1

Postcommunism, Nationalism, and Refugees

Before 1989, virtually no refugees went to Eastern Europe. The Soviet Union and its East European satellites produced waves of political refugees but received almost none. As communist regimes crumbled, the western media, analysts, and politicians predicted a mass exodus from the former communist bloc to the West. On the eve of the USSR's dissolution in the winter of 1991, estimates of the number of Soviet citizens likely to head westward ranged from two to thirty million.[1] By the second half of the 1990s, however, it became clear that, with the exception of the former Yugoslav states ravaged by war, citizens of postcommunist countries were not flooding Western Europe. Of the 4.2 million asylum applications received in Western Europe in 1990–1999, only 0.5 percent (196,600) were submitted by citizens of the former Soviet Union, and even fewer were submitted by citizens of Central European states.[2] Most postcommunist states not only did not become major refugee producers for the West, but instead attracted thousands – and, in some countries, millions – of refugees and other displaced persons. By the end of the 1990s, postcommunist states hosted 6.4 million refugees and involuntarily displaced persons – a whopping 29 percent of the world's total and 73 percent of Europe's total. Armenia, Azerbaijan, Georgia, Russia, and Ukraine hosted more displaced persons than any Western European country except Germany.[3]

Formation of a refugee protection regime is an element of the democratization process. As the Rapporteur of the Council of Europe's Committee on Migration, Refugees remarked, "no state which calls itself genuinely democratic can refuse to face up to its responsibilities in terms of protecting

[1] Klaus Segberg, "Migration and Refugee Movements from the USSR: Causes and Prospects," *RFE/RL Report on the USSR* v. 3, no. 46 (November 15, 1991), pp. 6–14, at 6.

[2] United Nations High Commissioner for Refugees, *The State of the World's Refugees. Fifty Years of Humanitarian Action* (Oxford: Oxford University Press, 2000), annex 10, p. 325.

[3] Calculated from ibid., annex 2, pp. 306–9. Displaced persons are those the UNHCR considers its "population of concern." Chapter 2 will provide details.

1

persecuted persons."[4] This book is the first systematic comparative treatment
of the politics of refugee admission policy in the postcommunist region that
focuses on an intriguing puzzle the region presents: economically and politi-
cally similar postcommunist states, faced with a refugee problem similar in
nature and size, and the same international legal standards for dealing with
refugees, responding differently – some being more receptive to refugees than
others; some privileging certain refugee groups while others treated all refu-
gees equally. The Czech Republic and Poland, and Russia and Ukraine, the
four cases examined in this book, are two pairs of cases exemplifying this
puzzling variation. The Czech Republic proved to be more receptive to refu-
gees than Poland. Russia and Ukraine also responded differently to a similar
refugee problem. There was a more receptive policy toward refugees from the
developing world in Ukraine compared to Russia, and preferential treatment
of coethnic refugees in Russia but not in Ukraine.

Through an in-depth examination of the formation of refugee regimes and
the politics of refugee admission policy in these two pairs of states since the
fall of communism, this book develops a theory of postcommunist refugee
admission policy that identifies the politics of national identity – debates over
the boundaries of the nation – and the strategies of international refugee-
assisting institutions, in particular of the United Nations High Commissioner
for Refugees (UNHCR), as the main sources of postcommunist refugee poli-
cies. A key counterintuitive finding of this study is that when national identity
is highly contested, and thus there is no consensus on which group should
receive preferential treatment in state policies by virtue of belonging to "us,"
a political space for a receptive and nondiscriminatory refugee policy opens.
The book makes the case that neither contestation over the nation's boundar-
ies per se nor the presence of strong ethno-nationalism necessarily leads to
exclusionary policies. Instead, I argue that we have to pay close attention to
exactly *how* the national question is contested and resolved to understand
how nationalism affects state policies. The book also demonstrated that inter-
national actors can promote changes in domestic refugee policy when they
tailor strategies to fit domestic constraints.

