

NOTES

SCREEN DOOR, SIDE DOOR, CLOSED DOOR: HOW IMMIGRATION POLICIES FOR THREE HOMOGENOUS STATES ARE DECIDEDLY NOT “OPEN”

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INTRODUCTION

Homogenous states face a tricky predicament when it comes to labor migration. Unlike “settler” countries that pride themselves on immigration, homogenous states face cultural barriers that complicate the process of incorporating a large foreign population. This clashes with the situation on the ground, as these states have relied, and are increasingly relying, on migrant workers. Nonetheless, homogenous states cannot be treated as a monolith in their reception of newcomers. This paper compares three homogenous states—Israel, Japan, and the United Arab Emirates (UAE)—in their treatment of foreign labor. To offer a metaphor, imagine an illustrative “door” that immigration advocates seek to remain open. Israel represents a screen door. As the “Jewish democratic state,” it encourages the immigration of Diaspora Jews but restricts the right of its non-Jewish foreign workforce to settle. Japan embodies a side door. It desires an ethnically uniform Japan but has allowed slow reforms to fill growing labor shortages. The UAE is a closed door, where purely temporary migrant workers make up a large majority of the population. Recent trends have initiated some concessions. For example, Israel faces pro-caregiver popular campaigns, and Japan has a rapidly aging population. Lastly, one must distinguish between migration and immigration, which are in tension here. For these homogenous states, migration of foreign labor—while filling economic needs—disrupts the preferred ethnic immigration. This paper tackles the movement of foreign workers that hampers these states’ homogenous ideals.

I. THEORETICAL FRAMEWORKS

The theories underlying migration are not in conflict here. In fact, the neo-classical model, a functionalist model, aptly describes all three countries. Functionalism stresses the push and pull factors that drive people out of origin countries and into destination countries. Push factors include population

growth, a lack of economic opportunities, and political repression.¹ Conversely, pull factors include a demand for labor, available land, economic opportunities, and political freedom.² The theory posits that individual migrants are “rational actors” who understand the supply and demand for labor in different states and, over time, will move from high unemployment to low unemployment areas, eventually leading to a “win-win” for sending and receiving countries.³ Israel, Japan, and the UAE offer more jobs and higher pay than many countries in the Middle East, South Asia, and Eastern Europe.⁴ Additionally, migration network theory posits that migrants create social ties with other migrants, families, and friends, thus facilitating further migration.⁵ This certainly applies to the three states at issue, where migrant networks—often formalized recruitment agencies—communicate job opportunities.

However, the homogenous states clash with the concept of incorporation. The original incorporation framework—assimilation theory—describes the process of fusion in which immigrants acquire the sentiments of the host country and join its common cultural life.⁶ Different models of assimilation include “straight-line,” in which the process moves inexorably forward even if ethnic groups advance at different speeds, and “segmented” assimilation, which recognizes that immigrant populations assimilate to different segments of the host society.⁷ Today, the term “integration” is more often used than “assimilation.” Integration evokes the processes that allow immigrants to obtain the opportunities afforded to native citizens to reach socioeconomic success and institutional inclusion.⁸ The ease of integration depends on a country’s policy. For example, France’s Republican model pushes strong assimilationist principles, while Canada embraces multiculturalism for the selected immigrants that pass through its points-based entry controls.⁹ However, for homogenous states defensive of their ethnocultural conceptions of nationhood, incorporation represents more than just a theory: it represents a threat.

1. Stephen Castles et al., *THE AGE OF MIGRATION: INTERNATIONAL POPULATION MOVEMENTS IN THE MODERN WORLD* 28 (Palgrave Macmillan, 5th ed. 2014).

2. *Id.*

3. *Id.* at 29.

4. George S. Naufal, *Labor Migration and Remittances in the GCC*, 52 *LABOR HISTORY* 307, 307 (2011).

5. Castles et al., *supra* note 1, at 39.

6. David Scott FitzGerald, *The Society of International Migration*, in *MIGRATION THEORY: TALKING ACROSS DISCIPLINES* 124 (Caroline Brettell & James Hollifield eds., Routledge 3d ed. 2015).

7. *Id.* at 119.

8. Richard Alba & Nancy Foner, *Comparing Immigrant Integration in North America and Western Europe: How Much Do the Grand Narratives Tell Us?*, 48 *INT’L MIGRATION REV.* 263, 264 (2014).

9. *Id.* at 269.

II. WHY INCORPORATION IS AT ODDS FOR THESE HOMOGENOUS STATES

A. *Israel*

Israel's main issue with "incorporation" stems from its foundation as a Jewish state. Israel is an ethnic democracy dedicated to safeguarding the Jewish people. Israel's minority inhabitants enjoy equal rights, but they also struggle as do most minority status populations the world over. The basis of Israeli citizenship is in its 1950 Law of Return, which gives every Jew in the Diaspora the right to settle in Israel.¹⁰ This is confusing from the perspective that Judaism is a religion rather than an ethnicity, but in Israeli law, one qualifies as Jewish based on ancestry, similar to the ethnic German model of citizenship.¹¹ Determining citizenship by the nationality or ethnicity of one's parents—rather than by birthplace—makes Israel a *ius sanguinis* system.¹² Thus, Israel perceives itself as an "Aliyah" (Jewish repatriation) state, not an immigration state.¹³

In addition, Israel is a nation at war, a developed country in a developing geopolitical neighborhood, and a small country sensitive to demographic changes.¹⁴ Israel is the only Western-style democracy bordered on all sides by developing countries with huge gross national product (GNP) disparities.¹⁵ Moreover, its borders are shared by enemies—Syria, Lebanon, Hamas in Gaza—that refuse to recognize Israel's legitimacy.¹⁶

Given these circumstances, the incorporation framework fails to account for reality. Many Israelis and the state itself view maintenance of a Jewish majority as necessary for the country's continued existence.¹⁷ When one considers Israel's two groups of non-citizen workers—labor migrants and daily commuters from the Palestinian Authority¹⁸—one cannot expect a gradual assimilation process. However, the neoclassical theory rings true in that Israel's strong economy and democratic freedoms, especially compared to its neighbors, work as pull factors drawing in labor migrants, and this influx is only growing.

