The Political Economy of the Constitutional Right to Asylum

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THE POLITICAL ECONOMY OF THE CONSTITUTIONAL RIGHT TO ASYLUM

Lucas Kowalczyk & Mila Versteeg†

The issues of mass migrations, displaced persons, and refugees from war-torn countries are not new, but they have become particularly prominent and contentious in recent years and will garner even more attention as climate change refugees begin to cross borders seeking new homes in foreign countries. Academics and policy-makers have jointly turned to international law to remind states of their international legal obligations toward refugees; yet they are also quick to point out the inadequacies of the international legal framework. At the same time, efforts to address these inadequacies and to lay down general legal standards and policies to manage the growing migration flows have faltered.

Surprisingly, in light of the mounting crisis, it has largely escaped the attention of commentators that a substantial number of countries provide a right to asylum in their constitutions. Remarkably, constitutional asylum provisions often go beyond states' international legal obligations and establish permanent legal solutions for those seeking sanctuary. In addition, constitutional provisions are insulated from changing political tides and encourage governments to honor their commitments even when doing so lacks popular support. These constitutional provisions thus hold substantial promise to address some of the most pressing legal problems of our time.

This Article offers the first systematic exploration of constitutional asylum provisions. It presents an original data set on right to asylum provisions in all national constitutions written since 1789, explores the first instances of adoption, and traces the right's development over time. The data reveals that, currently, approximately thirty-five percent of all countries have constitutionalized the right to asylum. Drawing on both real-world examples and regression analysis, we find that constitutional asylum provisions serve a complicated pur-

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pose. Some constitutions frame asylum as a right for all those in need, thus, seemingly serving a true humanitarian purpose. Other states, however, use the right as an instrument to broadcast their doctrines and to cast judgment on the views of other countries by granting asylum only to those that share the ideology of the host nation. This latter version of the right to asylum is particularly prominent in authoritarian and socialist constitutions. Thus, asylum provisions can serve as both a humanitarian tool for providing state-sponsored sanctuary to persecuted persons and an overt instrument of foreign policy deployed to achieve the political objectives of the host nation.

We further find that the adoption of asylum provisions can be motivated by self-interest. Even when framed as a universal right, asylum might be a useful tool to condemn the human rights records of foreign countries. Moreover, we find that countries with net refugee outflows, such as some of the smallest and poorest African states, as well as nations with aging and declining populations, such as Germany, more readily entrench the right to asylum in their constitutions. We conclude that these apparently self-serving motivations for constitutionalizing asylum rights are not necessarily detrimental for asylum-seekers, nor do they necessarily undermine the right: appealing to self-interest, rather than self-sacrifice or humanitarian ideals, might actually prove more effective in motivating states to ensure adequate protection of human rights, including the right to asylum.

INTRODUCTION 1221

I. THE RIGHT TO ASYLUM IN HISTORY..... 1229

    A. Ancient Greece and Rome 1231

    B. The Judeo-Christian Tradition 1232

    C. The Islamic Tradition 1234

    D. Toward Modernity 1234

    E. The American Experiment 1236

II. THE RIGHT TO ASYLUM IN INTERNATIONAL LAW 1239

    A. International Legal Obligations Toward
        Refugees 1239

    B. The Substance of the "Right to Asylum" 1243

III. ASYLUM AS A CONSTITUTIONAL RIGHT 1246

    A. Constitutionalizing the Right to Asylum 1246

    B. Motivations for Constitutionalizing Asylum ... 1250

        1. Condemning Foreign States..... 1251

        2. Strengthening Foreign Opposition Groups.. 1253

        3. Supplementing a Shrinking Workforce 1254

        4. Broadcasting Good Intentions..... 1255

IV. ASYLUM IN THE WORLD'S CONSTITUTIONS 1257

A. The Global Spread of Constitutional Asylum Provisions	1260
B. The Dual Nature of the Right	1267
V. WHAT PREDICTS THE ADOPTION OF THE RIGHT TO ASYLUM?	1274
CONCLUSION	1284

INTRODUCTION

The era of the refugee has already begun. Most estimates suggest that by 2050, rising sea levels and worsening droughts will displace between 50 and 250 million people.¹ Many small island nations may soon be completely submerged by rising seas.² Although climate change-related relocation is not a new phenomenon, the modern scale of migration and potential displacement presents an unprecedented challenge for the international community.³ Meanwhile, millions of people have fled war-torn Syria, escaping oppression and, for many, possible death at the hands of the Islamic State.⁴ Their journey across Europe often turned out to be just as life-threatening; thousands have drowned crossing the Mediterranean⁵ or suffo-

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¹ Jane McAdam, *Environmental Migration*, in GLOBAL MIGRATION GOVERNANCE 153, 153–54 (Alexander Betts ed., 2011). Despite the enormity of these displacement figures, some commentators call them “conservative.” NICHOLAS STERN, THE ECONOMICS OF CLIMATE CHANGE: THE STERN REVIEW 91–92 (2007). Others criticize those numbers as “at best, guesswork.” Tom Wilbanks et al., *Industry, Settlement and Society*, in CLIMATE CHANGE 2007: IMPACTS, ADAPTATION AND VULNERABILITY 357, 365 Box 7.2 (Parry et al. eds., 2007).

² See, e.g., Anna Edwards, *Life on the Next Atlantis: Doomed Pacific Island Which Will Be Swallowed by the Sea Within 60 Years*, DAILY MAIL (Jun. 13, 2013, 7:15 AM), <http://www.dailymail.co.uk/news/article-2340804/Beautiful-Pacific-island-nation-Kiribati-claimed-sea-60-years-rising-ocean-levels.html> [https://perma.cc/T26F-SHG9] (stating that the island nation of Kiribati “will be swallowed by the sea within 60 years”); Cole Mellino, *Which Country Will Be First to Go Completely Underwater due to Climate Change?*, ECOWATCH (May 22, 2015), <http://ecowatch.com/2015/05/22/maldives-underwater-climate-change> [https://perma.cc/VMZ9-VFYM] (warning that the Maldives “could become the first state in history to be completely erased by the sea”).

³ See JANE MCADAM, CLIMATE CHANGE, FORCED MIGRATION, AND INTERNATIONAL LAW 3 (2012).

⁴ Refugee Population by Country or Territory of Origin, WORLD BANK, <http://data.worldbank.org/indicator/SM.POP.REFG.OR> [https://perma.cc/FT43-7NEF].

⁵ *Mediterranean Migrant Arrivals in 2016: 204,311; Deaths 2,443*, INT’L ORG. FOR MIGRATION (May 31, 2016), <https://www.iom.int/news/mediterranean-migrant-arrivals-2016-204311-deaths-2443> [perma.cc/BH7T-V52L] (estimating that some 4271 refugees and migrants have died or gone missing between January 2015 and May 2016).

cated in overcrowded boats and trucks.⁶ The growing stream of displaced masses poses an important moral dilemma for destination countries given that accepting refugees is often both politically unpopular and financially costly. The European Union (EU) has been slow to respond to the recent migrant crisis and has failed to adopt a unified policy. Indeed, most EU countries have rejected German Chancellor Angela Merkel's plan for an EU quota system; as Slovak Foreign Minister Miroslav Lajčák said, "quotas only increase the incentives for migration."⁷ Across the Atlantic, the newly elected President of the United States, Donald J. Trump, was quick to pass an executive order that indefinitely suspended admission of Syrian refugees and temporarily limited the flow of all other refugees into the United States.⁸ Indeed, many countries are prioritizing border protection and the reduction of migrant flows.⁹

Few issues in international law have generated as much disagreement as refugee protection mechanisms, thereby pushing the legal status of displaced persons to the forefront of some of the most politically charged debates of our time.¹⁰ The efforts by the international community to lay down general standards and policies to manage growing migration flows have not escaped scholarly attention.¹¹ Overwhelmingly, the literature has concluded that these attempts to address the mounting and complex crisis have been inadequate, and the existing international legal frameworks are often underenforced.¹² A

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⁶ See Alison Smale et al., *Europe Reels from More Migrant Deaths on Land and Sea*, N.Y. TIMES (Aug 28, 2015), <https://www.nytimes.com/2015/08/29/world/europe/migrants-bodies-austria-truck.html> [perma.cc/6AN4-7CQ4].

⁷ Frank Zeller, *Merkel Isolated as EU Partners Slam Door on Refugees*, YAHOO! NEWS (Feb. 13, 2016), <http://news.yahoo.com/merkel-isolated-eu-partners-slam-door-refugees-095551766.html> [perma.cc/4SPB-QWZT].

⁸ Exec. Order No. 13,769, 82 Fed. Reg. 8,977 (Feb. 1, 2017).

⁹ See, e.g., Exec. Order No. 13,767, 82 Fed. Reg. 8,793 (Jan. 30, 2017).

¹⁰ "Many people leave their home countries for a combination of political, economic and other reasons. This mixture of motives is one factor creating a perception of widespread abuse of asylum systems, which is often manipulated by politicians and the media." U.N. High Comm'r for Refugees [UNHCR], *THE STATE OF THE WORLD'S REFUGEES 2000: FIFTY YEARS OF HUMANITARIAN ACTION* 155 (2000) [hereinafter *FIFTY YEARS OF HUMANITARIAN ACTION*] (footnote omitted).

¹¹ See Eike Albrecht & Malte Paul Plewa, *International Recognition of Environmental Refugees*, 45 ENVTL. POL'Y & L. 78, 79 (2015) ("Although the debate on this issue has been going on for more than three decades, however, no universally accepted and legally binding solution has been developed.").

¹² See, e.g., GUY S. GOODWIN-GILL & JANE MCADAM, *THE REFUGEE IN INTERNATIONAL LAW* 201–84 (3d ed. 2007) (analyzing the evolution of the principle of non-refoulement); James C. Hathaway, *A Reconsideration of the Underlying Premise of Refugee Law*, 31 HARV. INT'L L.J. 129, 130 (1990) (describing the divergent conceptions of refugee rights and protections present among the states that drafted the 1951 Refugee Convention).

host of studies have further highlighted the limitations of the primary international legal documents pertaining to refugees—the 1951 Refugee Convention and its 1967 Optional Protocol.¹³ Scholars have observed that only a small portion of those seeking refuge fall within the Convention's narrow definitions and that states are not required to provide permanent solutions to integrate refugees, who frequently remain in camps for decades.¹⁴ For instance, while the Convention offers a range of protections to those who meet the narrow definitions of refugee, it does not require states to grant refugees asylum, which

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¹³ Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150 [hereinafter Refugee Convention or Convention]. The Refugee Convention of 1951 included temporal and geographic restrictions in that it applied to refugees in Europe who became refugees because of events that occurred prior to 1951. The 1967 Protocol removed these restrictions. Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 [hereinafter Refugee Protocol].

¹⁴ For a general treatment of the topic, see MICHELLE FOSTER, INTERNATIONAL REFUGEE LAW AND SOCIO-ECONOMIC RIGHTS: REFUGE FROM DEPRIVATION (Crawford et al. eds., 2007); JAMES C. HATHAWAY, THE RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW (2005); DAVID A. MARTIN ET AL., FORCED MIGRATION: LAW AND POLICY (2d ed. 2013). For criticism of the refugee definition, see GOODWIN-GILL & MCADAM, *supra* note 12, at 9 ("Many key terms [of the Refugee Convention] are vague, undefined and open to interpretation . . ."); see also Eduardo Arboleda & Ian Hoy, *The Convention Refugee Definition in the West: Disharmony of Interpretation and Application*, 5 INT'L J. REFUGEE L. 66, 66–68 (1993) (discussing different interpretations of the definition and resulting inconsistencies in application); Walter Kälin, *Refugees and Civil Wars: Only a Matter of Interpretation?*, 3 INT'L J. REFUGEE L. 435, 444–45 (1991) (arguing that the "open-ended" text of the definition should be construed liberally). For suggestions on revisions to the Convention, see Joan Fitzpatrick, *Revitalizing the 1951 Refugee Convention*, 9 HARV. HUM. RTS. J. 229 (1996); Todd Stewart Schenk, Note, *A Proposal to Improve the Treatment of Women in Asylum Law: Adding a "Gender" Category to the International Definition of "Refugee"*, 2 IND. J. GLOBAL LEGAL STUD. 301 (1994). For scholarship pointing at limitations of international refugee law, see Arthur C. Helton, *Forced International Migration: A Need for New Approaches by the International Community*, 18 FORDHAM INT'L L.J. 1623, 1627 (1995); Satvinder Juss, *Toward a Morally Legitimate Reform of Refugee Law: The Uses of Cultural Jurisprudence*, 11 HARV. HUM. RTS. J. 311 (1998). For arguments that the locus of responsibility should be in countries' collective protection efforts rather than in individual nations, see Gervase Coles, *Approaching the Refugee Problem Today*, in REFUGEES AND INTERNATIONAL RELATIONS 373, 408 (Gil Loescher & Laila Monahan eds., 1989); Peter Harder, *Opinion, Migration: A New International Dimension*, 5 INT'L J. REFUGEE L. 101, 104–06 (1993); James C. Hathaway & R. Alexander Neve, *Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection*, 10 HARV. HUM. RTS. J. 115 (1997). For discussions on the development and future of refugee law, see NIRAJ NATHWANI, RETHINKING REFUGEE LAW (2003); David A. Martin, *Reforming Asylum Adjudication: On Navigating the Coast of Bohemia*, 138 U. PA. L. REV. 1247 (1990); Daniel J. Steinbock, *Interpreting the Refugee Definition*, 45 UCLA L. REV. 733, 782 (1998); Dirk Vanheule, *A Comparison of the Judicial Interpretations of the Notion of Refugee*, in EUROPE AND REFUGEES: A CHALLENGE? (Jean-Yves Carlier & Dirk Vanheule eds., 1997).

would allow refugees to take up permanent residency in the host country.¹⁵

Perhaps surprisingly, despite the controversy that international legal refugee protections have generated, much less is known about asylum in domestic law. It has largely escaped the attention of legal commentators that a substantial number of countries have enshrined a right to asylum in their constitutions.¹⁶ According to our own data, about thirty-five percent of all countries include asylum in their founding legal documents. A diverse set of countries with dissimilar legal histories—including Germany, Colombia, and Burkina Faso—have all constitutionalized asylum. At first glance, these protections hold substantial promise to address some of the most difficult legal problems surrounding states' obligations toward refugees. Indeed, when a constitution stipulates that "[t]he politically persecuted shall enjoy the right of asylum," as provided in the German constitution of 1949, the state is constitutionally required to grant asylum to those in need, thereby going beyond state obligations under international law.¹⁷ Moreover, the con-

¹⁵ See *infra* notes 99–113 and accompanying text.

¹⁶ The literature lacks a systematic and comprehensive study of the constitutional right to asylum. See LIZA SCHUSTER, *THE USE AND ABUSE OF POLITICAL ASYLUM IN BRITAIN AND GERMANY* 88–89 (2003) (describing the constitutional right to asylum in Germany and comparing it with the practices of Great Britain); Roman Boed, *The State of the Right of Asylum in International Law*, 5 DUKE J. COMP. & INT'L L. 1, 14–16 (1994) (exploring the constitutional asylum law of the Czech Republic, Germany, and Italy only); Maria-Teresa Gil-Bazo, *Asylum as a General Principle of International Law*, 27 INT'L J. REFUGEE L. 3, 23–24 (2015) (listing the countries that recognize a constitutional right of asylum without further analysis); William Thomas Worster, *The Contemporary International Law Status of the Right to Receive Asylum*, 26 INT'L J. REFUGEE L. 477, 488–90 (2014) (same).

¹⁷ GRUNDGESETZ [GG] [BASIC LAW] 1949, art. 16, cl. 2 (Ger.), translation at http://www.cvce.eu/content/publication/1999/1/1/7fa618bb-604e-4980-b667-76bf0cd0dd9b/publishable_en.pdf [<https://perma.cc/5ZKV-CP5S>]. In the aftermath of World War II, Germany enshrined the right to asylum in its constitution, the Basic Law. Article 16(2) of Germany's 1949 constitution stated simply: "The politically persecuted shall enjoy the right of asylum." As construed by Germany's Constitutional Court, Article 16(2) provided a subjective right belonging to the asylum-seeker and directly enforceable against the government. However, due to growing nativist fears, Article 16(2) was amended in 1993. The new constitutional right to asylum retained the provision that "[p]ersons persecuted on political grounds enjoy the right of asylum." GG 1993, art. 16a(1), translation at https://www.pravo.unizg.hr/_download/repository/the_basic_law.pdf [<https://perma.cc/Y7ZL-NLPB>]. However, Article 16 was expanded to include additional provisions limiting, or otherwise defining the scope of the right. In fact, the 1993 amendment to Article 16 made the German formulation of the right to asylum the most elaborate, cumbersome, and lengthy of all provisions in world constitutions. See generally Sam Blay & Andreas Zimmermann, *Recent Changes in German Refugee Law: A Critical Assessment*, 88 AM. J. INT'L L. 361 (1994) (discussing the constitutional amendments and the resulting changes). Most importantly, the newly-added provisions preclude foreigners arriving from "safe" countries from

stitutionalization of the right, as opposed to mere codification in ordinary law, insulates it from politics and thereby prevents perfunctory revisions when honoring asylum obligations becomes politically inconvenient.¹⁸ In light of the mounting refugee crisis today, it is surprising that these self-imposed constitutional obligations to grant asylum have largely escaped the attention of academics and policymakers alike.

This Article takes up the challenge. Drawing on original data based on coding all of the world's constitutions since 1789, this Article traces the historical origins and development of asylum in national constitutions, analyzes the first cases in which the right was adopted, and statistically explores the predictors of the right. The analysis reveals that asylum provisions often serve a more complicated purpose than the German example alone suggests. In particular, we discover that the adoption of the right is dominated by considerations of political economy. As we spell out in this Article, the right to asylum does not merely confer entitlements upon refugees but also brings important potential benefits to the right-granting states. Notably, a constitutional asylum provision can serve as a foreign policy tool that allows a state to cast judgment on the

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invoking the right. See GG 1993, art. 16(a)(2)–(3). As such, refugees who enter Germany from a third state where, because of the adoption of the Refugee Convention, they are assumed to be safe from political persecution, may not invoke the constitutional right to asylum. Because Germany is bordered solely by nations that have adopted the Convention and are thus characterized as “safe,” reaching Germany while retaining the ability to invoke Article 16’s protections has become discouragingly difficult. The new constitutional right to asylum appears to concern itself less with persecution on political grounds and its alleviation as a humanitarian responsibility and more with the banal issue of asylum-seekers’ method of reaching Germany. As such, deprivation of rights does not in itself guarantee sanctuary under Germany’s constitution. The assumption here is deceptively simple: “safe” third countries somehow mitigate the need for Germany to recognize even the most legitimate persecution, giving Germany a (constitutionally entrenched) reason to refuse humanitarian protection. The amendment drastically reduced both the influx of asylum-seekers and the number of applicants that were granted asylum. See Stefan Heuser, *Is There a Right to Have Rights? The Case of the Right of Asylum*, 11 ETHICAL THEORY & MORAL PRAC. 3, 7–9 (2008). Today, Germany has positioned itself among the many “affluent nations [that] curtail . . . the right of asylum through extraordinary legal measures and close their borders to those seeking protection.” Christoph Auffarth, *Protecting Strangers: Establishing a Fundamental Value in the Religions of the Ancient Near East and Ancient Greece*, 39 NUMEN 193, 194 (1992).

¹⁸ See JON ELSTER, ULYSSES UNBOUND: STUDIES IN RATIONALITY, PRECOMMITMENT, AND CONSTRAINTS 101 (2000); Stephen Holmes, *Precommitment and the Paradox of Democracy*, in CONSTITUTIONALISM AND DEMOCRACY 195, 227–28 (Jon Elster & Rune Slagstad eds., 1988); see also JON ELSTER, ULYSSES AND THE SIRENS: STUDIES IN RATIONALITY AND IRRATIONALITY 36–37 (1984) (likening constitutions to Ulysses’s ropes that helped him honor his earlier commitment to resist the singing of the Sirens).

practices of other sovereigns.¹⁹ Granting asylum to the citizens of another country can serve as an indictment of that country's government for its inability or unwillingness to prevent persecution. States may also use the provision to explicitly broadcast their ideology by extending protections to those who share their ideological commitments, thereby making asylum an instrument in the legal and political battles between states. Thus, a constitutional asylum provision can be an attractive and useful tool of foreign policy, independent of its humanitarian purposes.

When surveying the world's constitutions, we find evidence that asylum provisions are at times explicitly used for foreign policy. While some countries frame asylum as a right for all those in need, others appear to use the right first and foremost as an instrument to broadcast their ideology and cast judgments on the ideological views and policies of other states. Consider, for example, the Soviet constitution of 1977 proclaiming that "[t]he USSR grants the right of asylum to foreigners, persecuted for defending the interests of the working people and the cause of peace, for participating in revolutionary or national liberation movements, or for progressive socio-political, scientific, or other creative activities."²⁰ The purpose of this provision, seemingly, was to condemn Western policies and to extend a welcome to those who shared the Soviets' socialist ideology. At the same time, we find that this particular usage of the asylum provision has been in decline and that the past two decades have witnessed a "humanitarization" of the right.²¹

All asylum provisions can further state interests; when they are not used to overtly condemn or condone particular ideologies, they can be employed to cast judgments on other countries' human rights records. In addition, the constitutionalization of the right to asylum can generate other political and economic benefits. Specifically, our statistical analysis reveals that a high age-dependency ratio²²—that is, a large aging pop-

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¹⁹ See *infra* notes 157–61 and accompanying text.

²⁰ KONSTITUTSIJA SSSR (1977) [KONST. SSSR] [USSR CONSTITUTION] art. 38.

²¹ See *infra* notes 172–74 and accompanying text.

²² See *Age-Dependency Ratio*, ENCYCLOPEDIA OF PUB. HEALTH, 23 (Wilhelm Kirch ed., 2008) ("The age-dependency ratio is a summary measure of age composition in a population that incorporates specific assumptions about 'productive' and 'unproductive' groups. Age-dependency ratios represent the relative numbers of dependents to supporters in the population. The child dependency ratio compares the population of children (0–14 years) to the working age (15–64 years) population, while the aged dependency ratio compares those aged 65 years and over to the same working-age reference group. The total age-dependency ratio

ulation relative to the diminishing size of the work force—is correlated with the adoption of the right.²³ A high age-dependency ratio implies that a larger workforce is needed to sustain the aging population and that refugees might be a welcome addition to the declining labor force.²⁴ Indeed, it is striking that within the EU, Germany has been both the most welcoming country to refugees and one with the highest age-dependency ratios, meaning that it can gain more from admitting refugees than can most other nations.²⁵ Similarly, we find that countries with net refugee outflows are more likely to include asylum rights in their constitution.²⁶ In countries where refugee outflows exceed inflows, promising asylum is relatively cheap as there is little demand to reside in the country. In such cases, constitutionalizing the right might serve as an imprimatur on the practices of other countries accepting refugees, seemingly legitimizing the fact that many of a country's own citizens pursue asylum elsewhere.

Thus, our core finding is that constitutional asylum rights are predicated upon the political and economic benefits for the host nations, not merely the moral or humanitarian justifica-

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compares the combined youngest and oldest population to the intermediate working age group.”).

²³ See *infra* Part V.

²⁴ See, e.g., U.N. DEPT OF ECON. & SOC. AFFAIRS, POPULATION DIV., U.N. Sales No. E.01.XIII.19, REPLACEMENT MIGRATION: IS IT A SOLUTION TO DECLINING AND AGEING POPULATIONS? 1–5 (2001), <http://www.un.org/esa/population/publications/migration/migration.htm> [<https://perma.cc/XAK7-4FDS>] (finding that migration to a country can be used to hinder the decline or aging of a population based on the examination of eight industrialized countries); see also Christa Simon et al., *Minimizing the Dependency Ratio in a Population with Below-Replacement Fertility Through Immigration*, 82 THEORETICAL POPULATION BIOLOGY 158, 164 (2012) (modeling data on an optimal immigration age to increase birth rates in the host nation).

²⁵ See PEW RESEARCH CTR., ATTITUDES ABOUT AGING: A GLOBAL PERSPECTIVE 24, 30 (2014), <http://www.pewglobal.org/2014/01/30/attitudes-about-aging-a-global-perspective> [<https://perma.cc/4K9L-J2PH>] (“[T]o prevent [its] population[ ] from decreasing, Germany would have to roughly double its annual intake of immigrants between now and 2050 . . . . Some countries that are already among the oldest in the world—Germany, Italy, Spain and Japan—may find that their old-age dependency ratio has doubled by 2050 . . . .”); see also Robert Peston, *Why Germany Needs Migrants More than UK*, BBC NEWS (Sept. 7, 2015) <http://www.bbc.com/news/business-34172729> [<https://perma.cc/PW64-UKCV>] (“[T]he UK’s population is rising fast, whereas Germany’s is falling fast . . . [and] the dependency ratio (the proportion of expensive older people in the population relative to able-bodied, tax-generating workers) is rising much quicker in Germany than in the UK.”); *Age Invaders*, ECONOMIST (Apr. 26, 2014), <http://www.economist.com/news/briefing/21601248-generation-old-people-about-change-global-economy-they-will-not-all-do-so> [<https://perma.cc/FE5F-ZUX9>] (discussing how rich countries, like Germany, will see an “old-age dependency ratio” that is proportionally “much higher” than the average).

²⁶ See *infra* Part V.

tion of providing sanctuary to persecuted persons. We are not necessarily the first to advance this claim; others have made similar observations about the international legal framework dealing with refugees.²⁷ Yet, to our knowledge, we are the first to systematically show its empirical basis by drawing upon global data. At a time when progress on international legal efforts to protect refugees has stalled,²⁸ we are shifting the attention to the legal refugee protections in constitutional documents.

The remainder of this Article unfolds as follows. Part I traces the institution of asylum throughout history. It illustrates that, in contrast to other rights which only recently entered the human rights arena, “[t]he concept of asylum has been in existence for at least 3,500 years and is found, in one form or another, in the texts and traditions of many different ancient societies.”²⁹ The purpose of the historical inquiry is to show that, across history and civilizations, the institution of asylum often appeared to serve the interests of the nation or society granting it.

Parts II and III explore the right to asylum in international and constitutional law respectively. Part II explores asylum in international law and notes that, because international law does not ultimately require states to grant asylum, there exists substantial confusion about the contours and the substance of this right. Part III focuses on asylum as a constitutional right and notes that constitutions can, and often do, go beyond international law in vesting the right to asylum in the hands of those seeking it. What is more, constitutionalizing asylum insulates the right from changing political tides and encourages governments to honor their commitments even when doing so lacks popular support. While it is relatively easy for states to revoke their treaty obligations,³⁰ it is usually more difficult to

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²⁷ See Hathaway, *supra* note 12, at 133 (arguing in the context of refugee crises that “the pursuit by states of their own well-being has been the greatest factor shaping the international legal response to refugees since World War II”).

²⁸ See Phil Cole, *What’s Wrong with the Refugee Convention?*, E-INTERNATIONAL REL. (Nov. 6, 2015), <http://www.e-ir.info/2015/11/06/whats-wrong-with-the-refugee-convention> [<https://perma.cc/V2SU-WF9F>] (“What the current crisis has shown is that the UN Refugee Convention and the rights and obligations which flow from it are inadequate and need to be fundamentally revised.”).

²⁹ UNHCR, *THE STATE OF THE WORLD’S REFUGEES 1993: THE CHALLENGE OF PROTECTION* 33 (1993) [hereinafter *THE CHALLENGE OF PROTECTION*].

³⁰ See Lucas Kowalczyk, Note, *The Nuclear Option: Domestic Treaty Withdrawal Mechanisms*, 56 VA. J. INT’L L. (forthcoming 2017) (finding that it is typically relatively easy to withdraw from treaties). Note that dualist systems can simply decide not to pass implementing legislation, and that in many monist systems, international law is inferior to domestic law. See Pierre-Hugues Verdier

amend their constitutions.³¹ We therefore note that, as states begin to engage in the contentious debate on solutions intended to address the current crisis, their constitutional commitments should be of great interest.

Part IV presents our original data on the constitutional right to asylum and uses it to document the trajectory of the right in the world's constitutions. It shows that there are two distinct versions of the right to asylum: one that overtly serves states' foreign policy interests by promising asylum to those who share the state's ideological commitments, and one that is seemingly motivated solely by human rights considerations. We document a "humanitarization" of asylum provisions, meaning that a growing number of states have adopted the latter version. Part V presents an empirical analysis identifying the correlates of right to asylum provisions. While the analysis is merely exploratory and cannot be used to make causal claims, it reveals that high age-dependency ratios and a large number of citizens that reside as refugees abroad are both positively associated with the adoption of constitutional asylum provisions.

