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## **Migration Industries and the State: Guestwork Programs in East Asia**

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### **Abstract**

Studies of “migration industries” have demonstrated the critical role that border-spanning businesses play in international mobility. To date, most research has focused on meso-level entrepreneurial initiatives that operate in a legal gray area under a state that provides an environment for their growth or decline. Extending this work, this article advances a taxonomy of the ways states partner with migration industries based on the nature of their relationship (formal or informal) and the type of actor involved (for-profit or non-profit). The analysis focuses on low-paid temporary migrant work programs – schemes that require substantial state involvement to function – and examines cases from the East Asian democracies with strong economies that have become net importers of migrants: Taiwan, Japan, and South Korea. The conclusion, incorporating cases beyond Asia, explicates the properties and limits of each arrangement based on the degree of formality and importance of profit.

In recent years, migration scholarship has taken deeper interest in the border-spanning businesses that move people internationally. Operating for financial gain, these “migration industries” play a crucial role in moving people across borders and keeping them connected to home (Gammeltoft-Hansen and Nyberg Sørensen 2013; Hernández-León 2008; Hennebry 2008; Lindquist 2010; Garapich 2008; see also Kyle 2003; Martin 1996; Salt and Stein 1997). Hernández-León (2008, 154) defines migration industries as “the ensemble of entrepreneurs, businesses and services which, motivated by the pursuit of financial gain, facilitate and sustain international migration.” They encompass labor recruitment, money lending, trafficking, and legal, transportation, remittance, documentation, and communication services stimulate and facilitate migration. Gammeltoft-Hansen and Nyberg Sørensen (2013, 6-7) broaden the scope to include NGOs, social movements, and faith-based organizations – non-state actors involved in the facilitation, constraint, or assistance of migration and for whom financial gain is a secondary, though not absent, concern. In some cases, migration industries may serve as a complement to social networks, but in others, they replace family and acquaintance connections (Hernández-León 2013).. The critical difference between the two is the promise of financial reward – rather than merely obligations of reciprocity – that becomes an engine propelling mobility forward (Salt and Stein 1997). As such, migration industry actors have a stake in and perpetuate the growing commercialization of migration and increased outsourcing of migration management.

Migration industry actors may be regulated or unregulated, operate legally or illegally, or be formally or informally organized (Spaan and Hillman 2013), yet much of

the empirical literature focuses on businesses that operate either criminally or in a legal gray zone. Small van courier services, for example, may offer an alternative to the post office for migrants to send in-kind remittances from the US to Mexico while avoiding customs and other fees (Hernández-León 2008), and profitable migration advice offices may purvey combinations of legal and false documents to facilitate cross-border flows (Garapich 2008). State policies can create opportunities for illegal migration industries to emerge, or heighten the demand for those already in place (Friman 2011; Trujillo-Pagan). As many studies have shown, smugglers proliferate when immigration controls are strengthened (Salt and Stein 1997; Massey, Durand, and Malone 2002; Kyle and Koslowski 2001; Krissman 2000).

If migration industries can play a crucial role in moving people across borders, they are not an unchanging feature of the landscape. Hernández-León (2013) advances a migration industry “life cycle” to capture the dynamics of its growth and decline. Within this cycle, the state sets the conditions that facilitate or hinder industry development. His conclusion accords with many of the findings of the large literature on migration agents, brokers, and smugglers. When a government attempts to regulate migration streams, the limits it stipulates create opportunities – though not deliberately – for migration entrepreneurs and labor brokers to set up business. As such, they appear as an unintended by-product of state control (Salt and Stein 1997; Massey, Durand, and Malone 2002; Hennebry 2008; Krissman 2000), or ineffective state regulation (Spaan 2014). State programs that aim to reduce migration may impact migration industries differently: they can eliminate customers and thereby induce industry decline, or produce new demands

for brokers and service providers who facilitate migration outside the law (Hernández-León 2013, 29-31; see also Trujillo-Pagán 2014).

Within the migration industry literature, the state typically establishes the playing field in which the action takes place. The terrain is often variegated: governments determine the limits of legality and illegality that create opportunities for migration industries to grow (Spaan 1994, Mahmud 2013, Kyle 2003). But in the context of reception, the state is not theorized as an active participant in their business ventures. Indeed, some suggest that the state's direct involvement in migration industry activities may be an anomaly (Hernández-León 2005). Studies that consider how destination states may engage the private sector do so largely from an interest in activities directed at halting migration. For example, states may attempt to stem migration industry growth by enlisting private actors to limit mobility by outsourcing detention facilities (Menz 2011; Bacon 2005) or border control (Lemberg-Pederson 2013). As such, the state's active engagement with the dominant element of the migration industry, facilitating flows, remains unspecified.

The exception is research on sending states. Analysts of Southeast Asia have long observed the commercialization of emigration in the region (Abella 1992, 270-4), resulting in a "labor export industry" that works alongside state policies (Goss and Lindquist 1995; Lindquist 2010). The Philippines is perhaps the most striking case of the state working with migration industry actors to organize labor export (Rodriguez 2010), while in other places, not the effectiveness, but the ineffectiveness of sending state migration management can foster the growth of private migration agents (Spaan 1994). Migration industry actors may cooperate with sending governments when the supply of

workers outstrips demand. Studies of the Mexican side of the Bracero program have shown, for example, that local officials partnered with employment agents to circumvent bureaucratic rules and utilize the labor power locally before migrants departed north (FitzGerald 2008; Chávez 2009). Comparing cases across Asia, Hugo and Stahl (2004) speculate that a sending government can influence the labor export industry by supporting its growth, controlling its development, or maximizing benefits and minimizing costs in the interests of the nation. They suggest that direct intervention can affect legal streams, while indirect intervention may be used to influence undocumented streams. The findings across these cases raise questions about whether and how receiving states, too, may engage migration industry actors in implementing programs to attract migrants.

When states work with non-state actors to coordinate migration flows, the basic relationship is one of devolution or delegation, for the control of cross-border movement rests in a state's sovereign domain. As such, a principle-agent framework can offer a starting point for charting the territory. In it, an actor – the principal – empowers an agent to act on its behalf. Defining the relationship is a formal or informal contract whereby the principal does not merely grant authority to the agent to carry out a task, but can rescind it as well (Hawkins et al. 2006, 7). Typically, governmental tasks are delegated either to private firms or other governmental bodies, international organizations, or civic groups. Thus one can specify the mode of engagement based on two key dimensions: the nature of the contract (formal or informal), and the type of agent (private or civic/public). In basic form, four outcomes are possible, as sketched in Table 1.

-----TABLE 1 ABOUT HERE -----

Delegation, however, carries risks. The interests of the both parties may not align completely, leading to “slippage” in coordination, and agents may behave opportunistically or shirk responsibilities, resulting in “agency slack” (Kiewiet and McCubbins 1991; Hawkins et al. 2006; Pollack 2003). Not only does the act of delegation itself carry costs, but attempts to monitor the behavior of agents, limit their discretion, or control the outcomes of their actions can be costly as well (Weingast and Moran 1983; Pollack 2003). In the case of guestwork schemes, states typically adopt such programs to extract labor from a supply of foreign workers while controlling their impact on the sending society and ensuring that their sojourn remains temporary. Yet middlemen have little intrinsic concern in policing exit. If profit-oriented, their preferences point towards a high turnover of customers, as the rate of return they receive for handling each worker typically decreases over time. Both actors can have an interest in limiting the labor market mobility of foreign workers – states often want temporary foreign workers to remain supplements of rather than substitutes for local labor, while middlemen prefer to minimize transaction costs associated with workplace transfers (Surak 2013). As interests partially diverge, states will want to ensure that control mechanisms are in place to guarantee that migration industry actors achieve the government’s overall goals (Hawkins et al. 2006; Kiewiet and McCubbins 1991, 22-38). These concerns can serve as an orienting device to flesh out the dynamics and stakes involved when states partner with the migration industry.

