Assembling an International Social Protection for the Migrant: Juridical Categorization in ILO Migration Standards, 1919-1939

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Initiatives to formalize and institutionalize global migration governance have become a familiar topic on the agenda of international lawmaking bodies over the past twenty-five years, contributing to and shaped by the ascendency of migration-related issues on the political agendas of many countries. The International Labour Organization (ILO) has been among the various actors engaged in these efforts to govern migration as a global phenomenon, and it has had some success in injecting its decent work agenda into emerging migration governance frameworks (Piper, 2017). Indeed, observers highlight the global and world-spanning perspective developed in ILO initiatives which seek to integrate migration-related international labor standards into an emerging global migration governance regime (Amaya-Castro, 2012). This embrace of abstracted, globally-scaled categories has been identified as a key feature of "global migration governance" as a contemporary policy discourse operating across intergovernmental organizations. Proponents of these initiatives have focused on the potential of global standardization to inspire greater coherence across national migration policies (Bhagwati, 1992), while critical scholarship emphasizes the technocratic and top-down tendencies of this discourse (Geiger and Pecoud, 2014; Geiger and Pecoud, 2010).

At the same time that both proponents and critics of global migration governance have focused on discursive standardization, scholars of international law and international organizations describe the defining features of this normative regime as fragmentation and

differentiation. Indeed, to the extent that a juridical field of "international migration law" can be said to exist, it is a field viewed by doctrinal specialists as deeply fragmented[i] and too diffuse to permit a single normative edifice. This fragmentation is seen to manifest itself in contested rules and plural normative frames that potentially authorize different institutional programs and paradigms for action across specialized treaty regimes for migrant labor, human trafficking, and refugees (Spiro, 2017; Thomas, 2011). Most recently, the differing programs of action articulated in the Global Migration Compact and the Global Refugee Compact have been presented as exemplifying a further institutionalization of fragmented global migration governance (Kaintz et al., 2020). This regime composed of differentiated categories and normative frameworks – what one influential commentator has termed "substance without architecture" – might be optimistically conceptualized as responding to the differing sites and forms of human mobility (Aleinikoff, 2007: 479). Yet other legal commentators express concerns that normative divergence across regimes, particularly in terms of their underlying normative ethos, may result in a slicing-up of human rights that fails to reflect and respond to the lived experiences of migrants (Ramji-Nogales, 2017) or that allows security-centered frameworks in practice to crowd out frameworks more protective of migrant rights (Thomas, 2011)

While they thus have notably different emphases, both debates over global migration governance's technocratic tendencies and analyses of its fragmented normative architecture have tended to approach their object of study as a relatively recent development. It is the regime of post-WWII international and regional organizations that features most prominently in discussions of "global" migration governance (Freitas, 2013), and it is the post-WWII corpus of law-making treaties that is conventionally recognized as generating the fragmented normative basis for "international" migration law (Dehm, 2015). The implicit timeline for the regime's

expansion and formalization is one that begins in the latter half of the twentieth century, with particular attention devoted to the post-Cold War period. Yet the drawback of this focus on the contemporary international order is that it overlooks the extent to which the impulse to develop "universal" standards for human mobility has a significantly longer timeline. Exploring how normative categories and conceptual frameworks have shifted over a longer time-span is particularly useful for calling into question overly simplistic analyses of the contemporary global migration governance regime that present its particular normative architecture as functionally determined.

To foreground the constructed nature of these normative categories, this article applies a history of knowledge perspective to interwar ILO initiatives to produce generalized international instruments for governing migrant labor. Although the culmination of these efforts, the ILO Migration for Employment Convention of 1939, never entered into force due to insufficient ratification, tracing its history sheds light on contingent processes of category construction at the core of international knowledge making both historically and today. For this reason, these historical ILO initiatives therefore merit more sustained and detailed treatment than they have thus far received in existing organizational histories (Hasenau, 1991; Bohning, 1991). By closely examining what it meant in the interwar context to adopt a "universal" perspective and to devise "a common law of the emigrant," while also highlighting the underlying notions of equivalence and exclusion that informed these standard-setting discussions, my analysis aims to offer a richer and more historically informed account of what it means to govern human mobility through abstracted and universal norms.

Conceptual Framework: How Juridical Categorization Assembles Global Social Policy

My account of the interwar ILO's standard-setting initiatives approaches global social policymaking through a perspective that highlights the knowledge making processes through which social categories are assembled at a global scale. The construction of categories for approaching the "social question" has been a central theme in the historiography of international social policymaking in the late 19th and early 20th centuries. Perhaps most significantly, the problem of "unemployment" had to be invented and popularized before a common program could be formulated to standardize policy responses cross-nationally (Topalov, 1994). The production of public knowledge – books, pamphlets, and conference reports – was central to the process by which amorphous categories such as "social progress," "social economy," and "social protection" came to operate as a common-sense repertoire for transnational reform networks during this period (Rodgers, 2009). And this common language provided the basis for a distinctive internationalized social politics aiming to address apparently comparable problems across diverse regulatory contexts, a project in which the ILO featured prominently (Van Daele, 2005; Sauthier, 2013; Kott, 2012).

