I. Introduction

This research mainly builds on comparative studies that examine how international norms domestically have impacts on migration policies and expansion of migrant workers’ rights in Korea and Japan. With emphasis on the role of international norms, this research attempts to figure out the puzzle why Japan maintains the most restrictive migration policy among the developed countries, yet Korea is moving toward more liberal policy.

In this research, I would like to compare how two industrialized and democratic countries such as Japan and Korea have responded to the increase of international migration, and its impacts on politics and society in the respective countries. Both Korea and Japan have experienced a rapid rise of foreign migrant workers as well as international marriage migrants since the late 1980s. During the past two decades, Japan and Korea have passed so called, “migratory transition,” which means that both countries turned from labor-sending countries into labor-receiving ones. As latecomers to immigration, both countries have some similarity in formulating immigration policies. The two countries have faced a structurally embedded demand for foreign labor such as aging population and low birth-rate, and labor shortage in dirty, dangerous, and difficult sectors. Japan and Korea had shared almost identical policies against the inflow of foreign workers until 2004. Japan claims that unskilled foreign workers are officially not allowed. In 1991 following the Japanese model, Korea launched a similar program. However, Korea adopted a new system in 2004, and it is aimed at allowing unskilled migrant workers to work legally with a status of worker, and at providing equal treatment to foreign workers including basic labor rights, employment insurance and legal minimum wages, so that it can prevent human rights violation, which was chronic in the former trainee system. The debut of the new program signals that Korea switched the position from side-door mechanism to front-door one. This research tries to figure out the puzzle why Japan is still maintaining the restrictive foreign labor policy to import the foreign workers, yet Korea is moving toward more open policy even though Korea
began with a carbon copy of the Japanese policy. To answer this question, this research mainly aims to examine how international human rights norms domestically have impacts on immigration policies and expansion of migrants’ rights in Korea and Japan.

Within the literature of migration studies, several scholars have emphasized the role of international human rights norms as one of the key factors to shape migration policies or citizenship by constraining the policy choice of the state. Yasemin Soyal introduced “top-down” theories that argue the diffusion of norms through international organizations such as the UN (Soysal 1994), while Amy Gurowitz suggested a “bottom-up” approach that stresses on how NGOs mobilize international norms as a tool kit to fortify their claim-making for the expansion of migrant workers’ rights. (Gurowitz, 1999) However, both theories cannot explain the variance of foreign labor policies between Korea and Japan because many scholars have reported that Japan and Korea were exposed to many of the same international norms, and pro-migrant NGOs in both countries tried to use international norms to strengthen their arguments. If international norms simply affect state policy, and constrain the policy option, we would have expected Japan to change the migration policies much earlier than Korea because Japan’s international status as a major developed country could have made it more sensitive to international pressures. (Lee and Park 2005) In reality, however, the Korean government is modifying the foreign labor policy in more liberal way, while the Japanese one is maintaining the most restrictive policy. Why is it so?

Due to little attention to the mechanisms and processes by which international norms can acquire domestic salience, the former literatures on international norms failed to reveal the different impacts of international norms on domestic policies. Therefore, I will focus on the domestic political structures in terms of state-society relations, especially the dynamic process among states, NGOs, and international norms. I will argue that while acceptance of international norms in Japan has been discussed within the context of internationalization, Korean NGOs and government considers human rights and compliance with international norms as part of national development. Further, the growth of Korean NGOs, the strong cooperation between the government and these civic groups as a consequence of democratization were the key factors to explain the changes of the migration policy, while in Japan expansion of migrant workers’ rights has been achieved at the local level, rather than at the national level thanks to higher level of autonomy found in the Japanese bureaucratic system and lack of NGOs’ influence over the national level of public policies.

II . International Human Rights Norms Approach

One group of scholars within political science suggests international norms approach to immigration policy. They “stress the extent to which the individual rights that are at the heart of democratic states displace interests and limit the actions of states.” (Freeman 2005) James Hollifield argues that migration policies in liberal states are affected by embedded liberalism. The organizational framework which emerged in the post-World War II era implicitly supported freer international mobility of labor forces. Embedded liberalism with emphasis on individual rights has
developed rights-based discourses and policies. Therefore, the structure and culture of the democratic states as well as international regimes bring out more open and generous patterns of immigration policies in the liberal democracies. Further, they claim that once embedded liberalism is installed, it will be difficult to roll more open policies back to more restrictive ones due to nature of path dependency. While the political economy approach explains expansive immigration policies in the liberal democracies with regard to the mode of client politics, international norms approach focuses on the process of path dependency in which rights of immigrants and asylum seekers have been evolved.

While agreeing that rights do matter, one question still remains: how rights influence state behavior? Is the power of rights coming outside the state or inside the state? Do the states constrain their actions by complying themselves with external pressures or by self-limiting themselves? Regarding this issue, Saskia Sassen, David Jacobson, and Yasemin Soysal see transnational processes as a key force in regulating states’ sovereignty over immigration policies. An emergent transnational regime of human rights is limiting the basis of state sovereignty, and pushing right to self-determination toward rights of individuals regardless of nationality. However, some scholars do not agree with the idea of this globalization thesis. For example, Christian Joppke mockingly addresses, “the capacity of states to control immigration has not diminished but increased – as every person landing in Schipohl (Amsterdam) or Sidney airports without a valid entry visa would painfully notice.” (Joppke 1998) Joppke argues that the liberal democracies are not losing capacity to control migration, but self-limiting that capacity. Joppke illustrates the idea of self-limited sovereignty by focusing on the legal processes in democratic countries as the underlying force of expansionary immigration policy. Put simply, courts and judges protect rights of immigrants from anti-immigrant populist voices and from client politics. These judicial decisions provide the strongest framework for expansionary and inclusive immigration policymaking. In sum, expansion of immigrants’ rights is rooted in domestic political process.