## **Study Design and Case Selection**

To understand how destination states engage with migration industry actors to facilitate cross-border mobility, this study focuses on net migrant-receiving countries in East Asia: Taiwan, Japan, and South Korea. The literature on immigration typically selects its cases from Europe and North America and has devoted little attention to destination states outside the West. The omission is striking given that immigrant-receiving countries in East Asia resemble the canonical Western cases on the key elements – strong economies, democratic structures, and welfare provision – that undergird many intra-Western comparisons in the first instance. As such, they provide a fruitful site for developing theories that might apply elsewhere.

The units of analysis examined are temporary low-paid migrant work schemes, or “guestwork” programs. To date, the literature on migration industries has concentrated on activities in a legal gray zone, as well as irregular or illegal operations. In such cases, direct state involvement, for example through formal partnerships, would be surprising. By contrast, legal migration streams offer the opportunity to observe a greater diversity in the ways that states become actively involved with mobility businesses. Indeed, one might expect migration enterprises or entrepreneurs to establish a stronger foothold over legal labor migration since decreased risks may enable them to offer migratory “all-or-nothing package deals” rather than merely segments of the journey (Spener 2009).

Guestwork programs, as government-run schemes for the recruitment of labor, offer prime material for examining the roles – beyond simply facilitating migration – that migration industry actors might play. In their ideal type, such programs grasp migrants

merely as labor power, which they must closely control. Their purpose is to keep numbers regulated, the impact on the receiving society minimized, and return ensured (Surak 2013). As such, three principal points of monitoring are guestworkers' entry, exit, and maintenance and mobility while on the program. For the state, labor brokers represent the segment of the migration industry of greatest interest as these actors – in contrast to remittance or communication services – deal directly with the issues of labor mobility and management.<sup>1</sup> The following case studies therefore focus on the relationship between the state and labor brokers as the migration industry actors most closely involved with labor provision. The analysis addresses program structures and how entry, exit, and maintenance operate in practice. It also examines the resilience of the relationship between the state and the migration industry by investigating calls for change and reform.

The subsequent sections examine guestwork schemes in Taiwan, Japan and South Korea to analyze the particular mixture of private and non-profit cooperation that defines their management. The case selection provides prime material for several reasons. By the early 1990s, South Korea and Taiwan transitioned from authoritarian rule to join Japan as democracies in the region. All countries saw strong economic growth in the late 1980s, as well as rising numbers of irregular migrant workers. In response, all rolled out temporary low-paid labor migration programs by 1993. The schemes are relatively small. Yet despite low fertility rates and declining populations, the countries still greatly

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<sup>1</sup> In addition, brokers may serve as the gatekeeper for access to other service providers by determining whether or not migrants under their watch can visit internet or telephone centers or which remittance facilities they may use.



circumscribe the possibility for such migrants to stay beyond their contracts – family reunion is off the table and moving into a new visa category is often prohibited. The similarities among the countries may be unsurprising given that the governments in the region are frequently described as developmental states dedicated to ensuring social harmony by protecting economic growth. However, a comparison within the region reveals significant differences in the extent to which states coordinate their programs with private actors and embrace market mechanisms in managing the guestwork programs in place.

The analysis is based on primary and secondary sources. These include articles, NGO reports, and government white papers that were examined by the author if in English or Japanese, and by research assistants if in Korean or Chinese. The author also carried out fieldwork trips to the countries in 2010 and 2012, and concluded an additional fieldwork trip to Japan in 2014. In Japan, she completed 33 interviews with government officials, business representatives, lawyers, NGOs, employers, migration experts, and migrant workers. In Taiwan, she conducted 18 interviews with government officials, advisors, migration experts, NGOs, brokers, and migrant workers. In South Korea, she carried out 28 interviews with representatives from government and business, NGOs, lawyers, and unions, as well as migration experts and migrant workers. Research assistants undertook follow-up interviews in 2014 and 2015 as needed.

## **Taiwan**

Though historically a settler society, Taiwan in the decades following World War II saw little cross-border movement. An authoritarian regime controlled the island, and the struggling economy with a GDP on par with sub-Saharan Africa rendered it undesirable to economic migrants. By the late 1980s, however, industrial growth and a gradual democratic transition encouraged the entry of irregular workers, estimated to have reached 50,000 by the close of the decade (Tsay 1992). To contain the increasing flows, the government passed the Employment Services Act in 1992. The first major piece of legislation to address foreign workers, the Act drew inspiration from Singapore's system that used employment agencies and brokers for controlling labor migration (Tseng and Wang 2010). Still in place today, it allows low-paid migrants to enter the country on three-year visas, renewable up to four times. Currently the program hosts around 550,000 workers. They are evenly distributed between manufacturing and caretaking, with men from the Philippines, Thailand, and Vietnam working in the former, and largely Indonesian women taking up employment in the latter (Council of Labor Affairs 2014, 0).

For more than two decades, the program came under the auspices of the Council of Labor Affairs (CLA), a cabinet-level office directly under the President that was upgraded to become a new Ministry of Labor in 2014. Although Taiwanese workers are its primary concern, it also determines the number of foreign workers admitted to the country and the sectors where they can be sent. The agency carries out case-by-case analyses of the labor needs of relevant sectors and grants employers permission to hire foreigners to fill up to 35% of their workforce.

Though the Ministry of Labor sets the policies and parameters of the program, it delegates implementation to licensed labor brokers. The choice to partner with the migration industry was strategic. In the words of one policy expert involved in developing the program, “We were dealing with Thailand, Indonesia, and the Philippines – corrupt states you can’t trust. We turned to the private sector because the market is far more efficient.” To obtain a two-year permit, a broker must be legally filed as a company, have no legal violations, pay a monthly fee to the government, and follow the fee structure established by the Ministry of Labor that details the services that they must offer, including placement, registration, counseling, tests, transportation (see Chan 1999; Council of Labor Affairs 2014). Enforcement, however, is lax, and brokers are well known for collecting two or three times the legal limits (Wang and Belanger 2007; Wang and Belanger 2011). With substantial profits to be made, the number brokerage firms, now 1300, has doubled over the past ten years, as reported in interviews with the Ministry of Labor.<sup>2</sup> Dominating the field are around twenty large companies with more than one hundred employees that focus on supplying workers – both Taiwanese and foreign – to big businesses. Surrounding them are several hundred mid-sized operations with more limited staff and in some cases overseas offices. Firms of this size can still demonstrate the \$150,000<sup>3</sup> in capital required by the government for licensing. Operating in a gray zone are individual brokers with little more than a cell phone, though their numbers are thought to be diminishing from government crack downs on fly-by-night operations. The industry has grown with the increase in foreign workers. In 2007, the

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<sup>2</sup> Lan (2007, 260) counts 600 licensed brokers.

<sup>3</sup> All dollar figures represent US dollars.

CLA lifted maximum limits in order to “open the labor market,” according to its director, and the agency has since moved system of sliding formulas, with final figures determined by the employment needs of a particular sector. However, as the Ministry of Labor is charged with protecting local labor as well, it keeps overall numbers low, which heightens competition among the brokers to handle the limited cases, and for employers – particularly in construction – to compete for limited slots to hire workers (Lan 2007; see also Tierney 2007).