For advancing this progressive aspiration to devise social policy frameworks with universal regulatory reach, recent historical studies suggest that technologies of formalization and abstraction have been particularly significant. These historical accounts build on scholarship in the history of science which foregrounds the role of positivist science in assembling elements from different spaces and times into "universal" cartographies, statistical classifications, and other global frameworks of analysis that potentially can be enrolled into a world-spanning regulatory projects (Latour, 1990; Desrosières, 1998). With respect to the ILO and its contribution to global social policymaking, techniques of statistical categorization have been

shown to play a particularly important role. As a mode of making things objective, statistical techniques served to "anchor general categories such as gender and work into organizational structures like those of the ILO" (Wobbe and Renard, 2017: 345). Indeed, the creation of the ILO as a platform for international social policymaking after the First World War propelled a fundamental reworking of an existing systems of classification previously rooted in the specificities of national or imperial policy spaces, a process of knowledge making in which statistical specialists were deeply involved (Kevonian, 2005; Stricker, 2019).

Juridical techniques offer a similarly fruitful site for examining how technologies of categorization historically constructed global social policy. Recent studies have shown how ostensibly "scientific" juridical practices such as casuistry and conventions of international treaty drafting were deeply implicated in the construction of interwar international law frameworks (Wheatley, 2017; Mallard and Sgard, 2016). The historical construction of international migration law during the early 20th century has likewise attracted renewed interest from scholars of international law (Mégret, 2021; Szabla 2021). With relatively less emphasis on doctrinal development, studies of global history have highlighted how transnational regulatory frameworks for governing human mobility during this period built upon distinctions between immigrant laborers and foreign merchants (McKeown, 2008) and between "free" and "unfree" recruited labor (Mongia, 2018; Ngai, 2015; Cooper 2000; Gabaccia, 1997) that operated to cement perceived differences. Yet scholars have only begun to unpack the variety of formalized classifications that allowed expanding human mobility in the late 19th and early 20th centuries to be conceptualized as a specific subject of globalized policymaking.

Building on this body of scholarship examining the history of global law and policy through techniques of knowledge making, I focus on how processes formalizing commonality

and difference operated in interwar ILO migration standard-setting. In terms of the assemblage of commonality, I trace the International Labour Office's efforts starting in 1919 and continuing throughout the 1920s to depict labor migration as an appropriate subject for "universal" standards under existing international social law paradigms. In terms of the construction of difference, I examine the ILO's persistent efforts to sustain a juridical distinction that separated "migration for employment," tacitly associated with European labor migrants, from "native" or "indigenous" migratory labor. In what follows, I discuss each of these interwar categorization processes in turn, and then show how they were brought together at the end of this period through a juridical codification that represented both the culmination of an era of international social policymaking on migration and the final instantiation of its conceptual framework. The article's conclusion reflects on the relevance for scholarship on contemporary global migration governance of examining these processes through which categorical distinctions were historically constructed and reconstructed.

"A Common Law of the Emigrant"

The ILO's earliest migration-related standard-setting initiatives reflected both the existing importance of this issue for a number of the Organization's European constituents and the contemporaneous frameworks of bilateral reciprocity through which they tended to approach it. Although the ILO's founding constitution, the Labour Chapter of the Treaty of Versailles, includes only a vague reference to the principle of "protection of the interests of workers when employed in countries other than their own," the Peace Conference's Labour Commission had informally agreed that the treatment of foreign workers would be part of the First International Labour Conference's discussion of unemployment issues (Shotwell, 1934: 212). Seizing this

opening, French social reformer Max Lazard, who led the Washington Conference's organizing committee,[ii] placed emigration questions within a broader proposed program that sought to internationalize key tenets of reform socialism within France over the previous two decades. These included cementing the role of the state in recruiting foreign labor and advancing the principle of equality of treatment for national and foreign workers.[iii] Delegates at the Washington Conference were invited to endorse both the principle of equality of treatment for foreign and national workers in access to unemployment insurance systems (ILO Unemployment Convention, 1919 No. 2) and the principle that "recruiting of bodies of workers…should not be permitted except by mutual agreement between the countries interested and after consultation with employers and workers in each country in the industries concerned" (ILO Unemployment Recommendation, 1919, No.1).