1.1. THE QUESTION, THE PUZZLE, AND THE CASES

Claus Offe coined the term "triple transition" to highlight the enormity of the
challenge of simultaneously undertaking political, economic, and territorial
reforms the postcommunist states face.[5] However, not all elements of the triple
transition are equally monumental. In some issue-areas, the postcommunist

---

[4] Committee on Migration Refugees and Demography Council of Europe Parliamentary
Assembly, *Report on Refugees and Asylum Seekers in Central and Eastern Europe*, No. 7386
(September 6, 1995), p. 9.
[5] Claus Offe, "Capitalism by Democratic Design? Democratic Theory Facing the Triple
Transition in East-Central Europe," *Social Research* v. 58, no. 4 (Winter 1991), pp. 865–92.

states could build on communist-era legacies and/or institutions. In other areas, postcommunist states were truly starting from a blank slate. Refugee policy making was one of such areas. During the Cold War, the communist governments for ideological reasons remained outside the international refugee protection system and were not parties to the international instruments on refugee protection such as the 1951 Geneva Convention on the Status of Refugees and its 1967 Protocol. Instead, communist states offered asylum to procommunist activists from the noncommunist states. Article 38 of the 1977 Soviet Constitution, for example, provided for the granting of asylum to "foreigners persecuted for defending the interests of the working people and the cause of peace, or for participation in the revolutionary and national-liberation movement, or for progressive social and political, scientific, or other creative activity."[6] Decisions to grant asylum were made on individual basis by the presidium of the Supreme Soviet of the USSR, and no refugee laws or refugee policy bureaucracy existed.

Former communist countries thus entered the postcommunist era without any legislative legacy, domestic institutions, or expertise to deal with the refugee problem, and had to form refugee protection regimes literally from scratch. The enormity of the challenge of starting from scratch can be appreciated from an account of a UNHCR staffer in Ukraine who recalled how the first UNHCR representative dispatched to Ukraine in 1994 sometimes took refugees to her apartment to sleep, as in the absence of reception facilities or government procedure for determining refugee status, there was absolutely nowhere for them to go – refugees literally were dying at the train station.[7] In Poland, the government agency for refugee policy did not even have a proper typewriter when it was formed in 1991, being staffed by just five people – one short to be entitled to an electric typewriter under government rules.[8]

This book is an investigation of the politics of refugee policy formation in the postcommunist region. This politics has two dimensions – domestic and international. Unlike nonpolitical migration, where the international regime regulating it is recognized as being much weaker than international regimes regulating other types of international flows,[9] there is a robust international refugee regime, which makes the refugee issue distinct from nonpolitical migration.[10] The 1951 Convention, its 1967 Protocol, and the UNHCR are

6 Soviet Union, *Constitution (Fundamental Law) of the Union of Soviet Socialist Republics: Adopted at the Seventh (Special) Session of the Supreme Soviet of the USSR, Ninth Convocation, on October 7, 1977* (Moscow: Novosti Press Agency Pub. House, 1977).

7 Author's interview, UNHCR Kyiv, May 25, 1998.

8 Agnieszka Kosowicz, *Working Together: 15 Years of UNHCR in Poland* (Warsaw: UNHCR, 2007), p. 23.

9 Wayne Cornelius and Marc Rosenblum, "Immigration and Politics," *Annual Review of Political Science* v. 8, no. 1 (2005), pp. 99–119, at p. 109.

10 On this point, see, for example, James Hollifield, "The Politics of International Migration: How Can We "Bring the State Back In?" in Caroline Brettell and James Hollifield, eds., *Migration Theory: Talking Across Disciplines* (New York: Routledge, 2000), pp. 137–86, especially pp. 141, 161.

the main elements of this regime. The Convention and the Protocol provide common blueprints for domestic refugee policy, while the UNHCR is mandated by the UN to promote the ratification of these instruments, to supervise their application, and to safeguard the rights and well-being of refugees.[11] The UNHCR has been active on the ground in the postcommunist region since the late 1980s, when in 1989 it established first regional permanent local office in Hungary. If the lack of domestic legislative and institutional legacies and weak culture of human rights have been common to the entire postcommunist region, also common have been UNHCR objectives and its efforts across the region.

Yet, both state policies toward refugees and UNHCR success in influencing these policies has varied greatly across the region, with some postcommunist states more willingly translating the UNHCR-propagated international standards of refugee protection into domestic legislation and practice than others. This variation is both empirically and theoretically interesting as an example of variation in state compliance with international norms. A puzzle of economically and politically similar postcommunist states, faced with a refugee problem similar in nature and size, and the same international legal standards for dealing with refugees, responding differently is particularly intriguing. This puzzle is exemplified by the two pairs of cases examined in this book.