### ***Program Implementation***

#### *Entrance*

Within Taiwan, brokers manage nearly all stages of the entrance process. Employers apply to the Ministry of Labor for permission to hire a foreign worker. If the application is successful, the Ministry issues a “job order” that the employer sells on to a broker for upwards of \$2,000. Brokers compete among themselves for the opportunity to handle these lucrative orders by promising better services than their competitors. The agent transfers the job order to a partner in the sending country – either a subsidiary firm of the Taiwanese agency, or an independent business affiliate – which are often licensed through the sending country’s labor export program (see also Wang and Bélanger 2011). To recover the initial expenditure, the broker collects placement fees from the migrant worker amounting to \$5,000 to \$6,000, which it splits with the affiliate in the sending country. Brokers meet the foreign laborers at the international airport in Taipei, where

they process the necessary forms, oversee their initial health and criminal record checks, and load them into vans for transportation to their the job sites (Tseng and Wang 2010).

### *Program participation*

Brokers handle day-to-day management and on-going paperwork requirements, including housing arrangements, regular medical checks, insurance forms, and visa renewals. By law, the agents receive a monthly fee from migrants in compensation, set at 10% of wages, or between \$50 and \$60, but it is not unusual to charge up to three times this amount in practice. From the placement and maintenance fees, brokers typically earn about \$6,000 per migrant over the course of three years (Ku 2013).<sup>4</sup> In response, the government has cracked down on skyrocketing fees as “market distortions” that squeeze too much from workers, and requires that fees are collected only after services provided (Council of Labor Affairs 2014, 2-3). Nonetheless, the workers remain, on the whole, heavily indebted. As a result, they have little leverage against their employers in the face of labor contract violations and workplace problems, which commonly include inadequate housing, harassment, injuries, and uncompensated work, and trafficking problems (U.S. Department of State 2014, 368-9).

### *Exit*

The state charges brokers with ensuring that guestworkers return at the end of their contracts, and requires each brokerage firm to leave a \$30,000 deposit with the

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<sup>4</sup> For a detailed examination of the cost structure in the early to mid-2000s, see Wang and Bélanger (2007; 2011).

government to cover the costs of deporting runaway migrants.<sup>5</sup> The sizeable sum presents an effective incentive for brokers to ensure that workers do not leave the program for irregular work and that they return home at the end of their visa. To aid brokers with monitoring, the government allows them to retain up to 30% of a migrant's monthly earnings, paid only upon their return home. Such deposit structures have been largely effective in stemming "runaways," with less than 5% of program participants illegally leaving the program annually, according to government sources (Lee 2010). Of these, deportations are high since brokers go to great lengths – contacting the family in the sending country, for example – to avoid losing the deposit left with the government. Indeed, it is only when then the agent returns the boarding slip validated by an airline that the money is released, and an employer can hire another worker (Tseng and Wang 2010).

### ***Resilience and Reform***

The Ministry of Labor, in close partnership with the migration industry, readily embraces the putative efficiency of market mechanisms and operates its system around a calculus of profit, loss, and competition. Indeed, the market logic is so deeply embedded that it is even extended to the reforms of the program. After heavy criticism of abuse by brokers, the CLA began an incentive system in 2007 based on smart consumer shopping. The purpose was to "institute a market exit mechanism" for brokers and "effective[ly] administer and enhance brokerage service quality" (Council of Labor Affairs 2014: 5).

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<sup>5</sup> The amount is stipulated in the Regulations for Permission and Supervision of Private Employment Services, Ministry of Labor, 2014. Withholding up to 30% of a migrant's monthly earnings was also once used to discourage departure into the irregular labor market, but strong criticism led to its abolition.

Since its inception, each employment agency is ranked on a scale from A to C. Around 25% obtain an A grade on an annual basis. Those that receive a C are given two years to improve or lose their license. This largely impotent threat slashes only about ten firms each year – just over 1% of those in the business.

When brokers extract illegally high fees from migrants, direct hiring offers a possible solution to growing costs by allowing employers to circumvent middlemen. The Taiwanese government has long avoided this option due to the resources it saves by outsourcing policy implementation to the private sector (Tierney 2007, 222). Still, in 2007 it yielded to NGO and international pressure and rolled out a direct hiring channel, but with little impact. Though employers may now bypass brokers, more than 90% choose to retain them for the paperwork required to hire migrant workers is so cumbersome that most are keen to leave the task to others (Tseng and Wang 2010). The organizations that use direct hiring are, according to Ministry of Labor officials, predominantly large businesses whose substantial internal bureaucracies process the paperwork involved.

The government maintains that foreign workers should be admitted only if they are supplements to rather than substitutes for the local labor force. With youth unemployment on the rise, such claims have become more difficult to sustain. Yet the MOL continues with the current framework. Most recently, it has proposed an increase in the “employment stabilization fees” it charges to employers, ostensibly to improve work conditions in the service sector with the hope of attracting recent university graduates. It has also debated expanding the program to include care workers as a part of comprehensive health insurance reform. The continued expansion seems viable for a

system organized through a direct contractual relationship between the government and the labor brokers that implement the program. The hallmark of the scheme, almost entirely devolved to the private sector, is its coordination through a competitive market and driven by concerns of profit and loss – a logic that extends even to its reforms.

## **Japan**

In contrast to Taiwan's formal guestwork program, Japan's scheme operates through a hazy distinction between apprenticeship and work. Officially, Japan does not allow low-paid labor migration, but in practice its Technical Intern Training Program (TITP) serves the same function, and its origins and development over time suggest that labor migration is indeed its intent.<sup>6</sup> Immigration law reform in 1990 enabled the expansion of an existent channel, and by 1993 a technical internship program was added, forming the TITP. Regularly adjusted since, the scheme currently enables around 150,000 trainees, predominantly from China, to work for up to three years in 44 occupations, largely in textiles, food processing, agriculture, and metalwork.<sup>7</sup> The government stipulates no absolute limit on the number accepted, but creates a ceiling by constraining the proportion of trainees to no more than 5% of employees in a company.

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<sup>6</sup> In addition to the trainees, about 105,000 Japanese-Brazilians work in Japan, typically in skilled assembly or service sector jobs (Yamada 2010). With no employment restrictions on their visas and unlimited renewal possible, they have free access to the labor market. As neither their stay nor their labor market access is limited, I exclude the Japanese-Brazilians and other "Nikkei" populations from the present analysis of temporary labor migration schemes. On the history of the reform, see Akashi (2010, 106-115).

<sup>7</sup> Until 2010, the categories "trainee" and "intern" were distinguished by the application of labor laws – trainees were to earn at least minimum wage.



The program developed out of an intra-company transfer scheme established in the 1950s to allow small numbers of workers from overseas branches of Japanese firms to train at the home base.<sup>8</sup> For several decades, this lightly regulated channel lay open only to large enterprises with offices abroad. In the early 1970s, small- and medium-sized businesses called programs to allow in low-paid labor, but their efforts were stifled by the Ministry of Justice and Ministry of Labor (Chiavacci 2011), and soon made moot by the 1973 oil crisis. A booming economy in the 1980s saw the same calls emerge, along with growing numbers of irregular workers, and again business interests pressed the government for a scheme to allow low-paid migrants workers on a temporary basis. The Ministry of Justice – the final voice on migration control – acted, but not through radical alterations; countering alternative proposals, it retained the policy of admitting no unskilled workers. The result was the expansion of channels for trainees. This concession to small- and medium-sized businesses was based on the older trainee system, which was broadened in 1991, and capped with a “technical intern” channel to form the TITP in 1993 (see Nakagawa 2003; Chiavacci 2011; Milly 2014, 62-66; Oishi 1995; Kajita 2002). The program was established through administrative reform, which creates a wide berth for reinterpretation based on recommendations rather than legally binding strictures. The result has produced difficulties in enforcement.