The success at the 1919 Washington Conference of this social reform agenda reflected the support it enjoyed not only from French social reformers but also from other ILO constituents. In particular, the Italian government, which had itself pioneered a dirigiste emigration policy over the preceding two decades, found it advantageous to use ILO standards to safeguard state-supervised recruiting; France was a major destination for Italians working abroad, and a commitment to equality of treatment advanced Italy's own policy of *valorizzazione*, i.e. negotiating labor placements abroad to benefit the state (Ipsen, 1996). In addition, the international trade union movement, led by French trade unionist Léon Jouhaux, embraced state supervision of emigration, provided it was accompanied by labor consultation, and had adopted a platform of equality of treatment for national and foreign workers (Tosstorff, 2005).

The ILO represented a site for all of these groups to advance their policy agenda on intra-European labor recruiting. If the incorporation of foreign workers into the ILO standards enacted in 1919 also presented an opportunity to showcase international solidarity against the "unilateralist" tendencies within Anglo-Saxon countries on immigration questions, then this was viewed as an added benefit (Bonnet, 1976: 126). But the primary focus was on movements of workers within Continental Europe.

While movements within Europe may have dominated discussions at the Washington Conference, we see a gradual shift to considering immigration and emigration questions on a more global scale in the International Labour Office's involvement throughout 1920-21 with the "International Emigration Commission."[iv] By selecting a British government official to chair the Commission and by encouraging the participation of American experts, ILO leadership signaled its intention to expand the geographic scope of the international labor standards so as to include "intercontinental" emigration (ILO, 1921). An international regulation of overseas emigration was of particular interest to the newly appointed Director of the International Labour Office's Unemployment and Emigration Section, the Belgian social law jurist Louis Varlez. Before the War, Varlez had been active in the social reform networks of the International Association for Unemployment and the International Association for Labor Legislation, whose members as early as 1915 had begun to explore the possibility of an International Migration Institute to facilitate the selection and distribution of emigrants internationally (Foreign Born 1922, 214). Envisioned as an internationalized unemployment bureau for the post-War unemployed, such proposals were inspired in part by the British Government's contemporaneous plans to inaugurate state-aided intraimperial emigration to address metropolitan unemployment after the war. For internationalists such as Varlez, as well as ILO Director Albert Thomas, creating an International

Migration Institute under ILO auspices not only would provide an institutionalized authority for curbing spontaneous, individual, and free migration but also represented a step towards stabilizing labor conditions throughout the world (Varlez, 1923).

Yet if ILO jurists were keen to expand the ambitions and reach of standard-setting, from regulating movements of workers within Europe towards a more global redistribution of labor, the British Government strongly objected to such proposals as an unacceptable interference in intraimperial affairs. From the perspective of British imperial policymakers, promoting overseas settlement raised sensitive political issues in the British Dominions, where labor movements viewed settlers as competition for wage employment (Kennedy, 1988; Gupta, 1975). British officials insisted that any internationalized regulation of overseas imperial settlement ran afoul of the classical international law distinction between international and imperial matters (Stricker, 2019). These concerns about possible ILO overreach contributed to Australia's decision not to send a delegate to the International Emigration Commission's August 1921 meeting and ensured that, under British chairmanship, the Commission steered clear of any discussion of international regulatory mechanisms, such as a fund for subsidizing overseas emigration, and confined itself to purely advisory resolutions (ILO, 1922).

Strong skepticism of any proposal to regulate international migration under ILO auspices continued throughout the 1920s. ILO Governing Body delegates from Britain and the Dominions sought to block the establishment of any permanent emigration committee, especially with the prospect that such a committee would include U.S. experts whose presence was viewed as legitimizing ILO competence to address overseas labor movements. And suggestions were even made to the League that it should remove migration from the International Labour Office's budget. Plans for a permanent committee moved forward only when an inter-state conference

sponsored in 1924 by the Italian Government prompted concerns on the part of other Governing Body delegates that ILO inaction was damaging the Organization's prestige (ILO, 1924). However, opposition to its authority continued to be manifested in calls for limiting the participation of non-governmental experts and limiting its standard-setting undertakings to initiatives that were perceived as relatively uncontroversial and that enjoyed broad support from international women's social reform organizations, such as harmonizing standards for inspection of emigrants on board ship (Gorman, 2012; Metzger, 2007). In the face of pronounced British opposition, ILO officials took pains to clarify that there was no standard-setting agenda behind their technical efforts, such as statistical work undertaken in collaboration with U.S. nongovernmental partners, which collected information on international migration (Tait, 1927). The decision of the United States in 1924 to make permanent its restrictionist legislation of national origin quotas was seen as confirmation that resistance to international solidarity on migration questions would be slow to give way.