In the 1990s, the Czech Republic was notably more receptive to refugees than Poland, granting refugee status to a large share of the applicants. The Czech Republic was also the first (and, for a time, the only) postcommunist state to initiate and implement an integration program for recognized refugees, which began already in 1993. Polish refugee policies in the early 1990s were less receptive, and the UNHCR criticized Poland for falling short of international standards in a number of respects. By the end of the 1990s, differences between the Czech and Polish refugee admission policies became less dramatic but remained noticeable even though both states have been harmonizing their legislation with European Union (EU) requirements in preparation for joining the EU.

Russia and Ukraine also responded differently to a similar refugee problem. As Chapter 2 will explain in greater details, the nature of the refugee problem varies across the postcommunist region: Whereas some states face predominantly traditional refugees, others face predominantly nontraditional ones. Traditional refugees are those who fit the refugee definition in the Article 1(2) of the 1951 Geneva Convention: they crossed an international border; are not citizens of the state where they are seeking refuge; and fled due to a "well-founded fear of being persecuted for reasons of race, religion, nationality,

---

[11] As defined in the Statute of the Office of the UNHCR. Division of International Protection United Nations High Commissioner for Refugees, *Collection of International Instruments and Other Legal Acts Concerning Refugees and Displaced Persons* (Geneva: United Nations High Commissioner for Refugees, 1995), v. I, part 1, pp. 3–9.

membership of a particular social group or political opinion."[12] In western states, and in most East-Central European states, the majority of refugees are traditional refugees. However, in much of the Balkans and in the post-Soviet region, including in Russia and Ukraine, the emergence of refugees was closely tied to the process of "ethnic unmixing"[13] in the wake of the collapse of multinational states, and is characterized by the predominance of nontraditional refugees.

Nontraditional refugees are those who fled for reasons similar to those of refugees – fearing ethnic, political, or religious persecution – but who do not fit the refugee definition found in international law either because they did not cross an international border and/or because they are entitled to citizenship of the state where they seek refuge. At the end of the 1990s, in the former Yugoslavia, nontraditional refugees constituted 52 percent of the total refugee population; in the former Soviet Union – 79 percent. In Russia and Ukraine, 94 and 98 percent of the displaced persons, respectively, are nontraditional refugees, most of them arrivals from other former Soviet republics and coethnics of the titular group.[14] State policies toward each category of refugees have been very different, however. In Russia, both refugee legislation and its implementation clearly favored nontraditional refugees, with arrivals from the former Soviet republics, in particular ethnic Russians, receiving preferential treatment. In Ukraine, no such preferential policy toward either coethnics or the former Soviet citizens in general existed. Another puzzling variation has been a more receptive policy toward traditional refugees from the developing world in Ukraine. At the end of 2002, 70 percent of refugees recognized in Ukraine were from the developing world, whereas in Russia, the corresponding figure stood at just 3 percent.[15]

This book thus focuses on two puzzles. First, why do some postcommunist states accept refugees more readily than others? Second, why do some postcommunist states privilege certain groups of refugees (such as coethnics) whereas others do not? To answer these questions, the book undertakes an in-depth examination of the emergence of refugee regimes in the Czech Republic, Poland, Russia, and Ukraine in the decade and a half since the fall of communism and develops a theory of postcommunist refugee admission policy that identifies the politics of national identity (defined as domestic contestation

---

[12] According to the 1951 Convention, people with well-founded fear of persecution were refugees only if they fled "as a result of events occurring in Europe before 1 January 1951." The 1967 Protocol Relating to the Status of Refugees removed this time and geographical limitation. Text of the 1951 Convention and its 1967 Protocol are in ibid., pp. 10–45.

[13] The term is Rogers Brubaker's and describes the return of ethnic minorities to their "ethnic homelands." Rogers Brubaker, "Migration of "Ethnic Unmixing" in the New Europe," *International Migration Review* v. 34, no. 4 (1998), pp. 1047–65.

