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Understanding the Politics of Refugee Law and Policy Making: Interdisciplinary and Empirical Approaches

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Abstract

In this article, we argue that building a stronger empirical understanding of the politics of domestic refugee law and policy making is essential for refugee law scholars to better advocate for protection-orientated reforms. While much of the legal scholarship is aimed at promoting policy change, the best way to achieve this goal has rarely been examined. We identify three key areas of interdisciplinary empirical research that can create a stronger evidence-base for improving domestic policy reform efforts. This includes understanding the institutions and actors involved in policy formulation, measuring the impact of refugee laws and policies in practice, and identifying how to influence public opinion and build support for progressive law and policy change. We showcase existing interdisciplinary research in each of these areas, and highlight topics ripe for further empirical inquiry.

Keywords: refugee law; politics; policy making; interdisciplinary; empirical legal research; public opinion

Introduction

In this article, we make the case for the utility of interdisciplinary empirical research on the politics and dynamics of domestic refugee law and policy making. Rosemary Byrne and Thomas Gammeltoft-Hansen have described refugee law scholars as having a 'dual imperative' to simultaneously advance scholarly knowledge and effect protection-orientated policy change (Byrne and Gammeltoft-Hansen, 2020). However, despite the clear focus of many legal scholars on advocating and promoting policy change, the dynamics of the domestic policy making and law reform process remain under-explored in refugee law scholarship. The result is that refugee law scholars are often feeling their way in the dark when devising advocacy strategies. In many respects, legal scholars have been playing catch up with their refugee studies colleagues, who have grappled with how best to address this dual imperative for two decades (Jacobson and Landau 2003).

In line with the focus of this special issue, we argue that greater integration of the refugee law scholarship with the broader refugee studies scholarship is required in order to effectively address this dual imperative. In particular, we showcase existing interdisciplinary empirical research focused on understanding the politics and dynamics of domestic refugee and asylum policy making, and identify areas ripe for further empirical exploration. Such research provides valuable insights that could enhance the ability of both legal and social science refugee scholars to effectively influence progressive policy reform. While our focus is primarily on providing an evidence base for domestic reform efforts, we argue that empirical methods could equally play an important role in advancing scholarly knowledge. Such research could provide an opportunity to test and validate the assumptions

of the normative and theoretical scholarship on the politics of refugee law making and reform, and the relationships and interactions between international, transnational and domestic refugee law.

The article proceeds in five parts. We begin by situating empirical research on the politics of domestic law and policy making in the broader context of the scholarship on the politics of international and transnational refugee law. We then set out the challenges, risks and limitations of empirical refugee law research and strategies for how these can be best addressed. We then turn to showcasing three areas of interdisciplinary empirical research that can aid refugee law scholars in their goal of effecting domestic protection orientated reforms. First, we examine a variety of interdisciplinary approaches that can be used to develop a deeper understanding of the institutions, policy actors and processes which shape domestic refugee and asylum policy making. Building an empirically grounded understanding of these institutions and processes and identifying the key actors involved and their motivations, could lay the groundwork for refugee law scholars to more effectively time, frame and target proposals for domestic reform. We then turn to approaches to measuring and evaluating the impact and success of existing policies. With restrictive asylum policies in particular, we argue that evidence that they fail to meet their intended objectives, could be a very effective tool in advocating for protection-orientated reforms. Finally, we turn to empirical experimental studies evaluating how different message framings could influence public support for protection-orientated asylum and refugee policy reforms. Drawing on approaches from behavioural psychology and international relations, such research can provide a much-needed evidence base for how best to win public support to advance reform proposals.

The aim is to provide a number of illustrative examples that demonstrate the diversity of approaches available for carrying out empirical research in this space. The examples touch on a wide variety of forms of empirical research, ranging from qualitative interviews with policy makers, decision-makers, lawyers and refugees; analysis of statistical data on the impact of refugee laws in practice; data-driven computational methods for collating quantitative data on policy outcomes; and experimental studies.

The Politics of Refugee Law: A Multi-Dimensional Perspective

The role of politics in shaping international refugee law has been the subject of much scholarly debate. For much of the 20th century, refugee law scholarship was dominated by a positivist tradition which limited and downplayed the role of politics in shaping both the content of international obligations and their domestic implementation (Lambert 2010). It viewed refugee law as an apolitical 'abstract system of rules which can be identified, objectively interpreted and enforced' (Chimni 1998, p 352). Scholars drawing on critical approaches vigorously pushed back against this view, highlighting not only the degree to which politics shapes and influences refugee law, but also the dangers of accepting the positivist claim as to the neutrality of law (Kennedy 1986, Harvey 1999, Chimni 1998, 2007, Juss 2012, Woldemariam, Maguire & von Meding 2019, Spijkerboer 2014). There is also a significant body of scholarship examining the influence of politics on the evolution of international refugee law (Goodwin-Gill 2021; Hamlin 2021), the development and operation of the Office of the United Nations High Commissioner for Refugees (UNHCR) (Goodwin Gill 2008), and UNHCR's central role in influencing and shaping international refugee law (Goodwin-Gill 2020; Betts, Loescher, Milner 2013; Loescher 2001), as well as the role of other international organisations and non-governmental organisation in that process (Gordenker and Weiss 1995; Ferris 2011).