10. Ayelet Shachar, *Citizenship and Membership in the Israeli Polity*, in FROM MIGRANTS TO CITIZENS 387 (T. Alexander Aleinikoff & Douglas Klusmeyer eds., Carnegie Endowment for Int'l Peace 2000).

11. *Id.* at 391.

12. Rebeca Raijman, *Citizenship Status, Ethno-National Origin and Entitlement to Rights: Majority Attitudes towards Minorities and Immigrants in Israel*, 36 J. ETHNIC & MIGRATION STUD. 87, 89 (2010).

13. Rebeca Raijman, *Foreigners and Outsiders: Exclusionist Attitudes towards Labour Migrants in Israel*, 51 INT'L MIGRATION 136, 137 (2012).

14. Shlomo Avineri et al., *Managing Global Migration: A Strategy for Immigration Policy in Israel*, THE METZILAH CENTER FOR ZIONIST, JEWISH, LIBERAL AND HUMANIST THOUGHT 10 (2010).

15. *Id.* at 28.

16. *Id.*

17. *Id.* at 27.

18. Karin Amit et al., *Public Attitudes Toward Policies Related to Labor Migrants in Israel*, 52 SOC. SCI. J. 516, 516 (2015).

B. *Japan*

Japan is similarly an ethnic democracy: since its imperial era, the state has desired ethnic uniformity, and today, the state combines ethnic Japanese dominance with democratic rights for all inhabitants. Like Israel, Japanese citizenship is *jus sanguinis*. With its persistent belief in ethnic homogeneity, Japan has been reluctant to incorporate people of different backgrounds.¹⁹ Despite being a rich, liberal democracy with a market economy—very attractive pull factors that tend to attract migrants—Japan has experienced remarkably little immigration. Only 1.6% of the population was foreign-born in 2010.²⁰

C. *UAE*

Although by no stretch a democracy, the UAE is similarly at odds with incorporation theory because of its efforts to maintain an ethnic Arab country. Like the other Gulf states (“GCCs”), UAE operates under the premise that migrants are temporary and should not be integrated.²¹ Thus, scholarly assumptions about incorporation by the host society do not apply in this context. In fact, while the UAE boasts among the highest rates of migrant population relative to the host population, integration is assuredly rare. Incorporation is all but impossible for migrants when male workers are housed in segregated barracks, women work as live-in domestics with limited interactions with the host society, and the country explicitly seeks non-Arab workers for their pliability and ease of exclusion.²²

III. CASE STUDY: ISRAEL

A. *Migration Situation*

Despite favoring “Aliyah” immigration, the reality is that Israel is home to hundreds of thousands of migrant workers: an estimated 250,000–400,000 today.²³ Not counting Jewish immigrants, Israel is one of the world’s leaders in absorbing immigration relative to its (small) population size. This did not happen overnight. Israeli labor migration originated during the Six Day War in 1967, after which non-citizen Palestinian workers from the West Bank and Gaza Strip entered Israel to take available “low-skill” jobs.²⁴ This arrangement was abruptly altered in 1987 following a Palestinian uprising (“first intifada”), to which Israel responded by restricting daily labor commuters. Although similarly industrializing countries had recruited foreign workers

19. Castles et al., *supra* note 1, at 266.

20. FitzGerald, *supra* note 6, at 122.

21. Castles et al., *supra* note 1, at 265.

22. FitzGerald, *supra* note 6, at 126.

23. Avineri et al., *supra* note 14, at 45.

24. Rebeca Rajzman & Moshe Semyonov, *Perceived Threat and Exclusionary Attitudes towards Foreign Workers in Israel*, 27 *ETHNIC & RACIAL STUD.* 780, 780–81 (2004).

for decades, Israel held out until the 1980s.²⁵ The breakdown of a relationship through which hundreds of thousands of Palestinians made their living in low-wage Israeli jobs induced an influx of labor migrants. In 1987, the Israeli Ministry of Labor granted 2,500 permits.²⁶ By the 1990s, migrant workers represented around 8% of the Israeli labor market.²⁷ By 2002, foreign migrant workers numbered 232,000, while Palestinian workers had declined to 30,000.²⁸

Most of Israel's 250,000–400,000 migrants work in construction, agriculture, and home health, but they hail from an array of regions: about 30% are Thai, 20% Eastern European, 18% Filipino, 10% Chinese, and 6% Nepalese.²⁹ Despite hostility to the Jewish state around the world and an expensive recruitment process, migrants desire Israel's high wages and ample employment. For example, Chinese media have portrayed Israel as a hostile state since the 1950s, but rural areas of Fujian Province are called "Israeli villages" due to the high concentration of labor migration.³⁰

By far the most visible labor migrants in Israeli society are caregivers. By 2010, Israel hosted an estimated 54,000 migrant care workers, accounting for 50% of the Israeli care workforce, with the Philippines being the largest sending country.³¹ And, while Israel is not a world market leader for Filipino or other South/Southeast Asian workers, it is the Philippines' second most important destination for caregivers.³²

B. *Immigration Laws*

Israel's immigration law starts with citizenship. Section 1 of the 1950 Law of Return grants every Jew the right to immigrate.³³ The 1952 Citizenship Law requires that all non-Jewish immigrants endure a rigid naturalization process.³⁴ Unlike returning Jews who receive *jus sanguinis* citizenship, naturalization is subject to Ministry of the Interior discretion based on requirements such as residence in Israel for three of the last five years, an expressed intent to settle, Hebrew language knowledge, and renunciation of prior citizenship.³⁵ The 1952 Entry into Israel Law controls entry, how visas and

25. Maya Shapiro, *The Development of a "Privileged Underclass," Locating Undocumented Migrant Women and their Children in the Political Economy of Tel Aviv, Israel*, 37 *DIALECTICAL ANTHROPOLOGY* 423, 428 (2013).