[14] Calculated from United Nations High Commissioner for Refugees, *The State of the World's Refugees. Fifty Years of Humanitarian Action*, annex 2. Also see Table 2.3.

[15] Calculated from Derzhavnyi Komitet u spravakh natsional'nostei i mihratsii, "Zvit pro statevo-vikovyi sklad bizhentsiv v Ukraini na 1.01.2003. Forma 2 (bizhentsi)" (27 January 2003), and Goskomstat Rossii, *Chislennost' i migratsiia naseleniia Rossiiskoi Federatsii v 2003 godu* (Moskva: Goskomstat Rossii, 2004), table 3.1.

over the question of nation's boundaries – more on the definition and methodology in Chapter 2) and the strategies of international refugee-assisting institutions, in particular the UNHCR, as the main sources of postcommunist refugee policies.

1.2. REFUGEE POLITICS IN OLD EUROPE AND THE NEW

Scholars of migration and refugee policies of western states acknowledge that a complex set of factors shapes these policies.[16] The immigration and refugee policy studies note in particular causal factors such as party politics, economic interests, and institutional locations of policy making.[17] In the postcommunist region, however, the novelty of the refugee problem greatly diminishes the importance of causal factors commonly found to be consequential in the western context. Take party politics. A common argument about political parties in the immigration literature is that parties on the left advocate more generous immigration and refugee policies than parties on the right – either because of their ideology, and/or as a result of expected electoral gains from immigrants and their advocates[18] – although many studies see the role of party politics in immigration policy as more complex.[19] In the postcommunist region, the

[16] Stephen Castles, "Factors That Make and Unmake Migration Policies," *International Migration Review* v. 28, no. 3 (Fall 2004), pp. 852–84.

[17] For useful literature review summarizing these dominant approaches, see Garry Freeman and Alan Kessler, "Political Economy and Migration Policy," *Journal of Ethnic and Migration Studies* v. 34, no. 4 (May 2008), pp. 656–78; Cornelius and Rosenblum, "Immigration and Politics"; Christina Boswell, "Theorizing Migration Policy: Is There a Third Way?" *International Migration Review* v. 41, no. 1 (Spring 2007), pp. 75–100; Eytan Meyers, "Theories of International Immigration Policy: A Comparative Analysis," *International Migration Review* v. 34, no. 4 (Winter 2000), pp. 1245–82.

[18] Ted Perlmutter, "Bringing Parties Back In: Comments on 'Modes of Immigration Policies in Liberal Democratic Societies'," *International Migration Review* v. 30, no. 1 (1996), pp. 375–93; Dirk Jacobs, "Discourse, Politics and Policy: The Dutch Parliamentary Debate about Voting Rights for Foreign Residents," *International Migration Review* v. 32, no. 2 (Summer 1998), pp. 350–73, at 355; Minon Hix and Abdul Noury, "Politics, Not Economic Interests: Determinants of Migration Policies in the European Union," *International Migration Review* v. 41, no. 1 (March 2007), pp. 182–205; Gallya Lahav, *Immigration and Politics in the New Europe: Reinventing Borders* (New York: Cambridge University Press, 2004).

[19] Scholars have pointed to such facts as the center-left governments that came to power in a number of western states in the second half of the 1990s continuing the policies of their rightist predecessors, or even introducing additional restrictions (Liza Schuster, "A Comparative Analysis of the Asylum Policy of Seven European Governments," *Journal of Refugee Studies* v. 13, no. 1 [March 2000], pp. 118–32); that immigration divides the left and center-left (Martin Schain, "Commentary: Why Political Parties Matter," *Journal of European Public Policy* v. 15, no. 3 [April 2008], pp. 465–70); that party politics can change over time within a given country (Martin Schain, *The Politics of Immigration in France, Britain, and the United States: A Comparative Study* [New York: Palgrave Macmillan, 2008]); and that leftist parties are more open to immigrants than rightist parties only with regard to the integration of already resident immigrants, whereas the Left and the Right are equally restrictive when it comes to immigration control policies (Terri Givens and Adam Luedtke, "The Politics of European Union Immigration Policy: Institutions, Salience, and Harmonization," *Policy*

relationship between party politics and refugee policies is more ambiguous for at least two reasons.