The Article concludes on an optimistic note. It notes that, in the realm of human rights enforcement, self-interest is not necessarily alarming, surprising, or even unwanted. A body of literature suggests that when rights commitments align with national interests, governments are much more likely to uphold them.³² While this Article does not explore the impact of constitutional asylum provisions directly, we suggest that the self-interested motivations for enshrining rights actually increase the prospects of the right to asylum being more than just empty or aspirational promises.³³

I

THE RIGHT TO ASYLUM IN HISTORY

Mass migrations, refugees, and torn-apart countries forcing people to seek refuge in another place are not new. The

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& Mila Versteeg, *International Law in National Legal Systems: An Empirical Investigation*, 109 AM. J. INT'L L. 514, 518 (2015).

³¹ See Donald S. Lutz, *Toward a Theory of Constitutional Amendment*, in RESPONDING TO IMPERFECTION: THE THEORY AND PRACTICE OF CONSTITUTIONAL AMENDMENT 237, 260–62 (Sanford Levinson ed., 1995).

³² See *infra* notes 354–60 and accompanying text.

³³ See generally David S. Law & Mila Versteeg, *Sham Constitutions*, 101 CALIF. L. REV. 863, 871 (2013) (finding that a substantial portion of the world's constitutions can be characterized as "sham constitutions," in that their promises are not upheld).

institution of asylum is not new either. As one commentator observed, “[a]sylum for political refugees is an ancient practice, privilege and problem” that “has shown a remarkable capacity for institutional survival, albeit with accommodations, in the vicissitudes of changing international relations.”³⁴ Although the study of the scale and complexity of the problem of displaced individuals was not fully undertaken until 1951 when the Office of the United Nations High Commissioner for Refugees (UNHCR) was founded,³⁵ domestic systems even before then often compelled themselves to define the obligations and responsibilities toward foreign nationals. In fact, prior to the establishment of nation-states and the national laws and constitutions that recognize the right to asylum, the idea was found in the religious laws, traditions, and practices of many societies, making it a “remarkably constant feature of human history.”³⁶

One of the noteworthy features of many of the early asylum cases is that it often appeared to serve the interest of the nation granting it. From antiquity to the mid-twentieth century, asylum was the right of a nation or society to disobey the requests of another sovereign to return its escaping refugees. It was an expression of one’s sovereignty—the right to defy the will of another country by refusing to send back a refugee was a manifestation of autonomy, self-determination, independence, and even military fearlessness. In other instances, however, the right appeared at least on the surface to be more selfless in character and motivated by humanitarian purpose. While a full historical review of the right to asylum is beyond the scope of this Article, the purpose of this Part is to illustrate that the dual nature that characterizes asylum provisions today, alternating between self-interest and apparent selflessness, can be found throughout history.³⁷

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³⁴ Otto Kirchheimer, *Asylum*, 53 AM. POL. SCI. REV. 985, 985 (1959).

³⁵ See FIFTY YEARS OF HUMANITARIAN ACTION, *supra* note 10, at 13–22 (cataloging the few international efforts to solve refugee issues prior to the creation of the UNHCR and defining one of its primary functions as “to seek permanent solutions to the problem of refugees”).

³⁶ UNHCR, THE STATE OF THE WORLD’S REFUGEES 2006: HUMAN DISPLACEMENT IN THE NEW MILLENNIUM 31 (Nada Merheb et al. eds., 2006).

³⁷ Also note that there are important differences between the early cases and the current legal protections that are not brought out in our analysis.

A. Ancient Greece and Rome

The word “asylum” traces back to Ancient Greece.³⁸ It comes from the Greek *sylao*, and translates literally to mean “without capture, without violation, without devastation.”³⁹ The idea of asylum was indeed prevalent in Ancient Greek history. Herodotus describes, for instance, the case of Adrastus who, after unwittingly killing his brother, sought refuge in Sardis where he was welcomed and courteously received by King Croesus, who offered him protection.⁴⁰

Ancient Greek theater and literature also referred to asylum in its storylines. In Sophocles’ *Oedipus Rex*, the mythological hero, Oedipus, after solving the Sphinx riddle, frees the town of Thebes and assumes its throne only to later seek refuge in Athens due to persecution. Athenian King Theseus grants Oedipus protection, as he, too, was forced to hide in foreign lands to escape his enemies.⁴¹ Similarly, the protection and proper treatment of strangers is a recurring theme of Homer’s *Odyssey*.⁴²

The concept of refuge also received attention from Plato who, emphasizing the humanitarian dimension of asylum, wrote that “[t]he foreigner, isolated from his fellow countrymen and his family should be the subject of greater love on the part of men and of the Gods.”⁴³ Thus understood, for Plato, “the protection of the foreigner was based on his defenselessness, a consequence of his isolation from his people, from his family. The moral justification of protecting the foreigner provides the basis for asylum.”⁴⁴ Later, in other texts, as exemplified in

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³⁸ However, references to asylum have also been found in cultures and early societies in the Middle East, such as Assyrians, Hittites, and the ancient Egyptians. The earliest known refugee treaty, the Treaty of Kadesh from the thirteenth century B.C., was between the Hittites King Hatusil III and Egypt’s ruler Pharaoh Rameses II. See Gil-Bazo, *supra* note 16, at 20. In the Treaty of Kadesh, the Hittite king declared that “when a refugee comes from [the Egyptian] land into mine, he will not be returned to [Egypt]. To return a refugee from the land of the Hittites is not right.” DARREN J. O’BYRNE, *HUMAN RIGHTS: AN INTRODUCTION* 343 (2003). The Egyptian ruler indeed later offered asylum to a displaced Hittite king, Urhi-Teshup. *THE CHALLENGE OF PROTECTION*, *supra* note 29.

³⁹ Waldo Villalpando, *Asylum in History*, in *AN INSTRUMENT OF PEACE: FOR FORTY YEARS, UNHCR ALONGSIDE REFUGEES* 33, 36 (Lionello Boscadi et al. eds., 1991); see ATLE GRAHL-MADSEN, *THE STATUS OF REFUGEES IN INTERNATIONAL LAW: ASYLUM, ENTRY AND SOJOURN* 3 (1972).

⁴⁰ See 2 J. TALBOYS WHEELER, *THE LIFE AND TRAVELS OF HERODOTUS IN THE FIFTH CENTURY BEFORE CHRIST* 254–55 (1856).

⁴¹ See Villalpando, *supra* note 39, at 34–35.

⁴² See *THE ODYSSEY OF HOMER* (Richmond Lattimore trans., Harper & Row 1967); Villalpando, *supra* note 39, at 34–35.

⁴³ Villalpando, *supra* note 39, at 44.

⁴⁴ *Id.*

Oedipus Rex, the "basis is ascribed to obligation to reciprocate."⁴⁵ When Oedipus asks for asylum, Theseus acquiesces, proclaiming that he, too, grew up in a foreign land.⁴⁶ As such, in these early accounts from Ancient Greece, the concept of asylum was understood as a privilege granted upon strangers, justified as a moral obligation, regardless of any economic and political benefits. Under what conditions asylum was actually granted, and for what reasons, is a separate question beyond the scope of our inquiry. Noteworthy for our purposes are the ancient roots of this moral obligation.

B. The Judeo-Christian Tradition

The right to asylum is also found in the Judeo-Christian tradition. In fact, the Hebrew tradition is founded upon the act of hospitality, when Abraham, the biblical patriarch, is visited by three pilgrims. Abraham washes the pilgrims' feet, offers them bread, milk, and his best calf for a meal. Unbeknownst to Abraham, the strangers are two angels and God himself, who tell Abraham that Sarah, his elderly wife, would give birth to a son. The following year, Sarah, despite nearing her 100th birthday, gave birth to Isaac, one of the three patriarchs of the Israelites.⁴⁷ "It is not surprising therefore that Mosaic Law contains various precepts concerning the protection of the foreigner, whether by asylum or by the granting of hospitality."⁴⁸ Indeed, in the Old Testament, the command to provide refuge comes directly from God. In the Book of Numbers, God orders Moses to select six cities as places of sanctuary "for the children of Israel, and for the stranger, and for the sojourner among them . . . ."⁴⁹

The Bible is replete with other illustrations. Leviticus commands: "Do not mistreat foreigners who are living in your land. Treat them as you would a fellow Israelite, and love them as you love yourselves. Remember that you were once foreigners in the land of Egypt."⁵⁰ Deuteronomy is even more forceful when it proclaims that "[i]f a slave runs away from his owner and comes to you for protection, do not send him back. He may

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⁴⁵ *Id.*

⁴⁶ *Id.*; see SOPHOCLES, *Oedipus at Colonus*, in SOPHOCLES I, at 77, 79, 106 (David Grene & Richmond Lattimore eds., 2d ed. Univ. of Chi. Press 1991).

⁴⁷ *Genesis* 21:1-3 (King James).

⁴⁸ Villalpando, *supra* note 39, at 40.

⁴⁹ *Numbers* 35:9-15 (King James).

⁵⁰ *Leviticus* 19:33-34 (Good News).

live in any of your towns that he chooses, and you are not to treat him harshly.”⁵¹

The Hebrew tradition considers providing asylum to be a responsibility originating from God.⁵² Indeed, “[s]cholars agree that while there are early records of asylum provided by secular authorities, the origins of the concept lie in the religious realm. It was assumed that there were areas which stood under the special protection of divine authority and upon which human beings must therefore not infringe.”⁵³

The idea that a special, religiously commanded duty was owed to displaced foreigners, regardless of any material benefits derived from it, is similarly enshrined in the Christian tradition, where one of the conditions for salvation is to provide help to a stranger.⁵⁴ At Final Judgment, God is depicted as blessing the virtuous, proclaiming: “I was a stranger, and ye took me in . . . .”⁵⁵ When God destroyed the city of Sodom, he spared only the few righteous men who had offered refuge and protection against the threats of the locals to the two angels visiting the city.⁵⁶ Indeed, the concept of persecution and seeking belonging is deeply ingrained in the Bible. Christ was himself a refugee. His family fled to Egypt to avoid persecution by the tyrannical King Herod.⁵⁷ Later in life, Jesus was again displaced while preaching the Gospel, had “no place to lay his head,”⁵⁸ and was rejected in his hometown of Nazareth.⁵⁹

Just as in Ancient Greece, the obligation to reciprocate emerged as justification of offering protection to strangers. Moses, for instance, reminds the Hebrew people that “you also were foreigners in Egypt” and compels them to accept refugees.⁶⁰ While a full exploration of asylum during this period is beyond the scope of this Part, and we have little information on how the right played out in practice, the ideal of asylum in the Judeo-Christian tradition appears to be influenced by humanitarian concerns. It was further motivated by reciprocity: the grant of asylum to strangers in need was a recognition of the

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⁵¹ *Deuteronomy* 23:15–16 (Good News).

⁵² See SCHUSTER, *supra* note 16, at 91–92 n.15; *Psalms* 146:9 (King James).

⁵³ W. GUNTHER PLAUT, EIGHT DECADES: THE SELECTED WRITINGS OF W. GUNTHER PLAUT 341 (2008).

⁵⁴ See, e.g., *Genesis* 19:1–12 (recounting a story of God sparing men who offered refuge to visiting angels).

⁵⁵ *Matthew* 25:35–40 (King James).

⁵⁶ See *Genesis* 19:8 (King James).

⁵⁷ See *Matthew* 2:12–16 (King James).

⁵⁸ *Matthew* 8:20 (New International).

⁵⁹ See *Luke* 1:14–31 (King James).

⁶⁰ Villalpando, *supra* note 39, at 44.

uncertainty of the world where those providing shelter today may be forced to seek refuge tomorrow.

C. The Islamic Tradition

The early period of the Muslim faith begins with an exiled prophet. Soon after the beginnings of Islam, Mohammed and his followers fled persecution by opponents of the new religion. The escape from Mecca to Medina in 622 A.D., known as the Hijra, denotes the inaugural year in the Islamic calendar. Although the prophet eventually returned to Mecca, "his remains still lie in the city which granted him asylum."⁶¹

The Quran clearly delineates the sanctity of extending asylum by proclaiming that "[t]hose that have embraced the Faith and fled their homes and fought for the cause of God, and those that have sheltered them and helped them—they are the true believers."⁶² Indeed, Allah comforted the exiled Mohammed with the reassurances:

[t]he life to come holds a richer prize for you than this present life . . . . Did He not find you an orphan and give you shelter? Did He not find you in error and guide you? Did He not find you poor and enrich you? Therefore do not wrong the orphan, nor chide away the beggar. But proclaim the goodness of your Lord.⁶³

In these accounts, the concept and grant of asylum appeared to be tied more closely to the identity of those seeking protection. Thus, in the Islamic tradition, asylum is expressed not as the right of the protection-seeking individual but rather as a religious instrument, much like a political tool, dispensed to protect people of similar affiliation, political ideology and aspirations, or, as in this case, religious sentiments.⁶⁴ While we lack information on how the right played out in practice, the Islamic case shows how more instrumental justifications for asylum began to emerge.

D. Toward Modernity

The granting of sanctuary in ancient times was primarily the purview of religious institutions; over time, it gradually

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⁶¹ *Id.* at 42.

⁶² THE KORAN 8:74 (N. J. Dawood trans., 50th Anniversary ed. Penguin Books 2006).

⁶³ *Id.* at 93:3–11.

⁶⁴ See, e.g., *id.* (showing Allah reassuring Mohammed and telling him to provide shelter and aid to others as it had been provided to himself).

shifted to the realm of kings and monarchs.⁶⁵ A parallel shift occurred from asylum as a reflection of the faith-based commandment to provide refuge to outsiders in need to an expression of sovereignty, and, on occasion, defiance.⁶⁶ For instance, in the sixteenth century, King Henry VIII of England established seven “cities of refuge” to replace the previously existing Church-operated sanctuaries.⁶⁷ At that time, the Reformation forced both the Huguenots from France and Protestants from Belgium to flee, seeking protection.⁶⁸ For Britain, which accepted the fleeing masses, the political turmoil offered practical and material economic benefits. Britain saw the incoming foreigners “as a source of skills and capital” and provided them with sanctuary.⁶⁹ Shortly thereafter, the revocation of the Edict of Nantes in 1685 forced thousands of Protestants to flee France in hopes of finding shelter in Prussia and Brandenburg.⁷⁰ For Brandenburg’s ruler Frederick William, the incoming foreigners were invaluable as a source of “expertise, mercantile skills[,] and manpower.”⁷¹

With the emergence of the nation-state system following the Peace of Westphalia in 1648, countries began to forge a system of international relations.⁷² Its bedrock was the recognition of truly independent sovereigns, and the power to grant asylum became inevitably tied to nations’ efforts to proclaim their sovereignty and legitimacy.⁷³ In the context of countries’ often futile demands for extradition of political asylees, it became apparent that asylum would forever become a source of tension and an instrument of political posturing, capable of strengthening one sovereign at the expense of another.⁷⁴

The identity of refugees changed over time, as “the category of refugees fleeing political rather than religious persecution

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⁶⁵ See, e.g., THE CHALLENGE OF PROTECTION, *supra* note 29, at 33 (noting that King Henry VIII replaced Church-operated sanctuaries with “cities of refuge” in the 16th century).

⁶⁶ See *id.* at 33 (“As the power of the monarchy grew, the right to grant asylum increasingly became the prerogative of the state and the inviolability of internal asylum in holy places declined correspondingly.”).

⁶⁷ *Id.*

⁶⁸ See SCHUSTER, *supra* note 16, at 74.

⁶⁹ *Id.*

⁷⁰ See O’BYRNE, *supra* note 38, at 343.

⁷¹ SCHUSTER, *supra* note 16, at 76.

⁷² See *id.* at 74–75.

⁷³ See *id.* at 75.

⁷⁴ *Id.* at 76 (“[S]tates which granted asylum were threatened with war, for granting asylum was regarded as a hostile act, in which the asylum-granting state undermined the sovereignty of the prosecuting state, while at the same time granting asylum was seen as a way of asserting sovereignty.”).

began to gain prominence" after the French Revolution.⁷⁵ Soon, legal scholars began to recognize that "a right to refuge creates demands on one state by another, as a refugee from one is protected in another, thereby restricting that power of states to prosecute."⁷⁶ Others pointed out that "it is unjust that an individual state, by allowing unrestricted freedom of residence and action to dangerous revolutionaries, endangers many other states."⁷⁷ Thus, the debate revolved around asylum as a political tool and its international implications. At the same time, in 1848, however, British Lord Palmerston, in a letter to Russian and Hungarian ambassadors, emphasized for the first time that "the granting of asylum was tied to the demands of humanity."⁷⁸ Nevertheless, scholars continued to frame asylum from the perspective of the granting state, rather than as a self-standing subjective right for the individual.⁷⁹ In fact, asylum's shift from a policy instrument wielded by a nation to a human right held by those seeking sanctuary did not occur until the beginning of the twentieth century.⁸⁰

E. The American Experiment

Although the United States has never recognized a right to asylum in its constitution, it unarguably has itself been an asylum and its history has been intertwined with the concept of sanctuary since the discovery of the New World. During the seventeenth and early eighteenth centuries, against the backdrop of British colonial mercantilism, the North American colonies became a place of refuge for "the very scum of the earth."⁸¹ As the British Crown sought to build a vast empire, it remained anxious that the New World would drain Britain's human capital of the most productive and skilled of men, causing depopulation. As such, the United States became a solution to the Crown's pressing problem at home—the influx of French and

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⁷⁵ THE CHALLENGE OF PROTECTION, *supra* note 29, at 33.

⁷⁶ AUGUST VON BULMERINCQ, DAS ASYLRECHT IN SEINER GESCHICHTLICHEN ENTWICKLUNG BEURTHEILT VOM STANDPUNKTE DES RECHTS UND DESSEN VÖLKERRECHTLICHE BEDEUTUNG FÜR DIE AUSLIEFERUNG FLÜCHTIGER VERBRECHER 7-8 (1853).

⁷⁷ ROBERT VON MOHL, REVISION DER VÖLKERRECHTLICHEN LEHRE VOM ASYLE 1-11 (1853).

⁷⁸ SCHUSTER, *supra* note 16, at 79.

⁷⁹ See, e.g., ANDREAS WEDER, ZUR BEHANDLUNG DER POLITISCHEN VERBRECHER IM INTERNATIONALEN STRAFRECHT 16 (1887) ("Just as life is the most important right of the individual, so its sovereignty, its existence, is the foremost right of the state. The political [refugee] is, from the perspective of states, *a priori* unforgivable.").

⁸⁰ See THE CHALLENGE OF PROTECTION, *supra* note 29, at 33.

⁸¹ MARILYN C. BASELER, "ASYLUM FOR MANKIND": AMERICA, 1607-1800, at 32 (1998) (quoting CALENDAR OF STATE PAPERS, COLONIAL SERIES, 1574-1660, at 155 (W. Noel Sainsbury ed., 1964)).

German Protestants fleeing religious persecution and hardship. In an effort to supply the colonies with much-needed laborers, the Crown decided to relocate to the New World its “people not her own,”⁸² who the Crown felt drained Britain’s resources at home, such as beggars, felons, poor children, vagrants, immigrants, and African slaves.

These “undesirables” were offered refuge in the United States, which became since then, in Thomas Paine’s words, the “asylum for mankind.”⁸³ The American colonies, angered by Britain’s immigration policies, attempted to limit the influx of convicts and slaves by local laws, which Britain quickly vetoed.⁸⁴ The colonies then turned to measures intended to entice the immigration of wealthier and more skilled groups of people. Such attempts were struck down by England as well. In fact, in 1773, royal colonial governors were directed by the Crown to not acquiesce to any bills allowing for the naturalization of, or any land grants to, foreigners.⁸⁵ As a consequence, the Declaration of Independence accused the British of attempting to “to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners, refusing to pass others to encourage their immigration thither.”⁸⁶

That time instilled America’s image as asylum for the religiously persecuted, dispossessed, and poor, and “the best poor man’s country.”⁸⁷ The colonies were built upon the political, economic, and religious oppression of their early citizens, and the memory of the British colonial asylum never faded. After the American Revolution, the colonies saw themselves as torchbearers of liberty, and American asylum, now greatly expanded, was an expression thereof.⁸⁸ Asylum was imbued with political significance. For the colonies, “a nation’s wealth and power expanded along with its population”;⁸⁹ new settlers were needed to cultivate land, strengthen the borders, battle the Native Americans, and balance out the substantial African-

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⁸² *Id.* at 34–38 (quoting WALTER ALLEN KNITTLE, *EARLY EIGHTEENTH-CENTURY PALATINE EMIGRATION: A BRITISH GOVERNMENT REDEMPTIONER PROJECT TO MANUFACTURE NAVAL STORIES* 27 (1937)).

⁸³ *TRACTS OF THE AMERICAN REVOLUTION, 1763–1776*, at lxi (Merrill Jensen ed., 1966) (citing Thomas Paine as proclaiming, “O! receive the fugitive and prepare in time an asylum for mankind”).

⁸⁴ BASELER, *supra* note 81, at 124–25.

⁸⁵ *Id.* at 125.

⁸⁶ *Id.* at 126 (quoting *THE DECLARATION OF INDEPENDENCE* para. 9 (U.S. 1776)).

⁸⁷ *Id.* at 88.

⁸⁸ *Id.* at 331.

⁸⁹ *Id.*

American population. Although asylum was born out of a philosophical principle, it was later rooted in a political and economic exigency for the early colonies. The continuous addition of new labor allowed the emerging country to grow and flourish.

Soon, the enthusiasm for the incoming masses turned to ambivalence and the United States slowly began to consider measures to curb the influx—a change that clashed with its image as a world haven. The first national legislation imposing restrictions on immigration, the Alien Act, was passed in 1798, although individual states began to deal with the issue much earlier.⁹⁰ In 1782, Georgia passed a bill mandating “that no Person a Native of Scotland, shall be permitted or allowed to emigrate into this State with intent to Settle within the same.”⁹¹ Limiting the immigration of foreigners perceived as a threat to the unity of the emerging American nation became a priority.

In sum, British asylum was an instrument of state and economic power, ensuring the continuity of a vast empire while remedying a brewing domestic problem; it was a pragmatic device serving the state more than it served the involuntary refugees.⁹² Later, Americans embraced the idea of asylum, which they recognized as offering military and economic advantages for the growing colonies, and encouraged immigration with low taxes, free land, and inheritance rights for aliens. It was still, nevertheless, a device to bolster a state’s economic growth and stand up against British subjectship. Thus, British immigration policy during the colonial period and the American asylum were both political devices. Although for post-revolutionary thinkers asylum stemmed from the deeply entrenched notions of liberty and freedom from an oppressor upon which America was built, contrary impulses slowly emerged. Once the immediate goals of the colonies were achieved and the influx of new immigrants no longer served a clear economic or political purpose, the wariness about foreigners grew and immigration restrictions expanded.⁹³

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⁹⁰ *Id.* at 13, 147.

⁹¹ *Id.* at 147.

⁹² *See id.* at 70–71.

⁹³ For instance, the Naturalization Act of 1790 limited asylum to whites only. *See* 1790 Naturalization Act, ch. 3, 1 Stat. 103, *repealed by* Act of Jan. 29, 1795, ch. 20, 1 Stat. 414.

II

THE RIGHT TO ASYLUM IN INTERNATIONAL LAW

The international law literature is characterized by substantial confusion over the contours and substance of the right to asylum.⁹⁴ The confusion appears to stem at least in part from the fact that, while international law grants various protections to refugees, it does not directly provide a right for refugees to be granted asylum, that is, to enjoy long-term legal protections in the host country.⁹⁵ Since the right to be granted asylum is not found in international law itself, any attempt to define its content draws from various legal systems, which may themselves lack clear definitions of the right, or from moral principles. This Part will describe the status of asylum in international law and summarize the various attempts in the literature to define its content. Doing so will set the stage for moving our inquiry to national constitutions in Part III.

A. International Legal Obligations Toward Refugees

Over the past decades, international law has placed a robust set of obligations on states to grant certain protections to certain groups of non-citizens under certain circumstances.⁹⁶ When refugees reach foreign shores, these international legal obligations tend to be a natural focal point for activists seeking to remind states of their humanitarian commitments. Indeed, much of the debate in the current refugee crisis has played out with reference to the main international legal documents: the Refugee Convention and its Refugee Protocol, as well as the International Covenant on Civil and Political Rights.⁹⁷ Because international law tends to be the starting point for analyzing states' legal obligations toward refugees, it is also the starting point for our analysis.

The legal status of the right to asylum in international law was famously described by Professor Grahl-Madsen as consist-

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⁹⁴ See Kay Hailbronner, *Refugees and Asylum: The West German Case*, 8 WASH. Q. 183, 183 (1985) (suggesting that the right to asylum has been one of the most difficult rights to define); Paul Weis, *Recent Developments in the Law of Territorial Asylum*, 1 HUM. RTS. J. 378, 378 (1968) ("[T]he loose use of the term 'right of asylum' leads to confusion . . .").

⁹⁵ See *supra* and *infra* notes 82–120 and accompanying text.

⁹⁶ For an overview, see T. Alexander Aleinikoff, *International Legal Norms and Migration: A Report*, in MIGRATION AND INTERNATIONAL LEGAL NORMS 1 (T. Alexander Aleinikoff & Vincent Chetail eds., 2003).

⁹⁷ See, e.g., E. Tendayi Achiume, *Syria, Cost-sharing, and the Responsibility to Protect Refugees*, 100 MINN. L. REV. 687 (2015); Andrew I. Schoenholtz, *The New Refugees and the Old Treaty: Persecutors and Persecuted in the Twenty-First Century*, 16 CHI. J. INT'L L. 81 (2015).

ing of three distinct components: (1) the right of a state to grant asylum; (2) the right of an individual to seek asylum; and (3) the right of an individual to be granted asylum.⁹⁸ The first aspect, the right to *grant* asylum, is inherent in state sovereignty.⁹⁹ It is a well-established principle of international law that each sovereign state has complete and independent control over its admission policies, conditions, and their justifications. As part of this, "every sovereign state has the right to grant or deny asylum to persons located within its boundaries."¹⁰⁰

The second aspect, the right of an individual to *seek* asylum and, as such, leave his home state with the intention to obtain refuge in another country, is enshrined in numerous international and regional legal instruments. For instance, Article 13(2) of the Universal Declaration of Human Rights proclaims that "[e]veryone has the right to leave any country, including his own."¹⁰¹ Similarly, Article 12(2) of the International Covenant on Civil and Political Rights (ICCPR) states that "[e]veryone shall be free to leave any country, including his own."¹⁰² The essence of this right is the notion that "a State may not claim to 'own' its nationals or residents."¹⁰³

The third facet of the right of asylum, undeniably most crucial, is the right of an individual *to receive* asylum. Currently, international law does not recognize a person's right to be granted asylum; rather, this is a decision ultimately left to the sovereign state.¹⁰⁴ While the Refugee Convention places the obligation upon states to extend certain protections to those who meet the definition of refugee, there is no international legal obligation to grant asylum.¹⁰⁵

This omission is not an oversight. The drafting history of the Universal Declaration of Human Rights reveals as much. Although the original draft of Article 14 of the Universal Decla-

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⁹⁸ See ATLE GRAHL-MADSEN, TERRITORIAL ASYLUM 2 (1980).

⁹⁹ See *id.* at 23.

¹⁰⁰ Boed, *supra* note 16, at 3.

¹⁰¹ Universal Declaration of Human Rights, art. 13, ¶ 2, G.A. Res. 217A, U.N. Doc. A/810 (Dec. 10, 1948).

¹⁰² International Covenant on Civil and Political Rights, art. 12, ¶ 2, Dec. 16, 1966, 99 U.N.T.S. 171, 176.

¹⁰³ GRAHL-MADSEN, *supra* note 39, at 26.

¹⁰⁴ See GOODWIN-GILL & MCADAM, *supra* note 12, at 149.

¹⁰⁵ See GRAHL-MADSEN, *supra* note 39, at 2; DANIELE JOLY, REFUGEES: ASYLUM IN EUROPE? 16 (1992) ("[I]t is the sole prerogative of the recipient state to recognize refugees and grant them asylum on its territory."); Hailbronner, *supra* note 94, at 183-84 (noting that the "right of asylum" is understood as the right of a State to *grant* asylum, where a state "remain[s] under no obligation to grant asylum . . . to refugees").

ration of Human Rights stated that “[e]veryone has the right to seek and *be granted*, in other countries, asylum from persecution,” after objections by Australian, British, and Saudi Arabian representatives, the provision was amended to vest the right entirely within the state.¹⁰⁶ The new Article 14 does not oblige the states to grant asylum; rather, it removes the phrase “to be granted” and substitutes the benign words “to enjoy,” depriving Article 14 of any pledges, guarantees, or obligations toward an individual by nations.¹⁰⁷ Even more emphatically, Article 1, paragraph 3 of the 1967 United Nations Declaration on Territorial Asylum vests in each state the authority “to evaluate the grounds for the grant of asylum.”¹⁰⁸

The primary international instruments concerned with refugees, the 1951 Convention relating to the Status of Refugees¹⁰⁹ and its 1967 Protocol relating to the Status of Refugees,¹¹⁰ likewise do not provide a right to be granted asylum.¹¹¹ These documents do offer important, albeit temporary, protections to refugees.¹¹² For example, they require that states not send refugees back to a country where they would be in danger (the principle of non-refoulement),¹¹³ not impose

¹⁰⁶ Draft International Declaration of Human Rights, G.A. Draft Res. 3/285 Rev.1, U.N. Doc. A/C. 3/285/Rev.1, at 1 (Oct. 30, 1948) (emphasis added); see Felice Morgenstern, *The Right of Asylum*, 26 BRIT. Y.B. INT’L L. 327, 336–37 (1949).

