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RESEARCH ARTICLE

Migrant protection regimes: Beyond advocacy and towards exit in Thailand

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Abstract

International migrants are subject to many types of violence, such as trafficking, detention, and forced labour. We need an improved understanding of what protects migrants from such violence. The concept of ‘migrant protection regimes’ draws our attention away from formal rights advocacy and to both the informal dimensions of protection and the way migrants help determine the quality of protection they receive. ‘Migrant protection regimes’ are sets of rules and practices regarding who ought to protect whom. These regimes include formal rights to protection in the law and informal relationships that protect migrants from lawful violence by the state. They may be changed by ‘power grabs’, when sovereign actors seek to monopolise protection relationships, but also by ‘exits’, when migrants refuse to accept the protection on offer. The study demonstrates the value of these concepts by using them to explain an unlikely case: a change in laws concerning migrant protection in an authoritarian state: Thailand. Drawing on rich qualitative sources, the article reveals how, after a human rights advocacy campaign had placed migrants’ protection in jeopardy, a mass migrant exodus compelled the country’s junta to offer migrants protection on better terms.

Keywords: Protection; Thailand; International Migration; Violence; Rights

Introduction

Migrants are subject to many different forms of violence. They flee violence in their home countries to seek refuge abroad. They evade violence from traffickers and border guards *en route* to their destinations. Finally, migrants face violence at the hands of employers, police officials, and armed mobs in their destination countries. While there is a shared acknowledgement that contemporary migrants face an inordinate amount of violence, we have a limited understanding of how migrants obtain protection from such violence.¹ This article seeks to address this problem by identifying new forces that might make national elites introduce policies that afford migrants better terms of protection. The article specifically moves away from a reliance on liberal rights advocacy groups to emphasise the potential of informal rules and migrant agency to make policymaking conform with migrants’ protection preferences.

Most research on migrant protection focuses on efforts to establish rights to protection in international treaties, and domestic laws, and efforts to encourage international organisations

¹R. Jones, *Violent Borders: Refugees and the Right to Move* (London: Verso Books, 2016). I adhere to the following definition of violence: acts that threaten, attempt, or actually inflict physical harm or constraint A. J. Reiss and J. A. Roth, *Understanding and Preventing Violence: Panel on the Understanding and Control of Violent Behavior* (Washington, DC: National Academies Press, 1993).

and national governments to uphold and enforce these rights.² This ‘formal’ approach has a lot to say about protecting migrants from *unlawful* forms of violence like human trafficking, forced labour, and xenophobic attacks, but little to say about protecting migrants from *lawful* state violence – in the form of border controls, arrests, detentions, and deportations. This is a problem, because securing protection from state-enacted violence is, for many migrants, their abiding – if not central – object of concern.

Other research helps overcome some of the blind spots in the formal approach, by demonstrating how powerful liberal ‘advocacy coalitions’ can reduce the incidence of *lawful* state violence against migrants.³ Liberal advocacy coalitions, made up of human rights NGOs and organised business, have reduced governments’ capacity to arrest, detain, and deport unauthorised migrants, by challenging or undermining the control-oriented policies and laws advocated by ‘nationalist coalitions’ (composed of nationalists, security groups, and organised labour). Yet, this literature has not identified how migrants obtain protection when liberal coalitions are weak or divided, and/or political elites are able to ignore their demands.⁴ This is an important gap in our understanding, because large portions of the world’s migrants move between countries in the Global South, where liberal advocacy coalitions are comparatively weak and authoritarian governments are in charge.⁵

For these reasons, this article seeks to reconceptualise migrant protection in a way that looks beyond formal rights and advocacy coalitions. In order to do so, I draw inspiration from two sources. First, critical research on international migration governance suggests that *informal* migration regimes shape the way ordinary officials and non-state actors deploy violence in the name of immigration control.⁶ While this literature has demonstrated that the rules and practices that make up these informal regimes determine protection outcomes in a variety of *micro*-contexts and *everyday* encounters; it has yet to determine whether informal regimes can operate at a more macro-scale, to constrain sovereign actors like national policymaking elites.⁷ Meanwhile, historical sociological and feminist research demonstrates that the behaviour of sovereign actors is socially constructed by protection ‘rackets’.⁸ Yet, this research has yet to fully explore how migrants might meaningfully influence the type of protection that such ‘rackets’ afford.

This article builds upon these literatures, by introducing the concept of ‘migrant protection regimes’: sets of rules and practices regarding who ought to protect whom from whom in what ways and at what cost. Migrant protection regimes combine formal protections offered to migrants in national and international law and the more *informal* guarantees offered by networks

²See, for example, A. Geddes, *Immigration and European Integration: Towards Fortress Europe?* (Manchester: Manchester University Press, 2000), pp. xii, 196; J. C. Hathaway, *The Law of Refugee Status* (Toronto: Butterworths, 1991).

³J. F. Hollifield, *Immigrants, Markets, and States: The Political Economy of Postwar Europe* (Cambridge, MA: Harvard University Press, 1992), pp. ix, 305; D. J. Tichenor, *Dividing Lines: The Politics of Immigration Control in America* (Princeton: Princeton University Press, 2009); P. A. Sabatier, ‘An advocacy coalition framework of policy change and the role of policy-oriented learning therein’, *Policy Sciences*, 21 (1988), pp. 129–68.

⁴A. Klotz, *Migration and National Identity in South Africa, 1860–2010* (Cambridge: Cambridge University Press, 2013).

⁵K. Hujo and N. Piper, *South-South Migration: Implications for Social Policy and Development* (New York: Springer Publishing, 2010); D. Vigneswaran and L. Landau, ‘Shifting the focus of migration back home: Perspectives from Africa’, *Development*, 50 (2007), pp. 82–7.

⁶B. Hindess, ‘Citizenship in the international management of populations’, *American Behavioral Scientist*, 43 (2000), pp. 1486–97; N. De Genova, ‘The deportation regime: Sovereignty, space, and the freedom of movement’, in N. De Genova and N. M. Peutz (eds), *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement* (Durham, NC: Duke University Press, 2010), pp. x, 507; J. Hyndman and A. Mountz, ‘Another brick in the wall? Neo-refoulement and the externalization of asylum by Australia and Europe’, *Government and Opposition*, 43 (2008), pp. 249–69.

⁷D. E. Punter, H. van der Veen, E. van Wingerden, and D. Vigneswaran, ‘A “distributive regime”’: Rethinking global migration control’, *Political Geography*, 70 (2019), pp. 117–26.

⁸I. M. Young, ‘The logic of masculinist protection: Reflections on the current security state’, *Signs: Journal of Women in Culture and Society*, 29 (2003), pp. 1–25; J. H. Stiehm, ‘The protected, the protector, the defender’, *Elsevier*, 5:3–4 (1982), pp. 367–76; C. Tilly, ‘War making and state making as organized crime’, in P. B. Evans, D. Rueschemeyer, and T. Skocpol (eds), *Bringing the State Back In* (Cambridge: Cambridge University Press, 1985); S. R. Peterson, ‘Coercion and rape: The state as a male protection racket’, *Feminism and Philosophy* (1977), pp. 360–71.

of smugglers, officials, and employers. The article then identifies two forms of agency that might change protection regimes. We are relatively familiar with the first form of agency, ‘power grabs’: when providers of protection seek to ‘monopolise’ protection services. We have been less attentive to the potential of the second, ‘exits’: when migrants opt out of protection relationships. The article demonstrates that the formal *and informal* dimensions of migrant protection regimes limit the behaviour of sovereign actors and that migrant acts of exit can change these regimes’ defining rules and practices.

This study demonstrates the explanatory power of these concepts through an in-depth study of a deviant case: a change in the terms of formal migrant protection in Thailand. Thailand is a major migrant receiving country that has been ruled by a military junta since 2014. International migrants in Thailand are subject to multiple forms of state and non-state violence, and have few means of expressing their preferences for protection in the public sphere. Yet, in mid-2017 Thailand passed two starkly contrasting laws that had direct implications for the use of lawful violence against migrants and migrant protection. On 23 June 2017, the junta introduced an emergency law – The Royal Decree on Foreign Worker Management B.E. 2560 (2017) – that mandated high penalties for illegal work: fines for employers and prison sentences for workers. Over the next few days, many foreign workers were fired and deported and others fled to the neighbouring countries of Myanmar and Cambodia. Then, a week after the first emergency law was introduced, the Thai prime minister introduced another emergency law – NCPO Order 33/2560 (2017) – which placed a moratorium on the penalties for illegal work in the first decree. The junta then introduced an amnesty programme that helped unauthorised migrant workers legalise their terms of work and stay. Many of the migrant workers who had been deported or had fled, then returned to work in Thailand, and began to apply for permits.