There is also an extensive body of scholarship examining the dynamics and politics of the interaction of international, supra-national and domestic refugee law. This has been explored through the lens of transnational legal theory (Aleinikoff, 2004, Koh 2006, Lambert 2010 and Mann 2013), and related interdisciplinary efforts drawing on international relations and international legal theory

(Gammeltoft-Hansen 2014; Goodwin-Gill and Lambert 2010; Lambert, McAdam and Fullerton 2014); and policy transfer and diffusion (Ghezelbash 2018). This work recognises the fact that the politics of domestic refugee and policy making cannot be examined in isolation from the political dynamics of international refugee law. Domestic policy responses are constrained by states' obligations under international and supra-national law,¹ and state practice can in turn influence the interpretation of international refugee law provisions. Moreover, domestic refugee law and policy making across different jurisdictions do not develop in isolation. Domestic policy makers and judges often draw on policies and judicial decisions in other jurisdictions.

There is an absence of a strong tradition of empirical research in the existing legal scholarship on the various dimensions of the politics of international and transnational refugee law. Where empirical research has been undertaken, it has often been limited to auto-ethnographic approaches, drawing on authors' own involvement in the refugee policy making process (see, eg. Kennedy 1986), or interviews or surveys with policy and legal actors (see, eg. Goodwin-Gill and Lambert 2010, Lambert, McAdam and Fullerton 2014, Ghezelbash 2018).

At the domestic level, there has been important empirical and interdisciplinary research examining the influence of politics and other factors in judicial and administrative decision-making in the refugee cases (see, eg, Ramji-Nogales et al 2009; Rehaag 2012; 2019; Evans Cameron 2018). This work has been aided and expanded in recent years by a new wave of studies that use computational methods and artificial intelligence to code and analyse large data sets of decisions (Ghezelbash, Dorostkar and Walsh 2022; Byrne et al 2023; Rehaag 2023). There has also been important recent empirical research aimed understanding the role of street-level bureaucrats in interpreting and implementing international refugee law (eg. Jeffries 2021)

This article builds on this existing scholarship to focus more squarely on empirical approaches to studying the influence of politics on domestic law and policy making by the legislative and executive arms of government. The aim is to showcase existing empirical research in this area and to identify a number of priority areas that would benefit from further empirical study. While we do not propose or advocate for specific protection-orientated reforms, we argue that building more detailed picture of the domestic refugee law and policy making process will enable refugee law scholars and other actors to better advocate for the implementation of such reforms.

Empirical Refugee Law Research: Challenges, Risks and Limitations

We acknowledge the challenges refugee law scholars face when undertaking empirical research. There is the absence of a strong tradition of empirical research in this field, and legal scholars generally lack training and experience in carrying out such research. Yet, there is no need to reinvent the wheel. Legal scholars could draw upon the existing body of empirical research in this area from other disciplines, and the other contributions in this special issue showcase the possibilities of incorporating methods and approaches from political science, anthropology, sociology, and psychology and data science in refugee legal scholarship. Additional guidance could also be drawn from the field of empirical legal studies, and in particular empirical international legal scholarship (see, e.g. Shaffer and Ginsburg 2012), as well as the data-driven approaches to studying judicial and administrative refugee decision-making discussed above. Legal scholars do not need to undertake this work alone, and could

¹ That is not to say that these constraints are always respected in practice. However, the lengths that governments go to in justifying their policies as complying with their international obligations shows that those obligations still have a significant impact on domestic policy making (Gammeltoft-Hansen 2014, Ghezelbash 2020).

collaborate with researchers from disciplines with stronger empirical traditions to design and carry out the types of research we propose.

In making the case for more empirical research, the intention is not to devalue non-empirical research, or argue for the inherent superiority of empirical approaches. Nor do we propose a binary approach to categories research as empirical or non-empirical. Indeed, much of the research surveyed below, and proposals for further research combine empirical and non-empirical approaches. Rather, the focus here is on how more empirical research could complement and validate existing empirical, doctrinal, normative and theoretical research in this space. There has been an unhelpful tendency to couch empirical work as somehow more definitive or superior to other research methodologies, glossing over shortcomings in research design and execution. These shortcomings have been highlighted through the ongoing replication crisis, which has shown that the results of many medical, psychology, natural science and social science empirical research findings have been difficult or impossible to replicate (Ioannidis 2005). Similar issues around replication have been documented in relation to empirical legal scholarship (Chin and Zeiler 2021), and there is helpful practical guidance available for legal scholars to ensure the quality and replicability of empirical legal research (Chin et al 2021). This includes the need for pre-registration of studies on online platforms, and transparency around data, analytic code, and other materials such as interview protocols and scripts (Chin et al 2021).