While the tradition of political economy approach to immigration policy emphasizes domestic factors such as interest groups, geographical location, and factor endowments, other scholars, so-called “globalists” began to pay attention to international factors including economic globalization and international norms. “Globalists” refers to “scholars who emphasize the blurring of domestic and international boundaries in an interdependent world, which relies on the free flow of goods, money, people, and ideas or norms.” (Guiraudon and Lahav 2000, p. 164) International relations and comparative politics have focused on to what extent globalization has diminished national sovereignty, and how international norms impact domestic policy change. International migration as a form of transnational flows is in the middle of this ongoing debates between globalization and national policy making. Linking international migration with large-scale social change including post-industrial change and intensified globalization, “globalists” highlight the decline of sovereignty in the sense that nation states can no longer hold their own autonomy over controlling international labor movement under the global pressure outside of nation states. They argue that socioeconomic global transformation and increasing international human rights norms are reducing the power of nation states when they enact and implement immigration policies, and leading to convergence of immigration policies.

Globalists locate the source of policy change
outside the nation states in the age of globalization as well as in the increase of international human rights norms. Saskia Sassen claims that economic globalization and the emergence of global cities have made multinational corporations demand more generous immigration policies in receiving countries. (Sassen 1996) Yasemin Soysal (Soysal 1994) and David Jacobson (Jacobson 1997) argue that international human rights norms have contributed to shifting traditional citizenship-based rights into “postnational” rights based on universal personhood. According to them, international human rights norms, which are embodied in “charters, treaties, and transnational organization as well as in proliferating governmental and nongovernmental “rights talk,” (Surak 2008, p. 552) have provided migrants with rights previously limited to citizens. Studies of globalists imply that international norms and standards can constrain immigration policy making, even on sovereignty-related issues.

With regard to the relationship between international human rights norms and state’s sovereignty over immigration policy, the previous researches can be divided into two groups. The first group is the “top-down” theory that emphasizes the diffusion of norms through international regimes such as the UN and the European Commission on Human Rights. The post-national scholars such as Yasemin Soysal emphasize the power of universal human rights, and they claim that international human rights norms embedded in international regime constrain the decisions of the states from the outside. Soysal argues that the legitimacy of human rights is located at the transnational level rather than the national level when rights of migrants are discussed. Guestworkers in Western European countries have received permanent residence status and have formed large “foreign communities” there, even though they are not naturalized. She addresses that the traditional concept of national citizenship is shifted to what she calls a post-national citizenship based on “personhood” detached from nationality due to international human rights norms. In sum, whereas national citizenship is rooted in territorialized concept of cultural belonging, post-national citizenship is anchored in deterritorialized persons’ rights. To explain these changes in citizenship, the post-nationalists assume that international norms directly affect the national government’s decision to expand the rights of immigrants. Since the post nationalist scholars do not specify the intermediate mechanism between international norms and expansion of immigrant rights, Hideki Tarumoto calls it “international-legal path.” (Tarumoto 2003) However, this approach is criticized “although an international human rights regime may indeed affect states, this has yet to be demonstrated.” (Gurowitz, 1999, p. 414) Soysal demonstrates a list of the agencies and the organizations, but does not explain how these agencies and organizations play roles in diffusing international norms and in changing the national government’s policies.

International norms do not acquire domestic salience automatically, and norms do not have the same importance everywhere. Thus, another camp on the role of international human rights norms argues that we need to focus on the dynamic mechanism embedded in the interactions among the state, international norms and civil society in expanding the rights of migrant workers. The second group is a “bottom-up” theory that underscores how NGOs utilize as tools to fortify their arguments on the issues of expanding rights of migrant workers. Gurowitz claims, “The role of international norms has been central in part because these standards have provided pro-immigrant actors with a tool to use in their arguments against the government in the face of domestic resistance to change.” (Gurowitz, 1999, p. 415) Tarumoto calls this mechanism as
“domestic-political path.” The second group of globalists constructs the basic model that explains the causal chain flowing from international human rights norms through pro-migrant organizations to government’s responses to expand immigrants rights. The domestic-political path highlights the roles of social movements and pro-migrant NGOs activities as engines for expanding immigrant rights.

Globalists raise the core question as to “whether and how the capability of the state in liberal democracies to control immigration has been eroded by a combination of international agreements and the increased role of courts in establishing individual and collective rights.” (Schain 2009, p. 94) Although critics admit that international norms circumscribed the government’s options for immigration policies, they argue that the power of international norms is exaggerated. Rather, they claim that normative constraints on migration control come from domestic liberal norms guaranteed by constitutions, legislation, and jurisprudence. Embedded liberalism in the political system makes it difficult to roll back the expansive immigration policies, and the domestic norms in the legal system also keep protecting immigrants’ rights.

Debating on the influence of international norms, the critics of globalists’ argument address “bring the state back in” because “It is still the states themselves that decide whether and how they will abide by international norms.” (Schain 2009, p. 98) Since it is not clear to what extent international norms have influence on decisions of political authorities, we should look into the state or domestic institutions that mediate or filter transnational ideas and international norms.

III. Immigration Policies in Japan and Korea: overview

1. Japan

Japan has been considered a unique “negative case” in the literature of immigration studies, which means during rapid economic growth in the post-war period, Japan unlike other developed countries successfully resisted the import of foreign labor forces by using internal labor migration from rural area to urban cities. (Bartram, 2000) However, in the 1980s, Japan’s local labor began to shrink, and therefore, “the increasing labor shortage in non-tradable sectors, such as construction and small manufacturing, prompted a heated debate over the use of unskilled foreign workers, polarizing opinions on the grounds of economic necessity and the potential loss of racial homogeneity.” (Kim, 2004, p.40) To figure out this tension, the Japanese government initiated an ambiguous foreign labor policy, so-called Training Program in 1982. Through this program, the government was able to maintain their original position that Japan does not allow unskilled migrant workers, and at the same time, the government could import the migrant workers through side-door in the name of “trainees.”