First, attaching the "left" and "right" labels to postcommunist political parties is often problematic. The weakness of socio-economic cleavages under state socialism and the prohibition on interest differentiation and articulation hampered the system of interest representation in the postcommunist societies and created political parties that are not anchored in class divisions in society but are instead "floating over society," having weak ideologies, and being internally fractionalized.[20] Granted, with the passage of time this is changing and partisanship is developing even in the post-Soviet region where one-party rule lasted for seven decades.[21] Still, the postcommunist parties often do not behave according to ideology associated with the left/right labels in the traditional partisan theory,[22] which makes examining political parties' stand on refugee policy issues through this lens problematic.

The second problem with party-centered analysis of postcommunist refugee policies is arguably even more serious. Political parties in the postcommunist states for a while do not have *any* position on refugee policy matters owing to the fact that the refugee policy is an entirely new and unfamiliar issue. Scholars of Western European countries have observed that partisan responses to immigration vary depending on the phase of immigration cycle, with party distinctions being more polarized in traditional immigration countries and more blurred in newer immigration states.[23] In the postcommunist states, party distinctions are often not just blurred but downright lacking. In

Studies Journal v. 32, no. 1 [2004], pp. 145–65; Terri Givens and Adam Luedtke, "European Union Immigration Policies in Comparative Perspective: Issue Salience, Partizanship, and Immigrant Rights," *Comparative European Politics* v. 3, no. 1 [2005], pp. 1–22; Jeannette Money, *Fences and Neighbors: The Geography of Immigration Control* [Ithaca, NY: Cornell University Press, 1999]).

[20] Jon Elster, Claus Offe, and Ulrich Klaus Preuss, *Institutional Design in Post-Communist Societies: Rebuilding the Ship at Sea* (New York: Cambridge University Press, 1998), p. 139; Valerie Bunce and Maria Csanadi, "Uncertainty in the Transition: Post-Communism in Hungary," *East European Politics and Society* v. 7, no. 1 (Spring 1993), pp. 240–75; Barbara Geddes, "A Comparative Perspective on the Leninist Legacy in Eastern Europe," *Comparative Political Studies* v. 28, no. 2 (1995), pp. 239–74; Mary McAuley, *Russia's Politics of Uncertainty* (New York: Cambridge University Press, 1997). On the importance of ideologies for party formation and strength generally and in the post-Soviet Russia specifically, see Stephen Hanson, *Post-Imperial Democracies: Ideology and Party Formation in Third Republic France, Wiemar Germnay, and Post-Soviet Russia* (New York, Cambridge University Press, 2010).

[21] For evidence to this effect from Russia, see Timothy Colton, *Transitional Citizens: Voters and What Influences Them in the New Russia* (Cambridge, MA: Harvard University Press, 2000), especially pp. 103–37.

[22] For example, a recent study showed how leftist parties in postcommunist countries are more likely to pursue rightist policies of fiscal responsibility and economic reforms than rightist parties. Margit Tavits and Natalia Letki, "When Left Is Right: Party Ideology and Policy in Post-Communist Europe," *American Political Science Review* v. 103, no. 4 (November 2009), pp. 555–69.

[23] Lahav, *Immigration and Politics in the New Europe*, pp. 141–2.

1998, I interviewed representatives of all parliamentary political parties in the Czech Republic, which has one of the most structured party systems in the region, only to find that no party had either a position on refugee policy in its program or enforced party discipline in voting on refugee policy issues. Over time, postcommunist parties can develop a position on refugee and immigration policy matters, but for a while, control of the government by the left or the right will not be a good predictor of receptivity to refugees. That said, party politics can impinge on refugee policies when refugee policy is linked to other salient issues on which political parties have well-articulated positions. Chapter 2 will expand on this point when discussing the impact of the politics of national identity on refugee policy making.