There is also the need to be aware of and address the unique ethical issues that arise in relation to empirical research in the refugee context. On the one hand is the need to include, amplify and complement the voices and views of refugee and asylum seekers themselves, including through co-produced research. On the other hand, this must be done in a way that recognises and mitigates the risks involved for participants and collaborators. Particular care must be taken to avoid re-traumatisation and manage legal precarity and power asymmetries (Clark-Kazak 2021). Again, there are useful practical guidance available to for scholars, including the code of ethics developed by the International Association for the Study of Forced Migration (IASFM) (2018) and Guidelines for Co-Produced Research with Refugees and Other People with Lived Experience of Displacement (Harley and Wazefadost, 2023).

Institutions, Actors and Processes

Understanding the institutions, actors and processes involved in domestic refugee and asylum policy making is critical to influencing law reform and policy change. Such an understanding is important for advocating for progressive law reform, as well as for resisting the adoption of restrictive practices. In addition to providing insights into effective advocacy strategies, empirical research into the institutions, actors and policy making processes could also test and validate some of the claims and assumptions made in the normative literature on the politics of refugee law. For example, this form of research could test the warning by critical scholars that ‘solution orientated’ input from refugee lawyers is likely to be corrupted in the ensuing political process (Byrne and Gammeltoft-Hansen, 2020, p. 184).

There is a rich and longstanding body of interdisciplinary social science scholarship aimed at understanding the politics of immigration control policies. This work draws on approaches from political science, comparative politics, international relations, sociology, anthropology, ethnography and psychology.² This literature identifies a variety of factors which influence domestic immigration

² For an overview of these theoretical approaches, see Meyers 2000; Boswell 2007; Castles 2004; and Natter 2018 for a critique of the global north bias of this literature.

policy, including public opinion, socio-economic forces, culture, foreign policy and international relations considerations, the impact of international law, and the role of state institutions, and the influence of the laws and policies of other jurisdictions. While providing some very valuable insights – this work has a number of limitations when it comes to its application in the context of informing protection-orientated refugee law reform advocacy. First, much of the work examines refugee and asylum policy in the broader context of immigration control measures— perhaps missing some of the idiosyncratic characteristics specific to asylum and refugee policy making. Second, there remains more work to be done in terms of testing the validity of these theories in the context of asylum and refugee policy making in specific jurisdictions through empirical research.

In the remainder of this section, we set out a number of domains of empirical inquiry into the politics and dynamics of how domestic refugee law and policy is made that could assist scholars to more effectively progress reform proposals. The focus is on understanding the practice of actors and institutions involved in refugee law and policy making, and their interaction at a domestic and international level.

Empirical qualitative research can take an ‘actor-centred’ approach, identifying key players involved in refugee law and policy making, and understand their values and motivations. For example, David Palmer documents the values that have guided asylum policy decisions in Australia through interviews with political leaders and senior public servants (2008). Laurent Bernhard and David Kaufmann have examined the values and approaches of both policy makers and advocacy organisations involved in modifications to Swiss Asylum Law in 2013 (Bernhard and Kaufmann 2018). Such work is important to facilitating constructive dialogue between refugee advocates and governments, creating a shared vocabulary, and allowing advocates to craft protection-orientated policy reform proposals that meet needs and imperatives of policy makers.

Integrating ethnographic methods and perspectives can enhance such research, providing deeper and more nuanced insights. Initially developed and applied by anthropologists, ethnographic approaches are increasingly being utilised by scholars in other disciplines. In her contribution to this special issue, Maja Janmyr’s provides an excellent introduction to the application of ethnographic approaches in the context of international refugee law. She defines ethnography a ‘distinctive method of research that involves in-depth, case-orientated study, including long-term field work and open-ended, often narrative-orientated interviews’ (2022: 3) Janmyr has applied such an approach to examining Lebanon’s resistance to ratifying the 1951 Refugee Convention and Protocol draws on extensive fieldwork interviewing key informants from government agencies, NGOs and the UN (2017).

As Janmyr notes, the value of the ethnographic approach in the refugee law context not only lies in its methods, but also its perspectives on questions of power, knowledge, reflexivity and subjectivity. This includes a commitment to engaging with and amplifying the voices of refugees and asylum seekers and promoting their agency. In this regard more work can be done in terms including the perspectives of refugees and asylum seekers in future research on the dynamics of the refugee policy making process, and recognising the important role they play as users and makers of refugee law. (Janmyr 2023; Harley 2021). A notable existing example of such an approach is Kelsey Norman’s study of migration and asylum policy making in Egypt, Morocco and Turkey, which not only captures the views of elite policy makers, but also the experience of refugees and migrants (Norman 2019).