As Tsuda and Cornelius (2004) explain it, the two main pillars of the side-door mechanism “are the admission of the nikkeijin and the expansion of the ‘trainee’ program” (Cornelius et al. 2004, p. 453). In the trainee program established in 1982, only companies with capital or trade relations with foreign countries and with more than 20 employees were allowed to hire foreign workers from this system. In 1990, however, the program was significantly changed to allow any company to utilize trainees. Further, the government eagerly
expanded this program by establishing the Japan International Training Cooperation Organization (JITCO) to help companies to accept foreign trainees. As a result, the number of trainees dramatically increased. In 1987, the number of trainees was 17,081, but by 1997, the number increased almost threefold to 49,594 (Shipper, 2002, p.57). However, the problem is that the large majority of trainees were treated not as real trainees who should receive technical training, but as cheap, unskilled laborers for 3-D jobs where native Japanese no more works. Another problem is that legally they are not classified as workers entitled to standard wages and to the protections guaranteed under Japan’s labor laws. In short, the trainee system was vulnerable to turn into highly exploitive system and designed to create marginalized lower class within the Japanese labor market.

In 1993, the Ministry of Justice revised the Training Program with the introduction of the Technical Intern Training Program (TITP). Although it still maintained limited improvement, the new program allowed trainees to change their residence status to “technical interns” after a minimum of nine months, and after passing a “skills evaluation”. (Cornelius et al, 2004, pp. 454-455) Under the TITP, the trainees would become official employees entitled to regular wages and full protection under Japanese labor laws. While Tsuda and Cornelius argue that “it moves closer to an officially acknowledged (front-door) guest-worker program when compared to the old trainee system”(Cornelius et al, 2004, p. 455), it is hard to assess that Japanese government accepted front-door mechanism to import foreign workers because in 2000, the Ministry of Justice released a new basic immigration control plan that mainly reiterated the original position that the government maintain its policy of not accepting unskilled foreign workers.

Another important side-door mechanism is to encourage nikkeijin to work in Japan , and these descendants of Japanese emigrants in Latin America returned to Japan to supply the largest number of new foreign workers. Most of the nikkeijin come from Brazil, but there are also significant numbers from other countries, including Peru, Bolivia, Argentina, China, the Philippines. There are currently over 330,000 nikkeijin, (Tsuda and Cornelius, 2004, p. 455), yet the total number of nikkeijin is much higher because many bring their spouses and children with them. Most nikkeijin work for small subcontractors in unskilled or low-skill production jobs. This fact totally belies the government’s official position that the policy toward the nikkeijin is designed as an opportunity for learning Japanese language and culture, for meeting Japanese relatives, and for chances to search their ethnic heritage (Tsuda and Corenlius 2004).

However, it is obvious that few nikkeijin come to Japan to learn their cultural roots. According to one survey, 80 percent of nikkeijin returned to Japan in order to find job. (Shipper 2002, p. 44). Compared to trainees/interns and illegal workers, the nikkeijin enjoy some privileges. Their salaries are relatively higher, there are no restrictions on the type of work, and they have a legally protected right to stay in Japan with permanent residence. Yet, it does not mean the nikkeijin enjoy the same economic status as the native Japanese. They are located in the Japanese labor market as second-class because the majority of nikkeijin are working for the manufacturing sector as a form of indirect employment, meaning they are employed by labor contractors and dispatched to production lines. With contract periods limited to three months or even shorter, nikkeijin workers have become a source of extremely flexible labor for many businesses. Despite their lower economic status, it seems that the government’s effort to replace foreign workers with nikkeijin.
is successful. *Nikkeijin* surpassed the number of the undocumented workers and legal trainees combined. (Kim, 2004, p. 48) The policy toward *nikkeijin* clearly shows how much the Japanese government has made efforts to maintain the racial homogeneity in the face of the labor shortage.

2. Korea

The labor shortages in economic structure and restrictive immigration policies mainly generate the problems of migrant workers. (Moon, 2000, p. 174) To solve the labor shortages in small and mid-sized firms the government had to import limited number of foreign labor forces in the name of trainees, yet at the same time the government attempted to control numbers of foreign workers on a short-term basis. One of the principles for the migrant workers in South Korea is to prevent them from settling down in a long term, and to force them to work only within a restricted period.

The major role of migrant workers in South Korea is to fill in vacancies of 3D sectors which suffer from labor shortage. During the 1970s Korean government successfully switched the industrial structure from light-manufacturing to heavy industries by implementing policies that encouraged economic concentration to a few large companies, so-called *Chaebol*. As a result, automobile, ship-building, chemistry, electronics, and LCD become Korea’s main engines for economic growth. However, small-sized manufacturing began to lose the comparative advantage in the world market, and this tendency was accelerated by wage hike as a consequence of political democratization after 1987. To maintain profits and reduce labor costs small-sized enterprises were forced to close or moved abroad to countries where cheap labor existed, such as China, Vietnam, Indonesia, or Philippines. The small-sized enterprises, which could not shift the facilities abroad still suffered from labor shortage. Especially, construction and fisheries are impossible to go overseas because they are geographically dependent and immobile. Time-constrained business like cleaning, maid service and printing cannot move abroad. (Park, 2002, p. 67) Timothy C. Lim’s study shows how the importation of foreign workers was helpful to figure out the labor shortage in Korea. Lim illustrates that “Beginning in the mid-1980s, the labor shortage rate for small firms (10-20 employees) grew steadily from 1.5% in 1985 to 7.78% by 1990. For “unskilled” labor, the shortage rate was even more severe, growing from 4.9% to 20.13% during the same period. Moreover, in certain industrial sectors such as plastics, electoral machinery, and commercial fishery the vacancy rate was even higher, reaching upward of 30% and even 40%.” (Lim, 2003, p. 424) After Korea received foreign labor forces from 1991, the vacancy rates in these sectors promptly declined.