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<sup>8</sup> The Colombo Plan of 1954 opened the possibility for such intra-company transfers. In the 1960s, several thousand trainees from South Korea, Taiwan, Indonesia, Thailand, and Malaysia came through this channel to take up semi-skilled and unskilled work (Ochiai 1975). In the two decades between 1954 and 1977, 48,000 trainees entered the country, largely under the guidance of JICA. By 1982, there were 10,000 intra-company trainees, which grew to 23,000 by 1988 (Kantō Bengoshikai Rengōkai 1990, 192). On the expansion of such trainee programs into work programs under the TITP, see Shimada (1994, 68-72).

To implement the scheme, the government established the Japan International Training Cooperation Organization (JITCO), a non-profit quasi-governmental organization run under the auspices of five ministries and with input from the big business federation Keidanren. The organization offers support to firms, navigating the tangle of bureaucratic procedures, to comply with program stipulations. As large businesses continue to hire trainees through intra-company transfer, JITCO targets small- and medium-sized firms, which lack the administrative resources or interest to handle the paperwork on their own. As such, the organization assists the employers of about 90% of the trainees coming to Japan.<sup>9</sup> For its services, firms pay between \$500 and \$3,000 in annual membership fees, in addition to a smaller cost for each migrant employed – lower total costs than going through independent lawyers. A significant portion of JITCO’s funds comes from the qualification tests it administers to all trainees – a simple exercise that almost all participants pass (Daily Yomiuri 2006; Uemoto 2009).<sup>10</sup> Nearly 20,000 employers, dubbed “implementing organizations” in JITCO’s terminology, participate in the scheme (Kokusai Kenshū Kyōryoku Kikō 2011).

While JITCO operates as a service for employers and provides them with legal assistance, tests, and insurance, “supervising organizations” handle issues concerning the migrant workers themselves and the bulk of the program implementation. These establishments must be licensed by the government as an employment agency and operate as a non-profit, at least on paper. Agricultural associations, vocational training companies, and chambers of commerce may apply to become “supervising

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<sup>9</sup> See Kokusai Kenshū Kyōryoku Kikō (2011) for comprehensive statistics.

<sup>10</sup> On the program implementation and structure, see Moriya (2011, 142-3), Akashi (2010, 106-115).

organizations,” but the bulk are represented by “small business associations” of five or more firms. Typically, a handful of brokers band together to form a dummy firm that they register with the local government as a business association. In some instances, broker agencies from sending countries, in order to dispatch workers directly, have established shell companies in Japan and registered them as supervising organizations as well (Kurematsu 2013). These “small business associations” handle over 80% of the trainees coming to Japan, and as such have become the indispensable middlemen that connect workers to jobs. The field counts approximately 2000 supervising organizations that typically employ around ten people (see Kokusai Kenshū Kyōryoku Kikō 2011, 94-6). Though large employment firms are key actors in Taiwan, Japan does not see big companies in the business of dispatching trainees as most of this work, though registered, occurs in a legal gray area. The sizeable number of small-sized broker firms also contributes to difficulties in regulation enforcement.

### ***Program Implementation***

#### *Entrance*

Formally, JITCO sits astride the cross-border connections to the sending area. It maintains partnerships with the sending states, which supervise their own field of brokers and employment agencies, or “sending organizations.” It is this level – the connection between the sending organizations and supervising organizations – that manages the nuts-and-bolts of moving people across borders and connecting them to employers (see Tajima 2010, 145-83; Kurematsu 2010, 68-78). The supervising organizations in Japan meet upon arrival the “trainee” workers, who have paid upwards of \$9,000 to come to the

country. A portion of the fee may be transferred to the broker in Japan to cover the airfare, and typically part is held as a bond in the sending country to ensure return. In contrast to the broker-dominated system found in Taiwan, JITCO handles the entrance paperwork for the employers for a fee running between \$50 and \$100 per case.

### *Program participation*

Once a migrant is in the job, brokers assume responsibility for the paperwork and maintenance requirements for a monthly fee of around \$200, paid by the employer and typically extracted from the migrant's wages. As supervising organizations, the brokers are charged with auditing the employment sites yearly and establishing a training plan, as well as providing initial training, health insurance, and return travel. They are also required to supply continuing language support, counseling services, and adjustment help, though there is little incentive to do so and actual provision in these areas is spotty. JITCO rarely monitors the maintenance fees brokers charge, which include both "maintenance expenses" between \$200 and \$500 per month, and an annual \$1000 in "placement expenses." Migrants may face additional charges as well, and contracts can stipulate the fines levied for activities like complaining, sexual involvements, or exchanges with irregular migrants (Belanger et al. 2011, 47; on program violations see Yasuda 2013).

### *Exit*

Like Taiwan, Japan has kept runaways low. Though the wages and work conditions are often better in the irregular labor market, only around 3% of participants illegally leave

the program annually, according to JITCO in interviews.<sup>11</sup> A key deterrent might be the substantial bonds that recruitment agencies may hold in the sending country, which can range from \$5,000 to \$10,000 (Belanger et al 2011, 43; Yasuda 2013, 55-6). Though they are illegal under the program, JITCO reportedly encourages such “safety deposits,” and brokers regularly use them as well. A small bonus for return is the promise of pension refunds: the national government deducts pension costs from pay, as it does for all workers, which are refunded only upon documentation of the cancelled work visa obtained upon exiting the country.

### ***Resilience and Reform***

Violations within the program are rampant, yet sanctions rare.<sup>12</sup> The Japan Civil Liberties Union and Japanese Lawyer’s Association are highly critical of the program, which the UNHCR and U.S. Department of State has suggested amounts to “slavery” or “forced labor” in some cases (US Department of State 2014, 220-1; US Department of State 2007, 125; Bustamante 2011, 10).<sup>13</sup> Despite widespread abuse, only 0.5% of supervisory organizations were penalized for misconduct in 2009 (Watanabe 2010). Though courts

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<sup>11</sup> The government estimated that about 60,000 visa over-stayers were in Japan in 2014 (Ministry of Justice 2014, 77).

<sup>12</sup> On program violations see Yasuda (2013), Hayakawa (2008), *Gaikokujin Kenschuseikenri Nettowaaku*, volumes 1 and 2 (2006), *Kokusai Kenschu Kyoryoku Kiko* (2011).

<sup>13</sup> The US Department of State’s *Trafficking in Persons Report* places Japan on its Tier 2 list and notes that its government “has not, through practices or policy, ended the use of forced labor within the TTIP [*sic*], a government-run program that was originally designed to foster basic industrial skills and techniques among foreign workers, but has instead become a guest worker program” (2014, 12).

have seen numerous cases involving named brokers, government officials continue to deny their existence and refer only to “supervising organizations.”