This actor centred approach could also provide valuable insights into tracing the process and networks through which asylum and refugee policies spread across jurisdictions. For example, Daniel Ghezlbash documents the policy making process through which the policies of mandatory detention, maritime interdiction and extraterritorial processing spread between the United States and Australia

(2018). Interviews with key policy makers were used to test and validate the explanations in the legal (eg Twining, 2011), public policy (eg Dolowitz and Marsh, 1996), and international relations literature (eg Braun and Gilardi 2006) on how policies spread across jurisdictions. The interviews identified the forums and networks through which policy makers exchange ideas, and the relative importance of these different forums for facilitating transfers. For example, interview respondents noted that formal forums hosted by international institutions such as UNHCR and IOM were not suitable for the frank discussions that inform the transfer of policy ideas. Rather, such transfers more often occurred through informal bilateral talks, or smaller informal multi-lateral meetings (Ghezelbash, 2018, p. 47). The fact that these discussions are taking place behind closed doors means that refugee lawyers and other stakeholders are kept in the dark about the ideas exchanged and the evidence provided backing the supposed success of particular policies. This further underscores the importance and need for speaking directly with the policy makers to get insights into this important and otherwise undocumented aspect of the policy making process (Ghezelbash, 2018, p 18). These insights can in turn inform advocacy strategies for counter-acting the further diffusion of restrictive policies around the globe, as well as providing opportunities to advocate and support the diffusion of best-practice protection-orientated reforms.

Institutions play an important role in shaping and responding to calls for asylum and refugee law reform. In her contribution to this special issue, Rebecca Hamlin provides a comprehensive overview of the utility of the institutional approach to studying refugee protection, noting that '[t]he ideals of international refugee law must be implemented in practice by people on the ground, and those people are embedded in institutions' (Hamlin 2022). Hamlin defines the institutional approach as 'a method of social scientific research that places the institution at the centre of the study by assuming that institutions shape and constrain individual interests and behaviour' (Hamlin 2022). The approach often combines an examination of formal legal rules with ethnographic fieldwork to understand how informal agency culture that helps shape outcomes. The institutional approach has been applied in numerous domains of inquiry relating to refugee protection. These include refugee status determination procedures (Hamlin 2014, 2022) and the dynamics of the UNHCR (Kennedy 1986, Hamlin 2022), and to identify factors which explain divergent responses to refugee protection across states (Betts 2013; Abdelaaty 2021).

Yet there have been few attempts to apply the institutional approach to understand the intricacies of domestic refugee law and policy making, and in particular, how domestic institutions respond to, internalise, or push-back against protection-oriented refugee and asylum policy reform proposals. Grounded, empirical research identifying the policy decision-making and law making structure in specific jurisdictions, and the policy framings which fit within existing institutional cultures would create a valuable evidence base for effective law and policy reform advocacy. There is also scope for triangulating qualitative data from interviews, with quantitative data on the policy making process and outcomes. For example, Lamis Abdelaaty's research into the institutions responsible for implementing refugee policy in Egypt, Turkey and Kenya, combines interviews with policy makers with quantitative data on asylum admissions and content analysis of parliamentary proceedings (2021).

More work could also be done in relation to the interactions between domestic and international institutions. UNHCR, for example, has played an important role in engaging with domestic institutions to advocate for protection orientated reforms. UNHCR has undertaken empirical evaluations of the effectiveness of this engagement in a number of key thematic areas (see, e.g. O'Neil and Emerson-Keeler 2019; Majewski et al 2021; Zetter et al 2022). This could be complemented with more empirical research on how inter-institutional dynamics have played out in specific contexts, and identifying effective strategies for engaging with specific domestic institutions.

The focus need not only be on understanding how institutions operate today – but could also draw valuable insights on how law and policy change has occurred in the past. Using approaches from historical institutionalism, future research could focus on understanding the ‘critical junctures’ that have occurred in the past that have made stable institutions more open to new policy approaches (Hamlin 2022, Thelen 1999). This could inform the timing for running effective law and policy reform campaigns, or perhaps in some circumstances, efforts to recreate the external shocks or pressures which facilitated earlier shifts in policy.

Further qualitative and quantitative empirical research into the actors, processes and institutions involved in refugee and asylum policy making and the points in the process where advocates are most likely to be able to influence decision-making, will allow refugee lawyers and advocacy groups to use their limited time and resources more efficiently and effectively.

Impact of Refugee Laws and Policies in Practice

Empirical research evaluating the impact and success (or failure) of refugee and asylum policies can provide a valuable evidence base for reform advocacy. Evidence that a policy is not only harmful, but also failing to meet the government’s own stated objectives can be a powerful advocacy tool. While there has been some important empirical work documenting the impact of restrictive policies on asylum seekers and refugees (see, eg. Costello and Kaytaz, 2013), there is scope for more research evaluating whether policies are successful in meeting their intended goals from the perspective of the governments. Gathering and analysing such data is not straight forward. In our experience of conducting such research we have drawn on everything from published statistics, computational methods to scrape data from legal decisions, freedom of information requests and qualitative interviews with stakeholders. It is also often unclear what success means in a particular context. In this section, we set out an interdisciplinary framework that could assist in guiding attempts to evaluate various dimensions of refugee and asylum policy success. We then discuss existing research and challenges to measuring success and policy impact in the refugee and asylum policy space, and explore avenues for potential future research.