Korean government began the Industrial and Technical Training Program for Foreigners (ITTP) from 1991 as a response to the Korea Federation of Small and Medium Business (KFSB) and other organizations’ demand for labor. According to this program, the government did not give foreign workers a work permit. They would go to Korea as trainees, not workers. However, they in fact worked in factories without any training. Since their visa status is trainee, they could not have any basic workers’ rights such as unionizing, collective bargaining, and collective action. Further, the foreign workers paid for brokerage fees, usually from US $2,000 TO US $8,000 to work in Korea. In many cases the migrant workers borrow these brokerage fees before they depart from their countries. The agencies in their countries deducted the payment from the trainees’ monthly wages. Yet, the monthly wages were quite lower than they expected. As a result, large number
of trainees escaped the companies, and became illegal workers to get more reasonable wages or to pay off their debts. In conclusion, the Korean government tried to achieve two goals through ITTP. The one was a solution to labor shortage, and the other was a restriction of foreign workers’ long-term stay for employment. Therefore, ITTP actually functioned not as a training program, but as a program for employing foreign workers on a short-term basis.

After the ITTP was criticized for its dysfunctional results, Korean government implemented the new program, the Work-After-Training Program (WATP), which allows trainees to obtain legal status as workers after the two-year training period. However, activists for migrant workers argued that WATP was just an extended version of ITTP because during the training period, the trainees cannot be protected by legal guarantees for workers.

Even though migrant workers have contributed to solving the problem of labor shortage in manufacturing sectors of South Korea, too strict policies caused enormous amount of illegal migrant workers, and they are vulnerable to exploitation and abuse by employers. They are suffering from unpaid wages, withholding travel documents, physical and verbal abuses, sexual harassment toward female workers, and inability to gain insurance in the case of industrial accidents. According to the survey conducted by Seol, Choi and Han on behalf of National Human Rights Commission of Korea, 51% of migrant workers had experienced verbal abuse, and 68% of them responded that they had been abused by Korean colleagues and 49% answered that they had been abused by supervisors. In terms of wages, 32% of migrant workers said that they are discriminated in the workplace. According to Seol and Han, many migrant workers did not receive their wages in the case of bankruptcy of their companies. In some cases employers intentionally avoided paying the workers. The survey illustrates that 41% of migrant workers did not get wages despite Korean co-workers were paid. This discrimination against migrant workers can be mostly attributed to their illegal status caused by restrictive policies.

On August 16, 2003, a new legislation, “Foreign Worker Employment-Related Law” went into effect. This new law provides the legal framework for the implementation of the Employment Permit Program (EPP). The EPP generally aims to correct mistakes and problems taken place under the previous policies. First of all, the new system attempts to figure out the problems of undocumented workers including the former trainees who ran away from the companies with which they were contracted. From September to October in 2003, the government legalized undocumented workers, yet the unauthorized workers who have stayed illegally over five years were excluded from the legalizing process, and they were not allowed to apply for the employment permit. The government intended not only to absorb undocumented workers into the properly legalized framework, but to prevent the long-term settlement. Secondly, while the previous ITTP was run by privately owned recruiting agencies that had withheld wages, and imposed hidden costs, under the EPP, both sending and receiving countries exchanges Memorandum of Understanding which contains the outlines of the government’s responsibility for managing foreign workers. Finally, the EPP endows foreign workers to the same rights as domestic workers. While the previous system insufficiently guaranteed the rights of foreign workers, the EPP “issues employment permits up to three years...under the Labor Standards Act...[Foreign workers] have access to the National Health Insurance, the Casualty Insurance, the Industrial Accident Compensation Insurance, and the National Pension.” (Kim, 2005,
In this part, I will examine how acceptance of international norms and its roles have been discussed differently in Japan and Korea, and how different state institutions and structures of civil society in Japan and Korea are linked with impacts of international norms on the rights of migrant workers in both countries.

1. International norms and Internationalization in Japan

The debates over migration issues in Japan cannot be understood without the trend of internationalization. Throughout the late 1970s and early 1980s the term, “internationalization” gradually dominated the Japanese society. The internationalization refers to “such diverse things as learning English, traveling internationally, keeping up with other advanced industrial states and the latest high technology, and fully participating in international institutions.” (Gurowitz, 2006a, p. 156) In addition, local governments in Japan made efforts to advance internationalization projects with funds from the national government under slogans such as “internationalization of the countryside.” They increased international exchange activities, and induced the number of foreign students. (Lu, Menju, and Williams, 2005, p. 119) As a part of internationalization project, the Japanese government participated in international affairs more actively. For example, the government began to be involved in aid to other regions such as Eastern Europe and Asia, and increased the role in United Nations human rights process and the UN in general. Behind these scenes, the Japanese government had an idea that “economic power bring with it new responsibilities that extend beyond the purely economic realm.” (Gurowitz, 2006a, p. 156) To achieve this goal, Japan was pressured to be more open culturally and socially at domestic level. Thus, Shimada claims, “It is undeniable that Japan has forged ahead of the world, and even of the other industrialized countries, in terms of economic and income opportunities, and yet it still protects its homogeneity on the human level, and plainly gives the outside world the impression that it is a closed society.” (Shimada, 1994, p. 202)

The move to internationalization had significant impacts on the use of international norms for expanding the rights of migrant workers in Japan. Pro-migrant activists linked the mood of internationalization with the issues of immigration in Japan, and they have utilized this linkage to pressure the Japanese government by arguing that Japan is against or lags behind international norms regarding the rights of migrant workers. Under the internal pressure of internationalization, Japan has ratified several major international human rights norms such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR) in 1979, the Convention Relating to the Status of Refugees in 1982, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1985, and the Convention on the Elimination of All Forms of Racial Discrimination (CERD) in
1995. As Amy Gurowitz names this process as “change from outside-in,” pro-migrant activists, lawyers, and scholars use the ratified international conventions to advance their demands to expand the rights of migrant workers in Japan, and further to press the government to change their policies.