Theories that see state receptivity to immigrants and refugees as a function of organized societal interests focus on a broad array of domestic groups favoring or opposing immigration and their relative power, such as business organizations, unions, ethnic groups, civil liberties groups, and nativist organizations.[24] These theories are of limited relevance in the postcommunist region for similar reasons as party-focused theories. First, in the postcommunist states, economic interest groups such as employer groups and workers' unions are not well organized and not very influential.[25] Scholars have attributed this situation to the high level of uncertainty of both interests and institutions in postcommunism – "*much* greater than what we find in established liberal settings [and also] in southern Europe and Latin America."[26]

Second, like political parties, interest groups need time to formulate a position on refugee problem, which is an entirely novel phenomena the economic implications of which are initially uncertain. Poland, with its history of the Solidarity trade union movement, is a good illustration of how even when organized economic groups are present, they may not have a position on the refugee issue for some time. I found no evidence that in the 1990s, trade unions, employers, or other economic interest groups had articulated clear positions on refugee admission policies and sough to impress these

[24] Interests-based theory of immigration was first proposed by Garry Freeman in his now-classic Garry Freeman, "Modes of Immigration Policies in Liberal Democratic States," *International Migration Review* v. 29, no. 4 (1995), pp. 881–902. See also Garry Freeman, *Towards a Theory of Domestic Politics of International Migration in Western Nations* (South Bend, IN: Nanovic Institute, University of Notre Dame, 1998); Garry Freeman, "National Models, Policy Types, and the Politics of Immigration in Liberal Democracies," *West European Politics* v. 29, no. 2 (March 2006), pp. 227–47; Christian Joppke, "Why Liberal States Accept Unwanted Immigration," *World Politics* v. 50, no. 2 (1998), pp. 266–93; Money, *Fences and Neighbors*; Daniel Tichenor, *Dividing Lines: the Politics of Immigration Control in America* (Princeton, NJ: Princeton University Press, 2002); Julie R. Watts, *Immigration Policy and the Challenge of Globalization: Unions and Employers in Unlikely Alliance* (Ithaca, NY: ILR Press, 2002).

[25] Geddes, "A Comparative Perspective on the Leninist Legacy in Eastern Europe"; David Ost, "The Politics of Interest in Post-Communist Europe," *Theory and Society* v. 22 (1993), pp. 453–86.

[26] Bunce and Csanadi, "Uncertainty in the Transition," p. 267. Emphasis in the original.

positions on policy makers. A 2007 study of immigration policy making in Poland similarly concluded that the situation in the country stands "in clear contrast to the European-level way of doing things, where decisions concerning immigration involve a broad spectrum of lobbyists, social groups, and interested politicians."[27] An interest group, or "client," model of immigration policy making along the lines articulate by Freeman,[28] whereby state openness to immigration becomes a product of the relative strength of domestic actors whose interests are affected by immigrants, may eventually emerge in the postcommunist states, but this will not be the case right away.

Finally, theories that attribute variation in state receptivity to refugees and immigrants to the institutional locations of policy making also do not offer enough explanatory power in the postcommunist context. Scholars have shown how western democracies exhibit a "rights-based liberalism,"[29] manifested in particular by the "court-driven liberalization of asylum," whereby powerful independent judiciaries liberalize state refugee policies.[30] Postcommunist judiciaries, however, do not play the same role, for two reasons. First, unlike the courts in western democracies, the courts in postcommunist states do

[27] Anna Kicinger, Agnieszka Weinar, and Agata Górny, "Advanced Yet Uneven: The Europeanization of Polish Immigration Policy," in Thomas Faist and Andreas Ette, eds., *The Europeanization of National Policies and Politics of Immigration: Between Autonomy and the European Union* (New York: Palgrave Macmillan, 2007), pp. 181–200, at p. 190.

[28] Freeman's "client politics" model of immigration policy rests on the idea that immigration creates concentrated benefits and diffused costs, and that because those who benefit from immigration (employers of labor-intensive industries and ethnic networks) are better organized than those who bear the costs (the population competing with immigrants for jobs and government services), self-interested politicians cater to the former, which results in expansive immigration policies even in the face of the widespread opposition of the general public. Freeman, "Modes of Immigration Policies in Liberal Democratic States"; Garry Freeman, "Client Politics of Populism? Immigration Reform in the United States," in Virginie Guiraudon and Christian Joppke, eds., *Controlling a New Migration World* (London and New York: Routledge, 2001), pp. 65–95. Some recent studies call into question the underlying assumption of the client politics model – that public opinion is too diffuse to influence policy – and find instead that public opinion both matters and is closer to elite opinion than is often assumed. Lahav, *Immigration and Politics in the New Europe.*

[29] Wayne Cornelius, Philip Martin, and James Hollifield, eds., *Controlling Immigration. A Global Perspective* (Stanford, CA: Stanford University Press, 1994); Christian Joppke, "The Legal-Domestic Sources of Immigrant Rights: The United States, Germany, and the European Union," *Comparative Political Studies* v. 34, no. 4 (May 2001), pp. 339–66.