Public policy scholars have identified a number of different dimensions from which policy success can be evaluated. The so-called revisionist approach to evaluation recognised the need to combine a rationalistic measurement of the impact of the policy in practice, with broader constructivist analysis which captures political considerations. Bovens, t’Hart and Peters thus identify two dimensions to measuring policy success. The first is the *programmatic* dimension which focuses ‘on the effectiveness, efficiency and resilience of the specific policies being evaluated (Bovens, t’Hart and Peters, 2001, p. 20). The second is the *political* dimension referring ‘to the way policies and policymakers become evaluated in the political arena’ (Bovens, t’Hart and Peters, 2001, p. 20). Building on the revisionist approach, Marsh and McConnell argue for the need to consider a third dimension of *process* success, which focuses on the quality and legitimacy of the process through which a policy was developed (Marsh and McConnell, 2010). While providing a comprehensive overview of the various dimensions of policy making, we argue that these approaches do not pay sufficient attention to the role of the law as the key avenue for policy implementation. We thus propose *legal success* as a fourth dimension for evaluating policy success. This can be measured by evaluating whether the law or policy survives judicial challenges in domestic, supranational or international courts or tribunals (Ghezelbash 2018). For example, legal failure will occur when there is judicial finding that a law or policy is unlawful, or where the judiciary adopts an interpretation of the provisions which frustrates the intentions of the government in introducing the laws in question. While we advocate for legal success being a discreet dimension warranting separate analysis, we do note the close connection this dimension of success has with those identified in the public policy

literature. For example, *legal* failure in the form of a law or policy being struck down by the courts will obviously impact on whether a policy can meet its *programmatic* goals.

While the four dimensions for measuring success identified above are connected, assessments from these different perspectives may yield different results. For example, you could have a policy that is introduced without meaningful consultation and is inefficient and ineffective at achieving its policy goals, yet is politically popular and survives judicial challenges. In this instance there would be different views regarding success, depending on what dimension the focus of analysis is on.

It is not surprising that the legal literature has focused on the legal dimension of success (although it is rarely expressly stated in such terms). Examining the ways that courts and supra-national bodies have dealt with laws and policies is at the core of positivist doctrinal legal research. However, this narrow framing on legal success will only paint a partial picture. For example, in *Refuge Lost*, Ghezelbash focuses on legal success when assessing the transfer of policies of mandatory detention, offshore processing and boat push-backs in Australia and the US. The findings from that perspective were dissatisfying to the extent that these policies could be viewed as a success from the government's perspective, having survived a series of judicial challenges in the respective jurisdictions.

In contrast, the social science scholarship has tended to focus on the *programmatic* success of refugee policies. In particular, there is a rich and growing body of scholarship focusing on the degree to which restrictive policies are successful in their goal of deterring asylum seekers. Some of this work has focused on examining the experience of a single state (see, eg. Holzer, Schneider and Widmer, 2000, focusing on Switzerland). Others have adopted a comparative approach that evaluates the impact of deterrence policies across a number of different jurisdictions. These often draw on econometric methods and multivariate analysis in an effort to address the issue of causation and the relative impact of policy changes and other relevant economic and social variables, and so called 'push' factors in source countries. These studies have adopted different approaches to identifying relevant policy variables. Some have relied on average asylum acceptance rates as a proxy for deterrence, finding mixed results as to whether higher refusal rates reduce asylum flows (Neumayer 2004; Toshkov 2014). Others have relied on composite indices capturing a wide variety of asylum policies and deterrent measures, finding that some forms of deterrent measures to have a modest deterrent effect, but others did not (Thielemann 2006; Hatton 2009). One limitation of this existing research is that it almost exclusively focuses on Europe and other states of the Global North, and seldom explores how these dynamics play out in the states of the Global South which host the vast majority of the world's refugees. One notable exception to this is Abdelaaty's comprehensive study covering 64 destination countries from around the globe (2022). Rather than focusing on specific policies, Abdelaaty focused on the degree to which states provided four core refugee rights – finding that deportation, detention and encampment were not associated with decrease in refugee arrivals or application, and a potential small impact of restrictions on work rights.

There are opportunities however, to evaluate other forms of programmatic success, beyond deterrence. For example, we are currently undertaking a project evaluating whether fast-track and accelerated asylum procedures succeed in their goal of speeding up the refugee status determination process – examining case studies from Australia, Canada, and Switzerland.³ What follows are some

³ 'Balancing Fairness and Efficiency in the Asylum Process: Comparing and Evaluating Fast-Track Procedures in Australia, Canada and Switzerland', Australian Research Council Discovery Early Career Research Award, DE220101189.

reflections on some further methodological challenges in relation this form of empirical research into programmatic success.

First, in addition to identifying the dimension of success being examined, it is also necessary to be clear on defining *success for whom* (Marsh and McConnell, 2010). Success lies in the eyes of the beholder. There are likely always going to be competing interests and divergence of views as to whether or not a particular policy is successful (Nelken, 2001, p. 48). For example, the interests and perspectives of asylum seekers, lawyers, advocates, and policy makers will almost always diverge. These groups are also not monolithic and there will be a divergence of views within each of these groups as well. These issues are exacerbated in the context of inter-state policy making at a regional and international level, where we are even more likely to see competing interests and power asymmetries at play. As such, it is vital to be clear about which perspective is being assessed and to also acknowledge and highlight perspectives that are not considered.