A series of ratification of international human rights norms entailed the improvement in court decisions and policy toward minorities in Japan. Before 1982, Koreans in Japan, who migrated or were forced to migrate under the Japanese colonial rule, were excluded from the national pension plan. However, with the help from Japan’s ratification of the Convention Relating to the Status of Refugees, nationality restrictions were abolished in the pension plan. After Japan ratified the Convention on the Elimination of All Forms of Discrimination Against Women in 1985, Japan modified its citizenship law to allow not only children born to Japanese fathers, but also those born to Japanese mothers to acquire Japanese citizenship. In 1993 the practice of fingerprinting required for permanent resident aliens was eliminated. The court argued that “there was to suspect that the policy of fingerprinting violated several ICCPR.” (Lu, Menju, and Williams, 2005, p. 115)

As previously noted, the internationalization and Japan’s ratification of several international human rights norms contributed to improving the rights of foreigners in Japan. While Amy Gurowitz positively assesses the impacts of international norms on domestic policies, crucial changes to transform the basic framework toward migrant workers in Japan are lack at the national level. Tegtmeyer Pak argues in her study of differences between national and local responses to foreigners in Japan that local actors frequently invokes an idea of internationalization and local governments are compensating for the national government’s unwillingness to admit the migrant workers. In short, as Yasuo Takao claims, “while the Japanese national government has been extremely reluctant to engage fully in international norms, Japanese local governments have been cultivating new categories of norms about foreigners’ rights.” (Takao, 2003, p. 530) However, it is obvious that international norms alone are unlikely to engender the major changes in policies toward migrant workers at the national level. Therefore, we need to raise a question why the Japanese national government has been reluctant to make efforts to match domestic policies with international standards.

2. Human rights as a part of national development in Korea

While Japanese acceptance of international human rights norms has taken place in the context of internationalization, Korean political leaders and some parts of the bureaucracy have pushed human rights as part of national development. Gurowitz found a pattern in Japan that pro-migrant advocates use international human rights norms as a tool for NGOs to legitimate their claims, and to challenge against the Japanese government. According to Seol and Skrentny, however, a similar pattern in Korea is found “but somewhat more muted pattern.” (Seol and Skrentny, 2001, p. 11) They argue that human rights norms for expanding the rights of migrant workers in Korea are already internalized, and Korean NGOs legitimize their claims based more on human rights norms domestically grown from the experiences of democratization, rather than on international human rights norms.

South Korea ratified the ICCPR and the ICESCR in 1990. They acceded to the CERD in 1978, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1995, CEDAW in 1984, and the Convention on the Rights of the Child (CRC) in
1991. However, it is quite controversial whether these ratifications of international human rights norms have affected the recent policy change from ITTP to EPP in South Korea.

Joon K. Kim positively assesses the impacts of international norms on the policy change stating relationships among the state, civil society, and international conventions “can provide a mutually reinforcing system of checks-and-balances and foster a greater accountability from the state in implementing international norms regarding the protection of foreign workers.” (Kim, 2005, p. 385) Kim illustrates that in 1998, the Joint Committee for Migrant Workers in Korea (JCMK), an umbrella organization for migrant worker advocacy has taken part in the campaign for the ratification of the UN convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Prior to the passage of the EPP in 2003, pro-migrant NGO groups pushed the government by reporting the problems of the existing trainee system to several UN committees such as the Committee on the Elimination of Racial Discrimination. (Kim, 2005, p. 411) In addition, several activists argue that international human rights norms have neutrality and some legitimacy factor, thus it helps to justify a policy change. (Seol and Skrentny, 2001, p. 11) However, according to Seol and Skrentny’s interviews, some activists denied that they used international norms as a tool for migrant advocacy. Shin straightforwardly states they do not use international norms as part of their struggle. Another activist, Park Seok-Woon, director of Seoul’s Association for Foreign Workers’ Human Rights, mentioned international norms “don’t really concern us. As fellow laborers, we feel that we basically need to reform solidarity and ensure that they are guaranteed the same rights as us. So that’s the level at which we are proceeding with our movement.” (Seol and Skrentny, 2001, p. 12)

Korean NGOs have appropriated human rights as part of the strategy of national development. NGOs utilize the context and symbol of democratization movement in South Korea to enhance the rights of migrant workers. For instance, the protests for migrant worker rights are frequently held in at Myongdong Cathedral in downtown Seoul, a regular site of democracy and labor activity. The workers demanded reform of the trainee system and complained of human rights abuse by invoking Koreans’ previous poor working conditions during the era of rapid economic development and dictatorship. Koreans have been educated about human rights by the democracy and labor struggles, and in the migrant worker case, they rely more on human rights norms inherited from domestic experiences rather than on international norms. Thus, Seol and Skrentny argue that international option is not a decisive factor in policymaking. (Seol and Skrentny, p. 13) The domestic option that we shouldn’t mistreat foreign workers when Korean once went through lots of painful experiences as illegal aliens in Germany and Japan or when Korea passed through poor and severe working conditions put pressure on policy-makers. Further some NGOs leaders understand the expansion of migrant worker rights as a chance of national development. For example, Reverend Hae-Sung Kim, one of activists for migrant workers warned in an interview with Hankyoreh newspaper that if the government does not stop the crackdowns on illegal migrant workers, we will have “notorious names” such as underdeveloped countries in terms of labor relations and human rights. He says, “legalizing the illegal migrant workers is a good opportunity for us to be reborn as “new human rights country.” (Hankyoreh, 21 November, 2003)