26. Rajiman & Semyonov, *supra* note 24, at 781–82.

27. *Id.* at 780.

28. Amit et al., *supra* note 18, at 517.

29. Avineri et al., *supra* note 14, at 45.

30. Li Minghuan, *Making a Living at the Interface of Legality and Illegality: Chinese Migrant Workers in Israel*, 50 *INT'L MIGRATION* 81, 82 (2009).

31. Hila Shamir, *Migrant Care Workers in Israel: Between Family, Market, and State*, 28 *ISRAEL STUD. REV.* 192, 197 (2013); Anna Lim, *Networked Mobility in the 'Migration Industry': Transnational Migration of Filipino Caregivers to Israel*, 31 *ASIAN WOMEN* 85, 94 (2015).

32. Lim, *supra* note 31, at 86.

33. Shachar, *supra* note 10, at 388.

34. *Id.* at 389.

35. *Id.* at 409.

residency permits are granted, and deportation grounds. A visitor's permit is valid for three months with a possible two-year extension, and a temporary resident permit is valid for three years with a possible two-year extension.³⁶

With the Israeli legislature ("Knesset") only passing piecemeal legislation, the Ministry of Interior has broad power to make "primary arrangements" for entry, residency, and naturalization, devoid of any democratic process.³⁷ One of Israel's piecemeal laws, the 1991 Foreign Workers Law, is most relevant for this discussion. The 1991 law criminalizes unlawful employment of labor migrants via employer sanctions.³⁸ It also governs foreign workers' permits, which the Minister of Interior may extend for up to five years for most positions and longer for long-term caregivers.³⁹ In 2000, an amendment obligated employers to provide certain accommodations, health insurance, and employment contracts to their foreign workers.⁴⁰ By assigning responsibility to the employers, Israel approved minimal state involvement, which enabled workers' rights abuses.

Another early 1990s reform centered on elderly care. Israel faced a rapidly growing elderly population who lived alone, with few nursing care institutions, and an increased demand for long-term care.⁴¹ Consequently, Israel introduced the Long-Term Care Benefit into its Social Security Act to issue guest worker visas specifically to migrant caregivers.⁴² The benefit featured generous eligibility, providing an "in kind" provision of care for needy Israelis based on age, income, and dependency level.⁴³

Israel's piecemeal and hands-off immigration framework essentially operated as a guest worker regime. Israel maintained strict restrictions on family reunification to keep the jobs temporary, for example, only allowing one spouse per migrant family to apply for a job in Israel.⁴⁴ If two migrant workers get married in Israel, one is obligated to leave.⁴⁵

In addition, private recruitment came to dominate the migrant labor market. The state requires that Israeli placement agencies find prospective workers in cooperation with recruitment agencies from the sending countries.⁴⁶ Thereafter, Israeli placement agencies must coordinate with potential Israeli employers and the Ministry of Interior, which provides mandatory orientation seminars.⁴⁷ Israel's *laissez-faire*, employer-deferential legislative approach has enabled these private recruitment agencies to charge exorbitant

36. Avineri et al., *supra* note 14, at 33.

37. *Id.* at 31.

38. Shamir, *supra* note 31, at 197.

39. Avineri et al., *supra* note 14, at 33.

40. Shamir, *supra* note 31, at 197.

41. Lim, *supra* note 31, at 94.

42. Shamir, *supra* note 31, at 192.

43. *Id.* at 194.

44. Lim, *supra* note 31, at 96.

45. Shamir, *supra* note 31, at 199.

46. Lim, *supra* note 31, at 104.

47. Lim, *supra* note 31, at 104–05.

placement fees, among other obstacles.⁴⁸ In addition, Israel's refusal to sign bilateral agreements with sending countries like the Philippines has exacerbated this privatization.⁴⁹

A glaring issue with Israel's lax regulation of migrant labor is enforcement. The 1991 law entitles migrant workers to the same employment conditions as Israelis: including working hours, minimum wages, severance pay, and health insurance.⁵⁰ However, employers routinely deprive migrant workers of their rights.⁵¹ Also, just a minority of foreign workers enter Israel lawfully: most overstay tourist and specific employer visas and therefore do not receive temporary work visas.⁵² In 1995, Israel established an Immigration Authority, with Immigration Police, to deport expired visa holders.⁵³ The Authority initially sought voluntary repatriation from undocumented workers, but in 2003 it started targeting migrant communities for deportation.⁵⁴ Problematically, children of non-Israeli parents do not acquire citizenship, and there are thousands of undocumented children living in metropolitan areas, especially Tel Aviv—many of these children born and raised in Israel.⁵⁵ Despite their lack of legal entitlement to social services, Israel tends to ensure that these children receive education and healthcare.⁵⁶

Guest worker abuses came to a head in the mid-2000s. Minimal state oversight empowered employers to forcibly bind workers to their jobs. More specifically, to stimulate workers' arrival and reduce costs, Israel originally granted work visas to employers, thus binding a migrant worker to his particular employer.⁵⁷ Combined with excessive recruitment fees—sometimes seven times the amount permitted by law—the arrangement often resembled debt bondage.⁵⁸ This system of indentured servitude became the norm in the GCCs even though it was eschewed by most Western countries. In Israel, the exploitative arrangement prohibited visa portability and maximized employer control over workers.

