From right to earned privilege? The development of stricter family immigration rules in Denmark, Norway and the United Kingdom

by

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A thesis submitted in conformity with the requirements for the degree of Doctor of Philosophy

Political Science
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University of Toronto
2014

Abstract

Family immigration is the most important immigration flow to Europe, but the existing immigration literature pays little attention to it. This dissertation is concerned with explaining family immigration policy development in Denmark, Norway and the United Kingdom between 1997 and 2012. In addition to addressing a broad and consequential trend of spreading restrictions on family immigration, the dissertation seeks to explain why this trend has manifested itself differently in these three countries. In Denmark, dramatic reforms in 2002 led to the introduction of an age limit for spouses and a so-called attachment requirement, measuring ‘attachment’ to Denmark. The two other countries considered measures inspired by Denmark, but instead adopted a high income requirement for sponsors.

By examining these restrictive family immigration changes in light of the immigration control literature, we can demonstrate how policymakers are much more free from ‘constraints’ on their action than has been assumed until now. I develop a model of political agency focused on what I, drawing on the theoretical literature, call ‘debate limitation’, combining analyses of policy venues and policy frames with a focus on the contextual variable of time and the mediating variable of expert knowledge. When policymakers successfully limit debate, they may push through restrictive changes and overcome
constraints. The analysis relies on qualitative data gleaned from interviews, policy documents, records of parliamentary debates and secondary literature.

The two most consequential findings of this dissertation are that (a) the constraints on the liberal state have been exaggerated with regard to family immigration control, and that (b) recently, a selective logic of migration management has seeped into family immigration policy.
Acknowledgments

While a doctoral dissertation is in many ways a lonely pursuit, there are many who deserve thanks for helping me reach the finishing line. First of all, I would like to thank my supervisor, Randall Hansen. He has made me think and provided constructive, relevant and useful feedback all along (although we haven’t always agreed), and he is also to thank for helping to make it possible for me to combine thesis writing with other professional pursuits. While he is a man of strong opinions, he is also of an open mind, and sometimes I have made him think again, too. I would also like to thank my committee members, Phil Triadafilopoulos and Audrey Macklin, for supportive and constructive comments on chapter drafts as they became ready and for generally being enthusiastic about my project. Thanks as well to Joe Carens for important support during the early stages of the PhD, including writing a letter for me to Canadian immigration when I was dealing with my own family reunification issues!

I have also been lucky to receive feedback from and discuss family immigration with Helena Wray, Eleonore Kofman, Rikke Wagner, Saara Pellander, Saskia Bonjour, Albert Kraler and various other colleagues at conferences that I have attended during these past few years.

At the institutional level, I would like to thank both the Department of Political Science at the University of Toronto and especially the Institute for Social Research in Oslo for having taken me in and supported me throughout this project both materially and personally. Mari Teigen, here’s looking at you. Working during these years at the institute with Vigdis Vevstad and Jan-Paul Brekke has been an inspiration and a joy. Thank you. Thanks also go out to Anja Bredal, Anniken Hagelund and Hilde Lidén.

There are many friends and colleagues that deserve thanks both in Toronto and in Oslo. I made a lot of friends in the grueling years of coursework at the beginning of the PhD, and I would in particular like to mention Dragana Bodruzic, Ethel Tungohan, Kiran Banerjee, Evan Rosevear, Craig Damian Smith, Paul Thomas and Nikola Milicic (especially for some key practical assistance at the very end!), although there are many more that should probably be mentioned! In Oslo, I was lucky to be part of a small group of PhD students in the basement of the Institute. I’ve really appreciated our communal lunches and sharing of triumphs and hard times. Thanks go to Marjan Nadim, Arnfinn Midtbøen, Julia Orupabo, Håkon Dalby Trætteberg, Kristine von Simson, Kjersti Misje Østbakken, Monica Five Aarset and Ingrid Lønrusten Rogstad (I so appreciated our yoga and study sessions, Ingrid!).

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There are, of course, many more people to thank outside of academia – first and foremost my husband Álvaro who has given me pep talks when called for and made my life outside of the thesis so much better. I could not have done it without you. A shout-out, as well, to Ingeborg, my partner in crime of so many years, Siri and the other Lyon girls, Elizabeth, Alice, Stephanie, Eva Kristin and Anna. Finally, thanks to Olav and my mother for their unwavering support.
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Appendix A: Political Parties in Denmark and Norway

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List of Acronyms

APPG - All-Party Parliamentary Group
AUF - Youth organization of Norwegian Labor Party
CJEU - Court of Justice of the European Union (also called ECJ)
DIHR - Danish Institute of Human Rights
DPP - Danish People’s Party
DRC - Danish Documentation and Counseling Centre for Racial Discrimination
ECHR - European Convention of Human Rights
ECJ - European Court of Justice (also called CJEU)
ECtHR - European Court of Human Rights
EEA - European Economic Area
EEC - European Economic Community
EU - European Union
FCO - British Foreign and Commonwealth Office
FrP - Norwegian Progress Party (*Fremskrittspartiet*)
ICCPR - International Covenant on Civil and Political Rights
ILPA - British Immigration Law Practitioners’ Association
IMDi - Norwegian Directorate of Integration and Diversity
IPPR - Institute for Public Policy Research (London)
JCWI - Joint Council for the Welfare of Immigrants
JHA - Justice and Home Affairs
LOKK - Danish Association of Shelters
MAC - Migration Advisory Committee
NGO - non-governmental organization
NHS - National Health Service

NOAS - Norwegian Organization for Asylum Seekers

NOU - Norwegian Official Report (Norges Offentlige Utredninger)

OISC - British Office of the Immigration Services Commissioner

SOU - Swedish Official Report (equivalent to the NOUs in Norway)

UDHR - Universal Declaration of Human Rights

UDI - Norwegian Directorate of Immigration

UNE - Norwegian Immigration Appeals Board

UNHCR - United Nations High Commissioner for Refugees

UKBA - United Kingdom Border Agency

VK government - Danish Liberal/Conservative government
Chapter 1

1 Introduction

“There is a fundamental principle - not a privilege, but a right - that it would not be proper to take away: that of a mother and her children to join the father who is already settled in this country”.¹

“Our message is clear - if you cannot support your foreign spouse or partner you cannot expect the tax payer to do it for you”.²

Family immigration is fundamental to immigration policy, accounting for the largest share of immigrants to Europe, yet family immigration policies remain ill understood. In recent years, many European countries have drastically altered their entry regulations for family migrants, and it is timely for immigration scholars to examine these developments in more detail. I argue that there has been a shift in discourse – but most importantly in policy – over the past decades which is encapsulated in the distinction between the above two quotes, by British Home Office Ministers 43 years apart: family immigration is becoming not a right, but an earned privilege.

In this dissertation I will focus on three European countries that have tightened their family immigration rules during the 2000s: Denmark, Norway and the United Kingdom. I will develop an explanation for how and why they have restricted family immigration during the 1997-2012 period, and why they have done so in different ways. I contend that the countries under examination form part of a broader trend, but that the restrictive trend has manifested itself in different ways. These three countries represent two different ideal-type migration countries

¹ British Home Office Minister David Ennals addressing the House of Commons in 1968, HC Deb 24 July 1968 vol 769 cc852.
In this introductory chapter, I will first elaborate on the importance and relevance of family immigration, most particularly due to the fact that it accounts for the largest share of immigration to Europe. This makes the limited attention paid to it in the migration literature particularly puzzling. I will then carry out a theoretically informed examination of different motivations a liberal (welfare) state may have for controlling family immigration, before looking more concretely at politicization of family immigration beginning in the late 1990s. After this more general introduction, I move on to outline three cases examined in this thesis: Denmark, Norway and the United Kingdom. I demonstrate how they have all restricted their family admissions policies, but using different policy instruments. I then outline the research questions of this thesis, and the argument and plan of the dissertation.

1.1 The relevance of family immigration

I argue in this dissertation that family immigration policy remains a relatively neglected area of study - despite the recognition of such neglect a decade ago. In this section, I outline why family immigration and its policies are important to examine in further depth.

1.1.1 Immigration control and the sheer importance of numbers

Family immigration is the single most important source of immigration to Europe from the rest of the world, accounting for 32% of residence permits issued to migrants from outside the European Union (EU) and the European Economic Area (EEA) in 2012 - a total of 700,000

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3 The UK is a typical colonial regime, whereas Germany and Austria are typical guestworker regimes. France, Belgium and the Netherlands experienced both guestworker and colonial migration. Randall Hansen, “Migration to Europe since 1945: Its History and Its Lessons,” *The Political Quarterly* 74 (August 1, 2003): 25–38.


5 The EEA is the agreement between the EU, Iceland, Norway and Liechtenstein which regulates these countries’ relationship to the EU and the internal market. In accordance with the EEA agreement, these countries are part of the internal market and thus all aspects of EU integration related to the “four freedoms”, i.e. the free movement of
immigrants\textsuperscript{6} - and 41\% if we omit student permits from the total.\textsuperscript{7} Unlike students, family migrants are likely to stay over the long term, and they are thus particularly important for permanent immigration and the growth of immigrant populations. If we look to the United States, for comparison, family migration accounts for 2/3 of admissions.\textsuperscript{8} It follows that examinations of policies to control immigration should take into account family immigration regulation. It has long been recognized that family migration holds potential to increase immigrant numbers, as each ‘primary’ migrant carries with him or her the potential for ‘secondary’ migration through family reunification.\textsuperscript{9} This was, indeed, the story of the transition from ‘primary’ to ‘secondary’ migration in the 1970s. Colonial migrants in the UK and (guest) worker migrants in countries including Germany, Denmark and Norway settled and brought in family members, in particular after states closed their borders to primary immigration and eliminated any possibility of circular movement. Indeed, migration to Germany continued at a high pace following the immigration due to the arrival of guest workers’ families,\textsuperscript{10} belying its self-identification as ‘not a country of immigration’. Some countries attempted to refuse family reunification altogether in order to properly close their borders, but they found themselves prevented from doing so, mainly by domestic courts (see discussion in chapter 2.2.2.2). During

\begin{itemize}
\item Of those 700,000, the United Kingdom issued approximately 90,000 family immigration permits while Spain and Italy issued almost 120,000 each, making these three countries by far the most important receiving countries for family immigration flows.
\item These numbers are extracted from the Eurostat "mig_resfirst" database on 14 April 2014 (available at http://epp.eurostat.ec.europa.eu/portal/page/portal/population/data/database). 2013 numbers were not yet available.
\end{itemize}
this time, then, family migration was to some extent problematized as a wedge in Europe’s borders, but accepted as a fact of life, necessary to ensure the rights of migrant workers and citizens marrying foreigners.

Family migration continued throughout the 1980s and 1990s, following both increased asylum migration and marriage migration as the descendants of original immigrants continued to marry persons from their parents’ country of origin. Citizens without migrant background also married foreign partners, as more and more people started living more mobile lives through work and study abroad. This has meant that family migration flows have continued and grown.

As noted, family migration now accounts for about 1/3 of immigration permits issued every year in to Europe as a whole - 40% if we discount student permits - and sometimes more at the individual country level. For the purposes of underlining the importance of family immigration, it would perhaps be most fruitful to explore family immigration as a proportion of the non-EEA total permanent immigration. It is, however, difficult to obtain comparable statistics of grants of permanent immigration permits categorized by the original status of the sponsor. In Norway and Denmark, all immigrants initially obtain a temporary permit, and statistics covering grants of permanent residence do not usually distinguish by the original immigration status of the applicant (i.e. work, family, other). In the United Kingdom, there are other complications: previously, some family migrants obtained settlement, or permanent residence, immediately upon arrival but not others. On the other hand, this thesis is concerned with immigration admissions and immigration control, which would instead suggest a focus on admissions numbers. Admissions numbers are, furthermore, the most easily comparable available data, as Eurostat compiles such numbers annually. I have used the Eurostat database "migr_resfirst", which counts grants of first residence permits by reason. I omit students from the total, as they are the least likely to remain in the country long-term and thus less significant in a broader perspective on immigration policy. This means that some temporary workers are included in the total, but this is too difficult to control for. This is especially true in the case of the United Kingdom, which in the Eurostat data has a high proportion of "other" migrants. Thus, these

11 There are many more separate categories of immigration permits in the British system, which has developed through decades of “layering”, than in the Scandinavian systems which have undergone comprehensive immigration reforms.
numbers are likely to underestimate the importance of family migration as a share of permanent migration. In fact, Charsley et al conclude from Home Office statistics that “spouses are the largest single category of migrant settlement in the UK” from outside the EEA (i.e. permanent residence permits), accounting for 39% in 2008 and 40% in 2009,\(^\text{12}\) rather than around 30% which these numbers suggest. In 2012, 37% of settlement grants were on the basis of family formation and reunification, but dependents of labor migrants actually come in addition to this.

<table>
<thead>
<tr>
<th>Migration for “family reasons”, absolute numbers</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Denmark</td>
<td>4,231</td>
<td>4,680</td>
<td>8,098</td>
<td>6,061</td>
<td>6,346</td>
</tr>
<tr>
<td>Norway</td>
<td>11,578</td>
<td>12,060</td>
<td>9,672</td>
<td>11,058</td>
<td>10,839</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>117,041</td>
<td>121,268</td>
<td>125,360</td>
<td>118,698</td>
<td>90,879</td>
</tr>
</tbody>
</table>

Table 1: Residence permits issued for “family reasons”, absolute numbers.\(^\text{13}\)

Looking at absolute numbers may seem a little underwhelming, but it is important to note that both Denmark and Norway are small and sparsely populated countries, with approximately 5.6 million and 5 million inhabitants respectively, compared to 63 million in the United Kingdom. To put these numbers in more of a perspective, we can note that per capita, Norway receives more family migrants than the UK. It is perhaps better, then, to look at family admissions as a proportion of total non-EEA admissions.

<table>
<thead>
<tr>
<th>Migration for “Family reasons” as percentage of total non-student immigration from outside the EEA</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Denmark</td>
<td>34%</td>
<td>23%</td>
<td>36%</td>
<td>32%</td>
<td>35%</td>
</tr>
<tr>
<td>Norway</td>
<td>53%</td>
<td>52%</td>
<td>41%</td>
<td>48%</td>
<td>46%</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>29%</td>
<td>30%</td>
<td>27%</td>
<td>26%</td>
<td>21%</td>
</tr>
</tbody>
</table>

Table 2: Residence permits issued for “family reasons” as percentage of non-student total of residence permits issued (total includes “work”, family and “other” reasons).\(^\text{14}\)

---


\(^{13}\) Source: Eurostat migr_resfirst database.

\(^{14}\) Source: Eurostat migr_resfirst database.
As I noted, these numbers are not optimal and likely to underestimate the importance of family immigration as a share of permanent migration to Europe, but they are the most comparable numbers available. In order to present richer data on family admissions, I use nationally issued numbers in the country chapters. What we can already note, however, is that we see in the Eurostat data that both the absolute numbers and the share of family migration went down in Norway in 2010 (when the new income requirement was introduced) and in the UK in 2012 (when the British income requirement was introduced). There appears also to be a declining trend, which is likely caused by a combination of the development of stricter family reunification rules with the development of more liberal rules for highly skilled labor immigration (see 1.1.2).

All the numbers provided thus far exclude EEA immigration to these countries, as this type of immigration is not ‘controlled’ by national governments. Following from the Treaty of Rome and codified most recently and comprehensively in EU Directive 2004/38/EC, citizens of EU and EEA countries have the right to circulate freely for up to three months in the EEA and to stay for longer in order to work, study or if they are self-sufficient. They may also bring family members. In all three countries, EEA migration is an important share of total immigration. Overall immigration (work, studies and self-sufficient persons, plus family members of the above-mentioned) from other EEA countries are reported in the below table. Such flows are consistently much more important on an annual basis than non-EEA family immigration flows, but are not subject to immigration control. It could be interesting to look in more depth at EEA family immigration flows, but this is complicated due to the lack of comparable data.

<table>
<thead>
<tr>
<th>Year</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Denmark</td>
<td>19,970</td>
<td>16,218</td>
<td>16,671</td>
<td>18,116</td>
<td>19,802</td>
</tr>
</tbody>
</table>

Oddly, the national-level data issued by the bodies which report to Eurostat is not quite concordant with Eurostat data. This likely has to do with different definitions in use at the national level.


Eurostat does not provide data on intra-EU migration by immigration reason. National-level data is different from Eurostat data, for unknown reasons. One known problem is that within the Nordic countries Nordic citizens do not need to register when using their right to free movement, so in Denmark Nordic citizens are omitted from EEA numbers.
<table>
<thead>
<tr>
<th></th>
<th>197,720</th>
<th>167,424</th>
<th>175,960</th>
<th>174,135</th>
<th>157,554</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>United Kingdom</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Norway</strong></td>
<td>32,180</td>
<td>26,884</td>
<td>37,266</td>
<td>39,960</td>
<td>36,801</td>
</tr>
</tbody>
</table>

**Table 3 Annual arrivals of migrants from EEA countries under free movement rules.**

The numerical importance of family migration as a share of immigration which is actually under government control, implies that any control of immigration numbers requires some control of family immigration – although the potential for family migration is, of course, limited to those that have the requisite family ties. When the overall number of immigrants becomes a salient political concern, we could expect that politicians might turn to family migration and seek to restrict it. This ‘quantitative’ argument goes back to the 1970s and the efforts to curb immigration, as I suggested above. There is some variation in the extent to which immigration numbers as such have been politicized in different European countries over time, as even a brief survey of the three countries under study show. Britain sought after 1971 to be a ‘zero-immigration’ country, but after New Labour entered government in 1997 this ambition was largely modified - migration should be managed, but not curbed. The number of asylum seekers and the dramatic numbers of unprocessed applications in asylum backlogs were topics of political debate around the turn of the millennium, but the number of immigrants in other categories was not considered salient until the unexpectedly large influx from Eastern Europe after the 2004 EU enlargement, and to a greater extent still with the entry into government of the Conservative-Liberal Democrat coalition in 2010, which sought to implement a cap on immigration. In Norway, asylum numbers have been a salient concern and are closely tracked from year to year, but mainstream political parties have not politicized the overall number of immigrants (which has grown substantially after the eastward expansion of the EU). In Denmark, the number of immigrants and the pace of immigration were explicitly politicized and politicians sought to bring immigration down.

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18 Source: Eurostat “Immigration by sex, age group and citizenship” database (migr_imm1ctz).

1.1.2 Thinking about motivations for control

What is it about family migration that might compel states to control it? This question brings to the fore both real and perceived ‘problems’ perceived by states and policymakers as they engage with family immigration. Following Shachar’s contention that modern immigration policy is developing simultaneously towards openness and closure, and thus that family immigration control is likely to be about more than just numbers, we can explore this question in more detail by considering what Christina Boswell calls the “functional imperatives of the [modern welfare] state”; foremost of which is to ensure legitimacy. This is ensured through abiding by four basic principles, which she identifies as (1) maintaining security, (2) facilitating accumulation, (3) ensuring fairness, and (4) respecting institutional legitimacy. Applying these four principles to (family) migration shows how they can pull the state in different directions. The first one is arguably of limited significance. While migration has, especially since 9/11, been securitized, family migration has not been seen through the security lens to the extent that we have seen with asylum. With regard to the second principle of accumulation, (family) migration is more contested. Migration is usually held to have a small, but positive, overall impact on the economy. However, the effect of migration mainly ‘increases the size of the pie’ (the economy as measured through gross domestic product/GDP), and many not have the same positive effect on GDP per capita. At the same time, immigration generates winners and losers - the distribution of benefits may be unequal, and low-skilled or poor ‘natives’ are more likely to lose out whereas

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22 Ibid., 89.

23 Although the 2002 British White Paper “Secure Borders, Safe Haven” bizarrely covers family migration in a chapter entitled “Marriage/Family Visits and War Criminals”.


businesses may benefit. The economic desirability of migration is therefore contested. Furthermore, some migrants are perceived as more economically beneficial than others - certainly, the perceived economic desirability of family migrants is lower than that of highly skilled migrant workers. In Norway, it has indeed been pointed out that family migrants do have lower labor market participation rates on average than some other groups of migrants. This might invite stricter control of their entry in the name of accumulation or economic wellbeing. At the same time, the state may wish to make entry easier for the family members of the attractive, highly skilled workers to enter, so as not to deter those workers. In a competitive global workplace, access to family reunification might be used as a ‘sweetener’ in order to attract the most attractive highly skilled workers. This points to a more selective and differentiated family immigration policy. Shachar has identified the development of more selective and differentiated immigration policies - with the state seeking at the same time both openness and closure - as a key trend in the past few years. Her research, which focuses on the extension of membership to ‘super-talent’ (such as what she calls ‘Olympic citizenship’ to top athletes), is congruent with the extension of family reunification rights to ‘desirable’ immigrants.

With regard to fairness, one can imagine the scale tipping both ways for family immigration. Basic norms of fairness may dictate that citizens and residents should be allowed to live with their family members (i.e. the ‘rights of insiders’ argument) - indeed, citizens may consider

26 Rosenblum and Cornelius, “Dimensions of Immigration Policy.”


rules that separate them from their family members to be ‘illegitimate’ even if they generally accept the legitimacy of immigration control. But (cosmopolitan) norms of equal treatment can clash with (communitarian) norms of protection or preference for nationals over non-nationals, for example. Fairness arguably also dictates that young persons be protected from forced marriages and other crimes – and in a logic where forced marriages are motivated by immigration concerns, rights protection can become a motivation for control. Finally, the requirement of institutional legitimacy demands that migration control be rule-bound and not arbitrary. Immigration law is now codified in much larger detail than it was 30 years ago in all the countries under study – but the complex rules are often difficult to understand and may indeed be perceived as arbitrary by those who fall afoul of them. They may also change so rapidly that they may be perceived as arbitrary by persons who happen to apply too late when new restrictions are put in place.

Boswell notes that the four basic imperatives can clash with each other. This is certainly true, and I will examine empirically how family immigration has become an object of control in the following section. Adding to the complexity, it should be acknowledged that different parts of the state - different ministries or government agencies - may have different interests and ideas about the desirability of family immigration. This, then, suggests that state or policymakers’ motivations for controlling family migration, and objectives in family immigration policy, are to some extent an empirical question, and that they are likely to pull in different directions towards both openness and closure.

32 This is arguably demonstrated in the discourse of interest groups for people affected by strict family immigration rules, such as Grenseløs Kjærlighet and BritCits. See also Helga Eggebø, “A Real Marriage? Applying for Marriage Migration to Norway,” *Journal of Ethnic and Migration Studies* 39, no. 5 (2013): 773–89, doi:10.1080/1369183X.2013.756678.

33 For communitarian reasoning, see for example Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (Basic Books, 1983) It should be noted that communitarian thinkers such as Meilaender consider that states should give access to family reunification. Peter C. Meilaender, *Toward a Theory of Immigration* (Macmillan, 2001).

1.1.3 The emergence of family immigration as an object of immigration control

After the ‘immigration stop’ in the 1960s in the United Kingdom and in the mid-1970s in Denmark and Norway (along with the rest of Western Europe), family immigration soon took over as the dominant mode of entry. As I noted above, some countries attempted to curb family reunification, but partly due to the influence of the courts accepted continued family immigration. Despite family immigration becoming the most important mode of entry to Europe, it only made occasional impact on the policy agenda in many countries: in the Netherlands during the 1950s, in the United Kingdom during the 1970s and 1980s (see chapter 5), and in Germany in the 1980s. In other countries, it was not a topic of debate, and it has not been examined in any depth in the immigration control literature (as I will develop in chapter 2). The late 1980s and the entire 1990s was marked, to a large extent, by the sharp rise in arrivals of asylum seekers making their way to Europe from all over the world (or, in the case of the wars in the Balkans, originating right at the doors of the European Union). The ‘asylum crisis’ was, not surprisingly, at the top of both policymakers’ and academics’ minds, as was the construction of a potential ‘Fortress Europe’, where the external borders of the continent were


reinforced just as the internal borders were being weakened and rendered less important.\textsuperscript{40} Towards the end of the 1990s family immigration became somewhat more politically salient, but it was again overshadowed after 9/11 by asylum flows and security concerns related to these.\textsuperscript{41} The early 2000s, in turn, governments revived labor migration to Europe and opened new doors for the highly skilled.\textsuperscript{42} This was followed by the significant eastward expansion of the European Union in 2004 with attendant migration flows from East to West.\textsuperscript{43} As we see, other issues have frequently loomed larger on the policy agenda than family immigration, providing a partial explanation for the relative lack of academic attention to the issue. Adding to this, the understanding of family migration as secondary migration following either labor migration flows or asylum flows might lead to the conclusion that examining those flows is more important for revealing migration dynamics, leaving family immigration as a relative afterthought.\textsuperscript{44}


\textsuperscript{44} An example of this is Anthony M. Messina, \textit{The Logics and Politics of Post-WWII Migration to Western Europe}, 1st ed. (Cambridge: Cambridge University Press, 2007).
So how did family immigration rise on the agenda in these three countries? These processes will be examined in much more detail in the individual country chapters, but I will outline a general process of politicization here, focusing on three aspects, which, although analytically distinct, can be difficult to separate in practice. Firstly, there has been a change in the valuation of family and work migration flows. Secondly, forced marriages have been a catalytic debate through which family immigration has been problematized. Thirdly, family immigration has been problematized in light of debates over immigrant integration in several different ways. In brief, these different debates concern immigration in the light of ‘culture’ and ‘economics’.

During the mid-1970s, countries that had previously solicited labor migrants abruptly stopped doing so. Economic migrants, or potential workers, became suspect and were no longer wanted in the midst of the economic crisis. Family migration, on the other hand, was still (reluctantly at times) accepted. In this light, certain family migrants were suspected of really being labor migrants using the family stream to circumvent immigration controls. This was particularly the case for male family migrants in the United Kingdom, who were thought to be primarily motivated by the possibility to obtain a residence permit so that they could work in the United Kingdom. This lead to the institution of the ‘primary purpose’ rule, whereby prospective family migrants would have to ‘prove’ that their reasons for applying were marriage rather than the prospect of moving to Britain to work (an impossible task, as it were, allowing the Home Office to reject their applications). Similarly, Norway moved relatively early to curb family immigration for almost-grown-up young men and male relatives. Some countries quite simply barred family migrants from accessing the labor market. Thirty years later, European countries have again opened the door to labor immigration (especially of the highly skilled), and the concern is, instead, about migrants who do not work, and family migrants have been cast as problematic precisely because they do not immigrate for work reasons. Both in Denmark and Norway prospective family migrants have been advised to apply through the work stream instead (this option, of course, is only open to the skilled). This development has to do with concerns


over the welfare state and expectations that family migrants will have low labor market participation rates, which I will engage with further in a moment.

As noted, family immigration continued after the reunification of the original guest worker and colonial families. This was partly because many children of these original migrants married partners from their ancestral country, leading to continued migration flows from these countries (most importantly in our cases Pakistan, Turkey and India). Especially in the Asian subcontinent, there is a tradition of arranged marriages, which has been carried forward in immigrant communities in Europe. The practice of transnational arranged marriage has been problematized at the micro-level and at the macro-level by both politicians and activists. At the micro-level, some participants in the public debate have argued that the marriage patterns of children of immigrants hide a number of forced marriages, where young women (and men) are married off against their will.47 There is no widely accepted definition of forced marriage, and indeed the Council of Europe definition name checks both arranged marriage, child marriage and sham marriage.48 More specifically, we may say that forced and arranged marriages exist on a spectrum where the ‘forced’ end dispenses with consent and meaningful involvement of the young person. It may involve physical or emotional violence.49 Forcing someone to marry is a violation of his or her individual rights, and it is prohibited in several human rights treaties.50

47 For a discussion see for example Ralph Grillo, “Marriages, Arranged and Forced: The UK Debate,” in Gender, Generations and the Family in International Migration, ed. Albert Kraler et al. (Amsterdam: Amsterdam University Press, 2011), 77–99; or for an example see Hege Storhaug and Human Rights Service, Feminin integrering : utfordringer i et fleretnisk samfunn. ([Høvik]: Kolofon, 2003).


Assumptions that forced marriages are an important (or the most important) reason for many transnational marriages have largely been made with limited empirical data to support them, and have entered public debates in both Scandinavia and the United Kingdom through mediatized accounts of individual, tragic, cases.\textsuperscript{51} Sherene Razack, a Canadian critical scholar of race, notes how “Western feminists have begun to share conceptual terrain with the far right”.\textsuperscript{52} By this, she is referring to white, Western, self-identified feminists (such as Hege Storhaug in Norway, Karen Jespersen in Denmark and Ann Cryer in the UK) who have brought forward these individual cases of forced marriage and used them to call for immigration restrictions – a rhetorical move which has also been made by anti-immigrant parties.\textsuperscript{53} The association of individual rights violations with broad marriage patterns also relies on a conflation of arranged and forced marriages and an assumption that if given the choice, second-generation migrants would by definition not marry transnationally or indeed accept a marriage arranged by their parents. Existing research does not fully support such an assumption.\textsuperscript{54} Many activists (especially among minority populations themselves) have also deplored how forced marriages are seen as a special, culturally determined, form of violence rather than another form of violence against women.\textsuperscript{55} Singling out forced marriages with an immigration dimension may also mean that forced marriages that do not have one go under the radar. As Dustin has argued, the singling out of forced marriages and the efforts to tackle them through immigration control measures rather than through other means “gives rise to the concerns that the main motive – rather than a byproduct –


\textsuperscript{52} Sherene H. Razack, “Imperilled Muslim Women, Dangerous Muslim Men and Civilised Europeans: Legal and Social Responses to Forced Marriages,” \textit{Feminist Legal Studies} 12, no. 2 (2004): 130.

\textsuperscript{53} Razack, “Imperilled Muslim Women, Dangerous Muslim Men and Civilised Europeans”; Hagelund, “‘For Women and Children’ The Family and Immigration Politics in Scandinavia.”


of the initiative is reducing immigration through family reunion”.\(^{56}\) At any rate, as I will show in the individual country chapters, the question of forced marriage has been a catalytic debate leading to a shift towards further restrictions.

Policymakers and anti-immigration activists\(^{57}\) have also identified family immigration as a source of poor immigrant integration\(^{58}\) – a shift from an idea widely held in earlier periods where the presence of family was thought precisely to allow migrants to settle down rather than to yearn for home. Indeed, the original Family Reunification Directive proposal, put forward by the European Commission in 1999, presented family reunification as necessary for immigrant integration, but over the course of negotiations, integration was recast as a requirement for family reunification rather than an outcome of it.\(^{59}\) A recent EU-funded comparative project (IMPACIM, one of three recent EU-funded projects related to family and integration) looked at the linkages between family immigration and integration. They defined integration in the immigration context as “the inclusion of new populations into the existing social structures and economic activities of the receiving country”\(^{60}\) and argued that it is generally seen as a ‘two-way process’ – including in the EU’s Common Basic Principles for integration policy.\(^{61}\) Heckmann and Lüken-Klaßen argue that "in the process of integration, four dimensions can be differentiated: (a) structural integration, (b) cultural integration, (c) social integration and (d)

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58 Note that the concept of “integration” is not widely used in the British context, where there is usually more talk of “social cohesion”.


61 Ibid.
identificational integration”.

The first entails the formal acquisition of rights, whereas the last entails the “formation of feelings and belonging”. The middle two concern “a mutual individual learning process” and “the building of social relations”. These different dimensions can be seen as ‘thinner’ and ‘thicker’ notions of integration. In a ‘thick’ notion of integration, we expect ‘feelings of belonging’ and dense intercultural social relations. It is arguably in this light that some scholars have seen the intermarriage rate as a measure of integration, and that the fact that the descendants of immigrants often marry persons from their ancestral country, has been taken, in itself, as evidence of failed integration. This position has been problematized, and one can point out that people in general marry persons that are like themselves. However, intra-ethnic transnational marriages or the marriage patterns of minority groups have also been argued to essentially reproduce the first generation of migrants, slowing down integration over time through the creation of poor language-learning environments for children and the persistence of ‘different’ family cultures. Migrant and Muslim women, in this context, are seen as ‘carriers of culture’. Such arguments highlight the blurring of immigration and integration policies which

62 Ibid., 4.
63 Ibid., 5.
64 The intermarriage rate is considered by some the “gold standard” of integration measures, see Shamit Saggar and Will Somerville, Building a British Model of Integration in an Era of Immigration: Policy Lessons for Government (Washington, DC.: Transatlantic Council on Immigration/Migration Policy Institute, May 2012); For an example, see Giampaolo Lanzieri, Merging Populations: A Look at Marriages with Foreign-Born Persons in European Countries, Eurostat statistics in focus, Populations and Social Conditions (Brussels: Eurostat, 2012).
66 See for example Hagelund, “‘For Women and Children’ The Family and Immigration Politics in Scandinavia” She associates this view in Norwegian debates with the activist Hege Storhaug. See for example ibid. She associates this view in Norwegian debates with the activist Hege Storhaug.
has been a trend in recent years, and reflects a ‘culturalist turn’ where some immigrants (in particular from Muslim-majority countries) have been seen as potentially ‘irreconcilable’ with the Western societies in which they settle. As such, the ‘integration potential’ of family migrants has become and object of measurement, and several countries have introduced ‘integration tests’ as a prerequisite for family immigration, whereby would-be family migrants would have to undergo language testing before entry. Most infamously, the Dutch required would-be migrants to watch a video of topless women sunbathing and gay men kissing; daring them to accept the Dutch ‘liberal’ way of life. The Danish ‘attachment requirement’ which I will examine in this dissertation also relies on an integration logic, as ‘attachment’ is argued to indicate ability and willingness to integrate oneself and one’s partner. Such notions of family immigration undermining integration are of course mainly associated with a certain type of family migrant from non-Western countries.

A much ‘thinner’ notion of integration has also developed whereby employment has become a byword for integration. This feeds into another, much broader, debate about immigration to Western liberal welfare states. Already in the 1970s, welfare state scholars argued that diversity


70 The extreme version of this view is the “Eurabia thesis” fronted by authors such as Bat Ye’or, see Bat Ye’or, Europe, Globalization, and the Coming of the Universal Caliphate (Rowman & Littlefield, 2011); Scholars generally sow doubt about such accounts, see for example Göran Larsson, “The Fear of Small Numbers: Eurabia Literature and Censuses on Religious Belonging,” Journal of Muslims in Europe 1, no. 2 (January 1, 2012): 142–65, doi:10.1163/22117954-12341237.


hindered the expansion of the welfare state, and Freeman argued in a 1986 article that immigration to Europe would lead to Americanization of European welfare states. This debate was brought to the fore again in the mid-2000s with Alesina and Glaeser’s agenda-setting book comparing American and European approaches to social policy, where they found that diversity was an important explanatory variable with regard to the difference in approaches. Immigration scholars have also engaged with these questions. Indeed, the staying power (or perhaps foresight) of Freeman’s 1986 article has been so important that an entire anthology was devoted to revisiting it in 2012. While questions of the place of immigrants in the welfare state have been actualized in different kinds of welfare regimes, one might suggest that the concern over the place of immigrants is particularly acute in the comprehensive Scandinavian welfare state based on the underlying prerequisite of full employment. While new labor migrants come to Europe to work - and usually require a work contract in order to secure an immigration permit - family migrants ostensibly do not migrate for work (although, as I noted, they have sometimes been suspected of doing so back when labor migration was temporarily taboo – and currently in

78 Sainsbury, Welfare States and Immigrant Rights.
79 Norway’s government, for instance, commissioned a large study of the impact of migration on the welfare state, which was published in 2011. NOU 2011:7, Velferd Og Migasjon: Den Norske Modellens Framtid.
cases of suspected marriages of convenience). The Scandinavian countries have invested significantly in integration programs for asylum and family migrants, which are largely geared at preparing them to join the labor force. 80 As Engebrigtsen has argued in the Norwegian context, “to be a wage-earner is to be integrated”. 81 A slightly more ‘tabloid’ version of this argument is relevant in the British context of a liberal and more minimal welfare state; there, it is suggested that it is not the job of the state to care for incoming family migrants through the ‘no recourse to public funds’ stamp placed in their passports. 82 In this context, we see an economic logic seeping into family immigration policy, which will be discussed at length in this dissertation. To qualify for family immigration, sponsors and family migrants must demonstrate their independence from the welfare state. 83 New migrants may be barred from accessing welfare benefits for a certain period of time, obligating the sponsor to care for them in the intervening years – thus imposing other forms of dependency. 84 While the ‘thicker’ notion of integration described in the previous paragraph has clearer racial and cultural overtones, this thin notion of integration is at its face more neutral in racial terms, making integration available to those who work.

To summarize, family immigration has emerged as an object of immigration control through the confluence of a number of political debates which concern individual rights violations, immigrant cultural integration and economic integration into the labor market and the welfare state.


81 Engebrigtsen, “Kinship, Gender and Adaptation Processes in Exile,” 734.

82 See Sainsbury, Welfare States and Immigrant Rights.


84 Eggebø, “The Problem of Dependency.”
1.2 Three cases of family immigration restrictions

In this dissertation I examine more closely the development of family immigration policy in three European countries - Denmark, Norway and the United Kingdom - during the 1997-2012 period. In the following, I will describe the three ‘cases’ and the policy developments under study, highlighting both how they form part of a broader trend, and how this trend has manifested itself in different ways.

1.2.1 Denmark and the achievement of control

Denmark – a small Scandinavian country that allowed companies to recruit guest workers in the late 1960s and early 1970s, and which codified one of the world’s most liberal immigration legislations in the early 1980s – became the poster child for immigration restrictionism in 2002. In fact, the roots of restrictionism lay further back – the very liberal 1983 Immigration Act was opposed from the start by the right, and towards the end of the 1990s even the political left began to move towards restricting immigration, as parts of the Social Democratic Party became concerned about immigrant integration.

In 2001, a conservative coalition government came into power with the support of the far right Danish People’s Party. It moved immediately to severely restrict immigration, and I devote the most important part of chapter 3 to explaining how the government was able to put through these dramatic restrictions on family immigration. The most important measures introduced was an age limit for spousal reunification, requiring that both spouses be at least 24 years of age, and a requirement that the couple’s combined subjective ‘attachment’ to Denmark (as measured through language skills, time spent, family ties and so forth) be greater than their ‘attachment’ to an alternate country of residence.

Despite changes at the margins – mainly to reduce some of the ill effects of the policies on ‘real Danes’, the core policies – the 24-year age limit for spouses and the attachment requirement – have survived for more than a decade and a change of government. Further restrictions were attempted in 2010, when the same government sought to implement a points-based system. These rules were overturned as soon as the new Social Democrat-led coalition government entered power in 2011. A more detailed account of these developments is provided in chapter 3.
1.2.2 Norway’s circuitous path to the income requirement

Norway’s early immigration history mirrors Denmark’s almost perfectly, but whereas immigration legislation in Denmark was controversial during the 1980s, there was practically unanimous agreement in Norway on the institution of a right to family reunification given the fulfillment of certain conditions, notably an income requirement. This did not, however, apply to citizens. Family immigration became more politicized towards the late 1990s and early 2000s in the context of rising asylum inflows and increased attention to forced marriages - issues which the growing Progress Party began harnessing as reasons to restrict immigration. A first round of family immigration restrictions came in 2003, with the extension of the income requirement to persons with humanitarian status and young citizens.

A new expert proposal for immigration policy reform was published in 2004, which was important in setting the agenda for family immigration policy and defining both the ‘problems’ to be solved and in influencing policymakers’ understanding of the legal constraints on their action. Forced marriage prevention was a central priority, and the experts also cemented the understanding the family immigration rules could act as a ‘pull factor’ for asylum seekers. A few years later, Norwegian policymakers from the Labour Party, in a coalition government with the Socialists and the Center Party\(^\text{85}\), sought to implement similar measures to the Danish policies, proposing a slightly lower age limit and a more objectively measured attachment requirement, after taking several study tours to Denmark. The effort failed.

In 2007-8, however, full immigration reform moved forward, including a dramatic extension of the existing income requirement for family immigration, which was both raised and extended to new groups of sponsors (most importantly citizens). Norway emerged in 2010 with a much stricter, and in particular a much more selective, family immigration regime. These developments will be studied in detail in chapter 4.

\(^{85}\) A liberal, centrist, agrarian party, which until 2005 had aligned itself with the center-right (so-called ‘bourgeois’) parties.
1.2.3 Managing the courts and managing migration in Britain

In Britain, family immigration was a point of tension throughout the 1960s and 1970s, when family migration continued from the Indian subcontinent after Britain began to restrict entry for colonial workers. Male family migrants in particular were suspected of really being labor migrants ‘in disguise’ – a problem because labor migration had decisively been ended. To halt this movement, the so-called ‘primary purpose’ rule, whereby the motive of immigration must be demonstrated to be marriage and not work, was instituted in the early 1980s, severely reducing family migration flows. As part of Labour’s 1997 election manifesto, the ‘primary purpose’ rule was lifted. Subsequently Labour incorporated the European Convention of Human Rights into British domestic legislation; altering the politico-legal conditions for family immigration of previous decades. In the UK, most mainstream politicians in the Labour party were careful not to take on family immigration head-on - this being a more sensitive political issue given the UK’s much larger immigrant population. During the early 2000s asylum policy entirely overshadowed concerns over family immigration, until political focus moved to a revival of labor immigration, and the unanticipated large inflow from countries such as Poland after the 2004 accession of eight Eastern European countries to the EU.

In Britain as in Scandinavia, the problem of forced marriages appeared on the political agenda around 1999-2000. The Labour MP Ann Cryer advocated for a Danish-style age limit, which was eventually put in place in 2008. In 2011, however, it was struck down by the new UK Supreme Court. By this time, the new Conservative-Liberal Democrat coalition government had entered office promising to dramatically reduce ‘net migration’, and they found another way to restrict family immigration. In the UK, as in Norway, income requirements and the assumption that families should be self-sufficient (with ‘no recourse to public funds’) already existed. In 2012 the income requirement was raised dramatically.

1.2.4 Similarities and differences

This dissertation, at the macro-level, charts developments which are part of an overall restrictive trend. It is widely recognized that there has been a ‘restrictive turn’ in family immigration policies across many European countries, and these three countries all follow this general
pattern.  

It is, in fact, perhaps particularly pronounced in these countries, as they are not bound by the EU Family Reunification Directive and thus not affected by what has been argued to be the re-liberalizing influence of the EU Court in recent years. It is also notable that restrictions have been pursued in these countries under governments of all stripes: Danish restrictions began under a center-left government and carried on under a right-wing government; Norwegian restrictions were first implemented by a center-right government but pursued by a center-left government, and in the United Kingdom both Labour and the Conservative-Liberal Democrat coalition enacted restrictive changes. I contend, therefore, that this is not primarily a story of political partisanship. I also contend that existing analyses of family immigration restrictions have been more focused on the ‘culturalist’ aspects of restrictions, and have not picked up on the economic and selective logic, which I identify in particular in Norway and the United Kingdom. These developments of selective policies cohere instead with developments with regard to the extension of membership as analyzed by Ayelet Shachar.

The important trend of restrictions on family immigration has manifested itself in different ways and through the adoption of different policy instruments in the cases under consideration (and


arguably also across other countries). In my examination of these three countries I examine why and how these countries ended up with different policy instruments. To illustrate the differences between the three countries, I have systematized their policies, objectives and outcomes in the following table.

<table>
<thead>
<tr>
<th></th>
<th>Denmark</th>
<th>Norway</th>
<th>UK</th>
</tr>
</thead>
<tbody>
<tr>
<td>Migration type</td>
<td>Modified guest-worker</td>
<td>Modified guest-worker</td>
<td>Colonial</td>
</tr>
<tr>
<td>Age limit?</td>
<td>Yes, 24 since 2002</td>
<td>Attempted introduced in 2006 and withdrawn</td>
<td>Implemented 2008, revoked 2011</td>
</tr>
<tr>
<td>requirement?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income requirement?</td>
<td>Modest</td>
<td>Dramatically raised and extended in 2008</td>
<td>Dramatically raised and extended 2012</td>
</tr>
<tr>
<td>Policy outcomes?</td>
<td>Severe reduction in numbers</td>
<td>Shift in composition of flows.</td>
<td>Reduction in numbers and shift in composition</td>
</tr>
</tbody>
</table>

Table 4: Policies, objectives and outcomes in three countries.

The three countries display variation in the policy tools adopted, in the levels of restriction of family immigration and in the arguments used to put through changes. Whereas Denmark has had an age and attachment requirement since 2002, these forms of regulation did not entirely succeed in the other two countries, where alternate forms of family immigration regulation have been preferred, most importantly a high income requirement. By examining this variation in policy instruments, I am able to demonstrate the flexible means through which policymakers can exert control.
1.3 Research questions

The objective of this thesis is to analyze the policy developments in Denmark, Norway and the United Kingdom described at the beginning of this chapter: the development of stricter family immigration rules and the introduction of respectively age limits and income rules. I begin by asking the following background question:

(1) How did family immigration become an object of immigration control and restrictions in these countries?

I then move to the explanatory questions that form the main ambition of this thesis.

(2) How can we explain policy outcomes in the area of family immigration policy?

In all three countries, the regulation of family immigration has changed significantly, and it is important to have a good understanding of the process. Hereunder I will investigate the policy objectives pursued, the arguments and frames that were employed and the concrete means chosen.

The third question of this thesis concerns the shift from cultural to income-based regulation:

(3) Why, given the initial pursuit of Danish-style regulations (age limits, attachment requirements), did Norwegian and British policymakers reconsider and adopt high income requirements as the centerpiece of their family immigration regulations instead?

As the question implies, the bulk of the attention is paid to Norway and the United Kingdom, rather than to Denmark, which is observed mainly from their perspective. Both Norway and the UK implemented or sought to implement measures that had been pioneered in Denmark. I am, mainly, interested in why they first sought to do this, why they failed, and why and how they adjusted their strategies.

1.4 Argument

The existing scholarly literature on immigration control policies has to a large extent seen the state as ‘constrained’ in its control of family immigration, for reasons that I will develop in chapter 2. Scholars have identified constraints on policymakers stemming from both within the
state (courts, interest groups), and outside it (human rights norms, the European Union). In this dissertation I advance an analytical account to explain the restrictive changes introduced to family immigration policy focused around the idea that policymakers may mitigate or circumvent constraints on policymaking through a key strategy which I call ‘debate limitation’. Linking analyses of policy venues and policy frames, I argue that policymakers have been able to introduce restrictive measures when they have successfully limited the scope of conflict surrounding the changes both at the level of the venue and at the level of how changes are framed. I draw in the intervening factors of ‘time’ (in the form of ‘timing’ and ‘speed’) as well as the strategic use of expert knowledge in order to develop how policymakers have limited debate. I focus on the question of proportionality as a particular object of framing. In order to be acceptable under human rights law, interference in family life must be ‘proportional’, in accordance with the European Convention on Human Rights. While this is on the one hand a question for courts to decide, the argument about whether a particular policy is proportional is also a matter of discursive positioning for governments.

In Denmark, reforms were quick and well–timed in light of the recent elections and the peak of anti-immigration sentiment in Denmark. The scope of conflict was limited, as the political left was divided and external stakeholders had limited access to the policy process due to the restricted and brief public consultations: the most important venue was the Danish parliament and the policy process was closed to many actors. Three objectives were cited for the policy changes (immigration reduction, integration improvement, forced marriage prevention), allowing policymakers to pick the most effective argument at each point. The measures were framed as rights-protecting, and expert knowledge was shunned, as it was unlikely to support the measures. Civil society organizations were given limited opportunity to provide input, and legal experts were themselves under strain as their research institutions and their credibility were also under attack by the government. The government’s framing ‘stuck’ in the absence of expert evidence to the contrary.

In Norway, the age limit debate was slow, allowing the build-up of opposition and the broadening of the scope of conflict. There was conflict both within and outside the governing coalition. Whereas the Danes had limited opportunities for input, the Norwegian policy consultation dragged out and became highly contested. The framing of the measure as one which would prevent forced marriage was also disputed. The measure had narrow objectives, which
were cast into doubt both in terms of their genuineness and in terms of the posited relationship between means and ends. The income rule, on the other hand, had broad policy objectives: it was framed as preventing both forced marriages and asylum seeking, as well as improving integration and self-sufficiency. It was also well-timed at the peak of asylum arrivals in 2008. It was further a matter of changing secondary and not primary legislation, so it was a more discrete process. In fact, when highly skilled workers were exempted from some of the income rules in subsequent secondary legislation, it was barely noticed.

Similarly, in the UK the age limit debate was slow, but while conflict was limited politically, it later shifted to the courts, where opponents of the rules had more opportunity to challenge it. The age limit’s limited objective stood in the way of its proportionality. The income requirement was again subjected to limited political conflict, and it was legitimized through its partial outsourcing to the experts in the Migration Advisory Committee, who could calculate the appropriate level ‘scientifically’. Broad policy objectives and limited political opposition contributed to its successful implementation.

1.5 Plan of the dissertation

This chapter has underlined that family immigration is front and center of immigration to Europe, and that despite its centrality political scientists have made relatively limited attempts to understand family immigration policy. Chapter Two will examine the literature on immigration control, where it has been observed that states reluctantly accept ‘unwanted’ immigration due to the existence of internal and external constraints on policymaking. Family immigration has traditionally been seen as this sort of ‘unwanted’, but accepted, form of immigration, which states have had limited ability to control and regulate. International and constitutional legal norms about the right to family life are usually understood to prevent strict family immigration control. Too little attention has been paid, I argue, to how these constraints can be negotiated through the mobilization of different types of discourses and resources by policymakers.