The program’s origins in administrative adjustments, rather than new laws, has resulted in a hulking bureaucratic apparatus, many gray areas, and disrupted chains of responsibility. As such, third parties face great difficulties in ensuring that decrees – for example that trainees have rights as workers – are applied in practice. The sustained denial that the *de jure* trainee program is a *de facto* guestwork scheme works through a set of fuzzy metaphors that limits the enforcement of migrant workers’ rights, as observed from the outset (see Shimada 1994, 69-70, 76-7). The government likens the program to a scholarship system that allows the poor to access education through a “work abroad” scheme. Official newsletters tout experiences that broaden workers’ horizons – opportunities to wear firefighter suits for the first time as they learn about fire safety or to attend cultural events like tea ceremony gatherings – or activities that will help them to “develop leadership” in unexpected fields like sewing piece-work.<sup>14</sup> In the face of rampant violations, JITCO maintains that it can only “guide” the program, and does not hold the authority to command the actors involved.

In the main, JITCO operates in a language of “human resource development,” and reforms adhere to this framework. In 2009, for example, NGO and international pressure led the government to alter the program, but it didn’t address the human trafficking problems they raised. Rather, it focused on the training component, which was revised to allow participants who complete the first year of the program as “trainees” to move onto

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<sup>14</sup> [Http://www.jitco.or.jp/english/activities\\_trainees\\_interns/2008/case1.html](http://www.jitco.or.jp/english/activities_trainees_interns/2008/case1.html) and  
[Http://www.jitco.or.jp/english/activities\\_trainees\\_interns/2005/case13.html](http://www.jitco.or.jp/english/activities_trainees_interns/2005/case13.html) accessed February 1, 2015.

the second and third years under a new bureaucratic category of “technical interns.” Following the same logic of tinkering, the government is now planning to expand the program yet further. The revised “Revitalization Strategy,” issued in 2014, lists ten points to improve the economy and includes the increased intake of foreign workers among them. Citing labor shortages expected to result from the construction of Olympic facilities, the government is planning to expand the trainee program from three to five years and broaden its scope to include an additional 5,000 participants per year in construction. Notably absent from the media-driven debate about “the scramble for Asian workers” is discussion of JITCO and the function of trainees as workers. The silences, however, work in alignment with the wink-and-nod system, organized through the informal delegation of coordination tasks to brokers.

### **South Korea**

In contrast to Japan and Taiwan, South Korea stands at the opposite end of the spectrum in its reliance on market mechanisms and private actors. The transformation, however, is recent and marks a dramatic shift from the broker-based temporary migrant worker program it initially implemented. Like its neighbors, the country saw growing numbers of irregular foreign workers as its economy took off in the late 1980s, and it instituted a low-paid labor migration program in 1991 to gain a handle on flows. The Industrial Training Program (ITP) took its cues from Japan in implementation and expansion. To run the local variant, the government set up the Korea International Training Cooperation Corps (KITCO), a conglomeration of business, labor, and government interests, dominated by the Korean Federation of Small Businesses (KFSB). By the end of the

millennium, close to 300,000 labored on the program, largely in manufacturing and agriculture, for up to four years and ten months and with the option of extending once.

Skill development was the stated purpose of this “education program” for foreigners, yet as in Japan, the ITP operated as a thinly veiled guestwork scheme with participants allocated to undesirable jobs that typically required little training. The KFSB determined the sectors with the greatest need for foreign workers, and devolved the oversight of migrant selection and entrance to South Korea to the relevant business associations. Yet this did not eliminate a role for the migration industry. To implement the program, the government appointed twenty “delegation control agencies” – effectively for-profit brokers who connected the migrants selected in the sending country to employers in South Korea. As with the other cases in the region, employers and brokers left deposits with the government to ensure that migrants did not “run away.” However, these were set so low – \$275 for employers and a mere \$100 for brokers – that they failed to provide a overwhelming incentive to police participation (Yoo 2003). As an additional measure, KITCO established “consulting agencies” to offer employers advice on working with foreign trainees and preventing runaways (Seol and Skrentny 2004), but implementation too was outsourced to brokers, and their effectiveness in service provision was minimal. Observes of the system at the time suggested that it “institutionalize[d] and legalize[d] the ‘coyote’ system that brings Mexican undocumented immigrants to the United States” (Seol and Skrentny 2004, 503). With migrants losing much of their paychecks to broker fees and debt payment, and with few recourses if problems arose on the job, and the number of ITP participants moving into



irregular work was large: between 30% and 60% of participants left the program for irregular work in any given year (Lim 2003; Kong et al. 2010, 259).

As with its Japanese counterpart, abuses ran high, and NGOs, civil rights and religious organizations, as well as a national union, repeatedly attacked the program for human rights violations and rampant corruption. By the late 1990s, a coalition of over eighty organizations called for greater government oversight as well as legal recognition of the trainees as workers – in short, a transformation from a dubious training program to a full-fledged, fully monitored guestwork scheme (see Kim 2003; 2005). Though the Ministry of Justice and Ministry of Commerce, Industry, and Energy stymied their actions repeatedly, the voices for reform found a supportive partner within the government when a former human rights lawyer, Roh Moo-hyun, took the presidency in 2003. Allied with a strong executive, civil society groups were able to push through their programs for reform (Kim 2011). The fight left the KFSB so discredited that it renamed itself KBIZ.

The result was the 2004 Employment of Foreign Workers Act. A fundamental overhaul of the system, the Act transferred implementation of the labor program from the migration industry to the government. To prevent corruption and improve efficiency, program designers looked to Germany not a negative example for guestwork schemes, but as a positive model, and took inspiration from their state-managed programs that recruited Korean nurses and miners in the 1960s and 1970s. Crucially, the reforms replaced the private sector “delegation control agencies” that had matched workers to employers with a public enterprise, the Human Resources Development of Korea (HRD), located under the Ministry of Employment and Labor. Thus the new program removed

the layer of brokers and the competitive market in which they operated and built in its place a publically managed structure (Seol 2004). One official at the Ministry of Employment and Labor described the design in an interview as “like a planned economy, but one inside a capitalist system.” The resultant Employment Permit System (EPS) allows around 250,000 foreigners to work in the country for up to four years and ten months – two months short of the minimum time required for permanent residence – in small- to medium-sized firms. Over 75% labor in manufacturing, with smaller proportions in construction and agriculture. The Vietnamese are the largest group, accounting for 30% of participants, followed Filipinos, Indonesians, Thai, and Sri Lankans (Oh et al. 2012, 42-3).

### ***Program Implementation***

#### *Entrance*

In the program’s original design, HRD was to manage and implement the entire scheme, from determining labor market needs, to screening workers and matching them to employers. But the task of handling over 100,000 entrants per year outstripped its capacities, and soon after the program’s inception, HRD partnered with KBIZ and the four related business associations (manufacturing, construction, fisheries and agriculture, and services) to assess which sectors required the extra hands. To ensure that brokers remain excluded from the Korean-side of the system, HRD continues to manage the international elements of the program, including the bilateral Memoranda of Understanding that the government holds with over one dozen sending countries. HRD, in connection with government-approved brokers abroad, selects candidates from a list of

available workers, concludes contracts before they depart from the sending country, and arranges transportation from the airport in Seoul to limit the participation of brokers in South Korea.

### *Program participation*

In day-to-day implementation, private sector involvement is kept to a minimum. To manage the workers' stay, the Ministry of Employment and Labor contracts around forty NGOs to provide private consultations and assistance to foreign workers, including medical, legal, and linguistic support. In compensation, these non-profits receive direct money transfers from the government, which can constitute a substantial part of their operating budget. The contracts, however, are not opened to tender – reputation and connections, rather than market competition, determine the NGOs selected. Migrants also attend a battery of instructional programs upon arrival, which are taught by private actors based outside the migration industry. The government pays vocational institutes to provide the 16 hours of skills training required of all program participants. Though migrants, on paper, can change employers if problems appear on the jobsite, this rarely occurs in practice as transfers are possible only if the worker receives written permission from their current employer. Furthermore, contracts are renewed annually, and participants who do change employers are barred from extending their work beyond three years – further disincentives for labor market mobility.