This pair of laws constitutes a surprise for an advocacy coalition approach. Why would a military junta – which is relatively immune to lobbying by migrant rights advocates – seek to protect and empower unauthorised migrant workers at the very moment when its own punitive law on immigration had begun to result in the expulsion and flight of those same workers? Had the balance of power between liberal and nationalist advocacy coalitions shifted over night? I argue that rethinking this set of events as an example of change in Thailand’s migrant protection regime can help us resolve this puzzle. In short, the Royal Decree disturbed the unwritten rules of the Thai protection regime, thereby encouraging a range of actors to respond in ways that forced the ruling junta to repeal exclusionary sections of the law and offer migrants protection on better terms. While this analysis does not offer a ‘recipe’ to be followed in efforts to promote migrant protection in other contexts, it seeks to identify the ingredients that go into changing migrant protection outcomes, setting the stage for accounts that go beyond mere advocacy for rights.

The article develops this argument in five steps. Section One explains what protection regimes are and identifies two forms of agency that might change them. Section Two identifies the case selection and data collection techniques deployed in this study. Section Three describes Thailand’s migrant protection regime. Section Four uses the ‘migrant protection regime’ concept to explain Thailand’s contrasting immigration laws of 2017. Section Five draws out the implications of the study for scholarship concerning migration, violence, and protection.

Protection regimes, power grabs, and exits

This study assumes that violence is an enduring facet of social life that people seek to avoid. ‘Violence’ refers to acts that threaten, attempt, or actually inflict physical harm or constraint,⁹ and protection refers to all those acts that mitigate the risk of violence. Protection includes prevention (acts which prevent actors from committing violent acts), defence (acts to physically halt

⁹Adapted from Reiss and Roth, *Understanding and Preventing Violence*.

or undermine a violent act), and remedy (acts to provide redress or compensate for a violent act that has been committed).

The capacity to prevent, defend, and remedy violence is unevenly distributed across society. So, some will inevitably rely on others for protection. It is therefore useful to distinguish between ‘protection providers’ – who sell/ award protection – and ‘protection seekers’ – who purchase and/or obtain protection.¹⁰

Protection services may be purchased in cash, for example, by paying a smuggler to take you across the border, or in kind, by working overtime for an employer who doesn’t report you to the authorities. However, the value of protection relationships may also be built on less quantifiable dimensions of a relationship like ‘trust’: that a provider will not expose or subject those seeking protection to violence and/or exploit a protection seeker’s vulnerability to threats of violence.¹¹

Protection is a ‘racket’ in which protection providers tend to be collectively positioned to dictate the terms upon which they offer services. There are three reasons why this is the case. First, protection markets tend naturally towards oligopoly, in which a limited range of actors have the capacity to offer meaningful protection from violent acts. As a result, those who seek protection have a limited range of choices of provider.¹² Second, and relatedly, people seeking protection generally lack the capacity to effectively deploy violence, and struggle to acquire and deploy leverage in their relationships with providers of protection, who commonly possess violent means.¹³ Third, providers of protection often have a perverse incentive to increase or maintain people’s risk of harm, thereby increasing the value of the protection services that they have to offer.¹⁴

There are two additional reasons why protection providers are particularly well positioned to dictate terms to *international migrants* seeking protection. First, international migrants are all uniquely exposed to the threat of *legitimate* violence. International migrants may be distinguished from national citizens by what Nicholas De Genova describes as the condition of ‘deportability’, wherein they may be lawfully arrested, detained and deported for the simple act of remaining where they are and continuing to do what they do.¹⁵ This condition most obviously applies to those migrants who migrate to a place without official authorisation. Unauthorised migrants must not only seek protection from violence at the hands of criminals, employers, family members, and corrupt officials, they are also exposed to the threat of legal arrest, detention, and deportation. However, the condition of ‘deportability’ also impacts those migrants who have acquired permission to stay or work in a national jurisdiction temporarily. While this group may be able to call on official protection against unlawful violence without necessarily fearing deportation, they can be distinguished from permanent residents and citizens in that they need to ensure that they will be protected from deportation in the future, and must fulfill a range of additional obligations, including maintaining a livelihood and not committing crimes, to reduce their risk of exposure.²³ Given that policymakers can annul or cancel temporary permits – as the Trump administration has recently done to Temporarily Protected Persons and DACA beneficiaries – this potential vulnerability can also rapidly become an actual one.

It is important to stress that migrants’ condition of ‘deportability’ does not merely mean that they have limited protection *vis-à-vis* arrest, detention, and deportation at the hands of a state official. An array of other forms of vulnerability to violence either stem directly from, or are made more acute by, migrants’ vulnerability to official deportation processes. For example, migrants become vulnerable to victimisation by potentially duplicitous smugglers because they

¹⁰D. Gambetta, *The Sicilian Mafia: The Business of Private Protection* (Cambridge, MA: Harvard University Press, 1993).

¹¹A. M. Hoffman, ‘A conceptualization of trust in international relations’, *European Journal of International Relations*, 8 (2002), pp. 375–401.

¹²F. C. Lane, ‘Economic consequences of organized violence’, *The Journal of Economic History*, 18 (1958), pp. 401–17.

¹³Tilly, ‘War making and state making as organized crime’.

¹⁴J. Pearce, ‘Perverse state formation and securitized democracy in Latin America’, *Democratization*, 17:2 (2010), pp. 286–306.

¹⁵De Genova, ‘The deportation regime’.

cannot make use of legal forms of cross-border transport; migrants' exposure to the threat of arrest and deportation makes them less likely to contest violent acts in the workplace; and migrants' vulnerability to deportation encourages officials to violently extort them for bribes. While migrants may be formally protected *vis-à-vis* these ancillary forms of violence by rights in the law, the condition of deportability often limits the likelihood that they will be able to meaningfully avail themselves of such rights. Hence, migrants' liability to lawful deportation constitutes the centrepiece of a field of violent relations to which migrants are exposed.

In addition to being peculiarly exposed to violence, international migrants have a generic disadvantage in negotiating their terms of protection. This is because migrants have a deficit – when compared to citizens – of what Albert Hirschman describes as 'voice': rights to vote, protest, litigate, and bargain collectively.¹⁶ Most migrants do not form part of the formal electorate in the jurisdiction where they require protection. In some countries, migrants' disenfranchisement is partially compensated for by powerful limits on the use of state violence, and institutions and actors dedicated to guaranteeing these rights,¹⁷ or by universal protections on the freedom of speech, assembly, and collective bargaining.¹⁸ However, the efficacy of courts, public protectors, and other institutions and actors capable of providing such guarantees, varies widely from one jurisdiction to another. In most contexts, migrants who are not authorised to reside and work in a country have few effective means – such as collective bargaining – of giving voice to their individual or collective preferences or demands. As a result, migrants' terms of protection tend to be worked out among protection providers; keeping migrants' interests and likely responses in mind, but not necessarily listening to migrants about what terms of protection they prefer.

The assumption that migrants have significantly weaker rights both to protection and voice when compared to citizens, does not automatically lead to the conclusion that migrant protection will be equally bad in all places. Migrant protection may take multiple forms – some of which may suit migrants' preferences more than others. In order to capture this variation, I introduce the term 'protection regimes', a concept that seeks to define the various ways in which acts of prevention, defence, and remedy are socially organised. A 'protection regime' is a set of rules and practices regarding who protects whom, in what ways, and at what cost. Constructivist approaches to the study of regimes in IR have long been attentive to the manner in which more formal, legally defined regimes are built upon a history of more informal customary practices.¹⁹ Research on migration governance has argued that in the absence of a formal treaty, unwritten and unspoken exclusionary and exploitative rules, define how the agents of sovereign governments and private actors control migrant mobility and labour.²⁰ My understanding of 'regimes' extends this 'informal' approach further, to suggest that in certain contexts informal *and* formally guaranteed expectations of protection ought to be *both* understood as basic components of protection regimes as a whole.²¹

Protection regimes vary in concentration: between monopoly and oligopoly. In monopolies a single actor – usually a political elite – decides who is afforded protection and on what terms within a given territorial jurisdiction. However, most migrant protection regimes tend towards oligopoly, in which political elites share responsibilities with both (a) a variety of other official

¹⁶A. O. Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* (Cambridge, MA: Harvard University Press, 1970).

¹⁷C. Joppke, 'Why liberal states accept unwanted immigration', *World Politics*, 50 (1998), pp. 266–93.