¹⁰⁷ Universal Declaration of Human Rights, art. 14, ¶ 1, G.A. Res. 217A, U.N. Doc. A/810 (Dec. 10, 1948); see Morgenstern, *supra* note 106, at 336–37.

¹⁰⁸ Declaration on Territorial Asylum, art. 1, ¶ 3, G.A. Res. 2312, U.N. GAOR, 22d Sess., Supp. No. 16, at 81, U.N. Doc. A/6912 (Dec. 14, 1967); see also Paul Weis, *The Draft United Nations Convention on Territorial Asylum*, 50 BRIT. Y.B. INT’L L. 151, 152 (1981) (explaining that the intent behind Article 14(1) was “to make it clear that asylum was not a right of the individual but the right of States to grant asylum”).

¹⁰⁹ Refugee Convention, *supra* note 13.

¹¹⁰ Refugee Protocol, *supra* note 13.

¹¹¹ UNHCR, HANDBOOK AND GUIDELINES ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS UNDER THE 1951 CONVENTION AND THE 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES 8 (2011) (“[T]he granting of asylum is not dealt with in the 1951 Convention or the 1967 Protocol.”).

¹¹² See MARTIN ET AL., *supra* note 14, at 56–57 (“The right to engage in employment, broad access to the housing market, and the right to public assistance or social security, for example, apply only to refugees lawfully staying in the country—i.e., those who have received some type of durable residence rights. Merely proving that one meets the refugee definition does not give a refugee any entitlement to lawful residence . . . . States retain discretion under the Convention to bestow or withhold both lawful status and residence rights.”); Stephen B. Young, *Between Sovereigns: A Reexamination of the Refugee’s Status*, 3 MICH. Y.B. INT’L LEGAL STUD. 339, 346–47 (1982) (“The conventions themselves do not provide either for automatic refuge or permanent resettlement.”).

¹¹³ Refugee Convention, *supra* note 13, art. 33, at 6267; see also Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punish-

penalties upon refugees for illegal entry,¹¹⁴ provide administrative assistance to refugees, and provide them with identity papers and travel documents,¹¹⁵ among other things. These conventions, moreover, require states to provide refugees with the privileges and protections of the right of association similar or equal to those “accorded to nationals of a foreign country, in the same circumstances,”¹¹⁶ as well as the “right to engage in wage-earning employment.”¹¹⁷ Finally, they require states to treat refugees similarly to “nationals” with respect to freedom of religion,¹¹⁸ access to court,¹¹⁹ elementary education¹²⁰ and social security,¹²¹ amongst other things. Notwithstanding these legal obligations, the state retains the right to decide whether to offer the refugee permanent legal status in the country; that is, to grant asylum.¹²² Short of that, all of these protections are only temporary; when a person ceases to be a refugee, they lose the protections under the Refugee Convention.¹²³

Like the Refugee Convention, various regional instruments similarly do not impose on the states any obligation to grant asylum. For instance, the American Declaration of the Rights and Duties of Man states in Article 27: “Every person has the right, in case of pursuit not resulting from ordinary crimes, to seek and receive asylum in foreign territory, in accordance with

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ment, art. 3, ¶ 1, 3(1) G.A. Res. 39/46, U.N. GAOR, 39th Sess., at 197, U.N. Doc. A139/51 (1984).

¹¹⁴ Refugee Convention, *supra* note 13, art. 31.

¹¹⁵ *Id.* art. 27–28.

¹¹⁶ *Id.* art. 15.

¹¹⁷ *Id.* art. 17(1).

¹¹⁸ *Id.* art. 4.

¹¹⁹ *Id.* art. 16.

¹²⁰ *Id.* art. 22.

¹²¹ *Id.* art. 24.

¹²² See Martin, *supra* note 14, at 1255 (explaining that the Refugee Convention does not guarantee asylum “even for those duly adjudged to be refugees under its provisions”); Paul Weis, *Legal Aspects of the Convention of 25 July 1951 Relating to the Status of Refugees*, 30 BRIT. Y.B. INT’L L. 478, 481 (1953) (explaining in relation to the Refugee Convention that in “international law as at present constituted, the so-called right of asylum is a right of States, not of the individual”); see also Morten Kjærum, *Article 14*, in THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: A COMMENTARY 220 (Asbjørn Eide et al. eds., 1992) (“[Generally,] States have been unwilling to pledge themselves in international conventions to the individual’s right to asylum.”).

¹²³ See Joan Fitzpatrick & Rafael Bonoan, *Cessation of Refugee Protection*, in REFUGEE PROTECTION IN INTERNATIONAL LAW: UNHCR’S GLOBAL CONSULTATIONS ON INTERNATIONAL PROTECTION 491, 493–94 (Erika Feller et al. eds., 2003), <http://www.unhcr.org/publ/PUBL/419dbce54.pdf> [<https://perma.cc/ARC6-WSPT>]; Joan Fitzpatrick, *The End of Protection: Legal Standards for Cessation of Refugee Status and Withdrawal of Temporary Protection*, 13 GEO. IMMIGR. L.J. 343, 348–49 (1999).

the laws of each country and with international agreements.”¹²⁴ Likewise, Article 22, paragraph 7 of the American Convention on Human Rights provides that “[e]very person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions.”¹²⁵ Similarly, neither the European¹²⁶ nor the African¹²⁷ regional instruments legally obligate states to guarantee asylum; the decision to grant protection remains vested with the state. Thus, while these documents place legal obligations upon states to offer protections to refugees, they give full discretion to states on whether to grant them permanent legal status.

Because international law does not impose on the states the obligation to *grant* asylum, there is a “gap between the individual’s right to seek asylum and the state’s discretion in providing it.”¹²⁸ Presently, the discretion to prescribe the criteria and conditions for the grant of asylum remains with the state.¹²⁹ As John Bassett Moore observed in 1908, “the right to grant asylum ‘is to be exercised by the government in the light of its own interests, and of its obligations as a representative of social order.’”¹³⁰ To the extent there is a right to asylum, its contours are defined in domestic legal systems, not international law.

B. The Substance of the “Right to Asylum”

Since international law does not protect the right to be granted asylum, the right has “no clear or agreed meaning”¹³¹ and is surrounded by confusion about what substantive legal

¹²⁴ American Declaration of the Rights and Duties of Man art. 27, May 2, 1948, O.A.S. Off. Rec. OEA/Ser. L/V/III 23, doc. 21, rev. 6 (1948).

¹²⁵ American Convention on Human Rights art. 22, ¶ 7, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123.

¹²⁶ European Convention on Human Rights and Fundamental Freedoms as amended by Protocol Nos. 11 and 14 and supplemented by Protocols Nos. 1, 4, 6, 7, 12 and 13, Nov. 4, 1950, 213 U.N.T.S. 221.

¹²⁷ OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, Sept. 10, 1969, art. II, ¶ 1, 1001 U.N.T.S. 45, 193, 195 (“States . . . shall use their best endeavors consistent with their respective legislation to receive refugees.”).

¹²⁸ THE CHALLENGE OF PROTECTION, *supra* note 29, at 32.

¹²⁹ See SCHUSTER, *supra* note 16, at 1 (“Asylum is a right of states, not of individuals, whose only right is to request and to enjoy asylum once it is granted . . .”).

¹³⁰ GOODWIN-GILL & MCADAM, *supra* note 12, at 356 (quoting 2 JOHN BASSETT MOORE, A DIGEST OF INTERNATIONAL LAW 757 (1906)).

¹³¹ GRAHL-MADSEN, *supra* note 98, at 50.

obligations are entailed by it.¹³² Some scholars have used the existing international legal obligations of states toward refugees to give content to the right to asylum. For example, Professor Schuster suggests that asylum is merely “the absence of extradition than an active protection of an individual.”¹³³ Professor Clark provides a more extensive list of obligations, which include the obligation “to admit a person to the territory of the State, to allow the person to remain there, to refuse to expel [the person], to refuse to extradite [the person] and not to prosecute, punish, or otherwise restrict the person’s liberty.”¹³⁴ These obligations, however, are already enshrined within the Refugee Convention.¹³⁵ Thus, for these scholars, the substance of the right to asylum equates the rights that refugees enjoy under international law. The idea here is that the imparting of refugee status under the Refugee Convention approximates an asylum grant.¹³⁶ As Professor Boed puts it, “Permission to sojourn in a country without a formal grant of asylum provides the individual with refuge, which amounts to *de facto* asylum.”¹³⁷

Others have suggested that the substance of the right to asylum goes beyond what is provided by international law.¹³⁸ After all, if international law does not provide a right to be granted asylum, then a right to asylum entails something not currently provided by international law. According to a number of commentators, what distinguishes the right to asylum from refugee protections under international law is a certain

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¹³² See Hailbronner, *supra* note 94, at 183 (arguing that the right of asylum has been one of the most difficult human rights to define); Weis, *supra* note 94, at 378:.

¹³³ SCHUSTER, *supra* note 16, at 90.

¹³⁴ Tom Clark, *Human Rights and Expulsion: Giving Content to the Concept of Asylum*, 4 INT’L J. REFUGEE L. 189, 190 (1992).

¹³⁵ See generally Refugee Convention, *supra* note 13 (detailing the protections afforded to refugees).

¹³⁶ See, e.g., Susan M. Akram & Terry Rempel, *Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees*, 22 B.U. INT’L L.J. 1, 2–3 (2004) (“Temporary protection is widely regarded as an international legal norm now obligatory in certain circumstances on states with regard to their treatment of a mass influx of refugees, or of persons fleeing situations of armed conflict or civil strife. As a recognized status, it is the most recent of the three major possibilities for protection of refugees a state can offer—the other two being the now-universal obligation of non-refoulement (non-return) and the non-obligatory protection of political asylum.” (emphasis omitted) (footnotes omitted)).

¹³⁷ Boed, *supra* note 16, at 11 n.58.

¹³⁸ See David A. Martin, *The Refugee Concept: On Definitions, Politics, and the Careful Use of a Scarce Resource*, in REFUGEE POLICY: CANADA AND THE UNITED STATES 30, 32–33 (Howard Adelman ed., 1991).

degree of permanence.¹³⁹ Specifically, the obligations provided under international law are conditioned upon refugee status. When a person ceases to be a refugee, the host state is no longer obliged to offer these protections and can even return the person to his home state.¹⁴⁰ Once asylum is granted, however, a person's legal status transitions from that of a refugee under international law to that of an asylee governed by domestic law.¹⁴¹

Once asylum is granted, the asylee is permitted to take up permanent residence in a country.¹⁴² Refugees, although protected by non-refoulement and granted conditional stay, will always be refugees, living in a state of legal and existential limbo, with rights defined by that label. Asylum, by contrast, allows the unconditional access to all domestic rights and, in reality, a conversion from a refugee into a *de facto* citizen literally unconfined by the barbed wire of the refugee camp.¹⁴³ The grant of asylum thus ensures access to national rights, obligations, and privileges, such as the ability to work legally, to settle in any place in the host nation, to receive training and education, to have property rights, and, eventually, to vote and decide the course of that country.¹⁴⁴

Thus defined, the granting of asylum acts as a gateway to a new set of rights. As one commentator notes, the right to asylum "aims at reinstating civil rights on individuals or smaller social groups of persons who have lost citizenship in their countries of origin."¹⁴⁵ Indeed, it is often the lack of those fundamental rights that triggers emigration in the first place. Therefore, as another commentator notes, the right to asylum is the embodiment of the "general principle of human rights

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¹³⁹ See, e.g., *id.* (characterizing the right of asylum as "an indefinite right to stay").

¹⁴⁰ See A. Roman Boed, Comment, *Past Persecution Standard for Asylum Eligibility in the Seventh Circuit: Bygones Are Bygones*, 43 DEPAUL L. REV. 147, 176–77 (1993).

¹⁴¹ See Martin, *supra* note 14, at 1256 (stating that most Western countries have domestic asylum adjudication systems with the discretionary power to grant asylum status); see also Boed, *supra* note 140, at 158 (explaining that in the United States, the grant of asylum is entirely within the discretion of the U.S. Attorney General).

¹⁴² See, e.g., Boed, *supra* note 140, at 152–53 (describing the process for U.S. asylees to apply for permanent resident status).

¹⁴³ See Martin, *supra* note 138, at 32.

¹⁴⁴ This definition is closest to an attempted definition by Professor David Martin who characterized the right of asylum as "an indefinite right to stay, accompanied by a range of other rights that will facilitate a reasonably normal life in the new land." Martin, *supra* note 138, at 32.

¹⁴⁵ Heuser, *supra* note 17, at 5.

policy that there shall be no human being who is not the subject of civil rights,"¹⁴⁶ bridging civil and human rights. While different countries employ different administrative measures to provide legal residence, the key feature is that the asylee is allowed to permanently settle in a country and receives full access to citizenship rights.

III

ASYLUM AS A CONSTITUTIONAL RIGHT

Although international law requires the state to extend certain temporary protections to refugees, it leaves the non-obligatory protection of asylum within the realm of state sovereignty. At the same time, international law does not prevent states from limiting their own discretion to create adjudicatory systems with the discretionary power to grant asylum to some persons under domestic law. Thus, a version of the right to asylum that goes beyond the compulsory temporary refugee protections and acts as a gateway to civil rights may be found in the provisions of domestic law embodied in constitutional or statutory schemes.¹⁴⁷

This Part explores the distinctive features of asylum as a constitutional right. It shows that constitutions can, and often do, offer protections that go beyond those mandated by international law and that their entrenchment makes them impervious to changing political tides. At the same time, we explain that constitutionalizing asylum rights can serve a purpose other than merely providing sanctuary to refugees: it can further a state's social, economic, and foreign policy goals. It is therefore important to view constitutional asylum rights not only as mechanisms for protection but also as instruments of state power.

A. Constitutionalizing the Right to Asylum

International law does not stipulate how and when states should grant asylum to refugees. Yet, many states have taken it upon themselves to do so under domestic law. Many limit the

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¹⁴⁶ *Id.* at 7 ("[T]he right of asylum can be an integral part of a global political practice with the objective that nobody shall live in the state of exception.").

¹⁴⁷ See Gil-Bazo, *supra* note 16, at 11 (citing Professor Grahl-Madsen as stating that "[t]he idea that States might agree on a binding convention guaranteeing the individual a right to be granted asylum is not entirely utopian. As a matter of fact, in many countries there are provisions of municipal law laying down a more or less perfect right of asylum for individuals . . . . In some countries such provisions are embodied in the national constitutions; in others they are of statutory character." (quoting GRAHL-MADSEN, *supra* note 98, at 24)).

pool of eligible asylum-seekers by providing detailed guidelines on the right to asylum in administrative law. For example, Israeli asylum law is governed by an internal directive issued in 2002 by the Minister of the Interior entitled “Regulations Regarding the Treatment of Asylum Seekers in Israel,”¹⁴⁸ which, in conjunction with other immigration laws,¹⁴⁹ denies any possibility of immigration to Palestinians and citizens of several other Arab countries. The United States laid down guidelines for asylum in its Immigration and Nationality Act, passed in 1952 and amended repeatedly since, which delineates eligibility requirements, procedures, exceptions, and burdens of proof, among other things, governing the grant of asylum by the Secretary of Homeland Security or Attorney General.¹⁵⁰ Poland’s administrative scheme concerning asylum is similarly authorized by a parliamentary act, which prescribes the general conditions for granting asylum.¹⁵¹ Many other countries have likewise adopted detailed administrative guidelines on how and when asylum can be granted.

Importantly, when the requirements for asylum are defined in ordinary law, the state retains a large amount of flexibility to alter its policies in the face of changing refugee flows. Statutory rights limit the discretion of immigration officers; yet, they can be amended by a simple majority of the legislature.¹⁵² Thus, when faced with an influx of refugees, the legislature can repeal or modify any statutory rights that grant asylum to refugees without much difficulty. Regulatory schemes are even more flexible and can be altered when the executive changes course. Unsurprisingly, many states will prefer one of these

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¹⁴⁸ See ANAT BEN-DOR & RAMI ADUT, ISRAEL—A SAFE HAVEN? PROBLEMS IN THE TREATMENT OFFERED BY THE STATE OF ISRAEL TO REFUGEES AND ASYLUM SEEKERS 68–71 (2003) (reprinting the regulations in Annex A).

¹⁴⁹ See The Citizenship and Entry into Israel Law (temporary provision) 5763–2003, art. 2 (2003) (prohibiting the grant of citizenship or any legal status in Israel to all persons from Iran, Lebanon, Syria and Iraq, and Palestine, no matter the merits of their claim of persecution).

¹⁵⁰ 8 U.S.C. § 1158(b)(1)(A) (2012).

¹⁵¹ Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach, Dział I, Przepisy ogólne, Poz. 1650, Dziennik Ustaw Rzeczypospolitej Polskiej (Pol.).

¹⁵² See William N. Eskridge, Jr. & John Ferejohn, *Super-Statutes*, 50 DUKE L.J. 1215, 1215–16 (2001) (arguing that some statutes, such as the Civil Rights Act or the Sherman Antitrust Act, dubbed “super-statutes,” play a role analogous to that of constitutional amendments and, although not enshrined in the constitution, are nevertheless invulnerable to the electoral process and changing political coalitions); see also WILLIAM N. ESKRIDGE, JR. & JOHN FERREJOHN, A REPUBLIC OF STATUTES: THE NEW AMERICAN CONSTITUTION 26 (2010) (naming the Voting Rights Act of 1965 and the Pregnancy Discrimination Act of 1978 as examples of super-statutes).

approaches as it gives them the flexibility to respond to unpredictable waves of forced migrants.

By contrast, where a right to asylum is constitutionalized, a state pre-commits to granting asylum to certain groups and makes it harder for future popular majorities to renege on these commitments when political sentiments change. In almost all legal systems, constitutional law is supreme to ordinary law and impervious to changes by a simple majority of the legislature.¹⁵³ In federal systems, the assent of the majority of states is required.¹⁵⁴ A growing number of countries, including Australia, Colombia, and Brazil, amend their constitutions through a national referendum and citizen input.¹⁵⁵ Although amendment practices vary across states, almost all erect some boundaries against relatively easy change, thereby separating constitutional law from ordinary law.¹⁵⁶ Thus, where a right to asylum is constitutionalized, states effectively restrict their ability to make their response to refugees dependent on prevailing political sentiments.

Constitutional asylum rights thus provide a defense against changing political preferences, especially in the face of

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¹⁵³ See, e.g., Donald S. Lutz, *Toward a Theory of Constitutional Amendment*, 88 AM. POL. SCI. REV. 355, 360–65 (1994) (analyzing the constitutional amendment process of thirty-two countries). But while most countries make it harder to change the constitution than ordinary law, most states made their constitutional systems more flexible than the U.S. Constitution. See Mila Versteeg & Emily Zackin, *Constitutions Unentrenched: Toward an Alternative Theory of Constitutional Design*, 110 AM. POL. SCI. REV. 657, 662–64 (challenging that entrenchment is the defining feature of modern constitutionalism).

¹⁵⁴ See, e.g., U.S. CONST. art. V (“The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress . . .”).

¹⁵⁵ See Mila Versteeg, *Unpopular Constitutionalism*, 89 IND. L.J. 1133, 1144 fig.2 (2014) (showing graphically the growth of the number of countries that require the constitution to be ratified by referendum).

¹⁵⁶ See, e.g., Dieter Grimm, *Types of Constitutions*, in THE OXFORD HANDBOOK OF COMPARATIVE CONSTITUTIONAL LAW 98, 111 (Michel Rosenfeld & András Sajó eds., 2012) (discussing various countries’ heightened requirements for constitutional amendments); Tom Ginsburg & James Melton, *Does the Constitutional Amendment Rule Matter at All? Amendment Cultures and the Challenges of Measuring Amendment Difficulty*, 13 INT’L J. CON. L. 686, 688 (2015) (explaining the concept of constitutional flexibility); Lutz, *supra* note 153, at 360–65 (analyzing the constitutional amendment process of thirty-two countries).

a looming refugee crisis.¹⁵⁷ Indeed, “The fear of a deluge of poor and alien people overwhelming prosperous and relatively homogenous societies is an old one . . . .”¹⁵⁸ The international pressure to accept political refugees may engender xenophobia, exclusionary attitudes, and even fears of loss of national identity¹⁵⁹—sentiments expressed by many European countries and the United States in response to the Syrian migration crisis.¹⁶⁰ While constitutional provisions are unlikely to change such sentiments, the constitutional pre-commitment to the right of asylum has the potential to guarantee that, as statutory rights and regulatory schemes are restricted, expanded, debated, and tested, the commitment to grant admission to those in need remains effective and largely immune from the swinging pendulum of the political process.¹⁶¹ As such, the constitutionalization of asylum has the potential to protect the rights of minorities from democratic majorities that might be hostile to refugees.¹⁶²

Of course, constitutional protections are not impenetrable. Each of the mechanisms shoring up constitutions as pre-commitment devices, such as judicial oversight¹⁶³ or creating a demanding amendment process,¹⁶⁴ can be either overcome or circumvented.¹⁶⁵ When the political will to do so is large

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¹⁵⁷ THE CHALLENGE OF PROTECTION, *supra* note 29, at 32 (“Like many forms of altruism, however, [asylum] is vulnerable in times of trouble, when individuals and states tend to become preoccupied with their own interests.”).

¹⁵⁸ *Id.* at 38.

¹⁵⁹ *Id.* (“[I]n many countries, there are individuals and political parties eager to exploit such anxieties, and to direct confusion and insecurity into the path of xenophobia.”).

¹⁶⁰ See, e.g., Achiume, *supra* note 97, at 735 (discussing Swedish xenophobic discrimination against Syrian refugees).

¹⁶¹ Cf. Lutz, *supra* note 153, 360–65 (illustrating that constitutions are usually more difficult to amend than legislation).

¹⁶² Cf. Daryl J. Levinson, *Parchment and Politics: The Positive Puzzle of Constitutional Commitment*, 124 HARV. L. REV. 657, 673–75 (2011) (“An oft-cited benefit of constitutionalism is that it enables us to commit to normatively preferred policies in order to stand firm during moments when pathological politics might undermine these policies.”).

¹⁶³ Cf. Denis J. Galligan & Mila Versteeg, *Theoretical Perspectives on the Social and Political Foundations of Constitutions*, in SOCIAL & POLITICAL FOUNDATIONS OF CONSTITUTIONS 3, 20 (Denis J. Galligan & Mila Versteeg eds., 2013) (describing judicial review as a form of “political insurance” that gives authority to non-legislative bodies).

¹⁶⁴ See Mila Versteeg & Emily Zackin, *American Constitutional Exceptionalism Revisited*, 81 U. CHI. L. REV. 1641, 1671–72 (2014) (describing amendment rates in the world’s constitutions and in state constitutions and noting that many countries manage to update their constitutions frequently).

¹⁶⁵ Cf. Levinson, *supra* note 162, at 682–83 (suggesting that many social science theories on precommitment do not actually explain why constitutional constraints endure in the future).

enough, amendments can be passed. And when fear of terrorism is large enough, judges may defer to executives or their rulings might be ignored. Nonetheless, each of these mechanisms imposes significant costs on a government seeking to restrict or abolish constitutional promises. Ignoring judges may set off popular protests¹⁶⁶ or undermine the independence of the court.¹⁶⁷ Likewise, passing constitutional amendments requires substantial time and resources, especially when a referendum for the approval of constitutional reforms is required.¹⁶⁸ Thus, these costs and burdens are intended to serve as guarantors of constitutional commitments, making them more credible and durable than promises enshrined in ordinary law or policy.

B. Motivations for Constitutionalizing Asylum

Because constitutional provisions often go beyond international law in limiting states' discretion to grant asylum, these provisions are of particular interest to asylum-seekers. The existence of these provisions, however, raises the question about powerful sovereigns' intentions in adopting laws that restrict their ability to respond to refugee flows, especially when admitting refugees is economically costly and politically unpopular.¹⁶⁹ While it is possible that states, at least to some extent, are concerned with global welfare,¹⁷⁰ we have to entertain the possibility that it is in countries' own interest to do so. Particularly, constitutionalizing the right to asylum may bring certain benefits that outweigh the costs associated with its con-

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¹⁶⁶ Cf. Ran Hirschl, *The Political Origins of Judicial Empowerment Through Constitutionalization: Lessons from Four Constitutional Revolutions*, 25 LAW & SOC. INQUIRY 91, 100 (2000) (describing courts as fire alarms that can alert the public to violations).

¹⁶⁷ Russell Hardin, *Why a Constitution?*, in THE FEDERALIST PAPERS and the New Institutionalism 100, 101–02 (Bernard Grofman & Donald Wittman eds., 1989) (noting that a constitution “establishes conventions” that “make it easier for us to cooperate and to coordinate”).

¹⁶⁸ See Mila Versteeg, *The Politics of Takings Clauses*, 109 NW. U. L. REV. 695, 702 (2015) (discussing how various precommitment mechanisms ultimately merely increase the costs of noncompliance).

¹⁶⁹ See generally RAN HIRSCHL, TOWARDS JURISTOCRACY: THE ORIGINS AND CONSEQUENCES OF THE NEW CONSTITUTIONALISM 97–99 (2004) (discussing the intentions that sovereigns may have for constitutionalization).

¹⁷⁰ See David Golove, *The American Founding and Global Justice: Hamiltonian and Jeffersonian Approaches*, VA. J. INT'L L. (forthcoming 2017) (suggesting that the American Founders were not only concerned with domestic interests, but also with global welfare); Eyal Benvenisti & Mila Versteeg, *The External Dimensions of Constitutions*, VA. J. INT'L L. (forthcoming 2017) (describing self-interest and global welfare as possible motivations for extending constitutional protections to people beyond the nation's border).

stitutional recognition. This subpart describes four possible motivations for constitutionalizing the right to asylum: (1) asylum can serve as a foreign policy tool through which states can cast judgment on the rights practices of other states, (2) asylum can be used to support opposition groups abroad by providing them with exit options, (3) asylum can boost the economy in countries with an aging workforce, and (4) asylum can be used to broadcast a certain image of the state to the outside world, especially in the face of large migration outflows.

1. *Condemning Foreign States*

Perhaps the most obvious way in which the right to asylum can further a state's self-interest is by serving as a foreign policy tool. In this sense, the right to asylum is a unique right, capable of injecting itself onto the arena of international and foreign relations. Specifically, the act of granting rights to the citizens of a foreign nation can serve as a verdict on the rights practices or ideology of that nation. By granting asylum, a state can review and ultimately criticize the lack of access to basic human rights in another state. Indeed, where states grant asylum to citizens of foreign countries, they directly infringe upon the law-enforcing capabilities of those countries because asylum often protects the refugee from the reach of the persecutor, and often the prosecutor, of a foreign nation. The grant of asylum, therefore, can constitute an encroachment into the domestic adjudicatory prerogative of another state. Thus understood, asylum recognizes the often-inevitable reversal of roles: a citizen's own country, which is the traditional provider fundamental rights, occasionally becomes the one from which the international community, or a particular foreign country, must protect.¹⁷¹

Asylum can serve as a means to condemn foreign governments regardless of how it is phrased. When asylum provisions are framed in ideological terms, and the right is granted to those who share the state's ideological goal, the instrumental value is apparent from the provision itself. In this case, states condemn other states that do not share their ideology, while supporting those who resist the foreign ideology. Consider the right to asylum in the 1977 Constitution of the Soviet Union, which was granted to "foreigners[ ] persecuted for defending the interests of the working people and the cause of peace, for

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¹⁷¹ See MICHAEL WALZER, SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY 48–49 (1983); James C. Hathaway, *Reconceiving Refugee Law as Human Rights Protection*, 4 J. REFUGEE STUD. 113, 122–23 (1991).

participating in revolutionary or national liberation movements, or for progressive socio-political, scientific, or other creative activities.”¹⁷² Here, the Soviet Union particularly sought to condemn those states not committed to the interest of the working people, meaning its capitalist adversaries.

Yet, even when asylum is phrased as a broad human right for all, rather than a protection only for those who share the state’s ideology, asylum can be employed to condemn the practices of other states. Consider, again, the example of Russia. By 1993, the newly-adopted constitution of the Russian Federation included a revised version of the right and stated that “[t]he Russian Federation shall grant political asylum to foreign nationals and stateless persons according to the universally recognized norms of international law.”¹⁷³ Ostensibly, this provision appears to serve a humanitarian purpose and no longer served to condemn those who do not share Russia’s ideology. Yet, when Edward Snowden was labeled a traitor by the United States and requested asylum in Russia, the provision turned out to be a helpful foreign policy tool to condemn the actions of a long-standing adversary.¹⁷⁴

As another example, consider the post-WWII German Constitution. In the 1960s, Germany, which at the time featured one of the broadest formulations of the right to asylum in its constitution,¹⁷⁵ frequently accepted refugees in order to showcase the moral bankruptcy of the nations from which they were fleeing.¹⁷⁶ This was the case when Germany granted asylum to

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¹⁷² KONSTITUTSIJA SSSR (1977) [KONST. SSSR] [USSR CONSTITUTION] art. 38.