With the U.S. firmly in the unilateralist camp and with persistent opposition to ILO involvement with British overseas settlement, the Office's project of globalizing migration policymaking shifted its focus to Latin America. A newly acquired mandate from the League to facilitate the placement of Russian and Armenian refugees offered an opportunity in 1925 to establish ILO regional offices in Brazil and Argentina, as part of an effort to match unemployed refugees who were willing to emigrate to Latin America with job offers from employers in these countries. To support these initiatives and also to provide input on standard-setting for emigrants on board ship, the Office in 1925 convened an umbrella organization for non-governmental organizations, the *Conference International des Organisations Privées pour La Protection des Migrants.* ILO officials also explored collaborations with the newly created *Société*

Internationale des Migrations, a Geneva-based non-governmental organization founded in 1926 by former French government officials, who likewise sought to implement an internationalized version of the French policy model of regulated, collective placement of foreign workers by organizing convoys of European emigrants to Latin America (Kevonian, 2005).[v]

Yet even with support from a growing network of non-governmental groups and with signs of interest from an enlarged set of both Continental European and Latin American states, internationalist ambitions for developing "an international common law of the emigrant" (Varlez, 1923: 447) proved challenging to realize. The ILO's refugee initiatives in Latin America encountered a number of logistical problems in placing refugees with available jobs, and the diffusion to Latin America of eugenicist theories of immigration control also complicated efforts to organize placement of foreign workers (Kevonian, 2005). Within the international trade union movement, a proposal from French labor leader Léon Jouhaux for a worker-led International Migration Office encountered strong opposition from Canadian trade unionists who opposed overseas settlement, and the ILO Workers Group was only able to endorse further technical migration studies that might help workers overcome their differences (ILO, 1928). As for state-led initiatives, Latin American delegates at the Second International Conference of Emigration and Immigration Countries, held in Havana in 1928, voiced deep opposition to an Italian government proposal for a supranational authority to facilitate agricultural colonization projects in Latin America, wary of Italian meddling in their internal affairs. Delegates in Havana also failed to endorse a proposal formulated by Latin American jurists for undertaking a comprehensive codification of international migration law (Varlez, 1929c).

What cumulative impact did these various developments over the course of the 1920s have on how the ILO's 1919 general constitutional mandate to "protect the interest of workers

when employed in countries other than their own" was understood and practically approached? Through their participation in internationalizing social reform networks, ILO officials maintained a strong attachment to a "universal" regulation of international migration. This was seen as completing an "evolutionary cycle" from an initial phase of emigration and immigration regulation through national laws, to an intermediate phase of adoption of reciprocal labor migration treaties on a bilateral basis, to the culminating adoption of general international conventions which move beyond the sovereign rights of various countries (Varlez, 1922). At the same time, by the end of the 1920s it was clear that political realities required that progress on such a multilateral project could best be achieved through incremental efforts (Varlez, 1929c). With his retirement as Director of the Office's Migration Section imminent at the end of 1928, Varlez pragmatically chose to focus his attention on elaborating two aspects of foreign workers' protection: first, the conditions under which recruiting abroad should be carried out, and second, the form and contents of the contracts of employment included in international recruiting accords.

The normative categories in Varlez's proposed standards tell us much about how the gradually expanding boundaries of social policymaking during the period informed not only the categories of persons to whom the proposed international recruiting and placement conventions should apply but also the forms of social protection that should be guaranteed to foreign workers. In terms of the former, by the late 1920s the ILO was working with a generalized definition of foreign workers which was not limited to the industrial foreign labor force on which French and Italian wartime recruitment accords had centered; the new category of "international migration for employment" included all those "needing to earn a living" and was designed to encompass overseas movements that often involved changes in individual migrants' occupations (Varlez,

1927). In terms of conceptualizing the forms of social protection that should be guaranteed to foreign workers, Varlez's international standards for recruiting framed the problem through the lens of a generalized need for state supervision, thereby allowing a wide variety of national interests raised in international discussions of migration to be acknowledged under the notion of a balance of state authorities.[vi] Regarding conditions of labor in particular, Varlez recommended including a general provision in the text of an international instrument that affirmed the right of foreign workers to equitable treatment but advised against attempting to specify the details of its application (Varlez, 1929b: 651-660). This proposal sought to identify common ground between understandings of "equality of treatment" within the context of Continental European recruiting (where sending countries were concerned that their nationals should not be confined to job placements in low-paying regions and positions) and somewhat different understandings of "equal treatment" in Latin American states (where European immigrants encountered fewer occupational restrictions and where concerns instead focused on European countries requiring higher wages to be paid to their nationals than to workers belonging to the country of immigration). By presenting the employment contract as the normative hook for equitable working conditions, Varlez aimed to devise broadly applicable standards for these diverse regulatory contexts.[vii]