### *Exit*

Monitoring exit has long been a problem in South Korea. Program reform has reduced the numbers of “runaways,” but not stemmed them. The EPS abolished the deposits and withheld wages that, though ineffective, were intended to combat runaways under the old scheme. However, it did not institute substitute mechanisms. The market for irregular workers counts around 170,000, and those who leave the EPS and remain in South Korea account for about 45,000 of this figure – or nearly 20% of program participants (Oh et al. 2012, 36, 42-3). The division of labor within the state works against draconian enforcement of exit. Though the Ministry of Employment and Labor favors deportation, only the Ministry of Justice can remove irregular workers, but it lacks both the will and the manpower to do so. Its Korean Immigration Service is in charge of deportation, but with only 1800 employees, the ratio of overstayers to officers is high. The police, too, are reluctant to become involved with deportation.

### ***Resilience and Reform***

Upon inception, South Korea’s EPS program was applauded as a successful example of government reform of a competition-infused market for foreign workers managed by brokers. In interviews, bureaucrats within the Korean Labor Institute and the Ministry of Employment and Labor recognize that market mechanisms can provide efficient outcomes in some parts of the economy, but declare that they do not work for foreign labor programs. Perhaps most significantly, the move from the private to the public and non-profit sector has brought a decline in profitability for middlemen; migrants’ debt has

more than halved from \$3500 under the ITP to between \$1200 (Yoon 2009) and \$2800 (Amnesty International 2014, 40; see also Amnesty International 2009, 26).<sup>15</sup>

However, the anti-broker goals of the program have not produced a unidirectional expansion of foreign workers' rights. Indeed, this rhetoric has also been used to limit the labor market mobility of guestworkers. In the first years of the program, migrants seeking new employment could enter a job center run by the Ministry of Employment and Labor and access a book, written in Korean, of employers registered to hire migrant workers. Businesses complained that the system encouraged too much turnover, and in 2012, under the "Policy to Stop the Intervention of Brokers," the system was ended on the grounds that brokers – often NGO workers who could read Korean, according to reports – were taking migrants en masse to find better jobs. Currently, a migrant dismissed by an employer cannot seek out new work, but must wait for a call from a new employer looking to hire.

### ***Visit and Employment Program***

Though the main source of foreign workers for undesirable jobs is the EPS, it is not the only guestwork-style program in the country. Running parallel to it since its inception is a second scheme – the Visit and Employment Program (VEP) that channels co-ethnic Korean workers, largely Korean-Chinese, into semi-skilled jobs located a step above those filled by EPS participants. In function, it resembles a temporary work program, but

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<sup>15</sup> Variation in the overall debt carried depends on sending country conditions as well. The Indonesian government, for example, charges its nationals \$5000 to work in South Korea, where the Nepalese government charges \$1200.

in form it deviates greatly from the restrictions characteristic of guestwork schemes. Not the Ministry of Employment and Labor, as with the EPS, but the Ministry of Justice handles the VEP scheme. It maintains that the program's purpose is to aid Korean communities abroad, rather than recruiting labor, and takes a light hand in regulating labor market mobility (see Kim 2008). Migrants on the scheme can work for up to four years and ten months in any of 32 designated sectors largely representing semi-skilled jobs. Like South Korean citizens, they can enter any of sixty government-run job centers to find work, and most find employment in service and construction alongside Korean counterparts. As such, migrants are matched to employers through already existing public institutions that become the de facto instruments structuring their mobility on the program. Those discovered laboring illegally – that is, without registering with the government – face fines rather than deportation. With few entry and employment restrictions, Korean-Chinese have far more labor market freedom than their counterparts on the EPS. The Ministry of Justice does not investigate labor demand or allocate workers to specific sectors, as under the EPS. Thus it may be unsurprising that the Ministry of Employment and Labor has argued that VEP participants serve as substitutes for – rather than supplements of – native workers, sometimes undercutting their wages. Lobbying the Justice Ministry, it has succeeded in seeing the program capped at 300,000 per year to minimize the impact on the local labor market.

Though the program operates with loose controls on labor market mobility, temporariness still defines it as a guestwork scheme. Yet even this has been eroded in recent years. The Ministry of Employment and Labor would prefer to channel VEP participants into sectors with greater labor needs than the service and construction jobs in

which they congregate, and the Ministry of Justice has agreed to allow ethnic Korean migrants who work in manufacturing or agriculture stay beyond their four year stint. Those who maintain an income on par with the national average can apply for permanent residence, and eventually citizenship (Seol 2012). Similarly, those who obtain college degrees are allowed to become permanent residents as well. As the government lifts limits on labor market mobility and the length of stay, elements of a scheme that once weakly operated for guestwork purposes are beginning to no longer functions as such.

-----TABLE 2 ABOUT HERE-----

## **Discussion**

Of the cases examined, the Taiwanese state has gone furthest in devolving guestworker management to the migration industry and its brokers, yielding what might be termed a *privately managed* program that fits within quadrant I: formal delegation to for-profit actors. The government strategically uses competition, profit, and loss to ensure rigid control over the system, and it places few efficacious limits on the financial gains that labor brokers skim off migrants' wages. The result is a profitable and competitive business sector responsible for implementing the temporary labor migration program. Capital requirements and limits on the number of foreign workers determine the upper parameters of the field's size, and as a result, employers and brokers alike vie for limited access to labor. Though direct hiring is also an option, the extensive paperwork required to obtain and retain a guestworker serves as a disincentive that leaves many employers eager to rely on brokers rather than costly private lawyers., Furthermore, the substantial

deposits that brokers and employers leave with the government supply a powerful incentive that ensures that both parties remain vigilant police for the program known for its human rights violations. Not only the administration of the program, but its monitoring as well has become fully commercialized. The combination of profit-oriented competition and incentives yields a tightly managed system. As such, expansion is limited not by the program structure, but concerns for domestic labor, and growth over the past few years has been continuous.

In Japan, as in Taiwan, the control of temporary low-paid migrant workers is largely outsourced to private actors, but this occurs through a gray haze of evasive formulations. This *unofficial collaboration* between the two parties instantiates quadrant II: informal delegation to for-profit actors. Guestworkers are “trainees” offered “scholarship-like” chances for gaining experience in low-skilled jobs in which little training is necessary; employers are “implementing organizations” that provide paid educational opportunities; and brokers enter as “supervising organizations” that ensure that the program runs smoothly. The ambiguity dovetails with general policy of the Ministry of Justice, articulated in weaker terms by other actors, that low-paid migrants workers are not wanted and should not be allowed to enter the country. However, brokers operating for profit implement the bulk of the program, with the informal consent of the state. With relatively small numbers of migrants, the national government is able to ignore many emergent problems as it devolves the management of migrant-related issues to the regional or local level. Lack of will to enforce effective oversight of the trainee program leaves brokers to operate with great freedom, while lack of transparency has resulted in substantial human rights violations. This ad hoc arrangement – replicated by



South Korea's ITP stream – based on hazy procedural interpretations is less amendable to enlargement of the sort found in Taiwan.