¹⁸W. J. Nicholls, *The DREAMers: How the Undocumented Youth Movement Transformed the Immigrant Rights Debate* (Stanford: Stanford University Press, 2013).

¹⁹F. Kratochwil and J. G. Ruggie, 'International organization: A state of the art on an art of the state', *International Organization*, 40 (1986), pp. 753–75.

²⁰Punter, van der Veen, van Wingerden, and Vigneswaran, 'A "distributive regime"; M. Bylander, 'Migration disruption: Crisis and continuity in the Cambodian mass returns', *International Migration Review*, 52 (2018), pp. 1130–61.

²¹C. C. Williams, 'Blurring the formal/informal economy divide: Beyond a dual economies approach', *International Journal of Economic Perspectives*, 5 (2011).

decision-makers – such as police, immigration officials, and private subcontractors – who have legal discretion to determine protection outcomes; and/or (b) largely autonomous actors like humanitarian workers, smugglers, employers of unauthorised migrants and corrupt officials, who offer informal protection from legitimate violence.²²

While this tells us what protection regimes are and how they vary, in order to understand how protection regimes are formed and evolve, we need to pay attention to the agency of protection providers and seekers. Both providers and seekers of protection have reasons to change protection regimes in their favour. At a minimum, we can expect providers of protection to maximise their profits from the provision of protection, maintain or increase their market share, and seek relationships with actors they trust. We can expect seekers of protection to choose protection that is effective and inexpensive, and to secure relationships with actors that they trust. These expectations can help us understand the nature and effects of at least two types of agency.

The first relates primarily to the distribution of responsibilities for protection. This involves actors making a ‘power grab’ by monopolising an oligopolistic regime. ‘Power grabs’ refer back to a process defined by Weber as the ‘monopolization of legitimate violence’,²³ and extended to the study of migration by John Torpey’s work on the ‘monopolization of legitimate movement’: the long term struggle by states to arrogate to themselves the exclusive right to determine – among other things – who may be forcibly removed from a given territory.²⁴ While monopolisation is commonly viewed as a completed process, it is better regarded as an ongoing struggle to distribute responsibilities and roles *vis-à-vis* the provision of migrant protection. In this vein, work on the ‘migration industry’ has observed the consistent drive by combinations of private, substate, and informal actors to procure and autonomously exercise the ostensible prerogatives of the state *vis-à-vis* violence and mobility.²⁵ This research suggests that policy elites can never simply assume monopoly, but must repeatedly reclaim sovereign prerogatives from a diverse range of actors.

Power grabs may, in turn, impact other providers’ capacity to make a profit, impact their market share, and shape their relationships of trust – generating pressure for them to alter their protection services and/or relationships. Power grabs may also impact seekers of protection – generating pressure for them to minimise their protection expenses, and potentially jeopardising the informal protection relationships that they value.

The second form of agency relates to the acceptance of offers of protection. Seekers of protection may create demand for new or reformed protective services through acts of ‘exit’. My understanding of ‘exit’ draws directly on Albert Hirschman’s formulation.²⁶ Exit consists of the decision to withdraw from a given relationship of power. This may involve physically ‘voting with one’s feet’ and leaving the jurisdiction or area of operations of a protection provider, but may also involve severing a protection relationship or establishing a new one, while not moving at all. We know that in illiberal, non-democratic, and authoritarian contexts, those seeking protection routinely and *en masse* both (a) switch between informal and formal protection regimes;²⁷ and (b) flee places where they cannot obtain adequate protection.²⁸ Migrants can exit by both

²²See, for example, M. Coleman and A. Kocher, ‘Detention, deportation, devolution and immigration incapacitation in the US, post 9/11’, *The Geographical Journal*, 177:3 (2011), pp. 228–37.

²³M. Weber, *Politics as a Vocation* (Minneapolis, MN: Fortress Press, 1965), p. 57.

²⁴J. C. Torpey, *The Invention of the Passport: Surveillance, Citizenship, and the State* (Cambridge, UK and New York: Cambridge University Press, 2000).

²⁵T. Gammeltoft-Hansen and N. N. Sorensen, *The Migration Industry and the Commercialization of International Migration* (London: Routledge, 2013); J. T. Anderson, ‘The Migration Industry in Managed Migration: Authority, Control and Guestworkers in the United States’ (PhD thesis, Gothenburg University, Sweden, 2019); K. Surak, ‘Migration industries and the state: Guestwork programs in East Asia’, *International Migration Review* (2017).

²⁶A. O. Hirschmann, ‘Exit, voice and the state’, *World Politics*, 31 (1978), pp. 90–107.

²⁷B. Baker, *Multi-Choice Policing in Africa* (Uppsala: Nordiska Afrikainstitutet, 2008).

²⁸A. Steele, ‘Seeking safety: Avoiding displacement and choosing destinations in civil wars’, *Journal of Peace Research*, 46 (2009), pp. 419–29.

moving between protection regimes in different places²⁹ and between both informal and formal protection regimes in the same place.³⁰ When they exit, they may create demand for new services and/or pressure upon existing protection providers to renegotiate terms.³¹

Both of these forms of agency are powerful but *non-determinate*. Power grabs and exits may create the pressure for changes in migrant protection regimes, but it is not clear what changes will result. For example, we don't know whether policymaker efforts to monopolise a protection regime will result in informal providers of protection inventing new ways of circumventing the law, or ceasing to offer protection services. We don't know whether acts of exit will result in providers of protection offering better terms of protection, or accepting their reduced capacity to extract value from protection services. The value of trust is a complicating factor here, resulting in actors' commonly making seemingly non-utilitarian decisions in order to stick with the 'devil they know'. Hence, understanding the outcomes of these forms of agency in specific cases will generally require interpretations that go beyond conventional rationalist forms of modelling, and that are attentive to the manner in which actors convey the intent behind their actions and interpret the meaning of others' behaviour.

To summarise, international migrants' expectations of protection are not adequately defined by national laws and international treaties: the places where IR theorists have commonly looked for evidence of international regimes. Migrants' expectations are likely to be shaped by a set of informal relationships and practices that partly constitute what I have called 'migrant protection regimes'. These regimes are unlikely to adequately cater to migrants' preferences, but are also prone to change. They do not only change in response to the lobbying efforts of advocacy coalitions for formal protection, but also in response to the concrete actions of protection providers' and seekers'. When those who protect migrants make power grabs and when migrants exit protection relationships, they both may generate pressures for change in the defining rules and practices of a protection regime.

Methods

I developed the concept of 'migrant protection regimes', through an exploratory study of a 'deviant' case. Deviant cases demonstrate a surprising value by reference to a specific theory.³² In mid-2017 the Thai government passed two laws in a matter of days: The Royal Decree on Foreign Worker Management B.E. 2560 (2017) and the act rescinding the penalties in the decree: NCPO Order 33/2560 (2017). These acts and their surrounding administrative procedures, presented a stark contrast in the terms of formal protection offered to migrants. The Royal Decree included prison sentences for migrants working without authorisation in Thailand. The NCPO

²⁹B. Hoffman, 'Bringing Hirschmann back in: "Exit", "voice", and "loyalty" in the politics of transnational migration', *Latin Americanist*, 54 (2010), pp. 57–73; P. Kivisto and V. L. Vecchia-Mikkola, 'Immigrant ambivalence toward the homeland: The case of Iraqis in Helsinki and Rome', *Journal of Immigrant & Refugee Studies*, 11 (2013), pp. 198–216; V. Squire, 'Acts of desertion: Abandonment and renouncement at the Sonoran borderzone', *Antipode*, 47 (2015), pp. 500–16.

³⁰M. De Regt, 'Ways to come, ways to leave: Gender, mobility, and il/legality among Ethiopian domestic workers in Yemen', *Gender & Society*, 24 (2010), pp. 237–60; A. K. Franck, 'A(nother) geography of fear: Burmese labour migrants in George Town, Malaysia', *Urban Studies*, 53 (2016), pp. 3206–22; C. Tazreiter, 'Temporary migrants as an uneasy presence in immigrant societies: Reflections on ambivalence in Australia', *International Journal of Comparative Sociology*, 60 (2019), pp. 91–109.

³¹For a rich description of the impacts of an instance of mass migrant worker exit on a local Thai economy, see S. Campbell, *Border Capitalism, Disrupted: Precarity and Struggle in a Southeast Asian Industrial Zone* (Ithaca, NY: Cornell University Press, 2018).