This framework for regulating "migration for employment" established a foundation for a social law approach to "protecting foreign workers" that would be applicable to both intracontinental and intercontinental movements of European workers. In seeking to construct a more "universal" perspective, the Office had identified common ground between familiar forms of European law and practice and the distinct forms of law and practice that characterized overseas recruiting and placement within Latin American countries. Yet some aspects of this

broadening of scope were not entirely successful. Specifically, Latin American representatives in the 1930s questioned whether proposed ILO migration standards, which constructed equality of treatment as a contractually-based employment right of collectively recruited foreign workers, were compatible with their own tradition of constitutionally-based equality regarding choice of occupation, freedom of association, social insurance, and working conditions (ILO, 1938: 574). Nevertheless, when compared against the Organization's initial 1919 framing of emigration questions, it is clear that the aspiration for greater "universality" was a key feature of ILO migration discussions throughout the interwar period. In devising a generalized regulatory architecture centered on state-supervised recruiting and contractually-based equality of treatment, ILO jurists envisioned international standards capable of encompassing workers moving to overseas destinations that had come to be understood as part of the expanding social law "universe."

The Colonial Exception: "Migratory Movements of Indigenous Workers"

ILO jurists' commitment to formulating migration standards that would be applicable beyond Europe raised the question of how far this universalism might extend. Would standards governing the recruiting and placement of foreign workers be applicable to colonial settings? The question was not simply theoretical. In 1926, the ILO had acquired a mandate from the League of Nations to address the issue of forced labor through international standard-setting (Daughton, 2011; Maul, 2007).[viii] ILO jurists could not ignore the fact that, unlike employment contracts negotiated for European migrants, colonial labor contracts failed to include any reference to a general principle of equivalent treatment (Varlez, 1929b: 657). How could international standards make a claim to universality when the Office's own compendia of

migration laws and treaties documented these divergent patterns? Rather than answering this question, Varlez apparently took for granted that ILO constituents would appreciate the fundamental differences between recruitment in colonial contexts and recruitment of European workers. Indeed, differentiating colonial conditions was an established practice within interwar international labor standard-setting. The Labour Chapter of the 1919 Treaty of Versailles, while urging equitable economic treatment for national and foreign workers as a general principle to guide the new Organization, nevertheless recognized that "differences of climate, habits, and customs" made strict uniformity in conditions of labor difficult to attain (Article 427). This text explicitly permitted the non-application of ratified conventions in "colonies, protectorates and possessions which are not fully self-governing" where "local conditions" were deemed to render them inapplicable (Article 421).

Moreover, as Varlez was aware, by 1928 the ILO had established an independent standard-setting initiative to regulate recruited labor in the colonial context. In the late 1920s, having completed work on standards to regulate forced labor, the ILO's Committee of Experts on Native Labour took up the issue of regulating colonial labor recruitment which, though technically distinct from forced labor, nevertheless left native workers vulnerable to abuse (Rodriguez-Pinero; 2005: 17-52). In doing so, the Committee (and the officials in the Office's Native Labour Section who advised them) could not avoid addressing recruitment that operated across international boundaries. Indeed, one of the sites at which native recruiting was felt to be most in need of international regulation involved the efforts of South African mining enterprises to secure labor from adjacent British and Portuguese colonies (Jeeves, 1986). Their discussions made clear that long-term contracts were extensively used for native workers recruited across international jurisdictions.

The basic premise for these standards, whether governing native labor recruiting within a given jurisdiction or across jurisdictions, was that the economic imperative of settler-colonial economic enterprise for access to native labor should be balanced against the humane consideration of natives whose removal from their ancestral villages inevitably involved practices that bordered on the coercive, such as deceptive recruiting techniques and penal sanctions for breach of contract. ILO Director Thomas himself framed the Office's work as guided by the conception of the "dual mandate" elaborated by former British colonial official Lord Frederick Lugard, which he presented as assisting "the well-being and development of peoples who are not able to stand by themselves under the strenuous conditions of the modern world" (ILO, 1926: 427). While the Office's native labour experts differed on whether periods spent in wage employment were more of a danger to the integrity of tribal society or the first step on its civilizing path, these former colonial officials shared in common the understanding that standard-setting for native labor had little to do with maintaining and developing existing national systems of labor legislation.