Chapter Three of this thesis will examine the case of family immigration policy in Denmark. Denmark represents the starkest example of ‘the achievement of control’: family immigration was tackled head on and severely reduced around 2002. I will ask how this was possible, and why none of the usually highlighted constraints stood in the way of restrictions, as well as examining how Denmark paved the way and provided an example for other European countries.
Chapter Four will examine family immigration regulation in Norway. It will examine the process whereby Norwegian immigration legislation was overhauled between 2004 and 2012, focusing in particular on the attempt to implement a Danish-style age limit, which failed, but was then replaced by a combination of other measures amounting to much the same effect.

Chapter Five takes on family immigration policy in the United Kingdom from the Labour years until 2012, focusing on the implementation of the age limit, its demise in the courts, and the new income rules implemented under the auspices of the new coalition government’s effort to bring down annual net immigration ‘to the tens of thousands’.

Chapter Six examines these developments in a comparative perspective, reviewing them against the existing literature on immigration. I propose some main variables required to understand the different outcomes in the different countries, and argue that this demonstrates the agency of policymakers.
Chapter 2

2 Constraints and how politicians overcome them

The objective of this chapter is to establish the necessary points of reference for this thesis. First, I examine family migration policy as an object of study; defining both family migration and policy. I then review existing literature on family migration and family migration policy. As I will contend, the literature on family migration does not generally analyze policy in depth, and the literature on immigration policy does not often look in depth at family immigration.

My broader aim in this dissertation is to speak to the literature on immigration control. As such, I proceed to delve more deeply into a major debate in the literature on immigration control policies, which is sometimes known as the ‘control gap debate’ or the ‘gap’ hypothesis. According to this hypothesis, the liberal state cannot control certain types of immigration flows due to constraints on its action. The academic analyses that make up this literature represent the search for different types of constraints on policymakers and on the state, and I will review the different sources of constraints that have been identified.

I contend in this dissertation that policymakers may use different tools and approaches to manage their impact and potentially overcome them. I outline these tools, drawing on the work of Baumgartner and Jones and others, in the third part of this chapter. The fourth and final part of this chapter addresses more practical concerns. What material have I studied? How have I approached it? What limitations do I see, and what challenges have I faced in the process of research?

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89 Bonjour, “The Power and Morals of Policy Makers.”


2.1 Family migration policy as an object of study

Before proceeding, I will examine family migration (policy) as an object of study. This involves, firstly, establishing some definitions of the object of study and secondly, examining existing academic literature on both family migration as a migration flow and family immigration policies.

2.1.1 Definitions

In this thesis I speak of family migration at a general level as migration regulated through family immigration rules. The majority of this migration is made up of spouses and partners, but there are also many children family migrants and some elderly relatives. Spousal immigration has, however, generally been the focus of policy interventions, and it follows that this is most central in this dissertation as well. It must be acknowledged that family migration in fact involves different processes and could be distinguished into at least three categories. The classic conception of family migration is the reunification of a family unit after a time of separation. This period of separation can occur during dramatic circumstances of flight (in the case of refugees), or may instead be planned in cases where one family member, usually the ‘breadwinner’, moves ahead to make a living in a new country and find work there. Once the remaining family members later join him or her, ‘normality’ is restored and the family is reunified.

Increasingly, however, family migration takes place through another process referred to as either family formation or marriage migration. In these cases, the family unit did not exist pre-migration, so there is, strictly speaking, no reunification. Rather, two individuals from different countries marry, and one subsequently moves to join the other. The marriage, then, or the formation of a family, is the purpose of the move itself. An example of marriage migration is the transnational arranged marriage – arranged by immigrant families in Europe for their (adult) children, sometimes with cousins or other relations from the country of origin. Thirdly, one may imagine families moving together from one country to another. In this case we speak of joint

migration, and it is most common in cases of highly skilled migration.\textsuperscript{93} These three main categories are often spoken of collectively as ‘family reunification’, but given the imprecision of this term, I prefer the collective term family migration instead to denote all migration regulated through family immigration rules. Most of the restrictive changes examined in this dissertation concern the immigration of spouses. This is therefore the main focus of the dissertation, but I will mention children where they are relevant (such as if a rule does not apply to family reunification with children).

This brings us to a second set of definitions, namely those that concern policy. A broad definition of immigration policy is that it is made up of the “laws, rules, measures, and practices implemented by national states with the stated objective to influence the volume, origin and internal composition of immigration flows”.\textsuperscript{94} It is usually pointed out that immigration policy is inextricably bound up with the state’s exercise of sovereignty through decisions on the right to enter and on the extension of membership (as such, it also deals with deportation of non-citizens, and not just entry.) Immigration policy at large is somewhat distinct from many other policy areas in the sense that it concerns non-citizens and their claims and rights. Family immigration policy is the area of immigration policy with the most potential of affecting ‘the public’ directly (as opposed to indirectly through, for example, the macro-effects of immigration on the economy) as it concerns the regulation of the right to enter for their family members. It is notable, however, that the focus is more often on the entering person than the resident one, for instance in family immigration jurisprudence, as the alien is the subject and object of immigration legislation.\textsuperscript{95}

Migration-related policies may also be distinguished into different sub-categories. I am concerned here with a type of admission policy, i.e. a policy that regulates first admissions of non-citizens into the country. In this specific type of admission policy, the criterion for

\textsuperscript{93} Boswell and Geddes, Migration and Mobility in the European Union, 107.


admission is a family relationship. Whereas all western countries have family admissions categories, they “vary with respect to whether additional family relationships [beyond the nuclear family] are recognized, including the siblings, adult children, and parents of citizens” (admission for extended family members is not very common in Europe). Admission for delineated categories of family members may in turn be conditional upon the fulfillment of particular requirements. It is, in practice, the adjustment of (a) eligibility categories and (b) conditions that make up family immigration policymaking. In this study, the major changes that I examine relate to changing conditions for family immigration, but some also reflect changing eligibility categories.

Family immigration is particularly important as a share of permanent immigration, as family migrants are much more likely than for instance students and some types of workers to remain in the country over the long term. Whereas countries of immigration, such as Canada, have historically given many immigrants permanent status upon arrival (‘landed immigrant’ status), European countries have been more likely to give immigrants a temporary status and then allow them to apply for permanent residence after some years, often as a process of integration. The UK is an exception here, as some family migrants were given immediate ‘settled’ status historically, but this has changed more recently. Studying family immigration policy in Europe, then, entails examining admissions policies under the assumption that many will settle permanently.

While family immigration policies analyzed here are, as I said, admission policies, they are arguably the type of admission policy that most closely relates to immigrant integration policies, i.e. the programs that regulate immigrants’ long-term stay and incorporation (through language acquisition, access to the labor market, access to permanent residence and citizenship). As I have

96 In other types, it may be that the criteria for persecution in the Refugee Convention are fulfilled, or that the would-be immigrant has a job offer and is seeking admission to work.

97 Rosenblum and Cornelius, “Dimensions of Immigration Policy.”

98 In recent years, more and more requirements have been added which immigrants must fulfill in order to qualify for permanent residence in many countries. However, the EU has also introduced a right to permanent residence after five years, through 2003 Directive on the status of non-EU nationals who are long-term residents. This Directive is not binding on Denmark, Ireland and the United Kingdom.
noted, family migrants represent a particularly large proportion of immigrants who end up staying in the long term and applying for permanent residence and citizenship (for an overview of citizenship rules in these three countries, see Appendix B). The totality of a country’s admission and integration policies \(^{99}\) may be referred to as its migration regime.\(^ {100}\)

### 2.1.2 The literature on family immigration and its policies

As I emphasized in chapter 1, family immigration makes up a very important proportion of immigration to Europe in the post 1975-era. As it changed character from pure reunifications of guest workers’ or colonial workers’ families to more diverse migration flows with significant levels of transnational arranged marriages, it also went from being taken for granted to being more controversial politically – a process of politicization and problematization that I began to assess in the introduction and will go into in more detail in each country chapter. Previously – as recently as 1998 – prominent scholars of immigration suggested that “post-war immigration to Europe has been a unique event that has come to a close now”.\(^ {101}\) This, of course, ignored continued asylum migration and in particular the continued family immigration spurred by the tendency of second-generation migrants to marry persons from their parents’ home country, as well as the increasingly global lives lived by Europeans of all backgrounds. I will outline existing research on family immigration in the following.

Some of the earlier works in the literature on migration to focus somewhat more on family migration came from academics seeking to bring attention to women and gender in the context of international migration.\(^ {102}\) The stereotypical migrants have generally been male workers and

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male political refugees, and a number of academics sought to underline the different roles of women in international migration - either as workers themselves or as more than simply passive followers of their husbands. The desire to highlight the role of women led, for instance, to the pioneering work of Jacqueline Bhabha and Sue Shutter on ‘Women’s Movement’ in the British context. Another central author in the past two decades, Eleonore Kofman, has written extensively about women’s different experiences of migration, and wrote the agenda-setting piece on the absence of family immigration studies in 2004.

Around the turn of the century policy developments at the EU level brought additional attention to family immigration policy: the efforts to Europeanize immigration policies, including through the Family Reunification Directive, caught the attention of EU and legal scholars. Early analyses often concluded that the Directive was a disappointment - neither leading to much harmonization nor ensuring the rights of migrants. Later work, however, has acknowledged the rights-generating potential of the directive, especially through the jurisprudence of the European Court of Justice (ECJ), and the ways in which cooperation in Europe has influenced

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105 Kofman, “Family-Related Migration.”

106 Harmonization means that legislation should become more similar, and it is an objective of European integration.


family immigration policies across the continent. Given that the Directive does not apply in any of the countries examined in this dissertation, I will not examine the literature on it in more detail here (I do, however, survey the provisions of the Directive in section 2.2.1.2. for comparison) This literature did however stem from a much broader legal literature on the right to family life and article 8 of the European Convention of Human Rights (the right to family life) in an immigration context (I will examine this more closely in section 2.2.1.1).

Another relevant legal literature considers family migration under intra-EU free movement rules. Since 1968, persons using their right to move freely for work or studies have had the right to be joined or accompanied by family members - regardless of the family members’ nationality.

Since the 1990s, beginning with the Surinder Singh ruling at the ECJ, these rights have been extended so as to cover nationals who return to their own country from another European country (i.e. protecting free movement in both directions). The highly controversial 2008


Metock ruling, in which ten European countries intervened to argue for their right to make their own immigration rules, extended the right to family reunification under EU rules further, ensuring that the non-EU family members had a right to join or accompany the ‘primary migrant’ even if they had not previously resided legally in the Union and essentially overriding the individual countries’ control over ‘first entry’ in some cases. These developments have garnered significant attention from legal scholars. They have also become particularly relevant in light of stricter national rules, as they create a situation of ‘reverse discrimination’ where EU migrants have more privileged access to family migration than citizens in a number of countries (including the three countries examined here, due to their participation in the internal market and acceptance of the EU’s four freedoms). It is through these EU rules that Danes have been able to opt for family migration across the border in Sweden when attempts to sponsor spouses to Denmark have failed. Recently such strategies have also become more widespread in both Norway and the United Kingdom.

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As noted, family immigration caught the attention of policymakers around the turn of the century through debates about (legal) transnational arranged and (illegal) forced marriages, forced marriages and integration. In this context, scholars have been interested in both the processes of transnational marriage as such, and in policy responses to them, spawning a significant academic literature. As the migration historians Schrover and Schinkel sum up policy discourses of the past years - with some sarcasm - while migrant men “cause problems”, migrant women “have problems”, or alternately while migrant men are “at risk”, the women are “at risk”.

Policymakers in several countries have seen family reunification policies as a locus where some of their concerns over forced marriages and integration might be resolved. (Or, from a more cynical point of view – whether their concerns over family reunification flows could be resolved though a focus on forced marriages and integration). These policy developments in themselves will be analyzed further in this thesis. Other scholars have, however, also examined these policy responses, often in critical ways. With regard to forced marriage, Bredal has asked whether politicians seek to ‘protect the nation’ or ‘protect the women’ when they restrict family immigration policies in the name of forced marriage prevention. Several have seen the focus on the ‘otherness’ of migrant women and migrants’ marriage practices as tools through which

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politicians contribute to drawing lines between ‘us’ and ‘them’. Through an emphasis on the rights of women and the need to ‘save’ them, both feminists and political parties on the right have indeed used such discourse to argue for immigration restrictions.

Three recent EU-funded studies have examined the links between integration and family immigration, emphasizing the high salience of these questions. One way policymakers have operationalized such concerns in family immigration policy is through so-called pre-entry integration tests, where language testing becomes a pre-condition to obtain a visa. These have elicited some academic interest. The Netherlands has been particularly well known for this, but the United Kingdom has also introduced such tests.

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In the past few years, several academics have analyzed family immigration policy as such, looking at its development. With some recent exceptions, most of these efforts have been single-case studies, but they have made important contributions to this otherwise rather thin literature, responding to Kofman’s call to arms. The political historian Saskia Bonjour has done significant work on family immigration policy in the Netherlands, looking at its development over time and in the more recent context of Europeanization. Laura Block recently completed a doctoral thesis examining German family immigration policy, focused around the idea of ‘social membership’. Norwegian sociologist Helga Eggebø has studied the idea of ‘dependency’ in Norwegian family immigration rules, as well as bureaucratic decision making in family cases and experiences of couples going through the process. The legal scholar Helena Wray examined the development of British family immigration regulation from 1962 until 2007, and the long-standing scholar of British immigration policy Sarah Spencer also considered family immigration policy in itself in her recent book/thesis, arguing that policy had mainly been reactive and ad hoc. In this rather thin field, however, there is evidently room for a comparative and theoretically informed study of policy development – a gap that this thesis will begin to fill.

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125 Block and Bonjour, “Fortress Europe or Europe of Rights? The Europeanisation of Family Migration Policies in France, Germany and the Netherlands”; Wray, Agoston, and Hutton, “A Family Resemblance?”.  
127 Block, “Regulating Social Membership and Family Ties: Policy Frames on Spousal Migration in Germany.”  
2.2 Constraints on policymakers in the liberal state

As is clear from the preceding literature review, scholars seeking to explain the development of immigration policies have only engaged in a relatively limited sense with family immigration and its policies. This literature has to a largely extent considered two major debates, of which I shall mainly be concerned with the latter. Firstly, scholars have considered the ‘convergence hypothesis’; an expectation that Western liberal democracies will develop similar immigration policies.\(^{131}\) Secondly, and most centrally, however is the long-standing debate about whether states have lost control of migration.\(^ {132}\) Sometimes call the gap hypothesis,\(^ {133}\) the debate is based on the observed difference between states’ assumed interest in preventing immigration (based both on the fact that control over entry is a basic component of state sovereignty and on the usual finding that Europe-wide public opinion is relatively hostile to immigration\(^ {134}\) ) and immigration outcomes: despite a stated intention of most Western European states to halt immigration in the mid-1970s, and despite general public hostility to immigration, immigration to these countries has mostly continued unabated. As Joppke succinctly asked, ‘why do states accept unwanted

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\(^{133}\) See Cornelius, Martin, and Hollifield, *Controlling Immigration*.

immigration?’ In this debate, family immigration has not frequently been considered, but it has been generally considered ‘unwanted’ and grouped with asylum seekers as ‘humanitarian’ migration, which has, for reasons usually related to human rights claims, been seen as ‘beyond control’. Reasons for the so-called gap have been identified both external and internal to the state – and the scholarly debate has by and large involved a search for ‘constraints’ preventing the state from doing what it wants.

2.2.1 International constraints
With regard to external constraints on state action, two important sources of such constraints have been highlighted. The first concerns the development of international and supranational human rights norms and the strengthening of rights independent of citizenship (often referred to as postnationalism). The second concerns the development of supranational authority through European integration.

2.2.1.1 Globalization, human rights and postnationalism
An influential strand of the immigration literature developed during the mid-1990s suggests that the state is a waning actor overwhelmed by the international forces of globalization and the spread of human rights norms. The state, then, is supposedly ‘losing control’ and cannot keep up. For Saskia Sassen, the two developments of economic globalization and codification of human rights worked together to fundamentally change the relationships between migrants and states. Sassen argues that “certain components of the state’s authority to protect rights are being displaced onto so-called universal human rights codes” at the same time as economic globalization has led to the liberalization of movement of everything except for persons – although in the European Union the free movement of persons has also been realized. Sassen highlights the importance of different human rights conventions and the Universal Declaration of

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135 But see Bonjour, “The Power and Morals of Policy Makers.”
136 Ibid.
138 Sassen, Losing Control?, 27.
Human Rights in extending rights even to unauthorized migrants, and in particular she points to the International Convention on the Rights of all Migrant Workers and Members of their Families\textsuperscript{139} as evidence of the ascendance of migrants’ rights and weakening control of entry.

David Jacobson also proposed a similar analysis in his examination of rights independent of citizenship in Western Europe and the United States, arguing that we are witnessing a “deterritorialization of identity”.\textsuperscript{140} As he suggested, “community, polity and territory are becoming separate and distinct entities or spheres: the (territorial) state, if present trends continue, is in the process of becoming a territorial administrative unit of a supranational political order based on human rights”.\textsuperscript{141} Jacobson, then, suggests that globalization and human rights have ‘washed over’ the state.

Perhaps the most influential iteration of this type of argument was elaborated by Yasemin Soysal, who argued that human rights discourse and norms have fundamentally changed the nature of membership. Focusing in particular on the European guest-worker experience, she argues that a ‘postnational’ model has developed, where “universal personhood replaces nationhood; and universal human rights replace national rights”.\textsuperscript{142} As evidence for this development, she cited the proliferation of international human rights conventions, arguing that this “emergence of universalistic rules and conceptions regarding the rights of the individual”\textsuperscript{143} among other things obligates states to treat people equally regardless of nationality. As the two figureheads of postnationalism, she cited the refugee and the European citizen, the latter embodying “postnational membership in its most elaborate legal form”,\textsuperscript{144} but she also pointed to immigrants’ rights to family reunification in France in particular as evidence of the extension of rights. It is notable, however, that the postnationalist thesis is not quite globalist; the focus

\begin{itemize}
\item \textsuperscript{139} Ibid., 67.
\item \textsuperscript{140} Jacobson, Rights, Across, Borders, 134.
\item \textsuperscript{141} Ibid., 133.
\item \textsuperscript{142} Soysal, “Toward a Post-National Model of Membership,” 194. Note that this is from an article-length version of the argument developed in her 1994 book Limits of Citizenship.
\item \textsuperscript{143} Ibid., 196.
\item \textsuperscript{144} Ibid., 199.
\end{itemize}
remains on the development of membership in the European nation-states where the immigrants settled.

In all these analyses, universal human rights are seen to supersede national interests in border control. In the context of this dissertation, the most pertinent human right at stake is the right to family life. This right is codified in all major international human rights treaties and Declarations, including the Universal Declaration of Human Rights art. 12, the International Covenant on Civil and Political Rights art. 17, and Convention on the Rights of the Child art. 16. It is also codified in the regional supranational treaty the European Convention on Human Rights, art. 8, which is binding on all three countries concerned and which is the most important of these supranational instruments as it is associated with a Court which has jurisdiction to hear individual complaints from appellants in each of the three countries concerned.

While the absolutist version of the postnationalist view has been widely criticized, there is a stronger case for a more modest view of supranational human rights constraints. Most specifically, immigration policies have been assessed in light of European Convention of Human Rights art. 8. Under article 8 (1), “everyone has the right to respect for his private and family life, his home and his correspondence”. Unlike non-refoulement of refugees, the right to family life is not an absolute right, and the state faces a different type of potential obstacle in trying to regulate or prevent it. Roos and Zaun argue that the power of an international norm depends on its robustness, which in turn is determined by its specificity, binding force, coherence with other norms (such as domestic legislation) and concordance (intersubjective agreement). They contend that family reunification is a norm of low specificity, which in turn limits its bindings force. What we can glean from the practice of the court is that regulating family immigration in the face of a possible judicial constraint is an exercise in ‘proportionality’. For a restrictive

\[145\] See for instance Hansen, “The Poverty of Postnationalism.”

\[146\] Non-refoulement is the norm in customary international law and the Refugee Convention which holds that someone who presents himself at the border as a refugee cannot be summarily turned back without finding out whether he or she is indeed a refugee.

measure to be acceptable under ECHR art 8, it must qualify under the criteria in art. 8.2: (1) it must be in accordance with the law, (2) it must have a legitimate objective, and (3) it must be necessary in a democratic society.\textsuperscript{148} At the same time, there is some coherence and concordance\textsuperscript{149} (suggesting the moral force of the norm, see section 2.2.2.3).

As any legislative measure is a priori in accordance with the law, the first criterion is unlikely to be relevant. Furthermore, immigration control measures might have a number of different legitimate objectives, including immigration control for its own sake or for the ‘economic well-being’ of the country. The Strasbourg court has generally accepted such claims without further scrutiny. I want to emphasize here that when I use the word ‘legitimate’ in this dissertation to describe policy objectives, I do not intend to insert my own moral judgment, but I am referring to objectives that have either been deemed legitimate by the Strasbourg court or are likely to be considered as such. Preventing forced marriages and preventing abuse of the immigration system would presumptively also qualify as legitimate policy objectives.\textsuperscript{150} The only aspect that requires consideration, then, is whether the measure is ‘necessary in a democratic society’, i.e. the \textit{proportionality assessment}, where the objective(s) are weighed against the interference.

The most well-known and precedent-setting case in the family reunification jurisprudence of the ECtHR is the 1985 case \textit{Abdulaziz, Cabales and Balkandali} (for short \textit{Abdulaziz}), to which I will return repeatedly in this dissertation. The case had several dimensions, of which gender discrimination was highly important. I will address this in section 2.2.2.2. With regard to article 8, however, the case was important for two reasons. First of all, it established that article 8 could be engaged in immigration cases and that family immigration policies could be made in such a way as to violate the convention. On the downside, however, the threshold for this engagement was quite high. The court considered that the most important objective of article 8 was to protect individuals against arbitrary interference in family life; what they call ‘negative obligations’ or

\textsuperscript{148} The precise wording of ECHR art 8 (2) is ”there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

\textsuperscript{149} Roos and Zaun, “Norms Matter! The Role of International Norms in EU Policies on Asylum and Immigration.”

\textsuperscript{150} The British Supreme Court in \textit{Quila} did not dispute the legitimacy of preventing forced marriages.
obligations on the state *not* to do something. From this we can derive protection against families being broken apart through deportation of one or more family member. ‘Positive obligations’ were also seen to potentially arise from article 8, but to a lesser extent and with significant margin of appreciation for states. The state interest in immigration control would in many cases tip the proportionality assessment in the state’s favor. Facilitation of family reunification, or immigration admissions, would fall under the rubric of ‘positive obligations’. The court thus established that while states may sometimes be required to admit immigrants in order to comply with article 8, article 8 was more likely to be relevant in deportation cases.\footnote{Helen Staples, *The Legal Status of Third Country Nationals Resident in the European Union* (The Hague: Kluwer Law International, 1999), 299.}

In practice, however, European states do invariably consider ECHR art. 8 during the policymaking process, indicating some concern for staying within its bounds. This suggests that while article 8 as a strict legal bulwark in court context is somewhat limited, it still has power in the sense of being an important norm. I will examine this further in section 2.2.2.3.

### 2.2.1.2 The influence of ‘Europe’

A second source of supranational constraint is the influence of the European Union. From its origins as an economic union, the EU has transformed into a highly developed supranational entity to which states have either ceded or pooled their sovereignty. EU integration has also been much discussed in the immigration policy field, and the Europeanization of immigration policies has become highly developed during the past 15 years, beginning with the Amsterdam Treaty and the EU summit in Tampere in 1999. The first immigration-related EU directives were negotiated around the turn of the Millennium, and the Common European Asylum System is due to be completed in 2014. In addition to the asylum directives, there are directives regulating the immigration to Europe of the family members of third-country nationals\footnote{This refers to citizens of countries outside the European Economic Area, i.e. the EU, Switzerland, Norway, Iceland and Liechtenstein.} and numerous other categories of migrants (researchers, students, highly skilled workers etc.).

Europeanization has thus become a highly relevant source of supranational constraints in immigration policymaking. But what is ‘Europeanization’ exactly? According to Radaelli, the
term has been used to describe distinct processes such as the *de jure* transfer of sovereignty to the supranational level; what happens once this transfer has taken place; the development of Europe-level structures of governance; and adaptive processes to a new European environment.\textsuperscript{153} Börzel and Risse have defined Europeanization more simply as “the EU’s impact on the domestic policies, institutions, and political processes of the member states as well as on the accession candidates”.\textsuperscript{154} Europeanization is clearly more than simply the top-down implementation of EU laws, however, and it can arguably be both ‘vertical’ and ‘horizontal’.\textsuperscript{155} I should note right away that I consider the direct, vertical influence of ‘Europe’ to be a secondary factor in this study. While Denmark has opted out of all EU cooperation on Justice and Home Affairs (JHA), the United Kingdom has a selective opt-in arrangement in this policy area whereby they decide on a case-by-case basis whether to opt in to Justice and Home Affairs directives. Norway, of course, is not a member of the EU.\textsuperscript{156} This in itself does not exclude the possibility that the EU has influenced these countries’ immigration policies in other ways – as Fischer et al. have argued, Europeanization has had an important influence on Swiss immigration policy, even though Switzerland is not a member of the EU.\textsuperscript{157} Further, the EU influence on Norwegian asylum policy is evident.\textsuperscript{158} The supranational power of the EU has involved a pooling of sovereignty in order to strengthen the control of the EU’s external borders, and this is

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\textsuperscript{155} See also Wray, Agoston, and Hutton, “A Family Resemblance?”.

\textsuperscript{156} It should be noted that even though Norway is not a member of the EU, it cooperates closely with the EU in the area of asylum policy due to its membership in Schengen (it has implemented the Return Directive, for instance, as it is ‘Schengen relevant’). Norway is also part of the internal market and is bound by the directives regulating free movement of goods, services, capital and persons.


\end{flushleft}
a development that has been of interest and relevance to all the countries under study, especially with regard to controlling asylum flows.\footnote{159}{Norway, for example, actively participates in Frontex operations at the maritime border in the Mediterranean.}

With regard to family immigration, the EU has developed a Directive that sets out minimum standards for family migration rules, dating back to 2003 (Council Directive 2003/86/EC on the right to family reunification). It applies where the sponsor is a third country national who is legally residing in the EU (rules for citizen sponsors are not harmonized, and provisions for cases where the sponsor is a mobile EU citizen are found in the Directive 2004/38/EC). The Directive obligates countries to introduce provisions for reunification of spouses and minor children, and leaves them discretion to provide for reunification with other family members (unmarried partners, unmarried children above the age of majority, parents.) States are allowed, but not obligated, to implement a minimum age for both spouses of a maximum of 21. The Directive lays out a number of conditions that states may implement: adequate housing, sickness insurance and stable income are the most widely used. It also opens for the use of integration measures with regard to incoming family members, as well as a waiting period of up to two years before being eligible to be joined by family members. Family members are entitled to autonomous residence permits after a maximum of five years.

The directive has led to a limited degree of harmonization (or convergence) of the family migration policies of different European states, as it contains a host of non-binding clauses as well as standstill clauses which let some states retain old idiosyncratic rules; and because it has not been correctly transposed in many places.\footnote{160}{Groenendijk et al., \textit{The Family Reunification Directive in EU Member States}; Thomas Huddleston, \textit{Right to Family Reunion-the Dynamics between EU Law and National Policy Change}, MPG Family Reunion Briefing (Migration Policy Group, 2011).} The Family Reunification Directive binds none of the countries under study. Arguably, then, the horizontal influence of the EU is likely to be more important than the vertical influence. While this study does not shed light on the Directive as such, it may indirectly provide a ‘test’ for arguments about whether or not the Directive has had a liberalizing effect or worked as a minimum standard, as I can examine whether or not the reforms put through in these countries would have passed muster under the EU Directive.
2.2.2 Domestic constraints

Against arguments about the external constraints on the state – especially those posed by international human rights law – another influential line of argument suggests that constraints internal to the state, rather than external ones, have lead to the expansionist bias in immigration policy. There are several variants of this argument, as scholars have located the source of constraint in different domestic institutions.

2.2.2.1 Groups and their influence

Freeman observed at an early stage that despite differing immigration histories, immigration politics in all liberal democracies have an ‘expansionary bias’. This, despite the fact that publics are not, as a rule, pro-immigration and a standard median-voter model would suggest that politicians should pursue restrictive policies. Freeman’s own response to why such an expansionary bias existed had two components. Firstly, he noted that information is scarce, and discourse on immigration is constrained by norms of legitimate discussion. These factors contribute to making public opinion more indifferent to immigration than one might expect. At the same time, the costs of immigration are diffuse and often fall on those who have a hard time making their voices heard. Conversely, the benefits of immigration are concentrated and befall employers, businesses and “the family and ethnic relations of those making up the immigrant streams”. These groups – who want more open immigration policies – have more incentive to organize and, at least in the case of employers, are more able to do so. Thus, in Freeman’s words, the typical mode of immigration politics, therefore, is client politics, a form of bilateral influence in which small and well-organized groups intensely interested in a policy develop close working relationships with those officials responsible for it.

162 Fetzer, “Public Opinion and Populism.”
163 Freeman, “Modes of Immigration Politics in Liberal Democratic States,” 885. It should be noted that the importance of families and ethnic networks is downplayed in the European cases, as they have smaller and more recent immigrant communities.
164 Ibid., 886.
Freeman expected ‘immigrant origin populations’ to exert influence on family immigration policy, though not as much in Europe as in the United States – he admitted that this theory had less purchase on post-1970s European immigration policy. Other European scholars have also noted this. Freeman and Tendler still argue that given the importance of organized interests in other areas of European policy making, interest groups should be important for immigration. Evidence of this, however, remains ambiguous. A study of immigration policy development in Germany suggests that church groups, trade unions and some political parties have provided a liberalizing constraint. Statham and Geddes find, on the other hand, that British pro-migrant NGOs have had a limited impact on policy in their study of the ‘organized public’. Somerville and Goodman find that there is a much denser ‘policy network’ on labor immigration policy than on asylum policy in the United Kingdom, which is relevant for our purposes given that many of the same organizations advocate both for the rights of asylum seekers and family migrants.

In the absence of consensus in the existing literature, the potential impact of groups becomes an empirical question. While Europe does not have the equivalent of America’s strong ethnic communities advocating for liberal immigration policies, there are a number of organizations in Europe advocating the rights of refugees and migrants (though they are not necessarily made up of refugees and migrants themselves), of which many are organized through the umbrella

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169 See for example Triadafilopoulos, Becoming Multicultural.

170 Statham and Geddes, “Elites and the ‘organised Public.’”

organization European Council for Refugees and Exiles (ECRE). ECRE member organizations are found in the three countries under study (one in Denmark, three in Norway and ten in the UK). Recent research suggests that such NGOs might in fact have more influence at the EU than at the national level. Some family immigration-specific advocacy groups have emerged in all three countries in response to the restrictive changes that are examined here.

2.2.2.2 Domestic Courts

The domestic ‘constraint’ that has arguably showed the most analytical promise in the literature is that of domestic courts. In response to Freeman, Joppke has argued that he ignored the legal process and its importance in Europe. Indeed, other scholars that examined the source of the expansionary bias have focused squarely on European courts. As I noted in Chapter 1, courts in several countries prevented the executive from closing the door on family migrants. In 1978 in France, “the Council of State overturned [the 1974 suspension of family immigration] because it contravened the constitutional rights to family life”. Similarly, while the German Constitutional Court “stopped short of recognizing a constitutional right of family reunification” in the 1987 Turkish and Yugoslav case, “according to the principle of proportionality, nonresident family members still possessed family rights under Article 6 [of the Basic Law] that foreigner law and policy had to respect”. In Germany, immigration policy was subject to strict

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172 It is perhaps not surprising that there are more such organizations in the UK, as a bigger country. It is perhaps also not surprising that there is just one in Denmark, and one can note that this organization, the Danish Refugee Council, mostly works with refugees in the global south.


174 These include BritCits in the UK, Kærlighed uden grænser in Denmark and Grenseløs Kjærlighet in Norway.

175 Joppke, Immigration and the Nation-State, 18–19.


judicial review and to the rights and norms codified in the German Basic Law, unlike in the American ‘plenary power’ system.\(^{178}\) It was notable - contra Soysal and Sassen - that the Courts relied on domestic (constitutional) legal norms rather than international human rights in reaching their verdicts in both instances. As Soennecken summarizes, “in liberal nation-states, extending hospitality (and later, the right to stay) to strangers has very much been a legal project”.\(^{179}\)

Differing legal systems and constitutional norms may thus represent a potential explanation for different policy outcomes in different European countries. Interestingly for our purposes, Joppke sees the United Kingdom as an exception to all of this – the European country that achieved immigration control.\(^{180}\) As they had not asked the colonial immigrants to come in the first place, British policymakers did not feel particularly constrained by moral obligations or guilty consciences. Nor were they constrained by Courts standing up for migrants – Britain’s unwritten Constitution left power to Parliament and did not protect individuals against potential excesses in immigration control in the way that one could see in Germany.\(^{181}\) While this may have been true at the time, the introduction of the Human Rights Act has since changed the balance of power over migrants’ rights, implementing a domestic legal protection of family life and making Britain more analogous to the German case. Bonjour provides further and more recent evidence that the type of legal and constitutional system in place may matter. She finds that Dutch courts have had limited impact on Dutch family immigration policy. While the Netherlands has no constitutional protection of family life, it is a typical example of a monist legal system, which means that, international treaties are directly applicable in Dutch law without having to be translated into national legislation. In spite of this, the human right to family life appears not to have made much difference to Dutch immigration policy, supporting the notion that and that the most important constraint is constitutional protection of family life.\(^{182}\) Soennecken suggests that the

\(^{178}\) Joppke, *Immigration and the Nation-State*, chap. 3.

\(^{179}\) Soennecken, “Extending Hospitality?,” 85.


\(^{181}\) Ibid., 103.

\(^{182}\) Bonjour, “The Power and Morals of Policy Makers”; family migration to the Netherlands has in fact been tightly regulated, see van Walsum, “Against All Odds.”
impact of courts can depend on the relationship between the judiciary and the executive in the immigration policy area, which in turn is embedded in the wider legal-political system and which has developed over time.\textsuperscript{183}

Schain has also suggested that the big court decisions of the 1970s and 1980s limited state action, but also shaped and defined it.\textsuperscript{184} One can suggest that the relationship between courts and executives is not so much a zero-sum game as a an on-going back and-forth, and that the influence of Courts depends on the set-up of the domestic legal system and the level of Constitutional protections that immigrants may rely on as well as on the specific relationship between courts and the executive as it develops over time. A factor that authors working within this tradition have often neglected, however, is that protection of migrants’ rights actually depends on litigation. As with human rights norms, domestic legislation operates through actual legal procedures. Families who have failed to obtain reunification must have the resources and incentives to fight their case through the legal system in order to ‘activate’ a potential constraint.

While much of the literature on the domestic legal constraint has focused on rules that specifically regulate family life, we may imagine that other areas of domestic legislation may be relevant. Arguably, anti-discrimination rules and rules about equal treatment have also, at times, affected family immigration policy development. The famous \textit{Abdulaziz} ruling, which Joppke analyzed at length, hinges not only on the right to enter and article 8 (see section 2.2.1.1), but also on a question of gender discrimination. The case was in fact three cases – \textit{Abdulaziz}, \textit{Cabales} and \textit{Balkandali} – processed jointly. All concerned women lawfully and permanently resident in the United Kingdom, who had been denied reunification with their spouses because the British immigration rules had stricter rules in place for male family migrants than female ones (i.e. the ‘primary purpose’ rule, which get into in more detail in chapter 4). The Court found that stated aim of this discriminatory rule – to protect the domestic labor market – did not establish sufficient grounds for differential treatment on the basis of sex. Thus, we can ascertain that states cannot make overtly discriminatory family immigration rules. This is perhaps

\textsuperscript{183} Soennecken, “Extending Hospitality?”.

especially important where there are strong domestic enforcement mechanisms with regard to discrimination, but as we just saw the Strasbourg court has also intervened. The Norwegian discrimination ombud\textsuperscript{185} represents one domestic body that has intervened in family immigration policymaking. As this aspect is not developed at length in the existing literature, the question of the influence of antidiscrimination rules is largely empirical.

### 2.2.2.3 Moral obligations

It should be acknowledged that underlying the codified right to family life in international human rights law and some countries’ constitutions lies a strong norm that families are a basic unit of society which politicians may be assumed to keep in mind even without any particular legal obligation to do so. Bonjour has also suggested that family migration policy development in the Netherlands has been a ‘morality play’, influenced by “immateriell norms such as family unity, equal treatment and individual responsibility”.\textsuperscript{186} This may again be related back to Joppke’s conception of ‘self-limiting sovereignty’,\textsuperscript{187} which was made up both of the separation of powers whereby courts could protect migrants against the executive, and a set of more intangible norms. In Germany, he argued, the political elite felt a kind of moral obligation to the guest workers that they had, after all, recruited. As Joppke argued, “fully discretionary primary admissions [limited] the state’s discretion over secondary admissions (in the sense of continued residence or new family admissions) which have to follow for moral and legal reasons.”\textsuperscript{188} Indeed, Carens develops this reasoning in his recent book \textit{Ethics of Immigration}, where family admissions are considered ‘obligatory admissions’ due to the moral obligations of liberal states “to take the vital interests of their own members [in being able to exercise family life] into account.”\textsuperscript{189}

\textsuperscript{185} The gender-specific ‘ombudsmann’ is no longer used in Norway and replaced by the gender neutral ‘ombud’. This term is also their preferred term in English (as opposed to ‘ombudsperson’), see their website www.ldo.no.
\textsuperscript{186} Bonjour, “The Power and Morals of Policy Makers.”
\textsuperscript{187} Joppke, “Challenge to the Nation-State.”
\textsuperscript{188} Joppke, \textit{Immigration and the Nation-state}, 21.
As such, we can consider that the right to family life operates both in the courtroom and also outside it as a broader norm; following Benhabib’s contention that “law can also structure an extralegal normative universe”.\(^{190}\) There is an extensive international relations literature on human rights norms, which has also sought to examine how these norms filter into national policymaking, but often focusing on the influence of human rights norms on countries in the global south.\(^{191}\) Examining how international human rights norms affected the German citizenship debate – the long-standing contention about whether non-ethnic Germans such as the descendants of the guest workers should gain access to German citizenship – Triadafilopoulos and Ingram argue that human rights norms are a political resource that activists could harness in domestic policy debates.\(^{192}\) I contend here that policymakers also engage in these debates and with these norms, sometimes actively seeking to frame their policy proposals as consistent with them: in this case, putting forward arguments about the proportionality of their actions. The fact that they do so, underscores the importance of these norms. At the same time, it means that they are not absolute, but subject to debate and interpretation.

2.2.3 Summing up

In the preceding sections I have outlined the most central sources of constraints that have been harnessed by scholars to explain the ‘gap’ between policy objectives and outcomes. I have suggested that international human rights norms (particularly ECHR art. 8) and domestic courts may be the most relevant and important constraints for our purposes, coupled with the right to family life as a norm. These constraints are largely same across the three countries I study here –


\(^{192}\) James D. Ingram and Triadafilos Triadafilopoulos, “Rights, Norms, and Politics: The Case of German Citizenship Reform,” *Social Research: An International Quarterly* 77, no. 1 (2010): 353–82; See also Benhabib’s discussion on the interpretation of norms through democratic iteration, on which the authors also draw, Benhabib, “Claiming Rights across Borders.”
which brings us to a second central hypothesis in the existing literature on immigration control, namely the ‘convergence hypothesis’ by which liberal democracies are expected to converge in their immigration policies, i.e. develop increasingly similar policies.\(^\text{193}\) We may keep this in mind as we investigate both the relatively converging objectives and the ultimately divergent policy instruments in the three countries examined.

Before proceeding, I should make one caveat. So far, I have not addressed the role of political parties, and there is indeed a literature dealing especially with immigration policy and the populist radical right.\(^\text{194}\) Evidently, the assumption is that parties on the populist radical right influence immigration policy in a restrictive direction – not that they are a liberalizing constraint. But the fact that other parties on the political spectrum may choose a cordon sanitaire strategy – i.e. banding together and refusing to work with the far right – may prevent any influence of the far right.\(^\text{195}\) A recent review suggests, however, that the evidence of influence of populist radical right parties on immigration policy across Europe is not conclusive.\(^\text{196}\)

### 2.3 Policymakers’ strategies for overcoming constraints

I contend that in order to better explain family immigration policy, we need to examine in much more detail the agency of policymakers (and possibly also other actors) in the policymaking

\(^{193}\) Rosenblum and Cornelius, “Dimensions of Immigration Policy”; Hollifield, “Migration and International Relations.”


\(^{196}\) Mudde, “Three Decades of Populist Radical Right Parties in Western Europe.”
process and examine how they face constraints, rather than looking for additional ones. These constraints are - for the most part - real and relevant, but they are not absolute. I am, of course, not the first person to realize that policymakers make policies, or indeed the first person to look to policymakers in examinations of immigration policy, especially in the British context.\footnote{Chris F. Wright, “Policy Legacies, Visa Reform and the Resilience of Immigration Politics,” \textit{West European Politics} 35, no. 4 (2012): 726–55, doi:10.1080/01402382.2012.682343; Will Somerville, \textit{Immigration under New Labour} (Bristol, UK: Policy Press, 2007); Spencer, “Wilful Betrayal or Capacity Constrained?”; Wright, “Policy Legacies, Visa Reform and the Resilience of Immigration Politics”; Somerville, \textit{Immigration under New Labour}; Spencer, “Wilful Betrayal or Capacity Constrained?”}. However, few analyses have engaged specifically with family immigration policy, with the exception of Sarah Spencer who again emphasized structure and constraints on ‘reactive’ policymakers.\footnote{Spencer, “Wilful Betrayal or Capacity Constrained?”}.

### 2.3.1 The analysis of preferences and objectives

The gap hypothesis relied on the assumption that states pursued a zero-immigration policy, or at least that it wanted to minimize immigration. Since the turn of the century and the re-opening of labor migration streams to Europe, analysts have recognized that states pursue migration management\footnote{Martin Geiger and Antoine Pécoud, \textit{The Politics of International Migration Management} (Basingstoke Hampshire ;;New York: Palgrave Macmillan, 2010).} and selection rather than simply prevention.\footnote{Spencer, \textit{The Politics of Migration}; Sara Kalm, “Liberalizing Movements? The Political Rationality of Global Migration Management,” in \textit{The Politics of International Migration Management}, ed. Martin Geiger and Antoine Pécoud, 1st ed. (Palgrave Macmillan, 2010), 21–44; Shachar and Hirschl, “Recruiting ‘Super Talent.’”} Some migrants – namely highly skilled workers – have been recognized as ‘wanted’, while others – namely asylum seekers - have been termed ‘unwanted’.\footnote{See for example Andrew Geddes, “Migration and the Welfare State in Europe,” in \textit{The Politics of Migration: Managing Opportunity, Conflict and Change}, ed. Sarah Spencer (Malden, Mass; ; Oxford, UK: Blackwell, 2003).} In this schema, family migration has usually been seen as unwanted - in line, for example, with Nicolas Sarkozy’s characterization of ‘immigration subie’, or ‘endured immigration’, which he contrasted with ‘chosen immigration’, i.e. skilled labor
migrants.  

This, however, is again based on relatively crude assumptions that start with the fact that family migrants are not solicited or even directly chosen by the state.

As I suggested in chapter 1, one way of analyzing preferences is through what Christina Boswell has termed ‘the functional imperatives of the state’. This approach does not predict unequivocally whether family migrants are ‘wanted’ or ‘unwanted’, but rather suggests that they may be both depending on the context. In this dissertation, then, I will maintain a focus on policy objectives, seeking to uncover them from policy documents, speeches and interviews, rather than assuming them a priori.

### 2.3.2 Controlling and limiting the policy debate

I argue in this dissertation that we can explain how policymakers have overcome ‘constraints’ and restricted family immigration through a key strategy of debate limitation, operating both at the level of policy venues and policy frames. I will outline the theoretical points of reference for this argument in the following.

#### 2.3.2.1 Venues and frames

In order to explain changes to family immigration policy, I draw on the framework developed by Baumgartner and Jones usually known as ‘punctuated equilibrium’, which represents an attempt to integrate ‘ideas’ and ‘institutions’ in order to explain policy change. What I consider most important in their theoretical framework is the combined focus on policy venues and policy images (or frames). I will briefly outline each of these two components and then examine how, by combining the two, we can gain useful insights into changing family immigration policies. I will also examine one particular object of framing, namely the question of proportionality.

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202 See for example Catherine. Raissiguier, Reinventing the Republic : Gender, Migration, and Citizenship in France (Stanford, Calif.: Stanford University Press, 2010).

203 Boswell, “Theorizing Migration Policy.”

204 Baumgartner and Jones, Agendas and Instability in American Politics.

205 Ibid., 7.
Baumgartner and Jones’ first important insight, which has been developed further both within studies of immigration policymaking\(^{206}\) and other policy issues\(^ {207} \) is that ‘venues matter’, and that they may differ with regard to questions like ‘who controls the venue?’, ‘who has access to the venue?’, and ‘is the venue open or closed?’ Venues will also differ in their rules of authoritative decision-making. Policymakers, then, may choose venues strategically in order to achieve their objectives on a given issue; a strategy known as ‘venue shopping’. For instance, Guiraudon concluded in the early 2000s that the EU level was a strategic venue choice for making more restrictive immigration policies than what was possible in national parliaments.\(^ {208} \) More recently, Kaunert et al have found that non-governmental organizations also engage in venue shopping, and have successfully lobbied for migrants’ rights at the EU level, making it a venue that may instead favor more liberal policies.\(^ {209} \)

The second important aspect of Baumgartner and Jones’ explanations of policy change relates to what they call ‘policy images’, but which is closely related to what other analysts refer to as ‘frames’.\(^ {210} \) Baumgartner and Jones define policy images as “how a policy is understood and discussed”,\(^ {211} \) and they argue that some images are more powerful than others. Effective policy images, they suggest, are “connected to core values”, such as progress, patriotism or economic growth – “things no one taken seriously in the political system can contest”.\(^ {212} \) Arguably, both the ideas of preventing forced marriages and of improving immigrant integration are such


\(^{209}\) Kaunert, Léonard, and Hoffmann, “Venue-Shopping and the Role of Non-Governmental Organisations in the Development of the European Union Asylum Policy.”


\(^{211}\) Baumgartner and Jones, \textit{Agendas and Instability in American Politics}, 25.

\(^{212}\) Ibid., 7.
incontestable ideas in liberal welfare states. Frames, as Lahav argues, simplify complex information, and are “potentially instrumental in shaping how individuals think about specific issues”. As Lahav continues, “by encouraging citizens [and presumably other actors] to draw heavily on the principles and values they emphasize, frames may significantly alter policy attitudes and preferences”. Frames, then, can be used for persuasive purposes.

Policy images and issue definition are tightly intertwined. Action on a particular policy issue stems from an understanding of the issue whereby it is (a) related to a case that is manmade, rather than natural and (b) of public concern. When these conditions are fulfilled, it is appropriate for a government to act. In Baumgartner and Jones’ example, dropping out of high school without basic literacy or numeracy skills is a private misfortune. But it may be turned into a public problem requiring educational policy change if it is instead discussed as a concern over educational attainment as a prerequisite for economic growth and competitiveness. Looking again to family immigration policy, the choice of spouse is arguably a private concern, which might be turned into a public one through a focus on the effects and consequences of family migration or through a focus on possible human rights violations such as forced marriages. Similarly, it has been argued that continued family migration might lead to poor immigrant integration and social cohesion. Again, no one is opposed to ‘good’ immigrant integration and social cohesion, and it is arguably something governments should strive for. By framing family immigration as a site where forced marriages occur and where integration fails, persons previously opposed to family immigration restrictions might instead come to support them.

If we combine these two concepts of venues and frames, what I suggest is that we see the contours of a model of debate limitation, where policymakers have abilities to control and limit political debates by influencing where it takes place (the venue) and on what terms it is carried

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214 Ibid., 239.

215 Baumgartner and Jones, Agendas and Instability in American Politics, 27.

216 Ibid.
out (frames). This, in many ways, relates back to Schattschneider’s analyses of the scope of conflict.217 Through debate limitation, I argue that policymakers can overcome or circumvent the constraints discussed in the second part of this chapter.