[30] Christian Joppke, "Asylum and State Sovereignty: A Comparison of the United States, Germany, and Britain," *Comparative Political Studies* v. 30, no. 3 (June 1997), pp. 259–98, at 270; also see Virginie Guiraudon, "Policy Change Behind Gilded Doors: Explaining the Evolution of Aliens' Rights in Contemporary Western Europe (1974–1994)" (Ph.D. Dissertation, Harvard University, 1997); Virginie Guiraudon, "European Courts and Foreigners' Rights: A Comparative Study of Norms Diffusion," *International Migration Review* v. 34, no. 4 (Winter 2000), pp. 1088–125; James Hollifield, *Immigrants, Markets, and States: the Political Economy of Postwar Europe* (Cambridge, MA: Harvard University Press, 1992); Joppke, "Why Liberal States Accept Unwanted Immigration"; Christian Joppke, *Immigration and the Nation-state: the United States, Germany, and Great Britain* (New York: Oxford University Press, 1999).

not have a history of protecting refugee rights (or human rights in general). Second, postcommunist judiciaries initially are simply not involved in the refugee policy-making process. Courts in the postcommunist states enter the refugee policy-making process only after the principle of judicial review of negative decisions on refugee status is established. This can take years. For example, a judge of the Polish Supreme Administrative Court admits that in 1995 he "knew absolutely nothing about refugees" and that the court "did not have one asylum case that had been decided on based on merits."[31] Likewise, in Ukraine, the appeal procedure for rejected refugee applications was not established (and thus courts did not enter the refugee policy-making arena) until late 1997. Courts may come to exert a liberalizing effect on refugee policies, similar to what they do in established democracies, but again it will take time. In sum, if in western democracies, refugee politics "is characterized by agitated publics, mobilized interest groups, partisan conflicts, and ... activist national courts,"[32] these factors do not play a comparable role in the postcommunist region.

With the novelty of the refugee problem in the postcommunist space eliminating party-based, interest-group-based, and institutional theories of immigration and refugee policies as satisfactory explanations of refugee policy choices made by the postcommunist governments, this leaves a subset of immigration and refugee policy theories that focus on the causal importance of national identity. This strand of the literature is an umbrella approach that incorporates a broad range of ideational, historical, and cultural factors. As the next chapter will discuss, some variables used in this subset of the literature, such as legacies of colonialism or immigration, are not relevant to the postcommunist cases. Other seemingly promising ones, such as ethnic homogeneity and ethnic affinity, are insufficient as causal explanations, given that countries similar in terms of ethnic homogeneity adopt divergent refugee policies. Russia and Ukraine are similar in ethnic homogeneity, and the majority of migrants to either of these states in the post-Soviet period were coethnics of the titular group, but only Russia privileged coethnics in state policies. Additionally, a common criticism of immigration and refugee policy studies in this tradition is that they operate with vaguely define variables such as "national identity."[33]

To adequately assess the explanatory potential of national identity, therefore, one must first clearly define national identity in a way that would be both theoretically informed and empirically meaningful in the postcommunist context, and second, specify mechanisms by which national identity can affect refugee policies so that the causal impact of national identity could be

---

[31] Judge Jacek Chlebny as quoted in Agnieszka Kosowicz, *Working Together: 15 years of UNHCR in Poland* (Warsaw: Agencja Wydawnicza MakPrint, 2007), p. 76.
[32] Freeman, "National Models, Policy Types, and the Politics of Immigration in Liberal Democracies," p. 238.
[33] Examples of such criticisms include Meyers, "Theories of International Immigration Policy," p. 1255; Eytan Meyers, *International Immigration Policy: A Theoretical and Comparative Analysis* (New York: Palgrave Macmillan, 2004), p. 8; and Money, *Fences and Neighbors*, p. 30.