³²J. Gerring, *Case Study Research: Principles and Practices* (Cambridge: Cambridge University Press, 2005). Significant changes in Thai policies on state violence *vis-à-vis* migrants and formal policies on migrant protection are not uncommon. A. Hall, 'Migration and Thailand: Policy, Perspectives and Challenges', Thailand Migration Report (2011), pp. 17–37. However, according to the analysis in this paper, this does not mean that Thai policymaking is uniquely careless and/or capricious towards migrant protection.

Order placed a moratorium on these penalties and created provisions for the regularisation of unauthorised workers and legislative reform that would give these regularised workers greater freedom to change employers. I regarded this as a deviant case, because the dramatic shift towards formal terms of protection in migrants' favour ran contrary to the expectations of advocacy coalition theory. Advocacy coalition theory explains changes favoring migrants in formal protection laws as the outcome of the advocacy efforts of powerful liberal coalitions. Yet, the Thai military junta is relatively immune from lobbying of any sort, is deeply connected to a nationalist coalition, and migrant rights advocates have little if any influence or sway over its decisions.

In order to gauge whether an advocacy coalition approach might nonetheless help us understand this outcome, and explore the potential merits of 'protection regimes' as a competing explanation, I conducted fieldwork in Thailand from mid-2017 to mid-2018, primarily in the Bangkok Metropolitan Area. While there, I spoke to 58 key informants, including 22 government and international organisation officials, 6 employers, 3 brokers,³³ 24 NGO workers, and 4 academics. Meanwhile, I hired a research assistant to conduct semi-structured interviews with 49 Myanmar migrant workers in Bangkok.³⁴ I then conducted document-based research including newspaper articles, government press releases, draft and final legislation, social media and used EU freedom of information procedures to gather a small selection of key resources on diplomatic relations between the EU and Thailand. Finally, I conducted observational research at NGO and policymaker workshops, government offices and business sites.

This combination of techniques had important limits. First, I was not able to secure interviews with officials in the office of the Prime Minister, Deputy Prime Minister, the former Labour Minister or the former Director General for Employment. I was able to partially compensate for this by interviewing senior officials in the Departments of Labour, Fisheries and the Navy who were directly involved in drafting and implementing the Royal Decree, and a range of non-government experts. However, I was not privy to parts of the decision-making processes that were ultimately responsible for the passage of the Royal Decree and NCPO Order. Second, I was not able to interview those migrants who had moved across the border in 2017. We asked all of the migrants we interviewed about their decisions during this period, studied responses on Facebook at the time, and conducted a follow up study of those who were leaving Thailand following the 2018 crackdown, but still needed to rely on secondary sources and inferences drawn from other data sources to account for their decisions. Third, I chose, due to ethical and security considerations, not to record interviews, but to instead take notes during conversations, and write extended summaries afterwards. This impacts on both the accuracy of the data and limits my ability to illustrate key empirical claims with direct quotations.

Despite these limitations, the data I have available lend substantial support to my argument that the concept of a migrant protection regime offers a more powerful explanation of the two laws than an advocacy coalition approach. The narrative below demonstrates how the empirical record supports my alternate interpretation of this surprising change in Thai migration laws.

Thailand's migrant protection regime: Oligopoly and the power of employers

The discussion now begins to apply this approach to the case study by describing the set of rules and principles that defined the protection of migrants in Thailand prior to the passage of the 2017 Royal Decree. In brief: the protection regime in Thailand was oligopolistic, affording

³³Brokers' are agents who facilitate migration and work processes in a wide variety of ways including assisting in applying for permits and documentation, organising transport, transferring funds, and mediating relationships between migrants and employers, smugglers, and officials.

³⁴In order to preserve the anonymity of respondents, the text references these interviews by their category (Official, Employer, Broker, NGO, Academic, and Migrant) and by assigning them a number that reflects the order in which the interviews were conducted. For example, the third NGO worker we spoke to is referenced as 'NGO no. 3'.

employers considerable formal authority and informal discretion to decide which migrants obtained protection from a wide variety of actors that threatened them with violence.

Over the past three decades, several million migrants from neighbouring countries – and principally Myanmar, Cambodia and Laos, have migrated to Thailand in search of asylum, employment, and better livelihoods.³⁵ Most of these migrants lacked the right to claim asylum or access work permits and so many entered the country informally and found places to live and work without authorisation.³⁶ In doing so, they immediately exposed themselves to a range of actors with the power to inflict legal and illegal forms of violence. On entry, migrants faced the threat of arrest, temporary detention, and deportation.³⁷ Migrants also faced penalties of up to two years imprisonment for being in the country without a valid permit (s. 81, Immigration Act, B.E. 2522 (1979)). Every year, large numbers of these unauthorised migrants were arrested, detained, and deported from Thailand.³⁸ However, Thai police officials are reputed for petty corruption. Hence, migrants were often not prosecuted for immigration crimes prior to deportation, but instead commonly paid bribes to secure their release.³⁹

Migrants sought protection from arrest, detention, deportation, and extortion from other providers, including migrants, smugglers, officials, brokers, employers, and landlords. These actors assisted migrants to evade detection and acquire papers and helped to negotiate their release from custody. However, these informal protection relationships exposed migrants to further exploitation and abuse. Smugglers, brokers, and traffickers offered assistance in concealing migrants from state officials but also extorted migrants, detained them, and ‘sold’ them to employers in Thailand.⁴⁰ Employers protected migrants from officials by physically concealing them and paying bribes, but also took advantage of migrants’ precarity, to make them work for low wages and under poor conditions.⁴¹

Formalising employer protection

Policymakers have formalised elements of this protection regime.⁴² Thailand signed memorandums of understanding (MOU) with neighbouring countries that provide for fully legal – albeit temporary – migration. The MOU permit (hereafter MOU) allowed migrants to legally cross the border and take up employment and residence in Thailand. Under the auspices of the MOUs, policymakers then created an array of temporary registration processes. Temporary Registration provides workers who have come to Thailand without papers and/or without official authorisation with the means to obtain passports or identity certification, temporary residence, and work permits.⁴³ At the

³⁵The IOM estimated in 2013 that 3.7 million foreign nationals were resident in Thailand. J. W. Huguet and A. Chamratrithong, *Thailand Migration Report 2014* (United Nations Thematic Working Group on Migration in Thailand Thailand, 2014).

³⁶The IOM estimated in 2013 that 1.6 million foreign nationals were living in Thailand without documents validating their right to remain.

³⁷S. S. Latt, ‘Managing migration in the Greater Mekong subregion: Regulation, extralegal relation and extortion’, *Singapore Journal of Tropical Geography*, 34 (2013), pp. 40–56; Mekong Migration Network, ‘Asian migrant centre’, *Migration in the Greater Mekong Subregion Resource Book: In-depth Study: Arrest, Detention and Deportation* (2013).

³⁸Between 2009–18 Thailand deported an average of 327,353 people each year. Source: Department of Labour.

³⁹S. Campbell, *Border Capitalism, Disrupted: Precarity and Struggle in a Southeast Asian Industrial Zone* (Cornell University Press, 2018); P. Robertson and B. Van Esveld, *From the Tiger to the Crocodile: Abuse of Migrant Workers in Thailand* (Human Rights Watch, 2010).

⁴⁰Human Rights Watch, ‘Hidden Chains: Rights Abuses and Forced Labor in Thailand’s Fishing Industry’ (2018).

⁴¹A. Derks, ‘Human rights and (im)mobility: Migrants and the state in Thailand’, *SOJOURN: Journal of Social Issues in Southeast Asia*, 28 (2013), pp. 216–40; A. Derks, ‘Migrant labour and the politics of immobilisation: Cambodian fishermen in Thailand’, *Asian Journal of Social Science*, 38 (2010), pp. 915–32.

⁴²Official no. 14.

⁴³For a review of these developments, see C. Natali, E. McDougall, and S. Stubbington, ‘International migration policy in Thailand’, in J. W. Huguet and A. Chamratrithong (eds), *Thailand Migration Report 2014* (United Nations Thematic Working Group on Migration in Thailand, 2014); A. Hall, ‘Migration and Thailand: Policy perspectives and challenges’,

same time, policymakers introduced harsher penalties for migrants working without permits. A 2008 law imposed prison sentences for illegal work (up to five years) and stay (up to two years) (s. 51, Alien Employment Act B.E. 2551 (2008)). These increased penalties are particularly significant, because migrants possessing Temporary Registration permits have had few guarantees that their permits would remain valid, be renewed or replaced in a subsequent registration round.