South Korea's EPS offers the counterexample of de-marketization. Here the state has reclaimed management of its temporary low-paid migrant worker scheme from the private sector to produce a *publically discharged* system that exemplifies quadrant III: formal delegation to non-profit organizations. Where brokers once operated for profit now stands a combination of public associations, government offices, and NGOs. The debt burden of migrant workers has decreased as well, as brokers within South Korea are less able to skim profits from their labor. The reforms, however, do not address other common sources of exploitation, including underpayment, overwork, unclear labor contracts, and excessive charges for accommodation (see Amnesty 2009; Amnesty 2014).. Yet the number of runaways has decreased – though without deposits, the tight control found in Taiwan is hardly matched. Employers call for changes that would allow for greater numbers of workers on longer contracts and with fewer rights, but the tarnished history of an official broker system has meant that current alterations must remain in line with the anti-broker rhetoric. If this does not prevent rollbacks entirely, it places a drag on deregulation.

The VEP, the companion program of the EPS, operates as a *publically overseen* scheme which falls within quadrant IV. The relationship between the state and the services that coordinate mobility for the program is informal; participants are able to rely on the facilities in place for nationals, and as such, no dedicated outsourcing is needed. Recent changes to the scheme also suggest that governments may be able to reverse

outsourcing to the migration industry. Not only may privatization be rolled back, but guestwork programs as well..

### **Assessment**

The relationship between states and migration industries is more varied than the current literature suggests. The analysis shows that states may chose to work with for-profit and non-profit actors to implement labor migration schemes as an efficient management configuration, engaging their capability not only to control, but also facilitate movement. The result is a relationship of delegation as the state places the responsibility for ensuring effective policy implementation on the shoulders of others. With this comes attendant risks and rewards that vary based on the form of contract connecting the state and the service providers, as well as the nature of the agent. The East Asian guestwork programs analyzed here instantiate four types of delegation relationship that can be applied more broadly.

-----TABLE 3 ABOUT HERE -----

States may formally outsource program implementation to for-profit actors, yielding a privately managed system (quadrant I). For the state, the arrangement offers some benefits: delegating guestwork program implementation to private actors can allow it to claim efficiency gains and save resources that might otherwise be drained by migration policy enforcement. Taiwan's guestwork program exemplifies this configuration, through it can be found beyond the island. Hong Kong's system for

importing domestic workers operates in this way, with licensed employment agencies responsible for connecting migrant workers to employers and ensuring return (Verona 2013), as do Singapore's temporary worker schemes (Teng 2014). The configuration has been used to implement seasonal agricultural work programs in recent years, as with Australia's Pacific Seasonal Worker Pilot Scheme operated by "labor hire companies" (MacDermott and Opeskin 2010). And much of the labor migration to the Gulf Cooperation Council (GCC) states of the Middle East, carried out by licensed recruitment agencies, comes under this rubric as well (Agunias 2010, Rahman 2011). Though states may find that such arrangements serve their interests, they must still ensure that their agents execute policies effectively and guard against shirking or slippage (Dunleavy 2011). In guestwork programs, exit is a key site where the interests may diverge. Labor brokers have little incentive to police migrants' return, yet a worker's stay must remain temporary for the program to operate as governments intend. A market-managed system, as found in Taiwan, can mitigate such risks as the state manipulates competition, as well as profit and loss incentives, to keep the agents in line. A counter-example can be found in Israel, where manpower agencies regularly ferry guestworkers into the country with the promise of a job that never materializes. The result is large pools of unemployed – and simultaneously undocumented – labor. Client politics and kickbacks have prevented the government from bringing these employment agencies to heel (Kemp and Raijman 2014), suggesting a case of agency slack. However, in ideal form, an explicit contract binds the principal and agent through licensing, which the principal can terminate should the agent deviate far. To hold labor brokers to task, the state can use market-based tools such as deposits, ratings systems, fines, and limits on the number of cases handled. The

observed result in Taiwan, Singapore, Hong Kong, and elsewhere is a closely managed and highly durable system with few runaways, if one that meets strong criticism from human rights organizations and NGOs for rights violations.

States may also opt for an alternative approach, based on an informal rather than formal delegation relationship (quadrant II). In such cases, the state allows the migration industry to become the de facto executor of its migration program. Not directly or specifically appointed to control migration flows per se, the agents possess greater autonomy and discretion in connecting workers to employers. The H1-B program in the US fits broadly into this category, as do some migration streams feeding the H2-B program (Griffith 2006). The “flying visa” system found across GCC countries operates along similar lines, in a gray zone outside official employment agencies. Unlicensed middlemen, often former migrant workers, secure visas from sponsors and subsequently rely on personal networks to find jobs for the workers they recruit (Rahman 2011, Aguinas 2010). In some cases, the liminal status leaves not only workers, but also brokers skirting the boundary between legality and illegality, which can inhibit the growth and expansion of such systems. In the Japanese case – as with South Korea before 2003 – brokers have not formed large firms of the sort that predominate in Taiwan, for example. The informal nature of the outsourcing thickens the corporate veil and evasive legal formulations can facilitate blame avoidance. As such, and in contrast to common principal-agent dilemmas, hidden information and hidden action are a boon, rather than a bane, for the principal (cf. Bessire 2005; Finkle 2005; Eisenhardt 1989). If unofficial collaboration programs have proven durable, their delicate balance of legality and illegality is likely to render them less expandable than counterparts with formal contracts.

States may also delegate program management to non-profit and civic actors, both directly (quadrant III) and indirectly (quadrant IV). The involvement of non-profits mitigates the extent to which increasing financial gain serves as a motive for program implementers. Even if NGOs collect some budgetary funds from the government in exchange for their services, their purpose is not to turn a profit, and they are less likely to transfer costs onto the migrant. Germany's post-war guestwork streams operated largely in this way until the practice of requesting migrants by name, combined with high demand, opened a path for informal brokers to organize flows (Faist 2000: 176-7). Similarly New Zealand's Working Holiday Maker Program, which is often – though not entirely – implemented indirectly through civic organizations, falls into this field as well. Public involvement is not a complete answer to some of the worst abuses that can mar guestwork programs. Even if delegation is based on a formal contract, the state may have little incentive to ensure that rights are protected and enforced if migrants are regarded solely as labor power. On occasion, privatization may even be reversed as evinced in South Korea's turn to *publically overseen* and *publically discharged* programs. More common is change in the other direction. South Africa's guestwork program, channeling labor to its mines for the entirety of the twentieth century, was managed by the non-profit Witwatersrand Native Labour Association, renamed TEBA,, which projected itself as an “agent” of the state (Crush and Tshitereke 2001). In 2005 the government began to wind down the program and privatized TEBA – a shift from quadrant III to I. The US's Bracero Program exhibits a similar move towards privatization. Though public and civic actors initially implemented the program, over time for-profit “merchants of labor” began matching workers to employers informally (Galarza 1964) – a shift from quadrant III to

II. Because entrepreneurs are drawn to the profits mobility offers and often find compliant actors within government, a general trend from non-profit to private implementation is to be expected.