2.3.2.2 ‘Politics in time’ and the uses of expert knowledge

To flesh out this model, I want to add two additional aspects that Baumgartner and Jones did not elaborate. The first is the question of time, a contextual variable that Baumgartner and Jones acknowledge when they suggest that policy images as well as equilibria are ‘historically specific’. The time dimension can be elaborated, however, as political scientists have increasingly come to realize the importance of ‘time’ in policy analyses. They have identified a number of different ways in which ‘time’ may matter – of which the focus on sequence and the possibility of path dependence is perhaps the most ‘fashionable’.218 Path dependence occurs when “a previous decision reinforces itself, when it determines in part the future development of events”,219 but this is not the only way to think about time in policy analyses. Pierson also highlights ‘timing’,220 and the focus on sequence can be broader than the question of path dependence, which is a particular form of sequencing.221

The idea of ‘timing’ has been developed by other authors; for instance Hansen and King focus on ‘timing’ vis-à-vis broader social debates and events; arguing that eugenic policies, which were widely supported and socially accepted at an earlier stage, could not be implemented in liberal


219 Hansen, “Globalization, Embedded Realism, and Path Dependence The Other Immigrants to Europe,” 269.

220 Pierson, “Not Just What, but When.”

221 Howlett and Rayner, “Understanding the Historical Turn in the Policy Sciences.”
democracies after they had become associated with Nazi Germany. In this context, we can suggest that the timing of restrictions with regard to broader debates on multiculturalism and in the aftermath of 9/11 may matter. Particular frames may have particular resonance in a historically specific context. In narrower analytical field – that of policy transfer studies - Dussauge-Laguna has provided a useful overview of the ways in which ‘time’ may influence the adoption of different policy ideas from abroad. He identifies six ways to think about time: (1) time as ‘time frames’, or the amount of time which a study covers, (2) time as legacies or inheritances, (3) the idea that ‘things take time’, (4) time as ‘Zeitgeist’, (5) the "availability of models/technologies at a certain time", and (6) time in relation to electoral or political cycles. While he was speaking specifically about policy transfer analyses, this overview is arguably quite useful. The fourth dimension - the Zeitgeist – picks up Hansen and King’s idea of timing vis-à-vis broader social debates. I also want to draw attention to the idea that ‘things take time’, as how long they take may matter: when policy processes are swifter, there is more limited time for opponents to mobilize against them. This, again, relates back to questions of controlling venues, debates and the scope of conflict.

A second dimension that we can add to the model relates to the question of the uses of expert knowledge, as developed by Christina Boswell. Questions of expert knowledge, again, are relevant both at the level of venues and frames: expert-led venues are more closed and operate according to different rules of the game. At the same time, expert knowledge may be used to endow specific frames with more heft. Often, policymakers rely on expert knowledge to build and promote policy images. Boswell outlines three uses of expert knowledge: the instrumental

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225 See also literature on epistemic communities, such as Emmanuel Adler and Peter M. Haas, “Conclusion: Epistemic Communities, World Order, and the Creation of a Reflective Research Program,” International
or problem-solving function, the substantiating function, and the legitimizing function. Of these, the instrumental function of knowledge is the one most developed in traditional studies of the nexus of expertise and policy, and Boswell notes that scholars have generally examined cases where politicians used knowledge versus instances where they failed to do so. She identifies three typical explanations from the scholarly literature for why politicians fail to take expert knowledge into account: (1) electoral pressures, (2) lack of organizational capacity to make use of the research and (3) lack of relevant knowledge. While Boswell does not address this at length, one might also add that politicians may have ideological commitments to convictions at odds with expert knowledge.

Boswell’s contention is that none of these explanations can account for why politicians continue to commission research, if they will not or cannot use it. She suggests that policymakers in fact want and use expert knowledge in other ways, and focuses on what she terms the legitimizing and substantiating functions of expertise. As Boswell says, “by being seen to draw on expert knowledge, an organization can enhance its legitimacy” and bolster its “epistemic authority”. This is especially likely to be seen as important in an institution that places value on knowledge. On the other hand, expert knowledge can be used to lend authority – or substantiate – a particular policy position. The substantiating function of knowledge is particularly relevant in contested policy areas. Both the legitimizing and the substantiating function of knowledge are symbolic rather than substantial. Boswell notes that different organizations seek legitimation in different ways; whereas ‘action agencies’, or administrative bodies which are judged by their

227 Ibid., 6–7.
228 The fight against climate change springs to mind, but politicians denying climate change do in fact have their own substantiating knowledge to rely on from outliers in the scientific community.
230 Ibid., 7–8.
actions and outputs, may favor an instrumental use of knowledge in order to actually improve those outputs; political organizations may be judged instead on their ‘talk’ and their ‘decisions’. In these latter cases, symbolic uses of knowledge take on particular importance. For instance, political organizations must be seen to make decisions on political issues that have been rendered salient and framed as requiring action. Finally, we can note how Boswell posits some potentially important expected relationships flowing from her model; most importantly that knowledge is likely to be particularly important in policy areas where technocratic modes of decision-making are accepted. Secondly, she notes that the quality of research is particularly important if it is put towards substantiating policy positions; and that in the case of the substantiating function, publication is likely to be highly selective. We may also note a comment she makes almost in passing, characterizing the continued use of expert knowledge stemming from an “almost ritualized respect”.

2.3.2.3 The question of proportionality

As I argued earlier in this chapter, the most important supranational constraint on family immigration policymaking is that family immigration rules should comply with ECHR article 8 on the right to family life. The question of whether a policy is compliant is teased out through a proportionality assessment. There is a discursive element to the question of proportionality, however, which is important to examine in light of the question of framing and policy images.

There are, on the whole, two main ways of making a policy measure more proportional: (1) by giving it a broader set of objectives, and (2) by making it more targeted, and as such avoiding ‘collateral damage’. As immigration control is legitimate in itself under ECtHR jurisprudence, an immigration control measure may be more acceptable under a proportionality assessment if it is

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231 Ibid., 41–44.
232 Ibid., 44; see also Baumgartner and Jones, Agendas and Instability in American Politics.
234 Ibid., 80–87.
235 Ibid., 39.
presented as such. It may also help to present multiple objectives. This part of the equation is thus largely related to framing and discursive practices, as the Court has generally taken countries at their word when assessing their objectives. Targeting might involve exemptions of some groups, or distinction between categories (such as the distinction in Norwegian law between family formation and reunification). What I am suggesting is that policymakers have ways in which they can influence the proportionality assessment of a given policy in the event that it should face legal scrutiny. This means that depending on how a policy measure is framed, and what its purpose is argued to be, policymakers can pre-empt action in venues they do not directly control, in this case the courts. This is an important strategy for overcoming legal and moral constraints on policymaking.

2.4 Practicalities

This final section of my ‘roadmap’ engages with the more practical side of research. I review the material examined in the thesis and my approach to this material, as well as limitations and challenges faced during the course of research.

2.4.1 Material

This dissertation relies on a number of different types of material. The primary data sources are different types of official policy documents (expert proposals, bills, consultation documents, reports) and records of parliamentary debates. I have also relied on mainstream media coverage of immigration policy.\(^{236}\) In the course of the research, I also interviewed policymakers, activists and lawyers in Norway and in the United Kingdom. I was based in Norway during most of the period of writing this thesis, and interviews were carried out in Oslo between March and June 2012 (with an additional interview carried out in May 2013). I made two trips to London in January and February of 2013, where I carried out interviews, met with experts in the field and attended an evidence gathering session of the All-Party Parliamentary Group on Migration which was at the time producing a report on the changes to the income requirement.

\(^{236}\) In Norway I used the Retriever database to search newspapers. I used Factiva for the two other countries as well as direct searches in some major newspapers.
Recruitment in Oslo was fairly straightforward – especially given my flexibility in terms of time and place, and also the fact that Norwegian public officials are quite easily accessible. I was able to interview two bureaucrats, three former high level policymakers, one opposition politician, one activist and one prominent immigration lawyer. I mainly contacted them directly by email. With two of the politicians, I employed a ‘snowballing technique’, and I was referred to two of the policymakers from the first politician I spoke to.

Recruitment in London turned out to be more of a challenge. I interviewed three former politicians who were quite forthcoming once I was able to locate current contact information (which was a challenge as they had retired from politics). Interviewing current policymakers and especially civil servants did, however, prove difficult due to the Home Office’s famed culture of secrecy and the timing of the project, which coincided with the dramatic 2012 reform. As such family immigration was quite high on the policy agenda and it was thus a rather sensitive topic. I approached the Home Office first through the European Migration Network office, where they were quite helpful, but once they referred me onwards to the people in charge of family immigration policy, I hit a wall. I made a second attempt after I had identified the civil servant in charge of the recent reform through interviews and conversations with experts, but while I was able to reach him directly he declined to participate in the research project. I sought to compensate for this by interviewing activists and lawyers, who interact with the Home Office from ‘the other side of the table’. I also attended an evidence-gathering session for the All-Party Parliamentary Group on Migration in relation to their 2013 Family Immigration Report.

The result of these challenges with recruitment is that the types of interviewees vary between countries. The Norwegian sample is made up of mainly ‘insiders’ - civil servants and politicians. The British sample features three former politicians and consummate insiders, but is otherwise made up of people from NGOs, lawyers, and others who in different ways engage with the rules. This may skew the results and mean that the account of the British case is less accurate than the Norwegian one, in terms of describing the assessments and decisions made. To counter this,

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I spoke with two NGO representatives, one immigration caseworker, one immigration lawyer, one member of the House of Lords and one employee at a think-tank. I also discussed my project with several prominent British academics within both law and social science.
however, it should be pointed out that the British public ‘paper trail’ is much larger, which I believe to some extent mitigates this problem.

The interviews were transcribed, and along with transcripts of Parliamentary debates, the texts were added to the NVivo software package. I used the software to categorize the material into specific themes, assisting with analysis. I looked in particular at how policy objectives, rights and constraints were discussed. The interviews in Norway were anonymized, as I had promised this to respondents from the outset and as some of them specifically requested it. When I did the British interviews, I realized some of them would be quite difficult to adequately anonymize. I requested consent to use their names where appropriate, which most of them gave. Persons speaking on behalf of specific organizations have simply been identified by their organization.

2.4.2 Approach to the material

This dissertation is comparative and inductive. As it was clear from the beginning that the existing literature on immigration control was not perfectly suited to explain family migration policy development, it seemed much more fruitful to employ an inductive approach to the material rather than to develop specific hypotheses to test from the outset. I have thus taken the empirical cases as my starting point, seeking to uncover the relevant variables that might explain policy outcomes. Inductive reasoning, as I view it, entails the development of a logical argument with support in the available evidence. It is judged primarily on its strength or probability, not whether or not it is true.

Drawing on the positivist research tradition, this thesis partly employs a ‘most different systems design’, insofar as Norway and the United Kingdom - with different immigration histories as well as political systems - both, for reasons which I seek to uncover, have had similar trajectories and outcomes with regard to family immigration regulation in the 2000s. In this schema, the ‘Danish case’ comes out most clearly as a ‘model’ or example, to which the other two countries looked to varying extent. At the same time, I do contend that all three countries are similar enough that they can all be compared, in accordance rather with the ‘most similar systems’ line

oft thinking: facing similar migration flows and similar perceived challenges, as well as similar ‘international constraints’ (relative freedom from the EU, but being bound by the ECHR), being of similar industrial development and relatively similar social culture and broader values (broadly speaking individual rights, equality, rule of law).

I carry out both within- and across-case analysis in this dissertation. Within each case study, I seek to explain development over time of stricter rules for family immigration, tracing sequence and timing of events. I pay attention to the legacies of early family immigration regulation, in line with historical institutionalist focus on the effect of potentially distant past events on present choices and thinking. Across the cases I seek to explain both similarity and difference. On the one hand, there is broad convergence in the direction of change: all three countries have tightened their family immigration rules in 1997-2012 period. I examine the common factors for this broad development towards stricter rules across different countries. On the other hand, I inquire why the countries took different approaches to this - why Denmark used an age limit and attachment requirement, while the two other countries eventually employed strict income rules instead. I uncover a set of variables that I argue may explain this difference in outcomes. In such an enterprise of small-N comparative research, conclusions can only be probabilistic, and it is not possible to ‘control’ for variables in the way in which one can do so in the experimental method used in the hard sciences. However, by judiciously triangulating information from different types of material (interviews, transcripts, policy documents, media clips), my ambition - as I just noted - is to advance a plausible analytical account.

2.4.3 Limitations and challenges

Before proceeding with the analytical chapters I want to outline some challenges faced while working on this project as well as some limitations of the analysis presented. The topic of my dissertation is one that is currently politically salient and which has been quite high on the political agenda in all the countries under examination. While this arguably supports the claim that this research is relevant and timely, one effect of the increased salience of family immigration policy in recent years is that family immigration rules have been frequently changing. Several of my interviewees also pointed to the fact that I am studying a moving target.

239 Mahoney, “Path Dependence in Historical Sociology”; Pierson, Politics in Time.
Especially in the case of the UK, the rules underwent significant changes during the course of working on this dissertation. It was difficult to decide on a time frame for this study, but it became clear, especially through the course of fieldwork in London in 2013, that while I had initially decided that 2011 would be my ‘end date’, I could not omit the very significant changes of 2012, when the Coalition government implemented a very demanding income requirement and attempted to circumscribe the right to family life. These changes, again, have come under challenge in the courts, but it is impossible to fully capture these developments, as they are ongoing. In Norway, there have been fewer changes since the big 2010 overhaul of immigration legislation, but important developments with regard to the income requirement took place in 2012. Therefore, the end of 2012 marks the end of this study although the policies are changing still.

The fact that I am examining a moving target also meant that the developments that required explanation - the value of the dependent variable, so to speak - changed during the course of the project. Before the end of 2011, the question that interested me was why the age limit was not implemented in Norway, but put in place in the UK. As the rule was scrapped in the UK and replaced with an income rule, however, I was suddenly explaining a similar outcome – the adoption of an income rule - rather than a different one.

A second challenge is that studying changing immigration policy means studying changing legislation. Primary and secondary legislation, along with guidelines, is where family immigration policy is made and operationalized. The fast-changing immigration rules are, in some ways, the core object of study - which in itself is troublesome as anything not enshrined in primary legislation is not always easily available (especially older versions of immigration rules are practically impossible to come by and one is forced to rely on secondary accounts). In addition to this very hands-on problem, however, is the broader question of interdisciplinary research. Coming to such a topic as a non-lawyer can be intimidating, but combining political science and law can be a particularly fruitful – though challenging - interdisciplinary endeavor.240 The making of immigration legislation is, however, a political process, which may

better be examined using the tools of political science. Pure legal analyses of immigration rules and legal causes may fail to capture the political back and forth which shaped the rules, and may over-estimate the wording of a particular court case without taking into account how politicians parse and work around court rulings.

Finally, the fact of interviewing political elites – a significant share of my interviewees – presents some challenges in and of itself. It is a relatively common technique in comparative and public policy research which is rarely problematized by researchers employing it. When interviewing political elites one avoids some of the ethical concerns that qualitative research may present, as elite subjects are likely to be familiar with the research process and understand questions of consent. They are, in fact, probably quite experienced interview subjects, and research on elites is often subjected to less rigorous ethics review than research on so-called ‘vulnerable populations’.241 In fact, the power relations in the interview may be ‘flipped’, where the researcher is left feeling, in Conti’s words, “embattled and insecure about the worthiness of [their] topic”242 as questions may be met with brusque responses or downright questioning of the ‘point’ of the whole exercise. At the same time, the researcher must keep in mind that

“it is not the obligation of a subject to be objective and tell us the truth. We have a purpose in requesting an interview but ignore the reality that subjects have a purpose in the interview too: they have something they want to say… they are talking about their work and, as such, justifying what they do.”243

When I ask retired politicians to reflect back on decisions and considerations they made while in office, I am giving them a space to justify their actions with the benefit of hindsight. I have,


241 There may however be other vulnerabilities, such as concerns over anonymity.


therefore, sought to triangulate information from informants from different ‘ends’ of the policy process and with different political viewpoints, as well as drawing on existing secondary sources, in order to put my interview material in a broader context and avoid giving their personal narratives too much space.
Chapter 3

3 Denmark and the achievement of control

3.1 Introduction

Denmark, a small Scandinavian country of five million inhabitants, had what was described as “the most liberal [Alien’s Act] in the world” until not long ago.244 This description of the 1983 Danish Aliens’ Act took into account its expansive refugee definition245 as well as the fact that the law contained an unconditional right to reunification with close family. By mid-2002, Denmark’s Alien’s Act was instead among the strictest in Europe and perhaps the world, and Denmark became an emblematic case of immigration restrictions targeting family migrants. Other scholars have examined the remarkable turnaround in Danish immigration policy during that 20-year period, and there is already an extant literature analyzing Danish family immigration policy from different perspectives.246 In this chapter, my main concern is the changes enacted in

244 Schmidt, “Law and Identity,” 259 emphasis in original.

245 The law accepted both Convention Refugees and ‘de facto refugees’. Convention refugees have “have a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country” (1951 Convention on the Status of Refugees, art. 1 (a)). So-called “de facto refugees” in Denmark were those who fear persecution but who may not fit the specific definition of the Convention. Such persons are increasingly recognized as qualifying for subsidiary or complementary protection see for example Jane McAdam, Complementary Protection in International Refugee Law, 1st ed (Oxford University Press, USA, 2007).


the 2002-2010 period, when Danish policymakers managed to drastically cut family immigration to Denmark - from 13,000 in the year 2001, to approximately 4,000 per year in subsequent years.

As we saw in Chapter Two, some authors have expected supranational human rights obligations to constrain policy-makers,\textsuperscript{247} while others have posited that domestic courts would uphold the right to family life and prevent policymakers from restricting family immigration in any meaningful sense.\textsuperscript{248} More broadly, many expect that politicians in a liberal democracy would be morally constrained to respect the 'right of insiders' to live with their family members.\textsuperscript{249} Despite these expected constraints, Danish policymakers managed to overhaul family immigration policy significantly after 2002. In addition to more ‘standard’ requirements such as sufficient income and adequate accommodation as well as a bond or collateral, Danish policymakers put in place a 24-year age limit for spouses and an ‘attachment requirement’ whereby the couple would have to prove that their combined subjective attachment to Denmark was stronger than to an alternate country of residence. How could Danish policymakers achieve control of a migration flow that has been seen as beyond their reach? The existing literature does not adequately explain this puzzle.

I argue in this chapter that a specific combination of factors allowed Danish policymakers to restrict family immigration to an unprecedented degree in the early 2000s. First of all, the \textit{timing} of the reforms in the aftermath of 9/11 and the \textit{speed} of reforms (terribly quick) were propitious for dramatic policy change. Secondly, the scope of conflict was relatively limited, especially at the party political level. The dynamics of Danish bloc and coalition politics changed after the Social Liberals realigned with the left in the early 1990s, and the Social Democrats became increasingly divided over immigration policy. This created a situation where the Danish mainstream political right – with the support of the far-right Danish People’s Party – was reunited behind the objective of immigration restrictions in the face of a divided left, and further increased the institutional leverage of the government through Denmark’s parliamentary system,

\begin{itemize}
  \item \textsuperscript{247} Yasemin Nuhoğlu Soysal, \textit{Limits of Citizenship : Migrants and Postnational Membership in Europe} (Chicago: University of Chicago, 1994); Sassen, \textit{Losing Control}?
  \item \textsuperscript{248} Joppke, \textit{Immigration and the Nation-State}.
  \item \textsuperscript{249} Carens, “Who Should Get In?”.
\end{itemize}
which already has few veto points. Political debates were further through very brief consultation periods, which prevented actors from outside the Danish Parliament from making meaningful contributions to the political debate.

With regard to supranational and judicial constraints on policymaking, the Danish opt-out of Justice and Home Affairs cooperation in the EU meant that Denmark was not affected by either the minimum standards agreed upon in the Family Reunification Directive or recent litigation at the European Court of Justice establishing a right to family reunification for third country nationals (see section 2.2.1.2). Denmark had, however, incorporated the ECHR into domestic legislation. At the same time, Denmark was bound by EU free movement rules, allowing individuals affected by the strict rules to easily reunite with family members across the border in Sweden, leading many to choose this option rather than to fight their case in Denmark. This undercut the judicial constraint, which cannot be exercised if there is no litigation on the contested issues.

Together with these institutional factors, ideational factors related to politicization and framing were also very important. At the time, both immigration as such and certain practices found in immigrant communities – most importantly forced marriages – were high on the Danish political agenda. Arranged and forced marriages were treated as two sides of the same coin. When these marriages were understood through the lens of immigration – with visas seen as an important motivation to forcibly marry off young Danish citizens of minority background – immigration restrictions could be reframed as rights-protecting rather than rights-violating. The broader consequences of the relatively common practice of arranged marriages – continued family migration among certain groups – could be reframed from private choices of how to live family life to public concerns through the focus on marriage patterns as an obstacle to integration, as well, as it was said to recreate the first generation of migrants. Objections to the rules based on discrimination concerns were met with a reframing of discrimination itself, as discrimination is always defined relative to a particular comparator. By changing the comparator, discrimination could be defined away. As noted, objections were limited through effective control of the debate itself, through the sidelining of experts and limited use of consultations. As such, the absence of expert knowledge became a mediating factor allowing several contested frames to 'stick’, as they resonated with important values such as gender equality, human rights protection and individual freedom.
While strict experimental conditions are evidently not in place (in particular, the timing was rather different), the third round of reforms – the 2010 attempt to introduce a point system for family members – is an interesting case to ‘test’ this argument against. The same government attempted that put through the 2002 changes introduced a new points-based system for family reunification, where family members would be picked out based on education and skills. As before, it was put through with bloc support. This time, the restrictions could not be framed as an issue of rights protection and gender equality, but rather came off as classist, leading the left to unite against it. Thus, at the first opportunity, the policy was revoked – even though all the other restrictions were kept in place.

This chapter begins with a review of the historical legacy of Danish family immigration regulations, as well as a brief overview of the Danish policymaking context. I subsequently examine the rise of family immigration on the political agenda. Then, three instances of family immigration reforms from the 2000s are examined: the major overhaul of immigration policy in 2002, the adjustments to the attachment requirement (whereby couples would have to demonstrate a stronger ‘combined attachment’ to Denmark than any other country) made in 2003, and the implementation and subsequent repeal of a points system for family migrant in 2010-11. I contend that Denmark, to some extent, served as a model for other European countries seeking to restrict family migration, and that the instances of reform analyzed in this chapter can assist us in answering the question of ‘how far you can go’ with regard to family immigration restrictions as well as the conditions under which policymakers can overcome putative constraints on immigration policymaking.

3.2 Historical legacy of family immigration and its regulation

Denmark, like many other European countries, underwent a brief experiment with labor immigration during the post-war economic boom in the 1960s and early 1970s. Danish companies recruited foreign workers,250 of whom the largest groups came to Denmark from

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250 Note that this was not a large-scale official recruitment program, but a much more ad hoc situation where individual employers undertook recruitment.
Turkey and then Yugoslavia, followed by Morocco and Pakistan. Labor immigration was temporarily halted in 1970, but briefly reopened when it turned out that the Danish entry into the European Economic Community (EEC) in 1973 did not result in large inflows from other EEC countries as some had expected. It was quickly stopped again, however, when the economic crisis struck in November of that year. By that time, Denmark had received approximately 15,000 immigrants from the Turkey, Yugoslavia, Morocco and Pakistan. Immigration to Denmark continued through family reunification and later through increasing asylum flows. By 2002, immigrants and descendants (second-generation, i.e. the children of the guest workers) would make up just over 400,000 persons, or 7.7% of the Danish population. Of these, just over 300,000 were immigrants and descendants from non-Western countries (5.8% of the population.)

Social Democratic Minister of Justice Erik Jensen established an expert commission in 1977 in order to propose a new Danish Immigration Act. It submitted its proposal in 1982, in the

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253 Hedetoft, “Denmark.”

254 At this time, Denmark allowed family reunification of spouses and children under the age of 20 if the sponsor had sufficient income to care for incoming family members. There was thus no unqualified right to family reunification in this early period. Vad Jønsson and Petersen, “Del 3: Danmark: Den National Velfærdsstat Møder Verden,” 147.

255 Specifically, in Danish statistics immigrants are defined as persons born outside of Denmark to two non-Danish parents. Descendants (efterkommere) are defined as persons born in Denmark where none of the parents are both Danish citizens and born in Denmark. If at least one parent is a Danish citizen, the person will count as Danish and not a descendant. Statistics Denmark, Indvandrere I Danmark 2012 (Statistics Denmark, 2012).

256 Ministeriet for flygtninge, indvandrere og integration, Årbog Om Udlændinge I Danmark 2002 (Ministeriet for Flygtninge, indvandrere og integration, 2002).

257 Bent Jensen, De fremmede i dansk avisdebatt fra 1870’erne til 1990’erne, Indvandrerne og deres levekår (Copenhagen: Spektrum, 2000), 440. This was the same year that Norway’s new Immigration Act commission was also given its mandate to propose new legislation, reflecting the parallel immigration histories of the Scandinavian countries.
middle of a change of government. Both Commission members and different political parties were conflicted on what the new Immigration Act should look like. The new so-called ‘four leaf clover’ government, under a Conservative prime minister and with coalition partners from the Liberals, the Christian People’s Party and the Centre Democrats, pursued the restrictive direction proposed by the Commission’s majority. Erik Ninn-Hansen, the Conservative Minister of Justice, famously warned of racial unrest and danger to the nation-state if the law was not formulated restrictively. The right to family reunification proposed by the Commission’s minority dissenters did, however, make it into the Act after opposition pressure, in spite of Ninn-Hansen’s maneuvering. How did this happen?

Given the number of parties in the Danish Parliament (currently eight, but as many as 10 after the 1973 election), it is highly unusual for any single party to have a majority. Most governments have historically been minority coalition governments (often Social-Democrat led), which have governed with the support of one or more non-governing parties in their ‘bloc’; although the right bloc has in fact often had an overall majority. Green-Pedersen and Thomsen, in their analysis of Danish parliamentary politics, note how the curious mix of consensus politics and contestation found in Scandinavian parliaments defies Lijphart’s classification of consensus-

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259 This party is now known as the Christian Democrats.

260 This party has not been represented in the Danish Parliament since before the 2002 elections.

261 Lærke Klitgård Holm, “Folketinget Og Udlændingepolitikken-Diskurser Om Naturaliserede, Indvandrere Og Flygtninge 1973-2002” (Aalborg University, 2007).


263 Holm, “Folketinget Og Udlændingepolitikken-Diskurser Om Naturaliserede, Indvandrere Og Flygtninge 1973-2002,” 160.

264 The centre-right in Scandinavia is usually referred to as “the bourgeois parties”. I have chosen not to use this term here, as it sounds somewhat odd and anachronistic in English, but it is in common usage in Scandinavian languages.

based and majoritarian systems. They argue that Danish politics have alternating decision styles and must be understood in terms of ‘bloc politics’ (majoritarianism) and ‘broad cooperation’ (consensus). Bloc politics occur in “situations where legislation is passed with support of left- or right-wing parties only”, whereas “broad cooperation” takes place where legislation has support from both sides of the aisle. The conditions of bloc politics can change over time, as the small parties in the center can switch their alignment. Green-Pedersen and Thomsen argue that the internal coherence of the bloc at a given time determines the decision style. Internal coherence, in turn, is influenced by factors such as the presence and power of extremist parties and whether they have potential to join or support the coalition; to what extent the moderate parties in the bloc engage in rivalry with each other and the number of parties in the system. When internal coherence is low, “bloc politics [i.e. relying on parties in the bloc] is not an option for the government and it becomes a weak minority government.”

Internal coherence on the right was at a low during the late 1970s and early 1980s. The coalition government depended on the support of both the anti-immigration Progress Party and the immigration-friendly Social Liberals in order to have a majority. In the end, the Social Liberals ‘won out’, successfully pushing for the right to family reunification for close family without conditions attached, and for an expansive refugee definition. All parties except for the Progress Party voted in favor of the law, which ended up being one of the world’s most liberal immigration laws.

Throughout the 1980s center-right parties remained discontented with the existence of a right to family reunification which they had never in fact wanted, but agreed that human rights

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266 Green-Pedersen and Thomsen, “Bloc Politics vs. Broad Cooperation?”.
267 Ibid., 157.
268 Ibid., 165. As an illustration of the problems of relying on the Progress Party as a bloc member, the authors note how this party voted against the annual budget on principle.
269 Green-Pedersen and Krogstrup, “Immigration as a Political Issue in Denmark and Sweden,” 621.
obligations under ECHR art. 8 limited their margin of maneuver. Politicians on the Danish right have since vilified the 1983 law, and they have often expressed the urgency of overturning it. The central far-right ideologue and later Danish People’s Party MP Søren Krarup have described it alternately as “the cause of the entire disaster” and “a kind of rape of the Danish people” [en slags voldtægt af det danske folk].

Like in the rest of Europe, the growing numbers of spontaneously arriving asylum seekers dominated the immigration political agenda during the late 1980s, and family immigration remained largely off the agenda. Family reunification would, however, be at the heart of one of the biggest Danish political scandals of the recent past – the so-called ‘Tamil case’. In 1987, Erik Ninn-Hansen – still the Minister of Justice – quietly ordered that family reunification claims for Tamil refugees should be halted unless they were to be rejected, with the hopes that the Tamil refugees could return to Sri Lanka soon to reunite there instead. This violated both the law at the time and of the norms and rules governing the relationship between the legislative and executive. While the revelations had no immediate consequences, they eventually led to the resignation of the Conservative government in January 1993 and the impeachment of Ninn-Hansen. This episode seems to foreshadow the idea that reunification should happen elsewhere, rather than in Denmark, which is prominent in the debates of the 2000s.

In 1992, a so-called ‘breadwinner condition’ (i.e. an income requirement) was introduced, requiring the Danish spouse to be able to support the immigrating partner; and hence ending the

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271 see Holm, “Folketinget Og Udlændingepolitikken-Diskurser Om Naturaliserede, Indvandrere Og Flygninge 1973-2002,” 276.
272 Folketinget, 23 May 2002, 14:15.
273 Folketinget, 29 April 2005, 11:20 (Debate on Question F9.)
274 Jensen, De fremmede i dansk avisdebat fra 1870’erne til 1990’erne.
276 Ninn-Hansen was impeached for his role in the matter in 1995, as only one of five individuals impeached in Danish history. Danmarks Domstole, “Rigsretten,” Danmarks Domstole, 2006, http://www.domstol.dk/om/organisation/Pages/Rigsretten.aspx.
unqualified right to family reunification. This happened just at the end of the governing period of the center-right coalition, which was subsequently replaced by the Social Democrat-led coalition government. Two of the small center parties (the Social Liberals and the Centre Democrats), realigned with the left bloc and entered into a coalition with the Social Democrats. Their government also had bloc support from the Socialists. The change of government did not lead to a re-liberalization of the family rules, however. Rather, there would be a new restrictive turn from the mid- to late-1990s, under pressure from both the political right and from within the Social Democratic Party.

The Social Democrats had since the early 1990s been internally divided on immigration policy, and a particularly stark division developed between local politicians who were promoting more restrictive views - many of the towns with the largest immigrant populations had Social Democrat mayors who were becoming increasingly vocal about their dissent with the national party line - and national politicians who continued to attempt to strike a balance with their more pro-immigrant Social Liberal coalition partners as well as the Socialists. At the national level there were also divisions, however, and the Danish Minister of Integration during 2000-2001, Karen Jespersen, fought for the Social Democrats to take a harder line on immigration.

Towards the end of the governing period of this center-left coalition, opposition pressure increased. Since the realignment of the Social Liberals, the right no longer had an incentive to moderate their stance on immigration, as their best bet for entering government now sat to their right – in the form of support from the Danish People’s Party. This increased internal coherence on the right (with higher coalition potential of the extremist party) opened the way for a stronger push for restrictive immigration policies from the right as a whole. Pressure from

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279 See Moeslund and Strasser, *Family Migration Policies in Denmark*, 12–13.


281 Green-Pedersen and Krogstrup, “Immigration as a Political Issue in Denmark and Sweden.”
inside and outside the government led to new restrictive changes from 1998, with new integration legislation and immigration rules set up to combat forced marriages through restrictions on reunification if one or both spouses were under 25 (see also section 3.4.2 below for an examination of the debate over forced marriages which fed into these changes). Soon after, in 2000, the first attachment requirement was implemented, requiring that the couple’s ‘attachment’ to Denmark be equal to an alternate country of residence (presumably the country of origin of the other spouse). At the time, the requirement did not apply to citizen sponsors. The government also moved to abolish the right to family reunification altogether for applicants under the age of 25, and it was decided that permits should only be given to couples in this age group if there was no doubt that the relationship was voluntary.

Politicians on the right did not consider these changes far-reaching enough. As we can see in the Committee response after the first reading of the 2000 bill, their intentions were clear: While this limited repeal was a “step in the right direction”, they would “keep working towards […] repealing] the right to family reunification generally.” They would only have to wait another two years to get their chance.

### 3.3 The Danish policymaking context

As I argue that several institutional and contextual variables are important in order to understand the development of Danish family immigration policy during the early 2000s, I will proceed now to explain these variables: most importantly, the party-political context, the influence of Danish courts, and the relationship between Denmark and the European Union with regard to immigration policy.

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282 Møeslund and Strasser, *Family Migration Policies in Denmark*. It appears that the authorities had the burden of proof and that it was therefore little used.

283 Institut for Menneskerettigheder, *Ægtefellesammenføring i Danmark*, Udredning (Copenhagen, Denmark: Danish Centre for Human Rights, 2004), 17.

3.3.1 The Danish party-political context

Denmark, like Norway, is a small Scandinavian or Nordic\textsuperscript{285} welfare state.\textsuperscript{286} It is a constitutional monarchy with a powerful parliament (Folketinget) elected through proportional representation. Four parties have dominated politics historically: the Social Democrats (Socialdemokratene), the Conservative People’s Party (Det Konservative Folkeparti), the Liberals (Venstre) and the Social Liberal Party (Radikale Venstre). Additionally, there has been a shifting lineup of smaller parties. Since 1995, the most important party on the far right has been the Danish People’s Party (Dansk Folkeparti), which replaced the earlier Progress Party (Fremskridtspartiet).\textsuperscript{287} As of 2012, 8 parties were represented in the 179-member Danish parliament. Government ministers may hold parliamentary seats, but they do not need to. During the 1990s, Denmark was governed by a coalition of the Social Democrats and the Social Liberals. Between 2001 and 2011, The Liberals and the Conservatives were in power supported by the Danish People’s Party. The Social Democrats and Social Liberals returned to power in 2011. Further detail on the Danish party political system and individual political parties can be found in Appendix A. I have also already described the conditions of bloc politics above (section 3.2), and it is important to note that the Danish parliamentary system has few veto points\textsuperscript{288} – and even fewer under conditions of bloc politics – increasing the power of the executive further.

3.3.2 Judiciary and legal obligations

As we saw in Chapter 2, studies of family immigration policy during the 1970s and 1980s often highlighted the importance of courts in upholding the right to family reunification. The courts, however, have not stood in the way of Danish policy restrictions to date. It is therefore important to ask why not.

\textsuperscript{285} I use the term Scandinavia term as it is used in Scandinavia, i.e. denoting Denmark, Norway and Sweden only. The wider term “Nordic countries” includes, in addition to the three Scandinavian countries, Finland, Iceland, the Faroe Islands, Greenland and Åland.


\textsuperscript{287} The Progress Party, similar to the Norwegian Progress Party, was founded as an anti-tax party in the 1970s.

Denmark has an independent judiciary that, although not explicitly authorized to do so under the Constitution, practices judicial review. The European Convention on Human Rights (ECHR) is fully incorporated into Danish law, but this is not the case for any of the other major human rights instruments, even though Denmark has signed them. The Danish Institute of Human Rights, established by Parliament in 1987 and reformed and made a national human rights institution in 2002 (the rather complicated circumstances of which are described in section 3.5.1.4), has an oversight function over human rights issues in Denmark, but Denmark has a more limited system of oversight in particular over ethnic discrimination issues compared to both Norway and the United Kingdom. In the United Kingdom anti-discrimination measures were developed in parallel with immigration control measures from the 1960s onwards. The push towards anti-discrimination legislation in Norway occurred right at the time when Denmark began to restrict immigration after 2000 and seemed frankly unwilling to investigate discrimination at all (Norway’s law against ethnic discrimination was enacted in 2005, and the Gender Equality Ombud was replaced by a broader Equality and Discrimination Ombud). Jørgensen suggests that there has been a general unwillingness in Denmark to investigate and document ethnic discrimination, pointing to how the Fogh Rasmussen government only accepted it as a ‘theoretical possibility’ in its 2003 Integration policy. Noting that only one government-sponsored study of discrimination appeared in the decade leading up to 2006, he characterizes the Danish approach to discrimination as a ‘ansvarsbefriende dementi’.

While difficult to translate directly, this means ‘evasion of responsibility through denial’, and it implies a ‘see-no-evil’ approach where responsibility for addressing discrimination is evaded by pretending it is not a problem or that it does not exist.

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290 This was amended somewhat with the creation of the Ligebehandlingsnævnet in 2009 in order to comply with the EU directive on racial discrimination. The idea of creating an ombud on ethnic discrimination has several times been rejected in Denmark, U. Hedetoft, *Multiculturalism in Denmark and Sweden* (DIIS, 2006), 5, http://www.diis.dk/graphics/Publications/Briefs2006/hedetoft_multiculturalism_dk_sweden.pdf.

Given the codification in Danish law of the most important bulwark in the protection of family life, article 8 of the ECHR (see chapter 2), one might expect that this would stand in the way of restrictions. As Guiraudon and others have argued, however, supranational human rights are not self-executing.\textsuperscript{292} The fact that article 8 is incorporated into Danish law is only relevant once individuals go to court and claim that the government has violated their article 8 rights, as Danish courts cannot on their own initiative strike down legislation. I will elaborate in the next section on why individuals with failed family reunification claims have arguably had limited incentives to pursue their cases in the courts, leading to limited litigation and thus few situations in which the judiciary could exercise any constraint on policymaking. In one of the few instances where a case reached the Supreme Court, the government also managed to convince the Danish Supreme Court – and even, more recently, the Strasbourg court – of its interpretation of discrimination. This surprising incentive structure with regard to fighting immigration decisions has to do with Denmark’s position within the EU and with EU free movement rules.

3.3.3 Denmark in Europe

Denmark has been part of the project of European integration since 1973, joining the then-EEC at the same time as the United Kingdom.\textsuperscript{293} Denmark’s participation has been somewhat half-hearted, and during the Maastricht Treaty negotiations in the early 1990s Denmark claimed full opt-outs in several areas of European cooperation, most importantly Justice and Home Affairs.\textsuperscript{294} Denmark has thus remained formally outside efforts to create common European immigration and asylum policies – although in practice Danish Ministers have participated in some of the negotiations anyway (sometimes seeking to ‘sell’ Danish policies to their European counterparts).\textsuperscript{295} The liberal influence of the Commission and, more recently, by the European


\textsuperscript{293} Norway voted no for the first time in that same accession round.

\textsuperscript{294} The other opt-outs concerned the Common Security and Defense Policy, the European Monetary Union (i.e. the euro) and European citizenship. They were negotiated in the Edinburgh agreement. The opt-out on citizenship no longer applies since the Amsterdam Treaty.

Court of Justice in its case law on the Family Reunification Directive (see section 2.2.1.2) have thus not directly affected Denmark.

On the other hand, Denmark is bound by EU free movement rules, as they are part of a different pillar of the EU architecture – indeed, the very foundation of the Union: the Treaty of Rome and the Four Freedoms. Under EU free movement rules going back to a set of 1968 regulations and now codified in Directive 2004/38/EC, persons exercising their right to free movement have a right, in turn, to be accompanied or joined by their family members, defined as both the spouse, children up to the age of 21, and relatives in the ascending line (i.e. parents and grandparents). No age limits, attachment requirements or income rules apply, as long as the sponsor has exercised EU Treaty Rights. Under these much more liberal rules, Danish citizens can move across the bridge to Sweden and obtain family reunification there. They may also, after a time, return to Denmark with their family members under EU rules, as free movement is protected in both directions. This means that is possible, at least for citizens, to circumvent Denmark’s strict rules. This provides citizens who cannot get their family to Denmark, or who expect to be unsuccessful in doing so, with an ‘exit’ option whereby they can easily move to Sweden and obtain family reunification there instead. I propose that this ‘exit’ option – which exists because of the unusual situation of mismatch between Danish and EU law – is much more accessible than the alternative of ‘voice’ (i.e. judicial proceedings to fight the rules in Denmark).

Because of the fortuitous geographical situation, Sweden is close enough that many Danes can

296 See also Staver, “Free Movement and the Fragmentation of Family Reunification Rights.”
298 The technical term for this is “reverse discrimination”, as EU law is more liberal than national law, see Walter, Reverse Discrimination and Family Reunification.
299 As it so happens, it appears that Rikke Wagner has used the same analogy in her recent doctoral work in political theory. Rikke Wagner, “Exit as Voice: Transnational Citizenship Practices in Response to Denmark’s Family Unification Policy” (PhD dissertation, The London School of Economics and Political Science (LSE), 2013), http://etheses.lse.ac.uk/815/.
even keep their job in Copenhagen while living in Sweden\textsuperscript{300} - all they need to do is cross the Øresund bridge.\textsuperscript{301} Further, the language is mutually comprehensible, housing in Sweden has been comparatively cheap compared to Copenhagen,\textsuperscript{302} and there are even specialized agencies that assist with the move.\textsuperscript{303} While their material was small, the Danish Institute for Human Rights found in 2006 that couples who had moved to Sweden generally had not pursued appeals in Denmark before making the move, and some had not even bothered to apply as they expected a refusal.\textsuperscript{304} This dynamic fundamentally alters the incentive structure with regard to fighting the Danish family immigration restrictions, making the usually controversial ‘exit’ option much more easily available than the more traditionally expected ‘voice’ option of challenging denied applications in court; thus reducing the scope for litigation which is crucial for a judicial constraint to materialize.

\subsection*{3.4 Family immigration on the agenda}

I will examine two sides of the rise of family immigration on the political agenda in Denmark in this section; the political ascendance of the Danish People’s Party and the politicization of forced marriages and immigration numbers. This relates to several aspects of the overall argument: the timing of immigration restrictions, the changing scope of political conflict, and the construction of family immigration as an object of control through a reframing of family immigration.

\textsuperscript{300} Cross-border work is also a form of protected free movement in accordance with jurisprudence at the Court of Justice of the EU.

\textsuperscript{301} This bridge may be familiar to anyone who has seen the Danish/Swedish crime show ”The Bridge”, which has been an international success.

\textsuperscript{302} Although the Danish housing market took a significant tumble after the financial crisis, changing this calculation somewhat.


3.4.1 The rise of the far right

A central actor in the Danish immigration landscape at the time of reforms was the Danish People’s Party, and it is incumbent on any analyst of the Danish reforms to examine it. Denmark is the only country in this study with a large party from the populist radical right.\footnote{Mudde, “Three Decades of Populist Radical Right Parties in Western Europe.”}

Previously, the Danish Progress Party held the position furthest to the right on the Danish political spectrum. Like its Norwegian counterpart, it was founded as an anti-tax party in the early 1970s, advocating neo-liberal during the 1980s, but it was never at heart ‘ethno-nationalist’ in the spirit of the French Far Right.\footnote{Jens Rydgren, “Explaining the Emergence of Radical Right-Wing Populist Parties: The Case of Denmark,” \textit{West European Politics} 27, no. 3 (2004): 480, doi:10.1080/0140238042000228103 Ethno-nationalism defines the nation in ethnic terms. In this case it entails a focus on ‘keeping Denmark Danish’.
}

French-style ethno-nationalist views would, however, gain a voice in Danish public debates through the Danish Association, founded in 1987 by a group including Søren Krarup. Krarup had previously led the Committee Against the Refugee Law, founded in 1984 in response to the 1983 Immigration Act as Denmark’s first anti-immigration group.\footnote{Ibid., 481.} The Danish Association expressed great sympathy with the views of European radical right-wing populist parties such as Front National, and promoted such views in Denmark through their own publications and in the mainstream press. Rydgren argues that the Danish Association in particular presented four anti-immigration frames identical to those promoted by the French Front National: (1) they conceived immigrants as a threat to Denmark, (2) they associated immigration with rising crime, (3) they saw immigrants as a threat to the welfare state and (4) they believed immigrants displaced Danes from the labor market.\footnote{Rydgren, “Explaining the Emergence of Radical Right-Wing Populist Parties.”}

In these ideas we can identify some very familiar anti-immigration tropes: (a) ‘they are unassimilable’ (1 and 2), (b) ‘they abuse the welfare state’ (3) and (c) ‘they steal our jobs’ (4).

The Norwegian Progress Party purged its more libertarian members in the early 1990s and emerged as a more disciplined party – with more anti-immigration but still not ethno-nationalist
policies. The Danish Progress Party instead fell apart. 1995, a group of politicians under the leadership of Pia Kjærsgård broke away and founded the failed to toe the party line. She kept the party on the right side of accusations of overt racism, but drew explicitly on the ‘master frame’ of continental European far right thought, as promoted by the Danish Association. A central component of the anti-immigration discourse of the Danish People’s Party has been “distinctions drawn between what is portrayed as the legitimate majority cultural tradition and a contrary illegitimate minority cultural tradition” and the ‘offense’ which minority cultures pose to Denmark and its people. At the same time, she pulled the other ‘trick’ of parties such as the Front National, combining ethno-nationalist discourse with anti-establishment views. By casting the DPP as outsiders, they could highlight that they had ‘clean hands’ and lacked any responsibility for the past decades of immigration. The anti-immigration stance was combined with support for a strong welfare state for Danish citizens as well as strong opposition to the EU. After bursting onto the political scene in the 1998 election, the 2001 election would mark the true ascendance of the Danish People’s Party in Danish politics. Central actors from the Danish Association, including Søren Krarup, entered parliament as DPP representatives.

3.4.2 The politicization of family immigration through the lenses of forced marriage and poor integration

During the late 1990s, two political debates converged to encourage the politicization and problematization of family immigration: at a macro-level, the issue of immigration and immigration numbers were politically salient to an unprecedented degree. At the micro-level, forced marriages and immigrant integration were put on the political agenda and associated with family immigration. The understanding of forced marriages as motivated by the possibility of

309 The Norwegian Progress Party, notably, has several prominent politicians of non-Norwegian ethnic background in its ranks.
311 Rydgren, “Explaining the Emergence of Radical Right-Wing Populist Parties.”
312 Siim and Borchorst, “The Multicultural Challenge to the Danish Welfare State—tensions between Gender Equality and Diversity,” 144.
immigration would give credence to the argument that immigration restrictions were rights-
protecting rather than rights-violating.

Stories of forced marriages and ‘honor killings’\textsuperscript{313} associated with forced marriages emerged in Danish newspapers in the mid-1990s. Bredal identifies the 1993-94 ‘Romeo and Juliet’ case (where a girl is alleged to have committed suicide to evade a forced marriage), a 1995 anonymous op-ed in the broadsheet \textit{Politiken} by a girl facing a forced marriage and the 1996 murder of ‘Nazia’ by her brother as central eye-openers.\textsuperscript{314} In 1996, the new youth organization UNGsam became an important actor taking the debate to a more principled level and placing it on the political agenda. They distinguished between forced and arranged marriages in their work.\textsuperscript{315}

While forced marriages did not feature in the early 1997 white paper on integration, they became a central feature when the new revision of the Immigration Act was presented in December 1997. In the proposal, it was specified that “a residence permit can...not be granted if the marriage rests on an agreement entered into by someone other than the spouses”, if the spouses were under the age of 25.\textsuperscript{316} It has been assumed that this inclusion followed from the strong media attention that forced marriages had been getting since 1996.\textsuperscript{317} From 1997/1998 onwards, then, forced marriages were put on the political agenda and interpreted in the context of family immigration, in what Mikkel Rytter has characterized as a ‘moral panic’, making it necessary to “rescue


\textsuperscript{314} Anja Bredal, \textit{Arrangerte ekteskap og tvangsekteskap i Norden} (København: Nordisk Ministerråd : Nordisk Råd, 1999), 74–75.

\textsuperscript{315} Bredal, \textit{Arrangerte ekteskap og tvangsekteskap i Norden} UNGsam was started by three young persons of minority background in 1996. They wanted to approach issues in a different way than existing minority organizations. They soon set up a helpline people could call to address inter-generational conflict and got a lot of media attention. The organization was disbanded in 1998 due to internal conflict as well as conflict with the minority umbrella organization IND-sam.


\textsuperscript{317} Bredal, \textit{Arrangerte ekteskap og tvangsekteskap i Norden}. 
young, second generation immigrants (especially women) from being forced into marriages with spouses from their countries of origin”. 318 Notably, immigration restrictions in order to prevent forced marriages were first initiated by the political left, under the Social Democrat/Social Liberal government.