It is true that Korean policymakers and some ministries find a reason to confirm to international human rights standard in the national interest. As
I mentioned above, Korea has ratified several UN conventions and covenants relating to civil and political rights, economic and social rights, and racial discrimination. These efforts result from the politics of national development, national image maintenance, and the internalization of human rights norms in the context of interaction between nationalism and globalization. The representative case is the National Human Rights Commission’s “National Action Plans for the Promotion and Protection of Human Rights” announced in January, 2006. To comply with international human rights standard, the Commission established the detailed plan to increase the rights of social minorities including migrant workers, and recommended each governmental agency to follow the guideline and action plans. However, the behind logic of this plan is that Korea should advance to human rights country following the achievements of economic development and democratization. Even the characteristics of the National Action Plans quite resembled Korea’s Five-year Economic Development Plan used as a model of state-led economic development. Further when the Ministry of Justice announced the plan of future immigration policy, the Ministry clearly stated that they will carry out the new immigration policy as the national development strategy.

Korean policymakers also are concerned that Korea would be conceived as an anti-human rights country resulting from mistreatment of migrant workers in Korea. Park Hyo-Ouk, policy director of the Korean Ministry of Labor, explained that after the Nepalese protest in downtown Seoul and other related events, human rights became a more serious consideration. He states, “It is not so much a matter of paying attention to international norms as it is recognizing that Korea in general has to conform to international standards and trends. Korean policy-makers feel that this is the natural thing to do and try to move in that direction.”

In Park’s view, this shift is related to other trends of globalization taking place in Korea. In Korea, globalization is a new language of nationalism. Gi-Wook Shin argues that the Korean state proactively appropriated globalization for nationalist goals, and globalization can strengthen national identity in reaction. (Shin, 2006) The Korean government perceived globalization based on Social Darwinism, principles of competition and survival of the fittest. Shin claims, “This reflects the social Darwinism thinking in Korea’s drive toward globalization that has utilized an instrumentalist treatment, which has aimed at maintaining competitive edge for the nation.” (Shin, 2006, p. 203) It is obvious that the term, globalization was introduced by the Korean government, and the government spread the term as a form of national campaign from “internationalization” (kukjehwa) through “globalization” (segyehwa) to Korea as a hub of a new Northeast Asia. The governments have claimed that the globalization must be achieved through ‘competitiveness’ and economic minded-nationals. Globalization is one of the historical stages toward the developed country, superpower, and a center of Asia. Under these goals, the government heavily imposed the discourse of the globalization colored with economic and nationalistic rhetoric on the Korean public. Korean policy making elites understand that Korea must aspire to international standards as part of national development and national pride. To be survived in the age of globalization, they argue that it is necessary to enhance our viewpoints, way of thinking, system and practices to the international standards.

3. Developmentalist State and intra-governmental competition in Japan

Many scholars locate this way of policymaking
within the framework of developmental state. A developmentalist state is defined by “the dominance of the professional bureaucratic staff over politicians with regard to policymaking authority or power.” (Bartram, 2004, p. 136) The scholars reported how a strong bureaucracy are insulated from politicians and civil society, and they argue a core of the developmentalist literature is that the bureaucrats can resist social pressures and attempt to implement policies to advance the general welfare. (Pekkanen, 2004a, p. 363)

While most scholarly works based on a developmentalist state focus on industrial policy (Johnson, 1982), David Bartram applies the argument of the developmentalist state to the Japanese immigration policy. (Bartram, 2004) In his comparative study of immigration policy between Israel and Japan, Bartram characterizes the state structure of Japan as a developmentalist state. He argues “foreign worker initiatives are more likely to be adopted in a country with a clientalist state than in a country with a developmentalist state,” (Bartram, 2004, p. 137) From this point of view, the Japanese bureaucrats dealing with immigration policymaking has been enormously isolated from economic and social pressures. Tsuda and Cornelius mention, “it is dominated by the bureaucracy, with little active participation by the democratic elected Diet, beyond rubber-stamping legislation handed down by the bureaucrats after pro-forma policy debates.” (Cornelius et al., 2004, p. 450)

Seventeen government ministries and agencies were involved in immigration policymaking. However, each ministry and agency reacted to different view points and agendas. Tsuda and Cornelius argue, “On the liberal end of the policy spectrum were those ministries most responsive to the demands of labor-deficient Japanese industries, most notably the Ministries of Construction, Agriculture, Transportation, and Forest and Fisheries, all of which generally advocated the legal admission of foreign workers. The Ministry of Foreign Affairs, which is most concerned with Japan’s international responsibilities and bears the brunt of foreign criticisms over Japan's exclusionary immigration policies, also took a liberal stance.” (Cornelius et al., 2004, p. 451) On the conservative sides, the Ministry of Justice, which is responsible for social order, has the most conservative stance on the issue of migrant workers. The Ministry of Labor, which is concerned with lowering the standard of labor due to influx of migrant workers, is also conservative on the issue. However, in terms of controlling immigration, those two ministries have a great degree of substantial authorities such as entry and exit, and hiring migrant workers. Therefore, within the government, the voices from labor and justice must have been heard loudly. Further, as Tsuda and Cornelius assert, “there is relatively poor coordination and cooperation between the ministries, which rarely produce policies based on a balanced discussion and compromise between a diversity of represented opinions and positions.” (Cornelius et al., 2004, p. 451) Due to the lack of well-coordinated system, policy has tended to follow the approach of the most conservative parts of the Japanese bureaucracy, represented by the Ministries of Justice and Labor.