These changes could be seen as a 'power grab', increasing the state's overall power to protect migrants. However, these moves are probably more accurately interpreted as merely perpetuating (while also reshaping) oligopoly, specifically inserting officials within the Ministry of Labour into a multi-actor system of protection. While this move gave Labour officials a new role in determining which unauthorised migrants would be protected against deportation, police officials retained the power to arrest migrants and added leverage to extort them for bribes.

More importantly, employers remained – in conjunction with police and brokers – key determinants of which migrants would receive protection.⁴⁴ Employers retained significant power to determine both whether migrants had the right to work, and whether unauthorised migrant workers would be arrested, imprisoned, and deported. Both the MOU and Temporary Registration permits made the right to work contingent on having an existing relationship with a specific employer and/or remaining with that employer. If a migrant worker left their place of employment, they risked invalidating their permits and exposure to arrest and deportation. Procedures to change an employer remained costly and complex and, in some instances, required the consent or participation of the original employer. Hence, migrants who were unhappy with their employment relationship, found it difficult to leave.⁴⁵

In addition to this direct ability to determine whether migrants were working legally, employers' had the power to determine whether migrants would be practically able to regularise. Acquiring the MOU and Temporary Registration permits was costly and complex.⁴⁶ These problems were exacerbated by the inability of the Department of Employment (DoE) to communicate rules effectively, the corruption of DoE officials, and the efforts of brokers to both inflate prices and exaggerate the complexity of application processes while routinely cheating their clients.⁴⁷ In this context, migrant workers relied heavily on their employers to pay and negotiate for their documents.⁴⁸ Employers tended to decide whether or not workers acquired legal documents or not, by not adequately informing migrants of their rights, withholding support, or actively preventing migrants from registering, sometimes by refusing to excuse them from work, so they could travel to the offices and complete the formalities.⁴⁹ Many employers then used this power as a form of leverage in the workplace. Some converted their payments for documents into debts that migrants had to repay and some limited workers' ability to leave or move freely by retaining possession of workers' permits.⁵⁰

Those employers who did not register their workers could offer a different form of protection: preventing their arrest by the police. Regularisation had not resulted in a slackening in police enforcement of immigration and labour laws. However, employers could: pay local police to

in J. W. Huguet and A. Chamrathirong (eds), *Thailand Migration Report 2011* (International Organization for Migration, 2011).

⁴⁴S. Lawreniuk and L. Parsons, 'After the exodus: Exploring migrant attitudes to documentation, brokerage and employment following the 2014 mass withdrawal of Cambodian workers from Thailand', *Singapore Journal of Tropical Geography*, 38 (2017), pp. 350–69.

⁴⁵Migrant nos 22, 27, 36, 40, 45.

⁴⁶I. Größ, 'The emergence of the temporary migrant: bureaucracies, legality and Myanmar migrants in Thailand', *Sojourn: Journal of Social Issues in Southeast Asia*, 32 (2017), pp. 1–35.

⁴⁷Migrant nos 8, 18, 34. See also C. Natali, E. McDougall, S. Stubbington, and J. W. Huguet, 'International migration policy in Thailand', *Thailand Migration Report 2014* (2014), pp. 13–24.

⁴⁸Migrant nos 2, 3, 12, 35.

⁴⁹Academic no. 2; Broker no. 1.

⁵⁰Employer n. 4; NGO n. 16.

either not inspect their businesses or not harass their employees in the immediate vicinity of the workplace;⁵¹ acquire information from police informants about impending raids so they could warn their workers to hide;⁵² pay bribes when migrant workers were arrested in the workplace;⁵³ and bail out migrant workers when they were arrested further afield.⁵⁴ Employers also threatened to call the police or immigration officials in order to exact concessions from undocumented migrant workers.⁵⁵ Migrant workers whose employers were unable or unwilling to provide protection, were commonly arrested and/or extorted.⁵⁶ This power was considerably enhanced by the fact that many migrant workers lived at their workplaces, and rarely moved out of their employers' realm of operations and local networks.

Migrant exit in the absence of voice

This did not mean that migrants have been forced to accept any protection arrangement on offer. This is due to the fact that migrant workers would commonly 'exit' protection relationships. Many would do so on entry to Thailand. The MOU permitting procedures were costly, slow, and tied workers to employers and fixed periods of stay. Hence, most migrants entering Thailand chose to bypass the MOU option and enter without authorisation with the informal protection of smugglers, and in the hope that they might be able to independently find an employer in Thailand who could help them to subsequently regularise their stay under a Temporary Registration scheme.⁵⁷

Opting out of the MOU process enhanced migrants' reliance on employer protection. However, migrants could also leave abusive employers, often *en masse*, in search of better terms of employment and places to stay, even though this move left them vulnerable to arrest.⁵⁸ Such acts impacted upon employer behaviour, rewarding those who offered better terms, and sanctioning those who didn't – in the form of the costs associated with recruitment and training new staff.⁵⁹ Other migrants opted to leave the country or abandon their old identity documents and permits in order to re-enter the country, or resurface at another office on different terms and as a new 'person'.⁶⁰ They also simply opted not to re-register themselves, because of the costs involved.⁶¹

While some migrant workers were able to choose between protection services, they did not acquire the sort of 'rights' that would enable them to voice demands for improved terms of protection.⁶² Some migrants sought the assistance of migrant NGOs and IGOs, who advocated for policy reforms on their behalf and assisted them to report and litigate abuses. On rare occasions of particularly egregious forms of abuse, they also sought out – sometimes with NGO support – the assistance of state officials and called upon its arbitration and relief processes.⁶³ However, migrant workers generally avoided such measures, both because of the prison and deportation sanctions associated with informal status and because of their expectations – developed through lengthy experience of corruption, state failure, and authoritarianism in both their home countries

⁵¹Migrant nos 2, 11, 13, 27, 30.

⁵²Migrant nos 16, 26.

⁵³Migrant nos 9, 18.

⁵⁴Migrant no. 45.

⁵⁵Migrant nos 8, 34, 42.

⁵⁶Migrant nos 13, 32.

⁵⁷Official no. 6.

⁵⁸NGO nos 8, 22; Employer no. 2.

⁵⁹Employer no. 2.

⁶⁰Broker nos 2, 3.

⁶¹Official no. 6.

⁶²M. Clarke, 'Re-imagining capacity building when participation is constrained: Illegal Burmese migrants in Thailand', in *Challenging Capacity Building* (New York: Springer, 2010), pp. 112–32.

⁶³International Labour Organization, B. Harkins and M. Åhlberg, 'Access to Justice for Migrant Workers in Southeast Asia' (2017).

and in Thailand – that government officials were more likely to exploit their vulnerability to harm than to offer them meaningful or lasting aid.⁶⁴

One crucial form of voice that migrants lacked was the power to collectively bargain.⁶⁵ Labour organisation in Thailand has long been weak, with Thailand reporting some of the lowest union participation rates in the world.⁶⁶ Successive Thai governments, whether democratic or military in composition, have all sought to keep labour disorganised.⁶⁷ While migrant workers were permitted to join unions, they were not allowed to form their own unions, or take leadership positions in existing unions (s. 88, Labour Relations Act, B.E. 2518 (1975)). Since the junta took power in 2014, the scope for organising labour has only narrowed further.⁶⁸ This is crucial, because it helps us understand the limited means available to convert migrants' individual capacity to exit into a more powerful form of collective leverage *vis-à-vis* decisions over their terms of protection.

There are two key points to take from this portrayal of the Thai protection regime. First, while Thai government agencies exchanged migrant protection responsibilities, employers' have retained considerable power to determine which migrant workers are shielded from arrest, detention, and deportation. Employers' role and power *vis-à-vis* migrant protection only becomes fully evident when we pay attention to both the formal and informal dimensions of the protection regime. Second, while migrants have limited ability to voice demands for better rights to protection, they routinely – albeit silently – express their support or opposition for the different protection services on offer, by exiting protection relationships.

These two points help us to understand why an advocacy coalition approach might run into trouble in Thailand. The various alliances among protection providers and seekers in Thailand tend to scramble conventional assumptions about alliances among a 'pro-migrant'/ liberal and an 'anti-migrant'/nationalist coalitions. Businesses sometimes align with migrant rights by protecting them *vis-à-vis* state officials and sometimes do this in conjunction with the 'nationalist' police officials. However, business and police officials can also turn around and together exert leverage against migrants in the workplace. As a result, while migrants often relied heavily on employers – their 'liberal' coalition counterparts – they also commonly work against their employers' interests by exiting the workplace in search of protection on better terms. In the next section, we will see how these nuances were lost on the EU officials seeking to promote migrant worker rights in Thailand, and how their poorly calculated interventions resulted in a major shake-up to Thailand's migrant protection regime.