In 2006, Israel's High Court of Justice (HCJ) held the binding system unconstitutional, calling it a “form of modern slavery” and a “violation of human rights.”⁵⁹ Israel replaced the binding system with a sectoral arrangement. Hiring must be conducted by authorized agencies rather than employers, providing more flexibility for workers to change employers.⁶⁰ Nevertheless, the issue of overstays persists.

48. *See id.*

49. *Id.* at 98.

50. Amit et al., *supra* note 18, at 517.

51. *See id.*

52. *See* Shachar, *supra* note 10, at 424–25.

53. *See* Adriana Kemp, *Labour Migration and Racialisation: Labour Market Mechanisms and Labour Migration Control Policies in Israel*, 10 SOC. IDENTITIES 267, 281 (2004).

54. *Id.* at 283.

55. *See id.*

56. *See* Shachar, *supra* note 10, at 425.

57. *See* Shamir, *supra* note 31, at 198.

58. *Id.* at 199.

59. Lim, *supra* note 31, at 97.

60. *Id.* at 97.

C. *Incorporation*

As mentioned above, migrant care workers theoretically enjoy working conditions on par with native Israelis. However, they lack the complete freedom to switch occupations and are excluded from overtime compensation.⁶¹ Additionally, the short-lived binding system arguably left a discriminatory trace on the Israeli psyche. While work permits are no longer assigned to employers, foreign workers in Israel reside at the bottom of the labor market and social order, with some of the least desirable jobs, lowest salaries, worst working conditions, and fewest welfare and union protections.⁶² Studies show that Israeli attitudes toward labor migrants include prejudice and antagonism.⁶³

This lack of incorporation stems from two anxieties: the state's concern over changing demographics that threaten Israel's Jewish identity and Israeli workers' apprehension of migrant workers as a competitive threat.⁶⁴ Remember, the state considers Israel an "Aliyah" country, so a permanent class of non-Jewish migrant workers is foreboding. Exclusionary attitudes by Israelis are strongly correlated with their own socio-economic characteristics.⁶⁵ Poorer Israelis are more likely to sense a competitive threat from migrants.⁶⁶ In fact, this fear of economic competition is most apparent among minority groups like Israeli Arabs.⁶⁷ As a whole, Israelis seem willing to benefit from the cheap labor that migrants provide but are reluctant to integrate them.⁶⁸

Notwithstanding, migrant workers have been able to find limited instances of acceptance. Foreign workers have established small communities and created families. Most of the undocumented labor migrants reside in southern Tel Aviv.⁶⁹ This has sparked new needs for education, health care, and social services. Israel tries to disregard these families—because a child born in Israel takes on the parents' citizenship status—but certain cities, such as Tel Aviv, as well as various non-governmental organizations (NGOs) have stepped up to provide social services.⁷⁰ In 2006 and 2009, the state offered amnesty programs for the children of migrant workers born in Israel, providing naturalization for some 1,300 children and their families.⁷¹

61. Shamir, *supra* note 31, at 203.

62. Rajjman, *supra* note 13, at 137.

63. Rajjman & Semyonov, *supra* note 24, at 782.

64. Rajjman, *supra* note 12, at 91.

65. Amit et al., *supra* note 18, at 524.

66. See Rajjman, *supra* note 12, at 102.

67. Rajjman, *supra* note 62, at 141.

68. *Id.* at 145.

69. Rajjman, *supra* note 12, at 90.

70. Shamir, *supra* note 31, at 202.

71. *Id.*

IV. CASE STUDY: JAPAN

A. *Migration Situation*

Japan is the only advanced industrial country that did not rely on immigrant labor during its period of high economic growth.⁷² Japan's indigenous majority group constructed the nation, and the state has since embraced a portrayal of ethnic and cultural homogeneity. One can sense this history in Japanese linguistics: the word "Minzoku"—defined as an ethnic group, a nation, a race, or a combination of these identities—reflects how Japan's national identity revolves around a shared Japanese ethnicity.⁷³ Japan's colonial empire, including Taiwan and Korea, was multiethnic, so a focus on Japanese ethnicity reinforced its nationalism.⁷⁴ And while the nationalist ideology may have faded since World War II, homogeneity remains embedded in Japanese culture.

Similar to Israel, Japan's migration situation changed dramatically in the 1980s. With the reluctance of young Japanese to take "3D" (dirty, dangerous, and demanding) jobs, Japan faced a severe labor shortage.⁷⁵ Thus, migrant workers began taking jobs in the construction, manufacturing, and service sectors.⁷⁶ Most entered Japan as tourists and overstayed their visas.⁷⁷ These newcomers differed from previous migrants in that, as opposed to coming from Japan's former colonies in Korea and China, they mostly hailed from Southeast Asia. The Japanese government initially responded to the increased migrant flows by reinforcing border controls and abolishing visa waiver agreements with Pakistan, Bangladesh, and Iran to reduce overstays.⁷⁸ However, in line with neoclassical migration theory, Japan's burgeoning economy and "3D" job opportunities continued to attract migrant workers.

A foreign labor population has challenged the ideal of a homogenous Japan. For one, Japan's place in the economic world order forced it to reconcile with international legal norms on human rights and worker rights. For example, after accepting Indochinese refugees, Japan had to join the relevant international conventions.⁷⁹ Japan's foreign population grew from 850,000 in 1985 to 2.2 million in 2009.⁸⁰ The 2005 census found foreign workers concentrated in manufacturing, restaurant and hotel, retail, and other services.⁸¹

72. Chikako Kashiwazaki, *Citizenship in Japan: Legal Practice and Contemporary Development*, in FROM MIGRANTS TO CITIZENS 434, 436 (T. Alexander Aleinikoff & Douglas Klusmeyer eds., Carnegie Endowment for Int'l Peace 2000).