The Ministry of Labor argued that unskilled foreign laborers would downgrade wages and working conditions and cause labor market segmentation. The Ministry of Justice, which monopolizes immigration controls, pursued complete control over immigration policymaking from other ministries and agencies. However, the main concerns of the Ministry of Justice are not protecting human rights of migrant workers, but cracking down undocumented workers, and preventing the crimes committed by migrant workers. This is one of the reasons why Japanese
government maintains quite restrictive policy toward foreign workers. In this sense, Tsuda and Cornelius’s quotation is meaningful. “Former Justice Ministry insiders (retired bureaucrats) report that the Ministry is one of the most conservative, closed-minded institutions in Japanese society and is still dominated by domestic security and ideological concerns to maintain the nation’s ethnic homogeneity and cultural purity. Because the Ministry of Justice emerged on top of the bureaucratic hierarchy in terms of immigration policymaking, its restrictive position was directly reflected in Japan’s 1990 revised immigration law.” (Cornelius et al., 2004, p. 452)

In sum, I argue that the reason why Japan clings to the most restrictive immigration policy among liberal democratic countries, and reluctant to change migration policies at the national level is found in high degree of bureaucratic isolation in the context of developmental state and domination of most conservative governmental branches such as the Ministries of Justice and Labor. Further, without any political coalitions between the bureaucrats and social actors such as employer’s association and pro-migrant NGOs, it is almost impossible to expect any changes in immigration policy in Japan. As I will explain later, while we can observe political coalition between the Labor Ministry and pro-migrant NGOs, and it contributed to implementing the new policy in Korea, it is difficult to see such a coalition in Japan because Japanese civil society has tended toward a passive and more parochial position. Pekkanen claims, “Japan has an abundance of small local groups but a striking dearth of large independent advocacy groups.” (Pekkanen, 2004b, p. 224) Such a dual structure of Japanese civil society implies that many small local groups facilitate high level of social capital, but fewer civil society voices are heard in the terrain of public policy.

The dearth of voices from civil society in the area of immigration policy also made a difference between Korea and Japan. Pekkanen states, “Japanese civil society groups have also been weak on issues ranging from whaling to human rights.” (Pekkanen, 2006, p. 181)

4. Intra-governmental competition and political coalition in Korea

Seen in the Japanese case, the Justice Ministry and the Labor Ministry dominate the process of immigration policymaking in Korea. However, one key difference is that the Labor Ministry opposed the position of the Justice Ministry since 1993. For example, “the Labor Ministry, which has been tasked with monitoring human rights violations, is sensitive to Korea’s international image”, (Cornelius et al., 2004, p. 499) and they have supported the front-door policy toward migrant workers, while the Justice Ministry has been against the EPP and attempted to maintain the ITTP with KFSB. The former President Kim Dae-Jung instructed that the Labor, the Justice, and the KFSB worked together in developing policy, but the Labor Ministry obviously has conflicts with the other two. Seol and Skrentny reports, “According to Choi Tai-Ho, deputy director of the Employment Policy Division a the Labor Ministry, The Labor Ministry holds the position that migrant workers should have legal worker status for a specified period, and also that an objective assessment is needed to determine the overall number of migrant workers needed in the labor market… The Justice Ministry and KFSB, on the other hand, feel that the current trainee system should be maintained.” (Cornelius et al., 2004, p. 499)

The cleavage between the Justice Ministry and the Labor Ministry took place in the Korean government’s attempts to balance economic
interests with human rights concerns. In conjunction with the increase in the number of foreign workers, infringements of human rights have become widespread: hard labor under confinement, work without pay, reduction in wages without explanation, dismissal without proper notice, exploitation by brokers and lack of compensation for injuries due to work-related accidents. Reflecting these matters, the emerging politics of immigration policies in Korea has largely been led by the debates between proponents of economic interests and of human rights. When the government debated the reforms of immigration policy, political coalitions were built on this line. It is observed well in Korea’s road to the enactment of the EPP, which entitles foreign workers to bonus allowance, retirement pay, and the three basic rights as a worker.

As I explained earlier, the ITTP generated a great amount of human rights violations for foreign workers. The ITTP ended up with a total failure as the program became a site for generating illegal foreign workers, thus creating more workers to human rights violations. A significant number of trainees escaped from their designated companies to become undocumented migrant workers whose wages more closely resembled native labor market price. As a remedy to the failure of the ITTP, the ruling New Korea Party and the opposition National Congress for New Politics submitted a bill in 1997 of the EPP to the National Assembly with the intention to curtail human rights abuse and labor exploitation. The Labor Ministry also supported the bill on humanitarian grounds along with the Joint Committee for Migrant Workers in Korea (JCMK), an umbrella organization for migrant worker. Established in 1995, JCKM let a number of protests, and nation-wide campaign calling for the end of discrimination and the adequate protection of migrant workers’ basic rights. In the face of the strong opposition from proponents of economic interests spearheaded by the Korea Federation of Small Business (KFSB) and the Ministry of Justice arguing that the passage of the bill would place a heavier financial burden on small Korean business due to the expected rise of foreign workers’ wages and welfare benefits, the EPP turned into a diluted form called “the Working After Training Program for Foreigners (WATP)” in April 1998. Through the WATP, foreign workers became entitled to the Labor Standard Act, the Medical Insurance Law, and the Industrial-Disaster Insurance Law, as well as receiving severance pay and various other allowances. However, as the WTAP still fell short of reducing human rights abuses, the second attempt was made in April 2000 under the Kim Dae Jung administration. However, the attempt of the EPP was once again dropped in favor of economic reasons on January 9, 2001. This time, the EPP bill did not even reach the Standing Committee of National Assembly due to economic downturns. Despite the continuation of the staunching opposition, the EPP bill was finally approved in August 2003 under the Roh administration. The one of the reasons for succeeding in enacting the EPP is that the political coalition to support the EPP on the basis of human rights was much wider than before. In 2002, a consortium of 166 advocacy organizations formed the Common Committee for Opposing Crackdown on Migrant Workers, Abolition of Trainee System and Securing Migrants’ Rights (COCATS). Further, two largest labor unions in Korea, the Korean Confederation of Trade Unions (KCTU), and the Federation of Korean Trade Unions (FKTU) sponsored a mass meeting in June 2003 urging the government to implement the EPP.3 (Kim, 2005, p. 405) Without in-depth studies, it is difficult to judge how the political coalition based on human rights (the Labor Ministry, pro-migration NGOs,
and trade unions) defeated another coalition on the basis of economic interests (The Justice Ministry, and KFSB). Yet, it is obvious that the active coalition-building on the consensus of human rights delivered more liberal policy in Korea in comparison to Japan.