¹⁷³ KONSTITUTSIJA ROSSIJSKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 63, ¶ 1 (Russ.).

¹⁷⁴ Jennifer Fraczek, *Whistleblowers Go Far to Find Asylum*, DEUTSCHE WELLE (June 14, 2013), <http://dw.com/p/18p5d> [<https://perma.cc/F6PM-WNRE>] (“The fact that states which, according to human rights groups, themselves have a limited freedom of opinion are declaring that they could take Snowden in is partly down to the political message that such a step would send . . . . [N]ormally democratic states grant asylum to political refugees from places like China, Myanmar, Russia, and elsewhere,” [said] Sylke Tempel of the German Council on Foreign Relations . . . . ‘If they take in fugitives from the US, it means they want to say, “Look, Americans, apparently your freedom isn’t that great either, because you pursue political refugees too.”’”).

¹⁷⁵ GRUNDGESETZ [GG] [Basic Law], 1949, art. 16, cl. 2 (Ger.), *translation at* http://www.cvce.eu/content/publication/1999/1/1/7fa618bb-604e-4980-b667-76bf0cd0dd9b/publishable_en.pdf [<https://perma.cc/5ZKV-CP5S>] (“The politically persecuted shall enjoy the right of asylum.”).

¹⁷⁶ See Patrice G. Poutrus, *Asylum in Postwar Germany: Refugee Admission Policies and Their Practical Implementation in the Federal Republic and the GDR Between the Late 1940s and the Mid-1970s*, 49 J. CONTEMP. HIST. 115, 120–21 (2014).

anti-communist refugees in the 1960s,¹⁷⁷ and later, in the 1970s, when it welcomed Chilean refugees after their failed military plot against the Chilean government.¹⁷⁸ In fact, ever since the development of its Basic Law immediately after World War II, Germany has tinkered with restrictions on its grant of the right to asylum; at times, it provided the right liberally, at others, Germany's practice amounted to restriction and exclusion.¹⁷⁹ Two faces of the right of asylum—a device that necessarily pits the human rights of those seeking refuge against the obligations and restrictions of the right-granting state—appear woven into the constitutional developments shaping the right to asylum in Germany.

2. *Strengthening Foreign Opposition Groups*

The second way in which asylum may further state interests is as a reassurance, assistance, and invigoration mechanism for oppressed political groups. Specifically, in condemning the policies of foreign governments, states can lend support to an embattled political opposition by offering safe exile. This is especially true in cases of dysfunctional states where civil disobedience depends critically on the availability of refuge for potential defectors. As such, the mere existence of asylum in one country may aid political competition in another. To use Hirschman's famous metaphor of "Exit, Voice, and Loyalty," giving opposition groups an exit option may strengthen their voice and resolve.¹⁸⁰ As one former African National Congress (ANC) rebel observed, the Soviet Union's offer of asylum for ANC activists fighting the apartheid regime emboldened them in their struggle.¹⁸¹ Likewise, Russia's pro-

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¹⁷⁷ See *id.* at 123 ("[T]he admission of Hungarian and Czechoslovakian refugees [by West Germany] can be seen as a reflection of the overwhelmingly anti-communist leanings of Cold War asylum policy in the Federal Republic.").

¹⁷⁸ Irmtrud Wojak & Pedro Holz, *Chilenische Exilanten in der Bundesrepublik Deutschland (1973–1989)*, in *EXILE IM 20. JAHRHUNDERT* 168, 168–90 (Claus-Dieter Krohn et al. eds., 2000).

¹⁷⁹ See Poutrus, *supra* note 176, at 115 (explaining that between the late 1940s and the mid-1970s, "In West Germany, the right to political asylum was permanently the subject of conflicts and new interpretations based on contradictions between a liberal constitutional law of political asylum and a restrictive institutional practice of migration policy.").

¹⁸⁰ ALBERT O. HIRSCHMAN, *EXIT, VOICE, AND LOYALTY: RESPONSES TO DECLINE IN FIRMS, ORGANIZATIONS, AND STATES* 83 (1970) ("[T]he effectiveness of the voice mechanism is strengthened by the possibility of exit. [Although] [t]he willingness to develop and use the voice mechanism is reduced by exit . . . , the ability to use [voice] with effect is increased by [the availability of exit].").

¹⁸¹ Interview with Heinz Klug, Evjue-Bascon Professor in Law, Univ. of Wisconsin Law Sch., Cambridge, U.K. (Sept. 2016).

tection of Edward Snowden may incentivize future whistleblowers to expose corruption or other wrongdoing, who will then seek to shield themselves from prosecution by seeking refuge. Julian Assange, the head of WikiLeaks, has also benefited from a grant of asylum following his organization's release of thousands of classified United States military documents and diplomatic cables.¹⁸² Fundamentally, then, the willingness of some states to offer sanctuary to defectors, revolutionaries, political nonconformists, or displaced political groups may directly affect the internal politics and domestic conflicts in other countries.

3. *Supplementing a Shrinking Workforce*

Economic considerations may also push states toward constitutionally recognizing asylum. Specifically, in countries with declining or aging populations, a shrinking workforce can be supplemented through the inflow of international migration. In many countries today, as the population ages due to decreasing levels of fertility or increasing emigration of native working-age people, filling the demands of the labor market may become challenging.¹⁸³ As the United Nations' Population Division observes, "These changes have profound consequences and far-reaching implications, especially for pension schemes, health-care systems, education programmes and housing plans, as well as for the economic vitality and growth of a country."¹⁸⁴ In countries with high proportions of older persons, international migration might prove to be a solution to ameliorate the decreasing population. Thus, such countries may seek to formulate their immigration policies, including access to the right of asylum, to attract foreigners to shore up the domestic workforce. Indeed, a nation's economic sustainability might well depend on its ability to increase international migra-

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¹⁸² Steven Erlanger & David E. Sanger, *Ecuador Cuts Internet of Julian Assange, WikiLeaks' Founder*, N.Y. TIMES (Oct. 18, 2016), https://www.nytimes.com/2016/10/19/world/europe/julian-assange-embassy.html?_r=0 [https://perma.cc/YMG7-BKZ3].

¹⁸³ See, e.g., David E. Bloom et al., *Implications of Population Ageing for Economic Growth*, 26 OXFORD REV. ECON. POL'Y 583, 583 (2010) ("Population ageing will tend to lower both labour-force participation and savings rates, thereby raising concerns about a future slowing of economic growth."); Klaus Prettnner, *Population Aging and Endogenous Economic Growth*, 26 J. POPULATION ECON. 811, 812 (2013) ("[S]upport ratios will decline such that fewer and fewer workers will have to carry the burden of financing more and more retirees.").

¹⁸⁴ U.N. DEPT OF ECON. & SOC. AFFAIRS, POPULATION DIV., U.N. Doc. ST/ESA/SER.A/206, REPLACEMENT MIGRATION: IS IT A SOLUTION TO DECLINING AND AGEING POPULATIONS? 11 (2001).

tion.¹⁸⁵ Accepting refugees, especially those with the agency and skills to make the treacherous journey to reach the shores of a foreign country, may thus be attractive to states with high age-dependency ratios.¹⁸⁶

4. *Broadcasting Good Intentions*

The grant of the right to asylum may also prove beneficial to countries desiring to project themselves as safe havens for refugees, especially when their actual human rights record suggests otherwise. Where more people seek to leave a country than enter it, constitutionally protecting asylum is relatively inexpensive, as there are few foreigners willing to take the country up on its offer to provide refuge. But while the costs are low, the potential benefits are substantial: granting a broad right to asylum might serve as a signal to domestic and international audiences alike that the nation is prosperous, desired, and one that provides shelter to people in need. As such, the inclusion of the right of asylum in the constitution gives the government and the people of the right-granting state license to celebrate prosperity, real or feigned.¹⁸⁷ In this vein, Professor Landau suggests that the large number of Colombians dwelling abroad as refugees motivated the drafters of the 1991 Colombian Constitution to include the right to asylum.¹⁸⁸ Likewise, some of the smallest and poorest African nations grant the right to asylum, possibly for political posturing or because they genuinely aspire to offer sanctuary for foreigners in need, even

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¹⁸⁵ Several studies support the notion that migration might indeed alleviate the effects of an aging population. See, e.g., *id.* at 15–33 (highlighting the impact that various levels of immigration would have on population size and population aging in eight low-fertility countries in the 1995–2050 period); Simon et al., *supra* note 24, at 160–65 (detailing mathematically “optimal immigration profiles” for a fixed number of immigrants); see also Michele Waslin, *States Will Need Immigrants to Counter Aging of the Labor Force*, AM. IMMIGR. COUNCIL: IMMIGR. IMPACT (June 1, 2016), <http://immigrationimpact.com/2016/06/01/aging-of-the-labor-force> [<https://perma.cc/7T2N-K3DY>] (noting that immigration may be necessary to offset declining populations of working age adults in parts of the United States).

¹⁸⁶ See Markus Dettmer et al., *German Companies See Refugees as Opportunity*, SPIEGEL ONLINE (Aug. 27, 2015, 3:22 PM), <http://www.spiegel.de/international/germany/refugees-are-an-opportunity-for-the-german-economy-a-1050102.html> [<https://perma.cc/XM39-8PUY>] (discussing the hurdles some successful refugees have faced in reaching Germany and their immediate contribution to the aging German workforce).

¹⁸⁷ See Tom Ginsburg & Alberto Simpser, *Introduction*, in CONSTITUTIONS IN AUTHORITARIAN REGIMES 10–11 (Tom Ginsburg & Alberto Simpser eds., 2014).

¹⁸⁸ See generally David Landau, *Constitutional Design, International Law and Vulnerable Insiders: The Victims of Internal Armed Conflict in Colombia*, VA. J. INT’L L. (forthcoming 2017) (discussing Colombia’s massive net outflow of refugees in light of its generous policies toward foreign refugees).

if those aspirations remain unfulfilled. To illustrate, Côte d'Ivoire, a country with net negative immigration, provides that "[a]ny person persecuted for reason of his political, religious, [or] philosophical convictions, or of his ethnic identity can benefit from the right of asylum in the territory of the Republic of Côte d'Ivoire, under the condition of conforming to the laws of the Republic."¹⁸⁹ Considering the large number of Ivorians seeking admission elsewhere, we have to consider the possibility that the provision seeks to remedy the reputational damage associated with the refugee and immigration outflows.

More generally, constitutional asylum provisions allow governments to project a certain image of themselves to the outside world.¹⁹⁰ When the provision is framed in ideological terms, it allows the government to broadcast its ideology. Consider, again, the example of the right to asylum in the 1977 Constitution of the Soviet Union, which was granted to "foreigners, persecuted for defending the interests of the working people and the cause of peace, for participating in revolutionary or national liberation movements, or for progressive sociopolitical, scientific, or other creative activities."¹⁹¹ This provision allowed the Soviet Union to broadcast its ideology and extend a welcome to those who shared it. Using the right to asylum is a particularly visible way of doing so.¹⁹² It represented cheap advertisement for the Soviet Union to portray itself as protecting the interests of the working classes by providing a home for all those who struggle. As we will show in Part IV, other states have likewise used the right to advertise their political ideologies.

Also when the right to asylum is phrased in humanitarian language, it can be used to project a particular image of the state. According to Professor Landau, this was part of the explanation for why the constituent assembly that drafted the Colombian Constitution of 1991 opted to enshrine the right in the Constitution.¹⁹³ As Landau explains, a broad right was added not only because many Colombians resided abroad but

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¹⁸⁹ CONSTITUTION DE LA RÉPUBLIQUE DE CÔTE D'IVOIRE [CONSTITUTION] 2000, art. 12 (Côte d'Ivoire).

¹⁹⁰ Ginsburg & Simpson, *supra* note 187, at 6–15 (describing that "[b]eyond serving as operating manuals, constitutions can play several other roles that [the authors] characterize as *billboards*, *blueprints*, and *window dressing*," that act as "advertisements . . . seek[ing] to provide information to potential and actual users of their provisions" (footnote omitted)).

¹⁹¹ KONSTITUTSIYA SSSR (1977) [KONST. SSSR] [USSR CONSTITUTION] art. 38.

¹⁹² Daniel A. Farber, *Rights as Signals*, 31 J. LEGAL STUD. 83, 87 (2002) (describing rights as particularly visible signals to foreign audiences).

¹⁹³ Landau, *supra* note 188, at 1.

also because “the country’s international and domestic public image had suffered” and “needed to be restored through sending signaling that it would now play by the rules of a ‘good’ state.”¹⁹⁴

IV

ASYLUM IN THE WORLD’S CONSTITUTIONS

A comprehensive analysis of why countries adopt a right to asylum requires us to collect data that captures which states feature the right in their constitutions. To collect such data, we analyzed every national constitution written between 1781 and today, established whether a right to asylum was included, and quantified this information.¹⁹⁵ Doing so allows us to present what we believe to be the first systematic and comprehensive account of the evolution of the right to asylum in national constitutions.¹⁹⁶

We initially analyzed the text of each constitution to determine whether the right to asylum was included. Each instance of the right was then coded. As a general rule, the right had to be mentioned explicitly in order to be counted as part of the constitution. In addition to coding constitutions containing an express “right to asylum,” or the availability of “asylum,” we also included constitutions guaranteeing “protection” or “sanctuary” for “foreigners” or “outsiders.” The general approach to coding national constitutions is provided in Professor Versteeg’s earlier work.¹⁹⁷

We initially coded simply whether or not a constitution included an asylum provision. For each country, the presence or absence of the right was coded. Upon closer inspection of each constitutional text, however, we found that there appeared to be two distinct versions of the right: one as a broad

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¹⁹⁴ *Id.*

¹⁹⁵ This data has been collected in a repository of all written constitutions, maintained by the Cline Center for Democracy at the University of Illinois at Urbana-Champaign. CLINE CTR. FOR DEMOCRACY, <http://production.clinecenter.illinois.edu/cgi-bin/login> [https://perma.cc/7KNC-YRX4]. The Comparative Constitutions Project (CCP) has collected similar data. See COMP. CONSTS. PROJECT, <http://comparativeconstitutionsproject.org/> [https://perma.cc/R96X-Y39V].

¹⁹⁶ A potential shortcoming of this data is that it does not rely on information found in ordinary legislation, case law, executive and administrative documents, and secondary sources. As such, it captures only the text of the constitution, excluding any of its judicial interpretations.

¹⁹⁷ See Benedikt Goderis & Mila Versteeg, *The Diffusion of Constitutional Rights* 39 INT’L REV. L. & ECON. 1, 4–5 (2014); David S. Law & Mila Versteeg, *The Evolution and Ideology of Global Constitutionalism*, 99 CALIF. L. REV. 1163, 1187–94 (2011).

human right and one as a more narrowly circumscribed ideological statement. We therefore coded, for each constitution that dealt with asylum, whether (1) it was phrased as a broad human right, or (2) whether asylum was conditioned upon shared ideologies. As an example of the former, consider the 1946 constitution of France, which stated that “[a]ny man persecuted in virtue of his actions in favour of liberty may claim the right of asylum upon the territories of the Republic.”¹⁹⁸ An example of the latter is the Cuban constitution of 1976, which proclaimed that:

The Republic of Cuba grants asylum to [those persons] persecuted by virtue of the struggle for the democratic rights of the majorities; for national liberation; against imperialism, fascism, colonialism and neocolonialism; for the suppression of racial discrimination; for the rights and demands of workers, peasants and students; for their progressive political, scientific, artistic and literary activities; for socialism and for peace.¹⁹⁹

Appendix A provides the full list of all the asylum provisions that we found in national constitutions.

We coded the asylum as a broad human right when the provision contained some or all of the following attributes: (1) it plainly concerns itself with human rights protections and places the right in the hands of the asylum-seeking individual; (2) given its all-encompassing scope and breadth, the right cannot be expanded any further; (3) it does not, on its face, involve or mention national interests or power; (4) it shows impartiality and neutrality and; (5) its relief is not predicated upon any specific conditions. We coded asylum as a more narrowly circumscribed ideological tool when the provision contained some or all of the following attributes: (1) it uses descriptive terms and references to certain political activities or events, making the availability of the right predicated upon those activities or limiting it because of other activities; (2) it leaves room for the expansion of its reach to additional categories of people or circumstances; (3) the right is provided only within a limited legal space and within specific parameters; (4) it does not appear on its face to concern itself with a protective function.

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¹⁹⁸ 1946 CONST. pmb. (Fr.), translation at http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/anglais/cst3.pdf [https://perma.cc/UU6M-PM3S].

¹⁹⁹ CONSTITUCIÓN DE LA REPUBLICA DE CUBA [CONSTITUTION] 1976, ch. 1, art. 13 (Cuba), translated by Anna I. Vellvé Torras in HEINONLINE WORLD CONSTITUTIONS ILLUSTRATED (Jefri Jay Ruchti ed., 2010).

Of course, the distinction is not ironclad. After all, on their face, all asylum provisions concern themselves with protecting those in need, and whether they are phrased in a Western human rights language or in a socialist terminology may be largely irrelevant from the perspective of the asylum seeker. Yet, we believe that there are important differences between these two types of the rights. First, they seem to serve different purposes: one is a seemingly humanitarian provision concerned with all those in need; the other is a foreign policy tool that allows the state to broadcast their ideology and condemn those who do not share that ideology. Second, they differ in the scope of their protection. To gauge this latter difference, it is useful to contrast these two types of provisions with the definition of a refugee provided in the Refugee Convention, which holds that the term “refugee” applies to

[a] person who . . . owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.²⁰⁰

A comparison of the constitutional and international protections reveals that the provisions that we coded as human rights broaden the definitional reach and scope of the Refugee Convention. That is, they offer asylum to all and extend beyond the limitations enshrined in international law, which guarantees sanctuary only to those persecuted for “reasons of race, religion, nationality, membership of a particular social group or political opinion.”²⁰¹ By contrast, the provisions that we classified as ideologically circumscribed narrow the internationally-mandated definition by tying asylum and its grant to ideological causes. While we recognize that our coding may not fully take into account the multiple reasons that may motivate

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²⁰⁰ Refugee Convention, *supra* note 13, ch. I, art. 1, § A, ¶ 2.

²⁰¹ *Id.* The narrow definition of “refugee” in the refugee convention has been heavily criticized for not protecting environmental refugees, women, or those escaping starvation. See, e.g., Bonnie Docherty & Tyler Giannini, *Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees*, 33 HARV. ENVTL. L. REV. 349, 357–58 (2009); Schenk, *supra* note 14, at 307–11 (1994).

the distinction, we do believe that the difference between the two types of provisions is significant and analytically useful.²⁰²

A. The Global Spread of Constitutional Asylum Provisions

Constitutional asylum provisions have become more popular over time. Figure 1 shows that, in the wake of World War II, only eleven percent of all constitutions provided a right to asylum. The solid line depicts all instances of asylum, while the dotted lines denote asylum as a broad human right and as an ideologically circumscribed policy tool, respectively. The graph reveals an initial increase in the post-WWII years: from four percent in 1940 to eleven percent in 1946 to nineteen percent by 1950. The graph moreover shows a substantial increase in the proportion of constitutions that contain the right to asylum in the 1990s. During this period, we also see that the narrower ideological version of asylum declines, while its formulation as a human right takes off, thus revealing a humanitarization of the right to asylum. Today, no less than thirty-five percent of all countries contain an asylum provision in their constitution, most of which frame it as a human right. Figure 2 shows the countries with asylum provisions on a world map. It shows that the right is fairly evenly distributed geographically and can be found in all corners of the globe.

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²⁰² Of course, there were a few judgment calls to make in this coding scheme. In some instances, the humanitarian aspect could not be separated from the political one. Instances that appeared to embrace both ideologies were nevertheless coded as foreign policy tools because the right, although purported to be offered on humanitarian grounds, was always predicated upon other political considerations or conditions limiting its scope and reach. *See, e.g.*, CONSTITUTION DE LA RÉPUBLIQUE ALGÉRIENNE DÉMOCRATIQUE ET POPULAIRE [CONSTITUTION] 1963, art. 21 (Alg.) (“The Algerian Republic guarantees the right of asylum to all who fight for liberty.”). In other instances, we coded a few countries as not possessing the right to asylum altogether when the constitutional language indicated that asylum was not a right and its grant was discretionary. *See, e.g.*, THE TRANSITIONAL FEDERAL CHARTER OF THE SOMALI REPUBLIC [Constitution] 2004, art. 23, cl. 2 (“The state may grant political asylum to a person and his close relatives who flee his or another country on grounds of political, religious, and cultural persecution unless such asylum seeker(s) have committed crime(s) against humanity.”).

FIGURE 1

FIGURE 2

To better gauge the logic of constitutional asylum provisions, it is useful to examine the first instances of its adoption. The very first nation to include the right to asylum was Colombia, which adopted the right in 1811.²⁰³ Colombia’s Article 39

203 CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] art. 39 (1811) (“In pursuance of the system of peace and amity with all nations which do not try to commit hostilities against us and which respect our rights, we give asylum in our ports and interior Provinces to all aliens who wish to live peacefully among us, subjecting themselves to the laws of the Union and of the Province wherein they reside, especially if in addition to their good intentions they bring among us some useful trade by which they may make their living, obtaining for this purpose a letter of naturalization or permission from Congress, before whom they shall prove the above circumstances, principally in times when unrestricted immigration would

was not only intricate and progressive for the time but also contained a high level of detail. The relevant provision declared that it recognized asylum in pursuance of a "system of peace and amity" with "all nations."²⁰⁴ The right was granted "to all aliens who wish to live peacefully among us, subjecting themselves to the laws of the Union," although the burden of proof to "prove the above circumstances" fell on the asylum seeker, who, by "permission from Congress," was to receive "a letter of naturalization."²⁰⁵ Colombia encouraged the granting of the right especially to those who have a "useful trade by which they may make their living."²⁰⁶ Colombia reaffirmed its commitment to the protection of foreigners in its subsequent constitutions. For instance, Article 11 of the 1863 constitution does not explicitly mention the right to asylum but rather allowed "[p]ersons fleeing to a State after committing illegal acts against the government of another State" to be "kept at such distance from the frontier as will prevent further acts of hostility."²⁰⁷ However, the right disappeared from the 1886 constitution, only to reappear in 1991.²⁰⁸

The next country to feature asylum in its constitution was another Latin American nation, Nicaragua.²⁰⁹ Article 9 of the 1893 Constitution proclaims, "The Republic of Nicaragua is a sacred asylum to all persons taking refuge in its territory."²¹⁰ Title III of the 1893 Constitution moreover stipulated that protected foreigners acquired property and civil rights.²¹¹ Internal law was to establish the conditions for approval and rejection of entry by foreigners.²¹² The constitution did, however, delineate the reach of the protection Nicaragua was willing to offer, "The

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be dangerous"). An early provision could be found in the 1793 French Constitution, which stated that, "The French people shall offer asylum to those banished from their countries in the cause of liberty; it shall refuse it to tyrants." Yet this provision never entered into force. See John Bell, *External Dimensions of the French Constitution*, VA. J. INT'L L. (forthcoming 2017).

²⁰⁴ CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] art. 39 (1811).

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] art. 11 (1863).

²⁰⁸ CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] (1886); CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] art. 36 (1991).

²⁰⁹ CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE NICARAGUA [CN.] tit. III, art. 9, LA GACETA, DIARIO OFICIAL [L.G.] 10 Dec. 1893, as amended by Ley No. 330, Jan. 18, 2000, Reforma Parcial a la Constitución Política de la República de Nicaragua, L.G. Jan. 19, 2000.

²¹⁰ *Id.*

²¹¹ *Id.* at tit. III, art. 11; *id.* tit. III, art. 12.

²¹² *Id.* at tit. III, art. 17.

dispositions of this Title do not modify the Treaties in force between Nicaragua and other countries.”²¹³

Constitutional asylum provisions next appeared in the constitutions of Eastern European countries, with Hungary adopting the right in its 1919 constitution,²¹⁴ followed by the Soviet Union²¹⁵ and its 1936 constitutional guarantee to “offer[] the right of asylum to foreign citizens persecuted for defending the interests of the working people, or for their scientific activities, or for their struggle for national liberation.”²¹⁶

The early 1940s witnessed a further proliferation of the right throughout Latin America. Cuba²¹⁷ and El Salvador²¹⁸ adopted it in 1940, while Guatemala²¹⁹ did so in 1945. The diffusion of the right among neighboring Latin American countries may be a result of the shared constitutional trajectory of Latin American countries.²²⁰ More surprising, perhaps, is that the right appeared in Mongolia’s 1940 constitution.²²¹ However, given the resemblance of the Mongolian provision to that

²¹³ *Id.* at tit. III, art. 19.

²¹⁴ MAGYARORSZÁG ALAPTÖRVÉNYE [THE FUNDAMENTAL LAW OF HUNGARY], ALAPTÖRVÉNY art. 13 (1919).

²¹⁵ This may not be that surprising because, although [t]he Soviet Union was a dictatorship, . . . the concept of rights always structured the theoretical edifice of political life . . . . Soviet rights bore the imprint of the international context. The rights revolutions of the 1940s and 1970s influenced Soviet jurisprudence and social policy. On an international scale, human rights assumed rhetorical power during and immediately after the Second World War . . . .

Mark B. Smith, *Social Rights in the Soviet Dictatorship: The Constitutional Right to Welfare from Stalin to Brezhnev*, 3 HUMANITY 385, 385 (2012).

²¹⁶ KONSTITUSIIA SSSR (1936) [KONST. SSSR] [USSR CONSTITUTION] art. 129, translation at <http://www.departments.bucknell.edu/russian/const/36cons04.html> [<https://perma.cc/D6VF-TMHJ>].

²¹⁷ CONSTITUCIÓN DE LA REPUBLICA DE CUBA [CONSTITUTION] 1940, ch. 1, art. 31.

²¹⁸ CONSTITUCIÓN DE REPÚBLICA DE EL SALVADOR [CONSTITUTION] 1945, tit. II, art. 11, cl. 1.

²¹⁹ CONSTITUCIÓN DE LA REPUBLICA DE GUATEMALA [CONST.] 1945, art. 26.

²²⁰ See Benedikt Goderis & Mila Versteeg, *Transnational Constitutions: A Conceptual Framework*, in SOCIAL AND POLITICAL FOUNDATIONS OF CONSTITUTIONS 103, 104 (Denis J. Galligan & Mila Versteeg eds., 2013) (suggesting that constitutional rights diffuse among “countries that share the same legal origins, the same religion, a common colonizer, and a common aid donor”); see also Zachary Elkins, *Constitutional Networks*, in NETWORKED POLITICS: AGENCY, POWER, AND GOVERNANCE 43, 43 (Miles Kahler ed., 2009) (“Constitutions are famously unoriginal documents. Legend has it that some Latin American constitutions in the 1800s shared not only the same provisions but also the same typographical errors.”).

²²¹ МОНГОЛ УЛСЫН ҮНДСЭН Хууль [CONSTITUTION] 1940, art. 88 (Mong.) (“The Mongol People’s Republic affords the right of asylum to foreign citizens persecuted for defending the interests of the workers, or for their struggle for national liberation.”).

of the constitution of the Soviet Union, the presence of the right in the neighboring Mongolia is perhaps less unexpected and reflects the Soviet Union's power over the country.²²²

In the aftermath of WWII, the right appeared in Western Europe. France, the first Western European country to adopt the right, included it in the preamble to its 1946 constitution;²²³ Italy²²⁴ and Germany²²⁵ followed shortly thereafter. These instances of adoption were undoubtedly inspired by the horrors of WWII and the stream of refugees it produced.²²⁶ Eastern Europe, Albania,²²⁷ Yugoslavia,²²⁸ Bulgaria,²²⁹ and Romania²³⁰ all adopted the right within a two-year time span. Perhaps less expectedly, the (not so) Democratic People's Republic of Korea adopted the right in 1948, proclaiming that "[t]he [Democratic People's Republic of Korea] affords the right of asylum to foreign nationals persecuted for fighting for democratic principles or national liberation movements, or for the interests of the working people or for freedom of scientific and cultural activities."²³¹ While the spread of the right had already begun in East Asia with Mongolia's inclusion of the right in its 1940 constitution, the diffusion of the right to North Korea, shortly after its partition from Korea following the end of World War II, may have its roots in the shared ideological com-

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222 See generally Hiroaki Kuromiya, *Stalin's Great Terror and the Asian Nexus*, 66 EUR.-ASIA STUD. 775, 775 (2014) ("Stalin's Great Terror of 1937-1938 did not stop at the Soviet borders: under Moscow's explicit instructions, it extended to Asia, particularly to the People's Republic of Mongolia and to Xinjiang or Chinese Turkestan."); see also George Ginsburgs, *Mongolia's "Socialist" Constitution*, 34 PAC. AFF. 141, 141 (1961) (describing the Soviet Union's influence on Mongolian constitution-making).