73. NIHONGO DAJITEN (THE GREAT JAPANESE DICTIONARY) (Tadao Umesao ed., 1989).

74. Kashiwazaki, *supra* note 72, at 439.

75. *Id.* at 452, 462.

76. *Id.* at 452.

77. *Id.*

78. *Id.* at 455.

79. *Id.* at 450.

80. Erin Aeran Chung, *Workers or Residents? Diverging Patterns of Immigrant Incorporation in Korea and Japan*, 83 PACIFIC AFR. 675, 675 (2010).

81. Yasuchi Iguchi, *What Role Do Low-Skilled Migrants Play in the Japanese Labor Markets?*, 56 AM. BEHAV. SCIENTIST 1029, 1042, 1045 (2012).

However, foreign workers remain the minority at their workplaces. And despite the global financial crisis, the flows of Chinese, Filipino, and Vietnamese immigrants to Japan have steadily grown.⁸²

B. *Immigration Laws*

Japan's immigration framework has been historically restrictive, starting with its citizenship laws. Japan follows *jus sanguinis* citizenship, so second generation immigrants do not automatically obtain citizenship and may remain foreigners indefinitely.⁸³ As previously mentioned, imperial Japan was a multiethnic empire, including Taiwan and Korea, so the state utilized restrictive citizenship to keep Japan ethnically homogenous even when colonial subjects migrated to the mother country.

Naturalization is technically possible but severely limited for anyone not attributed Japanese nationality at birth, with conditions including five years of consecutive residence, an age over twenty years, good moral conduct, financial independence, renunciation of previous nationality, and no membership in organizations that advocate the overthrow of Japan or its constitution.⁸⁴ Final discretion rests with the Justice Ministry, which has explicitly required assimilation—such as knowledge of Japanese language and adherence to a Japanese lifestyle—as a condition for naturalization.⁸⁵ Additionally, every person with Japanese nationality is registered in a family registry. Until 1985, the state required applicants for naturalization to adopt a new Japanese-style name.⁸⁶ Thus, naturalization of resident aliens has been rare, and despite the uptick in migration in recent years, Japan's naturalization rates remain among the lowest of industrialized democracies.⁸⁷

Japan historically recognized two narrow categories of permanent residents. Special permanent residents were individuals who had Japanese nationality before the San Francisco Peace Treaty of 1951 between Japan and China and applied mostly to Koreans, Chinese, and Taiwanese.⁸⁸ Ordinary permanent residents were individuals who applied for and obtained permanent resident status via Article 22 of Japan's Immigration Control and Refugee Recognition Act.⁸⁹ This limited opportunity was available to immigrants only after residing in Japan for at least ten years.⁹⁰

While the cornerstone of Japan's migration policy has been limiting the stay of migrants and assuring their return to origin countries, it has gradually eased restrictions since the late 1980s. The 1988 Economic Plan and Basic

82. *Id.* at 1034.

83. Kashiwazaki, *supra* note 72, at 437.

84. *Id.* at 442.

85. *Id.* at 444.

86. Chung, *supra* note 80, at 693.

87. *Id.* at 691.

88. Iguchi, *supra* note 81, at 1035.

89. *Id.*

90. *Id.*

Employment Measures Plan pushed to accept more foreign workers, with a preference for technical skills over “unskilled labor.”⁹¹ But Japan also recognized its shortage of “3D” workers, and 1990 revisions to the Immigration Control and Refugee Recognition Act introduced two exceptions allowing for long-term stay of “3D” workers. First, unskilled foreigners with Japanese ancestry are entitled to long-term resident status with no job restrictions. These “Nikkeijin” are the descendants of Japanese emigrants to South America.⁹² Second, the revised act created an “entertainers” skilled visa category that mostly applied to Filipina women working as prostitutes.⁹³ In addition, Japan established an Industrial Training Program to allow Japanese companies to hire semi-skilled foreign workers as industrial trainees.⁹⁴ Thanks to these reforms, the number of permanent residents rose to 943,000 in 2009.⁹⁵

More recently, Japan has reached bilateral agreements with Southeast Asian countries. The Japanese population enjoys high levels of longevity, but there is a severe lack of care workers to support the elderly.⁹⁶ In response, Japan reached Economic Partnership Agreements (EPAs) with Indonesia and the Philippines to employ nurses and caregivers on a trial basis. From 2008-2011, more than 1,300 candidates entered Japan.⁹⁷ The Japan-Philippines treaty of 2008 explicitly promotes the trans-border flow of goods, persons, services, and capital.⁹⁸ Japan requires nurses and caregivers to have four years of technical education, and if selected, endure six more months of training and pass board exams before serving in Japanese facilities.⁹⁹

C. Incorporation

Despite Japan’s side door reforms enabling more immigration, many of the immigrants only stay temporarily because of poor conditions.¹⁰⁰ The state deprives foreign workers of access to political participation and public services, including medical care, welfare, and social security.¹⁰¹ Immigrant children suffer from inadequate education because of linguistic and cultural barriers. Moreover, Japan keeps official declarations of labor rights very

91. *Id.* at 1038.

92. Rochelle Ball & Nicola Piper, *Globalisation and Reg. of Citizenship—Filipino Migrant Workers in Japan*, 21 POL. GEOGRAPHY 1013, 1025 (2002).

93. *Id.*

94. Jiyeoun Song, *Labour Markets, Care Regimes and Foreign Care Worker Policies in East Asia*, 49 SOC. POL’Y & ADMIN. 376, 382 (2015).

95. Chung, *supra* note 80, at 691.

96. Mario Lopez, *Reconstituting the Affective Labour of Filipinos as Care Workers in Japan*, 12 GLOBAL NETWORKS 252, 252 (2012).