ILO native labor standard-setting efforts, while fundamentally distinct from standards governing European migration, nevertheless needed to address a wide variety of colonial contexts if they were to be international in scope. And here the ILO's native labor experts were faced with a notable absence of convergence in law and practice *within* colonial settings. Were standards modeled on colonial administrators' efforts to minimize the worst abuses of African workers really appropriate in other settings? Their discussions acknowledged that recruitment of Indian workers to Southeast Asian mines and plantations was conducted not through European agents, as was the case in central and southern Africa, but rather through village-based systems of chain migration organized by workers themselves (ILO, 1935a). Ultimately, despite some

qualifying language about local conditions, the ILO's native labor experts lumped all of these labor movements together for standard-setting purposes. The proposed standards eventually sent by the Native Labour Committee to the Governing Body cut and paste their provisions governing labor movements across international jurisdictions from the model regulations concerning so-called "immigrant coolie labour" formulated by the International Colonial Institute more than three decades earlier (ILO, 1933).[ix] Translated from "coolie" to "native," this vague notion of non-European workers thus acquired a more universal reach as it was extended to all forms of labor recruited across colonial borders.

Yet it became increasingly difficult for officials within the Office to maintain the boundary between native labor standards, on the one hand, and the standard-setting project for European migration, on the other hand. Between 1933 and 1935, under the new ILO Directorship of Harold Butler, the distinct projects concerning "recruiting and placing of migrant workers" and "recruiting of native labour" were separately placed on the agenda of the International Labour Conference. As a result, after a brief hiatus during the worst years of worldwide economic depression, both sets of standards were simultaneously opened for the first time to broader and, from the perspective of ILO officials, less easily controlled constituent debate.

The most serious challenge to the boundary between these standard-setting projects emerged in 1935 as part of the Conference discussion of standards for native labor recruiting. It emerged in relation to the contentious topic of explicitly race-based legislation enacted by the Union of South Africa, which placed its Indian merchant community under restrictions applicable to all "Asiatics" and simultaneously assimilated them to the status of indigenous South Africans on matters of political rights, policies which had become a major cause for the nationalist movement within India (Klaaren, 2017; Mawani, 2018: 152-187). This issue of how

to define the conceptual boundaries of "native labor" was a question which the native labor experts had failed to address. Keen to avoid encouraging Indian delegates to raise the South African controversy, ILO officials preemptively removed the term "native" from the proposals formulated by the Native Labour Experts so that the project circulated to constituents carried the title "Draft Convention Concerning the Recruiting of Labour in Colonies and in Other Territories with Analogous Labour Conditions" (ILO, 1933: 856).[x] At the 1935 Conference discussion, Indian and Chinese delegates nevertheless took the opportunity to raise the uncomfortable issue of race-based discrimination. Indian conference delegates proposed provocatively that colonial-type recruiting should be conditioned not only upon the provision of suitable housing facilities as suggested in the Office's draft proposals but also upon "the granting of such elementary rights" as the acquisition of property, the right of equal trial before a court of law, and the right to trade union association (ILO, 1935b: 442). Going further, the Indian Workers' Delegate, V. M. Mudaliar, called upon ILO constituents to acknowledge that "a human being is not merely an animal" and insisted that he was speaking "not so much as an Indian but to plead the cause of all recruited labor." This rousing language attracted support from conference delegates from China, who for a number of years had sought unsuccessfully to insert discussion of race-based discrimination into ILO policy discussions.

These Conference discussions highlighted the tension between social law's longstanding reliance on "local conditions" as a justification for differing degrees of labor protection, a notion of social development embedded in the ILO Constitution, and a newer global diffusion of scientific race theories that conceptualized difference in essentialist terms (Lake and Reynolds, 2008). Endorsing the latter, colonial employers' representatives from South Africa bluntly defended their governments' race-based policies, both towards "Asiatics" and towards

"indigenous" groups, and insisted that the amendments offered by the Indian delegation would not only prevent enactment of the proposed standards but would also undermine any future ILO involvement in colonial matters (ILO, 1935b: 443). Yet the Indian and Chinese interventions called out the IlO for failing to identify a socio-economic rationale for treating recruited labor differenty from other workers. Their calls for equal treatment were ultimately defeated by a show of hands, after the British and French governments both strongly advised the Conference against impeding progress on colonial labor recruitment with what they termed "political questions."

From the perspective of ILO officials, it was embarrassing for the Organization to have voted down demands for equality made by Conference delegates nominally representing groups that the ILO claimed to be protecting. The key issue, as the Office saw it, was that the standards formulated by the Native Labour Experts had never been intended to be extended to include recruiting of "any other class of labour than native labour," and these categories would need to be more skillfully drawn "in order to avoid as far as possible both imprecisions and expressions to which objection might be taken" (ILO, 1936: 86). The formalistic drafting solution that was eventually achieved in advance of the 1936 International Labour Conference – a definition of "indigenous" that delegated its meaning to local law and practice within the relevant colonial jurisdiction – was designed to maintain the ILO's posture of organizational neutrality on racial questions, while clearly differentiating colonial-type labor recruiting from the forms of recruiting applicable to European workers. The scope of the newly renamed project on "Regulation of Certain Special Systems of Recruiting Workers" was accordingly drafted so as to make clear that it applied uniquely to "indigenous workers," a group defined as "workers belonging to or assimilated to the indigenous population." In other words, a worker identified by colonial officials as a non-citizen subject or assimilated to this inferior status (ILO, 1936: 119-120).