The European Union provokes changes in the Thai protection regime

From 2015–17, a migrant rights initiative challenged the core principles of the Thai protection regime. More specifically, human rights groups encouraged European Union (EU) officials to use the threat of trade sanctions to compel the military junta to take greater responsibility for protecting migrants from abuses in the workplace. Unlike the US State Department, that had long used the Trafficking in Persons Report to pressure Thailand for change, EU officials had no dedicated diplomatic tool for this purpose. Instead, EU officials developed a bespoke mechanism for promoting change in migrant rights policy under the auspices of its fishing laws, specifically the Illegal, Unregulated and Unreported (IUU) Fishing Regulation.⁶⁹ The IUU regulation is silent on migration and labour rights issues,⁷⁰ but it creates the power to ban imports to the EU

⁶⁴Migrant nos 8, 40.

⁶⁵NGO no. 8; Official no. 8.

⁶⁶ILOSTAT.

⁶⁷Official no. 7.

⁶⁸Ibid.; NGO no. 8.

⁶⁹European Council, 'Council Regulation (EC) No 1005/2008 Establishing a Community System to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing' (2008).

⁷⁰NGO no. 21.

from countries found to be in persistent violation of European fishing regulations. Between 2013 and 2015 researchers and journalists had been revealing widespread abuses against the Thai fishing industry's mostly foreign-born workforce, including accusations of forced labour, trafficking, and slavery.⁷¹ In this context, international human rights and labour rights NGOs successfully lobbied the European Commission to use the threat of trade sanctions to advocate for laws and law enforcement to protect victims of trafficking and forced labour, and the right to organise.⁷²

Some of the migrant rights NGOs that we spoke to believed that enhanced formal rights to protection from violence would mean little if migrants were unable to more actively motivate for their preferred protection outcomes.⁷³ However, they failed to convince EU officials to push for major improvements in the collective bargaining rights that migrants would need to do so. Instead, EU officials opted to pressure their Thai counterparts to introduce and implement laws to protect victims of trafficking and forced labour and supported new penalties for employers who hired illegal workers. The idea behind the second measure was that by cracking down on employers who hired illegal workers, the government might put an end to both unauthorised migration and work, cutting off the trafficking supply chain 'at its source'. This approach was first applied to the fishing sector in the Royal Decree on Fisheries B.E. 2558 (2015), which fined fishery businesses found to be illegally hiring foreign workers 400,000–800,000 baht (ss. 124,153).

Efforts to apply this approach to the fishing sector resulted in many deportations of migrant workers and the closure of a lot of Thai fishing businesses, but – due to the limited capacity/will- ingness of Thai officials to effectively pursue and prosecute human rights violations, and limited ability of migrants to make their own claims for protection – did not result in any convictions for trafficking or forced labour.⁷⁴ Despite the poor outcome of this policy in one economic sector, EU internal documents reveal that officials – still posing the threat of trade sanctions – then advocated for the same approach that had been adopted in the fishing sector to be extended across the economy as a whole.⁷⁵

EU officials had not invented the idea of introducing a penalty on employers for hiring unauthorised migrant workers. Over the previous decade, Ministry of Labour officials had repeatedly attempted to eliminate the option of Temporary Registration system and to compel all remaining undocumented migrants to return to their home countries and re-enter under the more costly and cumbersome MOU scheme.⁷⁶ Under the military junta, this approach acquired the support of security lobbies, who viewed Temporary Registration as a magnet for informal migration and viewed the presence of large numbers of undocumented migrants as an inherent

⁷¹S. Vartiala, H. Purje, A. Hall, K. Viherala, and A. Aukeala, 'Cheap Has a High Price: Responsibility Problems Relating to International Private Label Products and Food Production in Thailand' (Helsinki: Helsinki, Finnwatch, 2013); K. Hodal and C. Kelly, 'Trafficked into slavery on Thai trawlers to catch food for Prawns', *The Guardian* (10 June 2014); Environmental Justice Foundation, 'Thailand's Seafood Slaves: Human Trafficking, Slavery and Murder in Kantang's Fishing Industry' (London, 2015).

⁷²International Labour Rights Forum, 'Open Letter' (2016).

⁷³NGO nos 8, 21.

⁷⁴NGO no. 8.

⁷⁵J. Curell and C. Deben, 'From Jordi Curell, Director of Labour Mobility DG EMPL and César Deben, Principal Advisor DG MARE to the Authorities of the Kingdom of Thailand: Labour Dialogue-Observation Note on Implementation Measures, Dialogue held on 17–19 May 2016 in Brussels' (2016); J. Curell and C. Deben, 'From Jordi Curell, Director of Labour Mobility, DG EMPL and César Deben, Principal Advisor DG MARE to the Authorities of the Kingdom of Thailand: Labour Dialogue-Observation Note on Implementation Measures, Dialogue Mission held on June–July 2016 in Thailand' (2016); J. Curell and C. Deben, 'Letter From Jordi Curell, Director Labour Mobility, DG EMPL and César Deben, Principal Advisor DG MARE to Mr Plasai, Ambassador, Kingdom of Thailand: Follow-Up to Dialogue Mission held on 18–22 January 2016 in Thailand Development Research Institute' (2016); J. M. Sanz, 'From the EU to the Authorities of the Kingdom of Thailand: Conclusions on Labour Matters – Dialogue Mission held in March 2017 in Thailand' (2017).

⁷⁶NGO no. 10; Official no. 6.

security problem.⁷⁷ However, the local NGO and international organisation officials we spoke to concurred that large corporations in Thailand were extremely powerful and well connected to the current regime,⁷⁸ and pro-security lobbies had never been able to push anti-employer laws past Thai business.

It was the EU's threat of trade sanctions that settled the issue – prompting the Prime Minister to use his unique ability to pass a Royal Decree to introduce a law that would pose threats to any actor that was part of an informal migrant protection relationship, including both employers and migrants alike. The main new provisions of the 2017 Royal Decree on foreign worker management were s. 119 and s. 122, which levied a fine of between 400,000 and 800,000 baht (10,000–20,000 euros) on employers for each foreign worker they hired without a valid permit and s. 101 and s. 102 which mandated a prison sentence of up to five years for anyone found working illegally. The provisions regarding prison sentences were not greater than the penalties in the 2008 law, but the fact that they were not adjusted downwards also reveals that EU officials had not aimed at protecting migrants from violence *per se*, but only its unlawful forms. This difference becomes crucial in the next section, where we learn how migrants interpreted this combination of changes and continuities in the law.

In summary, a migrant protection regime framework reveals the potential for the EU's formal rights advocacy to have ambivalent outcomes. While EU officials had compelled Thailand to conform with international standards of protecting migrants against traffickers, they had simultaneously goaded the government into an attempted 'power grab' that jeopardised migrants' primary protection relationship, while offering no enhanced protection *vis-à-vis* the primary violent threat most migrants encountered in their everyday lives: the police.

An advocacy coalition approach would struggle to detect these nuances because, again, the relevant actors do not neatly align into liberal and national coalitions. One component of the supposed 'liberal coalition' (anti-trafficking human rights advocates) – teamed up with members of the supposed 'nationalist coalition' (the security lobby) behind a law that was contrary to the interests of another member of the 'liberal lobby' (business) and another member of the 'nationalist coalition' (organised labour). As we shall see, this not only leaves this approach without an explanation for the passage of the Royal Decree, but without the ability to interpret how protection providers and seekers responded differently to the law following its passage or why these responses resulted in the junta passing a second – more migrant-friendly law.

A migrant exodus compels the junta to pass a migrant-friendly law

The fine on employers was years in the making, but was smacked down in a week. The Royal Decree came into effect on 23 June 2017. By 30 June the prime minister had signalled his intention to revisit the provisions containing the fines on employers, formally issuing an NCPO order annulling the offending provisions on 4 July. The delayed mobilisation of Thailand's business lobby partly accounts for this turnaround. As soon as the government publicly announced the details of the Decree on 27 June, business groups responded negatively in press releases, reported comments in the media and through backchannels to senior government officials noting the potential for labour shortages and significant economic losses.⁷⁹

Yet, the sheer power of the business lobby does not account for the speed or nature of the new law. Business groups had more than a year, after the first version of the law was introduced in the fishing sector, to prepare to act. Draft versions of the law had been shown to business groups

⁷⁷Official nos 6, 12; NGO no. 22; see also National Security Agency Office, Asia Research Center for Migration (Chulalongkorn University) and Thailand Development Research Institute, 'The Problem of Migration of Populations in ASEAN Countries and the Impact on Security' (2016).