223 1946 CONST. pmbl. (Fr.).

224 Art. 10 Costituzione [Cost.] (It.).

225 GRUNDGESETZ [GG] [BASIC LAW], 1949, art. 16 (Ger.).

226 See, e.g., Auffarth, *supra* note 17, at 194 (Germany's right to asylum "was motivated by the experiences of the mothers and fathers of constitutional law because many of them had enjoyed protection from Nazi tyranny themselves"). The late 1940s was a period of mass remigration of displaced war prisoners and survivors, mass resettlements of Germans expellees from countries formerly occupied by Hitler, immigration of Jews beyond their native lands, and movement by other international wanderers. Overall, nearly 60 million Europeans became refugees either during or directly after the World War II period. Chauncy D. Harris & Gabriele Wülker, *The Refugee Problem of Germany*, 29 ECON. GEOGRAPHY 10, 10 (1953).

227 KUSHTETUTA E REPUBLIKËS SË SHQIPËRISË [CONSTITUTION] 1946, art. 40 (Alb.).

228 USTAV SOCIALISTICKE FEDERATIVNE REPUBLIKE JUGOSLAVIJE [CONSTITUTION] 1946, art. 31 (Yugoslavia).

229 Конституция На Народна Република България, 1947 [CONSTITUTION] 1947, art. 84 (Bulg.).

230 CONSTITUȚIA REPUBLICII POPULARE ROMÂNE [CONSTITUTION] 1948, art. 35 (Rom.).

231 대한민국헌법 [CONSTITUTION] 1948, art. 26 (N. Kor.).

mitment to Communism of both North Korea and its three regional neighbors: the Soviet Union, China, and Mongolia.

In the 1950s and 60s the right continued to proliferate in the three regions already delineated. In Latin and South America, Cuba recognized the right to asylum in its constitution in 1959,²³² so did Venezuela two years later,²³³ followed by Ecuador²³⁴ and Paraguay²³⁵ in 1967. In Europe, the right spread to Poland.²³⁶ In East Asia, the 1954 constitution of China featured the right.²³⁷ The first African country to adopt the right to asylum, Somalia, enshrined it in its 1960 constitution.²³⁸ Rwanda²³⁹ and Algeria²⁴⁰ followed soon thereafter. The 1970s and 1980s witnessed the adoption of asylum provision in the Middle East, with Iraq²⁴¹ and Egypt²⁴² adopting the right within a year apart, followed shortly by Syria²⁴³ in 1973 and Iran²⁴⁴ in 1979.²⁴⁵

The 1990s witnessed a particularly large increase in the proportion of constitutions containing the right to asylum. This development was driven mainly by adoption of the right to asylum among African countries, including some of the world's

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232 CONSTITUCIÓN DE LA REPUBLICA DE CUBA [CONSTITUTION] 1959, ch. 1, art. 31 (Cuba).

233 CONSTITUCIÓN [CONSTITUTION] 1961, tit. III, ch. 6, art. 116 (Venez.).

234 CONSTITUCIÓN POLÍTICA [CONSTITUTION] 1967, tit. IV, ch. 7, art. 80 (Ecuador).

235 CONSTITUCIÓN [CONSTITUTION] 1967, ch. 5, art. 122 (Para.).

236 KONSTYTUCJA POLSKIEJ RZECZYPOSPOLITEJ LUDOWEJ [CONSTITUTION] 1952, art. 75 (Pol.).

237 XIANFA art. 99 (1954) (China).

238 CONSTITUTION 1960, art. 19, no. 2 (Som.).

239 CONSTITUTION DE LA RÉPUBLIQUE RWANDAISE [CONSTITUTION] 1962, art. 15 (Rwanda).

240 CONSTITUTION DE LA RÉPUBLIQUE ALGÉRIENNE DÉMOCRATIQUE ET POPULAIRE [CONSTITUTION] 1963, tit. II, art. 21 (Alg.).

241 Article 34, al-Dustūr al-'Irāqī al-Mu'aqqat [The Interim Iraqi Constitution] of 1970.

242 CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 11 Sept. 1971 art. 53, *as amended*, 22 May 1980, 25 May 25 2005, 26 Mar. 2007.

243 دستور الجمهورية العربية السورية [CONSTITUTION] 1973, art. 34 (Syria).

244 QANUNI ASSASSI JUMHURII ISLAMAI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1358 [1979] art. 155.

245 Other instances of adoption of this right include, in Africa: People's Republic of the Congo, CONSTITUTION DE LA RÉPUBLIQUE POPULAIRE DU CONGO [CONSTITUTION] 1969, art. 15 (People's Republic of the Congo); Mozambique, CONSTITUIÇÃO DA REPÚBLICA POPULAR DE MOÇAMBIQUE [CONSTITUTION] 1975, art. 25 (Mozam.); and Chad, CONSTITUTION DE LA RÉPUBLIQUE DU TCHAD [CONSTITUTION] 1989, art. 57 (Chad). In Europe: Bulgaria, Конституция на Република България [CONSTITUTION] 1971, art. 65 (Bulg.); and Portugal, CONSTITUIÇÃO DA REPÚBLICA PORTUGUESA [CONSTITUTION] 1976, art. 22 (Port.). In East Asia: Vietnam, Hiến Pháp [CONSTITUTION] 1980, art. 81 (Viet.). In South America: Brazil, CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 4(x) (Braz.).

poorest countries²⁴⁶ such as Burundi,²⁴⁷ Burkina Faso,²⁴⁸ Côte d'Ivoire,²⁴⁹ Mali,²⁵⁰ and Democratic Republic of Congo,²⁵¹ as well as some of the smallest countries,²⁵² such as São Tomé and Príncipe²⁵³ and Cape Verde.²⁵⁴ According to our data, Libya became the latest African country to adopt the right to asylum in 2011.²⁵⁵ Europe also experienced a significant increase in the number of countries adopting the right to asylum in their constitutions in the 1990s. Those primarily included countries with some of the lowest gross domestic product per capita in Europe,²⁵⁶ such as Macedonia,²⁵⁷ Belarus,²⁵⁸ Moldova,²⁵⁹ Georgia,²⁶⁰ Serbia and Montenegro²⁶¹ (and later, the Republic of Serbia²⁶²), and the Ukraine.²⁶³ Notably, it was exclusively Eastern and Central European countries that adopted the right between 1990 and 2012.²⁶⁴ In South America, only one new country, Peru, adopted the right.²⁶⁵ In

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246 GDP Per Capita, WORLD BANK, <http://data.worldbank.org/indicator/NY.GDP.PCAP.CD> [<https://perma.cc/TY8Z-Z982>] (showing data in current U.S. dollars).

247 CONSTITUTION DE LA RÉPUBLIQUE DU BURUNDI [CONSTITUTION] 1992, art. 24 (Burundi).

248 CONSTITUTION DU BURKINA FASO [CONSTITUTION] 1991, art. 9 (Burk. Faso).

249 CONSTITUTION DE LA RÉPUBLIQUE DE CÔTE D'IVOIRE [CONSTITUTION] 2000, art. 12 (Côte d'Ivoire).

250 LA CONSTITUTION [CONSTITUTION] 1992, art. 12 (Mali).

251 CONSTITUTION DE LA RÉPUBLIQUE DÉMOCRATIQUE DU CONGO [CONSTITUTION] 2006, art. 35 (Dem. Rep. Congo).

252 See *The World Factbook*: Country Comparison, Area, CIA, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2147rank.html> [<https://perma.cc/8ZSE-WG4C>].

253 CONSTITUIÇÃO DA REPÚBLICA DEMOCRÁTICA DE SÃO TOMÉ E PRÍNCIPE [CONSTITUTION] 1990, art. 40 (São Tomé & Príncipe).

254 CONSTITUTION DE LA RÉPUBLIQUE DU CAP VERT [CONSTITUTION] 1992, art. 36 (Cape Verde).

255 الإعلان الدستوري المؤقت [PROVISIONAL CONSTITUTIONAL DECLARATION], 2011, art. 10 (Libya).

256 WORLD BANK, *supra* note 246.

257 Устав на Република Македонија [CONSTITUTION] 1991, art. 29 (Maced.).

258 Конституция Республики Беларусь года [CONSTITUTION] 1996, art. 12 (Belr.).

259 CONSTITUTIA REPUBLICII MOLDOVA [CONSTITUTION] 1994, art. 19 (Mold.).

260 საქართველოს კონსტიტუცია [CONSTITUTION] 1995, art. 47 (Geor.).

261 Уставна повеља Србије и Црне Горе [CONSTITUTION] 2003, art. 38 (Serb. & Montenegro).

262 Устав Републике Србије [CONSTITUTION] 2006, art. 57 (Serb.).

263 Конституція України [CONSTITUTION] 1996, art. 26 (Ukr.).

264 Others include, Slovenia, USTAVA REPUBLIKE SLOVENIJE [CONSTITUTION] 1991, art. 48 (Slovn.); Slovak Republic, ÚSTAVA SLOVENSKEJ REPUBLIKY [CONSTITUTION] 1992, ch. II, art. 53 (Slovk.); Czech Republic, Ústavní zákon č. 43/1993 Sb., Ústava České Republiky [Constitution of the Czech Republic]; and Croatia, USTAV REPUBLIKE HRVATSKE [CONSTITUTION] 1990, art. 33 (Croat.).

265 CONSTITUCIÓN POLÍTICA DEL PERÚ [CONSTITUTION] 1993, tit. I, ch. 3, art. 36 (Peru).

the Middle East, Saudi Arabia adopted the right in 1992.²⁶⁶ In Asia, the countries, again, included some of the poorest in the region,²⁶⁷ such as Tajikistan,²⁶⁸ Kyrgyz Republic,²⁶⁹ Azerbaijan,²⁷⁰ Indonesia,²⁷¹ Laos,²⁷² and Timor-Leste.²⁷³

B. The Dual Nature of the Right

The dual nature of asylum, as a broad human right and as an ideologically circumscribed foreign policy tool, developed early on. In many of the constitutions we examined, the right to asylum was unmistakably phrased in ideological terms. As explained earlier, frequently the texts of the constitutions revealed certain features, such as references to political activities or limitations on the granting of the right, which appeared to remove asylum from the realm of a protective humanitarian function, turning it instead into a political device, often carrying a clear and overt ideological message.

The most prominent examples of such constitutional provisions could be found in self-declared socialist states.²⁷⁴ Such states greatly limited the applicability of the right to asylum to include only certain categories of people or political causes.²⁷⁵ The earliest example, Hungary's 1919 constitution, limited

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²⁶⁶ للحكم الأساسي النظام [CONSTITUTION] 1992, art. 42 (Saudi Arabia).

²⁶⁷ WORLD BANK, *supra* note 246.

²⁶⁸ Конституция Республики Таджикистан [CONSTITUTION] 1994, art. 16 (Taj.).

²⁶⁹ Конституция Кыргызской Республики [CONSTITUTION] 1993, art. 19 (Kyrg.).

²⁷⁰ Azerbaijan Respublikasi Konstitusiyasi [CONSTITUTION] 1995, art. 70 (Azer.).

²⁷¹ UNDANG-UNDANG DASAR NEGARA REPUBLIK INDONESIA [CONSTITUTION] 2002, art. 28G (Indon.).

²⁷² CONSTITUTION DE LA RÉPUBLIQUE DÉMOCRATIQUE POPULAIRE LAO [CONSTITUTION] 1991, art. 38 (Laos).

²⁷³ CONSTITUIÇÃO DA REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE [CONSTITUTION] 2002, art. 10 (Timor-Leste).

²⁷⁴ See generally ISTVÁN KOVÁCS, NEW ELEMENTS IN THE EVOLUTION OF SOCIALIST CONSTITUTION (1968) (offering a comparative theoretical study of socialist constitutionalism, focusing on the features of socialist constitutional texts).

²⁷⁵ Kirchheimer, *supra* note 34, at 990 ("Constitutions within the Communist orbit are more specific in naming—as a propaganda device—the intended beneficiaries [of the right to asylum]."); see also Smith, *supra* note 215, at 385 ("[W]ritten into the [Soviet] constitution and its formal system of rights was the probability of violence, a probability that derived from its functions of dividing and cataloging the population, of using the legitimacy of mass politics to assign different values to different social groups . . . and entirely to exclude specific classes of people from normal society by depriving them of rights. Lenin argued that 'violence in the name of the interests and rights of the majority of the population . . . tramples on the rights of the exploiters.'" (third alteration in original)).

asylum to "foreign revolutionist[s]." ²⁷⁶ Similarly, China's 1975 and 1978 constitutions granted the right to foreigners "taking part in revolutionary movements." ²⁷⁷ The constitution of the Soviet Union from 1977 also reserved the right to those "participating in revolutionary or national liberation movements," ²⁷⁸ among others.

The motif of struggles and the fight for liberty (or liberation) is also ever-present throughout the texts of the provisions of the right to asylum in socialist constitutions. ²⁷⁹ Algeria's 1963 constitution declared simply that "[the] Republic guarantees the right of asylum to all who fight for liberty." ²⁸⁰ Albania limited its asylum to those "persecuted on account of their activity in favor of democracy, of the struggle for national liberation, of the rights of working people or in favor of the freedom in scientific and cultural work." ²⁸¹ So did Bulgaria, ²⁸²

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²⁷⁶ MAGYARORSZÁG ALAPTÖRVÉNYE [THE FUNDAMENTAL LAW OF HUNGARY], ALAPTÖRVÉNY art. 13 (1919).

²⁷⁷ XIANFA art. 29 (1975) (China); XIANFA art. 59 (1978) (China).

²⁷⁸ KONSTITUTSIJA SSSR (1977) [KONST. SSSR] [USSR CONSTITUTION] art. 38.

²⁷⁹ Kirchheimer, *supra* note 34, at 990 ("Constitutions belonging to the same spiritual [socialist] family modify their promises [concerning the right to asylum] in detail only.").

²⁸⁰ CONSTITUTION DE LA RÉPUBLIQUE ALGÉRIENNE DÉMOCRATIQUE ET POPULAIRE [CONSTITUTION] 1963, tit. II, art. 21 (Alg.). That same constitution declares in its preamble that "the democratic and popular Algerian Republic will direct its activities toward the construction of the country in accordance with the principles of socialism . . . ." *Id.* pmbl.

²⁸¹ KUSHTETUTA E REPUBLIKËS SË SHQIPËRISË [CONSTITUTION] 1946, art. 40 (Alb.).

²⁸² Конституция на Република България [CONSTITUTION] 1947, art. 84 (Bulg.) ("In the People's Republic of Bulgaria, foreigners enjoy the right of sanctuary when they are prosecuted for defending democratic principles, for struggling for their national liberation, for the rights of the workers, or for the freedom of scientific and cultural activity.").

Cuba,²⁸³ Romania,²⁸⁴ Poland,²⁸⁵ Republic of Congo,²⁸⁶ and North Korea.²⁸⁷ Mozambique's 1975 constitution granted the right to asylum to those fighting for "social liberation";²⁸⁸ Yugoslavia to those supporting "social emancipation";²⁸⁹ Vietnam to foreigners struggling for "national independence, socialism, democracy and peace, and scientific work."²⁹⁰

Notably absent from many of the aforementioned constitutional provisions are references to persons who might seek asylum based on deprivation of basic human rights or persecution on account of race, sex, religion, ethnicity or nationality, or membership in a particular social group. Instead, as was commonly a dominant theme in socialist states, the interests of the workers were of the utmost priority. As such, Mongolia granted asylum to those "foreign citizens persecuted for defending the interests of the workers."²⁹¹ Cuba elaborated even further, de-

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²⁸³ CONSTITUCIÓN DE LA REPUBLICA DE CUBA [CONSTITUTION] 1976, ch. 1, art. 13 (Cuba) ("The Republic of Cuba grants asylum to [those persons] persecuted by virtue of the struggle for the democratic rights of the majorities; for national liberation; against imperialism, fascism, colonialism and neocolonialism; for the suppression of racial discrimination; for the rights and demands of workers, peasants and students; for their progressive political, scientific, artistic and literary activities; for socialism and peace.").

²⁸⁴ CONSTITUȚIA REPUBLICII POPULARE ROMÂNE [CONSTITUTION] 1948, art. 35 (Rom.) ("The People's Republic of Rumania grants the right of refuge to all foreigners persecuted for their democratic activities, for their struggle for national liberation, for their scientific or cultural activities."); CONSTITUȚIA REPUBLICII POPULARE ROMÂNE [CONSTITUTION] 1952, art. 89 (Rom.) ("The Rumanian People's Republic affords the right of asylum to foreign citizens prosecuted for defending the interests of the working people, or for scientific activity, or for participating in the struggle for national liberation or the defence of peace.").

²⁸⁵ KONSTYTUCJA POLSKIEJ RZECZYPOSPOLITEJ LUDOWEJ [CONSTITUTION] 1976, art. 88 (Pol.) ("The Polish People's Republic shall grant asylum to nationals of other countries persecuted in connection with defending the interests of the working people, the struggle for social progress, activities in defence of peace, the struggle for national liberation, or as a result of scientific activities.").

²⁸⁶ CONSTITUTION DE LA RÉPUBLIQUE POPULAIRE DU CONGO [CONSTITUTION] 1979, art. 14 (People's Republic of Congo), *translated by* Haidee Celaya *in* CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (Albert P. Blaustein & Gisbert H. Flanz eds., 1980) ("The People's Republic of the Congo provides asylum in its territory to foreign nationals pursued as a result of their actions in favor of democracy, of their struggle for national liberation, for liberty in cultural and scientific work and for the defense of the rights of the working people.").

²⁸⁷ 대한민국헌법 [CONSTITUTION] 1948, art. 26 (N. Kor.) ("The D.P.R.K. affords the right of asylum to foreign nationals persecuted for fighting for democratic principles or national liberation movements, or for the interests of the working people or for freedom of scientific and cultural activities.").

²⁸⁸ CONSTITUIÇÃO DA REPÚBLICA POPULAR DE MOÇAMBIQUE [CONSTITUTION] 1975, art. 25 (Mozam.).

²⁸⁹ USTAV SOCIJALISTICKE FEDERATIVNE REPUBLIKE JUGOSLAVIJE [CONSTITUTION] 1963, art. 65 (Yugoslavia).

²⁹⁰ Hiến Pháp [CONSTITUTION] 1992, art. 49 (Viet.) (amended 2013).

²⁹¹ Монгол Улсын Үндсэн Хууль [CONSTITUTION] 1940, art. 88 (Mong.).

claring that it "grants asylum to [those persons] persecuted by virtue of the struggle . . . against imperialism, fascism, colonialism and neocolonialism; for the suppression of racial discrimination; [and] for the rights and demands of workers, peasants and students."²⁹²

Narrowly crafted asylum provisions were not unique to socialist countries. Constitutions of Islamic countries offer further insight into asylum as a right circumscribed and overshadowed by a nation's political and domestic considerations. For instance, Saudi Arabia grants political asylum "provided it is in the public interest."²⁹³ Iran's constitution declares that asylum is available to all foreigners "except[] those who are known . . . [by] Iran[] to be traitors and criminals."²⁹⁴

Most countries in our dataset, however, feature a form of the right of asylum in their constitutions that purports to reflect the state's genuine humanitarian concern. Many states simply recognize the right and do not predicate its granting upon any specific conditions, characteristics of the asylum-seeker, or the furthering of any ideology. Peru, for instance, declares simply that "[t]he State recognizes political asylum."²⁹⁵ So do Venezuela²⁹⁶ and Albania.²⁹⁷ Rwanda's 1978 constitution also states tersely that "[t]he right of asylum shall be recognized under the conditions prescribed by law."²⁹⁸ Asy-

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²⁹² CONSTITUCIÓN DE LA REPUBLICA DE CUBA [CONSTITUTION] 1976, ch. 1, art. 13 (Cuba) (first alteration in original).

²⁹³ الْحُكْمُ الْأَسَاسِيُّ النِّظَامِ [CONSTITUTION] 1992, art. 42 (Saudi Arabia).

²⁹⁴ QANUNI ASSASSI JUMHURII ISLAMAI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1358 [1979] art. 155.

²⁹⁵ CONSTITUCIÓN POLÍTICA DEL PERÚ [CONSTITUTION] 1993, tit. I, ch. 3, art. 36 (Peru) ("The State recognizes political asylum. It accepts the status of asylee [*asilado*] granted by a host government. In case the asylee is expelled, he is not to be returned to the country whose government persecutes him.").

²⁹⁶ CONSTITUCIÓN [CONSTITUTION] 1999, tit. III, ch. 4, sect. 1, art. 69 (Venez.) ("The Bolivarian Republic of Venezuela recognizes and guarantees the right of asylum and refuge. Extradition of Venezuelans is prohibited.").

²⁹⁷ KUSHTETUTA E REPUBLIKËS SË SHQIPËRISË [CONSTITUTION] 1998, art. 40 (Alb.) ("Foreigners have the right of refuge in the Republic of Albania according to law.").

²⁹⁸ CONSTITUTION DE LA RÉPUBLIQUE RWANDAISE [CONSTITUTION] 1978, art. 15 (Rwanda) ("The right of asylum shall be recognized under the conditions prescribed by law. Extradition shall be authorized only within the limits provided by law.").

lum provisions in the constitutions of Burundi,²⁹⁹ Chad,³⁰⁰ Georgia,³⁰¹ Macedonia,³⁰² Paraguay,³⁰³ post-Communist Poland,³⁰⁴ Romania,³⁰⁵ and Russia,³⁰⁶ among others, are analogous.

²⁹⁹ CONSTITUTION DE LA RÉPUBLIQUE DU BURUNDI [CONSTITUTION] 2005, art. 50 (Burundi) ("The right of asylum is recognized in the conditions specified by the law. Extradition is only authorized within the limits specified by the law. No Burundian may be extradited abroad except if they are prosecuted by an international penal jurisdiction for crime of genocide, crime of war or other crimes against humanity.").

³⁰⁰ CONSTITUTION DE LA RÉPUBLIQUE DU TCHAD [CONSTITUTION] 1996, art. 46 (Chad) ("The right to asylum is granted [*accordé*] to foreign nationals [*ressortissants*] within the conditions determined by the law. The extradition of political refugees is prohibited.").

³⁰¹ საქართველოს კონსტიტუცია [CONSTITUTION] 1995, art. 47 (Geor.) ("1. Aliens and stateless persons living in Georgia shall have the rights and obligations equal to those of the citizens of Georgia except as provided for by the Constitution and law. 2. Georgia shall grant asylum to aliens and stateless persons according to universally recognised rules of international law, as determined by law. 3. No asylum seeker shall be transferred to another state if he/she is persecuted for his/her political creed or an action not considered a crime under the legislation of Georgia.").

³⁰² Устав на Република Македонија [CONSTITUTION] 1991, art. 29 (Maced.) ("Foreign subjects enjoy freedoms and rights guaranteed by the Constitution in the Republic of Macedonia, under conditions regulated by law and international agreements. The Republic guarantees the right of asylum to foreign subjects and stateless persons expelled because of democratic political convictions and activities. Extradition of a foreign subject can be carried out only on the basis of a ratified international agreement and on the principle of reciprocity. A foreign subject cannot be extradited for political criminal offences. Acts of terrorism are not regarded as political criminal offences.").

³⁰³ CONSTITUCIÓN [CONSTITUTION] 1967, ch. 5, art. 122 (Para.) ("The right of asylum is recognized, under the conditions and with the requirements established by the laws and the standards of international law, in favor of any person who for political reason or offense may be the object of persecution or find himself in danger of being persecuted.").

³⁰⁴ KONSTYTUCJA POLSKIEJ RZECZYPOSPOLITEJ LUDOWEJ [CONSTITUTION] 1997, art. 56 (Pol.) ("1. Foreigners shall have a right of asylum in the Republic of Poland in accordance with principles specified by statute. 2. Foreigners who, in the Republic of Poland, seek protection from persecution, may be granted the status of a refugee in accordance with international agreements to which the Republic of Poland is a party.").

³⁰⁵ CONSTITUȚIA REPUBLICII POPULARE ROMÂNE [CONSTITUTION] 1991, art. 18 (Rom.) ("1. Aliens and stateless persons residing in Romania shall enjoy the general protection of persons and property guaranteed by the Constitution and other laws. 2. The right to asylum is granted and withdrawn under conditions of the law, observing the international conventions and treaties to which Romania is a party.").

³⁰⁶ KONSTITUTSIJA ROSSIJSKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 63 (1993) (Russ.) ("The Russian Federation shall grant political asylum to foreign nationals and stateless persons according to the universally recognized norms of international law. 2. In the Russian Federation it shall not be allowed to extradite to other States those people who are persecuted for political convictions, as well as for actions (or inaction) not recognized as a crime in the Russian Federation. The extradition of people accused of a crime, and also the handover of convicts for

Other countries' constitutions perceive the right of asylum through the prism of protections of human rights and show greater attention to the individual and her safety. Indonesia's 2000 amendment to the constitution put the right to obtain asylum in the context of a person's "right to protection of his/herself, family, honour, dignity, and property, and . . . the right to feel secure against and receive protection from the threat of fear to do or not do something that is a human right."³⁰⁷ The Kyrgyz Republic grants "asylum under the procedure established by law to foreign citizens and stateless persons persecuted for political reasons."³⁰⁸ In Egypt's 1971 constitution, the right to asylum belongs to "any foreigner who has been persecuted for having defended the interests of the people or the rights of man, peace or justice."³⁰⁹ The asylum provision in the constitutions of Timor-Leste,³¹⁰ Bulgaria,³¹¹ Slovak Republic,³¹² Slovenia,³¹³ and Tajikistan³¹⁴ reflect the same sentiment.

In other instances, the breadth of the right points to its use as a humanitarian device. Mongolia's most recent 1992 constitution grants the right to "persons persecuted for their convictions, political or other activities in pursuit of justice."³¹⁵ Namibia grants "asylum to persons who reasonably fear persecution on the ground of their political beliefs, race, religion or membership of a particular social group."³¹⁶ Similarly, Serbia's constitutional provision is most concerned with "prosecution based on his race, gender, language, religion, national origin or association with some other group, political opinions."³¹⁷ The Democratic Republic of Congo specifies even further that the right to asylum is aimed to provide sanctuary to

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serving sentences in other States shall be carried out on the basis of the federal law or the international agreement of the Russian Federation.").

³⁰⁷ UNDANG-UNDANG DASAR NEGARA REPUBLIK INDONESIA [CONSTITUTION] 2002, art. 28G (Indon.).

³⁰⁸ Конституция Кыргызской Республики [CONSTITUTION] 2007, art. 19 (Kyrg.).

³⁰⁹ CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 11 Sept. 1971 art. 53, as amended, 22 May 1980, 25 May 2005, 26 Mar. 2007.

³¹⁰ CONSTITUIÇÃO DA REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE [CONSTITUTION] 2002, art. 10 (Timor-Leste).

³¹¹ Конституция на Република България [CONSTITUTION] 1991, art. 27 (Bulg.).

³¹² ÚSTAVA SLOVENSKEJ REPUBLIKY [CONSTITUTION] 1992, ch. II, art. 53 (Slovk.).

³¹³ USTAVA REPUBLIKE SLOVENIJE [CONSTITUTION] 1991, art. 48 (Slovn.).

³¹⁴ Конституция Республики Таджикистан [CONSTITUTION] 1994, art. 16 (Taj.).

³¹⁵ Монгол Улсын Үндсэн Хууль [CONSTITUTION] 1992, art. 18, cl. 4 (Mong.).

³¹⁶ THE CONSTITUTION OF THE REPUBLIC OF NAMIBIA [CONSTITUTION] 1990, art. 97 (Namib.).

³¹⁷ Устав Републике Србије [CONSTITUTION] 2006, art. 57 (Serb.).

“foreign nationals, prosecuted or persecuted, notably, for their opinion, their belief, their racial, tribal, ethnic, linguistic affiliation or their action in favor of democracy and for the defense of the Rights of Man and of Peoples.”³¹⁸

Overall, the world’s constitutions have undoubtedly witnessed a trend toward the “humanitarization” of the right of asylum over time.³¹⁹ Some countries, especially a number of the later adopters, frame asylum as a right from the outset. In other cases, we notice the reenactment of existing asylum provisions rephrased to reflect a human rights dimension. We observed specific efforts to change the text of the constitutional provisions, often eliminating any references to revolutionaries, struggles for liberation, or other politically charged phraseology. For instance, Congo’s constitutional asylum provision from 1979 addressed foreigners “struggl[ing] for national liberation, for liberty in cultural and scientific work and for the defense of the rights of the working people.”³²⁰ By 1992, Congo’s constitutional provision expanded. While it still contained references to “national liberation,” it now also specifically referenced “the fight against racism and apartheid, the freedom of scientific and cultural work and for the defense of Human Rights.”³²¹ Only a decade later, Congo’s constitutional provision recognizing the right of asylum stated simply: “The right of asylum is accorded to foreigners under conditions determined by law.”³²²

Needless to say, even if the text of the right to asylum on its face appears to emphasize a humanitarian dimension, there still could be different underlying motivations for adoption or recharacterization of the right. Moreover, when asylum is phrased as a right, it still allows states to condemn the rights records of others. In addition, there can be obvious economic benefits for countries interested in admitting asylum-seekers, such as attracting much-needed workers in the face of an aging population, supplementing a declining population, or gaining labor skills in short national supply.³²³

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³¹⁸ CONSTITUTION DE LA RÉPUBLIQUE DÉMOCRATIQUE DU CONGO [CONSTITUTION] 2006, art. 33 (Dem. Rep. Congo).