One solution to this challenge is to measure success against the official stated purpose put forward by the government in public documents. For example, in our project on fast-track procedures, we pay particular attention to the governments stated goal of increasing the efficiency of the refugee status determination process. While we acknowledge there will likely be other political and programmatic goals that are unsaid, our view is that holding governments accountable against their own publicly stated goals has the greatest likelihood of success in the context of policy reform advocacy. However, as we discuss further below, the danger of this approach is that other perspectives are sidelined. Where possible, a multi-dimensional approach is preferable, which captures and evaluates success for various stakeholders, including refugees and asylum seekers.

Second, identifying causal effect of a policy in circumstances where there are numerous other independent variables such as overlapping policies, media influences and economic forces can also be a complex task (Marsh and McConnell, 2010, p. 581; Zetter et al 2003, p. xi). This could in part be overcome through robust interdisciplinary empirical research methods, and multivariate statistical modelling and analysis (as demonstrated in a number of the studies discussed above evaluating the success of deterrent measures). This could be informed with lessons from the ‘credibility revolution’ that taken place across many fields of the social science (Angrist and Pischke 2010), which have led to significant progress in terms of credibly identifying causal effects of laws and policies (Cope 2022). Moreover, even where it is not possible to demonstrate causality, and control for all possible variables, well designed studies using econometrics and/or multivariate analysis can identify demonstrate highly probable inferences as to the impact of specific policies (Cope 2022). Our view is that such empirically grounded inferences (which may fall short of conclusively demonstrating causality), coupled with nuanced analysis could nonetheless greatly contribute to building an empirical evidence base for reform advocacy proposals.

Third, is the absence of reliable and comprehensive outcomes data. Many governments around the world appear reluctant to collect and disseminate statistical data that may be used to scrutinise the impact of their asylum policies in practice. Where such data does exist, there are concerns around consistency and accuracy. For example, the studies evaluating deterrent policies outlined above focus on the number of asylum applications, refugee arrivals, or a combination of both. Yet, as Abdelaaty notes, published government statistics are rarely entirely accurate and the quality can vary significantly across different jurisdictions (2022). Innovative approaches to collating data could be used to both verify official public data, and fill the gap where no such data exists. For example, in our research on assessing the efficiency of fast-track procedures in Australia, we addressed the lack of published data on the time taken to finalise applications across the various stages of the asylum

process, by using computational methods to extract the required data points from cases published by the courts.

In addition to getting more creative in terms of obtaining relevant quantitative outcome data, there are opportunities for better integrating quantitative and qualitative research when measuring programmatic success. Interviewing key informants such as policy and decision-makers provides an opportunity to validate and contextualise the quantitative data on policy impact. Zetter et al used this approach to draw valuable additional insights in their study of the success of deterrent measures in the European context (2003). Moreover, while we argue that measuring *programmatic* success from the government's perspective may be the most persuasive for the purpose of law and policy reform advocacy – this should be complemented with empirical research capturing the perspectives of other stakeholders, particular of asylum seekers and refugees themselves. Again, this is a task we take up in our research on fast-track procedures, where we are capturing qualitative data on the lived experience of refugees and asylum seekers which go through the process, to provide a more multi-dimensional evaluation of the impact of such policies beyond the government's stated goals of efficiency.

While we have so far focused on methods to evaluate the programmatic and legal impact of asylum and refugee policies, interdisciplinary approaches have an equally important role to play in terms of providing input into how policies are assessed in the political arena (*political success*). Such inquiries are intimately connected to the type of interdisciplinary analysis discussed in the first section on the political conditions behind the law and policy making process. As already noted, the literature on the politics on immigration and asylum control measures identifies public opinion as one of the key influences of policy making (see, eg. Freeman 1995, Hamlin 2021). The adoption of restrictive asylum policies by governments are often motivated by a belief that such policies are popular in the electorate. Empirical data that specific policies are in fact, unpopular with the electorate, or that protection-oriented reforms are electorally popular, could add an additional layer of evidence to support effective law and policy reform advocacy. In terms of the harm and effectiveness of policies in action, the role of refugee law scholars is limited to measuring and documenting this impact. However, in relation to public opinion, we argue that refugee law scholars should not only be gathering data on public opinion, but also taking an active role in building public support for protection-oriented law reform. The following section discusses approaches to building an empirical evidence base to inform such public advocacy.