⁷⁸NGO nos 7, 8, 10; Official no. 8.

⁷⁹'PM orders review of migrant workers law', *The Nation* (Thailand) (5 July 2017); 'Employers seek to register foreign workers', *The Nation* (30 June 2017).

months in advance of its release and they had not mobilised to reverse the government's course.⁸⁰ One explanation for this inaction is that *big* businesses – the actors who exert disproportionate and more direct influence on the junta – were less likely to be dramatically affected by the law because they didn't make use of undocumented labour and/or could stomach the fines.⁸¹

The power of the Thai business lobby also does not wholly explain the process of legislative change that took place and would follow. In addition to reviewing the fines against employers, the new NCPO Order also suspended five year prison sentences for illegal workers (Clause 1). Then, three days later, the Ministry of Labour initiated an expansive registration process, giving all migrants working in the country enhanced opportunities to regularise, and making it significantly easier to register for those workers who did not have employer support.⁸² Finally, in the revised version of the emergency law, migrant workers holding these documents were given greater capacity to change their place of work, by simply notifying the Department of Employment (Royal Decree on Foreign Worker Management B.E. 2061 (2018) (ed. 2). In essence, the junta was not simply seeking to mollify corporate interests, but had produced a law that gave migrants the opportunity to substantially improve their protection arrangements, significantly reducing their dependence on officials, brokers, and also: their employers. What explains this attempt to make a more migrant (and not simply business) friendly law?

NGO's relative strength does not explain the outcome. These actors were important in helping to craft the government's new position. However, our interviews with NGO workers revealed that they have been pressuring Thai governments for decades to acknowledge the difficulties that migrants experience in becoming and remaining legal, and pushing for an approach that allows migrant workers to freely choose their employers without substantial success.⁸³ Their institutional leverage in Thailand is much smaller than that of business and has been further reduced under the junta.⁸⁴ They certainly do not have the institutional leverage to take on powerful corporations. Despite being shown previous versions of the decree, they had also been unable to motivate for changes to provisions affecting migrants.⁸⁵ Something happened between 23 June and 30 June that significantly – albeit probably not permanently – altered the balance of forces in migrant workers' favour.

My approach suggests that in order to understand these outcomes we need to observe the way the junta's 'power grab' compelled ordinary actors to respond, and how these different responses culminated in the mass exit of migrant workers. First, the police took advantage of their new powers under the law. Police and immigration officials independently launched a series of raids on migrant workplaces and homes. In several parts of the country, police and immigration bureau officials conducted raids on workplaces and arrested and deported migrants without papers.⁸⁶ These raids were not coordinated by the agencies responsible for drafting and passing the emergency law. The prime minister had not instructed the national security agencies to lead such an action. Our interviews with Ministry of Labour officials suggest that their Ministry did not have any plans to significantly or suddenly transform enforcement procedures.⁸⁷ There was no interdepartmental coordination of enforcement activities or special resources set aside to ramp up enforcement measures. Our interviews with migrants suggest that raids did not occur in all parts of the country.⁸⁸ It is unclear whether these enforcement actions led directly

⁸⁰Official nos 8, 13; Employer no. 3; see also Department of Employment (2017); Department of Employment (2017).

⁸¹'Big firms shrug off labour law burden', *The Bangkok Post* (4 July 2017).

⁸²Ministry of Labour, 'Migrant Worker Employment Processes Explained, 7 July' (2017).

⁸³NGO no. 1.

⁸⁴NGO no. 4.

⁸⁵Migrant Working Group, 'An Open Letter Observations and recommendations regarding the Draft Royal Decree on the Management of Foreign Workers B.E. 2560' (2017).

⁸⁶Broker no. 3; NGO no. 18; Migrant nos 14, 15, 22, 23, 24, 32, 39.

⁸⁷Official no.10.

⁸⁸Migrant nos 28, 31, 33, 36, 38, 41, 43.

to an increased number of people being deported during this period. This is partly due to the fact that many Cambodian and some Myanmar migrants were reporting themselves to police and immigration officials in order to be transported back to their relevant border posts.⁸⁹ In short, the junta's passage of the Emergency Law was not signalling an intention to 'crackdown' on unauthorised work.

According to one prominent migrant rights activist, rather than a planned and coordinated crackdown, these raids and arrests may be better seen as opportunistic efforts on the part of local officials to capitalise on the additional leverage afforded to them by the new penalties in the law – and particularly the fines against employers.⁹⁰ The emergency law provided these officials with an opportunity to – albeit temporarily – exert a new form of pressure *vis-à-vis* employers, ramp up their immigration enforcement outcomes, and extract additional value in the form of bribes.

While policymakers had not planned a crackdown, the reporting of a small number of raids in the news and on social media helped to create the impression that the Royal Decree was going to be enforced in a more comprehensive manner. This helped shape the response of migrants' key source of protection: employers. Our interviews with migrants suggest that many employers encouraged their workers to remain, promised protection against any raids, informed their workers when raids would occur, and bribed officials in order to secure migrants' release.⁹¹ In these respects, and in many places, the *status quo* in the Thai protection regime proved resilient throughout the course of the week. Employers assumed their traditional role of seeking the collusion of police officials to protect migrants from arrest, detention, and deportation.

However, other employers began firing migrant workers or instructing them to go home.⁹² The high fines radically reduced the economic incentive – particularly for medium and small enterprises – to protect migrants without permits, and made employers of unauthorised workers the targets of economic penalties for the first time. When combined with the sudden passage of the law, employers feared that they would be unable to come to an accommodation with police officials. It is plausible to suggest that employers also anticipated that non-local officials might lead the raids, reducing their ability to call on long-standing protection relationships with local Police and Labour officials, to secure their workers' release. According to the officials and NGO workers we spoke to, these considerations encouraged many employers to panic and shed themselves of the risk of prosecution through mass firings.⁹³

These two responses were – even when taken together – insufficient to force the junta's hand, but their impacts were soon amplified by a third: migrant exit. Here, it is important to note that most migrants learn about changes in immigration policy and practice through word of mouth⁹⁴ or based on what they read on their social media feeds.⁹⁵ In this context, a small number of migrant advocates played a significant role in making flight appear to be the most suitable course of action. Some of these advocates worked for pro-migrant organisations while others were brokers. A few had become online celebrities of sorts, registering hundreds of thousands of hits for some of their posts. In the process, they had become the primary source of migrants' information on developments in (and implications of) migrant policy and practice.⁹⁶

⁸⁹Academic no. 1; Official no. 5; NGO no. 11.

⁹⁰NGO no. 23.

⁹¹Migrant nos 3, 4, 8, 9.

⁹²NGO nos 1, 8, 19; Official nos 1, 5.

⁹³Official nos 1, 5; NGO no. 22.

⁹⁴S. Lawreniuk and L. Parsons, 'After the exodus: Exploring migrant attitudes to documentation, brokerage and employment following the 2014 mass withdrawal of Cambodian workers from Thailand', *Singapore Journal of Tropical Geography*, 38 (2017), pp. 350–69.

⁹⁵Broker no. 2; Migrant nos 6, 9, 11, 16, 25, 31.

⁹⁶NGO no. 18.

After the passage of the Royal Decree, many of these activists' Facebook posts depicted a worst-case scenario. First, the posts mistook the law for an indication of the government's intention to more harshly penalise unauthorised workers. The Royal Decree mandated a prison sentence of up to five years for anyone found working illegally (ss. 101, 102). However, these provisions merely maintained the penalty at the same rate as the 2008 law. Yet, the activists presented the five-year prison sentence to migrants as if it were a new law and indicative of a tougher approach.⁹⁷ Second, the posts circulated fearsome images of the crackdown – including videos of raids – to emphasise the threat that enhanced enforcement would present to migrants.⁹⁸ Third, the activists advised their colleagues without permits to either hide or return home to apply for a permit within the MOU system.⁹⁹ Two of these posts took the case one step further, suggesting that an exodus was the only way to achieve progress. By leaving *en masse*, the migrants would cause a massive disruption to the economy and force the government to change the law.¹⁰⁰ These posts were not prophetic, nor do they evince a sense of common political purpose or organisational capacity among migrant workers. However, in practice, they closely mirror the final impact that the ensuing exodus would have.

