsequent to the collapse of the Cold War policy framework, policymakers had to cast meaning into the term "particular social group" without being able to default to established policy prescriptions. In these situations, administrators and adjudicators alike drew on the embedded cultural distinctions of worth between "deserving" refugees who fled their countries as a last resort, and "undeserving" refugees whose flight was not considered necessary to the protection of their fundamental individual rights, in order to demarcate the boundaries of asylum protection and to construct the asylum seeker as an essentially distinct category from that of the undocumented migrant. Policy memos, case law and interviews show that this cultural distinction of worth became a primary framework for conceptualizing differences between "genuine" refugees and "undeserving" illegal immigrants; women and sexual minorities were defined as worthy of asylum protection because they were targeted for a trait both immutable and fundamental to their individual identity: their gender. Conversely, Central Americans fleeing the civil wars in the 1980s, and gang-violence in the 2000s, were constructed as unworthy because they were targeted for traits that are either not immutable or fundamental to their individual identity. Cultural categories of worth served as a template for the creation of a new hierarchy of harms in which harms of a sexual nature, targeting a person's sexuality or other physical or mental attributes over which a person has no control, took precedence over harms targeting a person because of socio-economic status or professional status – traits framed as either mutable or not fundamental to individual identity.

Finally, my research shows how spaces of incongruence and ambiguity inherent to classificatory regimes generate opportunities for change at the same time that they are central to the continuation and persistence of institutional formations. In the case of asylum, activist lawyers and asylum officers pursue spaces of ambiguity in the law despite agency pressures to

avoid and regulate them, leading to the protection to increasing numbers of Central American applicants and to the recognition of harms previously considered as falling outside the scope of asylum protection. At the same time, not only does the agency impose restrictions on applications of the category "particular social group," somewhat limiting its applicability to groups deemed unfavorable by the administration, but the very existence of this open-ended category allows the asylum determination system to adapt to changing socio-political circumstances, and to ensure its continued legitimacy.

Together these findings put at center processes of evaluation, categorization and cultural distinctions of worth, highlighting the nuanced role of the "other" category in administrative agencies under strain and the conditions that enable moral deliberation in the face of organizational pressures to promote efficiency. In order to examine the applicability of these findings beyond the case of asylum further research is needed. The asylum determination process is centered on the allocation of benefits (i.e. asylum protection) to individuals. In this respect, asylum officers, much like welfare bureaucrats, members of parole boards in prisons and pharmacists, to give just a few examples, devote time and resources to the identification of the "deserving" individual. Notions of deservingness and morality are central to these bureaucratic screening processes. Accordingly, examining the applicability of the theoretical framework developed in this dissertation on moral deliberation and worth beyond the case of asylum, requires investigating how moral deliberation takes on different forms within regulatory bureaucratic agencies charged not with the allocation of benefits but with the imposition of sanctions and regulations. A comparison between the asylum administration and bureaucratic agencies such as police, prisons or border patrols would thus provide an opportunity to better

identify the interconnections between the conditions for moral deliberation and distinct institutional environments.

A second set of questions concerns how distinct modes of asylum decision making are actualized within institutions of nation-states that differ in their administrative nature. In the United States, for example, decision making tends to be adversarial, fragmented across multiple government agencies, and allows for multiple perspectives to be presented and deliberated, whereas in Canada decision making is very centralized (all Canadian refugee decisions take place within the Refugee Protection Division of the Immigration and Refugee Board), with less fraught interactions between the courts and administrative tribunals (Hamlin 2012). Comparisons across different national contexts thus provides a unique opportunity for examining how frontline legal actors within each system differently respond to claims which resonate with understandings of worth but fail to squarely align with standardized agency scripts defining eligibility for asylum, with implications for how we understand bureaucratic justice and for how the line between deserving refugees and non-deserving refugees is drawn.