Understanding and Influencing Public Opinion

Restrictive asylum policies are often introduced because governments believe that they are popular with the electorate and may increase their chances of re-election. At the same time, securing and/or demonstrating public support for more progressive asylum policies can place pressure on governments to adopt more humane refugee and asylum policies (Trowbridge, 2019). There is a growing body of research around the globe measuring public opinion on migration and refugee issues (e.g. Lowy Institute, 2021; Gallup, 2019 and Heath et al., 2016). There have also been a number of studies on the factors that correlate with public support for more open asylum policies in particular states, including ethnic diversity (Steele and Abdelaaty 2019), beliefs as to potential threats to society and humanitarian need of arrivals (von Hermann and Neumann 2019), and the way asylum seekers and refugees are portrayed in domestic media coverage.⁴ There have, however, been few attempts to undertake empirical research on what is effective in *influencing* public opinion and building support for protection-oriented reform. It is not possible to draw causal inferences on this point from the observational style studies outlined above. It is thus necessary to explore new research methods

⁴ For a summary of this research, see Hamlin 2021.

capable of identifying what is effective (and what is not) when it comes to building public support for protection-orientated asylum reform. One such approach is the use of experimental methods.

Experimental design allows researchers to explore how different message framings affect public support for specific policies. Recent years have seen an increase in such studies undertaken across the fields of international relations, political science and behavioural psychology. Using a randomised controlled trial methodology, such studies are capable of providing causal evidence for what message framing are effective in shifting public opinion. While experiments of this nature lack some degree of external validity, the intention is that the results of such studies can inform further research and replication in real world environments.

Recent years have seen a significant number of experimental studies being undertaken in relation to how different forms of message framing can influence attitudes to immigration. A recent review identified 68 separate experimental studies, and found that approaches such as appealing to common interests rather than self-interest, appealing to conformity rather than diversity, and appealing to common ground, or empathy were consistently shown to be effective (Dennison 2022). Yet, given the focus of these studies on attitudes to immigration more broadly, it is unclear to what degree these findings would hold true in relation to attitudes towards refugee protection orientated reforms.

A separate body of experimental studies from the field of international relations have focused on the degree to which international law can influence public opinion.⁵ These survey experiments typically ask respondents about their support for a policy, while randomly assigning some respondents with additional information setting out how those policies violate specific provisions of international law. Such studies have found that messaging around compliance with international law does impact public opinion in certain contexts, including with regards to the use of torture (Wallace 2013) and the laws of war (Chilton 2015). However, experimental studies in the refugee law context have had mixed results. For example, Strezhnev, Simmons and Kim examined the effectiveness of appealing to obligations under international law on public support for restrictive asylum policies (2019). Drawing on experimental data from Australia, India and the United States, they found appeals to international law had a small persuasive effect. In another study, Sheppard and von Stein found that Australian's strongly opposed laws that were framed as violating international law, yet the effect of this framing in terms of increasing the willingness of respondents to take action to change the laws was at much more modest (2022). Cope and Crabtree's survey experiment in Turkey found that messages framed around obligations under international law were not only ineffective in building public support for accepting refugees, but resulted in a 'backfire effect', decreasing support (2020). A subsequent survey experiment by Cope and Crabtree in the United States found that framing the former US policy of separating migrant families as violating international law had no effect in shifting support for the policy (2022).

Another intervention that has shown promise involves providing information which addresses public misconceptions around refugee policies. A recent experimental study in the United States by Thorson and Abdelaaty found that correcting information about existing refugee policies, such as the refugee admission process, substantially increased support for refugees (2022). However, providing corrective information about policy outcomes, such as what proportion of US residents are refugees and how many have been convicted of terrorism related offences was not effective.

⁵ These have generally been undertaken in the context of evaluating treaty effectiveness, based on an assumption that public opinion is central to effective implementation of international law obligations (Simmons 2009; Cope 2022).

Other studies have used a Facebook experimental design to similarly evaluate the effectiveness of different framings in mobilising public support for refugees. These involve using Facebook's split test feature that allows advertisers to assign different ads randomly to different 'audiences' of Facebook profiles and to compare the relative effectiveness of the different ads in leading to engagement. Claire Adida et al used such an approach to test whether narratives of refugees assisting with COVID-19 related relief could boost public engagement (Adida et al 2021), but found the intervention to be ineffective.

This is an area where further experimental research exploring the effectiveness of other message framings would be valuable. Much of the literature examined thus far was aimed at measuring levels of support for refugees generally, or existing refugee policies. As Sheppard and von Stein study indicates, influencing public opinion on existing policies, does not necessarily translate to support for taking action to change those policies. In order for experimental studies to best support effective law reform strategies, a more direct focus on the effect of different message framings in mobilising support for specific reform proposals is required.

To this end, we were involved in two recent (and yet unpublished) experimental studies in the Australian context that draw on the growing behavioural psychology literature on the effectiveness of how different moral and non-moral framings can influence public support for reform proposals. The first experiment drew inspiration from research in the climate change (Myers et al 2012) and environmental policy space (Hurst and Stern, 2020) which had shown that messages framed in terms of 'intrinsic' rather than 'extrinsic' values were more effective in garnering support for progressive law and policy reform proposals.⁶ The distinction is drawn from Deci and Ryan's Self-Determination Theory of Motivations (Deci and Ryan, 1985). Intrinsic motivation comes from within and is founded on individual's core values and personal sense of morality. Extrinsic motivation is based on external sources, including things such as financial considerations. The study involved carrying out an online survey with a representative sample of the Australian voting public. Respondents were all provided with the same proposal for ending Australia's offshore processing policies. Certain respondents were randomly assigned additional information framed using intrinsic values, or extrinsic values, or a combination of both framings. Our experimental data revealed that none of the framings had a statistically significant effect on participants' level of support for the law reform proposal. This null result was nonetheless significant. The vast majority of public advocacy campaigns in Australia in recent years had adopted either an intrinsic or extrinsic framing (or sometimes a combination of both). The findings from the study indicate that these existing strategies need to be revisited, and new framings explored.