Once the reports of raids and firings – the collapse of migrants' core protection relationships – were amplified by social media, migrants began to exit. Migrants without permits began to leave their workplaces, places of residence, and jurisdictions *en masse*. Many paid brokers and drivers to smuggle them out to the border and out of the country. According to one official at an international organisation, significant numbers of the Cambodian migrants who left during this period combined these strategies, reporting themselves at local immigration detention centres and using deportation as a free ride to the border post.¹⁰¹ Hence, while we see a substantial rise in deportation numbers during this period, much of this volume may be accounted for by these 'self-deportations'.¹⁰² Others simply did not turn up for work, left their places of residence, or fled to other parts of the country.¹⁰³ It is impossible to develop an adequate numerical portrait of this exodus, but some of the data reflecting increases in movements across key border posts with Myanmar and Cambodia indicated that, within a few days of the announcement of the law, tens of thousands of migrants had departed and many others were 'in hiding' or simply not showing up at work.¹⁰⁴

This collective migrant exit helps us understand why the junta decided to – in addition to reviewing the fines on business – also revisit its policies on migrant registration and penalties for illegal workers. Here, it is important to note that the prime minister did not have to wait to see how these mass departures would impact both the economy and the government's credibility. In 2014, as one of its first acts in power, the military junta had conducted mass arrests and deportations of Cambodian workers. In that case, over 200,000 Cambodians left the country, bringing whole sectors of the economy to a halt, and disparaging the newly minted junta's international reputation.¹⁰⁵ According to the international organisation officials and NGO workers

⁹⁷Yaung Chi Oo Workers Association (2017).

⁹⁸'Mon News Update 18+', Facebook Timeline Post, 'Beware! If You Dont Have Enough Documents, Thai Police is Coming to Jail You' (2017).

⁹⁹Y. Min, Facebook Live Stream (2017); S. Mintun, Facebook Live Stream (2017); M. Thitsar, Facebook Timeline Post (2017); Y. Min, Facebook Timeline Post (2017).

¹⁰⁰S. Mintun, Facebook Live Stream (2017); R. Son, Facebook Timeline Post (2017).

¹⁰¹Official no. 1.

¹⁰²For a similar description of a combination of deportations and independent returns during the 2014 crackdown on Cambodian workers, see Bylander, 'Migration disruption'.

¹⁰³NGO no. 16; Migrant no. 8.

¹⁰⁴International Organization for Migration, 'IOM Cambodia Situation Report, IOM Migrant Resource Center (MRC) Poi Pet' (2017); '34,000 migrant workers return from Thailand', *The Irrawaddy* (6 July 2017); 'Traveling Statistics – Kingdom of Fiscal Year, 2018, At the crossing point Thai-Myanmar Friendship Bridge, Mae Sot International Airport (Tak Station)' (2017).

¹⁰⁵Bylander, 'Migration disruption'.

that we spoke to, with this outcome etched in the junta's recent memory, top officials urgently wanted migrants to return to work, and were willing to make major concessions to ensure that they would.¹⁰⁶ This created the space for domestic migrant rights lobby groups to make headway in ensuing revisions of the law, demanding that migrants would not only need additional opportunities to register, but greater freedom to choose their employer and place of work.¹⁰⁷ The exodus did not create the awareness among government officials of the importance of foreign workers to the economy, but it appeared to have demonstrated the government's inability to compel them to regularise on terms dictated by officials and suitable to employers.¹⁰⁸

This account further demonstrates the value of paying attention to the informal dimensions of the Thai protection regime. The Royal Decree was not simply a change in the formal regime, but a move towards *formalisation and monopolisation*. By challenging a core informal understanding in its migrant protection regime: that employers decide who is protected and who is not; the junta was making a power grab. Power grabs may encourage other actors to respond, and this one encouraged: (a) usurpatious police officials to conduct raids; (b) risk-averse employers to fire their workers; and (c) wary migrants to flee. This approach also helps us understand why the junta quickly caved when the exodus began. Not only was the junta's top brass – unlike its pro-security lobbies – only taking on employers because of EU pressure, it was unwilling to bear the costs of a fight it had never wanted to pick, and instead opted for more generous migrant protections – and further tolerance of informal migration – as a means of damage control. An advocacy coalition approach would struggle to understand or explain this sudden change. First, it would not recognise the significance of the differential gains of the competing members of the 'liberal' coalition, with migrants increasing their autonomy *vis-à-vis* their erstwhile protectors: employers. Second, it would not be able to explain why these changes suddenly took place over the course of a week, with little evidence that members of this 'coalition' had successfully advocated for the change.

These changes were, when we consider the scenario envisaged in the Royal Decree, a dramatic improvement for many migrants in terms of protection, providing them with greater freedom of movement in the country and the capacity to change employers. As a result, it is unsurprising that large numbers of migrants subscribed to the regularisation process. Many of our migrant respondents noted the advantages of becoming documented, in terms of greater leverage *vis-à-vis* employers, freedom from arrest, and freedom to move. At the same time, these improvements did not magically move migrants out of a general condition of deportability, or eradicate their reliance on employers, brokers, police officials, and smugglers to protect them from violence in Thailand. These everyday terms of protection continue to be worked out among formal and informal providers and seekers of protection through the deployment of power grabs, exits, and no doubt – other forms of agency that I have not adequately encountered or fully described in this piece.

Conclusion

This study of a sudden and dramatic change in Thai migrant protection policy reveals how paying attention to the informal side of protection regimes can help us explain what is happening in their other 'formal' side. More specifically, the paper provides us with the resources to move beyond conventional approaches that suggest that formal rights and liberal advocacy is all that protects migrants from violence. The concept of 'migrant protection regimes' compels us to observe

¹⁰⁶NGO nos 5, 19; Official nos 5, 15.

¹⁰⁷Author's observation, Migrant Working Group Discussion (18 August 2017).

¹⁰⁸This analysis of the second law does not comport with the interpretations offered by all sources. Some NGO workers believed the junta was manipulating the process the entire way, and simply using the threat of big fines – *and mass exodus* – to force employers to register their workers (for example, NGO no. 18). However, the accounts of officials inside the Labour Ministry do not support this line of interpretation, but rather – in the words of one official, support the image of a government 'learning by doing' (Official no. 12) and being countered and hemmed in by the responses of providers and seekers of protection along the way.

the full gamut of protection relationships that employers, policymakers, officials, and ordinary migrants seek to establish, renegotiate, and break, and to reckon with the situated, interactive, and non-linear way in which agents change these regimes.

In contrast to conventional IR scholarship, this approach demands that we look beyond the weak, formal dimensions of the international migration regime to understand how migrants are governed. This study concurs with previous research, that these informal dimensions of the international migration regime tend to result in migrant exclusion and exploitation, and that 'protection' is a racket heavily skewed against those who do not possess violent means. At the same time, this study also exposes the significant collective leverage that migrants can wield to resist or respond to the monopolistic power grabs and exploitative strategies of protection providers, by 'exiting' a protection regime.

While this study is based on a single case study of a specific moment in one country, there are several reasons to believe why the migrant protection regime concept might offer fruitful lines of inquiry beyond Thailand in 2017. On the one hand, this research has the potential to add significant purchase to efforts to understand migrant protection for the largest share of the world's migrants, who move between countries located in the Global South, where formal rights and liberal advocacy tend to be weaker and violent and informal modes of governing comparatively strong. However, the concept also has potential to travel further than that. As refugee protection systems in the Global North continue to fragment, governments experiment with guest worker-type policies that offer migrants fewer rights, and informal migration remains a structural feature of most national economies, migrants in the Global North will continue to navigate between formal and informal protection relationships. Understanding how protection providers and seekers attempt to shape and respond to changes in informal migrant protection regimes, may therefore offer key insights into the nature and transformation of emerging migration regimes across the Global North and South.

Going beyond the study of international migration, this work opens pathways to rethink the agency of vulnerable populations in IR. Historical sociologist and feminist research has popularised a deeply critical understanding of sovereign protection as a 'racket' that tips the scales in the favour of violent states and men and against civilians and women. This article demonstrates the value of using this critical take on the social construction of protection, to explore how migrant protection is achieved in practice. At the same time, it reveals the unique potential that vulnerable populations have to change the terms of protection on offer. Here, Hirschman's concept of 'exit' helps us point to the fact that – while protection may be a universal racket, human mobility can be a dynamic force, creating demand for change in the terms upon which protection is offered.¹⁰⁹ The challenge for researchers is to discover how the political meaning of such powerful acts of mobility might be interpreted and translated into more open protection regimes.

Supplementary material. To view supplementary material for this article, please visit: <https://doi.org/10.1017/S0260210520000339>

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¹⁰⁹D. Papadopoulos and V. S. Tsianos, 'After citizenship: Autonomy of migration, organisational ontology and mobile commons', *Citizenship Studies*, 17 (2013), pp. 178–96.

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