## **Conclusion**

States have frequently delegated migration policy implementation to other actors, from the nineteenth century steamship companies that screened passengers before boarding (Zolberg 2006) to the private companies that run visa offices and detention centers today. Though the state, in ideal form, may have the final say over its cross-border flows, it can also find it more expedient to engage – or leave – other actors to manage them. The possible reasons are many, including limited infrastructural capacity, possible resource savings, claimed efficiency gains, and persuasive client politics. Yet little research has specified the dynamics involved when states outsource migration management to third-party actors. Understanding these delegation relationships through a principal-agent framework can help identify the properties and stakes of common, yet distinct, configurations based on profit orientation and the nature of the contractual relation: for-profit/formal, for-profit/informal, non-profit/formal, and non-profit/informal. This is not to suggest that these relationships are unique, static, or omnipresent. Countries do not always rely on a single delegation type – they may use different configurations for different programs – and the same program may encompass more than one configuration. Individual programs may shift over time as well, with a drift towards privatization common, driven by the profitability of mobility. Nonetheless, applying these heuristic

divisions to immigration policies sheds light on the risks and rewards of each configuration.

Several conclusions can be drawn from this analysis. The first concerns the spectrum of formality. When states formally outsource guestwork program implementation, direct intervention is easier should the agent fail to achieve the principal's goals. . As a formal arrangement, such systems are more readily expanded than informal outsourcing whose ad hoc configurations limit the state's ability to intervene through explicit manipulation of the arrangement. Yet it doesn't curtail the state's influence entirely: the state can always render informally entrusted employment agents illegal, for example, thereby shifting their operation and calculations. But on the whole, the "light touch" nature of indirect relationships is likely to yield more workarounds rather than direct intervention. The contrast is evident in the difference between Taiwan's formal delegation and Japan's informal outsourcing.

The delegation relationship can also vary based on the importance of financial profit. When working with non-profit agents, the state often retains greater control over elements of a migration program and the extent of delegation tends to be less. The reverse holds when states turn to private actors for program implementation. The extent of delegation is likely to be greatest – with third party actors overseeing all aspects of entrance, exit, and program participation – when the relationship between the state and migration industry actors is formal and commercial. Driving the trend are the promise of financial savings for the state and of financial gain for the migration industry. As migration management becomes commercialized, delegation and its challenges are likely to increase. The difference is highlighted in the comparison of Taiwan and South Korea.

In the former's heavily privatized system, organized through formal channels, commercial operators and interests manage nearly all aspects of the program, including administration, monitoring, and implementation. In contrast, South Korea's formal partnerships with civic actors are crucial for coordinating the program, but less is outsourced, and the state retains control over migrant selection and utilizes public structures for job matching. In moving away from informal reliance on private actors under the ITP, the Korean government also moved many program elements in house.

Though it was beyond the scope of the paper to offer a causal explanation of the origins of different delegation relationships, a brief reflection on the historical development of the programs analyzed here suggests some considerations for future research. First, the sheer variety of outcomes points beyond the developmental state as the sole determinant of effects. In the Japanese case, the reforms in the 1990s were preceded by unsuccessful calls by business for guestwork programs. In the early 1970s, they were stymied by key ministries. When businesses renewed demands for workers in the late 1980s, they converged with several new immigration policy debates and a new constellation of stakeholders lobbying for more open migration channels (see Chiavacci 2011, Milly 2014). In response, the conservative Ministry of Justice, with the last say on migration policy, chose a cautious option: administrative reform of an existent channel. The result was a murky trainee scheme that has since operated as a de facto guestwork program. Taiwan and South Korea, in contrast, had been emigration countries under authoritarian rule until the late 1980s when they confronted the novel combination of irregular migration and strong business growth. Taiwan looked to Singapore as an economic role model and adopted a similar guestwork policy, while South Korea did the



same with Japan. It remains unclear whether the inter-ministerial jockeying of the sort seen in Japan played a role as well, or if the newness of the issue enabled a small set of bureaucrats to develop a policy in relative isolation. Either way, the imperatives behind policy choices appear mixed across the region. Though the results in Taiwan and Japan have remained resilient over time, South Korea saw radical revisions of its program. Behind these lay the conjuncture of a series of protests, building over years, and the election of an activist president. Such an outcome may also be possible in Taiwan, home to a presidential system and an activist scene. However, civil society pressure has not yet led to reform.

Taken as a whole, the factors and configurations affecting program development are many and would require historical research into a range of cases to isolate generalizable determinants. The present study suggests some elements that should be taken into account. These include the set actors involved in policy production and the relationships and power differentials among them, the history of failed attempts, the political opportunity structures available to civil society and other reformist movements, as well as the alternatives to formal guestwork programs for filling labor demands. The final point is crucial, though easily overlooked. A number of countries, such as Russia, have no need to develop formal guestwork programs for other, often irregular, migration streams provide a functional equivalent. The same exchange can be found within countries with guestwork programs as well. In Japan, for example, the inclusion of generous work permission clauses onto student visas have transformed educational opportunities for some students into a de facto work-abroad channel (Liu-Farrer 2009), which may reduce employer pressure on governments for expanded formal guestwork

channels. A fuller comparative account of the origins and transformations of guestwork programs over time would need to incorporate such functional equivalents.

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**Table 1. Basic Delegation Relationships**

	<b>Private Agent</b>	<b>Non-Profit Agent</b>
<b>Formal Contract</b>	I The state directly outsources responsibility to for-profit enterprises	III The state directly outsources responsibility to non-profit enterprises
<b>Informal Contract</b>	II The state, de facto, devolves responsibility to for-profit enterprises	IV The state, de facto, devolves responsibility to non-profit enterprises

**Table 2. Number of Guestwork Program Participants by Year**

	<b>Taiwan</b>	<b>Japan</b>	<b>South Korea</b>		
	Total foreign workers in productive industries and social welfare	Number of entering TITP participants	Number of entering ITP participants	Total EPS participants	Total VEP participants
<b>1992</b>	15,900		4,900		
<b>1993</b>			8,600		
<b>1994</b>		37,000	28,300		
<b>1995</b>	189,000	41,000	38,800		
<b>1996</b>		46,000	68,000		
<b>1997</b>		50,000	81,500		
<b>1998</b>	270,600	50,000	47,000		
<b>1999</b>		48,000	69,500		
<b>2000</b>		54,000	77,400		
<b>2001</b>	304,600	59,000	46,700		
<b>2002</b>	303,600	59,000			
<b>2003</b>	300,200	65,000			
<b>2004</b>	314,000	75,000		6,700	1,400
<b>2005</b>	327,400	83,000		53,700	12,700
<b>2006</b>	338,800	93,000		83,600	45,900
<b>2007</b>	357,900	102,000		108,600	62,200
<b>2008</b>	365,000	102,000		188,200	90,000
<b>2009</b>	351,000	80,000		228,200	122,400
<b>2010</b>	379,700	78,000		239,600	147,000
<b>2011</b>	425,700	82,000		205,600	106,000
<b>2012</b>	445,600	86,000			
<b>2013</b>	489,100	83,000			
<b>2014</b>	551,600				
<b>2015</b>	557,800				

**Sources:** (*Taiwan*) Ministry of Labor, Workforce Development Agency, <http://www.statdb.mol.gov.tw/html/mon/i0120020620e.htm>; (*Japan*) Ministry of Justice,

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**Table 3. Basic Delegation Relationships in East Asian and Other Guestwork Programs**

	<b>Private Agent</b>	<b>Non-Profit Agent</b>
<b>Formal Contract</b>	I Taiwan’s guestwork program Singapore’s guestwork program GCC’s guestwork program (employment-agencies) Israel’s guestwork program	III South Korea’s EPS South Africa’s mining guestwork program (until 2005) US’s Bracero Program (early years)
<b>Informal Contract</b>	II Japan’s TITP South Korea’s ITP GCC’s “flying visas” US’s H1-B and H2-B Programs	IV South Korea’s VEP New Zealand’s Working Holiday Maker Program