³¹⁹ See *supra* fig. 1.

³²⁰ CONSTITUTION DE LA RÉPUBLIQUE POPULAIRE DU CONGO [CONSTITUTION] 1979, art. 14 (People’s Republic of the Congo).

³²¹ CONSTITUTION DE LA RÉPUBLIQUE DU CONGO [CONSTITUTION] 1992, art. 51 (Congo).

³²² CONSTITUTION DE LA RÉPUBLIQUE DU CONGO [CONSTITUTION] 2002, art. 15 (Congo).

³²³ See *supra* subpart III.B.

V

WHAT PREDICTS THE ADOPTION OF THE RIGHT TO ASYLUM?

In the preceding Parts, we developed a number of conjectures that lend themselves to empirical testing. We suggested that, in various ways, asylum provisions may further state interest. Specifically, for countries with net refugee outflows, it is tempting to pay lip service to the right and improve their international reputation without incurring any of the costs associated with integrating refugees into their society.³²⁴ In addition, we suggested countries with high age-dependency ratios stand most to benefit from the right, as they need to expand the size of their workforce.

At the same time, the descriptive exploration in Part IV revealed that there are deep historic roots to the right, whereby some legal systems have long included the provision. We found an especially strong link between the adoption of asylum and socialism, with socialist countries serving as early adopters and the right diffusing among socialist states. Even today, the right is still common in former socialist systems, although it has been recast in a humanitarian language. By contrast, our descriptive analysis revealed that the right is notably absent from common law systems. These impressions are consistent with a body of literature that suggests that legal origins tend to have a lasting effect on a country's legal system—both because of path dependency and subsequent constitutional borrowing among countries that share the same tradition.³²⁵ It is possible, therefore, that a country's legal tradition is the only meaningful determinant of constitutional asylum rights adoption.

The use of regression analysis allows us to explore the empirical validity of these conjectures and to test them against each other. Specifically, regression analysis allows us to examine what variables predict the adoption of a right to asylum, while holding constant other factors. Of course, we ought to be cautious in making causal claims with cross-country data. While an important advantage of regression analysis is that we can hold other variables constant, we cannot control for *all* relevant factors. Specifically, there are differences among

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³²⁴ See *id.*

³²⁵ See, e.g., Goderis & Versteeg, *supra* note 197, at 14–15 (finding empirically that countries borrow constitutional provisions from countries within the same legal tradition); Holger Spamann, *Contemporary Legal Transplants: Legal Families and the Diffusion of (Corporate) Law*, 2009 BYU L. REV. 1813, 1844–51 (2010) (suggesting that there are important networks within each legal tradition through which legal ideas and innovations spread).

countries that cannot be captured by numerical data and therefore are not fully accounted for. When such factors are correlated with variables that are included in the model, we may wrongfully attribute the impact of the omitted factors to the variables included in the model. Nonetheless, exploring which factors are correlated with the adoption of asylum provisions sheds light on the plausibility of certain relationships and can usefully supplement our theories and impressions developed in the preceding Parts.³²⁶

To explore the predictors of the right to asylum, we estimate a logit model that exploits variation in adoption patterns both across countries and across time to explain why countries adopt the right to asylum in some form.³²⁷ In this model, the dependent variable takes the value of zero prior to the year of adoption, the value one in the year of adoption, and becomes missing after adoption. The aim of this model, which is known as an “onset model,” is to explain why countries adopt the right to asylum rather than to explain why they retain the right post-adoption.³²⁸

This model includes a number of variables that allow us to explore the plausibility of our main conjectures, along with a number of control variables. To explore the possibility that some states benefit more from asylum because of their demographic composition, we include: (1) a variable that captures countries’ age-dependency ratio. This variable, taken from the World Development Indicators, captures the ratio of people younger than fifteen or older than sixty-four to the working-age

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³²⁶ See Anne Meuwese & Mila Versteeg, *Quantitative Methods in Comparative Constitutional Law*, in PRACTICE AND THEORY OF COMPARATIVE LAW 230, 230 (Maurice Adams & Jacco Bomhoff eds., 2012) (elaborating these caveats in the realm of constitutional right adoption).

³²⁷ A linear probability model is an ordinary least squares model for a binary dependent variable. See JEFFREY M. WOOLDRIGE, *INTRODUCTORY ECONOMETRICS: A MODERN APPROACH* 243–49 (Thomson South-Western ed., 2d ed. 2003) (describing the basic assumptions underlying the linear probability model). The fact that we are analyzing panel data that has repeated country observations over time called for a number of methodological refinements. In particular, the model is estimated with robust standard errors that are both corrected for problems of heteroscedasticity that are common to panel data and clustered at the country level to allow for serial correlation over time. See also Tom Ginsburg et al., *When to Overthrow Your Government: The Right to Resist in the World’s Constitutions*, 60 UCLA L. REV. 1184, 1229 (2013) (adopting a similar approach); Tom Ginsburg & Mila Versteeg, *Why Do Countries Adopt Constitutional Review?*, 30 J.L. ECON. & ORG. 587, 597–600 (2014) (adopting a similar approach).

³²⁸ The onset model is also used by Goderis & Versteeg, *supra* note 197, at 15 and Ginsburg & Versteeg, *supra* note 327, 598 n.10, who also use it to analyze constitutional characteristics. In our baseline model, we observe twenty-four onsets, meaning that we explain twenty-four instances of adoption.

population.³²⁹ The higher the age-dependency ratio, the higher number of elderly dependent on an active work force, and the more foreign workers may be needed. Thus, a higher age-dependency ratio should increase the probability that a country enshrines the right to asylum in its constitution.

To explore the possibility that countries' refugee outflows affect the likelihood of constitutionally protecting asylum, we include (2) a variable that captures the natural log of the total number of refugees from each country that reside abroad as refugees.³³⁰ We expect that when countries have negative refugee flows, or a large number of their citizens reside abroad as refugees, they are more likely to adopt a right to asylum in their constitution to project an image of a desirable and prosperous nation, even when their actual record suggests otherwise.

We also account for the more permanent effect of a state's legal tradition. Specifically, we include two variables that capture (3) whether a country has socialist legal origins, meaning that its legal system was shaped by socialist influences, and (4) whether a country has a common law legal system. Both variables were created by Professors LaPorta, Lopez-de-Silanes, Shleifer, and Vishny, and are commonly used in the influential economics literature on the impact of legal origins.³³¹ The civil law tradition is omitted as a reference category for interpretation.³³² We expect that countries with socialist legal origins are more likely to adopt the right and that common law countries are less likely to adopt it.

The model includes a number of control variables. First, we control for (5) the level of democracy. A body of empirical research has shown that democracies are generally more respectful of human rights, which might also make them more

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³²⁹ Specifically, we use the variable "SP.POP.DPND" from the 2015 edition of the World Development Indicators. Data are shown as the percentage of dependents per 100 working-age population. WORLD BANK, *supra* note 4.

³³⁰ Specifically, we use the variable "SM.POP.REFG.OR" from the 2015 edition of the World Development Indicators. This variable captures the total refugee population. To account for outliers, we use the natural log of this variable. *Id.*

³³¹ See Rafael La Porta et al., *The Quality of Government*, 15 J.L. ECON. & ORG. 222, 222 (1999). For an overview of the literature, see Rafael La Porta et al., *The Economic Consequences of Legal Origins*, 46 J. ECON. LITERATURE 285 (2008).

³³² Professors La Porta et al. create two smaller groups of countries, those with German legal origins and Scandinavian legal origins. See *id.* Both of these are also omitted from the model, meaning that we have to interpret any effect of socialist legal origins or common law legal origins, as compared to the civil law tradition in addition to the German and Scandinavian law tradition (both of which are commonly considered to be of, or closely related to, the civil law tradition).

likely to adopt an asylum right.³³³ To account for this possibility, we include a country's level of democracy as measured numerically in the political science literature.³³⁴ Second, we include (6) the natural log of a country's level of GDP per capita. The empirical human rights literature has shown that wealthy countries tend to be more respectful of rights, as more resources allow states to better protect rights.³³⁵ As a result, they may also be more inclined to add rights protections to

³³³ See, e.g., Christian Davenport & David A. Armstrong II, *Democracy and the Violation of Human Rights: A Statistical Analysis from 1976–1996*, 48 AM. J. POL. SCI. 538, 551 (2004) (“[T]here is a threshold of domestic democratic peace. Below certain values, the level of democracy has no discernible impact on human rights violations, but after a threshold has been passed . . . democracy decreases state repression.”); Christian Davenport, *Human Rights and the Democratic Proposition*, 43 J. CONFLICT RESOL. 92, 96–97 (1999) (“[M]oves toward democracy decrease political repression . . . [because] changes in the level of democracy increase political tolerance of decision makers who are held accountable, and increased democracy decreases the willingness and influence of coercive agents to push for repressive applications [of law] because of their altered state with the government as well as the citizenry.”); Christian Davenport, *State Repression and the Tyrannical Peace*, 44 J. PEACE RES. 485, 500 (2007) (“[S]ingle-party governments possess some of the characteristics of democracies that reduce state repression . . . [but] facilitate[ing] democracy within these autocracies . . . entails an even greater reduction in repressive behavior.”); Emilie M. Hafner-Burton et al., *When Do Governments Resort to Election Violence?*, 44 BRIT. J. POL. SCI. 149, 174 (2013) (explaining that where institutional democracy is absent, “incumbent leaders are more likely to resort to repression – specifically violence – against political opposition candidates, voters or citizens when they fear losing power”); Bruce Bueno de Mesquita et al., *Thinking Inside the Box: A Closer Look at Democracy and Human Rights*, 49 INT’L STUD. Q. 439, 456 (2005) (“[T]he path to greater respect for integrity rights appears to involve all of the dimensions of democracy, albeit to varying degrees . . . .”); Steven C. Poe & C. Neal Tate, *Repression of Human Rights to Personal Integrity in the 1980s: A Global Analysis*, 88 AM. POL. SCI. REV. 853, 866 (1994) (“[D]emocracy . . . [is] associated with a decreased incidence in [state] repression . . . .”); David L. Richards, *Perilous Proxy: Human Rights and the Presence of National Elections*, 80 SOC. SCI. Q. 648, 649 (1999) ([D]emocracies are more protective of physical integrity rights than any other type of government.”); David L. Richards & Ronald D. Gelleny, *Good Things to Those Who Wait? National Elections and Government Respect for Human Rights*, 44 J. PEACE RES. 505, 519 (2007) (“[I]nstitutional democracy provides protection for physical integrity rights and, perhaps, other types of human rights as well.”). This insight is sometimes referred to as the “democratic civil peace.” See, e.g., Håvard Hegre et al., *Toward a Democratic Civil Peace? Democracy, Political Change, and Civil War, 1816–1992*, 95 AM. POL. SCI. REV. 33, 44 (2001) (“There is a democratic civil peace . . . .”).

³³⁴ The measure of a country's level of democracy is the “polity2” variable from the Polity IV data set, which is widely used by political scientists. This variable ranges from +10 (strongly democratic) to –10 (strongly autocratic). See *The Polity IV Project: About Polity*, CTR. FOR SYSTEMIC PEACE, <http://www.systemicpeace.org/polityproject.html> [https://perma.cc/Y5VS-887D].

³³⁵ See Poe & Tate, *supra* note 333, at 866–67 (finding that wealthier countries are more respectful of human rights). The measure of gross domestic product (GDP) per capita comes from the Penn World Table. *Penn World Table*, CTR. FOR INT’L DATA, <http://cid.econ.ucdavis.edu/pwt.html> [https://perma.cc/VER3-XQ8L].

their constitution. What is more, Professors Cox and Posner argue that wealthy countries are generally better able to absorb shocks of immigrants and refugees than poor countries, thus making it more likely that they offer generous asylum protections.³³⁶ Third, we control for (7) the natural log of the country's population size because population size generally affects human rights performance³³⁷ and because larger countries also have a larger capacity to accept refugees.³³⁸ Fourth, we control for (8) whether countries have ratified the Refugee Convention and its Optional Protocol. While the Convention does not require countries to constitutionally entrench their international legal obligations and does not provide refugees with a right to be granted asylum, some states may nonetheless opt to constitutionally protect the right to asylum when implementing their treaty commitments.³³⁹ On the other hand, it is also possible that ratification makes it less likely that states will constitutionally address asylum because the constitutional commitments and the treaty commitments serve as substitutes for one another.³⁴⁰

To control for permanent differences between different regions, we include a set of regional variables that capture whether a state is located in (9) Sub-Saharan Africa, in (10) Western Europe or Northern America, in (11) Latin America or the Caribbean, in (12) Northern Africa or the Middle East, in (13) Southern Asia, and in (14) East Asia and the Pacific, respectively. Finally, (15) to control for the possibility that the

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³³⁶ Adam B. Cox & Eric A. Posner, *The Second-Order Structure of Immigration Law*, 59 STAN. L. REV. 809, 834 (2007) ("Wealthy, populous countries are buffered against security and economic shocks to a much greater extent than poor and thinly populated countries are. Given an identical shock, a large country would gain less from removing noncitizens (as labor competitors, or threats) than a small country would. Thus, we predict that larger and wealthier countries provide greater ex post protections to migrants than smaller and poorer countries do, holding constant the proportion of migrants in the population."). Professors Chilton and Posner explore this work further, empirically, by studying the relationship between the protection a country provides and the investment a non-citizen makes specifically to live in that country. Adam S. Chilton & Eric A. Posner, *Country-Specific Investments and the Rights of Non-Citizens*, VA. J. INT'L L. (forthcoming 2017).

³³⁷ See Law & Versteeg, *supra* note 33, at 922 (noting the relationship between rights violations and population size).

³³⁸ See Chilton & Posner, *supra* note 336, at 834.

³³⁹ See Mila Versteeg, *Law Versus Norms: The Impact of Human-Rights Treaties on National Bill of Rights*, 171 J. INSTITUTIONAL & THEORETICAL ECON. 87, 98–100 (2015) (exploring the notion that treaty commitments may be reflected in the constitution but finding only limited support for this hypothesis).

³⁴⁰ See *id.* (suggesting that treaties and constitutions can serve as substitutes and complements, and finding evidence that, at least in some cases, they serve as substitutes).

right to asylum simply becomes more prevalent over time, we include a set of time trends, known as cubic splines.³⁴¹

Some variables in our model have better availability than others. Indeed, the variables we use vary in their availability both across countries and across time. Most notably, the variable that captures the natural log of the refugee population abroad only becomes available in the 1990s, while the other variables in the model are available from the 1960s onward. Without addressing these issues of coverage, there are only a few instances of asylum adoption that our model can explain. What is more, research suggests that when missing values in the data are not random, results might be biased.³⁴² For these reasons, we use a data imputation procedure (known as “Amelia”) that uses non-missing data from all the other variables in the model to predict the values of the missing data points.³⁴³ This procedure is commonly used in the quantitative political science literature.³⁴⁴ Importantly, however, our results are similar when we do not use the Amelia imputation procedure.³⁴⁵

Table 1 reports the results from our logit onset model. It reports odds ratios instead of coefficients, as these lend themselves to easier interpretation. The reported odds ratios capture the change in the odds of adopting the right to asylum given a one-unit increase on the independent variable. An odds ratio of one denotes that the odds stay the same; an odds ratio

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³⁴¹ We added a linear time trend, a squared time trend, and a cubed time trend. Doing so is considered to be best practice in dealing with time dependency in models with binary dependent variables. See David B. Carter & Curtis S. Signorino, *Back to the Future: Modeling Time Dependence in Binary Data*, 18 POL. ANALYSIS 271, 282–83 (2010).

³⁴² See James Honaker & Gary King, *What to Do About Missing Values in Time-Series Cross-Section Data*, 54 AM. J. POL. SCI. 561, 563 (2010).

³⁴³ We use the Amelia II package in R. See James Honaker et al, *Amelia II: A Program for Missing Data*, 45 J. STAT. SOFTWARE 1, 1–3 (2011). We only imputed values for the following variables: (1) the natural log of the refugee population abroad, (2) the age-dependency ratio, (3) the log of the country’s GDP per capita, (4) the log of the country’s population size, and (5) the country’s democracy score. We did not input the other variables because they have extensive coverage. We followed the standard procedure of imputing five datasets but because our matching procedure cannot use multiple values for a single variable, we used the average values of the imputed datasets for our matching procedure. As is common in the literature, we included a polynomial term to allow for the possibility of trends in these variables over time (“polytime = 2”). This approach is similar to the one taken by Chilton & Versteeg, see Adam S. Chilton & Mila Versteeg, *The Failure of Constitutional Torture Prohibitions*, 44 J. LEGAL STUD. 417, 434 (2015).

³⁴⁴ See, e.g., Adam S. Chilton & Mila Versteeg, *Do Constitutional Rights Make a Difference?*, 60 AM. J. POL. SCI. 575, 582 (2015) (utilizing the Amelia imputation procedure).

³⁴⁵ See *infra* note 351 and accompanying text.

of higher than one denotes an increase in the odds, and an odds ratio of smaller than one denotes a decrease in the odds. In Table 1, three stars (***) indicate confidence at the 99% level, two stars (**) confidence at the 95% level, and one star (*) confidence at the 90% level.

Figure 3 reports a subset of the same results graphically. To ease interpretation, it depicts the effect of the continuous variables only, for which the odds ratios are comparable.³⁴⁶ In Figure 3, the circles represent the best estimate of the odds ratio for each variable, holding the other variables constant. The lines to either side of each point denote the 90% confidence interval for the coefficient's value. We can say with 90% certainty that the coefficient's true value falls within this range. Where the intervals do not cross one, we can say with 90% certainty that there is a statistically significant increase in the odds of adopting the right to asylum.

The results reveal that, by far, the most important predictor of asylum adoption is the socialist legal tradition. For countries with socialist legal origins, the odds of adopting the right to asylum are twelve times higher than for those with origins in civil law (the reference category for interpretation), an effect that is statistically significant at the one percent level. Conversely, the odds that common law countries adopt the right are about six times lower than for civil law countries, an effect that is also statistically significant at the one percent level.

Yet, the results also show that legal origin is not the sole predictor of asylum adoption. Instead, we find that age-dependency ratios and refugee outflows also have explanatory power, even when we control for legal origins. The impact of a high age-dependency ratio is fairly substantial: a one-point increase on the age-dependency ratio (which is measured as a percentage and ranges from sixteen to 122) leads to a five percent increase in the odds that countries will adopt a right to asylum. This variable is statistically significant at the one percent level. In addition, we find that countries that have more citizens as refugees abroad are more likely to adopt a right to asylum. Because the variable is log transformed, the interpretation is a bit more complicated. A 2.718 increase in the total number of refugees abroad produces a 14.3 percent increase in the odds

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³⁴⁶ When depicting the odds ratios of all variables graphically, the effect of the socialist legal tradition dwarfs the others, which are hard to make out in Figure 3.

of adopting the right to asylum.³⁴⁷ This means that if the number of refugees abroad were to double, the odds of adopting the right to asylum would increase by 9.7 percent.³⁴⁸ At the same time, it is worth noting that this variable is statistically significant only at the ten percent level.

Some of our control variables are also statistically significant predictors of the right to asylum. Democracy is positively associated with the constitutional right to asylum. Specifically, a one-point increase in a country's democracy score, increases the odds of adopting the right to asylum by ten percent, an effect that is statistically significant at the one percent level. Larger countries also are more likely to adopt the right to asylum. Specifically, a doubling of a country's population size (which is also a log transformed variable) leads to a twenty-four percent increase in the odds of adopting the right to asylum, an effect that is statistically significant at the five percent level.³⁴⁹ Ratification of the Refugee Convention is negatively associated with the right to asylum adoption, suggesting that the international protections and the constitutional protections serve as substitutes rather than supplements. Specifically, the odds that parties to the Refugee Convention or its optional protocol adopt the right to asylum are 2.67 times lower than for non-parties. GDP per capita (logged), the time variables, and most of the regional variables are not statistically significant predictors of adopting the right to asylum.³⁵⁰

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³⁴⁷ If a variable is natural log transformed, then its odds ratio is the odds ratio associated with scaling up the original variable (the total number of asylum seekers abroad) by a factor of $e = \text{Exp}(1)$, which is about 2.7182818.

³⁴⁸ This is calculated using the formula $k^\beta = 2^{0.13} = 1.097$, whereby k is the factor by which the number of asylum seekers abroad increases, and β is the beta coefficient on this variable in a logit regression (whereby the coefficients are not presented as odds ratios).

³⁴⁹ This is calculated using the formula, $k^\beta = 2^{0.31} = 1.241$, whereby k is the factor by which the number of asylum seekers abroad increases, and β is the beta coefficient on this variable in a logit regression.

³⁵⁰ The regional variables reveal that the odds that countries in East Asia and the Pacific adopt the right to asylum are about sixteen times lower.

TABLE 1: PREDICTORS OF THE RIGHT TO ASYLUM

	(1) logit model
age dependency ratio	1.049*** (0.019)
refugees abroad (log)	1.143* (0.090)
refugee convention ratification	0.375** (0.156)
democracy	1.102*** (0.033)
GDP per capita (log)	1.146 (0.249)
population size (log)	1.367** (0.182)
socialist legal origins	12.413*** (9.319)
common law legal origins	0.163*** (0.102)
year	0.719 (0.472)
year squared	1.005 (0.009)
year cubed	1.000 (0.000)
Sub-Saharan Africa	0.810 (0.747)
Western Europe/North America	0.230 (0.238)
Latin America Caribbean	0.370 (0.291)
North Africa Middle East	0.590 (0.581)
East Asia Pacific	0.075*** (0.058)
Observations	6,607
Robust standard errors in parentheses	
***p<0.01, **p<0.05, *p<0.1	

FIGURE 3

These results are robust to a number of alternative specifications. First, when we drop the Amelia data imputation procedure, a similar impression emerges, even though the number of observations is substantially smaller.³⁵¹ Second, if we estimate a random effects logit model, which further allows us to account for unobserved cross-country differences, we find that the age-dependency ratio and socialist legal origins are still statistically significant predictors of asylum adoption (both at the one percent level), while the number of refugees abroad loses statistical significance. Third, if we fully account for all non-time varying country specific factors in a fixed-effects linear probability model, the age-dependency variable remains a

³⁵¹ Because we are working with a much smaller number of observations, we estimate two models: (1) a model that has all of our variables but excludes the number of refugees abroad, since that variable is available from the 1990s only; and (2) a model that includes all of our variables. In model (1), our variables of interest generally are similar in terms of size and signs. All findings are generally slightly less statistically significant, which is not surprising considering the smaller sample size. Socialist legal origins is now statistically significant at the 5 percent level (instead of the 1 percent level) and the age dependency ratio now has a p-value of 0.11, thus just falling outside conventional levels of statistical significance. In model (2), the number of refugees abroad has a similar size and sign and is statistically significant at the 10 percent level. In this model, however, which only includes cases of adoption since the 1990s, socialist legal origins and the age-dependency ratio are no longer statistically significant. Together, these findings suggest that recent instances of adoption are driven by refugees abroad and not socialist legal heritage or age dependency ratios.

statistically significant predictor of asylum adoption, while the number of refugees abroad just falls outside conventional levels of statistical significance.³⁵² In this model, the legal origins variables drop out because the country fixed-effects already control for permanent country characteristics. Overall, these robustness checks show that our results are fairly robust to alternative specifications and give us confidence that our findings are not merely an artifact of how we specified our model.

CONCLUSION

To our knowledge, this Article is the first to systematically explore the origins and evolution of the right to asylum in the world's constitutions. Our analysis reveals that the right is a reflection of underlying political economy motivations and incentives. Some countries are particularly forthright about their self-interest and openly use the right to proclaim their prevailing ideology and to reach out to people who share this ideology. Others, by contrast, frame it as a humanitarian tool that provides sanctuary to all. Yet, as more and more countries choose to adopt a version of the constitutional right to asylum underpinned by humanitarian concerns, the right to asylum can nevertheless become beneficial for the state in the face of changing demographic and economic circumstances. Indeed, we find that the right to asylum is more likely to appear in countries with a relatively small percentage of the population in the labor force and countries with net refugee outflows.

While our analysis might seem cynical, we end on a positive note. Although we do not provide an answer to the question whether the right to asylum is effective, the apparently self-serving motivations for including asylum rights are not necessarily detrimental for asylum-seekers nor do they necessarily undermine the right.³⁵³ Asylum's economic and political

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³⁵² We use a linear-probability model because a fixed effects logit model suffers from the so-called "incidental parameters" problem, causing the estimates for the fixed effects to be inconsistent. In the fixed-effects linear probability model, the age dependency ratio is still statistically significant at the 10 percent level, while the variable that captures the number of refugees abroad falls just outside conventional levels of statistical significance.

³⁵³ The pursuit of national interests, after all, can be a political necessity *and* a moral duty. See Hans J. Morgenthau, *The Mainsprings of American Foreign Policy: The National Interest vs. Moral Abstractions*, 44 AM. POL. SCI. REV. 833, 854 (1950). Indeed, aiding refugees may be both compatible and desired by domestic interests, and governments may readily take into account the plight of foreign stakeholders when shaping their national policies. See Eyal Benvenisti, *Sovereigns as Trustees of Humanity: On the Accountability of States to Foreign Stake-*

benefits, such as potentially alleviating the effects of an aging population by filling the demands of a declining labor force, may actually help ensure that countries will uphold their constitutional promises more readily.

A body of empirical literature has shown that human rights commitments are frequently under-enforced, regardless of whether they are rooted in constitutional law or international law.³⁵⁴ It is commonly suggested that human rights commitments fail to improve human rights practices because they lack an external, super-state enforcement authority capable of coercing political actors to comply with the law.³⁵⁵ Sovereign states can easily ignore commitments that are inconvenient, unless doing so would set off popular protests or carry other

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holders, 107 AM. J. INT'L L. 295, 314 (2013) ("Although sovereigns are entitled to prioritize their citizens' needs, they must weigh the interests of other stakeholders and consider internalizing them into their balancing calculus. The obligation to weigh the interests of foreign stakeholders does not necessarily imply an obligation to succumb to those interests, and does not even require full legal responsibility for ultimately preferring domestic interests in balancing various opposing claims . . . . What it does imply as a minimum, however, is that sovereigns . . . give due respect to those foreign and global interests.").

³⁵⁴ Recent empirical studies on the impact of constitutional rights have found that only some rights make a difference. See Chilton & Versteeg, *supra* note 344, at 582–85; Adam S. Chilton & Mila Versteeg, *supra* note 343, at 420. The literature on human rights treaty effectiveness has found that human rights treaties make an impact only under certain circumstances but not others. See, e.g., Kevin L. Cope & Cosette D. Creamer, Response, *Disaggregating the Human Rights Treaty Regime on The Influence of History on States' Compliance with Human Rights Obligations*, 56 VA. J. INT'L L. 1, 3 (2016). For an overview of the literature on human rights treaties, see *id.*; Emilie M. Hafner-Burton, *International Regimes for Human Rights*, 15 ANN. REV. POL. SCI. 265, 267 (2012); Beth Simmons, *Treaty Compliance and Violation*, 13 ANN. REV. POL. SCI. 273, 288–91 (2010).

³⁵⁵ When it comes to ordinary law—such as codes, statutes, and other rules that apply to private actors within a state—the state is the source of law, and it has power to enforce it against its private subjects. In constitutional law and international law, however, the state is not only the source of law but also its *subject*, meaning that the only actor empowered to enforce law against the state is the state itself. See Jack Goldsmith & Daryl Levinson, *Law for States: International Law, Constitutional Law, Public Law*, 122 HARV. L. REV. 1791, 1794 (2009) (observing that constitutional law lacks an "enforcement authority capable of coercing powerful political actors to comply with unpopular decisions" and conceptualizing both international law and constitutional law as "law for states"); see also Gillian K. Hadfield & Barry R. Weingast, *Constitutions as Coordinating Devices*, in INSTITUTIONS, PROPERTY RIGHTS, AND ECONOMIC GROWTH: THE LEGACY OF DOUGLASS NORTH 121, 122 (Sebastian Galiani & Itai Sened eds., 2014) ("[N]o external agent exists to enforce the constitution."); Hardin, *supra* note 167, at 102 (contrasting constitutions with private contracts that "are generally backed by external sanctions"); Levinson, *supra* note 162, at 662 (noting that constitutions lack "any external constitutional enforcer"); Martin Shapiro, *The European Court of Justice: Of Institutions and Democracy*, 32 ISR. L. REV. 3, 5 (1998) (noting the absence of a "superior enforcing authority" and offering "the appeal to God or the right of revolution" as "uncertain and extreme remedies").

costs.³⁵⁶ Yet, an important insight from this literature is that where rights commitments align with national interests, governments are much more likely to uphold them.³⁵⁷

When providing protection to persecuted foreigners in the form of an enshrined right to asylum provides states with valuable benefits domestically, this "coincidence of interest"³⁵⁸ may aid compliance.³⁵⁹ With the prospect of millions seeking new homes in the coming decades, the exploration of the protections offered by states, which presumably consider it in their interest to grant asylum to outsiders in need, might help ascertain the true contours and substance of the right of asylum. Appealing to self-interest, rather than self-sacrifice or humanitarian ideals, might prove more effective in motivating states to ensure adequate protection for the enjoyment of human rights.³⁶⁰

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³⁵⁶ See Levinson, *supra* note 162 (reviewing various costs and how they can induce compliance).