During this time, the political salience of the immigration issue was steadily rising. The proportion of people listing ‘immigration’ as the most important issue in an open question in election surveys peaked at a whopping 51% in 2001, declining again to 24% in the 2005 election. 319 At the time, as I noted, immigrants and descendants made up 7.7% of the Danish population – 75% of these were non-Western, who made up 5.8% of the population. 320 Most immigrants and descendants live in the urban areas of Odense, Aarhus and the greater Copenhagen area. 321 Many among the immigrant population had obtained Danish citizenship through naturalization (see Appendix B). Labor market participation among these non-Western immigrants and their descendants was significantly lower than for Danes – at 53% versus 80%. 322

In 2001, a government-established Think Tank on Integration published demographic forecasting that anticipated the number of immigrants from less developed countries to double by 2021, with an even greater increase in descendants of such immigrants. One of the alternative scenarios they examined showed that this growth in immigrant numbers would be significantly lesser if family immigration from less-developed countries were to cease, although it was presented as purely a theoretical scenario. 323 The think tank embraced an economic view whereby the growth in immigration was a threat to the Danish welfare state, in light of the lower labor market

318 Rytter, “‘The Family of Denmark’ and ‘the Aliens,’” 302.
319 Green-Pedersen and Krogstrup, “Immigration as a Political Issue in Denmark and Sweden,” 617.
320 Ministeriet for flygtninge, indvandrere og integration, Årbog Om Udlændinge I Danmark 2002.
322 Ministeriet for flygtninge, indvandrere og integration, Årbog Om Udlændinge I Danmark 2002, 127.
323 Tænketanken om udfordringer for integrationsindsatsen i Danmark, Befolkningsudviklingen 2001-2021 - Mulige Udviklingsforløb (Ministeriet for Flygtninge, indvandrere og integration, 2002).
participation of immigrants. Around this time, the sociologist turned Liberal politician Eyvind Vesselbo published the final installment of his study of the immigrant population of Ishøj municipality, showing how the initial 145 Turkish workers who came in 1969-70 had turned into a 1,824 person strong community of Turkish origin by 2000 – largely through family immigration. The report was widely cited in Parliament as an example of both how immigration had ‘gotten out of hand’, and how immigration statistics failed to capture the real size of the immigrant population, as third- and fourth generation immigrants (i.e. grandchildren and great-grandchildren of the original immigrants) were not counted among ‘descendants’. This, again, implied that persons of non-Danish ethnic origin could never truly integrate – as Rytter has argued, those who were Danish by ‘law’ (i.e. naturalization and as a consequence of citizenship laws allowing birthright citizenship to children of naturalized citizens, see Appendix B), remain “not-quite-real” as opposed to ‘real’ Danes.

Finally, the 2001 election was of course fought directly after 9/11, exacerbating concerns over immigration from Muslim-majority countries. The combination of these issues was expressed in a ‘culturalist turn’ in Danish integration and immigration debates. Schmidt argues that

the Danish case highlights specific aspects of these current discourses [on immigrant cultures], in particular the argument that how immigrants establish and organise their

324 Jørgensen, “Understanding the Research–Policy Nexus in Denmark and Sweden.”
326 The terminology of “second generation” and to some extent ”third generation” is used quite widely in Scandinavia, although it is criticized for defining persons born in the country - or even born to parents born in the country - as ’immigrants’. Official statistics do not count beyond the ’second generation’,
328 Rytter, “’The Family of Denmark’ and ‘the Aliens,’” 310.
329 Ibid., 303.
family lives is not a private matter but necessarily one of public concern, because such practices are contrary to culturally legitimate and nationally embedded practices. Immigration numbers and family lives thus became entwined as a central pivot of Danish immigration debates during the late 1990s and early 2000s, as Baumgartner and Jones suggested, political action was legitimized by making private concerns (marital choices) into public ones (integration, labor market participation and the pace of immigration). As the government knew, lower family immigration from less developed countries would also significantly affect the development of Denmark’s immigrant population.

3.5 Reforming family immigration policy

In this most central part of this chapter, I will go on to examine three rounds of immigration policy reform. Firstly, I look at the major 2002 reform to immigration legislation. Secondly, I examine the minor adjustments made in 2003. Finally I examine the 2010 attempt to introduce a points based system. I focus mainly on the relevant parliamentary debates, as the Danish Parliament was the central policymaking venue and where the government presented and defended its policies. I ask how restrictions could successfully be passed.

3.5.1 The 2002 Reform

The 2001 election and 2002 reform of Danish family immigration rules would be a significant policy turn-around (although as I suggested, some seeds of reform were already sown by the Social Democrats in 1998-2000), and would greatly reduce family immigration numbers. In this section I will examine the context of the 2001 election, the 2002 law proposal, the criticism it faced, and its passage, exploring the conditions for passage of highly restrictive family immigration policy. It is the central event in the story of Danish family immigration restrictions.

3.5.1.1 The 2001 election

The Danish elections of November 2001 marked the definitive breakthrough of the Danish People’s Party – finishing as the third largest party in Danish politics with 12% of the votes.

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331 Ibid., 260.
They forced all the mainstream parties to engage with the immigration issue, and according to Østergaard-Nielsen “there was really only one theme in the Danish [election] campaign [...]: on whose terms, under which conditions and at what speed should Denmark become a multi-ethnic society”. As we have seen, both immigration, in general, and issues related to family migration in particular – specifically forced marriages – were high on the agenda, and 9/11 was fresh in people’s minds with attendant concerns over migration from Muslim-majority countries, making the timing of immigration restrictions very propitious.

The debate over immigration concerned both culture and economics. The former was most remarked upon abroad, dealing with identity and the question of ‘us’ and ‘them’; interpreted by some as being practically purely racist. The second aspect was also important, however: the question of the ‘costs of migration’ to an open, universal welfare state. Bech and Mouritsen summarize this latter concern in the Danish context thusly: “family migration contributes to a weakening of the welfare contributor-to-recipient ratio, so the argument goes, by broadening the pool of likely welfare recipients without correspondingly growing the number of active contributors to welfare”. No matter where the emphasis lay, family migration was singled out as ‘the problem’ – both economically undesirable, and the carrier of ‘other’ cultures. The internally divided Social Democrats suffered from this intense focus on immigration.

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332 Fair, “‘Why Can’t I Get Married?’,” 143.
334 Rytter, “‘The Family of Denmark’ and ‘the Aliens,’” 302.
335 Østergaard-Nielsen, “Counting the Costs,” 448.
party sought to emphasize the restrictions they had put in place in 2000, but were criticized for applying piecemeal changes instead of enacting more coherent and comprehensive reform. The DPP put their weight behind a new Liberal-Conservative coalition (the “VK government”) – support that was formalized in the spring of 2002 through the first of a series of agreements. The government thus had strong bloc support to rely on with a relatively coherent immigration stance – altogether, the right bloc held 98 seats in Parliament, versus the Left’s 77. The government’s mantra was to institute a new ‘firm and fair’ aliens’ policy, and the new Prime Minister Anders Fogh Rasmussen announced the proposed repeal of the right to family reunification in his opening speech in Parliament in December 2001. This was followed by a combative New Year’s Address where he, amongst other things, announced that ‘superfluous’ research institutions would be eliminated by the new government, suggesting that “we do not need experts and arbiters of taste (smagsdommere) to decide on our behalf”, and that the government would fight the ‘tyranny of experts’.

3.5.1.2 The 2002 proposal

Not surprisingly, then, no expert commission was asked to propose immigration legislation this time. The Government announced its “New Aliens’ Policy” first at a press conference on 17 January 2002, and then to parliament as draft legislation with commentary on February 28,
2002. It sought to overhaul the entire Danish immigration system under three overarching objectives: (1) respecting Denmark’s international obligations, (2) limiting “the number of aliens that come to Denmark”, and (3) increasing immigrants’ self-sufficiency. We can note that the government itself set out to define what it meant to respect its international obligations. The proposals targeted all areas of immigration policy. While a liberal Green Card system was proposed to attract skilled workers, other policy areas such as asylum would be dramatically tightened. The probationary period to get permanent residence, and with it access to family reunification, was extended to seven years, and immigrants were expected to learn Danish and become self-sufficient though employment during this time. Failing this, “aliens that do not have permanent residence shall as a rule be removed if they cannot manage without public support”. Among these proposals, I will focus on the controversial family immigration restrictions. To set the tone, the government announced that “there shall be no legal right to spousal reunification”. Three specific requirements accompanied the announcement, which were added to the existing income and housing requirements: a bond of 50,000 Danish kroner, the age limit for spouses (“spousal reunification shall, as a rule, not be allowed if one of the spouses is under 24 years old”) and a stricter attachment requirement, requiring stronger, rather than equal, attachment to Denmark than to an alternate country of residence. The requirement would also apply to citizen sponsors, and factors to be taken into account included “the resident’s

\[\text{\footnotesize \cite{346} I have consulted the three-volume “Hvidbog vedr. Lov 365”, which gathers all documents relevant to the legislation. It can be found at http://www.nyidanmark.dk/bibliotek/lovstof/hvidboeger/2003/hvidbog_vedr_lov_nr_365_bind_1.pdf, accessed 2 September 2013.}\]

\[\text{\footnotesize \cite{347} Ministeriet for flygtninge, indvandrere og integration, “En ny udlændigepolitik” (Ministeriet for flygtninge, indvandrere og integration, January 17, 2002), http://www.nyidanmark.dk/NR/rdonlyres/442728D5-C3FA-4CD8-8557-7350ECD53745/0/en_ny_udlaendingepolitik.pdf.}\]

\[\text{\footnotesize \cite{348} Ibid., 5.}\]

\[\text{\footnotesize \cite{349} The proposal sought to replace the old ‘de facto refugee’ definition with a narrower ‘protection’ concept and to apply “cession” more widely, i.e. revoke refugee status when the situation changes in the home country and the risk of persecution therefore ceases (in accordance with the so-called ‘cession clause’ 1C of the Refugee Convention). By applying cession, one could make refugees return home within the period before they obtain permanent residence in Denmark. The proposal would also revoke refugee status from persons who travelled to their home country on vacation.}\]

\[\text{\footnotesize \cite{350} Ministeriet for flygtninge, indvandrere og integration, “En ny udlændigepolitik,” 3.}\]

\[\text{\footnotesize \cite{351} Ibid.}\]
familial ties to the prospective spouse’s home country”, which – quite explicitly – meant that young persons with parents from the same country as their prospective spouse would likely not qualify.352

In the detailed commentary to the draft legislation published in February, the attachment requirement and its extension to citizens was further justified:

Experience has shown that integration is particularly difficult in those families where they for generation after generation fetch a spouse to Denmark from their own or their parents’ home country. It is among resident immigrants and Danish citizens with foreign background a common marriage pattern to, amongst other things following from pressure from parents, marry a person from the home country. The pattern contributes to maintain the concerned individuals in a situation where they, more than others, experience problems of isolation and maladjustment with regard to Danish society. The pattern thus contributes to make integration of newly arrived immigrants in this country more difficult. The attachment requirement as it is at present, does not, in the government’s opinion, take adequately into account that the mentioned marriage pattern exists both among foreigners and among resident Danish citizens with foreign background.353

As this reasoning shows, family immigration among resident immigrants and citizens with an immigrant background was tied to both failures of integration and forced marriages, through the assumption that such marriages must be based on ‘pressure from parents’. It was held that “current rules are modeled on modern Western European norms […] and have unfortunately been taken advantage of through marriages of convenience and arranged marriages with frequent tragedies for young families as a consequence”. Such tragedies, presumably, could be prevented through the 24-year rule, which was justified with a maturity argument: “the older one

352 Ibid.
is, the better one can resist pressure from the family or others to marry against one’s will.”. The argument refers to ‘experience’, but does not reference any relevant research.

Forced marriages, arranged marriages, and marriages of convenience were all grouped together in a framing strategy focusing on what is arguably false equivalence: marriages of convenience are usually seen as a form of transaction not involving force, and there is generally thought to be a difference in degree (if not always in kind) between arranged and forced marriages. Through the posited equivalence between arranged and forced marriages – and the assumption that transnational marriages are arranged and by extension forced – family immigration as such was rendered suspect. This complete blurring of different phenomena can be illustrated with the 2003 Action Plan against “Forced, Quasi-Forced and Arranged Marriages”, which even had as an objective to “prevent unhappy family reunifications” – surely taking the efforts to render private matters public concerns a bit too far.

The detailed comments to the law contained the government’s assessment of the law’s compatibility with Danish international obligations. This assessment did not begin with the customary assessment of ECHR article 8 on the right to family life – usually thought to underlie family immigration policy – but rather with the freedom to marry whomever one wants. Article 8 was instead mentioned as a provision that would require the issuance of a family

354 Ibid., sec. 2 page 30.
355 Definitions vary, but usually require that the marriage is contracted solely for the purposes of obtaining a residence permit or circumventing immigration law, and assume that the spouses never intended to live together. Betty De Hart, “Introduction: The Marriage of Convenience in European Immigration Law,” European Journal of Migration and Law 8 (2006): 251.
356 As it was held in an influential British report on the subject, “in an arranged marriage, the family takes a leading role in the selection of partner, but the potential spouse always retains the right to say no; in a forced marriage, there is no choice”, see Anne Phillips and Moira Dustin, “UK Initiatives on Forced Marriage: Regulation, Dialogue and Exit,” Political Studies 52, no. 3 (October 1, 2004): 534, doi:10.1111/j.1467-9248.2004.00494.x.
358 This right is found in article 16 of the Universal Declaration of Human Rights and art. 23 (3) of the International Covenant on Civil and Political Rights (ICCPR).
reunification permit even when requirements were not fulfilled “in exceptional cases”. It was emphasized in that there was no general right to family reunification, nor a right to choose where reunification should take place. With regard to anti-discrimination provisions found in the central human rights instruments, it was argued that no discrimination would occur “as the requirements apply regardless of the resident’s ethnic background, and the person’s ethnicity in itself does not factor into the decision”.

By reframing human rights obligations as being about forced marriage prevention rather than being about the preservation of family life (not even being about both), family immigration restrictions could be justified in the name of human rights instead of being in opposition to them. With regard to discrimination, the Danish government posited that a universal rule, by definition, could not be discriminatory. This, oddly, ignores the possibility of indirect discrimination, whereby the effects of an apparently neutral rule are anything but neutral. Consistent with the government’s ‘war’ on ‘superfluous’ research institutions, little reference was made to research on the topics at hand.

3.5.1.3 Constraints

Political conflict over the law proposal was somewhat vocal, but ultimately of limited importance. Critiques in the parliamentary debates came mainly from the Socialists and the Social Liberals; relatively small parties on the left. Their opposition centered on the questions of the ‘rights of insiders’, the effects on ‘real Danes’, and discrimination. There was in fact limited criticism of the over objective of bringing down immigration numbers, and the opposition could only with difficulty argue against the idea of preventing forced marriages. Kamal Qureshi, the Socialist spokesperson, accused the government of hypocrisy in using the forced marriage issue instrumentally to bring down immigration numbers, and also questioned the efficacy of the proposed measures, questioning both the use of immigration legislation for this purpose and how

359 Ibid.
360 Ministeriet for flygtninge, indvandrere og integration, “Hvidbog vedr. lov nr. 365 (bind 1),” sec. 2 page 34.
361 See Bredal, “Border Control to Prevent Forced Marriages: Choosing between Protecting Women and Protecting the Nation.”
this would work against forced marriages among older spouses. In the final reading, the Social Liberals addressed the issue of proportionality:

There are perhaps 100-200 arranged and forced marriages a year, which Mr. Skaarup (DF) would like to prevent, for that matter so do we, but to do it you subject 4000-5000 Danish citizens, quite ordinary non-descript-looking\textsuperscript{362} citizens, that can trace their ancestry to the Vikings, to a humiliation, where they are dragged through an interrogation of their familiar relations, their childhood and everything else.\textsuperscript{363}

As we see, it was difficult for the opposition to argue against forced marriage prevention without falling into the trap of reinforcing stereotypes of ‘us’ and ‘them’ or being seen as trivializing forced marriages. Indeed, the opposition tended to focus on the effect on ‘pæredansker’, or ‘real Danes’ – implicitly and sometimes explicitly ‘white’ (‘Viking’) ones, who would by definition not force anyone to marry. These arguments focused mostly on the attachment requirement rather than the 24-year rule (indeed, the ‘real Danes’ would likely marry later and be less affected by it). Throughout several days of debate, the Socialists continued to list couples that would be caught by the changes. Notably, the Danes listed had spouses from the United States, South Africa, Israel and Australia - not Pakistan or other countries where forced marriages are known to occur. Much of the efforts to oppose the proposal thus turned on nativist ideas and were thus played on the right’s playing field.

Over the course of the second and third reading, the Social Liberals tried a slightly different approach, turning to the question of differential treatment and suggesting that the attachment requirement might breach constitutional anti-discrimination rules because it would indirectly take into account ethnic background in assessing ‘attachment’.\textsuperscript{364} They questioned the very idea of applying such a requirement to citizens (they were exempted during 2000-2), emphasizing that citizenship is the ultimate attachment: “I was always under the impression that when you were a

\textsuperscript{362} The original wording, “\textit{Leverpostejfarvede}”, translates directly as “paté colored”. It is used about a bland, ashy/greyish blond hair color common in Scandinavia. The Norwegian equivalent is “\textit{kommunefarget}”, or municipality-colored. It basically means bland/common-looking.

\textsuperscript{363} Elisabeth Arnold, RV, 30 May 2002, 11:55.

\textsuperscript{364} Elisabeth Arnold, RV, 23 May, 15:55.
Danish citizen, you had a home in Denmark and you had a Danish passport."\(^{365}\) For the Social Liberals, the relevant comparator for Danes affected by the rules were *Danes that married Danish people*, and they thus argued that Danes marrying foreigners would be discriminated against under the rules. At the same time, it was difficult to reconcile these anti-discrimination arguments with their own emphasis on the plight of ‘real Danes’. They argued themselves into a corner, suggesting that “we are free to discriminate, if I may say so, in Danish law between Danish and foreign citizens. There are rights that Danish citizens have that cannot be given to foreigners, such as the right to vote”.\(^{366}\) This is, of course, true: immigration control is based on discrimination between citizens and non-citizens. It was a hard sell, however – and not a very principled argument - to argue against discrimination of Danes by suggesting one should instead discriminate against non-citizens.

The very comprehensive law proposal was only put out for public consultation two weeks before it was presented in Parliament, leaving organizations limited time to consider their responses, which several organizations lamented.\(^{367}\) This, arguably, was a strategy to limit the debate on the reform. The Documentation and Counseling Centre for Racial Discrimination (DRC) pointed out that the deadline was particularly difficult to meet as the government had also cut their funding and staffing levels, and lamented that experts had not been consulted during the process of elaboration of the proposal. The Danish Bar and Law Society, the Danish Refugee Council, the Danish Red Cross, and LGBT Denmark were concerned over potential violations of ECHR art. 8. They were joined by the DRC, the Council for Ethnic Equality and the Council for Ethnic Minorities in also being concerned about discriminatory effects of the law, with disproportionate effects on persons of minority background. Several organizations argued that immigration legislation was ineffective for combating forced marriages and requested further research on the phenomenon to better target measures.

In a later, more in-depth study, the Danish Institute for Human Rights concluded that the combination of the 24-year rule and attachment requirement could lead to violations of article 8

\(^{365}\) Elisabeth Arnold, RV, 22 March 2002, 15:05.

\(^{366}\) Elisabeth Arnold, RV, 23 May 2002, 15:40.

\(^{367}\) The responses are found in the Hvidbog volume 1.
on the right to family life. Similar consequences could come from the income requirement if too stringently practiced, and they were highly critical of new limitations placed on family reunification for refugees.\textsuperscript{368} They also considered that the rules were so unpredictable in practice that this in itself could violate human rights standards.\textsuperscript{369} The European Commissioner for Human Rights, Álvaro Gil Robles, was particularly concerned about the 24-year rule and echoed their critique.\textsuperscript{370} The concern that the 24-year rule violated international human rights law was also echoed by the UN Committee on Economic, Social and Cultural Rights, which called on Denmark to “either repeal or amend the so-called 24-year rule”.\textsuperscript{371}

3.5.1.4 Defense and passage

The government largely ignored such ‘expert’ objections and usually just reiterated its original position. As I have shown, the government had indeed specifically spoken out against experts and ‘arbiters of taste’, as if supranational standards were simply a matter of taste – or truly ‘what you make of them’.\textsuperscript{372} Government spokespersons also took the opportunity handed to them in parliamentary debates to reframe discrimination, emphasizing the rules’ universal applicability contra the Social Liberals’ suggestion that they should discriminate against non-citizens by giving ‘real Danes’ preferential treatment. As the Conservative spokesperson explained, “the intention is \textit{precisely to create equal treatment} between persons in Denmark by also expanding the rules to count for Danish citizens. It is not just foreign citizens that shall be met with some requirements, they shall be required of all.”\textsuperscript{373} In the view of the government, the relevant

\textsuperscript{368} Institut for Menneskerettigheder, Ægtefellesammenføring i Danmark; Institut for Menneskerettigheder, Hvidbog Om Ægtefellesammenføring I Danmark.

\textsuperscript{369} Institut for Menneskerettigheder, Ægtefellesammenføring i Danmark.

\textsuperscript{370} Álvaro Gil-Robles, Report by Mr Álvaro Gil-Robles, Commissioner for Human Rights, on His Visit to Denmark (Council of Europe, 2004), https://wcd.coe.int/ViewDoc.jsp?id=758781&Site=COE#P105_12038.


\textsuperscript{373} Else Thiel Sørensen, KF, 23 May 2002, 15:10.
comparator was not another citizen getting married, but another sponsor for family immigration. The same approach was used to refute the ‘expert’ opinions that discrimination would ensue.

It was also clear that the rules had to apply to citizens in order to meet policy goals. As the Liberal Minister of Integration argued, "it is making [the attachment requirement] apply to Danish citizens that matters, because second generation migrants are typically Danish citizens, and this is where we have the problems we are discussing."374 Making these ‘problems’ more explicit, the Danish People’s Party spokesperson argued that

> We might as well say it, that we want to interfere with those foreigners that continue to fetch their spouse from that country they originally came from. […] I think everyone knows that this is a huge problem for integration, that people keep getting their spouses in the country from which they originally came. With the number of people from those countries I refer to that have gotten Danish citizenship, this has also become a problem for Danish citizens that get their spouse in their original homeland.375

Here, we see how descendants of immigrants and their marital choices (or lack of choice, as it were) are framed as a significant public concern,376 exacerbated by citizenship legislation (see Appendix B) extending citizenship to people who have another ‘homeland’.

The Danish People’s Party and the government spokespersons all mixed arguments over immigrant numbers and integration issues, through the focus on the ‘pace’ of immigration. The Danish People’s Party was more clearly concerned with “the number alone,”377 and insisted all along that the deciding factor with regard to whether they would support the reform was its effect on immigrant numbers.378 They argued that the liberal 1983 Immigration Act created the

374 Bertel Haarder, Minister of Immigration, 22 March 2002, 15:05.
375 Peter Skaarup, DF, 23 May 2002, 15:05.
376 See Baumgartner and Jones, Agendas and Instability in American Politics.
possibility for mass immigration, which must, at last, end: “what is at stake here is to slow down a migration (folkevandring) that has reached such a scale as it has mostly because of the Social Liberals […] and it will have some uncomfortable side effects.”

The most powerful argument at the government’s disposal was undoubtedly the concern over forced marriages. As I have shown, it was very difficult to argue against a policy that had the stated purpose of preventing forced marriages, expressed as a desire to make sure young people were mature enough to resist pressure to marry. The forced marriage argument was used to “legitimize stricter immigration control in relation to family members”. The argument itself relied on so-called ‘common sense’, and was not anchored in scientific findings. As we have seen, many organizations doubted whether it would work and little research was available.

The use of an age limit to prevent forced marriages had the somewhat reluctant support of the Social Democrats – who had, during their own time in government, used the family immigration rules in a somewhat similar way to prevent forced marriages. Here, we see what could have turned out to be broad cooperation on the issue. For the Social Democrats, a key causal logic was also symbolic. They considered that the law would send ‘a clear signal’ that people should be able choose their spouses freely. They also seemed to feel pressured to ‘do something’ about forced marriages. As the prominent Social Democrat Ritt Bjerregaard put it,

I share [the Social Liberals’] concerns with regard to the consequences of an age limit set at 24. When we in the Social Democratic Party have moved toward supporting that line of thought it has primarily been because we have been unable to see that there were other ways of helping the young women that would otherwise end in a forced marriage.

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While the opposition attacked the age limit and the attachment requirement on separate grounds, the Minister argued that the two would work in synergy. His contention was that an age limit alone could lead parents to keep their children abroad in a forced marriage until they were old enough to apply for reunification in Denmark. The attachment requirement would purportedly prevent this, however, as time spent in the parents’ homeland would weaken their attachment to Denmark and make return with the spouse impossible at age 24. As such, the attachment requirement could also be defended with the forced marriage argument.

The government generally brushed aside ‘lofty’ principles such as a ‘right of insiders’, suggesting that they must be sacrificed to atone for past sins, and to address the more urgent matters of forced marriage prevention and integration improvement. Those Danes that were affected, the government considered, must bear the cost - or find other solutions to live together, such as having the foreign spouse apply through the study or work stream (an option most likely to be available to those with spouses from Western countries. Further, the norms to which the opponents appealed were not clear, and could be reframed in ways that suited the government, such as with the issue of discrimination. In the end, the government entered into a deal with the Danish People’s Party in order to put the bill through, after the Social Democrats withdrew their support. Still, the opposition agreed with the government on the imperative of preventing forced marriages, and accepted control and requirements as necessary.

During the negotiations between the government and the Danish People’s Party in spring 2002, it was initially proposed that the Danish Centre for Human Rights be shut down – as part of the government’s weeding out of ‘superfluous’ research institutions. After some horse trading between the coalition partners and DPP, the Board for Ethnic Equality (which had criticized the law) was instead shut down to please the DPP, and its functions were built a newly created Danish Institute for Human Rights, which came out of a merger of several other institutes. The

386 Jørgensen, “Understanding the Research–Policy Nexus in Denmark and Sweden,” 94.
law creating the new Institute, L183, was put through with the support of the Social Liberals, with the Socialists and Social Democrats abstaining. It was put out on consultation for a week only, following the general pattern of debate limitation through limiting opportunities for input from actors outside the political parties.

3.5.1.5 Summing up

In this section I have argued that Danish policymakers were able to push through remarkably strict family immigration reforms in 2002 due to a combination of factors. The timing of reforms was highly propitious, following an election fought over immigration in which the Danish People’s Party gained an unprecedented proportion of votes. The speed of reforms was equally propitious for change - within seven months of the election, the changes already entered into force. This meant that meaning opponents had little time to mobilize against it- any many relevant stakeholders were at the same time concerned about their research institutions closing down or being put under severe strain as the government was reducing their funding. Due to the division within the Social Democrat Party, there was no united political opposition - in fact the Social Democrats initially supported some of the main reforms (although they ended up abstaining in the final vote). Using the forced marriage argument coupled with arguments about immigrant integration, the government managed to frame immigration restrictions as both protective of individual rights and beneficial for the integration of migrants. The fact that there was no evidence that forced marriages would actually be prevented was of limited consequence. The measures were framed as non-discriminatory by focusing on their universal application. These policy images ‘stuck’ and certainly were much more influential than the few attempts the small opposition parties made to tell another story about what the changes might in fact do. The result was an unprecedented - and still unsurpassed - tightening of family immigration rules in a North Western European country.

3.5.2 The 2003 changes to the attachment requirement

As opposition spokespersons repeatedly argued during the 2002 debates, the attachment requirement would likely lead to a number of ‘real Danes’ being denied family reunification if they had lived abroad over time and found a spouse. In response to significant pressure during the summer of 2003 from Danes abroad (especially diplomats and other professionals) who
suddenly found themselves unable to return to Denmark with their mixed families, the Government proposed changes to the attachment requirement in the fall of 2003.

### 3.5.2.1 The Proposal

As with the 2002 changes, the government hammered out a deal with the Danish People’s Party spelling out the proposed changes. The agreement had two parts: first, the so-called ‘28-year rule’ entailed that the attachment requirement would cease to apply when the sponsor had held Danish citizenship for 28 years. Under the new legislation, natural-born Danes would not be affected by the requirement from age 28, but immigrants who had naturalized at age 18, for instance, would have to fulfill the attachment requirement until age 46. As Minister Haarder explained when presenting the legislation, the cases of Danes abroad who could not return “showcased a need to make the attachment requirement more lenient for persons with a strong and enduring connection if they had lived abroad for most of their lives, had such a ‘strong and enduring connection’. Leaving no question about the source of the impetus for change, the Danish People’s Party spokesperson elaborated that “from a recent visit to the United States with Danish diplomats I know how this [proposed] change has been a relief to these compatriots abroad. All we could tell them was that it was never our intention with the law to affect them.”

The second part of the bill concerned, again, forced marriages: a rule of supposition was introduced whereby marriages between cousins or other related persons (which are otherwise legal in Denmark) would be assumed to be forced. The fight against forced marriages dominated the first parliamentary debate on the bill, and rallied the Social Democrats to support it. They

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390 Søren Krarup, 22 October 2003, 17:35.
saw it as an opportunity to both continue this fight and to ensure some liberalization of the 2002 rules.

3.5.2.2 Constraints?

Again, political conflict was subdued. Only the small pro-immigration parties spoke out against the proposal in Parliament. The Red-Green Alliance and the Socialist Party formulated a strongly worded dissent to the law in committee and argued vigorously against it in Parliament, along with the Social Liberals. Against the assumption that Danes would keep a strong connection to Denmark while living abroad, the Socialist spokesperson interjected that “in accordance with this proposal, a person who lives for 24 years outside of Denmark can have a stronger attachment than someone who has lived in Denmark for the past 24 years.”

Like in the debates during the previous year, the Social Liberals voiced concerns over possible discrimination on the basis of ancestry or ethnicity, as people would be treated differently based on when they obtained citizenship (and the residence period for obtaining citizenship was already long, see Appendix B).

The scope of conflict was again constrained through debate limitation. Like with previous legal changes, the proposal was put out for a short public consultation, less than two weeks before being tabled in Parliament. Several organizations lamented that this left them unable to properly consider the proposal. In the consultation responses, we also see how the organizations could not argue against forced marriage prevention. They were otherwise critical, however. A number of organizations, including Amnesty International, The Danish Refugee Council, the Red Cross, the DRC, the Danish Institute for Human Rights, UNHCR and the Council for Ethnic Minorities found the differential treatment based on time of citizenship acquisition troubling, and several expected it to be in violation of the ECHR articles 8, 12 and 14 when read together.

The DRC called the 28-year rule a “direct affront” to citizens of a different ethnic background. Several also questioned the thin evidence base of the proposal, in particular with regard to forced marriage prevention. The Danish Bar and Law Society wondered which unnamed “experience” and

391 Kamal Qureshi, SF, 22 October 2003, 16:40.
392 Article 12 establishes the right to marry and Article 14 prohibits discrimination.
“surveys” the government referred to, and the Danish Refugee Council noted that, “generally speaking, [we] find the proposed rule of supposition about forced marriages disconcerting in relation to the usual requirements of evidence base or allowance of the actual facts in other administrative contexts”.

3.5.2.3 Defense and passage

Refuting handily the harsh and critical responses to the proposal from various civil society organizations, the Liberal spokesperson insisted that “there is not a smidgen of discrimination in this law proposal, and Danes with minority background are not treated differently from other Danish citizens.”393 This echoed the government defense from the previous year, with the government insisting that as the 28-year rule applied to all, it would not discriminate. Again, they insisted on a different comparator than the Social Liberals. The government was also happy to underline that the attachment requirement was the invention of the previous government.394

The government similarly brushed off concerns over human rights violations. As the Minister argued,

With regard to Denmark's international obligations, it has again been ‘cried wolf’, and I think one shall be careful not to do that too often. […] I want to point out that with regard to the attachment requirement, it has been in place for four years. It was implemented by the previous Social Democrat/Social Liberal government […] There have been four years to take cases to the Court of Human Rights about the old attachment requirement. So perhaps we can be sanguine about this critique.395

While various human rights experts argued that the rules would violate international obligations, the government could dismiss these ‘experts’ - mere ‘arbiters of tastes’ – as long as no litigation had occurred and no court had found violations of the ECHR. As I have argued, an important

393 Irene Simonsen, V, 22 October 2003, 16:40.

394 One critique that was taken seriously related to adopted children. It was decided that they would be equated with natural born citizens if they were adopted before the age of 6. Again, it was clear that ‘real’ Danes should not be unduly affected by the rules.

395 Minister of Integration Bertel Haarder, 22 October 2003, 19:40.
reason for the limited litigation on the rules was that people could more easily reunite with family in Sweden under EU free movement rules, meaning that there were limited incentives to challenge refusals. Couples in Sweden with whom the Danish Institute for Human Rights had come in contact had usually not appealed refusals in Denmark, and often had not even applied.\footnote{In Rikke Wagner’s doctoral work on couples in Sweden, the ones that decided to ‘fight’ the Danish state were in a small minority (three among 30).} With regard to framing, the public and parliamentary debate was, again, strongly focused on forced marriages, allowing the right bloc to put through the 2003 changes not only with their own votes, but also with the support of the Social Democrats – meaning that this time, broad cooperation was achieved. As we see, the effective framing of immigration restrictions as preventing forced marriage, and the framing of universal rules as precluding discrimination, again allowed the government to tighten the rules targeting young persons of migrant background, all while making the rules easier to comply with for ‘real Danes’. This discursive strategy arguably has some commonalities with what has been called ‘dog-whistle politics’ in the Australian context,\footnote{Scott Poynting and Greg Noble, “‘Dog-whistle’ Journalism and Muslim Australians Since 2001,” Media International Australia, Incorporating Culture & Policy, no. 109 (2003): 41.} although it is not particularly subtle in execution. ‘Dog-whistle politics’ entail that politicians employ coded language; with meanings other than those immediately obvious that will be heard by some parts of the population. Talking about forced marriages certainly became a byword for restricting immigration from non-Western countries.

Several years later, the 28-year rule became the subject of an interesting case in the Danish Supreme Court – one of a small number of challenges to the rules. The case concerned a naturalized Danish citizen of Togolese origin who was denied reunification with his Ghanaian spouse due to insufficient combined attachment to Denmark.\footnote{One may wonder how a Ghanaian/Togolese couple had a stronger combined attachment to another country than Denmark when they were not in fact of the same national origin. The appellant had lived for some years in Ghana as a child, but did not have Ghanaian citizenship and thus no guarantee that he could live there.} He argued that he was

\footnote{Institut for Menneskerettigheder, Hvidbog Om Ægtefellesammenføring I Danmark.}

\footnote{Wagner, “Exit as Voice”; Wagner, “‘Transnational Civil Dis/obedience’ in the Danish Family Unification Dispute.”}

\footnote{Wagner’s, “‘Transnational Civil Dis/obedience’ in the Danish Family Unification Dispute.”}
discriminated against under the 28-year rule, having acquired Danish citizenship later in life. The Supreme Court split 4-3, with the majority considering the differential treatment as being objective and justified, referring to the 1985 *Abdulaziz* ruling (see sections 2.2.1.1 and 2.2.2.2), where the ECHR accepted differential treatment in family reunification cases between natural-born British citizens and Commonwealth citizens. The 28-year rule’s objective, they argued, was to identify a group of citizens with a particularly strong attachment to Denmark, whose family reunification would likely result in successful integration. This was considered a legitimate objective. The dissenting minority considered that differential treatment based on the time on had citizenship was not equivalent to differential treatment based on place of birth, and argued that the relevant comparison would not be naturalized citizens and natural-born citizens in Denmark, but naturalized citizens and Danish citizens abroad. These citizens, the minority argued, could not be assumed to have stronger attachment to Denmark than naturalized citizens, as naturalization required 9 years of residence and other evidence of attachment to Denmark (see Appendix B). They argued that the rule amounted to indirect discrimination.

As we see, the Court’s majority accepted the Government’s framing of the discrimination issue, and used the same comparator as the government had done. As Ersbøll points out, it is somewhat absurd to use the time citizenship has been held as a measure of attachment, as this leads to the conclusion that Danish citizens who live abroad actually get a stronger connection to Denmark the longer they are away. The opposite reasoning is applied to residents who spend time abroad, who are instead argued to lose attachment. As we see, the Court’s majority accepted the Government’s framing of the discrimination issue, and used the same comparator as the government had done. As Ersbøll points out, it is somewhat absurd to use the time citizenship has been held as a measure of attachment, as this leads to the conclusion that Danish citizens who live abroad actually get a stronger connection to Denmark the longer they are away. The opposite reasoning is applied to residents who spend time abroad, who are instead argued to lose attachment. Secondly, the government argued in 2002 that the attachment requirement did not discriminate because it applied universally – and then went on to exempt one group.

It took until March 2014 for a ruling to emerge from the ECtHR – at which point the family had long since moved to Sweden under free movement rules (an option available to all Danish citizens regardless of when they became citizen) and had a child, who was also a Danish citizen. The Strasbourg Court insisted on assessing the case based on the time of the initial appeal rather than the present, and the majority upheld the Supreme Court ruling with 4 votes against 3. It

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should be noted that wording of the ruling (“in the specific circumstances of the present case”, where the applicant had only been a Danish citizen for two years at the time of his attempt to reunite with his wife) is not exactly a ringing endorsement of the rule. The Court’s majority did, however, accept wholesale the Danish government’s claims that it was pursuing the legitimate objectives of immigration control and integration for the economic wellbeing of the country; what the majority several times referred to as “persuasive social reasons”. The Court’s minority objected that “neither Abdulaziz nor the present judgment have specified what those ‘persuasive social reasons’ are”. They found – like the Danish Supreme Court’s minority – that the majority’s ruling endorsed indirect discrimination by focusing on the rule’s objectives rather than its ostensible consequences, concluding that “we do not believe that the Convention was meant to endorse such deprivation”.

Finally, it should be noted that the government introduced a second exception from the attachment requirement in 2003 in administrative practice. It entailed that inferior attachment to Denmark than to the alternate country – as well as being under 24 years old - could be overlooked if the Danish resident worked in a sector mentioned on the “Positive List”, a list of professions and sectors with particular needs for qualified labor. Interestingly, however, the Ministry did not actually make this change public. It was known in the press in 2005, and subsequently the Ministry the Ministry came under significant criticism from the Parliamentary Ombudsman for inadequately informing the public. Here, we see a form of ‘economic drift’ where the economic utility and attractiveness of the sponsor could trump other concerns.

401 Biao v. Denmark (European Court of Human Rights 2014).
402 It might be interesting to note that the four judges in the majority were from Western Europe whereas the three dissenting judges were from Eastern Europe.
404 The Court’s minority was also the only ones to address the situation of the applicants’ small Danish citizen child.
As the Supreme Court accepted the Government’s reasoning – and as it has later been upheld in Strasbourg) the rule remains in place (although the new Social Democrat-led government has lowered it to 26 in 2011).

3.5.2.4  Summing up

In this section, I have shown how the government brought through amendments to the attachment requirement in 2003 after it became clear that many ethnic Danes abroad could not move back under the original attachment requirement. The timing was similar as this change came quite quickly after the original reform, and was brought on by popular media pressure. The speed, again, was extremely quick, preventing significant mobilization and input by stakeholders. Political conflict was, if possible, even more subdued than before, as the measure was put through with the support of the Social Democrats. Again, the government harnessed arguments about forced marriage and integration in their favor, and reframed discrimination in a manner that suited them, following the recipe for success from 2002. The government could argue that the rule did not violate human rights obligations as little litigation had occurred and therefore a potential judicial constraint had been headed off – those who fell foul of the rules instead moved to Sweden. Once litigation did occur, several years later, the government was vindicated by the courts. Majorities in both the Danish Supreme Court and Strasbourg accepted the broad objectives of improved integration and forced marriage prevention as legitimate without further scrutiny.

3.5.3  The failure of the Points-Based System

With the exception of the marginal changes in 2003, Danish family admission rules were actually remarkably stable for many years – as Bech and Mouritsen point out there was “only minimal adjustment” to the rules between 2002 and 2010.\(^\text{407}\) This, arguably, reflects a policy monopoly as well as an authoritative policy image whereby immigration restrictions were

\(^{407}\text{Bech and Mouritsen, “Restricting the Right to Family Migration in Denmark: When Human Rights Collide with a Welfare State under Pressure,” 167.}\)
important in protecting both human rights and Danish society.\textsuperscript{408} In 2010, however, after a long period of relative stability with regard to entry rules,\textsuperscript{409} the government declared that while the existing rules had ‘had a very positive effect’, the absence of any requirements concerning the qualifications of the incoming family member had meant that there were too many admitted spouses who ‘had difficulty integrating and with that adapting to Danish values, and who have difficulty in entering the Danish labour market’\textsuperscript{410}

While experimental conditions are evidently not fully met – especially with regard to timing – this arguably represents a form of test of the above argument, especially with regard to framing. The political balance of power was similar in absolute terms, but the frame employed meant that the Social Democrats could not get behind the changes. What happened when the effective framing of human rights, forced marriages and discrimination that I have outlined from 2002 and 2003 was taken out of the equation?

3.5.3.1 The argument for further restrictions

As with previous restrictions, the proposal was based on an agreement between the VK government and the Danish People’s Party.\textsuperscript{411} The government emphasized that the new policy would ensure that people who came to Denmark would be an asset to society – particularly in light of the economic crisis – and the Liberal spokesperson repeatedly announced during the first reading that the proposal was ‘fair’, but also emphasized that it was ‘modern’. ‘Modern’ immigration policy arguably evokes ideas such as selectivity and focus on the ‘best and

\textsuperscript{408} Cf. Baumgartner and Jones, \textit{Agendas and Instability in American Politics}.

\textsuperscript{409} During this period there were various other debates going on about social assistance for immigrants and other welfare-related issues.


\textsuperscript{411} The proposal and associated documents can be found at \url{http://www.ft.dk/samling/20101/lovforslag/L168/baggrund.htm#dok}, accessed 3 September 2013. The negotiations were, however, reputed to have run less smoothly than before. Berlingske Tidende, “Udlaendingeaftale På Plads,” \url{http://www.b.dk/politik/udlaendingeaftale-paa-plads-1}.  

brightest’ migrants; ideas central to the concept of migration management. Under the points system, family migrants could get points for education, language ability and work experience, with extra points awarded for graduates of particularly prestigious universities. The 24-year rule could be overcome if the young spouse had a particularly high score. This was presented both as a liberalization – the 24-year rule was no longer ‘hard and fast’ – but also as a restriction: under the points system you could no longer just ‘wait your way’ to family reunification once you were old enough. In addition to the new requirements for foreign family members, the proposal also contained a further tightening of the attachment requirement further, requiring “significantly stronger” attachment to Denmark, and required of resident sponsors a certain period of work and participation in integration-related activities, as well as a doubled collateral condition (100,000 DKK).

3.5.3.2 Constraints

This time, political conflict was broader than on previous occasions. The opposition was united in seeing this selection of family migrants based on skill as highly problematic, and in particular attacked the ‘snobbishness’ of the proposal. In the proposal, applicants with university degrees would obtain more points than those with vocational training, and additional points were awarded for graduates of certain prestigious universities such as Harvard. The Socialists and Social Democrats objected to these elitist and ‘classist’ aspects of the proposal, along with the proposed raising of the required collateral to 100,000 Danish kroner. The Social Liberals similarly interjected that “one would think this was a recruitment proposal, […] but it isn’t at all. It is about something so private and personal as the question of whether spouses shall be allowed to live together in Denmark or not.”

Compared to the 2002 debate, however, the tone among the opposition parties was quite different. They did not oppose the idea of requirements, but argued that the requirements would have to be “reasonable and relevant requirements” for


413 Points systems for immigration were pioneered by Canada in 1967, and the Canadian system has become a model for other countries. The Canadian points system, however, does apply directly to family members in this way, but to economic migrants. For an analysis of the pioneering Canadian system, see Triadafilos Triadafilopoulos, “Global Norms, Domestic Institutions and the Transformation of Immigration Policy in Canada and the US,” Review of International Studies 36, no. 01 (2010): 169–93, doi:10.1017/S0260210509990556.

414 Marianne Jelved, RV12 April 2011, 15:55.
family migration.\footnote{Astrid Krag, SF, 12 April 2011 (my emphasis). See also Bech and Mouritsen, “Restricting the Right to Family Migration in Denmark: When Human Rights Collide with a Welfare State under Pressure,” 177.} It is notable that the parties on the left objected to specific aspects of the proposal that were seen as inherently antithetical to socialist or workers’ values, not to the idea of strict requirements.

As with previous policy changes, the proposal was put out for public consultation for 17 days only, making it quite difficult for organizations to provide a timely response. Despite the short deadline, a larger number of civil society organizations responded to the consultation than before, and they were more uniformly negative – there was no liberalization or forced marriage prevention that mitigated the proposal in their eyes. Rather, different organizations identified a laundry list of potentially discriminatory effects, based on disability-related inabilities to fulfill income and education requirements, on national background, citizenship, education and income. The favoritism of certain universities over others, and of Western languages (German would give points, but not Arabic or Chinese) was seen to clearly disadvantage applicants from Asia and the Middle East.

This time, then, the debate was less successfully limited. The scope of conflict was broader, and the framing of the measures as ‘modern’ did not succeed. This time, they could not rely on arguments about the rights-protecting features of the rules, and the specific way in which the points system was laid out riled up the political left. While the proposed changes faced a united opposition both inside and outside parliament, it appears that the 2002 policies were largely normalized and accepted across the entire political spectrum – with consensus about the necessity of a ‘firm but fair’ immigration policy, even when it involved some of Europe’s strictest family immigration requirements.

3.5.3.3 Passage and revocation

The VK government passed the points system with bloc support against a united opposition, taking into account relatively few of the objections raised during the process,\footnote{With the somewhat odd exception of the concern raised over adopted children, who would count as though they received citizenship at birth if they were adopted before age 6.} and at a late stage exempting some countries from the language test for spouses, leading to even louder
complaints about discrimination based on national origin. In response to the Institute for Human Rights’ pointed critique, the Minister simply responded that they were perfectly entitled to their own opinion on Denmark’s international obligations, but that he simply did not agree with them, suggesting again that ‘expert knowledge’ was devalued as a simple question of ‘taste’.

In 2011, when the Social Democrats and Social Liberals formed a new coalition government after ten years of conservative rule, they moved quickly to remove the points system, while keeping the remaining rules in place – even though the Social Liberals had vigorously opposed them in 2002. As Minister of Justice Morten Bødskov announced:

The government considers that the 24-year rule and the attachment requirement should continue to make up the robust core of Danish immigration policy. We want to adjust the rules in order to return to those that were in place from 2002 until 2011. We do that because we want to repeal the latest unnecessary and unreasonable restrictions that were implemented in July 2011.

As such, the new government removed the attempts to regulate family migration through direct selection on skills, going back to the indirect selection mechanisms already in place. This time, the government had not managed to co-opt the opposition through an emphasis on forced marriage prevention or other rights-enhancing measures. Instead, the proposal jarred with values important to the left, such as workers’ rights (through the privileging of prestigious university education over vocational training). The framing of the proposal – instead of being incontestable – was destined to fail. It is important to note, however, that this was not simply because it involved economic selection – it was because it involved a specific kind of economic selection in which vocational training, for instance, was devalued, and which was thus not ‘neutral’, but more transparently discriminatory at the level of class characteristics.

417 Minister of Integration Søren Pind, 26 May 2011, 10:56.
3.6 Outcomes of the Danish reforms

I have claimed in this chapter that Danish policymakers ‘achieved control’ over family immigration policy after 2002. What exactly were the effects of the reforms? Did they fulfill their objectives?

3.6.1 Reduced family immigration and changing migration flows

An obvious way to begin to answer this question is to examine the numbers of accepted family migrants in 2001 (before most of the restrictions were implemented) and the numbers of family migrants in subsequent years.

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<th>Year</th>
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<th>Accepted</th>
<th>Rejected</th>
<th>% of decisions rejected</th>
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<td>13,187</td>
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<td>11,250</td>
<td>8,151</td>
<td>3,531</td>
<td>30%</td>
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<tr>
<td>2003</td>
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<td>4,791</td>
<td>3,745</td>
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<tr>
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<td>3,832</td>
<td>2,808</td>
<td>42%</td>
</tr>
<tr>
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</tr>
<tr>
<td>2011</td>
<td>1,919</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2012</td>
<td>1,600</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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422 Ibid.

423 Ibid.

424 Ibid.

425 Ibid.

426 Ibid.

427 Ibid.

428 Ibid.
Table 5: Applications for family immigration, permits issued, and applications rejected, 2001-2012.\textsuperscript{431}

<table>
<thead>
<tr>
<th>Applications</th>
<th>5,552</th>
<th>6,590</th>
<th>6,184</th>
<th>6,730</th>
<th>3,810</th>
<th>6,196</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accepted</td>
<td>4,454</td>
<td>3,749</td>
<td>4,479</td>
<td>4,768</td>
<td>2,902</td>
<td>3,107</td>
</tr>
<tr>
<td>Rejected</td>
<td>1,792</td>
<td>1,227</td>
<td>2,165</td>
<td>2,337</td>
<td>1,263</td>
<td>1,225</td>
</tr>
<tr>
<td>% of decisions rejected</td>
<td>29%</td>
<td>27%</td>
<td>32.5%</td>
<td>33%</td>
<td>30%</td>
<td>28%</td>
</tr>
</tbody>
</table>

In this table we can see the sharp drop in applications for family immigration. This suggests that the Social Democrats were right about the signal effect of immigration policy changes – if not with regard to forced marriages in particular, it seems that the signal was sent that family immigration would be much more difficult to obtain. The fact that rejection rates first went up, and then stabilized (at a higher level than before) also suggests that after some time, the rules became better known and families adjusted their expectations about the possibility of obtaining family immigration permits. Research shows that while the 24-year rule was widely known, however, the attachment requirement was unknown among many young descendants who would be affected by it.\textsuperscript{432} The attachment requirement was indeed the most frequent grounds for refusal of family immigration permits\textsuperscript{433} - perhaps not surprising given its flexible and highly subjective nature. The low number of applications in 2011 reflects the entry into force of the new points system, which likely dissuaded many from applying.\textsuperscript{434}

\textsuperscript{429} Udlændingestyrelsen, Tal Og Fakta På Udlændingeområdet 2012 (Copenhagen, Denmark: Udlændingestyrelsen, 2013).
\textsuperscript{430} Ibid.
\textsuperscript{431} Note that as applications may be made one year and decided the following, the numbers of accepted and rejected applications is not equal to the number of applications made.
\textsuperscript{432} Schmidt et al., New Regulations on Family Reunification.
\textsuperscript{433} Rytter, “‘The Family of Denmark’ and ‘the Aliens,’” 302.
The number of accepted family migrants dropped drastically from over 13,000 in 2001 (which was a peak year) to a much lower level of about 4,000 per year for the subsequent years. As such, the objective of reducing family immigration was certainly achieved – and Denmark has some of the lowest numbers of family admissions in Europe. Family migration also makes up a remarkably small percentage of admissions, reflecting success in changing the composition of migration flows away from ‘unwanted’ to ‘wanted’ migration.