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Appendix

Table A: Logistic Models Predicting Probability of Particular Social Group

	Model 1 Odds-Ratio	Model 2 Odds-Ratio	Model 3 Odds-Ratio	Model 4 Odds-Ratio	Model 5 Odds Ratio	Model 6 Odds-Ratio
	Somalia	**Mali**	**Guinea**	**The Gambia**	**Mexico**	**Northern Triangle Countries**
Legal Representative	0.179**	0.106	-0.168	1.063*	0.516***	0.506***
	(0.0681)	(0.644)	(0.522)	(0.473)	(0.140)	(0.0804)
Asylum Eras						
1995-1998	-	-	-	-	-	-
1999-2001	0.140*	1.581***	-0.115	1.699***	-0.195	-0.376***
	(0.0550)	(0.446)	(0.310)	(0.418)	(0.107)	(0.0551)
2002-2005	1.024***	3.047***	0.000854	2.195***	0.285*	-1.577***
	(0.0964)	(0.355)	(0.283)	(0.405)	(0.141)	(0.0576)
2006-2009	0.917***	3.265***	1.931***	2.824***	1.161***	-0.116*
	(0.137)	(0.295)	(0.255)	(0.329)	(0.119)	(0.0468)
2010-2014	-0.740*	3.725***	2.549***	3.848***	2.132***	1.963***
	(0.318)	(0.291)	(0.272)	(0.310)	(0.0855)	(0.0679)
Interaction Legal_Rep # Time						
Legal_Rep # 1999-2001	0.0495	0.755	1.072	-0.361	1.250***	-0.150
	(0.0869)	(0.813)	(0.599)	(0.651)	(0.181)	(0.115)
Legal_Rep # 2002-2005	0.461**	0.297	1.342*	0.948	1.747***	0.576***
	(0.161)	(0.709)	(0.559)	(0.580)	(0.202)	(0.112)
Legal_Rep # 2006-2009	0.223	0.0533	0.661	0.0326	1.845***	0.364***
	(0.197)	(0.664)	(0.536)	(0.520)	(0.179)	(0.0929)
Legal_Rep # 2010-2014	0.309	-0.258	0.267	-0.784	0.817***	0.502***
	(0.364)	(0.663)	(0.547)	(0.507)	(0.152)	(0.103)

Marital Status						
Single	-	-	-	-	-	-
Married	-0.0750	-0.0962	0.448***	-0.0984	1.189***	-0.222***
	(0.0385)	(0.107)	(0.0881)	(0.114)	(0.0436)	(0.0294)
Divorced/Widowed	-0.0348	-0.256	-0.300	-0.126	0.436***	-0.131
	(0.0790)	(0.207)	(0.169)	(0.208)	(0.0931)	(0.0726)
No Inspection	0.0529	-0.145	-0.170	-0.203	0.977***	-0.234***
	(0.0359)	(0.175)	(0.127)	(0.214)	(0.0494)	(0.0360)
Female	0.127***	1.652***	2.546***	1.755***	0.301***	0.0940***
	(0.0381)	(0.113)	(0.107)	(0.110)	(0.0382)	(0.0270)
Dependents	0.0662	0.212	0.553***	0.375**	0.194***	-0.231***
	(0.0710)	(0.147)	(0.133)	(0.140)	(0.0506)	(0.0389)
Asylum Office						
Arlington	-	-	-	-	-	-
Chicago	0.386***	-0.274	-0.425*	-0.503*	0.395**	0.574***
	(0.0784)	(0.262)	(0.193)	(0.223)	(0.124)	(0.0485)
Houston	0.132*	0.0645	-0.250	0.0830	0.596***	-0.193***
	(0.0655)	(0.304)	(0.238)	(0.334)	(0.126)	(0.0526)
Los Angeles	0.480***	-0.750	-1.085	0	0.580***	-0.779***
	(0.0516)	(0.769)	(0.815)	(.)	(0.109)	(0.0424)
Miami	-0.168	0.804	-1.280	-1.370	1.172***	-0.309***
	(0.283)	(1.158)	(1.121)	(1.152)	(0.127)	(0.0541)
Newark	0.813***	0.569***	0.260	0.685***	0.785***	-0.00287
	(0.110)	(0.164)	(0.136)	(0.151)	(0.120)	(0.0481)
New York	0.0232	0.369	0.342*	0.497	-0.207	-0.442***
	(0.426)	(0.192)	(0.146)	(0.284)	(0.139)	(0.0540)
San Francisco	0.306***	-0.293	-0.734	-0.611**	1.093***	-0.116*

	(0.0620)	(0.333)	(0.444)	(0.199)	(0.109)	(0.0488)
_cons	0.136	4.602***	4.724***	- 5.352***	3.280***	-3.462***
	(0.0708)	(0.304)	(0.282)	(0.305)	(0.128)	(0.0564)
N	14229	2982	7003	3562	91545	374274
Standard errors in parentheses						

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$ (two-tailed tests)