97. *Id.*

98. *Id.* at 254.

99. *Id.*

100. Ball & Piper, *supra* note 92, at 1029.

101. Bum Jung Kim & Fernando Torres-Gil, *Aging and Immigration: The Case of South Korea (With a Look at Italy and Japan)*, 32 AM. SOC’Y ON AGING 80, 83 (2009).

limited and the provision of citizenship rights almost unattainable.¹⁰² Also, industrial trainees are not protected by labor laws.¹⁰³ Employers exploit the trainee system accordingly, and many of the trainees are undocumented.¹⁰⁴ Discrimination also plays a role in the maltreatment of migrant workers. For example, Japanese perception of Filipinas is tainted by their prevalent role as “entertainers.”¹⁰⁵

Non-state actors have been slow to protect immigrants in the face of state inaction. One exception is a network of cities that, in 2001, established a Convention for Cities and Towns with Concentrations of Foreign Residents, with the goal of coordinating incorporation programs.¹⁰⁶

V. CASE STUDY: UNITED ARAB EMIRATES (UAE)

A. *Migration Situation*

One cannot understand migration to the UAE without considering the wider Gulf region, and that starts with oil wealth. In the early 1970s, the indigenous populations of the Gulf states (GCCs) were small: with the exception of Saudi Arabia, each population numbered less than one million.¹⁰⁷ After the worldwide increase in oil prices after 1973, the GCCs grew wealthy and desired massive development projects, but they lacked the requisite human resources. Another shared GCC dynamic is that the government is the major employer for nationals, while the private sector has tended to rely on foreign labor.¹⁰⁸ Like the other GCCs, the UAE economy largely runs on oil and gas exports; the oil industry creates jobs for UAE nationals in the public sector, while the private sector heavily employs foreigners.¹⁰⁹ When oil prices increase, the government contracts for major infrastructure projects, and in turn, more foreign workers arrive to fill those jobs. By 2007, UAE was the world’s third largest oil producer, and 95% of its labor pool were migrants.¹¹⁰ The mostly Indian, Pakistani, Bangladeshi, Nepalese, and Sri Lankan workforce has not shared in the wealth.¹¹¹

The history of GCC labor migration is characterized by regional strife in the Middle East and North Africa (MENA). MENA countries possess over 55% of the world’s crude oil reserves and over 40% of the world’s natural

102. Ball & Piper, *supra* note 92, at 1029.

103. Song, *supra* note 94, at 382.

104. Chung, *supra* note 80, at 688.

105. Lopez, *supra* note 96, at 259.

106. Chung, *supra* note 80, at 683.

107. Nasra M. Shah, *Labour Migration from Asian to GCC Countries: Trends, Patterns and Policies*, 5 MIDDLE EAST L. & GOVERNANCE 36, 37 (2013).

108. *Id.* at 56.

109. Philip L. Martin & Froilan Malit, *A New Era for Labour Migration in the GCC?*, 14 MIGRATION LETTERS 113, 115 (2017).

110. David Keane & Nicholas McGeehan, *Enforcing Migrant Workers’ Rights in the United Arab Emirates*, 15 INT’L J. ON MINORITY & GROUP RTS. 81, 82 (2008).

111. *Id.*

gas reserves.¹¹² Despite that resource wealth, the standard of living varies greatly across the region, largely because since World War II, dozens of armed conflicts have occurred in MENA.¹¹³ While GCCs like Kuwait, Qatar, and the UAE rank inside the top 15 countries in the region for standard of living, other Arab nations like Syria and Iraq are near the bottom.¹¹⁴ Due to the instability of their Arab neighbors, the GCCs systematically substituted Arab foreign workers with migrants from nearby South Asia. The reasons for this preference are both economic and social.¹¹⁵ Arab countries could not supply enough labor to meet the growing demand for major projects in the UAE. Also, South Asian workers proved more willing to take certain jobs that Arabs refused. Socially, Arab workers were more likely to relocate as families and attempt to stay permanently. And finally, the forces that caused regional conflict—including Arab nationalism and the Islamic revolution in Iran—led the GCCs to consider Arab migrants as political liabilities.

As a result, the UAE and the GCCs boast massive foreign population shares. In 2015, the UAE population was 9.6 million and 88% foreign.¹¹⁶ The UAE led the GCCs in this ratio. In 2013, the UAE counted over 5.1 million workers.¹¹⁷ Its one million public workers were 40% foreign, while its 4.1 million private laborers were 100% foreign.¹¹⁸ The 268,000 domestic workers measured in 2013 were also 100% foreign.¹¹⁹

B. *Immigration Laws*

The UAE has not tolerated long-term settlement. Regionally, the “Kafala” sponsorship system governs labor contracts. Under “Kafala,” employers hire foreign workers under contract for a fixed period of time by “sponsoring” the worker.¹²⁰ The legal contract operates as an employment agreement, spelling out the job duration, description, and salary. This enables a pure guest worker society. Foreign workers cannot live in the GCCs without a local sponsor (a “kafeel”).¹²¹ Moreover, migrants cannot obtain local nationality, own property, or sponsor their families to join them. Only in rare cases can a Muslim migrant obtain citizenship by a court order or by marriage to a local male citizen.¹²²

The UAE specifically enforces labor via its Federal Law No. 8 for 1980 on the Regulation of Labor Relations.¹²³ Only a UAE national-recruitment agent

112. Naufal, *supra* note 4, at 307.

113. *Id.*

114. *Id.* at 308.

115. *Id.* at 314.

116. Martin & Malit, *supra* note 109, at 114.

117. *Id.* at 118.

118. *Id.*

119. *Id.* at 119.