<table>
<thead>
<tr>
<th></th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asylum/humanitarian</td>
<td>6,263</td>
<td>4,069</td>
<td>2,447</td>
<td>1,592</td>
<td>1,147</td>
<td>1,095</td>
</tr>
<tr>
<td>Work/studies</td>
<td>10,001</td>
<td>13,310</td>
<td>16,778</td>
<td>19,887</td>
<td>24,988</td>
<td>28,448</td>
</tr>
<tr>
<td>Family</td>
<td>14,140</td>
<td>9,943</td>
<td>5,733</td>
<td>4,718</td>
<td>4,341</td>
<td>4,198</td>
</tr>
<tr>
<td>Total (non-EEA)</td>
<td>36,354</td>
<td>33,363</td>
<td>31,433</td>
<td>34,101</td>
<td>40,392</td>
<td>46,543</td>
</tr>
<tr>
<td>% family of non-EEA total</td>
<td>46.5%</td>
<td>36.3%</td>
<td>23%</td>
<td>18.9%</td>
<td>14.2%</td>
<td>12.4%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asylum and humanitarian</td>
<td>1,278</td>
<td>1,453</td>
<td>1,376</td>
<td>2,124</td>
<td>2,249</td>
<td>2,583</td>
</tr>
<tr>
<td>Work and studies</td>
<td>37,573</td>
<td>32,873</td>
<td>26,005</td>
<td>26,124</td>
<td>24,747</td>
<td>19,676</td>
</tr>
<tr>
<td>Family</td>
<td>5,148</td>
<td>4,407</td>
<td>5,211</td>
<td>5,410</td>
<td>3,396</td>
<td>3,664</td>
</tr>
<tr>
<td>Total (non-EEA)</td>
<td>58,569</td>
<td>69,277</td>
<td>56,897</td>
<td>59,019</td>
<td>57,787</td>
<td>55,982</td>
</tr>
<tr>
<td>% family of non-EEA total</td>
<td>11.7%</td>
<td>11.3%</td>
<td>16%</td>
<td>16%</td>
<td>11.1%</td>
<td>14.1%</td>
</tr>
</tbody>
</table>

Table 6: Total issued immigration permits Denmark, 2001-2012.437

435 Udlændingservice, Tal Og Fakta På Udlændingeområdet 2006.
436 Udlændingestyrelsen, Tal Og Fakta På Udlændingeområdet 2012.
437 This is based on the total immigration statistics featured in the Immigration Service reports from 2006 and 2012, each covering 6-year period. The numbers are slightly different from the family immigration statistics reported in Table 5, as they count some other types of cases under family which are not counted in the specific statistics.
As we see from this table, the share of family migration in overall flows from outside the EEA declined significantly during the period. This change was exacerbated by the growth in skilled migration, which was already foreshadowed with the proposal of a green card in 2002.

Related to this, we can note that the share of non-Western immigrants in the Danish population has also diminished. I noted previously that immigrants and their descendants made up 7.7% of the Danish population in 2002, and 75% of these were non-Western, who made up 5.8% of the population. In 2012, immigrants and their descendants made up 10.4% of the population. 7.9% were immigrants, of whom 59%, were non-Western. As we see, the composition of the immigrant population has changed in the intervening ten years away from non-Western immigrants. We can expect that this is related to the closure of the family immigration stream, as that has traditionally been the most easily accessible immigration stream to people from the global south.

### 3.6.2 Hidden family migrants and the composition of flows

Among the growing numbers of non-family migrants in the 2001-2012 period there were likely some that would otherwise have come through the family stream – indeed, it was specifically argued in 2002 that foreign spouses could do so. It is difficult to ascertain to what extent this has been the case, as the information about the Danish spouse would not have factored in to the decision or been recorded in statistics, This displacement of family migrants to work and study categories involves a powerful indirect selection mechanism of family migrants, as it would only be possible for resourceful individuals to make use of it – obtaining a skilled worker visa or

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438 Immigrants are defined as persons born outside of Denmark to two non-Danish parents. Descendants (efterkommere) are defined as persons born in Denmark where onenone of the parents are both Danish citizens and born in Denmark. If at least one parent is a Danish citizen, the person will count as Danish and not a descendant. Statistics Denmark, *Indvandrere I Danmark 2012*.

439 Ministeriet for flygtninge, indvandrere og integration, *Årbog Om Udlændinge I Danmark 2002*.

440 Statistics Denmark, *Indvandrere I Danmark 2012*. It should be noted that descendants are not counted if one parent is a Danish citizen. Unlike in for example America, censuses are not taken based on ethnicity.

441 For instance, immigration streams to the US shifted from European to Asian and other origins after 1965 when family admissions became the key criteria for entry.
study permit normally requires significant educational achievement already. This option would likely be available mainly to Western family migrants.

A second kind of ‘hidden’ family migrant comes through EU free movement rules. Denmark has issued significantly more permits under EU/EEA free movement rules in the years after the citizens of the new EU countries in the east were allowed to move freely in Europe. Among these, there are several thousand family members each year, both from within the EU and outside the Union. Both in 2011 and 2012, between 3,500 and 4,000 family members entered under EEA rules.

Within the group of EEA family migrants is where we might find the much debated “love’s refugees”\(^{442}\) – Danes that travel across the border to Sweden to obtain family reunification there under EU free movement rules, some of whom subsequently return to Denmark.\(^{443}\) Estimates on the number of Danes who have made the move vary, but they have added up to several thousand at this point. Schmidt et al. found that while 8-9% of ethnic minority youth had emigrated before 2002, the number was 13% in 2007. Among Pakistani-origin under-25s,\(^{444}\) 0.4% of men and 0.9% of men had emigrated to Sweden before 2002. By 2007, 5% of all Pakistani-origin under 25s had moved to Sweden. The number of ethnic Danes moving has also risen.\(^{445}\)

In 2008, it became clear, in a minor scandal, that Danish immigration authorities did not implement the Free Movement Directive correctly with regard to Danish citizens returning from other EU countries. In accordance with the 1992 *Surinder Singh* ruling,\(^{446}\) family reunification rights under free movement rules apply upon return to the home country as well, facilitating free movement in both directions. In an investigation by the Parliamentary Ombudsman, it was found

\(^{442}\) Kærlighetsflygtninger in Danish, kjærlighetsflyktninger in Norwegian.


\(^{444}\) This group predominantly lives in the Copenhagen area, close to Sweden. Schmidt et al., *New Regulations on Family Reunification*, 18.

\(^{445}\) Ibid., 17.

that the practice of the immigration authorities in such cases had been quite restrictive and inconsistent.\footnote{Folketingets Ombudsmand, “Ombudsmændens undersøgelse af udlændingemyndighederne – vejledning om familiesammenføring efter EU-retten mv.,” November 11, 2008, http://www.ombudsmanden.dk/find/nyheder/alle/svar_paa_foreloebig_redegoerelse/forloebig_redegoerelse_-_udlaendingemyndighedernes_vejledningspligt/.
} It also became clear that Danish immigration authorities had provided inadequate information about how and when Danes might qualify under free movement rules, with the information on the government immigration website being cursory, incomplete and hard to find – at times even misleading.\footnote{Ibid.} This revelation of problematic administrative practice coincided with the Metock ruling, which became extremely controversial due to the potential impact on border control. The ruling eliminated the possibility to require that family members of EU migrants have prior legal residence in the EU, facilitating immigration of third-country national family members (including failed asylum seekers). As a consequence of the Ombudsman’s investigation, Danes who had been rejected as sponsors for family reunification under free movement rules between 2002 and 2008 were from 2009 given a second chance.\footnote{Folketingets Ombudsmand, “Udlændingemyndighederne Giver Afviste Familiedlemmer En Ny Chance” (Folketingets Ombudsmand, March 11, 2009), http://www.ombudsmanden.dk/find/nyheder/alle/afviste_familiemedlemmer/.
} That – along with the significant publicity of the affair and of this possibility of return – would explain the spike in such applications during 2009 seen in the table below.\footnote{The high number of rejected applications made by Danes under EU rules in recent years is frankly surprising given the presumption of free movement and the relatively limited circumstances under which family reunifications under these rules can be denied (mainly if they are marriages of convenience).
\footnote{Udlæningestyrelsen, Tal Og Fakta På Udlæningeområdet 2012.
}

<table>
<thead>
<tr>
<th></th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permits</td>
<td>105</td>
<td>155</td>
<td>467</td>
<td>286</td>
<td>252</td>
<td>257</td>
</tr>
<tr>
<td>Rejection</td>
<td>6</td>
<td>6</td>
<td>351</td>
<td>419</td>
<td>204</td>
<td>286</td>
</tr>
<tr>
<td>Total</td>
<td>111</td>
<td>161</td>
<td>818</td>
<td>705</td>
<td>456</td>
<td>543</td>
</tr>
</tbody>
</table>

Table 7: Decisions under EU free movement rules where reference is a Danish citizen\footnote{The high number of rejected applications made by Danes under EU rules in recent years is frankly surprising given the presumption of free movement and the relatively limited circumstances under which family reunifications under these rules can be denied (mainly if they are marriages of convenience).
\footnote{Udlæningestyrelsen, Tal Og Fakta På Udlæningeområdet 2012.
}
3.6.3 Forced marriages and marriage patterns

How about forced marriages? Danish policymakers placed the fight against forced marriages front and center of the immigration debate in the early 2000s. Did the law reduce the incidence of forced marriage in Denmark? The short answer is that it this is unknown. One reason is that it is by definition challenging to accurately gauge the scope of an illicit activity. The government could argue that the rules helped on account of the fact that more applications were denied on grounds of forced marriage. The number of applications denied on the grounds of forced marriage did increase from 17 in 2002 (1% of applications) to 95 in 2007 (7.2%), but this was largely due to the ‘rule of supposition’ whereby cousin marriages were seen by definition as forced marriages.452

Many organizations working with victims argued both before and after the reform that it would not have much effect.453 Young persons of minority background have been found to have mixed views of the reforms, with some thinking it might help young persons at risk and others considering the changes more exclusionary than helpful, often arguing that it is just ‘another kind of force’ exercised by the state instead of by family.454 In a 2009 study of the effect on marriage patterns (not primarily on forced marriages), experts also disagreed on whether or not the policies were working.455

Another reason is that there have been very few real attempts at measuring the impact on forced marriages. As Martin Bak Jørgensen has argued, “generally speaking, policy-making on integration in Denmark rests less on the ‘pillars’ of science than on normative presumptions about ‘what is best’”.456 Danish policy makers, if they have used research at all, have largely used research that suited their goals rather than having it inform policymaking. Jørgensen

454 Fair, “‘Why Can’t I Get Married?’”; Schmidt and Jacobsen, Pardannelse Blandt Etniske Minoriteter I Danmark.
455 Schmidt et al., New Regulations on Family Reunification.
456 Jørgensen, “Understanding the Research–Policy Nexus in Denmark and Sweden,” 100.
contrasts this with the situation in Sweden, where there have been numerous researcher-led commissions elaborating reports informing policymakers (Swedish Official Reports, SOU, the equivalent of the Norwegian expert reports, NOU, one of which I examine length in section 4.3.4). Denmark, on the other hand, moved away from this practice. One might hypothesize that limited research has been commissioned on forced marriages because policymakers are content not to know. We can also relate this back to Boswell’s contention that knowledge is likely to be important in areas where technocratic decision making modes are accepted. With the politicization of family immigration in Denmark technocratic modes of decision making appeared not to be widely accepted. One may also quite legitimately question whether policymakers actually thought the law could prevent forced marriages – then Integration Minister, Rikke Hvilshøj, admitted in 2006 that the law could not in fact prevent all forced marriages.

Through such rhetorical slippage between different policy objectives – immigration reduction, forced marriage prevention and integration improvement through altered marriage patterns – politicians could claim success in many different contexts and situations as at least some objectives (with regard to numbers in particular, but also with regard to altered marriage patterns) had unequivocally been achieved. While the effect of the regulations on forced marriages is not adequately documented, the fact that marriage patterns of immigrants and descendants have changed – which was also an objective of the reforms - is well-documented. Young persons from immigrant populations have been found to marry later than before. Two large studies found that the marriage age was already on the rise before 2002 but that the policies exacerbated existing trends. Schultz-Nielsen and Tranaes found that the effects of the reform

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457 These are parallel to the Norwegian expert proposals (“NOU”).
459 Fair, “‘Why Can’t I Get Married?,” 148.
varied significantly between different immigrant groups, with the effect being the most significant for those of Turkish background. The inter-marriage rate of immigrants has been seen by some as a measure of integration.\textsuperscript{461} The tendency to marry ethnic Danes, however, has not gone up during the period under study, and there is also no significant growth in immigrants in Denmark marrying other young immigrants.\textsuperscript{462} Many fewer transnational marriages have occurred. Growing numbers, especially Pakistani origin persons and under-25-year olds, move to Sweden, both because of more lenient EU family reunification rules and because of the availability of housing etc.,\textsuperscript{463} but these marriages are not so numerous as to replace all the previous transnational marriages leading to reunification in Denmark. The research has thus clearly established that the rules altered the marriage patterns of immigrants in Denmark, making people marry later and reducing the incidence of transnational arranged marriages (although in some cases these marriages took place in Sweden instead.)

3.7 Observing the ‘Danish Model’

3.7.1 The view from outside

Throughout my interviews with policymakers and stakeholders in Norway and the United Kingdom, I asked them about their views on Denmark and the Danish policy developments. In Norway, in particular, the Danish immigration debate has been widely known and debated in the media due to the close connections between the Nordic countries. Policymakers and bureaucrats in the Nordic countries also have close contact through various fora, including a special working group on refugee policy; the Nordic Council and ad hoc meetings.

As one Norwegian civil servant suggested, Denmark is the "crown example of what can be achieved if you are strict" - whereas Sweden was widely seen among interviewees (both

\textsuperscript{461} See Saggard and Somerville, \textit{Building a British Model of Integration in an Era of Immigration: Policy Lessons for Government}.


\textsuperscript{463} Schmidt et al., \textit{New Regulations on Family Reunification}. 
politicians and civil servants) as being evasive on immigration and integration issues and not tackling them head-on. As a former policymaker noted, “it is almost impossible to sit in a neighboring country and be responsible for [immigration policy] and not play close attention to what Denmark has done.”\textsuperscript{464} In addition to this, the Norwegian Progress Party and activists has been paying particularly close attention to Danish policies, frequently making similar or identical proposals. This meant that it was perceived as necessary for the Norwegian center-left to keep up with the Danish developments – if only to pre-empt the Progress Party.

The Danish immigration debate, however, was widely perceived as more “raw”\textsuperscript{465} than the debate in Norway; with a “higher temperature”.\textsuperscript{466} With this comes the widespread perception that Denmark went very far, and that “some of their points of view have been completely awful”.\textsuperscript{467} An age limit as high as 24 was never seriously considered by the Norwegian center-left (although it has been aired by the Progress Party)\textsuperscript{468} or in the United Kingdom,\textsuperscript{469} and the Danish attachment requirement was perceived in Norway as leaving too much room for discretion.\textsuperscript{470} On the more positive side, some interviewees emphasized the Danish example as one where policymakers had made a comprehensive policy, rather than piecemeal changes, thinking through the interaction between different measures more thoroughly.\textsuperscript{471} Such contrasting views on the Danish experience can also be found in the responses to the Norwegian public consultation on the proposed age limit and attachment requirement from 2006-7, which I will examine in more detail in the next chapter. Proponents of the Danish rules pointed to the

\textsuperscript{464} Interview with former Norwegian policymaker, May 2012.
\textsuperscript{465} Interview with Norwegian opposition politician, June 2012.
\textsuperscript{466} Interview with former Norwegian policymaker, May 2012.
\textsuperscript{467} Interview with Norwegian opposition politician, June 2012.
\textsuperscript{468} And it reappeared in the 2013 Coalition Agreement between the Conservatives and the Progress Party. It surfaced in a consultation letter in June 2014.
\textsuperscript{469} Interview with former British MP, January 2013.
\textsuperscript{470} Interview with Norwegian civil servant, March 2012.
\textsuperscript{471} Interviews with Norwegian activist May 2012 and Norwegian opposition politician June 2012.
success in reducing immigration and transnational marriages, while opponents pointed out that no one could prove effects on forced marriages.

Several interviewees had had direct contact with Danish civil servants and policymakers about Danish immigration policies during the 2000s. Interestingly, they reported different experiences about what policy objectives had been emphasized in these interactions. It appeared that in discussions with their Norwegian counterparts, the Danes were more eager to discuss their success in getting down immigrant numbers\textsuperscript{472} and their more comprehensive efforts to improve integration.\textsuperscript{473} As the former policymaker noted, “they were really into these numbers arguments, which we weren’t so concerned with at the time”. The forced marriage angle, which Norwegian policymakers were perhaps most concerned about, was not widely discussed in these interactions. This supports the suggestion I have made in this chapter that the forced marriage argument was, in part, used strategically as a framing device to justify restrictions. In Norway, among opponents of the age limit, shared the widely held suspicion that that the government was \textit{really} trying to bring down numbers when similar proposals were presented there.

\subsection*{3.7.2 Denmark and the limits of control}

I have argued in this chapter that a particular, historically specific, constellation of factors allowed the Danish government to push through remarkably strict family immigration policies in the early 2000s, confounding expectations in the immigration literature with regard to the stickiness of open family immigration policies due to the ‘liberal constraint’.

The \textit{timing} of reforms, in the aftermath of 9/11 and during a high point of the Danish immigration debate, after a bombshell election perceived as giving a strong mandate for immigration restrictions, was arguably important. Immigration in general, and the pace of change of Danish society, was very high on the political agenda. The same was true for both forced and arranged marriages, leading to politicization of family immigration as such and the marriage patterns of immigrants. The speed of reforms also mattered – within just over six months the entire system was overhauled.

\textsuperscript{472} Interview with former Norwegian policymaker May 2012.
\textsuperscript{473} Interview with Norwegian opposition politician, June 2012.
Political conflict was unusually subdued. First, the context of Danish coalition and bloc politics, with a right bloc united on the issue of immigration restrictions since the realignment of the Social Liberals, and a divided Social Democratic Party, allowed the VK government to pursue its immigration agenda effectively with Danish People’s Party support. Some measures were even put through with broad cooperation, as the Social Democrats supported some aspects of the restrictionist agenda. Broader debate on the issues was limited and cut short through the circumscribing of public consultations and the cuts in funding to human rights and discrimination-related organizations and bodies.

In line with Baumgartner and Jones’ expectations, a policy image whereby private concerns (the choice of whom to marry) were redefined as public concerns (the cause of bad immigrant integration) legitimated political action. Still, ordinarily, there would be a perceived conflict between immigration control and interfering in family life, entailing possible violations of ECHR art. 8. Again, the specific historical context, with concern over forced marriages and the violation of young immigrant-origin women’s rights, allowed the government to reframe actions that could under other circumstances be seen as rights-violating as rights-protecting. Rather than violating ECHR art. 8, Denmark argued that it was fulfilling its international obligations to ensure that people could marry whomever they wanted. The prevention of forced marriages and securing of young women’s rights was an incontestable objective, against which the opposition could not effectively argue. There were some attempts to challenge the means-end relationship, suggesting that immigration legislation was ill-suited for forced marriage prevention. The absence of research and knowledge on the issue, however, worked both ways. While the government could not prove that it would work, the opposition could not prove that it would not. The Social Democrats had an alternative means-ends understanding, but they thought that the symbolic effect of the rules would be positive, so they did not object to the rules per se. Finally, the government was able to reframe the question of discrimination, by emphasizing equal treatment of sponsors for family immigration regardless of citizenship, rather than equal treatment of citizens regardless of who they married. Discrimination is always measured relative to a particular comparator, and by changing the comparator, the government essentially defined

away discrimination. They effectively ignored the question of indirect discrimination and the potential disproportionate effect on Danes of minority origin (indeed, they specifically intended it).

There was a question of proportionality with regard to implementing such draconian rules in order to prevent a relatively small number of forced marriages every year (an unknown number, at that). But it was difficult to make this argument without trivializing a serious human rights violation. Further, Danish couples who were affected by the rules but really wanted to live together had the ‘exit option’ to do so across the border in Sweden under EU rules. This, again, undercut the ‘judicial constraint’ as few couples pursued their cases in the Danish courts (i.e. used their ‘voice’). In one of the few cases that did reach the Danish Supreme Court, the Government argued effectively for their own interpretation of discrimination and the relevant comparator to use.

The first two instances of reform that I analyzed (2002 and 2003), suggested that the combination of contextual variables with the effective framing of the policies as rights-protecting, integration-promoting and non-discriminatory allowed the government to put through the changes with relatively broad support. The third reform attempt, however, saw the government abandoning the forced marriage and individual rights argument in favor of a much more elitist argument about only admitting the ‘best and brightest’ through the family stream – ‘modernizing’ family immigration policy. While the opposition on the left could hardly argue against forced marriage prevention, they balked against the ‘classist’ assumptions of the points-based system, in particular the higher number of points awarded to university education vs. vocational training and the extra points for prestigious universities. The fact that this type of rule was so clearly class-based was at odds with socialist and social democratic values.\(^475\) The lack of resonant framing meant that further restrictions could not achieve broad support – even though the Social Liberals and some of the Social Democrats that were opposed to the age limit and attachment requirement in 2002 now support them. This led to the points-based system being

\(^{475}\) For instance, it certainly violated the «Law of Jante», a widely known ‘law’ formulated by Danish-Norwegian author Axel Sandemose, usually summarized as “you should not believe you are anything special”; epitomizing Scandinavia’s pervasive anti-elitism.
eliminated immediately after the change of government in 2011 – even though the 24-year rule and the attachment requirement were kept in place.\textsuperscript{476}

As this suggests, the combination of a propitious institutional environment with a particular set of frames that resonated with Danish core values allowed for a severe restriction of family immigration rules in the early 2000s. These rules are now widely accepted across the Danish political spectrum, and have survived the change of government in 2011.

\textsuperscript{476} The 28-year rule was modified and the attachment requirement now ceases to apply after 26 years of citizenship instead of 28.
Chapter 4

4 Norway’s circuitous path to an income requirement

4.1 Introduction

Norway, Denmark’s neighbor to the north, has Europe’s highest income requirement for family reunification in absolute terms. While the policy turnaround in Norway was less dramatic than in Denmark – Norway has had a form of income requirement through the entire era of modern immigration policy – Norway has also gone through restrictive immigration reform since the early 2000s, and it is not an entirely straightforward story. This chapter investigates this period of reform and inquires why and how Norway ended up with a high income requirement for family immigration rather than the Danish-style age limit that was proposed in 2006. I demonstrate the capacity of policymakers to act in the face of constraints, arguing that by manipulating the proportionality assessment of the right to family life, controlling the scope of conflict (through technocratic approaches to policymaking and by limiting use of consultations) as well as drawing strategically on expert knowledge Norwegian policymakers have been able to change well entrenched policies.

Starting with the 1975 ‘immigration stop’ regulation, Norwegian policymakers considered family reunification a right so long as sponsors could maintain family members, but citizens were exempted from the income rules as privileged ‘insiders’. Throughout the 1980s and early 1990s, this approach was accepted across the political spectrum, and family immigration remained off the political agenda as it became the single most important source of migration in the 1990s. Established approaches to family migration began to become politicized towards the end of the decade through concerns relayed through the media over transnational arranged

477 Baumgartner and Jones, Agendas and Instability in American Politics; Hansen and Koehler, “Issue Definition, Political Discourse and the Politics of Nationality Reform in France and Germany.”


marriages and in particular forced marriages\textsuperscript{480} – a rights concern on which the populist Progress Party capitalized,\textsuperscript{481} further pushing politicians in the mainstream parties to act on the issue.

Between 2001 and 2004, an expert committee worked to propose a new Immigration Act. It was during this time that forced marriage concerns peaked – along with asylum arrivals, for which liberal family immigration rules were thought to be a pull factor. In this ‘panic’, the first new restrictions on family immigration were introduced in 2003, involving an income requirement for sponsors under age 23 (to prevent forced marriages) and persons with humanitarian status (to make Norway appear less attractive to asylum seekers). The expert committee published its findings in 2004,\textsuperscript{482} seeking to clearly delineate Norwegian international obligations. It suggested differential rules for family reunification and formation (i.e. pre- and post migration families). I argue that this report was important with regard to issue definition and framing of the ‘problems’ of family immigration.

Immigration reform stalled due to intra-coalition disagreements, but Labor in particular desired to regulate family immigration more closely, and pressure was rising to act to prevent forced marriages. Labor proposed an age limit and attachment requirement, modeled on Danish rules, to prevent forced marriages in 2006. The proposal broke down at the consultation stage, facing significant opposition both from within and outside the coalition due to doubts about its effectiveness in preventing forced marriages and by extension its proportionality – it was a broad measure with a narrow target. The Labor-led government revived the attachment requirement in 2009, in the context of rising asylum flows. Drawing on the expert proposal to differentiate rules for family formation and reunification, and using the argument that family immigration rules were a pull factor for asylum seekers to broaden policy objectives, the proportionality assessment was now more favorable for the government. They also controlled the scope of the debate by


\textsuperscript{481} Akkerman and Hagelund, “‘Women and Children First!’ Anti-Immigration Parties and Gender in Norway and the Netherlands.”

avoiding a second public consultation despite the changed format of the rule and new objectives ascribed to it.

In 2008, in the context of overall immigration reform, the new income requirement was proposed and extended to all groups including citizens. As the rule already existed in regulations, the change was presented as technocratic and minor in nature – even though its consequences were not. Its objectives were also broad, including self-sufficiency (important in a generous welfare state context), deterring asylum seekers, and preventing forced marriages. At the same time, to limited fanfare, highly skilled workers were exempted from parts of the income requirement in order attract workers by facilitating their family reunification. Again, politicians were able to manipulate the question of proportionality and limit conflict, introducing what were arguably momentous policy changes in the face of expected constraints.

These rounds of reform demonstrate the dynamic efforts of policymakers to negotiate constraints on family immigration policymaking, proving that such constraints are malleable and allowing for restrictive policies in the face of the right to family life. This chapter demonstrates that while Norwegian policymakers met with limited success in applying Danish family immigration restrictions, they were quite free to implement alternative policies.

### 4.2 Historical legacy and context

Family migration was long absent from the Norwegian immigration policy agenda, and for the first 25 years of Norway’s modern history of immigration, it barely featured in discussions over immigration policy. This section surveys the transition from primary to secondary migration early family immigration regulations.

#### 4.2.1 The transition to family immigration

Like many other European countries, Norway opened the door for labor migrants in the 1960s, during the postwar economic boom in which demand for labor in many sectors of the economy was significant.\(^{483}\) There is some dispute as to whether these workers were recruited to Norway

by Norwegian companies, or if they just ‘showed up’ on tourist visas and were able to obtain work permits subsequently.\textsuperscript{484} Either way, Norway was not initially a primary destination. As other European countries began to tighten their admissions rules, Norway saw larger inflows as it caught some of the ‘overflow’.\textsuperscript{485} While only about 200 persons of Asian origin lived in Norway in the mid-60s,\textsuperscript{486} a more significant number of persons from Pakistan, Morocco and Turkey arrived between 1968 and 1970,\textsuperscript{487} with admissions peaking in 1971.\textsuperscript{488} The guest worker logic – that immigrants should return home once their contract ended or work dried up – was not as explicit in Norway as in Germany, but the term used to describe these workers – alien workers (\textit{fremmedarbeidere}) – did imply that they were primarily there to work and did not ‘belong’. Norway’s ‘immigration stop’ only took effect on February 1, 1975, as one of the last countries in Europe\textsuperscript{489} and after its neighbors.\textsuperscript{490} At this point, the Pakistani population in Norway, which made up approximately one third of the foreign worker population, had reached 3,500 persons.\textsuperscript{491} By 2014, there were a total of 633,000 immigrants and 126,000 persons born to immigrant parents in Norway (descendants), together making up 14.9\% of the population of 5 million. Approximately half of the immigrants (326,000) and most of the descendants (102,000)

\textsuperscript{484} Most authors use somewhat roundabout phrases about the demand for labor which met the migrants once they arrived, see for instance ibid.

\textsuperscript{485} Kommunal- og arbeidsdepartementet, “St. Meld. Nr. 74 Om Innvandrere I Norge” (Norges Storting, 80 1979). Note that the establishment of networks as the first migrants settled also led to increased migration subsequently.

\textsuperscript{486} One of these was Farouk Al-Kasim, an Iraqi petroleum geologist married to a Norwegian woman, who would be recruited to lead the work to build the oil sector and arguably become Norway’s most profitable family migrant. Martin Sandbu, “The Iraqi Who Saved Norway from Oil,” \textit{Financial Times}, August 29, 2009, http://www.ft.com/cms/s/0/99680a04-92a0-11de-b63b-00144feabcd0.html#axzz2yBpxiqis.


\textsuperscript{488} Øivind Fuglerud, \textit{Migrasjonsforståelse : flytteprosesser, rasisme og globalisering} (Oslo: Universitetsforlaget, 2001), 114.

\textsuperscript{489} Ibid.

\textsuperscript{490} Sweden did not have a formal immigration stop, but implemented more restrictive conditions for work permits. Denmark implemented a formal stop at the end of 1973.

\textsuperscript{491} Tjelmeland and Brochmann, \textit{Norsk Innvandringshistorie: I globaliseringens tid 1940 - 2000}, 3:151. The Pakistanis who settled in Norway were mainly from the Kharian area of Punjab.
were from non-Western countries. In comparison with Denmark, then, the pace of immigration to Norway between the 1970s and 2000s has been quicker, and Norway currently has a larger immigrant population than Denmark.

The Norwegian immigration stop was not directly brought on by the petroleum crisis. With Norway’s recent discovery of oil in 1969, the international economic crisis could be met with expansive policies, somewhat softening the blow to the economy. However, Norway did not want to be too different from its counterparts by remaining as the only country open to immigration. Demand for labor did not cease, but shifted from the low- and unskilled jobs that the labor migrants from Pakistan had filled, to specialist expertise for the oil sector. In this light, Bø has argued that the immigration stop was an exclusionary policy that in fact only affected migrants from the Global South, as labor immigration continued from Western countries. The government went to some lengths to deny any discriminatory intent in the 1979-80 White Paper on immigrants, emphasizing that the specialists from Western countries “must be seen as mobile workers (arbeidsvandrere, literally ‘labor wanderers’) rather than immigrants”. The White Paper also established that this type of migration “should face the least possible obstacles”.

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492 Statistics Norway, [http://www.ssb.no/en/befolkning/statistikker/innbef](http://www.ssb.no/en/befolkning/statistikker/innbef), consulted 3 July 2014. Persons “born to immigrant parents” are more accurately defined as “are persons who are born in Norway of two parents born abroad, and in addition have four grandparents born abroad.” By non-Western, Statistics Norway mean persons originating from countries other than the EU/EEA, USA, Canada, Australia and New Zealand.


494 This is not to say that it mitigated it fully. For instance, the gasoline supply was restricted and people were instructed not to drive on the weekends. The Norwegian king was famously photographed travelling by tramway to go skiing during the winter 1973-74. The most severe effect of the crisis was on the Norwegian shipping industry.

495 This could be a case of policy diffusion or transfer, but examining it further lies beyond the scope of this dissertation.


497 Kommunal- og arbeidsdepartementet, “St. Meld. Nr. 74 Om Innvandrere I Norge,” 30. This parallels the current discursive distinctions between migration and mobility. Mobility is most often used to refer to free movement within the European Union, or movement/migration that does not trigger border control and is not nearly as politically controversial see Rainer Bauböck, “IMISCOE Keynote” (presented at the IMISCOE conference, Amsterdam, August 28, 2012).

the four years following the ‘immigration stop’, Norway issued twice as many immigration permits to specialist workers as to family migrants. The largest group of skilled workers came from the United States.\textsuperscript{499} In accordance with the Ministry’s expectations, however, few settled permanently. The balance between family migrants and workers begin to shift towards the end of the 1970s. During the 1980s, refugee inflows also grew. After seeing asylum arrivals in the tens or hundreds every year during the 1970s and early 1980s, Norway saw a sudden ten-fold increase from just over 800 asylum seekers in 1985 to 8,600 in 1987 – coinciding with the parliamentary debates on the new Immigration Act.

Between 1990 and 2012, family migrants made up 40% of immigration from outside the Nordic countries (i.e. including most EEA countries) – 200,000 of 580,000 immigrants - making them the single largest group of migrants.\textsuperscript{500} Of these, approximately 60% came for family reunification and 40% for family formation. Two thirds were women.\textsuperscript{501} The largest groups were Poles, followed by Thais, Somalis Iraqis, and Pakistanis. Reunifications increased relative to formations in the 2000s following increased labor migration from Eastern Europe, in particular Poland. Whereas the Poles most often came to reunify with Polish labor migrants and the Thais most often came through family formation with Norwegian men, the Iraqis and Somalis mainly reunited with refugees from their own country. Overall, one in four family migrants reunified or formed a family with a refugee.\textsuperscript{502} During the period, Norway received 2.5 times more refugees than family members of refugees, suggesting that asylum flows have not in themselves been responsible for the bulk of family migration.\textsuperscript{503} While the rates of transnational marriages among

\textsuperscript{499} The number of persons from Canada and the United States resident in Norway was in fact lower in 1984 than in 1976, and persons from Western countries naturalized less often, so that supports the assertion that this group was not an immigrant group per se. Justisdepartementet, Ot. Prp. Nr. 46 (1986-87) Om Lov Om Utlendingers Adgang Til Riket Og Deres Opphold Her (utlendingsloven), Proposition to the Odelsting, (1987), 24.

\textsuperscript{500} Sandnes and Henriksen, \textit{Familieinnvandring Og Ekteskapsmonster 1990-2012}.

\textsuperscript{501} Ibid., 14.

\textsuperscript{502} Ibid., 13.

\textsuperscript{503} Ibid.
second-generation Pakistani immigrants with spouses from Pakistan were high around the turn of the century, such unions are now less common. 504

4.2.2 Early legislation

The 1957 Aliens’ Act (Fremmedloven) – the immigration legislation in place during the early phase of labor immigration – was a briefly formulated enabling act (fullmaktslov) which left it up to the appropriate ministry to develop secondary legislation, with much discretion for the implementing authorities. The law did not regulate family immigration, and it is not, in fact, discussed in the first White Paper on immigration, St. Meld. 39 (1973-74). The first regulation of family immigration was in fact as an exemption to the 1975 ‘immigration stop’ regulation, which allowed sponsors to bring family members, 505 so long as they were able to support them. 506 A form of income requirement has thus existed in Norwegian family immigration legislation since the very beginning – albeit with exceptions. The 1979-80 White Paper on Immigration emphasized the right to family reunification as long as the sponsor had the resources to care for family members, but noted that these rules should be practiced “with particular goodwill” when the sponsor was a citizen or long-term resident. 507

Politicians considered that Norway needed more comprehensive and up-to-date immigration legislation, and in 1977 Professor Torkel Opsahl of the University of Oslo was named as head of an expert commission tasked with proposing a new law. 508 The Commission presented its proposal for a new Aliens’ Act 509 in 1983, noting with regard to family immigration that “the granting of residence permits to close family members already follows from Norway’s

504 Ibid., 28.
505 It was initially valid for one year, and renewed several times. It was subsequently made permanent, until new legislation came into place in 1991.
506 The requirement was found in the Immigration Regulations §42, but was practiced even before it was included in the regulations, NOU 1983:47, Ny Fremmedlov (Justisdepartementet, 1983), 56.
508 Note that this coincides almost exactly with the naming of an Immigration Act Commission in Denmark. The other four members of the Commission included a researcher, a social worker, a high court lawyer and a bureaucrat.
509 Note that the Commission referred to its proposal as an Aliens’ Act (Fremmedlov), whereas the Ministry later insisted on the more progressive term Immigration Act.
international legal obligations […] It is the opinion of the Commission, however, that this is so important that it merits express establishment by law.”\textsuperscript{510} The Norwegian experts – unlike their Danish counterparts – were united on the establishment of an individual right to family reunification, and while they recognized that ECHR article 8 did not entail an absolute right to family reunification, they went no further in seeking to establish its limits. The proposed Act formulated a right to reunification for spouses and children under 18, given that conditions were fulfilled – firmly establishing the rights-based nature of family reunification, while also delimiting the family circle tightly (with optional clauses for extended family members). The Commission noted that an income and housing requirement existed in secondary legislation, but did not propose including them in primary legislation and noted its relatively lax enforcement given the basic emphasis on family unity.\textsuperscript{511}

The Commission noted that not all family reunifications were reunifications strictly speaking, but that they had “been informed that one has never in Norway considered distinguishing between earlier and new marriages”.\textsuperscript{512} At this point in time, then, the distinction between what we now call family formation and reunification was not considered salient. Altogether, only two pages of the report were devoted to family migration, and they largely reveal that family migration of the nuclear family was seen as a question of rights rather than politics.

After a broad public consultation on the commission proposal, the Ministry of Justice presented draft legislation in April of 1987, adopting the commission’s view on the institution of a right to family reunification and noting that “the Ministry considers the rules regarding family members’ access to work or residence permits so important that it should be specified in its own section”.\textsuperscript{513} The Ministry in fact went further than the Commission with regard to facilitation of reunification, proposing to eliminate the housing requirement.\textsuperscript{514} The Ministry acknowledged

\textsuperscript{511} Ibid., 56–57.
\textsuperscript{512} Ibid., 194.
\textsuperscript{513} Justisdepartementet, \textit{Ot. Prp. Nr. 46 (1986-87) Om Lov Om Utlendingers Adgang Til Riket Og Deres Opphold Her (utlendingsloven)} my emphasis.
\textsuperscript{514} Ibid., 9.
that a right to family reunification would have consequences for immigration control, as it would
give “a number of persons a claim to settle in this country which cannot be changed through
secondary legislation”.515 Significantly, the response to such a concern was that “in Norway such
rules appear so self-evident that there are no hesitations about establishing them.”516

It is interesting to note that the Ministry rejected the idea of preferential treatment of citizens,
arguing that “in light of current understandings one should not ascribe particular importance to
citizenship with regard to the rights of people.”517 This suggests an understanding of human
rights as universal, and of family reunification as rights-based, echoing the arguments of authors
such as Yasemin Soysal (who studied this period) regarding the universalization of human rights
and the rights of denizens.518 One can conclude that for family reunification purposes, the
Ministry considered that non-citizens qualified as ‘insiders’519 as long as their stay in Norway
had some level of permanence (i.e. excluding students and others who were only in the country
temporarily). As this suggests, the right to family reunification in Norway was much more
thoroughly entrenched than in Denmark. Equal treatment for family reunification purposes was a
matter of leveling up the treatment of non-citizens rather than leveling down the treatment of
citizens.

The 1988 parliamentary debates on the new law reveal little controversy over family
immigration. Amidst a ten-fold increase in asylum arrivals and the success of the Progress Party
in the recent local elections – the only Norwegian elections where immigration has dominated
the agenda – asylum policy took center stage.520 The Conservatives, Center Party and Progress

515 Ibid., 31.
516 Ibid. my emphasis.
517 It was established that only one wife in a polygamous relationship, and only children of one wife, could qualify
for reunification. It was also established that relationships where one spouse was so young that the marriage would
be illegal in Norway (18, but effectively 17.5 years old) should not qualify for reunification ibid., 64.
518 Soysal, Limits of Citizenship; Hammar, European Immigration Policy.
520 Frøy Gudbrandsen, “Partisan Influence on Immigration: The Case of Norway,” Scandinavian Political Studies
33, no. 3 (September 1, 2010): 252 Examining the parliamentary debates, we see that issues of racism were also high
on the agenda, as well as concerns over the obligation for foreigners to identify themselves with a passport – an
Party (for an overview of Norwegian political parties, see Appendix A) did object to the wording of the law whereby foreign workers had a right to a work permit given the fulfillment of conditions. There was some dispute about whether this had any practical implications given the possibility to adjust conditions (indeed they were strict until the early 2000s), but they emphasized the right of states to control their borders. They did not extend this objection, however, to the introduction of a right to family reunification on similar terms. Carl I. Hagen, leader of the Progress Party, only noted the importance of operating with a narrow definition of the family, a tightening of the original proposal, which he himself referred to as “not so big”. While he did not specify it, his actual amendment did distinguish between the family members of citizens and non-citizens, suggesting a somewhat narrower notion of membership and insiders. It did not make any difference, as everyone voted against the amendment, and the right to family reunification was passed unanimously in the Odelsting. The law in its entirety was passed in the Lagting the following week, against the votes of the Socialist Party and the Progress Party; which considered it too restrictive and too lax respectively.

4.2.3 Immigration legislation in practice and in the courts

In tandem with the historical development of immigration legislation, Norway developed a bureaucracy for handing immigration cases, as well as institutionalizing a relationship between the judiciary and the executive in this area. The Immigration Department, set up in 1976, was from 1982 part of the Ministry of Local Government and Regional Development. In 2006 it was shifted to the Ministry of Labor, and in 2010 again to the Ministry of Justice and Public Security (with the exception of labor immigration). At the operational level, the agency responsible for executing immigration policy is the Norwegian Directorate of Immigration (UDI), set up in

issue than in hindsight does not appear terribly controversial, but which was politicized in part due to concerns of adoptive parents worrying that their children would be singled out because they looked 'foreign'.

523 Until 2009, Norway practiced a form of partial bicameralism. During debates about new laws, the parliament (Storting) would split into the Odelsting and the Lagting. After thorough debate in the Odelsting, the law would then go to the Lagting.
1988. A quasi-judicial body, the Immigration Appeals Board (UNE) was created 2001 to review UDI’s decisions (this was previously carried out by the Ministry itself). UNE decisions can be appealed to the Oslo District Court (and then to the Appeals Court and subsequently the Norwegian Supreme Court). Most immigration cases are finally resolved by UNE, and appellants wishing to take their cases to the Courts system must generally cover their own costs. The Lawyers’ Association has taken on a limited number of cases of principle *pro bono*, and the Norwegian Organization for Asylum Seekers, the organization SEIF, and the law student organization JussBuss provide some legal assistance, but there is limited access to legal aid for persons seeking to appeal immigration decisions in the regular court system, and relatively few cases do reach the normal courts.

Norwegian courts have, in any case, been reluctant to overrule the administration on immigration issues, going back to the 1991 *Abdi* case, where the Supreme Court upheld the administration’s high level of leeway with regard to status determination of asylum claimants. The Court endorsed the possibility of treating *non-refoulement* and decisions on immigration status separately, leaving the state free with regard to how to fulfill its international legal obligations: As long as Mr. Abdi was not expelled, the state did not need to give him refugee status, with the rights following from this status. During the 1990s and still to some extent during the 2000s, few people actually got Convention Status, with stark implications for access to family reunification, given that Convention Refugees were exempted from requirements that applied to others. This early immigration case set the tone for the relationship between the judiciary and the executive over immigration policy. Another illustration of this reluctance to intervene was seen again in two high profile Supreme Court cases decided in 2012 on long-staying undocumented children (usually children of failed asylum seekers), where a divided court again decided not to overrule the government. Here, Einarsen argues, the Court’s majority

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524 This project (Prosedyregruppen) has won approximately 70% of the cases they have chosen to pursue. They announced they would close down in 2013.
526 The obligation not to return a refugee to persecution.
527 Cf. Soennecken, “Extending Hospitality?”.
did not consider it to be within its remit to conduct its own assessment of the best interest of the child in the case, and contented itself with examining whether immigration authorities had indeed made such an assessment. He contends that this conclusion relies on a faulty reading of the Convention on the Rights of the Child. One can certainly argue that it shows a rather modest attitude with regard to international human rights law. Under such a logic, only very poorly argued decisions would be truly vulnerable to be overturned by the Courts.

Some immigration cases have been fought all the way to Strasbourg, but the case law displays no central tendency. Whereas Norway was found not to have breached article 8 on the right to family life in the 2008 *Omoregie* case, in which a failed asylum seeker had married and had a child with a Norwegian woman and was subsequently deported to Nigeria; the opposite conclusion was reached in the 2011 *Nuñez* case, where a Dominican woman had repeatedly broken Norwegian immigration laws and given a false identity in order to be with her children in Norway. A prominent lawyer who leads the Lawyers’ Association’s work on asylum and immigration argues that the Norwegian government has eagerly and effectively limited the impact of Strasbourg rulings by emphasizing the ‘uniqueness’ and lack of general applicability of the different cases. This is, indeed, an easy argument to make as the Strasbourg court’s approach to immigration cases is very fact-specific, meaning that it is often difficult to derive generally applicable principles or precedent from the rulings. Norwegian policymakers’ approach to Strasbourg cases illustrates one way that governments have to negotiate and shape a potential judicial constraint, and as I have shown in this section, there has not been a significant constraint from Norwegian or supranational courts.

### 4.2.4 Summing up

In this section, I have examined how Norway transitioned from a brief period of labor immigration in the late 1960s and 1970s to an era dominated by family immigration subsequently. Interestingly, family immigration was practically taken for granted well into the

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529 Ibid., 311.
530 Interview, June 2013.
1990s. The right to family reunification was elevated from an exception to the ‘immigration stop’ to a rule in the new Immigration Act in 1988 without controversy. Experts and politicians were unanimous in their understanding that the granting of a right to family reunification was appropriate and desirable. Even the Progress Party - which had emerged in the 1987 election as a strong immigration-skeptic voice – generally supported the idea of a right to family reunification, albeit under slightly more stringent conditions. The one condition that did have broad support was a form of income requirement, requiring that the sponsor should be able to care for incoming family members. This was not intended to be used against citizen sponsors, however. I have also shown how the Norwegian judiciary has rarely intervened in immigration policy. Norwegian volunteer organizations have limited resources for legal aid, and have generally voiced immigrants’ interests in other arenas than the courts, such as the important consultations that I will examine in section 4.4.

4.3 Setting the policy agenda

After two decades where family immigration had essentially gone unnoticed, it would rise in prominence on the immigration political agenda during the late 1990s and early 2000s, leading up to the policy changes that are the central object of analysis in this chapter. Before getting to them, I will examine the rise of family immigration on the agenda from several angles. Firstly, I review the international political context. I then examine the ‘moral panic’ over forced marriages and the growing understanding of forced marriages through an immigration lens that occurred in the late 1990s, which was tightly intertwined with the politicization of family migration as such. Then I look at the role of the Progress Party, the furthest-right party in Norwegian politics, which seized upon these forced marriage concerns and pushed for regulation in the 2000s. Finally, I examine the agenda setting and issue-defining role of the expert proposal for a new Immigration Act prepared between 2001 and 2004 by a government-appointed committee.

4.3.1 The international political context

The 1990s, in many ways, marked the high point of the ideologies of multiculturalism in the West - especially in academic discourse on immigration and integration. Authors such as Will
Kymlicka was widely read also among Norwegian academics and experts, even though institutionalized multiculturalist policies never quite took hold here. The initial expert proposal on the new Norwegian citizenship legislation, published in 2000, did however advocate a more liberal approach to citizenship, suggesting that Norway should begin to allow dual citizenship, and as we will see, the income rules for family immigration were liberalized as late as in 1997, along with refugee policy (for more details on Norwegian citizenship rules, see Appendix B). As the Norwegian immigration scholar Grete Brochmann later stated, however, “today, many think multiculturalism was buried in the dust of the Twin Towers on September 11, 2001”. In Norway, as in the rest of Western Europe and North America, 2001 did indeed mark a shift towards more restrictive policymaking after an era of liberalization in many fields, and the early 2000s were marked by the broader ‘crisis of multiculturalism’. The citizenship legislation that eventually did pass in 2006 would ban dual citizenship after all and maintain a more restrictive line, seeking to ‘re-value’ citizenship. Relatedly, compulsory Norwegian and social orientation courses for asylum and family migrants were introduced in 2003. While no citizenship tests were introduced in Norway, participation in the courses was obligatory in order to qualify for permanent residence and later citizenship. Immigration legislation, as we shall


533 Ibid., 100–101.

534 Ibid., 209 my translation.


536 In fact an important argument for maintaining the ban on dual citizenship related to forced marriages, as it would be more difficult to assist victims in countries such as Pakistan if they were dual citizens.


538 In 2013 the Introduction Act was amended to introduce compulsory final tests. Citizenship and immigration legislation have not been amended, however, so there are no actual sanctions associated with not passing these tests.
see, was also restricted in the post-9/11 era. It is, however, terribly difficult to demonstrate the ‘effect’ of 9/11 beyond pointing to this broad restrictive trend, occurring across Europe, of which Norway was a part. 9/11 was never mentioned explicitly in policy documents relating to citizenship reform.\(^{539}\) In debates and documents pertaining to family immigration, there are no explicit traces of this either, especially as family immigration was not ‘securitized’ in the same way as asylum.\(^{540}\) Concerns such as the rights of women and children were of much more importance in debates over family immigration, especially in the context of a gender-equal welfare state.\(^{541}\) The restrictions occurred, however, in the post-9/11 environment, where concerns over the place of Islam and Muslims in European societies were - at least - in the back of people’s minds.