However, I do not argue that the wider political coalition solely contributed to the change of the policy. Besides that, I claim that political environment or political opportunity structure was favorable to the political coalition. Thus, another factor for the change is the role of the state emphasizing human rights, especially the will of presidents. The first attempt to change into the EPP came from the former president, Kim Dae-Jung’s instruction. He stated, “We should be ashamed about the discrimination against foreign workers when we are aiming at establishing state safeguarding human rights in global era.” The next successor, president Roh’s will to human rights as a former human rights lawyer, contributed critically to passing the new policy. President Roh pledged to the enactment of the EPP during his presidential campaign. He claimed, “The responsibility and rights are inseparable, the nation, joining the ranks of advanced countries and the UN human rights conventions, should hold up labor policies meeting the international norms and standards not only in name, but in reality.” (Korea Times, February 2, 2003) Finally we should examine the role of state institutionalizing human rights issues. In support of the Roh administration’s initiative, the National Human Rights Commission (NHRC), which was established in 2001, critically helped the government to completely abolish the ITTP and to introduce the EPP to better protect human rights of foreign workers.4

V. Conclusion

Gary Freeman proposes three keywords to develop the theoretical tools for comparative immigration studies: Interests, Rights, and Institution. (Freeman, 2005) The one of the goals in this paper is to throw two keywords, rights, especially rights-based arguments from international norms and institution into the cases of Japan and Korea. I conclude that approach based on international norms alone has lesser explanatory powers than institutional approach in order to explain the development of immigration polices in Japan and Korea as well as the difference between two countries. The impacts of international norms on domestic migration policies are little found in Japanese policy regime, especially at the national level despite of several key decisions by the courts because the Japanese bureaucrats enjoy higher degree of autonomy than any other bureaucracies. Although Korean NGOs and governments sometimes have utilized international norms to enhance the rights of migrant workers in Korea, the real impacts on policy change came from domestic reasons rather than outside-in. In this sense, I argued that institutional approach focusing on intra-governmental competition and political coalition can explain better the difference of two countries. In both countries, the key ministries in the immigration policymaking regime are the Ministry of Justice and Labor. However, while in Japan two ministries are standing on the conservative side, in Korea, the Justice Ministry represented the interests of business on the conservative side, and the Labor Justice kept opposing the stance of the Justice Ministry. Moreover, this intra-governmental competition was extended to the cleavage between political
coalitions respectively based on economic interests and human rights. Thus, Korea had more opportunities to change the immigration policies within more competitive environment rather than Japanese policy regime, which was dominated by two conservative ministries, and was lack of political sway from civil society. The different state structure and political opportunity structure could make difference in the immigration policies between Japan and Korea. Focusing on a state’s domestic structure as a source of variations in the impact of international norms, this study attempts to demonstrate the role of the Korean state and its connection with Korean NGOs in accepting and developing international human rights norms domestically. In contrast to the previous studies that tend to dichotomize between states and human rights activists, this paper tries to argue that state actors in coalition with human rights activists were actively involved in the process of enacting the EPP in Korea. It is obvious that various state actors themselves such as the presidents and the National Human Rights Commission have been an integral part of mobilizing international human rights norms in Korea. As Lee and Park claims, “an arsenal of international human rights norms would not have been effectively translated into the adoption of the EPP if state actors had not been actively involved in working the EPP into the political processes domestically.” (Lee and Park, 2005, p. 159)

* This paper was presented at the International Seminar, “Nationalism and Peace in East Asia,” co-organized by Yonsei University and Tohoku University and sponsored by PaekSang Foundation, on November 23, 2012 in Sendai, Japan.

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Notes
1 The political economy approach was first developed by Gary P. Freeman. He bases his model on the work of James Q. Wilson, who identifies four types of politics depending on the distribution of the benefits and costs of a certain policy. The political economy approach attempts to explain immigration policymaking through which economic interests and societal preferences are mobilized and channeled. It assumes that while benefits of the immigration policy are widely diffused over the general public. Since the relevant interest groups have more incentives to mobilize in order to further their economic interests through more open immigration, the immigration policy is made based on a cliental relationship between policymakers and these well-organized groups.

2 The ITTP was operated by Korea International Training Cooperation Corps (KITCO), similar to Japan’s JITCO. But, KITCO is dominated by business interests from the KFSB, while Japan’s JITCO is collecting the opinions.
from the government, labor and business. Further, KITCO had exclusive rights to import and allocate trainees to the companies.

3 While Japanese trade unions oppose the imports of migrant workers, Korean trade unions do not oppose hiring migrant workers as far as they play supplementary role to domestic workers’ jobs. Most of company trade unions are affiliated with the FKTU and KCTU, which is considered as more progressive federation than FKTU. On the issues of migrant workers, KCTU was actively engaged in this issue. Both federations agree that the rights of migrant workers have to be protected by trade unions since they are also subjects of the unions.

4 NHRC has authority to investigate and research policies containing human rights issues and recommend solutions for correcting human rights violations.