The second experiment took a different approach to moral framing, drawing on moral foundations theory (Graham, Haidt and Nosek 2009). This theory proposes that there are five universal values from which our understanding of right and wrong are sourced (care/harm, fairness/cheating, loyalty/betrayal, authority/subversion and liberty/oppression). The experiment tested whether framing a proposal to provide a pathway to permanent residency for refugees on temporary protection visas using these universal values would influence public support for such a reform. The control stimulus provided facts about the temporary protection visa policy. Half the respondents were provided with additional moral framings appealing to all five of the universal values identified in moral foundations theory. The study demonstrated that the additional value framing led to a small, but statistically significant increase for support for the reform proposal.

⁶ The study was led by an interdisciplinary team, including Daniel Ghezelbash (Law, UNSW); Robert Ross (Psychology, Macquarie University); Saul Wodak & Ravi Dutta-Powell (Behavioural Insights Team)

One of the benefits of experimental studies is the possibility of identifying the impact of specific message framings on particular segments of the population, say based on their voting preferences, whether they self-identify as having progressive or conservative political views, or other social or demographic characteristics. Interestingly, the findings from our first study discussed above did not reveal any statistically significant differences in the effectiveness the intrinsic or extrinsic message framings based on such variables. However, in the second study, the use of moral framings was most effective with respect to people who self-identified as belonging to the political centre. Cope and Crabtree's study in Turkey revealed that that the backfire effect they identified in relation to framings around international obligations was more pronounced amongst supporters of the incumbent AKP party and those with lower educational qualifications (2020). There is great value in future research which provides deeper insights into how different segments of the population respond to specific message framings. It makes sense that tailored messages for specific groups would be more effective than a one size fits all approach.⁷ A deeper understanding of these dynamics and an evidence base for crafting more tailored messages for specific groups has the potential to significantly increase the effectiveness of public advocacy campaigns in relation to asylum and refugee law and policy reform. Given that public support is crucial for creating pressure for policy reform, it is our view that such research should be a top priority for refugee lawyers and advocates interested in effecting protection-orientated policy change.

Conclusion

In this article, we have provided an overview of various avenues of empirical research, which could provide a more robust evidence base for protection-orientated refugee policy reform advocacy. Refugee law and policy is shaped by individual actors, operating within specific institutional frameworks. Identifying key actors, their motivations and values, and the broader culture and values of the institutions in which they work, and the policy networks which influence them, could allow advocates to craft more effective and targeted reform proposals. These proposals could also benefit from more robust empirical data on the impact of policies in practice. Evidence that existing policies are not only harmful, but also not meeting their goals across a variety of the dimensions of success we identify, could greatly boost the effectiveness of reform proposals. Given the close nexus between public opinion and government policy, we argue that advocates for reform should not only be targeting policy makers, but also focus on building public support for their reform proposals. The effectiveness of this form of public advocacy would be greatly improved with experimental studies that provide an empirical foundation for the types of message framings that are effective building public support in specific jurisdictions.

The various examples of empirical research into asylum and refugee policy making we have discussed are by no means exhaustive. But the hope is that the methods and approaches we discuss may inform and inspire further empirical research into other aspects of the refugee policy making and law reform. Future studies could also take a more direct approach to reform advocacy – evaluating specific campaigns, particularly those that have been successful in contributing to progressive law reform, to identify patterns and draw lessons that could inform future strategies. Again, here there is a wealth of normative research to draw upon that generally advocates for a multi-pronged approach that involves strategic litigation in domestic and supra-national courts, political lobbying and public advocacy (see, eg. Tan and Gammeltoft-Hansen, 2020; Ghezlbash and Tan, 2020). Yet there have

⁷ Moral foundations theory, for example, posits that conservative and progressive voters are persuaded by distinct moral framings: Graham, Haidt and Nosek, 2009; Hurst and Stern, 2020.

been few attempts at carrying out empirical studies of specific campaigns to validate these assumptions.⁸

As we have discussed, in addition to informing reform efforts, empirical research could also test the assumptions that underpin the normative and theoretical work on the politics of asylum and refugee law and policy making (and also validate the findings from existing empirical research). This existing work spans numerous disciplines, including law, political science, comparative politics, international relations, anthropology, sociology and psychology. While there is a rich tradition of interdisciplinary work across the social sciences, more work can be done to further integrate legal scholarship with the broader interdisciplinary research in this space.

⁸ For notable exceptions to this, see Jackson 2020, Dastyari 2018.

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