### 4.3.2 The emerging panic over forced marriages

Both in Denmark\(^ {542}\) and in the United Kingdom,\(^ {543}\) the forced marriage debate has been argued to have characteristics of a ‘moral panic – a characterization which might also be applied in Norway. This is not to say that forced marriages do not represent a serious infraction of individual rights – they quite evidently do, as suggested by the importance placed on the freedom to marry whomever one wants in several international treaties.\(^ {544}\) The debate, however, took on a much broader character than the specific individual rights violation, and came to focus in particular on family immigration. Immigration is only one aspect of forced marriages, which

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\(^{539}\) Arnfinn Haagensen Midtbøen, “Innvandringens Ideologiske Konsekvenser: Årsaker Til Og Implikasjoner Av Statsborgerrettslig Divergens I de Skandinaviske Landene” (Master’s Thesis, University of Oslo, 2008), https://www.duo.uio.no/handle/10852/15769.

\(^{540}\) Cf. Bourbeau, *The Securitization of Migration*.


\(^{542}\) Rytter, “‘The Family of Denmark’ and ‘the Aliens,’” 302.

\(^{543}\) Grillo, “Marriages, Arranged and Forced: The UK Debate.”

\(^{544}\) See Dauvergne and Millbank, “Forced Marriage as a Harm in Domestic and International Law.”
otherwise relate to strict social control, and it is not necessarily entirely logical to seek the solution to a human rights problem in immigration law. This was, however, a central approach in much of Europe – even though there have not been reliable data anywhere on the scope of the problem, or reliable evidence to suggest that immigration restrictions might work. This section will note some of the most important actors and ideas in the forced marriage debate of the late 1990s, tracing its turn toward family immigration regulation. This ‘moral panic’ was central in bringing about stricter rules for family immigration.

Despite the putative end of primary immigration in 1975, immigration from countries such as Pakistan and Turkey continued into the 1990s as the children of the original foreign workers began to bring spouses from their country of origin. This practice brought more attention to arranged marriages – common in these countries – but also led to concerns over forced marriages. Forced marriages were put on the political agenda in Norway in the 1990s through media coverage of individual cases, most importantly the 1992 Sima case and the 1997-98 Nadia case. Attention to forced marriages has largely been driven by certain individual actors in the public debate, such as anthropologists Unni Wikan and Inger Lise Lien, and journalist/activist Hege Storhaug. Storhaug claims to have first made the Norwegian public aware of forced marriages through her coverage of the 1992 Sima case, and takes some credit for the re-criminalization of forced marriage in 1995. The story of Nadia features prominently in anthropologist Unni Wikan’s book Generous Betrayal, as Wikan was an expert witness on the trial of Nadia’s parents. These cases, Storhaug and Wikan, and the public debates that ensued

546 Bredal, Arrangerte ekteskap og tvangsekteskap i Norden, 75; Bredal, “Border Control to Prevent Forced Marriages: Choosing between Protecting Women and Protecting the Nation.”
548 Storhaug, Hellig tvang, 77.
549 Ibid., 80.
550 Wikan, Generous Betrayal.
played an important role in putting forced marriages on the political agenda, leading to the publication of the first Norwegian action plan against forced marriages in 1998.\textsuperscript{551} That same year, Hege Storhaug published a book on the topic called \textit{Hellig Tvang} (which translates as \textit{Sacred Force}). She also produced several TV documentaries and wrote for the popular press. While she proposed concrete policy measures in \textit{Hellig Tvang}, they did not involve restrictions on family migration – rather, she encouraged the use of so-called “fiancée(e) visas”, so that couples could live together before marriage,\textsuperscript{552} subsequently a recurring proposal from the immigration-friendly Liberal party (for an overview of parties, see Appendix B).

One way to visualize the growing concerns over forced marriage is to look at the incidence of the term in Norwegian media. As we can see from the below graph, media coverage of forced marriages began around 1995, peaking in 2002. This peak coincided with the ‘honor killing’ of the young Swedish woman Fadime Sahindal,\textsuperscript{553} which “caused massive outrage across Scandinavia” and “became a catalyst for a rethink of Norwegian integration policy”.\textsuperscript{554} A second peak coincides with the 2006-7 age limit debate.

\begin{footnotesize}
\textsuperscript{551} Bredal, “Border Control to Prevent Forced Marriages: Choosing between Protecting Women and Protecting the Nation.”
\textsuperscript{552} Storhaug, \textit{Hellig tvang}, 234.
\textsuperscript{553} Fadime was murdered by her own father after having chosen a Swedish boyfriend. The case became especially controversial as she had essentially foreseen her own death, and having spoken publicly about generational conflicts in immigrant communities. She became an important figure for many immigration policy critics, see for example Unni Wikan, \textit{In Honor of Fadime: Murder and Shame}, Revised and Extended, Partly Rewritten Version (University of Chicago Press, 2008).
\textsuperscript{554} Akkerman and Hagelund, “‘Women and Children First!’ Anti-Immigration Parties and Gender in Norway and the Netherlands,” 205.
\end{footnotesize}
Figure 1: Quarterly newspaper coverage of “forced marriage” (tvangsekteskap) in Norwegian print media, 1995-2010. Analysis produced in A-tekst/Retriever 12 December 2013.555

Given that the focus of the forced marriage debate was on young immigrants and children of immigrants, it was in many ways inscribed in the broader immigration debate.556 The first governmental action plan and Storhaug’s early writings on the issue, however, did not see the solution to the forced marriage problem in immigration legislation. Subsequently, however, Storhaug would become instrumental in pushing the immigration angle and the ‘Danish’ approach to forced marriage prevention. In her 2003 book Feminin Integrering (translated into

555 Note that the line does not actually return to zero – this is an artefact of the program through which I produced the graph.

556 Bredal, Arrangerte ekteskap og tvangsekteskap i Norden.
English by Bruce Bawer,\(^{557}\) with the catchy and telling title *Human Visas*) she embraced restrictions on family migration as the solution to the problem of forced marriages, claiming that young persons were forced into marriage in order to facilitate the immigration of people from the country of origin, often through cousin marriages. She was inspired by Danish policies and politicians in making this move;\(^{558}\) indeed she thanked Bertel Haarder, then-Danish Minister of Integration, is in the book’s acknowledgements\(^ {559}\) – evidence of the relatively important contact between Danish politicians and these Norwegian activists.\(^{560}\) In fact, Haarder is on record calling Unni Wikan his favorite author.\(^{561}\)

On the one hand, Storhaug’s work focused on the violations of the rights of individual migrants and young Norwegians, but on the other hand she has been concerned with broader demographic trends, frequently disputing the population and immigration forecasts of Statistics Norway. The cover of *Feminin Integrering* features a family tree, demonstrating how the arrival of one migrant from Pakistan, Ahmed, had led to the chain migration of 69 family members over a 30-year period, and the possibility of near-exponential continued family immigration is raised as a frightening specter. While having limited data to back up such a claim, Storhaug suggested that the example of the family she examined in her book was representative of the wider immigrant population: “we have also *met the faces which these statistics deal with:* through Mina we document the migration of an extended family to Norway over the last thirty years.”\(^ {562}\) As in Denmark, the most vocal activism *for* family immigration restrictions mixed arguments about individual rights and overall immigration numbers, echoing the work of Eyvind Vesselbo (whom she cites extensively). In challenging official statistics forecasts, Storhaug also used methods

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557 Bawer is a relatively controversial writer who is most well known for his writings that are critical to Islam, such as his book “While Europe Slept” He is sometimes associated with the Eurabia theory on how Muslims seek to take over Europe, which is generally considered a form of conspiracy theory revealing anti-Muslim sentiment.

558 Bredal, “Border Control to Prevent Forced Marriages: Choosing between Protecting Women and Protecting the Nation.”


560 see also Bredal, “Utlendingsloven Mot Tvangsekteskap.”

561 see Moeslund and Strasser, *Family Migration Policies in Denmark*, 24 at note 16.

562 Storhaug and Human Rights Service, *Feminin integrering*, 9, my translation and emphasis.
employed by the British group MigrationWatch, which publicly disputed British immigration
statistics in the early 2000s. These immigration skeptics all used knowledge claims to dispute
‘official’ data, taking advantage of the inherent uncertainty in such forecasting in order to
advance their views. They mixed arguments about individual rights and overall immigration
numbers, and while they often defended their policy proposals with a focus on the former aspect,
many of these measures were more logical in light of reducing immigration numbers.

4.3.3 The rise of the Progress Party
When examining the rise of family migration on the Norwegian political agenda we must also
acknowledge the role of the Progress Party (for an overview of Norwegian political parties see
Appendix B). The Party was founded as an anti-tax party in the 1970s under the leadership of
Anders Lange, but began to assert itself as Norway’s most anti-immigration party during the
mid-1980s. Their big breakthrough came in 1987, when the first significant spike in asylum
arrivals coincided with local elections. At the time, the party housed both libertarian and anti-
immigration factions, but the libertarians were largely pushed out in the early 1990s under then-
leader Carl I. Hagen. It should be emphasized that despite being the furthest right and most
anti-immigration party in Norwegian politics, the Progress Party is not usually classified as part
of the European populist radical right-wing parties and unlike the Danish People’s Party does
not consider itself part of this movement. The Party considers itself closer to the Danish

564 see ibid.
565 For an overview of Norwegian political parties, see Appendix A.
566 Akkerman and Hagelund, “‘Women and Children First’ Anti-Immigration Parties and Gender in Norway and
the Netherlands,” 201.
567 The split happened at the 1994 Convention, nicknamed “Dolkesjø”. Lars Unar Størdal Vegstein, “Varsler
Kursskifte I Frp,” Klassekampen, November 18, 2011, http://www.klassekampen.no/59551/article/item/null/varsler-
kursskifte-i-frp.
568 Mudde, “Three Decades of Populist Radical Right Parties in Western Europe.”
569 Indeed, one might be hard-pressed to find another right-populist party with prominent politicians of minority
background. The youth wing of the party was until 2013 lead by Himanshu Gulati, whose parents are Indian. Since
the party entered government, both he and Mazyar Keshvari (of Iranian origin) have prominent positions in the
party.
Liberals (*Venstre*) than the Danish People’s Party and does not belong to any international political groups or have any official sister parties.

All the same, during the 1980s, 1990s and early 2000s, all the other parties largely portrayed the Progress Party as holding ‘indecent’ opinions with regard to immigration - perhaps indicative of a *cordon sanitaire* strategy to contain their influence. The Progress Party position on family immigration hardened substantially towards the end of the 1990s, and they were also the only party to refuse to distinguish between forced and arranged marriages in the way that politicians on the right did in Denmark. As Hagelund and Akkerman show, the Progress Party “picked up on issues such as enforced marriages [sic] and genital mutilation as part of its immigration policy, condemning these practices in terms of human rights”. When other parties were perceived as slow to confront such issues, the far right could accuse “the political establishment of being inclined to cover up these issues”. By framing immigration restrictions as rights-protecting rather than rights-violating, the Progress Party has successfully argued for political intervention. FrP has also been instrumental in securing funding for Human Rights Service and the work of Hege Storhaug.

571 Hagelund, *The Importance of Being Decent*.
573 Bredal, *Arrangerte ekteskap og tvangsektaseskap i Norden*.
574 Akkerman and Hagelund, “‘Women and Children First!’ Anti-Immigration Parties and Gender in Norway and the Netherlands,” 201.
575 Ibid., 204.
576 See Baumgartner and Jones, *Agendas and Instability in American Politics*.
Some academics have argued that Labor has tried to ‘crack the code’ of the Progress Party by espousing some of their views – indeed, the parties compete for many of the same voters. While Bale et al. have argued that Labor has defused the influence of the Progress Party and that they have represented a larger problem for the political right than the left, others have argued that social democrats in Scandinavia have in fact been quite consistently restrictive on immigration independently of the presence of a far-right contender. Recent Norwegian research shows that the party political programs of Labor, the Conservatives and the Progress Party have become more similar on immigration in the past several elections, suggesting that the Progress Party has pulled the mainstream parties to the right on immigration over time. Notably, the Progress Party was the first party to problematize family immigration as such, suggesting an age limit for spousal sponsorship long before Labor launched it. The Progress Party’s transition to a ‘respectable’ political party was complete when it entered government in a coalition with the Conservatives in 2013 – by which point many of their previously ‘indecent’ positions were accepted in the mainstream.

4.3.4 Expert input: NOU 2004:20

Just as the 1957 Aliens’ Act looked dated towards the end of the 1970s, the 1988 Immigration Act was not adapted to immigration in the 21st century. Norwegian politicians again asked a commission made up of experts on migration and law to propose new immigration legislation.

578 Bale et al., “If You Can’t Beat Them, Join Them?”.
582 In the Conservative/Progress Party coalition government, the Progress Party holds both the immigration and integration portfolios.
583 The Committee, led by magistrate Bjørn Solbakken, had 8 members (some were switched during the process). Four were academic experts and four represented the legal profession and the police. A fifth legal expert was subcontracted to carry out assessments of specific legal questions, including the reach of article 8 on the right to family life with regard to reunification and formation as well as the possibility of introducing measures to prevent forced marriages.
Indeed, appointing expert commissions to investigate a given policy area and needs for change remains the standard way of making new policy in Norway. Their proposal was ready in 2004, published as NOU 2004:20 Ny Utlendingslov (Norwegian Official Report 2004:20 New Immigration Act, hereafter NOU). The NOU is, again, an example of the key role experts still play in the process of immigration policymaking in Norway, contra Denmark, and it is important to examine in the context of agenda setting and problem definition. To support this position, we can note that the 2007 White Paper proposing new legislation reproduced parts of the NOU 2004:20 verbatim, such as the description of the nature of family migration to Norway as well as the scope and content of Norway’s international obligations. Some of this may, however, be lip service paid to expertise: the focus on harmonization with the EU Family Reunification Directive, which was repeated in the White Paper, found limited resonance in parliamentary debates or with politicians interviewed for this project. EU minimum standards are perhaps more appealing to experts than politicians. Overall, however, the Commission espoused a certain view of family migration and appropriate measures of control that would be highly influential.

Compared to a brief two pages in the 1983 proposal, 50 pages were devoted to family migration in the 2004 report, reflecting its politicization and rise on the agenda in the intervening 20 years. The thorough treatment must have come partly from the Commission’s own initiative, as family immigration was not singled out in the Commission’s otherwise quite comprehensive mandate. The Commission sought to outline Norway’s international obligations with much more precision in order to determine the state’s margin of maneuver. Although the EU Family Reunification Directive is not binding for Norway, the Commission argued that it was of “central importance” from a “harmonization perspective, and in relation to the mechanisms in the

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585 Interview with former politician March 2012, Interview with opposition politician June 2012, Interview with parliamentary politician May 2012.

586 NOU 2004:20, Ny Utlendingslov. The mandate, among other things, calls on the Commission to elaborate simple rules that will allow Norway to attract foreign workers, and to consider asylum and other international obligations with regard to protection. The right to family life is not mentioned specifically, although non-discrimination and other human rights norms are.
migration field that affect migratory development”\textsuperscript{587} – likely a reference to the interdependence between different European countries in this area.\textsuperscript{588} While Norway is not a member of the EU, it is in many ways enmeshed in EU immigration policies through its participation in the Schengen systems (whereby Norway enforces the external borders of the Union) and the Dublin Regulations (which determine where an asylum application should be processed).\textsuperscript{589} On family migration, however, Norway is much less affected by EU integration.\textsuperscript{590}

The Commission made three particularly influential contributions to the understanding and perspective on family immigration legislation in Norway which we must note. These are first, that the Commission argued that human rights obligations were stronger with regard to family reunifications than with regard to family formation. Secondly, they understood forced marriages as at least partly motivated by the objective of securing a visa to the West, and so saw immigration legislation as a venue to combat forced marriages. Thirdly, they ratified a perception held in Norway that family immigration rules were a pull factor for asylum seekers.

With regard to the first point, the Commission engaged in in-depth discussion of the reach of ECHR art. 8, noting that “an infringement into the right to family life does not necessarily constitute a violation of the [ECHR],”\textsuperscript{591} except potentially in the case of refugees who cannot

\textsuperscript{587} NOU 2004:20, 212.


\textsuperscript{589} Norway is part of Schengen due to the existing participation in a Nordic passport union, which could only be maintained if Norway entered Schengen. Norway thus enforces the external borders of the EU, for instance at the land border with Russia. Norway has implemented the Returns Directive and cooperates with EU agencies such as Frontex (the border control agency) and since 2012 with the European Asylum Support Office (EASO).

\textsuperscript{590} It should be noted that Norway is part of the European Free Movement Area through the European Economic Area Agreement, entered into after Norway voted no to joining the EU for the second time in 1994. The 2004 Citizens’ Directive is implemented into Norwegian legislation, and thus, as in Denmark, Norway is bound by the family reunification provisions therein, which allow domestic legislation to be circumvented exactly in the same way as we have seen in Denmark (viz. “the Swedish Route”). These rules have not been widely known in Norway, and indeed it is somewhat counterintuitive that Norwegians, who are not EU citizens, should be able to benefit from what are otherwise considered EU citizen rights. Recently, however, there has been a little more attention devoted to this, as the pressure group “Grenseløs Kjærlighet” (Love without borders, See http://grenseloskjaerlighet.com/, accessed 20 October 2013.) has informed of this possibility to couples denied reunification. Some Norwegian families have begun to do like their Danish counterparts, settling across the border into Sweden.

\textsuperscript{591} NOU 2004:20, 209.
exercise family life elsewhere\textsuperscript{592} (this is what we know as ‘the elsewhere approach’), as art. 8 is not an absolute right. As they lay out, infringements are legal if they a) have a legitimate aim, b) are grounded in law and c) are necessary in a democratic society. Immigration controls as such that have as their purpose to further the economic and social wellbeing of a country – including income requirements for family immigration – were highlighted as aims which the Strasbourg Court has considered legitimate. The third requirement was identified as the only aspect that required more extensive consideration. It is under this rubric that we find the proportionality assessment, i.e. a weighing of the infringement itself against state interests. In the case law of the Court, this weighing is quite fact-specific and it is thus difficult to say with precision where the Court would draw the line, as the Commission also noted.

The Commission’s proposal kept family immigration as a right given that conditions were fulfilled. At the same time, they took an important step with regard to outlining the margin of maneuver of the state and minimizing the importance of this right when they emphasized the analytical distinction between family reunification and family formation. Reunification was defined as instances where the couple had already lived together for a certain amount of time, whereas formation involved the establishment of family life. The Commission argued that

\[
\text{in the proportionality assessment there is an important difference in degree between cases of family reunification proper and cases of recent marriages.…. How far the protection really goes with regard to marriages entered into after the immigration of the sponsor to the member state is unclear…}^{593}
\]

Thus, reunification of existing families was “considered to touch upon more important interests than the right to family formation.”\textsuperscript{594} As this distinction did not previously exist in law, there was limited data on the relative size of reunification and formation flows. One might argue that the Commission’s method for estimating the scope of family formation was bound to overestimate it, as they assumed that all instances where the sponsor was a citizen was a case of

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{592} NOU 2004:20, 210.
\item \textsuperscript{593} NOU 2004:20, 209-210.
\item \textsuperscript{594} NOU 2004:20, 212.
\end{itemize}
\end{footnotesize}
family formation – ignoring situations where citizens lived abroad and then returned with a spouse. They arrive at an assumption of 54% family formation in this way.\textsuperscript{595} The Commission, through arguing that family formation merited lesser human rights protection, legitimated the idea that family formation migration could be more closely controlled than reunifications.

In addition to being considered as more weakly protected in human rights law, family formation was more negatively framed as it was linked to undesirable practices.\textsuperscript{596} Family formation was largely associated with transnational arranged marriages, of which “a proportion … largely seem motivated by a migration strategy”, as “family formation is for many the only opportunity to gain residence in a Western country”.\textsuperscript{597} This was, in turn, seen as an important explanatory factor with regard to pressure exerted on young Norwegians to marry persons from the country of origin.\textsuperscript{598} This was framed as a sort of distortion of rules that were intended to “ensure the right to family life”, but instead led to the violation of individual rights.\textsuperscript{599} The Commission was careful not to equate forced and arranged marriages, however, and did not consider that arranged marriages as such should be restricted as long as they involved meaningful consent.\textsuperscript{600} The peak of the forced marriage debate in 2002, evidently influenced commission discussions on what type of family migration policies Norway should have. To illustrate the importance of this concern in the NOU, one can note that variations of the word ‘force’ (tvang) or ‘forced marriage’ (tvangsektaskap) occur 75 times in the report’s family migration chapter. Conversely ‘love’ only appears once, in the construction ‘love marriage’ (kjærlighetsektaskap), to define the contrary to a forced marriage. ‘Family life’ (familieliv), for comparison, is mentioned 16 times. The

\textsuperscript{595} NOU 2004:20, 213.

\textsuperscript{596} Note that family formation migration involving Norwegian men and women from South East Asia has rarely featured in these debates on ‘problematic’ family immigration.

\textsuperscript{597} NOU 2004:20, 244.

\textsuperscript{598} NOU 2004:20, 244.

\textsuperscript{599} NOU 2004:20, 241.

\textsuperscript{600} NOU 2004:20, 241.
Commission also ordered a special study on the Strasbourg case law, forced marriages and family immigration.601

Myrdahl has argued that the NOU sought to ‘legislate love’, promoting a distinct cultural idea of romantic love as the legitimate basis for family immigration – and in so doing representing a certain type of ‘racial project’.602 As such, she saw the NOU as threading the same path as many have identified in Denmark, reading racist intent into the policies.603 As my quick count above indicates, however, any focus on ‘love’ is highly implicit – the word occurred only once. While the ‘culturalist turn'604 arguably colors the text to some extent, there is also evidence of significant efforts to distinguish between categories (such as forced and arranged marriages) which was not at all done in Denmark; perhaps not surprising coming from an expert commission. The policies proposed are not analogous to the frontal assault on the marriage patterns of minorities that the Danish rules represented. At the time, Norway had recently introduced the income requirement for under 23-year olds as a means to combat forced marriages. This move met with some skepticism in the NOU, due to concerns over young people leaving education.605 The Commission did not support a general income requirement in the law, and noted the confusion between the “main rule” of the income requirement and the many exemptions from it.606 They also questioned the use of an exception from the income requirement for citizen sponsors, questioning whether this was in line with the principle of non-discrimination.607 The experts, then, questioned the favorable treatment of citizens.

601 This study was later published as an article, see Terje Einarsen, “Familieinnvandring, Tvangseketeskap Og Politikk,” Tidsskrift for Familierett, Arverett Og Barnevernrettslige Spørsmål 2 (2005): 107–21.


603 See for example Wren, “Cultural Racism”; Fair, “‘Why Can’t I Get Married?’.”

604 Schmidt, “Law and Identity.”


607 Ibid., 99.
Alongside forced marriages, the other issue dominating the discussion on family migration was the linkage between family migration flows and asylum flows. Norway received its highest ever number of asylum seekers in 2002. Asylum migration, in turn, begets family migration (as of course does any migration) – and the top source countries for asylum seekers have been important sources of family immigration as there were until recently immigration routes to Norway. Furthermore, Norway experienced a drop in asylum applications from Northern Iraq after the introduction of a temporary permit without access to family reunification for asylum seekers from this area in 2000. Following this, access to family reunification was widely assumed to be a ‘pull factor’ for asylum seekers, an interpretation that the Commission endorsed. It engaged in an extensive and somewhat tortuous discussion on the use of restrictive family reunification rules as a means to reduce asylum applications, but in the end decided against it.

One might note that this is a little like saying that getting something to eat, or a place to live, is a pull factor for asylum seekers – indeed, it is rather evident that asylum seekers may be motivated to go to a place where their basic needs and human rights might be respected. The logic of deterrence, however, has been important in the asylum policies of many European countries – including the cruel British practice of rendering asylum seekers destitute, introduced in 2002, which British courts eventually found in violation of ECHR art. 3 (inhuman and degrading treatment). Deterrence through the family rules has, however, not been emphasized in Danish and British family immigration debates, and this view of family migration rules as a pull factor is peculiarly Norwegian.

4.3.5 Summing up

I have shown in this section that family immigration began to become more politicized from the mid-1990s until the peak of debates over forced marriages and asylum arrivals in 2002; which coincided with the post-9/11 ‘crisis of multiculturalism’ and unease over the place of immigrants in general and Muslims in particular in European countries. In Norway, the Progress Party capitalized on such concerns, especially relating to the rights of immigrant women and children,

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608 Ibid., 214.
609 Ibid., 214–216.
610 Guiraudon and Joppke, *Controlling a New Migration World*. 
pushing for family immigration regulation. As in Denmark, stricter family immigration rules were framed as potentially rights-protecting rather than rights-violating – and over the course of the mid-2000s the thinking of the Progress Party would become more widely accepted. The expert commission working to propose new immigration legislation between 2001 and 2004 was influenced by these debates as well, relaying concerns over forced marriages and legitimizing differential treatment of new and existing family relationships in their attempt to clearly delineate Norway’s international obligations while finding ways to prevent forced marriages. As family immigration had risen on the immigration policy agenda, policymakers would begin to implement restrictive changes starting in 2003. These changes will be examined in the next section.

4.4 Reforming family immigration: politicians’ regulatory capacity

After reviewing the historical legacy of family immigration regulation, this most important section of the chapter will analyze four instances of changes to Norwegian family immigration regulation in the 2000s. One of these changes predates the large reform envisaged in the NOU 2004:20, while the other three follow more or less from it. The first marks the beginning of the use of family immigration regulations to prevent forced marriages. What it also represents, which has been little remarked, is a conceptual change whereby citizens were for the first time more affected by restrictive rules for family immigration. By the fourth round of changes, all citizens faced much stricter rules for family immigration than they had ten years earlier. This is not to say that Norway closed the door on family migration to the extent that Denmark did. While labor immigration overtook the family route as the most important immigration category overall from 2006 (due to high intra-EU immigration), family immigration remains the most important non-EEA route. Norway has, however, introduced much more complex regulations than before, arguably shifting family immigration flows towards the family members of the highly skilled and high-earning. As in Denmark, Norwegian politicians sought to introduce an age limit for spouses. This failed, however. The other three reforms, two of which focused on income rules for sponsorship, were implemented quite easily. I will examine each of these four instances of reform, focusing on politicians’ intentions and objectives, target groups, and politicians’ reliance on expert input. I argue that the regulating family immigration is a balancing act where measures and outcomes are weighed against policy objectives. Given the non-absolute nature of the right to family life, policy objectives are an important factor in determining whether
a measure is proportional. If the objectives are broad enough, restrictive measures can more easily be implemented.

<table>
<thead>
<tr>
<th>Year</th>
<th>Change</th>
<th>Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>1957</td>
<td>1957 Aliens’ Act</td>
<td>Broad enabling act without regulation of family migration</td>
</tr>
<tr>
<td>1973-4</td>
<td>First White Paper on Immigration</td>
<td>No mention of family</td>
</tr>
<tr>
<td>1975</td>
<td>‘Immigration Stop’ Regulations</td>
<td>Family migration regulated for the first time, income requirement but not applied to citizens</td>
</tr>
<tr>
<td>1979-80</td>
<td>White Paper on Immigration</td>
<td>Emphasis that income requirement should be practiced generously for citizens</td>
</tr>
<tr>
<td>1987</td>
<td>Law Proposal for new Immigration Act</td>
<td>Family reunification taken for granted</td>
</tr>
<tr>
<td>1988</td>
<td>Immigration Act 1988</td>
<td>All parties agreed on right to family immigration for insiders</td>
</tr>
<tr>
<td>1991</td>
<td>Immigration Regulations 1991</td>
<td>Income requirement, but waived for citizens and refugees</td>
</tr>
<tr>
<td>1997</td>
<td>Changes to Immigration Regulations</td>
<td>Income requirement waived for persons with humanitarian permits as well</td>
</tr>
<tr>
<td>2003</td>
<td>Changes to Immigration Regulations (1) Income requirement reintroduced for persons with humanitarian permits (asylum pull factor logic) (2) Income requirement introduced for citizens under age 23 (forced marriage logic)</td>
<td></td>
</tr>
<tr>
<td>2004</td>
<td>Expert Proposal on new Immigration Act</td>
<td>Recommends age limit (21) for spouses, but not income requirement. Focus on forced marriage and asylum seekers.</td>
</tr>
<tr>
<td>2005</td>
<td>Public consultation on expert proposal</td>
<td>Resistance to age limit – dumping concerns</td>
</tr>
<tr>
<td>2006-7</td>
<td>Age and attachment requirement proposal/consultation</td>
<td>Strong resistance against proposal, broad debate</td>
</tr>
<tr>
<td>2008</td>
<td>Parliamentary debates on new Immigration Act</td>
<td>Debated in April, law passed in May.</td>
</tr>
<tr>
<td>2008</td>
<td>13 points to reduce asylum flows</td>
<td>September. Attachment requirement proposed again as means to reduce asylum inflows.</td>
</tr>
<tr>
<td>2008</td>
<td>New consultation on income rules</td>
<td>October. Broad objectives, limited controversy.</td>
</tr>
<tr>
<td>2009</td>
<td>4-year rule</td>
<td>Passage of 4-year rule/attachment requirement in the extension of high asylum arrivals</td>
</tr>
</tbody>
</table>
Table 8: Main changes to Norwegian family immigration policy, 1957-2010

<table>
<thead>
<tr>
<th>2010</th>
<th>Immigration Act 2008 enters into force</th>
<th>Higher and expanded income rules entered into force</th>
</tr>
</thead>
</table>

4.4.1 2003: Income requirement, take 1

The first round of reforms were pursued during the elaboration of the NOU 2004:20, and concerned a first expansion of the income requirement.

4.4.1.1 Proposal

2002 was a key year in two ways: asylum arrivals peaked at 18,500 – a number still unsurpassed ten years later – and the forced marriage debate peaked as well, with the murder of the young Swedish woman Fadime Sahindal. Having just asked an expert commission to propose new immigration legislation, the government could not very well start such a process on its own, but it was under pressure to ‘do something’. The high asylum arrivals, in particular, led the Bondevik II government, with the Conservative Erna Solberg in charge of the immigration portfolio, to look for means to reduce asylum inflows. Simultaneously, forced marriage concerns led to the publication of a new Action Plan against forced marriages, following on a previous plan from 1998 (under Bondevik I). This plan, for the first time, proposed using immigration legislation to combat forced marriages.

In both instances, the government grasped for the income requirement for family immigration as a solution to their ‘problem’. An income requirement had been an integral part of Norwegian family immigration regulations since 1975. Over the years, however, different categories of sponsors had been exempted from the requirement. Sponsors who were citizens or had Convention refugee status had never been required to demonstrate adequate income. Under Bondevik I, as part of an electoral commitment to liberalize refugee policy, persons with humanitarian status were added to the list of exempted groups in 1997. From 1997 onwards, Akkerman and Hagelund, “‘Women and Children First!’ Anti-Immigration Parties and Gender in Norway and the Netherlands.” Gudbrandsen, “Partisan Influence on Immigration,” 253.
then, most categories of sponsors were in fact exempted from the income rules. Two separate public consultations on the changes to the income requirement in 2003: the first one sought to revoke the exemption from the income requirement that had been introduced in 1997, requiring that sponsors with humanitarian status demonstrate income to sponsor family members. The second proposed to require that all sponsors – even citizens – demonstrate adequate income in cases where one of the spouses was under the age of 23 (an exception was made for refugee family reunification when the family predated flight, foreshadowing the distinction between family formation and reunification). 613 This second proposal followed from Point 5 in the Action Plan against Forced Marriages. 614

We can examine the consultation letters in order to understand the logic behind using the income requirement in this way. The first change, concerning persons with humanitarian status, was justified most clearly with reference to a desire to bring down asylum numbers. As the Ministry reasoned, “The strong growth in the number of asylum seekers and the number of family reunifications can partly be explained by the fact that Norway has had significantly more liberal rules in this area than other countries.” 615 Changing the rules, they expected, “may lead to a reduced inflow of asylum seekers to Norway. If fewer persons get residence following reduced asylum applications in Norway, it may lead to fewer family reunifications in turn”. 616 They added a second justification, however, which was that “it is also important to stimulate those living here to become self-sufficient more quickly”. 617 As we see, the proposed change had dual, broad objectives: preventing asylum seeker inflows and encouraging integration into the workplace. Both objectives have been widely supported and accepted as legitimate across the

614 Regjeringen, “Regjeringens Tiltaksplan for Fornyet Innsats Mot Tvangsekteskap.”
616 Ibid.
The objective of preventing asylum seeker inflows can of course be deeply problematic, but it is at the heart of common policies of ‘deterrence’.  


Arbeidsdepartementet, “Høringsbrev: Forslag Til Endringer I Utlendingsforskriften §§ 25 Annet, Tredje Og Fjerde Ledd Og 19 Femte Ledd.”
with a strategy of debate limitation, the Ministry also deviated from the regular public consultation rules with regard to the income requirement for persons with humanitarian grounds, having a shorter consultation period than what was generally required. 22 responses with comments were received in the consultation on the proposal to reintroduce the income requirement for persons with humanitarian status. Other Ministries were generally quite favorable – even the Ministry of Finance intervened (somewhat unusually), noting that the budgetary savings from reduced asylum inflows could be quite high. This suggests a focus on the fiscal perspective on immigration to an expansive welfare state. Refugee and human rights NGOs were critical on the grounds that many persons who in practice could not return (recipients of subsidiary protection) would now be treated worse than Convention refugees. There was also some concern that delayed family reunification would hinder integration rather than promote it. Overall, the responses were reasonably critical, but with support from certain important respondents.

Of 19 responses with comments to the 23-year rule, about half were skeptical about whether the income rule would in fact prevent forced marriages, although they all welcomed efforts to tackle the problem. The overall tone was thus much more positive than in the previous consultation. Three types of concerns were raised: the lack of knowledge about the scope of forced marriages, the possibility that young persons would be held against their will in the country of origin until age 23, and the concern that young persons would be pushed to leave education and begin working in order to comply with the new rule. Some important actors were very positive to the proposal, however, including the Norwegian Red Cross (in charge of running a free phone service for potential victims of forced marriages). And while the Norwegian embassy in Islamabad was negative, the embassy in Rabat warmly welcomed the proposal. The Directorate of Immigration also supported the measure. The consultation does not suggest anything like the broad conflict we will see in 2006.

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621 While this sounds like a small number, remember that Norway is a country of 5 million people and that the 2006 consultation examined below – one of the most contentious immigration consultations on record – had 65 responses.

622 The responses were obtained through a freedom of information request, as they are not electronically available.
A database search over media coverage of these changes suggests relatively limited debate in the media as well, although Hege Storhaug was among those who argued that parents might force girls to leave education in order to work and finance their own forced marriage. An editorial in the tabloid Dagbladet considered the income rule for under-23-year-olds “curious” (underlig), noting that it would affect everyone and not just those at risk of forced marriage, and arguing that it was problematic to have different requirements for someone marrying a foreign spouse than someone marrying a Norwegian spouse. These critical examples were few and far between, however, and there was no significant public conflict surrounding the changes. Politically, the government had the support of the Progress Party (Bondevik II relied on them for bloc support), but also the Labor Party when it came to restrictions for those with humanitarian permits. With regard to preventing forced marriages, even the Socialist Party supported the changes. Experts were not directly involved with the elaboration of these rules, which were initiated by policymakers themselves. The Immigration Act Commission was in fact critical of the usage of income rules to prevent forced marriages, for the same reason as Hege Storhaug and some others (i.e. the fear that it would push young persons to leave education), but their report was only published the following year. These first income rules, then, were put through with broad cooperation across the aisle in Parliament.

4.4.1.3 Implementation

As the policy changes had widely accepted objectives and relatively specific target groups, and as the scope of conflict was reasonably narrow (coupled with strong pressure to act quickly), the changes were quite easily implemented within a short time, entering into force in the second half

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623 The database A-tekst has 13 records of «underholdskrav*» (maintenance requirement) during the period 01.01.2002-31.12.2003, and 8 records of the combination “tvangsektekap AND underhold*” (forced marriage and maintenance)
of 2003. High asylum arrivals made it important for a government to show that it is ‘in control’, and the round of changes for those with humanitarian status were one way to do so – especially in light of the broad conviction in Norway that family immigration rules are a pull factor for asylum seeking. The second measure – to prevent forced marriages – was also relatively uncontroversial; even though it represented the first time citizens had to fulfill the income requirement, challenging previous understandings of the rights of ‘insiders’ to family reunification. This, however, was a fact that stakeholders barely noted. As we have seen, it was the objective of forced marriage prevention which led to this conceptual change: the potential victims of forced marriage, as part of the second generation, were likely to hold citizenship, and forced marriage prevention through immigration legislation would thus have to involve measures targeting citizens. Through the framing of an immigration control measure as rights-protecting, rather than rights-violating, the conservative coalition government opened the way for restricting family immigration for sponsors previously exempted.

4.4.2 2006: The attempt at a Danish age limit and attachment requirement

Labor, with coalition partners from the Center Party and the Socialist Left Party formed a majority government after the 2005 election. The Center Party, a small agrarian party, had previously aligned with the center-right. The Socialists, a populist party on the so-called Nordic green left, had never been in government before. While Labor and the Center Party held relatively restrictive views on immigration, the Socialists had historically held liberal views (opposing the 1988 Immigration Act for being too restrictive, for instance). In the government platform, they had promised to pursue the work of reforming the entire Immigration Act, mentioning that they would review the family immigration rules without going into specifics. In light of intra-coalition disagreements about immigration policy, the reform work stalled. All agreed, however, on the importance of preventing forced marriages, and the issue was singled out as a priority area.


4.4.2.1 Proposal

A 21-year age limit to prevent forced marriages was suggested in the NOU (see section 4.3.4), and around this time (i.e. 2004-5), the idea was also being discussed in the Labor Party’s working group on integration policy, which travelled to Denmark to learn from their counterparts in the Danish Social Democrats.\(^{631}\) The proposal was never included in the Labor party electoral program\(^ {632}\) or in the coalition agreement.\(^ {633}\) Therefore there was some surprise when the rather forceful Labor Minister of Immigration, Bjarne Håkon Hanssen, released what he called a ‘trial balloon’ (prøveballong) in February 2003, calling for an age limit for spousal sponsorship at a level between the NOU proposal (21) and the Danish rule (24) in an interview with Norway’s biggest tabloid, VG.\(^ {634}\) The youth wing of the Labor Party (AUF) was particularly displeased, along with the Socialist coalition partners.\(^ {635}\) This was followed by months of steady, intense media debates over forced marriages (see Figure 1).

Later that spring, Hanssen travelled with the Minister of Integration Karita Bekkemellem Orheim,\(^ {636}\) and other policymakers and bureaucrats to Denmark in order to learn more about the Danish family immigration rules. Such trips are not uncommon, but this one received significant attention in the press - as one VG headline suggested, the delegation was taking a “course in tough immigration policy”.\(^ {637}\) This attention to Danish policies was also very much tied to the central promoters of the age limit in Norway - as Bekkemellem’s comments about Hege Storhaug in her autobiography suggest:

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\(^{631}\) Interview May 2012.


\(^{633}\) Office of the Prime Minister, “Political Platform as basis for the Government’s work (Soria Moria I).”


\(^{636}\) Now just called Bekkemellem.

Hege Storhaug and Rita Karlsen [Storhaug’s collaborator] had been in touch with me before, and got in touch again under Stoltenberg II. They worked closely with issues that gained little media attention, they followed the immigration debate and international developments within the field, and they were particularly oriented toward Denmark. It was useful to get this broadening of my perspective. During a trip to Denmark I had meetings with experts [in the Danish bureaucracy] and politicians, and I of course noticed how HRS’ work was emphasized there.638

As we saw in the previous chapter, the Danish 2002 policies had multiple policy objectives: forced marriage prevention, integration and reduction in immigration numbers. Apparently, Danish policymakers emphasized their successes with regard to reducing immigration numbers and the numbers of transnational marriages in the meetings, not forced marriages.639 In spite of this, Norwegian policymakers pursued the age limit measure as a means to prevent forced marriages, using the logic of assuming that maturity would increase with age in the same way as in Denmark (i.e. that young people would become more resilient and able to resist pressure with age). The minister insisted publicly that the age limit was not intended to prevent immigration as such.

4.4.2.2 Constraints

After months of steady media coverage, a public consultation was held starting in October 2006. This stands out still as a highly contentious consultation compared to what is usually seen with regard to changes to immigration legislation.640 The conflict, apparently, did not only rage in the media, but also within the ministry itself. Several interviewees suggested that due to resistance to the measure among bureaucrats, a Labor party insider was brought in to assist with the consultation itself.641 To the frustration of many respondents, the consultation question was

639 Interview with former Norwegian policymaker, April 2012.
640 For an analysis of this consultation from the perspective of gender equality see Hege Skjeie and Mari Teigen, *Likestilling Og Minoritetspolitis*kk (Oslo: Institutt for samfunnsforskning, 2007).
641 Interview with policymaker, May 2012, and Interview with activist, May 2012.
phrased as a conditional: “if an age limit of 21 years is introduced as a requirement for a residence permit for spouses/cohabitants […] should this be combined with measures to prevent young persons from being kept in the country of origin until the age requirement is fulfilled […]”?

These ‘measures’ were three different variants of an attachment requirement, which bureaucrats had developed in order to create a more predictable rule than the Danish attachment requirement. The reaction from many respondents, however, was that they did not want an age limit at all. Of 65 responses, 29 were against the age limit and 16 pronounced themselves in favor of it. Most of the main minority-based political organizations were among the 29 who did not want an age limit, although some did support it. One politician mused that such consultations always produced the same critical responses from the same radical organizations - like a ‘broken record’. This one, however, even elicited a concerned response from the Ministry of Foreign Affairs, noting that there were real concerns over whether the measure would be proportionate given the narrower policy objectives than those pursued in Denmark. Further, while the proposal drew on the 2004 NOU, the high level of uncertainty about the scope and mechanisms of forced marriages meant that knowledge claims were disputed and uncertain. Many respondents deplored the lack of further research and referred to experiences from Denmark showing precisely that the measure did not work to prevent forced marriages. Many cited experiences from the Danish association of emergency shelters, LOKK, whose leader had spoken at an event in Norway around this time, claiming that the rules had in fact made it more difficult to assist victims of forced marriage as they were more likely to be forced abroad (either


643 Interview, civil servant, March 2012.

644 Other respondents, refrained from commenting.

645 Skjeie and Teigen, Likestilling Og Minoritetspolitikk, 31.

646 Interview, May 2012.

647 Consultation letter, Ministry of Foreign Affairs.

648 Including the Ministry of Foreign Affairs, the Equality Ombud, the Children’s Ombud, Amnesty International and other organizations.
to the country of origin or also to Sweden). A prominent researcher on forced marriages argued that the measure did not take the ‘force’ in forced marriages seriously by seeing only the immigration aspect.

4.4.2.3 Failure

The conflict over the age limit raged, as we have seen, in the press and within the Ministry as well as among the consultation respondents - including other government ministries. Skjeie and Teigen opined that “the resistance from the stakeholders that were able to voice their opinion through this consultation is so great that the authorities risk making the consultation system look like a sham institution unless they act in accordance with it”. Most importantly, however, the conflict raged within the government coalition. Two of the critical responses to the consultation actually came from the Socialist Party’s subcommittee on ethnic discrimination and from its Parliamentary Party Group, and prominent Socialists denounced the policy in the media. The youth wing of the Labor Party (AUF) and some of their local politicians were also against it, objecting to the age limit’s association with a right-wing Danish government and its popularity among Progress Party politicians.

Here, the scope of conflict was remarkably broad - it raged in the coalition, in the Ministry, in the media and among experts. The conflict was tacked on to broader political cleavages between the Left and the Progress Party, and the insistence from the Minister that he did not intend to prevent immigration as such was met with much skepticism from many civil society and stakeholder organizations. The narrow objective combined with the general and absolute nature

649 This was mentioned in the consultation responses from The Resource Center for Pakistani Children (Ressurssenter for pakistanske barn), Legal advice for women (JURK), and the Secretariat of Shelters (Krisesentersekretariatet).
651 Skjeie and Teigen, Likestilling Og Minoritetspolitikk, 38.
of the measure and the lack of exemptions (media reports suggested that Norwegian men with Russian wives would be hardest hit\textsuperscript{655} led to great doubts about its proportionality. In the end, the measure was abandoned for a combination of reasons - chiefly, it seems, due to the Socialists getting their way in an intra-coalition deal.\textsuperscript{656} The combination of a very broad conflict, disputed claims about cause and effect, a narrow policy objective and a broad target group led the government to drop the measure.

4.4.3  2008: Income requirement, take 2

Subsequent to the failure of the age limit, Norwegian policymakers returned to the income requirement as a central tool of family immigration regulation. The policy process leading to the implementation of the high income requirement will be examined in this section. I will argue that broader objectives, narrower scope of conflict and better timing contributed to the success of the initiative. I will also demonstrate the flexibility of the income requirement, as Norwegian policymakers employed it at once to deter asylum seekers and attract highly skilled workers.

4.4.3.1  Income rules for everyone!

In 2007, the Ministry finally released draft legislation after years of haggling. The new legislation was debated in Parliament in the spring of 2008. While based on the original 2004 NOU, the age limit had been abandoned for a new income requirement.\textsuperscript{657} In the proposal, the Ministry professed itself in disagreement with the commission regarding the desirability of a main rule that income should be secured. The Commission had objected based on the many exceptions. This objection was largely met, however, as the Ministry proposed a number of new restrictions: (a) that only the sponsor’s income would count, (b) that the requirement be raised from pay scale level 1 to 8, (c) that the income requirement should also be fulfilled in the year preceding application, (d) that the sponsor should not have received social assistance in the past 12 months, and (e) that “today’s system whereby as a rule there are exemptions from the income


\textsuperscript{656} Interview with Norwegian politician, April 2012.

requirement for spouses or cohabitants of Norwegian citizens over the age of 23 […] be removed’. 658 The ‘main rule’ would actually be the main rule from now on.

Whereas the politicians debating the 1988 Immigration Act agreed that family reunification was a fundamental right in a liberal democracy, full stop, policymakers debating the new Immigration Act 20 years later followed this statement (which they still did make) 659 with a number of qualifiers, such as how it “unfortunately turns out that the family reunification rules are also abused, such as with marriages of convenience and forced marriages”. 660 Indeed, when asked about the objectives of family reunification policy, most politicians interviewed for this project began with the objectives of preventing abuse and forced marriages, rather than the objective of ensuring family life, 661 showcasing the policy image of family immigration as a potential source of ‘problems’ had lodged itself in Norwegian political discourse.

So while there were certain liberalizing measures in the bill – such as equating unmarried partners who had lived together for two years with married partners – politicians expressed a desire to restrict family reunification in order to prevent abuse, in particular in the form of forced marriages. The Labor speaker introduced the income requirement, whereby only the sponsor’s income would count, arguing that it would make it easier to “resist pressure from family with regard to forced marriage.” 662 This was based on the idea that financial independence would make it easier to say no to parental pressure. The measure was otherwise introduced in technical terms: “Today’s requirement for maintenance is raised from pay scale level 1 to pay scale level 8. There will also be a requirement for an equivalent income in the preceding year”. 663 He also emphasized that they did not expect this change to make much difference with regard to the

659 Inst. O. nr 42, p 36
661 Interviews, March-June 2012.
number of family migrants entering Norway, downplaying the scope of the change. As such, the change was presented as fairly technocratic, with limited acknowledgement of its actual scope. The expansion of the rule to citizens, as we saw above, was merely the withdrawal of an existing exemption. Only the Christian Democrats argued that the measure was poorly targeted at forced marriages and that it would have unfortunate consequences for low-income workers. In response, it was noted that the income requirement was in fact reintroduced in 2003 under a government led by none other than the Christian Democrats - just as the opposition of the Danish Social Liberals was met with the response that they were part of the coalition government that introduced the first Danish attachment requirement in 2000.

In the debates, as in 1988, the Socialists thought the measures were too restrictive - but this time they had agreed to them in the context of the coalition. Again, as in 1988, the Progress Party thought rules were not restrictive enough. Instead of putting their support behind the bill, or seeking to amend parts of it, the Progress Party members of the committee handling the bill actually proposed an entirely separate Immigration Act, for which only they voted. They considered “family immigration policy to be the most misguided part of Norwegian immigration policy, first and foremost because it facilitates forced marriages and an ever increasing inflow from groups that are difficult to integrate,” and essentially proposed to introduce a carbon copy of the Danish family rules. No other party supported the Progress Party proposal, but a large Parliamentary majority supported the majority proposal, passing a new main rule that income should be secured regardless of the citizenship of the sponsor. Here, then, the equality argument was used to level the status of citizens down, rather than leveling the status of non-citizens up – in a complete reversal from the thinking displayed in the 1988 Immigration Act.