120. Shah, *supra* note 107, at 39.

121. Naufal, *supra* note 4, at 310.

122. *Id.*

123. Keane & McGeehan, *supra* note 110, at 84.

or a UAE company can recruit migrant workers.¹²⁴ Workers must get employer-supplied work permits, thus tying employees to their employers. The 1980 law includes regulations for hours, breaks, annual leave, overtime, extreme summer temperatures, and compensation for work-related injuries or death.¹²⁵ However, trade unions, strikes, and lockouts are outright banned. And while UAE citizens enjoy a minimum wage, non-citizens have no such luxury.¹²⁶

There is strong evidence that debt bondage slavery is widespread in the UAE. Debt bondage is classified as slavery and prohibited in Article 4 of the Universal Declaration of Human Rights.¹²⁷ The International Labour Organization (ILO) recognizes various factors as proof of debt bondage and Human Rights Watch has identified these factors in the UAE, including the majority of migrant workers' illiteracy and ignorance of their rights, how the state does not punish recruitment agencies and employers for charging recruitment fees, how UAE nationals make up 5% of the workforce but own all of the businesses and hold all legal authority positions, and how migrants are dependent on employers for housing and healthcare.¹²⁸ While it is impossible to determine how many migrant workers in the UAE are enslaved under these terms, the above factors combined with the sponsorship system indicate that many of the millions of total workers may be in debt bondage.¹²⁹

Labor protection legislation does nothing when its enforceability is poor. A major reason for the meager enforcement of the UAE's limited labor rights is because the line between state and non-state actors is not just blurred, it is erased. For example, in Dubai, the state regularly makes takeover bids for private businesses and values its role in the private construction industry.¹³⁰ Thus, the state is both an active participant in labor abuse and its principal beneficiary. One need not delve deeper to recognize this conflict of interest. Moreover, the Ministry of Labor administers the working condition laws but does not release any figures on labor disputes. Rather, it passes directives with no mechanism to oversee their implementation, and as it happens, the state only tends to enforce those directives that protect employer interests.¹³¹ For example, the ban on unions and labor demonstrations is strictly enforced, while the Ministerial Directive No. 467 ban on outdoor work from noon to 4:30 p.m. during the summer months is lightly enforced.¹³²

The Labor Ministry delegates to employers to report deaths and suicides and then pay costs to the workers' families, so it should come as no surprise

124. *Id.* at 85.

125. *Id.* at 85–86.

126. *Id.* at 101.

127. Keane & McGeehan, *supra* note 110, at 112.

128. *Id.* at 108–10.

129. *Id.* at 113.

130. *Id.*

131. *Id.* at 89.

132. *Id.* at 90.

that such figures are sparingly reported and often manipulated.¹³³ Additionally, the state has outright excluded domestic workers from general labor law protection.¹³⁴ With millions of migrant workers completely dominating the labor force, many of these abuses seem avoidable. However, the prohibition on workers organizing underpins this entire system of subjugation.

There have been recent improvements driven by lower oil prices. In 2015, the UAE reformed its internal mobility laws, which do not replace the 1980 act, but alleviate some of the dangers inherent to the “Kafala” system. Ministerial Directive No. 766 affords migrants more mobility to switch jobs.¹³⁵ The resolution introduced “unlimited contracts” which, unlike the standard 2-3-year contracts, can be renewed indefinitely.¹³⁶ Also, the UAE required most private employers to pay employees via bank transfers, thus expediting the resolution of wage disputes.¹³⁷ Finally, Federal Law No. 10 of 2017 stipulated domestic workers’ leave and daily rest.¹³⁸

C. Incorporation

There is no incorporation of migrant workers in the UAE. This starts with the living conditions afforded to migrant workers. As the state holds employers responsible for accommodation, migrants reside in segregated labor camps.¹³⁹ Also, the UAE openly promotes its “Emiratization” initiative to coax nationals into the labor force.¹⁴⁰ The nationalization program works to make life difficult for migrant workers. First, several policies reduce the demand for migrant labor, such as capping the proportion of foreign workers in a company and taxing employers for the non-diversity of nationalities.¹⁴¹ Other policies reduce the supply of foreign workers, such as recruitment fees, charging for health insurance, and deporting irregular migrants.¹⁴² Lastly, some policies increase the demand for indigenous labor, such as pushing employers to meet quotas for native workers and promoting education and training for diverse sectors like technology and medicine.¹⁴³

“Emiratization” stems from the state’s desire to preserve an Arab culture in the midst of vast labor migration. Of course, the entire nationalization movement is ironic considering how the UAE and the GCCs traded out Arab foreign workers for South Asians. However, the state dislikes the optics of its

133. Keane & McGeehan, *supra* note 110, at 92.

134. *Id.* at 95.

135. Martin & Malit, *supra* note 109, at 121.

136. *Id.* at 122.

137. *Id.*

138. UAE: *Domestic Workers’ Rights Bill A Step Forward*, HUMAN RTS. WATCH (June 7, 2017), <https://www.hrw.org/news/2017/06/07/uae-domestic-workers-rights-bill-step-forward>.

139. Keane & McGeehan, *supra* note 110, at 99.

140. See Naufal, *supra* note 4, at 317.

141. Shah, *supra* note 107, at 58.

142. *Id.* at 68.

143. *Id.*

lopsided native-expat population shares. With so many Indian workers, the World Bank dubbed Dubai the “most developed Indian city” in the world. The UAE has responded with efforts to preserve its Arab identity, such as installing Arabic as its official language in all federal departments in 2008.¹⁴⁴

VI. EMERGING TRENDS

In all three homogenous countries, migration patterns have transformed in recent years. And since there is no reason to believe that flows will abate—as world migration numbers reach new heights—it is wise to examine trends on the horizon.