³⁵⁷ Goldsmith & Levinson, *supra* note 355, at 1826.

³⁵⁸ JACK L. GOLDSMITH & ERIC A. POSNER, *THE LIMITS OF INTERNATIONAL LAW* 27-28 (2005).

³⁵⁹ See *e.g.*, Goldsmith & Levinson, *supra* note 355, at 1825 ("If much of what passes for international law compliance is nothing more than states acting in their immediate self-interest, or the coincidence of international law tracking these interests because powerful states influence its content or because international law reflects the common private interests of all (or most) nations, then there is no puzzle of compliance to be solved.").

³⁶⁰ Ian Martin, *Foreword* to DANIELE JOLY, *REFUGEES: ASYLUM IN EUROPE?* vii, vii (1992) ("Governments . . . are more often motivated by self-interest than by considerations of humanity, and this provides a further reason for those seeking to combat human rights violations to insist upon the right of asylum.").

APPENDIX A³⁶¹

Country	Constitution	Full Text of the Relevant Provision(s)
Albania	1946	<i>Article 40.</i> The People's Republic of Albania grants the right to asylum in its territory to foreign citizens persecuted on account of their activity in favor of democracy, of the struggle for national liberation, of the rights of the working people or in favor of the freedom in scientific and cultural work.
Albania	1976	<i>Article 64.</i> The right of sanctuary in the People's Socialist Republic of Albania can be granted to foreign citizens who are persecuted on account of their activity in favour of the revolution and socialism, of democracy and national liberation, or the progress of science and culture.
Albania	1991	<i>Article 28, cl. 16.</i> The following are the main competences of the president of the Republic . . . . He grants the right for political asylum.
Albania	1998	<i>Article 40.</i> Foreigners have the right of refuge in the Republic of Albania according to law.
Algeria	1963	<i>Article 21.</i> The Algerian Republic guarantees the right of asylum to all who fight for liberty.
Algeria	1976	<i>Article 70.</i> In no case may a political refugee, legally benefiting from the right of asylum, be delivered up or extradited.
Algeria	1989	<i>Article 66.</i> In no case may a political refugee legally benefitting from the right of asylum, be delivered up or extradited.
Algeria	1996	<i>Article 69.</i> In no case may a political refugee legally benefiting from the right of asylum, be delivered up or extradited.
Angola	1975 (Amended in 1992)	<i>Article 26.</i> Any foreign or expatriate citizen shall be guaranteed the right to ask for asylum in the event of persecution for political reasons, in accordance with the laws in force and international instruments. <i>Article 27.</i> 1. The extradition or expulsion of Angolan citizens from the nations territory shall not be permitted. 2. The extradition of foreign citizens for political motives or for charges punishable by the death penalty under the laws of the applicant country shall not be permitted. 3. In accordance with the law, Angolan courts shall know the charges made against citi-

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³⁶¹ Italicized country names denote nations no longer in existence.

Country	Constitution	Full Text of the Relevant Provision(s)
		zens whose extradition is not permitted under the foregoing clauses of the present Article.
Angola	2010	<i>Article 71.</i> 1. All foreign or expatriate citizens shall be guaranteed the right to asylum in the event of persecution for political reasons, namely those involving serious threat or persecution as a result of their work for democracy, national independence, peace amongst different peoples, liberty and human rights, in accordance with the laws in force and international instruments. 2. The law shall define the status of political refugees. <i>Article 70.</i> 1. The deportation or extradition of Angolan citizens from national territory shall not be permitted. 2. The extradition of foreign citizens for political motives, for charges punishable by the death penalty or in cases where it is justifiably recognised that extradition may lead to the torture, inhumane or cruel treatment of the individual concerned or will result in irreversible damage to their physical integrity under the law of the state applying for extradition, shall not be permitted. 3. In accordance with the law, the Angolan courts shall know the charges made against citizens whose extradition is not permitted, in accordance with the provisions contained in the previous points in this Article. 4. The expulsion from national territory of foreign citizens or stateless persons with authorisation to reside in the country or those who have requested asylum shall only be determined by a judicial ruling, except when an authorisation has been revoked, under the terms of the law. 5. The law shall regulate the requirements and conditions for the extradition and expulsion of foreigners.
Azerbaijan	1995	<i>Article 70.</i> According to the universal international legal norms the Azerbaijan Republic shall grant political asylum to foreign citizens and persons without citizenship. Extradition to another State Persons persecuted for their political convictions and deeds which are not considered crimes in the Azerbaijan Republic shall not be authorized.
Belarus	1994 (Amended)	<i>Article 12.</i> The Republic of Belarus may grant the right of asylum to persons perse-

Country	Constitution	Full Text of the Relevant Provision(s)
	in 1996)	cuted in other states for political or religious beliefs or their ethnic affiliation.
Benin	1990	<i>Article 7.</i> The rights and the duties proclaimed and guaranteed by the African Charter of the Rights of Man and of Peoples adopted in 1981 by the Organization of African Unity and ratified by Benin on 20 January 1986 ¹ are made an integral part of this Constitution and of Beninese law.
Brazil	1988	<i>Article 4.</i> The international relations of the Federative Republic of Brazil are governed by the following principles: . . . granting of political asylum.
Bulgaria	1947	<i>Article 84.</i> In the People's Republic of Bulgaria, foreigners enjoy the right of sanctuary when they are prosecuted for defending democratic principles, for struggling for their national liberation, for the rights of the workers, or for the freedom of scientific and cultural activity.
Bulgaria	1971	<i>Article 65.</i> The People's Republic of Bulgaria grants the right of asylum to foreigners persecuted for defending the interests of the working people, for participating in the national-liberation struggle, for progressive political, scientific and artistic activity, for fighting racial discrimination or in defence of peace.
Bulgaria	1991	<i>Article 27.</i> 1. Foreigners who legally reside in the country may not be expelled from it or extradited to other countries against their wills, other than under the conditions and procedures defined by the law. 2. The Republic of Bulgaria grants asylum to foreigners persecuted for their convictions or activities in defense of internationally recognized rights and freedoms. 3. The conditions and procedures for granting asylum are established by law.
Burkina Faso	1991 (Amended in 2015)	<i>Article 9.</i> The free circulation of persons and of assets, the free choice of residence and the right of asylum, are guaranteed within the order of the laws and regulations in force.
Burundi	1992	<i>Article 24.</i> The right of asylum shall be recognized under conditions defined by

Country	Constitution	Full Text of the Relevant Provision(s)
		law. Extradition shall be authorized only within the limits provided by law. No Burundian may be extradited to a foreign land .
Burundi	1998	<i>Article 26.</i> The right of asylum is recognized under conditions defined by the law. Extradition is authorized only within the limits specified by law. No Burundian may be extradited to a foreign land (<i>l'étranger</i>).
Burundi	2004	<i>Article 50.</i> The right of asylum is recognized in the conditions defined by the law. Extradition is authorized only within the limits specified by law. No Burundian may be extradited abroad except if he is prosecuted by an international criminal jurisdiction for a crime of genocide, a war crime or other crimes against humanity.
Burundi	2005	<i>Article 50.</i> The right of asylum is recognized in the conditions specified by the law. Extradition is only authorized within the limits specified by the law. No Burundian may be extradited abroad except if they are prosecuted by an international penal jurisdiction for crime of genocide, crime of war or other crimes against humanity.
Cape Verde	1980 (Amended in 1992)	<i>Article 23.</i> 1. The aliens and stateless persons who reside or sojourn in the national territory, shall enjoy the same rights, liberties and guarantees and be subject to the same duties as the Capeverdean citizens, with exception of the political rights and the rights and duties reserved, constitutionally or by law, to national citizens. <i>Article 36.</i> 1. Aliens or stateless persons persecuted for political reasons or seriously threatened of persecution on account of their activity in favor of national liberation, democracy or the respect for human rights, shall be granted the right of asylum in the national territory. 2. The law will define the statute [sic] of the political refugee.
Chad	1989	<i>Article 57.</i> L'extradition des réfugiés politiques est interdite. Les conditions du droit d'asile aux étrangers poursuivis, en raison de leurs activités en faveur de la liberté, de la paix, des droits de l'homme sont définies par la loi.
Chad	1993	<i>Article 26.</i> La République du Tchad accorde le droit d'asile, sur son territoire,

Country	Constitution	Full Text of the Relevant Provision(s)
		aux ressortissants étrangers dans les conditions déterminées par la loi. - Aucun ressortissant étranger ne peut être extradé s'il est poursuivi pour délit d'opinion.
Chad	1996	<i>Article 46.</i> The right to asylum is granted [accordé] to foreign nationals [ressortissants] within the conditions determined by the law. The extradition of political refugees is prohibited.
China	1954	<i>Article 99.</i> The People's Republic of China grants the right of asylum to any foreign national persecuted for supporting a just cause, for taking part in the peace movement or for engaging in scientific activity.
China	1975	<i>Article 29.</i> The People's Republic of China grants the right of residence to any foreign national persecuted for supporting a just cause, for taking part in revolutionary movements or for engaging in scientific activities.
China	1978	<i>Article 59.</i> The People's Republic of China grants the right of residence to any foreign national persecuted for supporting a just cause, for taking part in revolutionary movements or for engaging in scientific work.
China	1982	<i>Article 32.</i> The People's Republic of China protects the lawful rights and interests of foreigners within Chinese territory, and while on Chinese territory foreigners must abide by the law[s] of the People's Republic of China. The People's Republic of China may grant asylum to foreigners who request it for political reasons.
Colombia	1811	<i>Article 39.</i> In pursuance of the system of peace and amity with all nations which do not try to commit hostilities against us and which respect our rights, we give asylum in our ports and interior Provinces to all aliens who wish to live peacefully among us, subjecting themselves to the laws of the Union and of the Province wherein they reside, especially if in addition to their good intentions they bring among us some useful trade by which they may make their living, obtaining for this purpose a letter of naturalization or permission from Congress, before whom they shall prove the above circumstances, principally in times when unrestricted immigration would be dangerous.

Country	Constitution	Full Text of the Relevant Provision(s)
Colombia	1832	<i>Article 209.</i> All aliens of whatever nationality shall be admitted to New Granada; they shall be entitled to the same protection of person and property as is extended to Granadines provided they respect the laws of the Republic.
Colombia	1863	<i>Article 11.</i> Persons fleeing to a State after committing illegal acts against the government of another State must be sent to the interior and kept at such distance from the frontier as will prevent further acts of hostility should such action be demanded of the asylum State by the government of the other State.
Colombia	1886	<i>Article 19.</i> The authorities of the Republic are established to protect all persons residing in Colombia in their lives, honor, and property, and secure the mutual respect of all natural rights, by preventing and punishing crimes.
Colombia	1991	<i>Article 36.</i> The right of asylum is recognized within the terms provided by the law.
Congo, Dem. Rep.	2003	<i>Article 35.</i> The right of sanctuary is recognized. The Republic accords, subject to national security, sanctuary on its territory to foreigners prosecuted or persecuted due in particular to their opinions, beliefs, their allegiance to a racial, tribal, ethnic, linguistic group or their action in favor of democracy and the defense of Human and People's rights, in accordance with applicable laws and regulations. It is forbidden for any person legally enjoying a right of sanctuary to undertake a subversive activity against their country of origin or against any other country from the territory of the Democratic Republic of the Congo. The law sets the rules for exercising this right.
Congo, Dem. Rep.	2006	<i>Article 33.</i> The right to asylum is recognized. The Democratic Republic of the Congo grants, under reserve of national security, asylum on its territory to foreign nationals, prosecuted or persecuted, notably, for their opinion, their belief, their racial, tribal, ethnic, linguistic affiliation or for their action in favor of democracy and for the defense of the Rights of Man and of Peoples, in accordance with the laws and regulations in force. It is forbidden that any person regularly in enjoyment of the rights of asylum undertake any subversive

Country	Constitution	Full Text of the Relevant Provision(s)
		activity against their country of origin or against any other country, from the territory of the Democratic Republic of the Congo. Refugees may neither be remitted to the authority of the State where they are prosecuted nor sent back to the territory of the latter. In no case may a person be turned over to the territory of a State in which they risk torture, [or] cruel, degrading or inhuman punishment or treatment. The law establishes the modalities of the exercise of this right.
Congo, People's Rep.	1969	<i>Article 14.</i> All citizens of the People's Republic of the Congo have the duty to conform to the Constitution and the other laws of the Republic, to pay their taxes and to fulfil [sic] their social obligations.
Congo, People's Rep.	1973	<i>Article 14.</i> La République Populaire du Congo accorde le droit d'asile sur son territoire aux ressortissants étrangers poursuivis en raison de leur action en faveur de la démocratie, de la lutte de libération nationale, de la liberté du travail scientifique et culturel et pour la défense des droits du peuple travailleur.
Congo, People's Rep.	1979	<i>Article 14.</i> The People's Republic of the Congo provides asylum in its territory to foreign nationals pursued as a result of their actions in favor of democracy, of their struggle for national liberation, for liberty in cultural and scientific work and for the defense of the rights of the working people.
Congo, Rep.	1992	<i>Article 51.</i> The State shall accord the right of asylum, on its territory to foreign exiles persecuted by reason of their action in favor of democracy, the fight for national liberation or the fight against racism and apartheid, the freedom of scientific and cultural work and for the defense of Human Rights and the Rights of Peoples conforming to laws and regulations in force. Immigration shall be submitted to the law.
Congo, Rep.	2002	<i>Article 15.</i> The right of asylum is granted to foreign nationals within the conditions determined by the law.
Costa Rica	1949	<i>Article 31.</i> The territory of Costa Rica will be [an] asylum to anyone persecuted for political reasons. If because of [a] legal imperative their expulsion is decreed, they can never be sent to the country where they are persecuted. Extradition will be

Country	Constitution	Full Text of the Relevant Provision(s)
		regulated by the law or by international treaties and will never proceed in cases of political crimes or [crimes] connected [conexos] to them, according to Costa Rican qualification.
Côte d'Ivoire	2000	<i>Article 12.</i> No Ivorian may be forced into exile. Any person persecuted for reason of his political, religious, [or] philosophical convictions, or of his ethnic identity can benefit from the right of asylum in the territory of the Republic of Côte d'Ivoire, under the condition of conforming to the laws of the Republic
Croatia	1990	<i>Article 33.</i> Foreign citizens and stateless persons may obtain asylum in Yugoslavia, ² unless they are persecuted for non-political crimes and activities contrary to the basic principles of international law. No alien who legally finds himself on the territory of the Republic shall be banished or extradited to another state, unless a decision made in accordance with a treaty or law is to be enforced.
Cuba	1940	<i>Article 31.</i> The Republic of Cuba offers and recognizes the right of asylum to those politically persecuted [<i>perseguidos políticos</i>], as long as those taking refuge in it respect the national sovereignty and Laws.
Cuba	1959	<i>Article 31.</i> The Republic of Cuba offers and recognizes the right of asylum for political refugees, provided that those who accept it respect the national sovereignty and laws. The State will not authorize the extradition of persons guilty of political crimes nor will it attempt to obtain extradition of Cubans guilty of such crimes who take refuge in foreign territory. Whenever the expulsion of an alien is proper in accordance with the Fundamental Law and the law, the expulsion shall not be effected, in the case of a political exile, to the territory of the State that may claim him.
Cuba	1976	<i>Article 13.</i> The Republic of Cuba grants asylum to [those persons] persecuted by virtue of the struggle for the democratic rights of the majorities; for national liberation; against imperialism, fascism, colonialism and neocolonialism; for the suppression of racial discrimination; for the rights

Country	Constitution	Full Text of the Relevant Provision(s)
		and demands of workers, peasants and students; for their progressive political, scientific, artistic and literary activities; for socialism and for peace.
Czechoslovakia	1960	<i>Article 33.</i> The Czechoslovak Socialist Republic shall grant the right of asylum to citizens of a foreign state persecuted for defending the interests of the working people, for participating in the national liberation movement, for scientific or artistic work, or for activity in defense of peace.
Czech Republic	1993	<i>Article 43 (of the Charter of Fundamental Rights and Basic Freedoms, which is part of the constitutional order of the Czech Republic).</i> The Czech and Slovak Federal Republic shall grant asylum to aliens who are being persecuted for the assertion of their political rights and freedoms. Asylum may be denied to a person who has acted contrary to fundamental human rights and freedoms.
Ecuador	1967	<i>Article 80.</i> The State, in accordance with the law and with international agreements, guarantees Ecuadorians the right to seek asylum in case of prosecution for other than common [sic] crimes. Extradition of an Ecuadorian shall never be granted; his trial shall be subject to the laws of Ecuador. <i>Article 84.</i> In accordance with the law and with international agreements, the State guarantees to foreigners the right of asylum in case of prosecution for other than common crimes.
Ecuador	1978	<i>Article 17.</i> In accordance with the law and with international agreements, the state guarantees foreigners the right of asylum.
Ecuador	1984	<i>Article 17.</i> Con arreglo a la ley y a los convenios internacionales, el Estado garantiza a los extranjeros el derecho de asilo. <i>Article 43.</i> Los ecuatorianos perseguidos por delitos políticos tienen derecho de asilo, que lo ejercerán de conformidad con la ley y los convenios internacionales vigentes.
Ecuador	1993	<i>Article 17.</i> Con arreglo a la ley y a los convenios internacionales, el Estado garantiza a los extranjeros el derecho de asilo.
Ecuador	1996	<i>Article 17.</i> Con arreglo a la Ley y a los convenios internacionales, el Estado reconoce a los extranjeros el derecho de asilo.

Country	Constitution	Full Text of the Relevant Provision(s)
		<i>Article 27.</i> Los ecuatorianos perseguidos por delitos políticos tienen derecho de asilo, que lo ejercerán de conformidad con la Ley y los convenios internacionales.
Ecuador	1997	<i>Article 17.</i> In accordance with the Law and with international agreements, the State recognizes the right of asylum for foreigners. <i>Article 27.</i> Ecuadorans persecuted for political crimes have the right of asylum, which they may exercise in accordance with the Law and international agreements.
Ecuador	1998	<i>Article 29.</i> Ecuadorans persecuted for political crimes shall have the right to solicit asylum and exercise that right in conformity with the law and international agreements. Ecuador recognizes foreigners' right to asylum.
Ecuador	2008	<i>Article 41.</i> Their rights to asylum and sanctuary are recognized, in accordance with the law and international human rights instruments. Persons who have been granted asylum or sanctuary shall benefit from special protection guaranteeing the full exercise of their rights. The State shall respect and guarantee the principle of non-return, in addition to humanitarian and legal emergency assistance. Persons requesting asylum or sanctuary shall not be penalized or prosecuted for having entered the country or for remaining in a situation of irregularity. The State, in exceptional cases and when the circumstances justify it, shall recognize the refugee status of a collective group, in accordance with the law.
Egypt	1971	<i>Article 53.</i> The State grants the right of political asylum to any foreigner who has been persecuted for having defended the interests of the people or the rights of man, peace or justice. The extradition of political refugees is forbidden.
Egypt	2011	<i>Article 15.</i> It is not permitted to expel a citizen from the country or forbid him from returning, or to give up political refugees.
Egypt	2012	<i>Article 57.</i> The right to political asylum shall be granted by the State to every foreigner deprived in their country of public rights and freedoms guaranteed by the Constitution. Extradition of political refu-

Country	Constitution	Full Text of the Relevant Provision(s)
		gees is prohibited. All of the above shall be subject to law regulations.
Egypt	2013/2014	<i>Article 91.</i> The State may grant political asylum to any foreigner persecuted for defending the interests of peoples, human rights, peace or justice. Extradition of political refugees is prohibited. All of the foregoing shall be according to the Law.
El Salvador	1945	<i>Article 11.</i> The Republic is a sacred asylum for all foreigners residing in its territory, except when they are guilty of common offenses and are claimed by some other nation, under the provisions of an extradition treaty. Extradition of Salvadorans, for any offense whatever, shall never be stipulated. Nor shall foreigners be extradited for political offenses, even if a common crime has resulted therefrom.
El Salvador	1950	<i>Article 153.</i> El Salvador grants asylum to any foreigner who desires to reside in its territory, except in those cases provided in its laws or by International Law. These exceptions may not include anyone who is being persecuted solely for political reasons. Extradition may not be stipulated with respect to Salvadoreans on any grounds whatsoever, nor with respect to foreigners for political offenses, even if a common crime has resulted therefrom.
El Salvador	1962	<i>Article 153.</i> El Salvador grants asylum to any foreigner who desires to reside in its territory, except in those cases provided in its laws or by international law. These exceptions may not include anyone who is being persecuted solely for political reasons. Extradition may not be stipulated with respect to Salvadorians on any grounds whatsoever, nor with respect to foreigners for political offenses, even if a common crime has resulted therefrom.
El Salvador	1983 (Amended in 2000)	<i>Article 28.</i> El Salvador concedes asylum to the foreigner who desires to reside in its territory, except in the cases established by the laws and by [the] international law. Any [person] persecuted only for political reasons cannot be included in the cases of exception. Extradition will be regulated in accordance with the international treaties and when involving Salvadorians, [it] will only proceed if the corresponding treaty expressly establishes it and it has been approved by the legislative organ of the

Country	Constitution	Full Text of the Relevant Provision(s)
		subscribing countries.
France	1946	<i>Preamble:</i> Anyone persecuted because of his activities in the cause of freedom has the right of asylum within the territories of the Republic.
France	1958 (Amended in 2008)	<i>Article 53-1.</i> The Republic may enter into agreements with European States which are bound by undertakings identical with its own in matters of asylum and the protection of human rights and fundamental freedoms, for the purpose of determining their respective jurisdiction as regards requests for asylum submitted to them. However, even if the request does not fall within their jurisdiction under the terms of such agreements, the authorities of the Republic shall remain empowered to grant asylum to any foreigner who is persecuted for his action in pursuit of freedom or who seeks the protection of France on other grounds.
Georgia	1995	<i>Article 47.</i> 1. Aliens and stateless persons living in Georgia shall have the rights and obligations equal to those of the citizens of Georgia except as provided for by the Constitution and law. 2. Georgia shall grant asylum to aliens and stateless persons according to universally recognised rules of international law, as determined by law. 3. No asylum seeker shall be transferred to another state if he/she is persecuted for his/her political creed or an action not considered a crime under the legislation of Georgia.
Germany	1949	<i>Article 16.</i> 1. No one may be deprived of his German citizenship. The loss of citizenship may occur only on the basis of a law and, against the will of the person concerned, only if the person concerned is not rendered stateless thereby. 2. No German may be extradited to a foreign country. The politically persecuted shall enjoy the right of asylum.
Germany	1949 (Amended in 1973)	<i>Article 16.</i> 1. No one may be deprived of his German citizenship. The loss of citizenship may occur only on the basis of a law and, against the will of the person concerned, only if the person concerned is not rendered stateless thereby. 2. No German may be extradited to a foreign country. The politically persecuted shall enjoy the right of asylum.

Country	Constitution	Full Text of the Relevant Provision(s)
Germany	1949 (Amended in 1990)	<i>Article 16.</i> 1. No one may be deprived of his German citizenship. Loss of citizenship may arise only pursuant to a law, and against the will of the person affected it may arise only if such person does not thereby become stateless. 2. No German may be extradited to a foreign country. Persons persecuted for political reasons enjoy the right of asylum.
Germany	1949 (Amended in 1993)	<i>Article 16a.</i> 1. Anybody persecuted on political grounds has the right of asylum. 2. Paragraph 1 may not be invoked by anybody who enters the country from a member state of the European Communities or another third country where the application of the Convention relating to the Status of Refugees and the Convention for the Protection of Human Rights and Fundamental Freedoms is assured. Countries outside the European Communities which fulfill [sic] the conditions of the first sentence of this paragraph shall be specified by legislation requiring the consent of the Bundesrat. In cases covered by the first sentence measures terminating a person's sojourn may be carried out irrespective of any remedy sought by that person. 3. Legislation requiring the consent of the Bundesrat may be introduced to specify countries where the legal situation, the application of the law and the general political circumstances justify the assumption that neither political persecution nor inhumane or degrading punishment or treatment takes place there. It shall be presumed that a foreigner from such a country is not subject to persecution on political grounds so long as the person concerned does not present facts supporting the supposition that, contrary to that presumption, he or she is subject to political persecution. 4. The implementation of measures terminating a person's sojourn shall, in the cases referred to in paragraph 3 and in other cases that are manifestly ill-founded or considered to be manifestly ill-founded, be suspended by the court only where serious doubt exists as to the legality of the measure; the scope of the investigation may be restricted and objections submitted after the prescribed time-limit may be disregarded. Details shall be the subject of a law. 5. Paragraphs 1 to 4 do not conflict

Country	Constitution	Full Text of the Relevant Provision(s)
		with international agreements of member states of the European Communities among themselves and with third countries which, with due regard for the obligations arising from the Convention relating to the Status of Refugees and the Convention for the Protection of Human Rights and Fundamental Freedoms, whose application must be assured in the contracting states, establish jurisdiction for the consideration of applications for asylum including the mutual recognition of decisions on asylum. <i>Article 18.</i> Those who abuse their freedom of expression, in particular freedom of the press (paragraph 1 of article 5), freedom of teaching (paragraph 3 of article 5), freedom of assembly (article 8), freedom of association (article 9), privacy of correspondence, posts and telecommunications (article 10), property (article 14), or the right of asylum (article 16a) in order to undermine the free democratic basic order shall forfeit these basic rights. Such forfeiture and its extent shall be determined by the Federal Constitutional Court.
Germany	1949 (Amended in 2002)	<i>Article 16a.</i> 1. Persons persecuted on political grounds enjoy the right of asylum. 2. The right of Paragraph 1 cannot claim who enters from a European Communities country or from another country where the application of the Convention on the Legal Status of Refugees and the Convention to Protect Human Rights and Civil Liberties is ensured. States outside of the European Communities for which the prerequisites of the first sentence hold true are determined by a statute requiring the consent of the Senate [Bundesrat]. In the cases of the first sentence, measures to end a stay can be effectuated independent of recourse to the course sought against these measures. 3. By statute requiring the consent of the Senate [Bundesrat], states can be determined in which on the basis of law, law application, or general political conditions it seems to be guaranteed that neither persecution on political grounds nor inhuman or derogatory punishment and treatment takes place. A foreigner from such a state is presumed to not being persecuted unless he asserts facts supporting that, contrary to this presumption, he is politically

Country	Constitution	Full Text of the Relevant Provision(s)
		persecuted. 4. The effectuation of measures to end a stay will, in the cases of Paragraph III and in other cases where the claim to stay is obviously unfounded or is regarded as obviously unfounded, only be suspended by court order if serious doubts arise concerning the legality of the measure; the scope of scrutiny can be limited and delayed assertions ignored. Details are regulated by a statute. 5. Paragraphs I to IV are not contrary to public law contracts of European Communities member states among each other and with other states which, honoring the obligations arising from the Convention on the Legal Status of Refugees and the Convention to Protect Human Rights and Civil Liberties the application of which has to be ensured in the contracting states, regulate responsibilities to examine claims of asylum including mutual acknowledgement of asylum decisions.
Guatemala	1945	<i>Article 26.</i> Guatemala recognizes and offers the right of asylum to politically persecuted persons, provided that they respect national sovereignty and laws. Extradition of persons accused of political offenses is prohibited. In no case shall it be attempted to extradite Guatemalans accused of those offenses who have taken refuge in foreign territory. No Guatemalan may be surrendered to a foreign Government for his judgment or punishment, except for serious common crimes included in treaties in force negotiated on bases of reciprocity. It is similarly prohibited to request extradition or accede to it for common offenses related to politics. When expulsion of an alien from the national territory is agreed to, it shall not be effected to a State that would persecute him, if political asylum is involved.
Guatemala	1956	<i>Article 48.</i> Guatemala recognizes the right of asylum and extends it to political refugees who seek such protection provided they respect the sovereignty and the laws of the Nation. Extradition of political refugees is prohibited, and in no case shall an attempt be made to extradite Guatemalans who for political reasons take refuge in a foreign country. No Guatemalan shall be handed over to a foreign government for