How could we explain such a complete reversal? Most fundamentally, the problem of forced marriages was understood in such a way as to legitimate and even require restrictions on family immigration with citizen sponsors. Young persons of minority background – the at-risk population on which attention was focused – were indeed generally citizens. The argument that

664 Bjørg Tørresdal, KrF, O.Tidende (2007-8), 301.
666 Innst. O. nr 42, p 6.
forced marriages of young citizens must be prevented was even central to the decision not to introduce dual citizenship provisions in Norwegian citizenship law. More broadly, Norwegian political discourse had also moved away from the more postnationalist and multiculturalist tone of the 1980s, although this is more difficult to demonstrate with precision. Ideas about self-sufficiency and the so-called arbeidslinja or work orientation of Norwegian welfare policy arguably also played a part, and it was seen as a good thing that (women) sponsors should demonstrate their financial independence. As such, the extension of requirements to citizens was broadly seen as rights-enhancing, unlike in the 1980s.

The main rule that income should be secured was thus passed in the Immigration Act, but the specifics of the rule were relegated to secondary legislation. The Ministry of Labor held a consultation on the provisions of the Immigration Regulations pertaining to the income requirement in the fall of 2008, which elicited the fewest responses of any of the reforms examined in this chapter (12 responses with comments, of which six were from different governmental bodies and agencies). The consultation letter presented four objectives of the new income rules: (1) “increasing the likelihood that the requirements give a real assurance that persons given residence permits will have sufficient means of support”, (2) “making sure conditions are favorable for integration”, as “within an integration perspective it is of importance that the person given residence in Norway is not dependent on social assistance for means of living, but that the person is part of a self-sufficient family”, (3) “preventing forced marriages”, as “the income requirement can stimulate young persons to build a foundation in life through education and work so that they are financially independent of their family and thence have better possibilities of resisting potential financial pressure from the family with regard to marriage”, and (4) “facing the issue of higher asylum inflows”, as “how Norwegian immigration and asylum policy is perceived abroad, especially compared to nearby countries, seems to have significant importance in explaining the distribution of asylum seekers between different

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667 Norway still does not allow dual citizenship, and children who are born to dual citizenship are usually expected to choose one at age 18 (not that everyone does). For more on citizenship rules, see Appendix B. It was noted in the debate on this at the turn of the millennium that it would be much more difficult to help victims of forced marriage in Pakistan if they were dual citizens than if they only had Norwegian citizenship. Interview, opposition politician, June 2012.

668 Eggebø, “The Problem of Dependency.”
European countries”. As in Denmark, we see a process whereby private concerns (marital choice) is linked up with public concerns such as integration, control of asylum migration and non-reliance on social assistance and benefits, legitimizing political action. In Denmark, however, the economic argument for the points system was never tied to forced marriage prevention. In Norway, even the economic restrictions were defended with the forced marriage argument-

Here we also see the very broadest set of objectives of any policy change examined in this chapter so far - essentially a combination of all of the objectives of the preceding measures. This demonstrates the remarkable pliability of the income requirement - although several respondents questioned the underlying causal logic. In particular, the integration perspective was disputed, as several respondents argued that delayed family reunification would delay good integration rather than facilitate it. This perspective was most forcefully voiced by the governmental agency in charge of settling refugees (IMDi), which noted its particular problems with settling single refugees compared to families, and which argued that the proposed changes put into sharp relief the “goal conflict between immigration and integration- political issues”. This debate mirrored a wider debate about the relationship between family immigration and integration, which has been the subject of much contention within the EU and which has also been researched extensively in recent years (see discussion in section 1.1.3).

Like in 2003, several organizations questioned the effect of income rules against forced marriages, voicing concerns that young persons would leave education in order to work. Perhaps ironically, this objection was made most effectively by the Directorate of Immigration which noted that the target group - young persons of immigrant background - often worked for family businesses anyway, undercutting the argument about independence from the family. Only the Directorate of Immigration - responsible for deciding family immigration cases - remarked upon the proposal’s likely significant effect on Norwegian citizen sponsors; noting how the changes


670 See Baumgartner and Jones, Agendas and Instability in American Politics.
violated logic of favorable treatment of citizens up until that point, and how many cases until then viewed as routine would no longer comply with the rules.

<table>
<thead>
<tr>
<th>Year</th>
<th>Citizens</th>
<th>TCN residents on other grounds</th>
<th>Refugees</th>
<th>Persons with humanitarian status</th>
</tr>
</thead>
<tbody>
<tr>
<td>1975</td>
<td>No</td>
<td>Yes</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>1991</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>1997</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>2003</td>
<td>If under 23</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>2008</td>
<td>Yes</td>
<td>Yes, but not past income requirement for labor migrants</td>
<td>Not if family reunification in first year after settlement</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Table 9: Groups covered by the Norwegian income requirement over time.

The low response rate for this consultation and little public attention to it meant that the importance of the change went almost entirely under the radar, and the Ministry was able to implement significant changes to the family reunification rules almost without notice. The all-purpose list of policy objectives also meant that even the application of restrictive rules to a very broad target group might pass the proportionality test.

4.4.3.2 …but with some new exceptions

The reforms from the 2000s I have examined so far in this chapter have in common that they involve varying degrees of restrictions on family immigration. There is another side to the policy developments from this decade, however, which also illustrates politicians’ general creativity with regard to pursuing their desired family immigration policies in the face of constraints, but which involves a significant liberalization. Like its opposite – the gradual extension of the income requirement to citizen sponsors – it has gone largely under the radar. I am referring to the liberalization of family reunification rules for skilled workers.

After the 1997 exemptions (see section 4.4.1.1), persons who had come through forms of work-related migration streams from outside the EU were among the only groups who would in fact have to fulfill the maintenance requirement. At the time, of course, they were a small group - Norway had not allowed labor immigration on any significant scale after the 1975 immigration stop (the ‘stop’, as such, ended with the 1988 Act, but relatively strict rules were enforced
through preference rules and labor market tests). Eleven years later, under the new Immigration Act, non-EU labor migrants were becoming a much more important group (although dwarfed by EU workers, whose entry is governed by EU rules). Now, however, they would on the contrary end up among the groups least affected by the income rules. This reversal, whereby non-EU labor migrants face less stringent income rules than citizens, must also be explained in this chapter, as it is a rather puzzling policy development.

In the early 2000s, views on labor migration changed dramatically, in light of increasing needs for highly skilled labor in the petroleum sector. A seasoned bureaucrat recalled meetings with industry representatives practically screaming about their need for “16,000 new engineers”.671 Norwegian politicians wanted to create an active labor immigration policy, making Norway an attractive destination despite being a small non-English-speaking country. Just as family reunification rules were seen as a pull factor for asylum seekers, they were seen as a potential pull factor for highly skilled workers. Whereas this was an undesired effect in the former case, it was something to harness in the second.

The 2007 Immigration Act proposal chapter on labor migration held that the general rule regarding secured income should apply to labor migrants in the same way as for other groups, but labor migrant sponsors were not mentioned in the family immigration chapter.672 Labor migration policy was debated in Parliament separately from the 2008 Immigration Act, following a White Paper on Labor Immigration from 2008.673 In this White Paper, the policy intent with regard to family rules for labor migrants was quite clear: family reunification should be facilitated in order to make Norway attractive to workers, and family immigration should be swift. As the Ministry of Labor argued, “it is important to arrange it so that highly skilled workers and specialists can have their family come to Norway as soon as possible after the

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671 Interview, March 2012.
issuance of their permit.”\textsuperscript{674} As we know, the income requirement was further specified in secondary legislation. The October 2008 consultation letter, examined above, contained the following passing reference, to which no respondents appeared to take notice: “In accordance with more detailed guidelines from the Directorate of Immigration, exemptions may be made from the requirement of past income for labor migrants.”\textsuperscript{675} In another consultation following up the Labor Immigration White Paper, in 2009, special rules for facilitating the application procedure for family members of specialists and skilled workers were discussed.\textsuperscript{676} The organizations asked to respond to the consultation (and those that responded) had a different profile than the ones examined above, mainly representing employers’ associations and the university sector. Few mentioned the family rules, but interestingly the Ministry of Research and Education argued for the rules to be made so that “one differentiates family reunification on general grounds and family reunification in relation to labor immigration”. As they argued, “in an arena where the battle over the bright minds is great, most will not let themselves be recruited to work in a country which requires that their family stays in the home country for a long time awaiting the processing of an application for a residence permit.” This underlines the potential for a conflict of interest in immigration control between different parts of the state – whereas Labor and Research Ministries may be quite pro-immigration, Interior and Justice Ministries may not be.\textsuperscript{677} No other respondent saw the family rules for labor migrants in light of the family rules more broadly (except for a few respondents that argued that low- and high skilled workers should have equal access to family reunification).

Following this, specialists and highly skilled workers were entirely exempted from the past income rule, whereby the previous year’s income must be demonstrated to be adequate through the provision of tax returns, potentially adding 1.5 year to the process before qualifying. As this

\textsuperscript{674} Arbeids- og inkluderingsdepartementet, \textit{St.meld. Nr. 18 (2007-2008): Arbeidsinnvandring.}

\textsuperscript{675} Arbeidsdepartementet, “Høringsbrev om regler i ny utlendingsforskrift og endringer i gjeldende utlendingsforskrift – Krav til sikret underhold og innføring av ny intervjuordning for å motvirke tvangsektaskap.”


\textsuperscript{677} See also Bonjour, “The Power and Morals of Policy Makers.”
was elaborated separately, the differences in treatment are not in fact widely known - despite their dramatic effects: while 99% of applicants with skilled worker sponsors were accepted in 2012, this was true for only 68% of cases with citizen sponsors.\textsuperscript{678} At the same time, these applications were processed separately – and much faster – than other family immigration applications.\textsuperscript{679}

Again, we see politicians implementing new policies through a strategy of debate limitation. Just as policymakers discreetly and gradually made the income rules more restrictive for citizens and most other groups, they discreetly exempted highly skilled workers from some of those provisions in order to make recruitment of the ‘brightest minds’ easier. In this case we see that policymakers were able to implement their desired family immigration policy through technical changes largely outside of the public eye, with a narrow scope of conflict and little stakeholder input. Political capacity to manage family migration, then, is again shown to be significant - even though in this case the result was a widening of the gate for a select group.

4.4.4 2009: Attachment requirements, take 2

While Labor considered the age limit dead and beyond saving after the 2006 failure, some of the people behind the proposal tried to rescue the attachment requirement and rethink a solution whereby it could be reintroduced on its own.\textsuperscript{680} Again, Labor politicians were central in engineering the new proposal, as early as 2007.\textsuperscript{681} They argued internally in the coalition that immigrants should be required to demonstrate their integration into Norwegian society by showing that they had worked or studied in Norway for a certain amount of time before becoming eligible for sponsorship in family immigration cases. Labor argued for a five year-requirement, and the internal bargaining in the government was over whether the limit should be


\textsuperscript{679} Processing times for labor immigration: http://www.udi.no/Oversiktsider/Saksbehandlingstider-/Saksbehandlingstider-for-arbeidsinnvandring/

\textsuperscript{680} Interview, activist, May 2012.

\textsuperscript{681} Ibid.
three, four or five years. As a compromise between Labor and the Socialists, they landed in the middle. 682

The Socialists disliked the proposal, however, and it did not make its way into the 2007-8 Immigration Act. The summer of 2008, after the Immigration Act had passed parliament, the opportunity arose for Labor to bring the measure back. As in 2002, asylum arrivals rose sharply, doubling from the previous year. The year-end total ended at 17,500, almost at the 2002 peak level. Arrivals were particularly high during the summer, and there was, as in 2002, significant political pressure to address the rising asylum inflows. Media coverage of asylum seeking spiked. In the following figure, the first spike in the blue/darker line (mentions of “asylum seeker” and variants of that word in newspapers) occurs in the third quarter of 2008 (July-September). The same is true for searches of the combination of “asylum” and “family reunification” (orange line). 683

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682 Interview, May 2012.
683 Note the seasonal nature of coverage of asylum seeking: it generally appears to be higher in the summer (arrivals are often higher and also more visible in the city during the summer months).
Figure 2: Quarterly mentions of “asylum seeker” (blue/dark) and “asylum* and family reunification” (orange/light) in Norwegian print media, 1995-2011. Analysis produced through Retriever/A-tekst 13.12.13.

4.4.4.1 Proposal

In September 2008, the prime minister announced 13 points to reduce asylum inflows, seeking again to demonstrate that the government was ‘in control’. The 13 points mainly covered restrictive measures in asylum policy proper, most controversially announcing that asylum policy could run counter to UNHCR recommendations. Point 5, however, concerned family immigration rules and announced that the government would introduce a requirement whereby sponsors with status in Norway on humanitarian grounds would have to complete “four years of

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education or work experience before any granting of family reunification or formation” (this would also include families with children, as reunification was covered), adding that “the same shall apply for persons with refugee status, but only for family formation” (this, therefore, would only apply for new spouses).  

The logic behind this proposal was exactly the same as we have seen in the NOU discussion on family rules as a pull factor for asylum flows, and as we saw in the 2002 income rules changes. Politicians expressed the view that asylum seekers might come to Norway - as opposed to another European country - based on the belief that they would more easily be able to sponsor family to come to Norway (a view which I sought to problematize in section 4.3.4). As noted, such a view was essentially ratified in the NOU, although the experts did not endorse changes to the rules as a consequence. Other Norwegian experts have also carried out government-funded research on pull factors on asylum flows.

Whereas limiting family immigration numbers in itself has not been seen as a legitimate or acceptable policy goal in Norway (contra Denmark), the objective of reducing asylum numbers has been much more broadly accepted in Norwegian politics. As I noted above, the Ministry of Finance considered asylum seekers quite expensive for the welfare state. This plays into an understanding of asylum policy as a sort of ‘regulatory competition’ in reverse – as opposed to competing over having little regulation in order to attract companies, countries want to have as much regulation as possible to deter asylum seekers. This was the background for the rule - even though the experts had specifically concluded that the family rules should not be used as a deterrent measure. The nature of the rule, however, was focused on measuring integration through participation in education or the workplace, and during 2008-9 it was often spoken of as


\[\text{Barbou des Places, “Taking Legal Rules into Consideration.”}\]

\[\text{NOU 2004:20, Ny Utendingslov.}\]
a measure geared at improving and rewarding immigrant integration. Its origin and perhaps true nature as a deterrence measure can also be emphasized, however, by noting that it was listed in the 2009 Government platform (Soria Moria II) section on immigration policy (under refugee and asylum policy) rather than in the subsequent section on integration and inclusion.

4.4.4.2 Constraints?

This change did require amendments to the newly passed new Immigration Act, and was thus more complex than the 2002 changes to the immigration regulations. The proposal was submitted to Parliament in January 2009. Consistent, again, with a strategy of debate limitation, the Ministry argued that no public consultation was required with regard to any measures concerning family formation, because there had already been a public consultation on the attachment requirement in 2006. This argument was made in spite of the fact that the context was different, the objectives of the policy were different, and the format of the policy itself was different. To get away with this, they shelved the part of the proposal that would also apply to family reunification, focusing on family formation only.

It is interesting that they considered the 2006 consultation to be supportive of the attachment requirement, as many respondents to that consultation only expressed support for it insofar as it would mitigate some of the concerns they had with regard to the age limit. At any rate, the Ministry effectively cut off the possibility for contentious debate and of another fractious consultation round. While arguing that the proposal was similar enough to its 2006 counterpart to avoid a consultation, they used the differences between the 2006 and the 2009 proposals as an argument for why the rule would be fine this second time around, noting in particular how the proportionality assessment would be much more favorable with a narrower target group (family


692 Ibid., 7.
formation only). Drawing on the NOU 2004:20, they argued that “family formation generally enjoys a weaker protection in accordance with human rights than family reunification”. We see how they avoided the 2006 traps, emphasizing broad policy objectives, narrow target groups, and limited human rights law constraints.

This did not mean that there was no conflict. As noted, the Socialists strongly disliked the measure. This time, however, they had not been able to stop it behind closed doors. They saw themselves forced to dissent over the issue in committee, but this did not help. Labor and the Center Party voted the measure through with the support of the Progress Party and the Conservatives. This, in many ways, reflects the rapprochement that has taken place between Labor, the Conservatives and the Progress Party in the last two elections, as demonstrated by Simonnes in a recent article examining their electoral programs over time.

4.4.4.3 Implementation

The attachment requirement was successfully implemented in 2009 due to a combination of factors. Timing, this time as in 2003, was highly propitious due to the high levels of asylum seeker arrivals, media attention and pressure to ‘do something’. Conflict was limited as the Ministry did not give stakeholders the opportunity to provide input through a consultation. The Socialist opposition was ineffective due to the broad support of the measure across much of the political spectrum. Further, the broad policy objectives made it easier to pursue, changing the proportionality assessment compared to the 2006 round. It meant, however, that it could only be applied to cases of family formation, and that family reunification was off limits. Citizens were

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693 Ibid., 12.
694 Ibid., 13.
696 Simonnes, “I Stjælne Klær? En Analyse Av Endringer I Høyres, Arbeiderpartiets Og Fremskrittspartiets Innvandrings- Og Integreringspolitikk”; see also Bale et al., “If You Can’t Beat Them, Join Them?”.
697 Simonnes, “I Stjælne Klær? En Analyse Av Endringer I Høyres, Arbeiderpartiets Og Fremskrittspartiets Innvandrings- Og Integreringspolitikk.”
also unaffected by this change, as it was intended to prevent asylum seeking and improve immigrant integration.

4.5 Post-reform Norwegian family migration

Before proceeding to discuss the above reforms and conclude, I will briefly examine the outcomes of the Norwegian family reunification reform, looking at the new immigration rules as well as their effects on immigration flows.

4.5.1 The new rules

The family immigration rules, as they stand after the entry into force in 2010, are as following. Spouses of Norwegian or Nordic citizens, of permanent residents and those who may become permanent residents have a right to a residence permit given the fulfillment of relevant conditions (Immigration Act §40). However, immigrants who themselves came to Norway as asylum seekers, family migrants or through resettlement must have worked or studied in Norway for four years prior to sponsoring anyone for family formation (‘the four-year rule’, §40a).

Unmarried partners (§41) and children under 18 (§42) of the above groups also have a right to reunification. Further, parents with minor children resident in Norway are entitled to residence permits in some situations in order to be with their children (§42-45). Section 51 specifies an exception from the right in instances of forced marriage. Family immigration can be allowed on a discretionary basis for some other family members, including for widowed/single elderly parents without other relatives in the home country (§46). Most family members must apply for family reunification from their home country. EU free movement legislation (Directive 2004/38/EC) applies in Norway as part of the EEA Agreement, and sets rules for sponsors who exercised their free movement rights. The definition of ‘the family’ under EEA rules is wider than under Norwegian rules. It includes children up to age 21, as well as relatives in the ascending line (i.e. parents and grandparents) and ‘other’ dependents. EEA migrants, unlike others, may thus easily reunify with persons beyond the nuclear family. Leaving aside EU free

698 Reunification rules for elderly parents have always been restrictive in Norway.

699 There is a possible exception here for family members of Norwegian citizen sponsors, who do not themselves require an entry visa.
movement rules – which Norwegian policymakers cannot change – these basic eligibility rules in many ways express the ‘right of insiders’ logic, with their focus on the right to entry for citizens’ and residents’ nuclear family members. The ‘four year rule’ is a mechanism to evaluate ‘quality of membership’ or integration, in its measurement of labor market participation or studies, but unlike in Denmark, it is not applied to citizens.

Conditions for family immigration – most importantly regarding income – are mainly laid down in secondary legislation and explained on the Directorate of Immigration (UDI) website, and it is at this level that the most restrictive changes have occurred. Sponsors must (per 2014) document an income equivalent to 251,856 NOK (approx. CAD 43,000 per July 2014) in the year of application. This must be demonstrated through a long-term work contract and three subsequent pay stubs. Most must also document an equivalent income in the preceding year (past income requirement) with their tax return. Norway does not have a national minimum wage, but this level is higher than the sectoral minimum wage levels for unskilled workers in certain sectors. It should be noted that in countries bound by the EU Family Reunification Directive may not introduce income levels higher than minimum wage levels, as per the Chakroun ruling against the Netherlands. Further, sponsors must document suitable housing and that they have not received social assistance in the past 12 months. The income rules do not apply for reunification with children under age 15. Refugees (but not those with humanitarian permits) who apply for reunification (not family formation) are exempted from the income requirement during their first year in Norway, in order to ensure family unity. The income requirement and other restrictions do not apply to EEA sponsors (or to Norwegians who have returned after

700 Block, “Regulating Social Membership and Family Ties: Policy Frames on Spousal Migration in Germany.”


702 After the 2008 reform the income level was set at public pay scale level 8 (lønnstrinn 8 i Statens lønnsregulativ). As of 2012, this level no longer existed on the scale, and the new calculation is 88% of pay scale level 19 (…). It is adjusted annually in line with the yearly wage settlement for the public sector.

exercising their free movement rights), although this group must document that they have been employed or otherwise exercised a Treaty Right.

4.5.2 Family immigration before and after

What were the effects of the changes to family immigration rules? Norway has not seen a drop in family immigration analogous to that of Denmark, and immigration both from inside and outside the EU has remained high. There are signs, however, that the income requirement has influenced the composition of family migration flows. The 2003 income changes, whereby persons with humanitarian status were required to demonstrate adequate income in order to sponsor family members, were evaluated by two economists in 2010.\textsuperscript{704} The authors found that application rates for the group in question fell significantly, and that the change also affected the proportion of applications that were accepted, but that many obtained family reunion after some time. They did find a small, but positive effect on employment rates. These findings, of course, were quite welcome, as they confirmed that the scheme did have some of the intended effects – although the authors noted that the effects at the individual level were small.

The other changes have not been evaluated in this way, and their effects cannot be assessed with the same amount of certainty.\textsuperscript{705} In addition, changes to the immigration statistics in 2009 make comparisons somewhat difficult – prior to this year, EEA family migrants were counted in the family migration statistics, whereas as subsequently they were not.\textsuperscript{706} In the following I examine the changes in family immigration to Norway from three angles, looking for trends in the numbers before and after 2010.

<table>
<thead>
<tr>
<th></th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total non EEA family</td>
<td>12,156</td>
<td>14,386</td>
<td>10,599</td>
<td>12,177</td>
<td>11,965</td>
<td>11,509</td>
<td>12,515</td>
</tr>
</tbody>
</table>

\textsuperscript{704} Bernt Bratsberg and Oddbjørn Raaum, \textit{Effekter Av Krav Om Forsørgevnsen Ved Familiegjenforening} (Oslo: Ragnar Frisch Centre for Economic Research, 2010).

\textsuperscript{705} Raaum and Bratsberg had access to registry data from Statistics Norway which allowed them to run sophisticated regression analyses of the effects.

\textsuperscript{706} In fact it is even more complicated: from 2009-2011 Romania and Bulgaria were in the ordinary family migration statistics and then they were also shifted to the EEA statistics.
Table 10: Number of family immigration permits issued yearly, 2001-2012

In this table, all family migrants from EEA countries have been removed. Examining the absolute number of permits issued, we see that family admissions peaked in 2009, before the implementation of the new rules in 2010. After a sharp drop arrivals have subsequently increased somewhat and apparently stabilized at a lower level than the 2009 numbers. Family admissions to Norway, then, remain much higher than family immigration to Denmark. The total number of family migrants is, however, lower than before the introduction of the new income rules.

Another way to examine changing family immigration patterns is by looking at how acceptance rates have changed after the introduction of the income requirement.

Table 11: Percentage of accepted applications based on gender of spousal migrant in Norway, 2007-2013.

As we see from this table, the changes appear to have had more dramatic effects with regard to male family migrants (with female sponsors) than with regard to female family migrants (with male sponsors): the acceptance rate with a female sponsor fell by 14 percentage points from

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707 Source: adapted from udi.no
708 These numbers were communicated to me via email by the UDI statistics department.
2009 to 2010 whereas the acceptance rate with a male sponsor only fell by four percentage points. The differences have since evened out somewhat, however. We may speculate that the income requirement is more difficult to fulfill for women, who will often have a looser connection to the labor market over time due to childrearing and other factors.\footnote{Staver, “Free Movement and the Fragmentation of Family Reunification Rights.”} These findings raised some concern in Norway in 2012, and were raised in Parliament by the Liberals.\footnote{Trine Skei Grande and Borghild Tenden, “Representantforslag fra stortingsrepresentantene Trine Skei Grande og Borghild Tenden om endringer i utlendingsregelverket for å få mer rettferdige familie- og foreningsregler,” dok8, (13:00:00), http://www.stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/Representantforslag/2011-2012/dok8-201112-050/.} The Discrimination Ombud expressed concern over indirect gender discrimination stemming from the income requirement in 2013.\footnote{This concern was voiced in response to a 2012 consultation proposing to raise the income requirement further for cases of family formation. The proposal is still listed as “under consideration” as of May 2014 on the Ministry of Justice and the Police website, see Justis- og beredskapsdepartementet, “Høringsbrev – forslag til endringer i utlendingsforskriften §§ 10-8 og 10-9 (heving av underholdskravet mv.),” October 9, 2012, http://www.regjeringen.no/nb/dep/jd/dok/hoeringer/hoeringsdok/2012/horingsbrev--forslag-til-endringer-i-utl/horingsbrev.html?id=704235.} The Ministry has defended the differences with reference to the fact that whereas most women sponsors are young women of immigrant background, most male sponsors are grown-up or older white Norwegian men, entailing that the differences in rejection rates are not caused by gender specifically but the different composition of groups where some are more likely to be high-earning than others due to age and other factors.\footnote{Justis-og beredskapsdepartementet, “Høringsbrev - endringer i utlendingsforskriften (heving av underholdskravet og ny hjemmel for unntak),” Horingsbrev, (June 26, 2014), http://www.regjeringen.no/nb/dep/jd/dok/hoeringer/hoeringsdok/2014/HORING--ENDRINGER-I-UTLENDINGSFORSKRIFTEN-HEVING-AV-UNDERHOLDSKRAVET-OG-NY-HJEMMEL-FOR-UNNTAK/Horingsbrev.html?id=764617.}

In addition to gender differences, there are also country differences in acceptance rates. Whereas almost all family migrants from India are accepted (often family members of Indian highly skilled workers) as well as practically all Thai applicants (generally Thai women married to older Norwegian men), the acceptance rate for family migrants from Somalia has hovered in the low 50s, with a dip in 2010 to 44%. Stateless family migrants – usually of Palestinian origin – were admitted at a rate of about 80% before 2010, but the introduction of the new income rules which
coincided with a change in policy towards Palestinian asylum seekers brought the acceptance rate down to 57-60%.

A third way to examine the effects of the changes is to look at acceptance rates according to the status of the sponsor (whether the sponsor is a citizen, resident, refugee or labor migrant). The status of the sponsor determines whether the income requirement applies, or if the sponsor is exempted from some parts of it: the income rules applies to persons with humanitarian status and citizens, but not to refugees applying for reunification in their first year of residence. Skilled workers are exempted from the past income requirement. Unfortunately, UDI has only produced such a breakdown of the acceptance rates since 2012, and they did not have capacity to supply such numbers for previous years when I requested them. The numbers available are, however, quite striking. A highly notable fact here is the near universal acceptance rates where the sponsor is a skilled worker, and the much lower acceptance rates for citizen, refugee and humanitarian status sponsors after the introduction of the income requirement in 2010. This appears to be caused in large measure by the fact that skilled workers do not need to comply with the past income requirement and generally have an easy time proving that they comply with the requirement for present/future income.

<table>
<thead>
<tr>
<th>Status of sponsor/acceptance rate</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Norwegian or Nordic citizen</td>
<td>68%</td>
<td>66%</td>
</tr>
<tr>
<td>Refugee</td>
<td>68%</td>
<td>66%</td>
</tr>
</tbody>
</table>

Whereas Palestinians until 2009 were given asylum in accordance with The Geneva Convention art. 1D, they were subsequently assessed individually and would more often get humanitarian status. This meant that they would have to comply with the income requirement.

While it is not required of all non-EU labor migrants to have a work contract to enter Norway, it should be safe to assume that they only apply for family reunification once they do.

Utendingsdirektoratet, Årsrapport 2012.

<table>
<thead>
<tr>
<th>Humanitarian status</th>
<th>42%</th>
<th>47%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Skilled worker</td>
<td>99%</td>
<td>99%</td>
</tr>
</tbody>
</table>

Table 12: proportion of family immigration applications accepted according to the immigration status of the sponsor, Norway 2012-3.

4.6 Managing family immigration in the face of the right to family life

The four rounds of reform that I have examined demonstrate that in general, Norwegian policy makers have been able to implement their intended family immigration policies, even when these have been restrictive. They have also managed to introduce policies that one might expect stakeholders to oppose, such as stricter rules for family immigration for citizen sponsors than for skilled foreign workers. By looking at the policies that were successfully implemented, along with those that were not, we can identify some common factors for successful implementation of restrictive family immigration policies.

Firstly, we can examine the role of time. We can also note that the timing of some proposals was arguably better than others. The 2003 and 2009 policy changes, as well as the 2008 income rule consultation, followed the highest arrivals of asylum seekers that Norway has seen, and given the widely held view in Norway that family rules were a pull factor, this timing legitimated more restrictive measures, as it was seen as politically imperative to ‘do something’ to reduce asylum seeker arrivals. It is not clear if one could conclude that the 2006 proposals had particularly poor timing, but they occurred so much later than the original Danish policy change that the effects of the age limit with regard to preventing forced marriages had been disputed. With regard to time in the sense of speed, the 2006 proposals also dragged out over the better part of that year, leaving much time for opponents to mobilize between the first airing of the idea in February and the publication of the consultation letter in October. The 2003 changes, in particular, were passed more quickly.

Examining the scope of conflict, we can note that the 2003 changes elicited relatively limited public conflict. There was significant public pressure to both reduce asylum inflows and address the forced marriage problématique at the time, and any action against forced marriages was
largely welcomed. The fact that it entailed implementing restrictions on family reunification for citizens was not problematized in any significant way. While some humanitarian organizations objected to requiring persons with humanitarian status to fulfill the income requirement, other important actors were more positive. The 2006 proposal, on the other hand, sparked a tense conflict both within the bureaucracy, the governing coalition and the media. The youth wing of the Labor Party and the Socialists publicly and vocally opposed the proposals, and the consultation was acrimonious and divided. In 2008, again, conflict was subdued as almost no one responded to the income rule consultation, and the technical nature of the rule meant that few got worked up over it. Again, the conceptual change that occurred – restricting family reunification for citizens – went under the radar. The separate liberalization for highly skilled sponsors also went largely unnoticed, through an uncontroversial consultation where the few respondents that commented on the family rules welcomed the liberalization. In 2009, politicians limited conflict by avoiding a consultation altogether, and overcame intra-coalition disagreements were overcome by working with parties on the right.

The question of framing relates in important ways to the objectives ascribed to the policy measures, and the degree to which they are broad and considered legitimate. This coheres with the findings in the Danish chapter, where we saw how Danish policymakers introduced a raft of changes to family immigration rules with the triple objectives of reducing immigration, preventing forced (and arranged) marriages, and improving integration. They were able to strategically draw on different objectives in order to justify different policies. In Norway, the one policy that did fail - the 2006 age limit and attachment requirement combination - had as its sole stated objective to prevent forced marriages. Although it resonated with important values of rights protection, this was - out of the three Danish objectives for the same policy - the only objective that could not easily be measured. At the same time, the impact of the rule would be broad, catching all people under age 21. This combination of a narrow objective with disputed effectiveness and a broad target group led to serious questions about the proportionality of the measure.

In the other cases, politicians justified the proposals with much broader objectives. The two separate income rule changes in 2003 were justified with reducing asylum inflows, improving integration outcomes and preventing forced marriages. These objectives resonated with fiscal arguments about the welfare state (it would reduce the costs to the welfare state to reduce asylum
inflows and encourage immigrants to work). The 2009 iteration of the attachment requirement was to both improve integration and reduce asylum inflows. And the 2008 income rules were supposed to do all these things - improve integration outcomes, prevent forced marriages, reduce asylum inflows and reduce immigrants’ reliance on social assistance – appealing to both important values of individual rights, self-sufficiency and fiscal savings to the welfare state. These concerns were highly resonant in Norway and on policymakers’ minds: in 2009, a new group of experts led by migration scholar Grete Brochmann was commissioned to produce a Norwegian Official Report on the consequences of immigration on the Norwegian welfare model. Its report, published in 2011, raised particular concerns about the low labor market participation rate of some migrants.717 On the other of the proportionality assessment; while the 2003 and 2009 changes had relatively specific target groups, the 2008 changes affected practically everyone. The broad objectives meant that the measure’s proportionality could still be defended.

The role of experts in these policy changes is variable and not entirely clear. While the unsuccessful reform – the age limit – was partly initiated by experts (although it was in turn disputed by other experts), other successful changes relied on knowledge generated in the expert proposal. This concerns two issues in particular: first of all, the analytical distinction between family formation and reunification allowed for the introduction of more specifically targeted, and thus more proportional, restrictions on family immigration. This can be seen most clearly in the 2009 re-introduction of the attachment requirement. Secondly, many of the changes rely on causal beliefs ratified by the experts with regard to a) the pull factor for asylum seeking represented by liberal family immigration rules and b) the importance of a migration strategy as a motive for forced marriages and the appropriateness of using the immigration rules to prevent forced marriages. While the habit of appointing expert commissions to create immigration legislation can be argued to adhere to the traditional instrumental view of expert knowledge, the more strategic manipulation of this knowledge over the years implies a more symbolic usage of expert knowledge, most closely aligned with Boswell’s ‘substantiating function’.718 The specific

insights of the experts – perhaps most notably the reunification/formation distinction – were employed in order to lend authority to certain policy positions. At the same time, the experts’ skepticism regarding the usage of the income requirement has not materialized in policy – quite the contrary, as the income requirement has become the centerpiece of the family immigration rules. Non-use of expert knowledge, then, can also be an effective policy choice. This echoes the lack of reliance on expert knowledge in Denmark as a way to introduce strict rules.

<table>
<thead>
<tr>
<th>Change</th>
<th>Time and timing</th>
<th>Experts</th>
<th>Scope of conflict</th>
<th>Objectives</th>
<th>Target group</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003 income</td>
<td>Quick, propitious</td>
<td>no</td>
<td>Narrow</td>
<td>Broad</td>
<td>Multiple but specific</td>
<td>Implementation</td>
</tr>
<tr>
<td>2006 age/attachment</td>
<td>Slow, unclear</td>
<td>Yes – disputed</td>
<td>Broad</td>
<td>Narrow</td>
<td>broad</td>
<td>Failure</td>
</tr>
<tr>
<td>2008 income</td>
<td>Quick, propitious</td>
<td>No</td>
<td>Narrow-ish</td>
<td>Broad</td>
<td>Everyone</td>
<td>Implementation</td>
</tr>
<tr>
<td>2009 attachment</td>
<td>Quick, propitious</td>
<td>Yes</td>
<td>Narrow-ish</td>
<td>broad</td>
<td>narrow</td>
<td>Implementation</td>
</tr>
</tbody>
</table>

Table 13: Overview of variables, Norway.

4.7 Chapter Conclusion

This chapter has demonstrated that despite the existence of certain constraints on family immigration policy – perhaps most notably the European Convention of Human Rights Article 8 on the right to private and family life – Norwegian policymakers have been able to introduce quite dramatic changes to family immigration policy. The key has been broad policy objectives and a relatively narrow scope of conflict, with some of the most significant changes passing under the radar at the time of passage and implementation. At the same time, Norwegian policymakers have strategically drawn on expert knowledge, in particular on the assessment made by Norwegian migration and legal experts suggest that ‘new’ relationships are more weakly protected in human rights law, operationalized through the distinction between family reunifications and formations.

The policy measures introduced in Norway were ultimately not the same ones as in Denmark. The Danish approach to age limits and attachment rules failed in Norway given the much
narrower objectives they were given. The Norwegian political landscape did not allow for overt, full-on restrictions on the numbers of family migrants, and mainstream Norwegian politicians have never called for this outright. The income rule, however, could draw on a long history on Norwegian immigration regulations, and the amendments to it that we have examined mainly happened discreetly in secondary legislation. It also resonated Big policy changes could be enacted simply by removing exemptions to existing rules. This explains why Norway ended up with strict income rules rather than a Danish approach.

Taking a long view on Norwegian family immigration policy, we can identify a full reversal in some aspects from the 1980s until today. During the 1980s, the right to family reunification for citizens and other persons with a reasonable permanence of residence (sometimes called denizens) was broadly recognized. Those considered ‘insiders’ did not have to comply with the income requirement, and notions of equal treatment led to the conclusion that non-citizens should be treated on par with citizens, demonstrating a universalist view of rights as the basis of family immigration policy that echoes the work of authors such as Soysal. In the 2000s, however, the conditional aspect of the policies – especially the income requirement, which was never previously applied to ‘insiders’ – was gradually emphasized and broadened. Arguments about equal treatment were instead used to level down the rights of citizens: the rules regarding family reunification should be the same for all. This development was in part sparked by concerns over other human rights, most importantly the right to freely choose one’s spouse and not to be forced into marriage. At the same time, those rights concerns were coupled with broader concerns over welfare state sustainability and asylum seeker numbers, which could be argued to undermine the rights argument to some extent, but which were also resonant in the context of a comprehensive welfare state facing relatively high immigration. And regardless of what were at times perfectly honorable intentions (and other times perhaps not), the policy changes produced in the end a significant weakening of access to family reunification. Rights, then, are shown to be a rather ‘manageable’ constraint on policymakers.
Chapter 5

5 The United Kingdom: Managing migration, managing the courts?

5.1 Introduction

In the previous chapter, we learned how Norwegian policymakers tried to implement an age limit for spousal sponsorship in 2006-7, but abandoned the effort and instead ended up pursuing a high income requirement for family immigration. In this chapter, we will see that Britain also pursued an age limit policy, but that it was struck down in the Courts, and that a high income requirement became the centerpiece of family immigration regulation instead. This remarkably similar course of events occurred in two countries with very different immigration histories. While Norway represents a form of guest worker regime, Britain is a postcolonial migration regime. After the putative end to primary migration, however, family immigration became a central migratory route to the UK just as it did to Scandinavia, and its regulation is the object of this chapter.

Given its longer history of immigration and wider academic tradition in this field, there is a rich existing literature on British immigration policy, with contending interpretations of the developments with regard to citizenship and immigration in the post-war era.\(^{719}\) While family immigration has not been analyzed in detail of any of these widely cited books, some of the scholarly literature on British immigration also deals explicitly with immigration through the family stream in general, most importantly Helena Wray’s recent legal analysis of the regulation of marriage migration.\(^{720}\) Others have analyzed more specific problématiques related to family immigration, such as the infamous ‘primary purpose’ rule, which restricted marriage migration


\(^{720}\) Wray, *Regulating Marriage Migration Into the UK*; Bhabha and Shutter, *Women’s Movement*. 
between 1980 and 1997, there is, however, still a relative dearth of studies examining the politics of family immigration and changes to family immigration policy as such, with the possible exception of policies to prevent ‘sham marriages’. Indeed, a recent study of immigration policy under New Labour contended that there was no articulated family immigration policy to speak of.

This reflects the lower position of family migration on the policy agenda in recent years as compared to other immigration streams: at the turn of the century, asylum seekers were the top concern. Then attention moved to highly skilled immigration and also to the unexpectedly large influx of workers from Eastern Europe after the 2004 expansion of the EU. While these other policy concerns have eclipsed family immigration on the British political agenda in the 2000s to a greater extent than in the other two countries examined in this thesis, there have indeed been developments in family immigration policy that merit closer attention.

In this chapter I wish to demonstrate that British policymakers, who were in earlier times considered relatively free to set restrictive family immigration policies, have in recent years engaged in a more dynamic struggle with the Courts over how to regulate family immigration, in particular in light of European Convention on Human Rights art. 8, which was incorporated into British legislation through the 1998 Human Rights Act. As in Norway, they have sought to control the scope of conflict, narrow the debate and manipulate the question of proportionality,

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725 Somerville, *Immigration under New Labour*.

726 Boswell, “Knowledge, Legitimation and the Politics of Risk.”
as well as drawing strategically on expert knowledge. Conflict has been somewhat subdued by the fact that family immigration is generally regulated in the Immigration Rules. These do not require parliamentary debate and are only subject to a negative resolution procedure. Secondly, the Home Office has held small consultations or hidden away responses to them – reflecting a culture of secrecy and the limited influence of British migrants’ rights groups. The Home Office has also become more assertive about its own interpretations of their international obligations.

While the UK closed its doors on primary immigration from the colonies between 1962 and 1971, wives and children were still admitted as a matter of statutory right out of respect for the men who came for work in the 1950s and 1960s. Immigration of male spouses, however, was hotly contested as a form of covert primary immigration – the men were suspected of really immigrating for work, and it was argued in the Immigration Rules that excluding male family migrants would protect the domestic labor market. When this gender discrimination came under scrutiny in Strasbourg in the Abdulaziz case (see 2.2.2.2), the outcome was that family reunification rights of male sponsors with foreign wives were also circumscribed, leaving all family migrants prey to the infamous ‘primary purpose’ rule, which mandated that applicants must prove that marriage, not immigration, was their ‘primary purpose’, as well as administrative practices designed to keep wives and children out.

New Labour began their time in office in from 1997 with several progressive policy changes. They scrapped the ‘primary purpose’ rule, incorporated the ECHR into British law through the Human Rights Act and passed more substantive legislation against racial discrimination. Labour, historically, has had strong support among Britain’s minority communities, and had insisted on the first legislation against discrimination in the 1960s. These three developments were of much importance to minority communities (see section 5.2.3 and 5.4.2.3). This, in some ways, brought the UK ‘full circle’ to a similar legal-political position as other European countries.

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728 This was, of course, not strictly possible to ‘prove’.
729 Wray, Regulating Marriage Migration Into the UK.
730 Interview, IPPR, February 2013.
Family immigration rose, but was overshadowed on the immigration policy agenda successively by asylum, highly skilled migration and migration from the new EU accession countries. As in other European countries, however, concerns were rising around the turn of the century about community cohesion, integration and forced marriages - leading to similar pressures to restrict family migration, although they were somewhat tempered by the much stronger position of minority communities in British politics.

The road to an age limit was long and slow, but was initially spurred by a Labour Party backbencher. While it came to have quite broad support among the political parties, civil society groups were more divided. Having had few opportunities to influence policy at an earlier stage, immigration activists took the opportunity to challenge the policy on article 8 grounds in the newly empowered courts once it was eventually in place in 2008. They won, leading to the rule being scrapped in 2011. The ruling shows, as it does in Norway, the trouble of proposing rules with broad target groups and narrow objectives, especially when their effect is in dispute.

The new Conservative/Liberal Democrat coalition entered office in 2010 vowing to cap net immigration. Whereas the Labour government had not expressly voiced concern with the actual number of family migrants, the ‘net migration’ target brought a new objective to family immigration policy - sheer reduction in numbers\(^{731}\) - along with concerns over self-sufficiency and independence from public support. In this context, a raft of restrictions was proposed, including a Danish-style attachment requirement\(^{732}\) for family reunification and a high income requirement. The former was scrapped, but the latter was announced in the new Immigration Rules in 2012. The new rules had broad objectives and could rely on expert backing in the shape of the Migration Advisory Committee. While the age limit was scrapped, even stricter measures were introduced in its place.

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\(^{731}\) While the Government has at times denied using the income rules to reduce net migration, this is in fact an objective stated in the policy impact assessment. Home Office, “Impact Assessment” (Home Office, 2012), 10.

\(^{732}\) I.e. a Danish-style rule assessing the couple’s ‘combined attachment’ to the UK versus their attachment to an alternate country of residence.
5.2 Historical legacy: the rise and fall of family immigration on the agenda

While Norway and Denmark are small countries on the Northern fringe of Europe which largely caught some of the ‘overflow’ of guest-worker migration to countries such as Germany in the late 1960s and 1970s, Britain was the center of the largest Empire the world has ever seen, and as such the metropole to which millions of people looked. Even as the empire no longer exists, Britain has a population of 63 million, more than ten times the population of Denmark. In this section, I seek to highlight Britain’s unique and interesting history of immigration and family immigration regulation – noting both the similarities and differences with the Scandinavian countries. Importantly, I will show that while family migration, especially in Norway, took on a taken-for-granted quality during the 1970s and 1980s, family immigration to Britain was much more contested – especially along gender lines. The heritage of this controversial policy – in particular the so-called ‘primary purpose’ rule – is important to understand in order to analyze immigration policy after 1997.

5.2.1 1948-1971: Opening and closing the border

The story of post-war immigration to Britain usually begins with the 1948 British Nationality Act, which reaffirmed that all 600 million subjects of the Crown – the entire old empire – had the right to circulate freely in the Commonwealth, including the right to enter Britain. At the time no one expected that they might actually do so, and the passage of this legislation in fact had little to do with immigration. Rather, Britain sought to maintain a uniform basis for nationality throughout the empire, in response to Canadian legislation which established that Canadian citizens “possessed British subjecthood in consequence of their status as Canadian citizens”, which challenged the British legal conception of subjecthood flowing directly from the Crown. In this context, the British were eager to reassert the unity of the Empire under the Crown.

734 See Hansen, Citizenship and Immigration in Post-War Britain, 37.
Immigration from what came to be known as the New Commonwealth\textsuperscript{735} and Pakistan, however, was neither wanted nor expected\textsuperscript{736} – not even during the immediate post-war when workers were needed. Instead, Britain experimented with recruitment of Eastern European guest workers during this time.\textsuperscript{737} Soon, however, people began to arrive from the West Indies and Indian subcontinent in greater numbers looking for work, with a notable early event being the arrival of the ship *Empire Windrush* from the Caribbean in 1948. In a succinct summary, Joppke suggests that

the entire British immigration experience is encapsulated in this response to the first 492 Jamaicans landing on its shore [on the *Empire Windrush*]. No one had asked them to come; they were perfectly free to come; more of them were too many of them.\textsuperscript{738}

The 1950s were marked by policy stasis,\textsuperscript{739} but antipathy towards immigration rose, culminating in the 1958 Notting Hill race riots.\textsuperscript{740} Concerns peaked over immigration numbers from the New Commonwealth in 1960 and 1961,\textsuperscript{741} leading up to the 1962 Commonwealth Immigrants Act, the first in a series of legislative measures seeking to separate the right to enter Britain from the status of subject of the Crown. The 1962 Act instituted entry controls for those subjects who

\footnotesize{\textsuperscript{735} This term refers to the more recent colonies in the Indian subcontinent (most importantly) and the Caribbean, i.e. the parts of the Commonwealth not populated by many British settlers.}

\footnotesize{\textsuperscript{736} It should be noted, however, that Bangladeshi migration, for example, has historical roots back to sailors in the early 19th century. Samad and Eade, *Community Perceptions of Forced Marriage.*}


\footnotesize{\textsuperscript{738} Joppke, *Immigration and the Nation-State*, 115.}

\footnotesize{\textsuperscript{739} Although there was action behind the scenes, see Paul, *Whitewashing Britain.*}

\footnotesize{\textsuperscript{740} Bhabha and Shutter, *Women’s Movement*, 33.}

\footnotesize{\textsuperscript{741} James McKay, “The Passage of the 1962 Commonwealth Immigrants Act, a Case-Study of Backbench Power,” *Observatoire de La Société Britannique. La Revue*, no. 6 (June 1, 2008): 89–108, doi:10.4000/osb.433.}
were not born in the UK and did not have a passport issued under the authority of London but rather under the authority of colonial governors. Differentiated by a stamp in their British passports, some British subjects would henceforth require an employment voucher to enter Britain.\textsuperscript{742} The Act also introduced powers to deport persons subject to immigration control.\textsuperscript{743} The Act, as Dummett and Nicol emphasize, opened up a ‘breach’ in British nationality legislation, because it, highly anomalously, determined that some passports (and thus some ‘subjects’) were subject to immigration control while others were not.\textsuperscript{744} However, under the Act, the wife and children (dependents) of Commonwealth workers could not be denied entry. The rules were gendered, based on the taken-for-granted idea that the male head of household was the primary migrant, and that he, once he had lawfully entered Britain, should be able to have his family members join him. This belief appears widely held by members of the British Home Office.\textsuperscript{745}

Labour had vehemently opposed the 1962 Act. After they returned to office in 1964, however, successive Labour governments accepted the legislation in place. Indeed, starting in 1965 no more employment vouchers were issued under the 1962 Act.\textsuperscript{746} The 1962-1981 era of immigration policy has been described as one long path towards the goal of becoming a ‘zero-immigration country’, regardless of who was in office.\textsuperscript{747} Labour did, however, seek to temper the effects of the growing immigration control arsenal through the institution of integration and non-discrimination policies. The successive Race Relations Acts (1965, 1968 and 1976) reflect a

\begin{itemize}
\item \textsuperscript{742} Hansen, \textit{Citizenship and Immigration in Post-War Britain}, 109–110.
\item \textsuperscript{743} Commonwealth citizens would automatically naturalize after five years, so it only applied in the first five years. Ibid., 111.
\item \textsuperscript{744} Ann Dummett and Andrew G. L Nicol, \textit{Subjects, Citizens, Aliens and Others : Nationality and Immigration Law} (London: Weidenfeld and Nicolson, 1990), 188.
\item \textsuperscript{745} Personal communication, Randall Hansen (who interviewed the Home Office officials directly). Also see Hansen, \textit{Citizenship and Immigration in Post-War Britain}.
\item \textsuperscript{746} Dummett and Nicol, \textit{Subjects, Citizens, Aliens and Others}, 186.
\item \textsuperscript{747} See Hansen, \textit{Citizenship and Immigration in Post-War Britain}; see also Layton-Henry, “Britain: The Would-Be Zero Immigration Country.”
\end{itemize}
long-standing perceived linkage between immigration control and integration. This approach has often been summarized through what Shamit Saggar has termed ‘Hattersley equation’ after Labour politician Roy Hattersley’s widely cited 1965 aphorism: “Without integration, limitation is inexcusable. Without limitation, integration is impossible”.