A. *Israel*

In Israel, the popular movement to support migrants, specifically care workers and their children, has already forced political changes. Before the state established an Immigration Authority in 2002, few unauthorized labor migrants were ever deported.¹⁴⁵ Non-citizen children of migrants had the support of local officials to attend Hebrew language schools with Israeli children. But in 2003, the Immigration Police announced a policy of deportations.¹⁴⁶ Outraged Israelis found a home in popular media, which commonly spotlights non-citizen children speaking Hebrew and longing to fulfill Israeli military service.¹⁴⁷ The phrase “Israeli in every way” became ubiquitous.¹⁴⁸ In a high-profile 2006 demonstration, Israeli teenagers demanded that the Ministry of the Interior in Tel Aviv provide a pathway to citizenship. In 2005, 2006, and 2010, three Prime Ministers—Sharon, Olmert, and Netanyahu—passed resolutions enabling limited pathways to citizenship.¹⁴⁹ The protests continue in 2020.

Israel’s aging population and the growing role of caregivers in society deserve credit for this movement. In 2009, 17.7% of Israelis over the age of 70 received the Care Benefit live-in aid social service.¹⁵⁰ In 2010 there were 54,000 migrant care workers, accounting for 50% of the total care workforce.¹⁵¹ By 2025, every fifth elderly Israeli will be aided by a migrant care worker, freeing Israeli families from the burden of elderly physical needs.¹⁵² Caregiving is the fastest growing foreign worker sector and the only one with no permits cap. Empathy for migrant caregivers especially resonates in Tel Aviv, the site of frequent anti-deportation campaigns and the setting for a

144. Naufal, *supra* note 4, at 317.

145. Alejandro I. Paz, *Speaking Like a Citizen: Biopolitics and Public Opinion in Recognizing Non-citizen Children in Israel*, 48 LANGUAGE & COMM. 18, 22 (2016).

146. *See id.* at 23.

147. *Id.* at 24.

148. *See id.*

149. *Id.* at 26.

150. Shamir, *supra* note 31, at 195.

151. *Id.* at 197.

152. *Id.* at 200.

series of recent films—“Jellyfish” and “Noodle”—that venerate the role of migrant caregivers.¹⁵³

B. *Japan*

Japan’s aging population is a crisis for the government and its existing social service apparatus. In 2003, the total fertility rate in Japan was 1.29, and the state released a White Paper warning that filling the labor gaps would require 640,000 immigrants every year until 2050.¹⁵⁴ While Japan has cracked open its doors to newcomers, it is nowhere close to accommodating those numbers. Rather, population trends are moving in the opposite direction, thanks to a rising marriage age for Japanese women, more women choosing not to marry, and more Japanese men marrying foreign brides.¹⁵⁵ Japan’s working age people represented 68% of the population in 2000, but this will drop to 59.7% by 2025.¹⁵⁶ Some 22.1% of Japanese are over 65, and this will rise to 40.5% by 2055.¹⁵⁷

Simply put, Japan’s side door reforms are not enough. The EPAs with Indonesia and the Philippines for nurses and care workers resulted in just 892 Indonesians and 670 Filipinos in Japan as of 2012.¹⁵⁸ The barriers have proved far too high, namely requiring the migrants to pass qualification tests in Japanese within three years of arrival and, even then, only allowing them to work in hospitals and nursing homes.¹⁵⁹

However, in the last few years, Japan has rushed legislation to grant visas to hundreds of thousands of migrant workers in sectors facing particularly severe shortages, with business groups at the forefront of lobbying the state to loosen immigration restrictions.¹⁶⁰ And in the past four years, the number of foreign workers in Japan has, as a result, doubled to 1.46 million.¹⁶¹

C. *UAE*

The UAE enjoys special economic leverage from its oil wealth that allows it to disregard pro-migrant pressures. The state receives its fair share of negative press detailing labor abuses; however, the state does not seem likely to pacify such concerns.

153. Shapiro, *supra* note 25, at 429–30.

154. Yeong-Hae Jung, *Can Japan Become “A Society Attractive for Immigrants?” Identity, Gender and Nation-States under Globalization in East Asia*, 13 INT’L J. JAPANESE SOC’Y 53, 53 (2004).

155. *Id.*

156. Kim & Torres-Gil, *supra* note 101, at 83.

157. Lopez, *supra* note 96, at 256.

158. Song, *supra* note 94, at 377.

159. *Id.* at 384.

160. Alastair Gale, *Japan to Accept More Foreign Workers in a Break From Its Historical Stance*, WALL ST. J. (Dec. 7, 2018), https://www.wsj.com/articles/japan-to-accept-more-foreign-workers-in-a-break-from-its-historical-stance-1544215014?mod=article_inline.

161. Alastair Gale & River Davis, *The Great Immigration Experiment: Can a Country Let People in Without Stirring Backlash?*, WALL ST. J. (Sept. 11, 2019), <https://www.wsj.com/articles/japans-immigration-experiment-can-it-let-people-in-without-stirring-backlash-11568213741>.

CONCLUSION

All three homogenous states have witnessed immense migration activity since the 1980s. Israel and Japan have endeavored to fill labor market gaps while mollifying ethnic fears, while the UAE has unabashedly relied on temporary foreign workers to build its great infrastructure developments. Thus, no state has embraced the same solution for migrant labor. To return to the “door” metaphor, none of the three states have opened their doors entirely. Israel’s screen door remains firmly on its hinges, welcoming Diaspora Jews but restricting long-term settlement for migrant workers. Japanese business leaders and pragmatic officials alarmed by worsening labor shortages have pushed open Japan’s side door from a crack to a gap. And the UAE continues to hold its weight against the state’s closed door. Given the migration expansion in each country over the last forty years, these doors will likely remain in motion.