Country	Constitution	Full Text of the Relevant Provision(s)
		trial or punishment except for crimes covered by international treaties ratified by Guatemala. It is also forbidden to request or grant extradition of persons accused of common law crimes connected with political crimes. When expulsion of a political refugee is ordered, he shall in no case be handed over to the country whose government is pursuing him.
Guatemala	1965	<i>Article 61.</i> Guatemala recognizes the right of asylum and extends it to political refugees who seek protection under its flag, provided they respect the sovereignty and the laws of the state. Extradition of political offenders is prohibited and in no case shall an attempt be made to extradite Guatemalans who for political reasons take refuge in a foreign country. No Guatemalan shall be handed over to a foreign government for trial or punishment except for crimes covered by international treaties in force in Guatemala. Extradition is also prohibited of persons accused of common crimes connected with political crimes. Whenever expulsion of a political refugee is ordered, he shall not be handed over to the country whose government pursues him.
Guatemala	1982	<i>Article 23.</i> 17. The right of asylum is recognized and shall also be granted to political refugees who seek protection under the flag of Guatemala, provided they respect the sovereignty and the laws of the State. If the expulsion of a political refugee is agreed to, under no circumstances shall he be handed over to the country whose government pursues him.
Guatemala	1985 (Amended in 1993)	<i>Article 27.</i> Guatemala recognizes the right of asylum and grants it in accordance with international practices. The extradition is regulated by that provided in the international treaties. The extradition of Guatemalans will not be initiated for political crimes, and they will not be handed over to a foreign government, except for what is established in [the] treaties and conventions regarding crimes against humanity or against the international law. The expulsion from the national territory of a political refugee will not be accorded, with destination to the country that seeks him [or her].
Guinea	1958	<i>Article 46.</i> The Republic of Guinea shall

Country	Constitution	Full Text of the Relevant Provision(s)
		grant the right of asylum to foreign citizens persecuted for having fought to defend a just cause, or for their scientific or cultural activities.
Guinea	1982	<i>Article 14.</i> The Popular Revolutionary Republic of Guinea accords the right of asylum to foreign citizens pursued because of their struggle for the defense of a just cause or for their scientific and cultural activity.
Guinea	1990	<i>Article 11.</i> Whoever is persecuted by reason of his political, philosophical or religious opinions, his race, his ethnicity, his intellectual, scientific or cultural activities, in the defense of liberty has the right of asylum on the territory of the Republic.
Guinea	2010	<i>Article 11.</i> Whoever is persecuted by virtue of their political, philosophical or religious opinions, of their race, of their ethnicity, of their intellectual, scientific or cultural activities, for the defense of freedom has the right to asylum on the territory of the Republic.
Haiti	1946	<i>Article 30.</i> The right of asylum is recognized for political refugees under the condition of conforming to the laws of the country.
Haiti	1950	<i>Article 29.</i> The right of asylum is accorded to political refugees, with the condition that they conform to the law. <i>Article 30.</i> Extradition will be neither granted nor requested for political matters.
Haiti	1964	<i>Article 36.</i> The right of asylum shall be accorded to political refugees, provided they conform to the laws of the country. <i>Article 37.</i> Extradition in political matters shall not be permitted.
Haiti	1983	<i>Article 47.</i> The right of asylum is accorded to political refugees, provided they conform to the laws of the country. Extradition in political matters is not admissible.
Haiti	1987	<i>Article 56.</i> An alien may be expelled from the territory of the Republic if he becomes involved in the political life of the country, or in cases determined by law. <i>Article 57.</i> The right to asylum for political refugees is recognized.
Honduras	1957	<i>Article 86.</i> Honduras recognizes the right of asylum in case of persecution not resulting from a common offense, in accord-

Country	Constitution	Full Text of the Relevant Provision(s)
		ance with international conventions to which it is a signatory.
Honduras	1965	<i>Article 76.</i> The Republic of Honduras offers asylum and recognizes the right of asylum to political fugitives, providing the asylees respect the sovereignty and laws of the nation. The state shall not authorize the extradition [sic] of criminals for political crimes and related common offenses. Even when the expulsion of a foreigner from national territory is proper according to law, it shall not be carried out in the case of a political asylee to the territory of the state that may claim him.
Honduras	1982	<i>Article 101.</i> Honduras recognizes the right of asylum in the form and conditions established by law. When asylum is revoked or denied in accordance with the law, in no case shall the political refugee or asylee be returned to the territory of the State that may claim him. The State shall not authorize the extradition of persons accused of committing political crimes or related common offenses.
Hungary	1919	<i>Section 13.</i> In the Hungarian Soviet Republic every foreign revolutionist shall possess the right of asylum.
Hungary	1949	<i>Article 58.</i> 1. The Hungarian People's Republic guarantees the rights of freedom to every worker residing on its territory. 2. Foreign citizens suffering persecution because of their democratic conduct and activity displayed in the interest of the liberation of peoples, enjoy the right of asylum in the Hungarian People's Republic.
Hungary	1949 (Amended in 1989)	<i>Article 65.</i> 1. The Republic of Hungary—in accordance with the provisions of law—grants asylum for those foreign citizens, who within their country, or for those stateless persons, who in their residence were persecuted for racial, religious, ethnic, linguistic or political reasons. 2. A person granted/enjoying asylum cannot be extradited to another state/country.
Hungary	1949 (Amended in 1997)	<i>Article 65.</i> 1. On terms laid down in the law, the Republic of Hungary ensures the right of asylum for foreign citizens persecuted in their homeland and for those displaced persons who are at their place of stay harassed on grounds of race, religion, nationality, language or political affiliation.

Country	Constitution	Full Text of the Relevant Provision(s)
		2. A person already granted asylum must not be extradited to another state. 3. The adoption of the law on the right of asylum requires the votes of two thirds of the MPs present.
Hungary	1949 (Amended in 2002)	<i>Article 65.</i> 1. In accordance with the conditions established by law, the Republic of Hungary shall, if neither their country of origin nor another country provides protection, extend the right of asylum to foreign citizens who, in their native country or the country of their usual place of residence, are subject to persecution on the basis of race or nationality, their alliance with a specific social group, religious or political conviction, or whose fear of being subject to persecution is well founded. 2. A majority of two-thirds of the votes of the Members of Parliament present is required to pass the law on the right to asylum.
Hungary	2011	<i>Article XIV.</i> 1. No Hungarian citizen may be expelled from the territory of Hungary and every Hungarian citizen may return from abroad at any time. Any foreign citizen staying in the territory of Hungary may only be expelled by a lawful decision. Collective expulsion shall be prohibited. 2. No person may be expelled or extradited to a state where he or she faces the danger of a death sentence, torture or any other inhuman treatment or punishment. 3. Hungary shall grant asylum to all non-Hungarian citizens as requested if they are being persecuted or have a well-founded fear of persecution in their native countries or in the countries of their usual residence due to their racial or national identities, affiliation to a particular social group, or to their religious or political persuasions, unless they receive protection from their countries of origin or any other country.
Indonesia	1959 (Amended in 2002)	<i>Article 28G.</i> 1. Every person shall have the right to protection of his/herself, family, honour, dignity, and property, and shall have the right to feel secure against and receive protection from the threat of fear to do or not do something that is a human right. 2. Every person shall have the right to be free from torture or inhumane and degrading treatment, and shall have the right to obtain political asylum from an-

Country	Constitution	Full Text of the Relevant Provision(s)
		other country.
Iran	1979	<i>Article 155.</i> The Islamic Republic of Iran shall offer sanctuary to all those asking for political asylum, excepting those who are known, in accordance with the laws of Iran, to be traitors and criminals.
Iraq	1970 (Amended in 1974)	<i>Article 34.</i> a. The Republic of Iraq shall grant political asylum for all strugglers persecuted in their countries because of defence for human liberation principles, which the Iraqi people has abided by in this Constitution. b. Political refugees shall not be delivered.
Iraq	1990	<i>Article 34.</i> a. The Iraqi Republic grants the right of political asylum for all militants, persecuted in their countries because of defending the liberal and human principles which are assumed by the Iraqi People in this Constitution. b. The extradition of political refugees is prohibited.
Iraq	2004	<i>Article 19.</i> No political refugee who has been granted asylum pursuant to applicable law may be surrendered or returned forcibly to the country from which he fled.
Iraq	2005	<i>Article 21.</i> First: No Iraqi shall be surrendered to foreign entities and authorities. Second: A law shall regulate the right of political asylum in Iraq. No political refugee shall be surrendered to a foreign entity or returned forcibly to the country from which he fled. Third: Political asylum shall not be granted to a person accused of committing international or terrorist crimes or to any person who inflicted damage on Iraq.
Italy	1947	<i>Article 10.</i> The Italian juridical system conforms to the generally recognized principles of international law. The juridical status of the foreigner is regulated by law in conformity with international rules and treaties. The foreigner who is denied in his own country the effective exercise of democratic freedoms provided for by the Italian Constitution has a right to asylum in the territory of the Republic in accordance with the provisions of law. Extradition of foreigners for political offenses shall not be granted.
Korea, Dem. Rep.	1948 (Amended in 1962)	<i>Article 26.</i> The [Democratic People's Republic of Korea] affords the right of asylum to foreign nationals persecuted for fighting

Country	Constitution	Full Text of the Relevant Provision(s)
		for democratic principles or national liberation movements, or for the interests of the working people or for freedom of scientific and cultural activities.
Korea, Dem. Rep.	1972	<i>Article 66.</i> The Democratic People's Republic of Korea protects the foreigners who seek asylum after fighting for peace and democracy, national independence and socialism, and for the freedom of scientific and cultural pursuits.
Korea, Dem. Rep.	1972 (Amended in 1998)	<i>Article 80.</i> The [Democratic People's Republic of Korea] shall grant the right of asylum to foreign nationals persecuted for struggling or peace and democracy, national independence and socialism for the freedom of scientific and cultural pursuit.
Kyrgyz Republic	1993 (as amended through 2007)	<i>Article 19.</i> 3. The Kyrgyz Republic may grant asylum under the procedure established by law to foreign citizens and stateless persons persecuted for political reasons.
Kyrgyz Republic	2007	<i>Article 19.</i> 1. Restrictions affecting the physical and moral inviolability of an individual shall be permitted solely by a court sentence pronounced on the basis of law as punishment for the committing of a crime. No one may be tortured, subjected to mistreatment or inhuman or degrading punishment. 2. The conducting of medical, biological or psychological experiments on people without their properly expressed and verified voluntary consent shall be prohibited. 3. The Kyrgyz Republic may grant asylum under the procedure established by law to foreign citizens and stateless persons persecuted for political reasons.
Kyrgyz Republic	2010	<i>Article 19.</i> 1. Foreign citizens and stateless persons in the Kyrgyz Republic shall enjoy rights and perform obligations equally with the citizens of the Kyrgyz Republic except for cases defined by law or international treaty to which the Kyrgyz Republic is a party. 2. In accordance with international commitments the Kyrgyz Republic shall grant asylum to foreign citizens and stateless persons persecuted on political grounds as well as on the grounds of violation of human rights and freedoms.
Lao PDR	1991	<i>Article 38.</i> The Lao People's Democratic Republic grants asylum to foreigners who

Country	Constitution	Full Text of the Relevant Provision(s)
		are persecuted for their struggle for freedom, justice, peace and scientific causes.
Libya	2011	<i>Article 10.</i> The State shall guarantee the right of asylum by virtue of the law. The extradition of political refugees shall be prohibited.
Libya	2014 Draft	<i>Article 18.</i> Extradition of political refugees to their country of origin or any other country they express unwillingness to go to shall be prohibited. Conditions and situations of political asylum shall be regulated by law
Macedonia	1991	<i>Article 29.</i> Foreign subjects enjoy freedoms and rights guaranteed by the Constitution in the Republic of Macedonia, under conditions regulated by law and international agreements. The Republic guarantees the right of asylum to foreign subjects and stateless persons expelled because of democratic political convictions and activities. Extradition of a foreign subject can be carried out only on the basis of a ratified international agreement and on the principle of reciprocity. A foreign subject cannot be extradited for political criminal offences. Acts of terrorism are not regarded as political criminal offences.
Mali	1992	<i>Article 12.</i> No one may be forced into exile. Any person persecuted for reason of his political or religious convictions, [or] by his ethnic affiliation [<i>appartenance</i>], may benefit from the right of asylum in the Republic of Mali.
Moldova	1994	<i>Article 19.</i> 1. Except in cases where the law has different rulings, aliens and stateless persons shall enjoy the same rights and shall have the same duties as the citizens of the Republic of Moldova. 2. The right to asylum shall be granted and denied by rule of law in compliance with those international treaties the Republic of Moldova is a party to.
Mongolia	1940	<i>Article 88.</i> The Mongol People's Republic affords the right of asylum to foreign citizens persecuted for defending the interests of the workers, or for their struggle for national liberation. <i>Article 89.</i> It is the duty of every citizen of the Mongol People's Republic to abide by the Constitution (Fundamental Law) of the Mongol People's Republic, to observe the

Country	Constitution	Full Text of the Relevant Provision(s)
		laws, to maintain labor discipline, to promote in every way possible the economic, cultural, and political development of the country, and to perform their public duties honestly.
Mongolia	1960 (as amended in 1973)	<i>Article 83.</i> Citizens of the [Mongolian People's Republic], irrespective of their nationality, have equal rights in all spheres of economic, cultural, social and political life of the country. Any direct or indirect restriction of the rights of citizens on account of their nationality or race and the advocacy of the ideas of chauvinism or nationalism are forbidden by law. The M.P.R. ensures representatives of all nationalities living on the territory of the Republic the opportunity to develop their national culture and to receive tuition and conduct business in their own native language. The M.P.R. grants the right of asylum to foreign citizens persecuted for their defense of the interests of the working people, for participation in the national-liberation movement, for their activities to strengthen [sic] peace and for scientific activities.
Mongolia	1992	<i>Article 18.</i> 4. Aliens or stateless persons persecuted for their convictions, political or other activities in pursuit of justice, may be granted asylum in Mongolia on the basis of their well-founded request.
Mozambique	1975	<i>Article 25.</i> The People's Republic of Mozambique grants the right of asylum to foreigners persecuted because of their struggle for peace, democracy and national and social liberation.
Mozambique	1990	<i>Article 64.</i> 1. The Republic of Mozambique shall support and be in solidarity with the struggles of peoples for their national liberation. 2. The Republic of Mozambique shall grant asylum to foreigners persecuted because of their fight for peace, democracy, national and social liberation, or their defence of human rights.
Mozambique	2004	<i>Article 20.</i> 1. The Republic of Mozambique shall support and be in solidarity with the struggles of peoples for their national liberation and for democracy. 2. The Republic of Mozambique shall grant asylum to foreigners persecuted on the grounds of their struggle for national liberation, for democracy, for peace and for the protec-

Country	Constitution	Full Text of the Relevant Provision(s)
		tion of human rights. 3. The law shall define political refugee status.
Namibia	1990	<i>Article 97.</i> The State shall, where it is reasonable to do so, grant asylum to persons who reasonably fear persecution on the ground of their political beliefs, race, religion or membership of a particular social group.
Nicaragua	1893	<i>Title III.</i> 9. The Republic of Nicaragua is a sacred asylum to all persons taking refuge in its territory. 10. Foreigners shall be obliged from their arrival in the territory of the Republic to respect the authorities and to observe the laws. 11. Foreigners enjoy in Nicaragua all the civil rights of Nicaraguans. 12. They may acquire all kinds of property in the country, being subject, however, in respect of such property, to all the ordinary or extraordinary charges to which the nationals are subject. 13. They shall make no claims, nor demand indemnity of the State except in the cases and in the manner as would apply in the case of Nicaraguans. 14. Foreigners who having made unjust claims have recourse to diplomatic intervention shall lose the right to dwell in the country if such claims are not determined in a friendly manner. 15. Extradition shall not be granted for political offences, even though the nature of such be that of a common offence. 16. The cases in which extradition for serious common offences shall take place shall be determined by law and Treaties. 17. The law shall establish the cases and the form in which entry to the national territory may be denied to a foreigner, as also those in which his expulsion may be ordered when his presence may be considered pernicious. 18. The law and Treaties shall regulate the use of these guarantees, but shall not diminish nor alter them. 19. The dispositions of this Title do not modify the Treaties in force between Nicaragua and other countries.
Paraguay	1967	<i>Article 122.</i> The right of asylum is recognized, under the conditions and with the requirements established by the laws and the standards of international law, in favor of any person who for political reason or offense may be the object of persecution or find himself in danger of being persecuted.

Country	Constitution	Full Text of the Relevant Provision(s)
Paraguay	1992	<i>Article 43.</i> Paraguay recognizes the right to territorial and diplomatic asylum to anyone persecuted for political reasons or for related common crimes or for his opinions or beliefs. Government authorities will have to immediately issue the respective personal and safe-conduct documents. No one who has been granted political asylum will be forced to go to the country whose authorities are persecuting him.
Peru	1993	<i>Article 36.</i> The State recognizes political asylum. It accepts the status of asylee [<i>asilado</i>] granted by a host government. In case the asylee is expelled, he is not to be returned to the country whose government persecutes him.
Poland	1952	<i>Article 75.</i> The Polish People's Republic grants asylum to citizens of foreign countries persecuted for defending the interests of the working people, for fighting for social progress, for activity in defence of peace, for fighting for national liberation or for scientific activity.
Poland	1976	<i>Article 88.</i> The Polish People's Republic shall grant asylum to nationals of other countries persecuted in connection with defending the interests of the working people, the struggle for social progress, activities in defence of peace, the struggle for national liberation, or as a result of scientific activities.
Poland	1997	<i>Article 56.</i> 1. Foreigners shall have a right of asylum in the Republic of Poland in accordance with principles specified by statute. 2. Foreigners who, in the Republic of Poland, seek protection from persecution, may be granted the status of a refugee in accordance with international agreements to which the Republic of Poland is a party.
Portugal	1976	<i>Article 22.</i> 1. The right of asylum shall be secured to foreigners and stateless persons persecuted as a result of their activities on behalf of democracy, social and national liberation, peace between peoples or individual freedom and rights. 2. The status of political refugees shall be defined by law.
Romania	1948	<i>Article 35.</i> The People's Republic of Rumania grants the right of refuge to all foreigners persecuted for their democratic activities, for their struggle for national

Country	Constitution	Full Text of the Relevant Provision(s)
		liberation, for their scientific or cultural activities.
Romania	1952	<i>Article 89.</i> The Rumanian People's Republic affords the right of asylum to foreign citizens prosecuted for defending the interests of the working people, or for scientific activity, or for participating in the struggle for national liberation or the defence of peace.
Romania	1965	<i>Article 38.</i> The Socialist Republic of Romania grants the right of refuge to foreign citizens persecuted for their activity in defence of the interests of the working people, for their participation in the fight for national liberation or in defence of peace.
Romania	1991	<i>Article 18.</i> 1. Aliens and stateless persons residing in Romania shall enjoy the general protection of persons and property guaranteed by the Constitution and other laws. 2. The right to asylum is granted and withdrawn under conditions of the law, observing the international conventions and treaties to which Romania is a party.
<i>Soviet Union</i>	1936	<i>Article 129.</i> The [Union of Soviet Socialist Republics] grants the right of asylum to foreign citizens persecuted for defending the interests of the toilers or for their scientific activity or for their struggle for national liberation.
<i>Soviet Union</i>	1977	<i>Article 38.</i> The [Union of Soviet Socialist Republics] grants the right of asylum to foreigners, persecuted for defending the interests of the working people and the cause of peace, for participating in revolutionary or national liberation movements, or for progressive socio-political, scientific, or other creative activities.
Russian Federation	1993	<i>Article 63.</i> 1. The Russian Federation shall grant political asylum to foreign nationals and stateless persons according to the universally recognized norms of international law. 2. In the Russian Federation it shall not be allowed to extradite to other States those people who are persecuted for political convictions, as well as for actions (or inaction) not recognized as a crime in the Russian Federation. The extradition of people accused of a crime, and also the handover of convicts for serving sentences in other States shall be carried out on the

Country	Constitution	Full Text of the Relevant Provision(s)
		basis of the federal law or the international agreement of the Russian Federation.
Rwanda	1962	<i>Article 15.</i> The freedom of the human person is inviolable. No one may be condemned except by virtue of a law in effect before the act was committed. No one may plead ignorance of the law. No penalty may be imposed except by virtue of a written law. Criminal responsibility shall be personal. Civil responsibility shall be defined by law. The absolute right to a defense is established in all the states and at all stages of the procedure. The right to asylum is recognized under the conditions stipulated by law. Extradition shall be authorized only within the limitations provided by law.
Rwanda	1978	<i>Article 15.</i> The right of asylum shall be recognized under the conditions prescribed by law. Extradition shall be authorized only within the limits provided by law.
Rwanda	2003	<i>Article 25.</i> The right to asylum is recognized under conditions determined by the law. The extradition of foreigners shall be permitted only so far as it is consistent with the law or international conventions to which Rwanda is a party. However, no Rwandan shall be extradited.
Sao Tome and Principe	1975 (Amended in 1990)	<i>Article 40.</i> 1. The extradition and the expulsion of Sao Tomean citizens from the National territory are not allowed. 2. Extradition for political motives is not permitted, nor for crimes which carry the death penalty according to the law of the petitioning State. 3. The expulsion of foreigners who have obtained residency authorization, only may be determined by judicial authority, the law assuring expeditious means of decision. 4. Asylum is granted to foreigners persecuted or gravely threatened with persecution, in virtue of their activity in favor of democratic rights.
Saudi Arabia	1992	<i>Article 42.</i> The State shall grant the right of political asylum provided it is in the public interest. International agreements and laws shall define rules and procedures for the extradition of common criminals.
Yugoslavia	1946	<i>Article 31.</i> Foreign citizens persecuted on account of their struggle for the principles of democracy, for national liberation, the rights of the working people, or the free-

Country	Constitution	Full Text of the Relevant Provision(s)
		dom of scientific and cultural work, enjoy the right of asylum in the Federal Peoples Republic of Yugoslavia.
<i>Yugoslavia</i>	1963	<i>Article 65.</i> Citizens of other countries and persons without citizenship who are persecuted for their defence of democratic ideas and political movements, social emancipation and national liberation, the freedom and the rights of the human personality or of the freedom of scientific or artistic creativity, shall be guaranteed right of asylum.
<i>Yugoslavia</i>	1974	<i>Article 202.</i> Foreign citizens and stateless persons who are persecuted for supporting democratic views and movements, social and national emancipation, the freedoms and rights of the human personality or the freedom of scientific and artistic creative endeavor, shall be guaranteed the right of asylum.
<i>Yugoslavia</i>	1992	<i>Article 66.</i> Aliens in the Federal Republic of Yugoslavia shall enjoy the freedoms and the rights and duties laid down in the Constitution, federal law, and international treaties. An alien may be extradited to another state only in cases provided for under international treaties which are binding on the Federal Republic of Yugoslavia. The right of asylum shall be guaranteed to foreign citizens and stateless persons who are being persecuted for their advocacy of democratic views or for participation in movements for social or national liberation, for the freedom and rights of the human personality, or for scientific or artistic freedom.
<i>Serbia and Montenegro</i>	2003	<i>Article 38.</i> Any alien who reasonably fears that he/she might be persecuted because of his/her race, colour, sex, language, religion, ethnic affiliation, membership of a group or political conviction, shall have the right of asylum in Serbia and Montenegro. The asylum granting procedure shall be determined by law.
Serbia	2006	<i>Article 57.</i> Any foreign national with reasonable fear of prosecution based on his race, gender, language, religion, national origin or association with some other group, political opinions, shall have the right to asylum in the Republic of Serbia. The procedure for granting asylum shall be regulated by the law.

Country	Constitution	Full Text of the Relevant Provision(s)
Slovak Republic	1992	<i>Article 53.</i> The Slovak Republic grants asylum to foreign nationals persecuted for upholding political rights and liberties. Asylum may be denied to those who acted at variance with basic human rights and liberties. Details will be defined by law.
Slovenia	1991	<i>Article 48.</i> The right to give sanctuary to foreign citizens and persons without citizenship who are persecuted for their support of human rights and basic liberties is recognized within the limits of the law.
Somalia	1960	<i>Article 19.</i> 1. Extradition may be ordered only in the cases and in the manner established by law and in any case only when required by international conventions. 2. No one may be subjected to extradition for political offenses. 3. A foreigner persecuted in his country for political offenses has a right to asylum in the territory of the State in the cases and under the conditions provided by law.
Somalia	1979	<i>Article 35.</i> 1. The Somali Democratic Republic may extradite a person who has committed a crime in his country or another, and has taken refuge in the Somali Democratic Republic, provided that there is an extradition treaty between the Somali Democratic Republic and the state requesting the extradition of the accused or offender. 2. The Somali Democratic Republic may grant political asylum to a person who has fled his country or another for political reasons while struggling for popular causes, human rights or peace.
Somalia	1990	<i>Article 35.</i> 1. A person who has committed an offence in his country or another country and has taken refuge in Somalia may be extradited, provided that there is an extradition treaty between the Somali state and the state that has requested the extradition of the accused offender. Extradition of accused or offender may not affect political offences. 2. The state may grant political asylum to a person who has fled his country or another country due to political oppression while struggling for the interests of the people, human rights or peace.
Somalia	2004	<i>Article 23.</i> 1. Extradition may be granted against a person accused of a crime committed in his or another country only if an extradition treaty exists between Somalia

Country	Constitution	Full Text of the Relevant Provision(s)
		and the country requesting thereof. 2. The state may grant political asylum to a person and his close relatives who flee his or another country on grounds of political, religious, and cultural persecution unless such asylum seeker(s) have committed crime(s) against humanity.
Somalia	2012	<i>Article 37.</i> 1. Every person who has sought refuge in the Federal Republic of Somalia has the right not to be returned or taken to any country in which that person has a well-founded fear of persecution. 2. The Federal Parliament shall enact legislation in compliance with international law, regulating refugees and asylum seekers.
Syrian Arab Republic	1973	<i>Article 34.</i> Political refugees shall not be surrendered because of their political principles or of actions they may take in defense of the cause of freedom.
Syrian Arab Republic	2012	<i>Article 39.</i> Political refugees shall not be extradited because of their political beliefs or for their defense of freedom.
Tajikistan	1994	<i>Article 16.</i> A citizen of Tajikistan located in another country enjoys the protection of the state. No citizen of the republic may be extradited to a foreign state. Extradition of a criminal to a foreign state is permitted on the grounds of a bilateral agreement. Foreign citizens and stateless persons enjoy these announced rights and freedoms, and have obligations and responsibilities equal to those of citizens of Tajikistan, except in cases anticipated by law. Tajikistan may offer political asylum to foreign citizens who have been victims of human rights violations.
Timor-Leste	2002	<i>Section 10.</i> 1. The Democratic Republic of East Timor shall extend its solidarity to the struggle of all peoples for national liberation. 2. The Democratic Republic of East Timor shall grant political asylum, in accordance with the law, to foreigners persecuted as a result of their struggle for national and social liberation, defence of human rights, democracy and peace.
Turkmenistan	1992	<i>Article 8.</i> Foreign citizens and persons without citizenship shall enjoy the rights and freedoms of citizens of Turkmenistan, with exceptions defined by law. Turkmenistan shall grant the right of asylum to

Country	Constitution	Full Text of the Relevant Provision(s)
		foreign citizens persecuted in their countries for political, national, or religious convictions or faiths.
Turkmenistan	2008	<i>Article 8.</i> Foreign nationals and stateless persons enjoy the rights and freedoms, and bear the responsibilities, of citizens of Turkmenistan in accordance with law and international treaties of Turkmenistan. Turkmenistan, in accordance with universally recognized norms of international right and in the order established by the law, gives refuge to foreign citizens and stateless persons.
Ukraine	1996	<i>Article 26.</i> Foreigners and stateless persons who are in Ukraine on legal grounds enjoy the same rights and freedoms and also bear the same duties as citizens of Ukraine, with the exceptions established by the Constitution, laws or international treaties of Ukraine. Foreigners and stateless persons may be granted asylum by the procedure established by law.
Venezuela	1961	<i>Article 116.</i> The Republic recognizes asylum in behalf of any person subject to persecution or who is in danger, for political reasons, under the conditions and requirements established by law and rules of international law.
Venezuela	1999	<i>Article 69.</i> The Bolivarian Republic of Venezuela recognizes and guarantees the right of asylum and refuge. Extradition of Venezuelans is prohibited
Vietnam	1980	<i>Article 81.</i> Foreigners who are persecuted for struggling for freedom and national independence, for socialism, democracy and peace, or for engaging in scientific pursuits, are granted the right of asylum by the Socialist Republic of Viet Nam.
Vietnam	1992	<i>Article 82.</i> Foreigners who are persecuted for their struggle for freedom and national independence, for socialism, democracy, and peace, or for engaging in scientific pursuits, may be considered and granted the right of asylum by the Socialist Republic of Vietnam.
Vietnam	1992 (Amended in 2013)	<i>Article 49.</i> The Socialist Republic of Vietnam shall consider granting asylum to foreigners who are harmed because of their struggling for freedom, national independence, socialism, democracy and peace, and scientific work.