Insofar as in operated as a legislative *fait accompli*, this formalization of juridical boundaries for recruited colonial subjects would allow, in turn, for a more formalized bounding of the subjects covered by the "migration for employment" project. Indigenous workers could be excluded from ILO migration discussions, it was asserted, because they already had their own dedicated set of international instruments (ILO, 1936). And with the lightening-rod of South African race laws now closed to discussion as a "political question," Indian delegates at the 1938 and 1939 Conference discussions of migration standards apparently saw insufficient payoff in challenging the indigenous worker exclusion.[xi] Thus, while the category of "migration for employment" was almost entirely concerned with European workers and the laws impacting their migration experiences, the enacted 1939 standards on "Recruiting, Place and Conditions of Labour of Migrant Workers" had no need to mention the word European. Assembled through a chain of formalistic references, this solution relieved international social policymaking of having to reveal its own implicit racial and imperial boundaries.

The 1939 International Labour Code

The 1939 International Labour Conference, at which both migration for employment standards and separate standards governing indigenous labor contracts were enacted, would prove to be the final occasion for tripartite lawmaking before the dissolution of the League of Nations. In 1940, shortly after a reduced ILO secretariat decamped from Geneva to Montreal, a young British ILO official named Wilfred Jenks undertook the drafting of an "International Labour Code" that aimed to preserve what had been accomplished over the preceding twenty years of international social policymaking. The codification would allow these achievements to be resurrected when a new peace was made at the end of the Second World War.

Although Jenks's code presents international migrant labor standards in universal terms, with an entire chapter dedicated to migration, this universalism is belied by footnotes directing readers interested in "migratory movements of indigenous workers" to a separate chapter of the code dealing with "Colonial Labour Policy" (ILO, 1941: 844). Jenks's juridical artistry effectively went one step beyond the categorical formalization of difference already contained in the standards themselves; the exclusionary provision for indigenous workers was now recast as a technical footnote that simply referenced a separate section of the code. Captured in this footnote cross-reference, we see the artifacts of juridical techniques assimilation and exclusion that simultaneously constructed standards governing migration for employment and the contemporaneous project governing migratory movements under regimes of dependence and tutelage.

Yet, while they were repeatedly distinguished by jurists over the course of two decades, these ILO interwar categories for regulating human mobility became outdated almost as soon as they were enacted. The "Migration Chapter" of the *International Labour Code of 1939* represented a culmination of interwar international social lawmaking efforts but also a curtain-call for this era of regulatory projects. Shortly after the Second World War, the exemption for "indigenous workers" was among the first elements of the 1939 Migration for Employment standards deleted from the revised migration standards enacted by the ILO in 1949 (Migration for Employment Convention (Revised), 1949 No. 97). Postwar ILO standard-setting processes were shaped by a distinct set of institutional and political assemblages (Supiot, 2010), and standard-setting on migration for employment proved to be no exception. Reflecting this changed context, during the preparatory discussions at which the 1949 Conference's migration proposals were formulated, neither ILO officials nor any of the participating ILO constitutents

claimed to be able to recall a rationale for the exclusion of indigenous workers from the earlier migration standards (ILO, 1949: 175-76). Significantly, the deletion of a categorical distinction that had come to seem an enduring element of international labor law took place with little public discussion.

Conclusion

Early ILO initiatives to "regulate international migrations," stemming from the Organization's 1919 constitutional mandate to protect foreign workers, have received little detailed examination or discussion within scholarship on global social policy. In extending the historical chronology of "global migration governance" to encompass ILO interwar efforts, my analysis has emphasized both the constructed nature of these categories and the role of juridical techniques in broadening their reach as well as delimiting the domain of their exclusions. The development of generalized standards for regulating migration for employment was propelled by an aspiration on the part of internationalist ILO officials to devise a framework with "universal" normative applicability. At the same time, their framework for "an international common law of the emigrant" both produced and reproduced the taken-for-granted boundaries of the international order in which they operated.

Significantly, the underlying assumptions in the construction of categories diverged in relationship to migrants and "migratory" indigenous workers. For those classified as migrants, differences across national labor protection systems were deemphasized in the interest of finding common ground for social protection. By contrast, for those mobile workers formally excluded from this class of protected migrant labor, social conditions and racial difference became merged. The categories of international social law, while avoiding explicit racial language in

distinguishing between forms of human mobility, thus internalized and propagated a racialized logic that determined which foreigners could assimilate into the social state and which could not.

In contemporary debates about international protections for migrant workers, scholars have emphasized the daunting challenge of developing new international labor standards in the current moment of neoliberalism (Piper and Withers, 2018; Geiger, 2013; Gamlen, 2010). In one sense, this challenge becomes all the more apparent when contrasted against historical ILO standard-setting achievements in this domain, which developed prior to the ascendance of neoliberal migration management frameworks. Yet in another sense, the history of ILO standards regulating migration for employment points to the shifting and contingent nature of the categories associated with global migration governance, including categorical forms of differentiation often presented as responding to objective differences in the sites and causes of human mobility.

As the historical account in this article has emphasized, both the geographic reach of "universal" migration standards and the types of migrants included within their protection were mediated by juridical engineering that naturalized existing notions of racial and civilizational difference. That the formalized exclusion of "indigenous workers" devised by interwar jurists would quickly prove untenable in the post-WWII context, even as it was replaced by other forms of difference (Vosko, 2014), underscores the politically and historically constructed nature of these normative frameworks. Extended to today's context, this historical experience thus suggests that the apparently enduring systems of classification operating in today's fragmented regime of global migration governance are likewise perhaps only tenuously responsive to the lived experiences of migrants, and thus open to being challenge as such.

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[i] Fragmentation in this context refers to the International Law Commission's notion of the diversification and expansion of "specialized and (relatively) autonomous rules or rule-complexes, legal institutions, and spheres of legal practice" (International Law Commission, 2006: 8).

[ii] Lazard (1875-1953) had been part of the network of social reformers before the War which established the tripartite International Association for the Fight against Involuntary Unemployment. See Sauthier, 2013: 67-84.

[iii] In terms of the treatment of foreign workers, these reformist projects had included prewar bilateral accords negotiated by reform socialist leader (and future ILO Governing Body Chair) Arthur Fontaine, which secured pillars of the social state through their reciprocity provisions on unemployment insurance and placement bureaus, as well as wartime bilateral accords negotiated by reform socialist leader (and future ILO Director) Albert Thomas, which institutionalized equality of treatment as a mechanism for ensuring that the wages of foreign workers would not undercut those of French workers and that they would be represented by French trade unions. See Rosental, 2011; Horne, 1985; Cross 1983.

[iv] Established as a follow-up mechanism to the 1919 Washington discussions, the Commission's secretariat consisted of the Office's newly created Unemployment and Emigration technical section, whose broad mandate included "consideration of all questions concerning the migration of workers and the condition of foreign wage earners" not only within Europe but also overseas (ILO, 1919: 223-43).

[v] Although they differed on whether an international organization or some other form of organization was the most practical means of globalizing migration regulation, interwar social reformers working inside and outside the League embraced a broadly similar project – combining population science with social policy concerns – to regulate the distribution of population on a rational, equitable, and impartial basis. See Comité d'Action pour la Société des Nations, 1925; Thomas, 1927.

[vi] The state interests mentioned included dirigiste aims such as those underlying the Italian policy of *valorizzazione* as well as the aim of maintaining existing labor legislation at the heart of French social reformers' program limiting commercial recruiting. At the same time, the discussion also addressed the state interests of overseas immigration countries, which discussed national sovereignty in terms of both non-interference of foreign governments in internal affairs and the ability to enact policies preventing the arrival of men "entirely unsuited to the country" (Varlez, 1929a).

[vii] In centering the juridical lens on the issue of foreign workers' contracts, Varlez drew on a framing of the issues that had been suggested two years earlier by jurists affiliated with the Chamber of Labour and Workers and Employees in Vienna, a group with whom Varlez had initially come into contact in 1923 during an official visit to Central and Eastern Europe.
[viii] This initiative had emerged as an extension of the Office's native labor portfolio, which itself was an outgrowth of longstanding campaigns by international humanitarian networks to abolish slavery as well as systems of forced labor that approached slavery (Cooper, 2000; Grant, 2005).
[ix] The International Colonial Institute's model regulations in this area were part of an effort to internationalize the British Imperial system of supervising indentured Indian labor and were similarly oriented to curbing the worst abuses through a framework of liberal paternalism. See Mongia, 2018.
[x] The "other territories" was a technical term intended by ILO officials to include South Africa and its system of mining recruitment, although not its racist laws directed towards Indian free migrants, since by the 1930s Indian indenture was no longer operating. Yet the term "other territories" was equally applicable to India itself, as recognized by the Indian Government representative on the Governing Body who expressed approval that "a subject which was of importance to oversea countries had been suggested" (ILO 1933: 12).
[xi] Proposals by Chinese delegates for provisions to address the "serious disabilities" suffered by Chinese emigrants (in such varied domains as admissions quotas, residence restrictions, and criminal justice matters) were easily deflected by ILO officials as beyond the proper scope of international labor law (ILO, 1938: 574).