Thus, while instituting safeguards against racial discrimination (initially rather meek ones), Labour pursued immigration control with subsequent immigration legislation, most divisively with the 1968 Commonwealth Immigration Act, following the Kenyan Asian Crisis. The right to enter for wives and children was not reneged, however. Labour Home Office Minister David Ennals argued that same year that “there is a fundamental principle - not a privilege, but a right - that it would not be proper to take away: that of a mother and her children to join the father who is already settled in this country”. This was representative of views that were widely held at the time. At the same time, however, politicians were beginning to question whether this family immigration really was secondary immigration, or if it was actually continued primary

748 Bhabha and Shutter, Women’s Movement, 5.
749 Shamit Saggar, Race and Politics in Britain (Harvester Wheatsheaf, 1992).
750 This widely held assumption has been criticized, however, as it “is based on the assumption that it is black people who are the cause of racial tension, […] otherwise there would be no need to reduce their numbers”. MacDonald argues forcefully that this assumption is “entirely incorrect”, given that “after all, racial tension is caused by white people’s prejudiced views and actions against black people and not vice versa”. Ian A Macdonald, Immigration Law and Practice in the United Kingdom (London, Eng.: Butterworths, 1983), 17.
752 HC Deb 24 July 1968 vol 769 cc852.
753 HL Deb 29 February 1968 vol 289 cc918. Similarly, the Lord Chancellor Gardiner emphasized that “The Government have always thought—and, if I may say so, I entirely agree—that we have been right to say that anyone who is allowed in may either bring with him or have subsequently reside here his family. I can understand the attitude: ‘It is all very well to have a man who is going to do some work, but to have his wife and children here, too, only adds to our problems without our getting any benefit from it.’ I do not think that is right or humane. The unit on which most civilisations are planned is the family, and we have always thought that this is right.” HL Deb 29 February 1968 vol 289 cc918.
immigration in disguise. Such concerns were raised in particular regarding older children whose mothers remained in the country of origin.\textsuperscript{754}

The official culmination of these immigration control measures came with the 1971 Immigration Act (in force 1973), which remains the basic framework of British immigration legislation.\textsuperscript{755} This Act completed the process of “transforming the status of Commonwealth citizens into that of migrant workers”\textsuperscript{756} with the creation of five new categories of British subjects\textsuperscript{757} of which only one, the ‘patrial’ citizen, had a ‘right of abode’ in Britain. Patriality actually expanded the previous category of persons exempted from control through its emphasis on connections to the UK put in place in 1968, giving a right of abode to all those with a British grandparent - thus cementing ties to the Old Commonwealth,\textsuperscript{758} where larger numbers of British persons had emigrated in the first place.\textsuperscript{759} Their descendants could now return to Britain if they wished, while New Commonwealth citizens could not, as their status was increasingly equated with that of aliens. Officially, the 1971 Act brought an end to primary immigration, but it also entrenched the right of those men who had entered before 1973 to be joined by their wives and children.

5.2.2 1962-1997: Gender, race and primary purpose

The story of family immigration control in Britain in the post-war period would be incomplete without acknowledging the pervasive gender discrimination inherent in the family immigration

\textsuperscript{754} As Gardiner continued: “But I am not at all sure that we ought to admit so freely those children who are coming at an age when they are really ceasing to be children and are passing almost at once into the labour market.”\textit{HL Deb 29 February 1968 vol 289 cc918.}

\textsuperscript{755} However, the 1969 Immigration Appeals Act had already made entry clearance compulsory for all dependants, meaning that this act was arguably of more practical importance with regard to access to family reunification. Wray, \textit{Regulating Marriage Migration Into the UK}, 49; Joppke notes that the 1969 Act “extraterritorialized” control. Joppke, “Challenge to the Nation-State,” 117.

\textsuperscript{756} Bhabha and Shutter, \textit{Women’s Movement}, 35.

\textsuperscript{757} These categories were “Patrial citizen of the United Kingdom and Colonies”, “Non-patrial CUKC connected with an existing dependency”, “non-patrial CUKC connected with a former dependency”, “non-patrial British subject without citizenship of any Commonwealth country”, and “British Protected Person” Dummett and Nicol, \textit{Subjects, Citizens, Aliens and Others}, 3.

\textsuperscript{758} The “Old Commonwealth” refers to Australia, New Zealand, South Africa and Canada, where many British subjects emigrated.

rules over time. The 1962 Act contained a statutory right to be joined by one’s wife and children.\textsuperscript{760} The reverse situation – if women might want to sponsor their foreign husbands – was a different story. It was simply assumed that the early migrants were all men, to whom family reunification was owed, ignoring the fact that migration flows from the Caribbean were in fact more female-dominated.\textsuperscript{761} As noted, immigrating husbands were often suspected of being primary/labor migrants who tried to enter Britain through the family stream.\textsuperscript{762} This assumption meant that family immigration was much more politicized in the UK than in Norway during this earlier period of immigration. It is true that in the first Immigration Rules, published in 1966 (Cmnd 3064), migrant husbands were also given access to family reunification in the UK. Applications from husbands should only be denied on “medical grounds, grounds of criminal record or security, or if the man was likely to become a charge on public funds or his wife did not want him to join her”.\textsuperscript{763} Notably, however, this was a concession and not a statutory right,\textsuperscript{764} and could thus be revoked at will. This concession was indeed withdrawn in 1969 – leaving Commonwealth husbands in a less favorable position with regard to entry than aliens.\textsuperscript{765} Suddenly, husbands could only obtain permits in “special circumstances”.\textsuperscript{766} Such special circumstances could more easily be claimed if the wife were white British and faced moving to ‘the jungle’\textsuperscript{767} than if she were originally from the subcontinent or from the Caribbean and faced

\textsuperscript{760} Although, it should be noted, rather abhorrent administrative practices such as “virginity tests” of prospective female marriage migrants from the Indian subcontinent have since come to light, see Alan Travis, “Ministers Face Calls for Apology as Extent of 1970s ‘Virginity Tests’ Revealed,” The Guardian, May 8, 2011, sec. UK news, http://www.guardian.co.uk/uk/2011/may/08/home-office-virginity-tests-1970s; see also Wray, Regulating Marriage Migration Into the UK, chap. 5.


\textsuperscript{762} Vaughan Bevan, The Development of British Immigration Law (London; Dover, N.H: Croom Helm, 1986), 246.

\textsuperscript{763} Macdonald, Immigration Law and Practice in the United Kingdom, 1983, 218.

\textsuperscript{764} Dummett and Nicol, Subjects, Citizens, Aliens and Others, 207.

\textsuperscript{765} Ibid.

\textsuperscript{766} Macdonald, Immigration Law and Practice in the United Kingdom, 1983, 218.

\textsuperscript{767} Wray, “An Ideal Husband? Marriages of Convenience, Moral Gate-Keeping and Immigration to the UK.”
the prospect of moving ‘home’, adding a layer of implicit racial discrimination to the overt gender discrimination.

This discriminatory practice was repeatedly debated both in the House of Commons and among the Lords during the early 1970s, initially to little avail. Subsequently, however, the so-called ‘ban on husbands’ was lifted, and husbands were as a rule to be admitted except for reasons of criminal records or the public good. This liberal turn would not last – in 1977, stricter rules were re-imposed on husbands after “a few lurid stories of marriage rackets and men paying women settled in the UK to marry them were given enormous prominence” in the media.

Efforts to prevent the immigration of husbands took a new turn in 1980, however, with the introduction of the first iteration of the ‘primary purpose’ rule, later described as having “generated more anger and anguish than perhaps any other Immigration Rule”. In order to qualify for family immigration, the ‘primary purpose’ of the prospective husband immigrant had to be marriage, not immigration. The rule really began to matter in 1983, when the burden of proof shifted from the Home Office to the applicant – effectively entailing that an applicant for an immigration permit must engage in the difficult exercise of proving that immigration was not the purpose of the application. Hansen comments dryly that “applicants could be forgiven if they thought they were trapped in a Kafkaesque nightmare”. What complicated matters, in particular for husbands from the Indian subcontinent, was that they were often parties to arranged marriages. With such marriages not conforming to Western norms of romantic love – and with 

768 Ibid., 305–6.
770 Bhabha and Shutter, Women’s Movement, chap. 3.
772 Ibid.
774 Ibid., 336.
775 Hansen, Citizenship and Immigration in Post-War Britain, 233.
spouses often barely having met\textsuperscript{776} - it became especially difficult to prove that marriage was really what they came for, and not immigration to work in Britain; or that the purpose of the marriage itself was not immigration to Britain.\textsuperscript{777}

These rules only applied to husbands and were thus overtly gender discriminatory, and were challenged on these grounds\textsuperscript{778} at the European Court of Human Rights in the landmark joint cases of \textit{Abdulaziz, Balkandali and Cabales}\textsuperscript{779} in 1985 (see 2.2.2.2). Not surprisingly, Britain was found to violate the prohibition on discrimination by gender in subjecting would-be male immigrants to stricter tests than women\textsuperscript{780} - although the Court found no violation of article 8, and the case has remained a benchmark for restrictive entry policies. In an ironic twist, explored at length by Joppke,\textsuperscript{781} the British response to this ruling was to change the Immigration Rules so as to level down and make the situation of prospective female migrants as difficult as that of men, “respecting the law but certainly not the spirit of it”.\textsuperscript{782} Subsequently, in 1988, the statutory right to family reunification for Commonwealth migrants who had arrived before 1973 was repealed – at least it was now equal on paper.\textsuperscript{783}

\textsuperscript{776} There was a requirement that they must have met at least once, but this need not be in the context of marriage ibid., 231.

\textsuperscript{777} See Wray, “An Ideal Husband? Marriages of Convenience, Moral Gate-Keeping and Immigration to the UK.”

\textsuperscript{778} The appelants alleged violation of article 8 (family life) in conjunction with article 14 (discrimination)

\textsuperscript{779} Abdulaziz, Cabales and Balkandali v. The United Kingdom (European Court of Human Rights 1985).

\textsuperscript{780} No standalone violation of article 8 was found, however, and the case is widely cited as precedence for states’ wide margin of maneuver in immigration cases.

\textsuperscript{781} Joppke, \textit{Immigration and the Nation-State}.

\textsuperscript{782} Hansen, \textit{Citizenship and Immigration in Post-War Britain}, 231.

\textsuperscript{783} Practice remained discriminatory, however, because the ‘primary purpose’ rule disproportionately affected foreign men, especially from the Indian subcontinent, seeking to join wives in the UK Wray, “An Ideal Husband? Marriages of Convenience, Moral Gate-Keeping and Immigration to the UK.”.
5.2.3 The early Labour years: ending primary purpose and ‘managing’ migration

It is arguably quite rare for a mainstream European party to go to election promising to liberalize immigration policy, but in 1997 Labour went to the polls with a promise to remove the ‘primary purpose’ rule, affirming in their manifesto that “every country must have firm control over immigration and Britain is no exception. […] We will, however, reform the system in current use to remove the arbitrary and unfair results that can follow from the existing 'primary purpose' rule.”\(^{784}\) Labour followed through on its electoral promise and removed the ‘primary purpose’ rule from the Immigration Rules on June 5, 1997. As the government held in written answers to Parliament, “we are acting to end the primary purpose rule because it is arbitrary, unfair and ineffective and has penalised genuine marriages, divided families and unnecessarily increased the administrative burden on the immigration system.”\(^{785}\)

This simple change in the Immigration Rules arguably stands among the most significant achievements of the New Labour era on family immigration policy.\(^{786}\) Many of the British interviewees for this study brought it up, usually unprompted. When asked about Labour’s family immigration record, one noted that “getting rid of that within about one month of coming into office was really, really important” and “a great credit to them.”\(^{787}\) Another interviewee suggested that “obviously there has been the minimum age issue, but when Labour came into power they removed the primary purpose rule for example. So I think Labour was less concerned with trying to put barriers for family migration’.\(^{788}\) A third interviewee noted the importance of the “totemic” primary purpose rule. She suggested that “it is an example of an immigration issue that became representative of a wider kind of race issue”, as it was practiced in an overtly racist way, and that its removal was important for cementing the support of different communities,

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\(^{785}\) *HL Deb 05 June 1997 vol 580 cc49-50WA*

\(^{786}\) To their credit, after entering office Labour also introduced a concession to the rules making it possible for same-sex partners to immigrate. Gina Clayton, *Textbook on Immigration and Asylum Law*, 3rd ed (Oxford; New York: Oxford University Press, 2008), chap. 9.

\(^{787}\) Interview, experienced immigration case worker, 20 February 2013.

\(^{788}\) Interview Migrants Rights Network, 21 January 2013.
such as Bangladeshis and Pakistanis.” Indeed, there is no known case of the primary purpose rule being used to deny immigration in a case involving two white spouses.

While almost everyone seemed pleased to see it gone, one interviewee, who will return as an important actor later on with regard to family immigration policy, saw things differently. Ann Cryer, who would later militate for the raised age limit for spousal sponsorship – and become a central actor in the story told in this chapter – argued that the removal of the primary purpose rule did not have only positive implications:

The Labour party took office and almost straight away we did away with the primary purpose rule. And I voted to get rid of that rule because we were told it was racist, it wasn’t fair, etc. [...] What I realized very quickly after being elected was that the removal of the primary purpose rule benefited the families, but it certainly didn’t benefit the participants, the girl or boy who was being married. And we went into a whole range of forced marriages.

The removal of the rule certainly did lead to an almost immediate rise in family immigration – but at the time this was not at all on the government’s agenda. The big story of the early Labour years was asylum, and the big rise in the number of asylum seekers in the late 1990s. Barbara Roche, Minister for Immigration during the 1999-2001 period, said that “the emphasis understandably was on asylum” and the “historic backlog in decision-making”, whereas “immigration policy itself as a policy area hadn’t been really considered”, under the assumption

789 Interview, IPPR, 13 February 2013.
790 Dustin, Gender Equality, Cultural Diversity, 14.
792 While I have not been able to locate the exact numbers here, it is often claimed that the abolition of the primary purpose rule led to a significant rise in family immigration to the tune of 50% between 1997 and 2009/2010. Of this, not all was of course related to the lifting of the rule. By Alasdair Palmer, “All You Need to Know about Immigration in Britain Today,” The Telegraph, May 21, 2009, http://www.telegraph.co.uk/news/uknews/5028913/All-you-need-to-know-about-immigration-in-Britain-today.html; David Goodhart, “Accidental Immigration,” Prospect Magazine, February 8, 2010, http://www.prospectmagazine.co.uk/magazine/transforming-britain-by-accident/#.U3TIIVfevq4.
793 For an analysis of British asylum policy during this era, see for example Gibney, The Ethics and Politics of Asylum, chap. 4.
that “the legislation of the 1970s had meant that primary immigration had ended.”

In fact, she has said that once she came into office, and asked what the immigration policy was, she was told there was none. During her tenure, Labour took the first steps towards a new policy of ‘managed migration’, trying to frame migration as an opportunity rather than a problem. This initiative was launched in a well-known speech to the Institute for Public Policy Research in September 2000. The focus was on encouraging highly skilled migration – regardless of the race or origin of the migrant. During the 1997-2004 period, labor migration rules were eased both for the highly skilled and also for those with lower skills through the Sector Based Scheme. From 2005 onwards, labor immigration policy would be re-restricted somewhat, especially at the lower end of the skills spectrum, expecting that demand for lower-skilled workers in the economy would be fulfilled from the EU.

Key to the idea of migration management is the desire to reap the benefits of immigration. In Geiger and Pécoud’s analysis, migration management is a set of practices and discourses employed by some actors in the migration field. The managed migration discourse is what they call a performative discourse; “it not only describes or analyzes reality, but also aims at shaping the way migration is perceived by actors in charge of managing it”. This, one could argue, is a

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794 Interview 11 Feb 2013.


798 Note that Roche came to the Home Office from the Treasury, where she had been a minister for business. The Treasury is famously supportive of lax labor immigration policies. Somerville, “The Politics and Policy of Skilled Economic Immigration Under New Labour, 1997–2010.”


form of framing. It involves attempts to depoliticize migration through the employment of technocratic ‘management speak’, as well as attempts to turn otherwise negative migration discourse into a much more positive discourse about optimization and benefits,\textsuperscript{802} such as when politicians talk about admitting the ‘best and brightest’. This was, indeed, what Barbara Roche began doing in her 2000 speech; emphasizing that “the evidence shows that economically driven migration can bring substantial overall benefits both for growth and the economy.”\textsuperscript{803} Roche only mentioned family-related migration in her historical overview of past immigration to the UK – it had no clear place in her modern vision for migration. Family migration does, in fact, sit somewhat oddly in the migration management discourse,\textsuperscript{804} given its focus on skills and work and on migrant selection. As focus shifted from asylum policy to highly skilled migration (leading to the creation of the Highly Skilled Migrant Program and later the Points Based system), in addition to the unexpectedly large inflow of migrants from the new EU Member States from 2004 (579,000 A8 migrants were registered in the first 18 months\textsuperscript{805}), family immigration remained largely under the radar.

5.3 The limits of Britain’s international obligations

In the two previous chapters, we have seen that while the European Convention on Human Rights and its article 8 have been a relevant consideration in family immigration policy, it has not presented a particular obstacle to policymaking in practice. Rather, politicians in both Norway and Denmark have discursively positioned their policies within the limits drawn by article 8, with and without expert assistance. This highlights the fact that article 8 operates both within and outside the courtroom.

\textsuperscript{802} Geiger and Pécoud, The Politics of International Migration Management.

\textsuperscript{803} Roche, “UK Migration in a Global Economy (IPPR Speech).”

\textsuperscript{804} For a discussion, see Anne-Marie D’Aoust, “‘Take a Chance on Me’: Premeditation, Technologies of Love and Marriage Migration Management,” in Disciplining the Transnational Mobility of People, ed. Martin Geiger and Antoine Pécoud (Houndmills, Basingstoke, Hampshire: Palgrave Macmillan, 2013).

\textsuperscript{805} Devitt, Labour Migration Governance in Contemporary Europe: The UK Case, 7.
In the past, the UK has been held up in the literature on immigration as a country particularly unconstrained by human rights laws, but I wish to show in this section that the reality is more complicated. Whereas Denmark has a full opt-out on Justice and Home Affairs, the UK has a selective opt-in, and it decided not to opt in to the Family Reunification Directive. Around the same time, however, the New Labour government decided to incorporate the European Convention on Human Rights into domestic legislation. This has had complex effects on family immigration regulation. In the following, I will examine these effects in detail, seeking to explain why the effects of the Convention have been different in the UK than in Scandinavia, and seeking to show how policymakers have responded dynamically to the new constraint on policymaking – with some responses being more successful than others.

5.3.1 The implementation of the Human Rights Act

In his influential work on immigration and the nation-state from the late 1990s, Christian Joppke identified the United Kingdom as an exception to the European norm, where the lack of a Bill of Rights and the supremacy of Parliament gave the executive unique leeway in immigration control. Analyzing the Abdulaziz case, whereby the Home Office responded to the finding that the family immigration rules violated the prohibition of gender discrimination by leveling down through the extension rather than elimination of the primary purpose rule (see 2.2.2.2), Joppke argued that family reunification rights could be so easily taken away in the UK because (1) the guilt or moral obligations towards immigrants evidenced in Germany “ha[d] been channeled into the build-up of an elaborate race relations regime” rather than into individual rights of migrants and (2) British immigration policy ha[d] not been “mellowed by legal constitutional constraints” as Britain had no written constitution and limited legal review.

Just as Joppke’s work was published, however, the new Labour government incorporated the European Convention on Human Rights into British law through the 1998 Human Rights Act (in force 2000), altering condition (2) above. While the UK was one of the original signatories to the

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806 Joppke, Immigration and the Nation-State.
807 Ibid.
ECHR, violations had not been justiciable in British courts before 2000. Courts could only review individual cases against the policies of the government, not against the ECHR directly – the government was free to strike a balance against the ECHR in British policies as it saw fit. Incorporation of the Convention moved the decisions on compliance with article 8 on the right to family life from Strasbourg – a long distance away due to the fact that cases would first have to be fought through the domestic system – to the domestic courts themselves; giving British judges the power to determine whether a given policy or decision complied with human rights obligations. This, importantly, took away the government’s monopoly with regard to defining its obligations toward family life in the immigration context.

5.3.2 Article 8 and immigration law in practice

On one level, one might think that incorporation of the ECHR into domestic legislation might bring Britain in line with the other countries in this study – as one interviewee put it, it integrated the UK “into a wider system of norms in Europe”. In both Denmark and Norway, the Convention has been incorporated into national legislation for a long time – with quite limited effect, as courts have been reluctant to intervene and relatively few cases have in fact been before the courts. There are some institutional differences that set Britain apart, however. Firstly, the possibilities of challenging immigration policies and immigration decisions are more tightly circumscribed, and secondly the legal systems are different. These two factors together arguably mean that the effects of incorporation have gone beyond an equalization of conditions.

My interviews suggest that the relationships between NGOs and interest groups and the executive in Norway remains much more cordial compared to the UK. Indeed, the immigration policy community is small in Norway, and the same persons may work for the Norwegian Organization for Asylum Seekers one year and the Directorate of Immigration the next. The upshot of this is that other avenues for trying to influence policy (such as consultations, which I examined at length in the chapter on Norway, but also direct lobbying) are more readily available

809 Wray, Regulating Marriage Migration Into the UK, 178.
810 Interview, Migrants’ Rights Network, January 2013.
811 This author has in fact worked for both employers.
to Norwegians seeking to influence immigration policy in one way or another. In the UK, civil society interviewees generally described an antagonistic relationship with the Home Office – for instance the Joint Council for the Welfare of Immigrants (JCWI) - an active migrants’ rights organization since the late 1960s - is not even invited to respond to immigration related consultations. This would leave legal action the most viable venue to engage with the Home Office and with immigration policy. These findings are consistent with institutionalist theory and with previous research, which suggests that the British state is relatively impenetrable to interest group pressure, and lacks routinized links or access points for the ‘organized public’. 812 This contrasts with the Scandinavian systems, but in particular with Norway where there is a much stronger tradition of cooperation and stakeholder input through the historical legacy of corporatism and the inclusion of organized interests in policymaking. 813

As I just suggested, the legal system is one of few access points for civil society to influence immigration policy in the UK. The legal system, too, has specificities compared to the other two countries. Britain, unlike Denmark and Norway, has an adversarial common law system. With it, one interviewee argued, comes an “adversarial mindset”. 814 Plaintiffs have also historically had easier access to legal aid, and there are a number of lawyers who do immigration case work, sometimes pro bono. The Immigration Law Practitioners’ Association organizes approximately 1,000 lawyers, and operates at a much larger scale than comparable outfits in the other countries (where there are in fact no separate organizations for immigration lawyers as opposed to lawyers in general). In addition, there are also many immigration advisors, who are not trained lawyers but who provide inexpensive legal advice and who are regulated through the Office of the Immigration Services Commissioner (OISC). As one immigration lawyer said, “there are lots of immigration lawyers like me out there who are happy to take cases”. 815 There are also activist

812 Statham and Geddes, “Elites and the ‘organised Public.’”


814 Interview, immigration lawyer, February 2013.

815 Interview, immigration lawyer, February 2013.
organizations such as the JCWI that have bankrolled legal challenges on principle. Two interviewees suggested that different lawyers within the immigration law community practically compete with each other in order to challenge new immigration restrictions first.\textsuperscript{816}

The combination of opportunity structures which steer persons wishing to challenge immigration rules towards the court system - in the absence of other avenues - and activist lawyers with an adversarial mindset arguably means that ‘judicial constraint’ is more apt to be activated in the UK, through the much higher volume of litigation than in the Scandinavian countries. In the UK, the ‘exit option’ posed by EU free movement rules is also slightly more difficult to exercise, as the possibilities of cross-border work available Scandinavia do not exist.

How have the immigration cases that have been fought fared in the courts? Wray argues that the British Courts were quite deferential toward the executive until around 2007 - and the lower courts have often continued to be. From then on, relying especially on the precedent of the \textit{Huang} case\textsuperscript{817} in which the Lords established that the Courts should in fact carry out their own assessment of whether there was a violation of article 8 rather than submit to the Home Office’s assessment, the higher courts have taken a more interventionist stance. The possibility of winning cases with article 8 claims, an experienced immigration caseworker told me, “has given a whole extra layer of arguments that can be put in British Courts”.\textsuperscript{818}

As Wray argues, then, through an important development in the past decade, British courts have come to the conclusion that that when applying ECHR article 8, cases should be determined with reference to proportionality, weighing the public interest in immigration control against interference into family life. This conclusion is opposite to that of the Norwegian Supreme Court, which has generally left it to the executive to determine how international obligations should be fulfilled (see section 4.2.3). The British courts have increasingly challenged the

\textsuperscript{816} One suggested that this might have led to the failure of the challenge against the English language requirement for family immigration, as the test case that ended up going forward (Chapti & Ors, R (on the application of) v Secretary of State for the Home Department & Ors (Rev 1) [2011] EWHC 3370 (Admin) (EWHC (Admin) 2011).) was a poor one.


\textsuperscript{818} Interview, experienced immigration case worker, February 2013.
government’s claims with regard to justified interference. This has especially been true in the higher courts. Whereas lower courts often took a restrictive stance, “the House of Lords, as it then was, returned to the spirit of Article 8 and the Strasbourg case law, insisting both on a flexible approach, as mandated by Article 8, and on a true recognition of the human rights at stake.”

5.3.3 Policy responses

British policymakers have responded to the introduction and shifting practice on ECHR articles 8 in several ways that are important to examine. Indeed, I do not wish to overstate the impact of the Courts, although I do believe it has been significant in certain instances, such as the age limit which I will return to. As Spencer and Pobjoy argue, “the courts have in practice limited government options more at the margins than at the core of its family migration policies.” The point here is that the ‘legal constraint’ is not absolute, but one which policymakers respond to. In this section I will look at three such responses: increased attention in policy documents, reductions in legal aid, and a public and political discourse intended to discredit these legal norms.

Labour, of course, imposed this judicial constraint on itself through the incorporation of the Human Rights Act and could not initially complain too much. In Labour’s early immigration white papers, there was no mention of ECHR art. 8, but some focus on preventing so-called “bogus marriages”, and later an expressed desire to reduce and manage family

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819 Wray, Regulating Marriage Migration Into the UK, 177.
820 Ibid., 189 As an example, in Chikwamba, the House of Lords determined that she, as a failed asylum seeker with a settled refugee husband and citizen child, could not be made to return to her home country to apply for family reunification from there, as is usually required. .
immigration. In ‘Secure Borders, Safe Haven’ the Government expressed concerns similar to their Danish counterparts, including a hope that the practice of arranged marriages would gradually end and that young persons would rather find partners in their own communities in the UK. As Wray notes, “these passages were regarded by many as an unacceptable intrusion into the personal lives of minorities, although they were defended by the combative Home Secretary, David Blunkett”. Article 8 appears for the first time in the 2005 White Paper “Controlling our Borders”. Firstly, while the paper proposed the elimination of the possibility of appeals for some groups of migrants, it noted that appeals rights would be retained in family visit cases in “recognition of right to family life”. Secondly, and more obscurely, the White paper announced that “we will end the practice where those who have settled on a family reunion basis can themselves immediately sponsor further family members, consistent with our ECHR obligations”. In 2007, “Securing our Border: Our Vision and Strategy for the Future” first proposed an age limit to prevent forced marriage, but did not further discuss ECHR obligations (it was relatively short).

The new Coalition government (and in particular the Conservative Party) - without Labour’s responsibility for having introduced the Human Rights Act in the first place - could more easily oppose it. The 2011 Family Migration consultation, indeed, discusses article 8 obligations at length. The government underlined the fact that the right to family life is not absolute and invited

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824 Wray, Regulating Marriage Migration Into the UK, 159.
826 Ibid., 20.
827 Ibid., 22 Presumably this means that such sponsorships would not be denied where they might violate article 8. .
views on the balancing of public interests and individual rights.\textsuperscript{829} It was clear that the government was not pleased with the Courts’ evolving approach to this balancing act:

It is not generally a breach of Article 8 to refuse entry or remove if the family can live elsewhere. This is apparent from the regularity with which the absence of such obstacles is specifically cited as a reason for dismissing the applicant’s Article 8 claim in the Strasbourg Court’s decisions. It is also apparent from the reference to such obstacles in the (relatively rare) instances in which the claim is upheld…. For a period following the coming into force in 2000 of the Human Rights Act 1998 that concept was applied regularly by courts in the UK. In a number of more recent cases, the courts have substituted for whether there are “insurmountable obstacles” the alternative question of whether it is “reasonable to expect” the family of an applicant facing removal to join him or her in his or her country of origin.\textsuperscript{830}

This combative approach has become somewhat of a trademark of the Coalition’s Conservative Home Secretary, Theresa May, who has made it abundantly clear that she considers judges “overzealous” in their application of the Human Rights Act (for instance by claiming – wrongly – in her speech to the 2011 Conservative Party Conference that one migrant had been allowed to stay out of respect for family life with his cat\textsuperscript{831}). Her point of view has found particular resonance in tabloid media.\textsuperscript{832} The Home Secretary – and tabloid media – have, however,
frequently blurred the distinctions between article 8 cases concerning deportation and article 8 cases concerning entry. The Strasbourg jurisprudence has generally been more severe on states with regard to deportation or removal cases where family life is broken up than with entry cases (see section 2.2.1.1), so many arguments used against article 8 would not be directly applicable to family admission policy.

It is in particular with regard to deportation cases that Ms. May has found herself in conflict with the courts (see 2.2.2.2). One of the less successful attempts she made so far to eliminate the judicial constraint was by trying to instruct judges on how to interpret article 8. As noted, article 8 is a so-called qualified right, and judges applying will always weigh whether interference is proportionate. At a high-profile Commons debate in June 2012, however, she moved that “the conditions for migrants to enter or remain in the UK on the basis of their family […] life should be those contained in the Immigration Rules”, insisting that the rules were the embodiment of proportionality. Judges have not responded kindly to this attempt to instruct them on how to do their job, and have continued to investigate cases according to the legal precedent of Strasbourg case law, where the proportionality assessment with regard to interference in family life has always been highly fact- and case-specific.

A final point to note is that both Labour during its third term and in particular the Coalition government have sought to reduce funding for legal aid for refugees and migrants and change the rules for funding whereby only legal assistance given after the High Court granted permission for a full hearing of a case would be reimbursed. This and other cuts forced the most prominent legal advice body, the charity Immigration Advisory Service, into administration in 2011. This followed the closure of another legal aid provider, Refugee and Migrant Justice, in 2010. As a

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834 A widely reported one, which did not involve article 8, concerned the deportation of the controversial cleric Abu Qatada.

835 HC Deb 19 June 2012 cc760.

836 This is analogous to filing for bankruptcy under what is known as "Chapter 11" in the United States, and involves a court-appointed administrator who seeks to reorganize the company.
consequence, legal aid is more difficult to access in certain areas – what might be called ‘legal aid deserts’. While this has made it more difficult to bring cases forward, immigration cases can still be brought for judicial review. This means that the outcome per se cannot be challenged, but the procedure or way in which the decision was reached can be tested. In spite of these very real challenges put in the way of migrants and their families seeking to challenge immigration decisions, there are still possibilities to do so.

5.3.4 Summing up

I want to be clear that I do not consider article 8 an absolute constraint or substantial obstacle to the making of family immigration regulations. However, the combination of the abandonment of the ‘primary purpose’ rule and the introduction of the Human Rights Act, followed by active litigation by immigration lawyers and activists, have changed the conditions in which British policymakers make family immigration policy. They have been forced to take into account questions which they previously did not need to worry much about, such as whether their proposed rules fulfilled norms about proportionality, as the question of proportionality is no longer up to them to define, but much more open for debate with additional actors and venues – most importantly the courts. Taking these questions into account, as I will show in the remainder of the chapter, can make the difference between success and failure in the quest for stricter family immigration regulations.

5.4 Regulating family immigration to the UK 1997-2012

Will Somerville argued in his book on the first ten years of immigration policy under New Labour that there was essentially no articulated family immigration policy. Somerville’s contention that family immigration policy has been a series of “reactive initiatives to address ‘abuse’ rather than a coherent strategy with clear objectives” is perhaps a more nuanced conclusion, and Somerville could hardly be expected to predict the more dramatic changes to

838 Somerville, Immigration under New Labour.
839 Spencer, “Wilful Betrayal or Capacity Constrained?,” 129; Spencer, The Migration Debate; See also Wray, Regulating Marriage Migration Into the UK, chap. 6.
family immigration rules during the 2007-2010 period. I will briefly outline the changes to family immigration policy that took place in the 1997-2012 period here, before I go on to examine three of them in more detail: the age limit which was introduced and then later scrapped in response to the Supreme Court ruling in Quila, and the 2011 attachment and income proposals, of which the former was scrapped and the latter was implemented in 2012.

5.4.1 Overview of policy changes 1997-2012

One of New Labour’s main family immigration legacies, as we have seen, was the scrapping of the ‘primary purpose’ rule. Other changes affecting family migrants during the first two electoral terms of the Labour government were mainly related to integration and not to entry rules - with the exception of the first changes to the age limit in 2003/2004 which I will examine below. Following the European trend, the UK began to introduce requirements for citizenship and settlement, making family migrants demonstrate their knowledge of English before they could obtain citizenship (2004), and later introducing the “Life in the UK” test as well (2005). In 2007, these tests were moved up, so that they were required in order to qualify for settlement (i.e. permanent residence) rather than citizenship. In 2010 the English test was moved even further up, requiring family migrants to demonstrate English at the A1 level before entry, analogous to the Dutch pre-entry language test (for an overview of British rules for citizenship acquisition, see Appendix B).

Another form of restrictions affecting family life were rules to prevent ‘switching’, making it difficult for asylum seekers or irregular migrants who had established family life in the UK to...


843 Goodman, “Integration Requirements for Integration’s Sake?”; Goodman, “Controlling Immigration through Language and Country Knowledge Requirements.”
regularize their status based on their family ties. This meant that applications for family reunification had to be filed from the home country. In the *Chikwamba* case, involving a refugee from Zimbabwe who was in any event expected to obtain family reunification at the end of the ordeal, this was held to be unreasonable. Related to this was the Certificate of Approval Scheme, introduced in 2005 to prevent ‘bogus marriages’. Under the scheme, persons who had entered the UK without a visa who wished to marry in the United Kingdom would have to obtain a certificate from the Home Office before doing so (which was very expensive) - unless they were getting married in the Church of England. This requirement was quickly accused of infringing on the right to marry as well as being discriminatory and there was a long legal battle against the measure. Both the High Court and later the House of Lords ruled in favor of the applicants in *Baiai* (July 2008). While they did not make a specific finding of incompatibility for the scheme, the Lords objected to the religious discrimination inherent in exempting members of one specific church, and to the cost of the certificate, which they found not to be justified, as well as its blanket nature. While the fee was amended, the Home Office did not move particularly quickly to remove the requirement – in fact it was still in place by the 2010 General Election. The European Court of Human Rights then ruled on the matter in the *O’Donoghue* case in December 2010, and found a violation of Article 12 (the right to marry) and Article 14 (prohibition of discrimination) read together, as well as a violation of Article 14 read together with article 9 (freedom of religion). The rule was eventually abolished in 2011, three years overdue.

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846 Wray, *Regulating Marriage Migration Into the UK*, 291.
849 O’Donoghue and others vs. The United Kingdom (European Court of Human Rights 2010).
<table>
<thead>
<tr>
<th>Year</th>
<th>Change</th>
<th>Type of regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997</td>
<td>‘Primary Purpose’ Rule abolished</td>
<td>Entry</td>
</tr>
<tr>
<td>2003</td>
<td>Minimum age for applicants raised from 16 to 18</td>
<td>Entry</td>
</tr>
<tr>
<td>2004</td>
<td>Minimum age for sponsors raised from 16 to 18</td>
<td>Entry</td>
</tr>
<tr>
<td>2004</td>
<td>English test required in order to obtain citizenship</td>
<td>Integration</td>
</tr>
<tr>
<td>2005</td>
<td>“Life in the UK” test required in order to obtain citizenship</td>
<td>Integration</td>
</tr>
<tr>
<td>2005</td>
<td>Introduction of Certificate of Approval Scheme</td>
<td>Marriage/switching</td>
</tr>
<tr>
<td>2006</td>
<td>Income requirement articulated as being minimum level above which families become eligible for income support</td>
<td>Entry</td>
</tr>
<tr>
<td>2007</td>
<td>English and Life in the UK tests required for settlement</td>
<td>Integration</td>
</tr>
<tr>
<td>2008</td>
<td>Minimum age for sponsors and applicants raised to 21</td>
<td>Entry</td>
</tr>
<tr>
<td>2008</td>
<td>Certificate of Approval scheme condemned by House of Lords in <em>Baiai</em></td>
<td>Marriage/switching</td>
</tr>
<tr>
<td>2009</td>
<td>Supreme Court case: third-party support can be relied on to fulfill income rules</td>
<td>Entry</td>
</tr>
<tr>
<td>2010</td>
<td>Pre-entry English language test introduced (level A1)</td>
<td>Entry</td>
</tr>
<tr>
<td>2010</td>
<td>Certificate of Approval scheme condemned by ECtHR in <em>O’Donoghue</em></td>
<td>Marriage/switching</td>
</tr>
<tr>
<td>2011</td>
<td>Certificate of Approval scheme abolished</td>
<td>Marriage/switching</td>
</tr>
<tr>
<td>2011</td>
<td>Attachment and income requirements proposed, along with other things, in Family Immigration consultation</td>
<td>Entry</td>
</tr>
<tr>
<td>2011</td>
<td>Minimum age lowered back to 18 after <em>Quila</em> case</td>
<td>Entry</td>
</tr>
</tbody>
</table>
Minimum income requirement for spouse/partner visas increased to £18,600, with higher limits for dependents

Table 14: Relevant changes to British family immigration policy, 1997-2012

As this brief outline and table shows, the most important changes to entry rules during 1997-2012 were the age limit, the English language requirement, and the income rules. In the following, I will investigate only the two of these that are directly analogous to the Norwegian rules, i.e. the age limit and the income requirement. The English language requirement is more interesting to analyze in light of similar requirements in other European countries that use them, and it is also to some extent less controversial than these in the sense that English is widely used and taught in the world and that the level required is quite low. In the 2011 Family Migration consultation, basic English language testing received much wider support than other requirements. There have been concerns about the way in which the pre-entry has been implemented, most importantly with the problems that many applicants may have in accessing approved testing centers, but most interviewees considered the measure legitimate in principle - if not in execution. One did, however, point rather cynically to a 2010 BBC interview with then-Minister of Immigration Damian Green, where he seemingly accidentally characterized the pre-entry test as a mechanism of immigration reduction and control, before correcting himself and talking about integration.

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850 This table was adapted from Sibley, Fenelon, and Mole, Family Reunification Requirements: A Barrier or Facilitator to Integration? United Kingdom Country Report, 24.
852 For instance, JCWI has worked on the case of a Yemeni man who had to move to Jordan in order to access a testing center.
It should be noted that refugee family reunion with ‘pre-flight’ family members (i.e. reunification with the refugee’s family from which he or she was separated during flight) is subjected to a different set of rules, and there are no income or English language requirements for these family members. This is analogous to the Norwegian distinction between family formation and reunification and the recognition that refugee family formation appears to merit particular protection under article 8 due to the impossibility of reunification in the home country.

5.4.2 Case 1: Labour’s age limit

British politicians, like their Norwegian counterparts, were seduced by the idea of age limits as a protective measure against forced marriages. This came after a long build-up over attention to forced marriages, and a long process of campaigning by the Labour MP Ann Cryer. In this section, I will show first the rise of forced marriages on the policy agenda, the genesis of the age limit and its policy objectives, the constraints delaying its implementation, and finally its failure. I argue that the age limit failed due to successful civil society pressure by way of the newly empowered courts, as the policy – with its single objective of preventing forced marriages – was found to be disproportionate.

5.4.2.1 Forced marriages on the agenda

At the turn of the century, a number of events brought to the fore concerns over forced marriages, community cohesion and integration; concerns which in the UK as in Scandinavia in certain ways tied into discussions over family immigration. The Labour MP for Keighley, Ann Cryer, who would become the most prominent proponent of the age limit in British politics, first brought up the issue of forced marriages in an adjournment debate in the British Parliament in 1999 – described by Amrit Wilson as “laden with colonial overtones” – sparking a wider debate on the issue. Compared to Norway, then, action against forced marriages was more

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initiated from within the political elite rather than from the outside.\textsuperscript{857} However, although Cryer was elected in 1997 as part of a wave of new female MPs, she was not a typical “New Labour” type. The wife of a former MP (elected to her deceased husband’s former seat), she was initially at the far left of the party, belonging to the Socialist Campaign Group, although her voting record is not quite consistent with many other members.\textsuperscript{858} She found herself at the middle of several quite thorny issues, including both forced marriages and the Rochdale sex grooming scandals (in which young girls where groomed for sexual exploitation by gang of British Pakistani men),\textsuperscript{859} and was certainly not afraid to speak up about them. She has been criticized by many BME academics and activists for mixing her opposition to forced marriage with more questionable, perhaps racist, attitudes about the South Asian community,\textsuperscript{860} and she has indeed used water-based metaphors such as ‘floodgates’ referring to immigration from the subcontinent.\textsuperscript{861} Like Scandinavian activists, then, she has mixed arguments about individual rights and overall immigration numbers.

After Cryer’s 1999 adjournment debate, an expert team was commissioned to investigate forced marriages. After interviewing stakeholders across Britain, they published the influential report

\begin{footnotesize}
\begin{enumerate}
\item See for instance Wilson, “The Forced Marriage Debate and the British State.”
\item Humera Khan of the An-Nisa society, a women’s organization, describes her experience at the 1999 adjournment debate thusly: Watching from the public gallery, I was aware that the terms “Muslim”, “woman” and “oppressed” have become so closely interwoven that you would think that they were the same thing. Acting as judge, jury and liberator, the new defenders of women of faith began the attack by distancing themselves from any accusation of being racist or Islamophobic, demanding instead an end to the “conspiracy of silence about anything to do with Muslim women.” Humera Khan, “Islam’s Women Protect and Defend Each Other,” \textit{The Guardian}, April 1, 1999, http://www.guardian.co.uk/world/1999/feb/20/religion.islam.
\end{enumerate}
\end{footnotesize}
“A Choice by Right” in 2000. Unlike in Norway, these experts did not link forced marriages to immigration *per se*, but noted that “some anecdotal evidence has been presented to the Working Group of cases where forced marriage has been deliberately used as part of a wider scheme to circumvent the immigration rules. These cases are not the norm.” The report strongly emphasized the distinction between forced and arranged marriages, in the same way as expert had done in Norway. The Forced Marriage Unit, localized in the Foreign and Commonwealth Office (FCO), was established as a consequence of this report. Several academics have questioned the decision to locate this unit within the FCO, as it brings into focus those marriages that have an overseas or immigration dimension to the detriment of those that do not. The “Choice by Right” Report was followed by an additional study which also found that the immigration dimension was not particularly important, and which warned that the usage of restrictive immigration regulation to present forced marriages could lead to young persons being dumped in Pakistan or Bangladesh instead.

Events during the following year meant the debates over immigration would continue. 9/11, the Sangatte refugee crisis and most particularly the riots in the Northern towns such as Bradford, Oldham and Burnley have been widely seen as wake-up calls in British immigration and integration policy, and as McGhee argues, “it would not be an exaggeration to say that these disturbances spawned an industry with the agenda of enhancing citizenship, increasing integration and building community cohesion”. The Cantle report, produced to explain the

863 Ibid., 12.
864 Grillo, “Marriages, Arranged and Forced: The UK Debate.”
865 Dustin, *Gender Equality, Cultural Diversity*, 9; Gill and Anitha, “The Illusion of Protection?,” 263.
866 Samad and Eade, *Community Perceptions of Forced Marriage*.
867 Sangatte was a camp run by the Red Cross on the French side of the Channel Tunnel where asylum seekers waited to try to cross the English Channel to the UK. There were riots in the camp in 2001 and it was closed down in 2002.
riots, would be very influential; documenting segregation of certain communities.\textsuperscript{869} The immigration-skeptic think tank Migration Watch – a controversial voice in the British immigration debate – has argued that continued immigration through the family stream has contributed to this segregation,\textsuperscript{870} but a recent state-of-the-art review on research on marriage migration argues that there is not sufficient evidence to back up causal claims of this nature.\textsuperscript{871} However it cannot be disputed that family immigration contributed to the continued migration from the Indian subcontinent and the growth of different immigrant communities, as there were for decades no other viable mode of entry. As Yuval-Davis et al point out, “family migration, though largely neglected, has been a major source of permanent settlement, especially in those areas (Oldham, Bradford and Burnley) which are considered to represent the failure of liberal multiculturalism.”\textsuperscript{872} They link this observation with the increased desire to control family immigration observed from the 2002 White Paper on immigration (\textit{Secure Borders, Safe Haven}) onwards.\textsuperscript{873} In the UK as in Norway and Denmark, then, forced marriages, arranged marriages and so-called ‘chain migration’ became part of the wider immigration and integration debate, feeding into a ‘moral panic’ and a general backlash against multiculturalism.\textsuperscript{874}

5.4.2.2  Genesis and objective

In her constituency of Keighley, at the outskirts of Bradford, Ann Cryer found herself in contact with young women (and sometimes men), mostly of Pakistani background, who requested assistance from their MP in preventing the issuance of visas to their intended spouses - what is

\begin{thebibliography}{9}
\bibitem{869} For more on this report see for example McGhee, “The Paths to Citizenship.”
\bibitem{871} Charsley et al., “Marriage-Related Migration to the UK.”
\bibitem{873} See also Gedalof, “Unhomely Homes.”
\bibitem{874} Grillo, “Marriages, Arranged and Forced: The UK Debate.”
\end{thebibliography}
often known in the UK context as ‘reluctant sponsors’. She tried to help, sometimes through contacting immigration officials or the High Commission in Islamabad. She subsequently learned about the Danish age limit both through the media and through her position as a representative of the United Kingdom in the Council of Europe, where she interacted with parliamentarians from all over Europe. While she considered that the Danes had set the limit too high at 24, she considered the policy a pragmatic way to assist the young people she was coming in contact with. With an age limit of 21, they would be able to finish their university degrees before transnational marriage would become possible. Cryer was not, in fact, aware of the existence of an optional 21-year rule in the Family Reunification Directive,\(^\text{875}\) so the genesis of the age limit policy in the UK was not derivative of EU policy developments.

Forced marriage prevention was certainly the central objective voiced by Ann Cryer, although some activists have been dubious of her motives given her involvement in other debates over immigration from the sub-continent.\(^\text{876}\) The Home Office also focused on the forced marriage angle; and in the 2008 Equality Impact Assessment the rule’s objective is stated in no uncertain terms: “this Marriage Visa reform is based on one fundamental principle: to do everything we can to prevent forced marriage”\(^\text{877}\). When Minister of Immigration Phil Woolas announced the policy in parliament, his main focus was forced marriages, although he did also draw a link to integration. As he said,

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\text{[t]he change reflects our firm conviction that no one should be pressurised into sponsoring a marriage visa and that those who wish to sponsor a marriage partner from overseas should be encouraged to establish an independent adult life here first and to see that as an important way of helping their partner to integrate.}^{878}\]

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\(^{875}\) Interview, Ann Cryer, January 2013.  
\(^{878}\) *HC Deb, 4 November 2008, c18WS*
In hindsight, however, arguments about integration and immigrant numbers were more blurred together. As he said,

part of the motive of increasing the age limit was to try to control the numbers of immigrants. My view and my colleagues’ view was that there was a very strong issue around community cohesion and women’s rights. Remember that my parliamentary constituency of Oldham in Greater Manchester was a very ethnically diverse area…there were significant numbers of people who were suffering because they were being brought into the country through an arranged or forced marriage.  

As in Norway, many activists suspected that immigration control was the ‘real’ motive, or at least a motive of the rule. As Dustin argued,

raising the age of which citizens can be joined by a spouse from overseas may protect women from forced marriage - though this has not been demonstrated - but it will also reduce the number of family reunification entrants. This threatens the credibility of work by statutory bodies, leading to a perception by minority communities that reducing immigration is the main objective or at least a welcome byproduct of this work.  

However, as one lawyer argued, “it seemed very odd at the time that you would want to reduce immigration but not publicize the fact that you were reducing immigration”. The Home Office has otherwise been eager to tout its successes in immigration control in recent years. Infamous recent examples include live tweeting enforcement action against ‘immigration offenders’ as well as the so-called ‘Go Home’ campaign where a van with the sign “In the UK illegally? Go

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879 Interview, Phil Woolas, February 2013.
880 Dustin, Gender Equality, Cultural Diversity, 31.
881 Interview, immigration lawyer, February 2013.
home or face arrest” trafficked London neighborhoods with many immigrants. It was widely ridiculed with the hashtag #racistvan, and the campaign was subsequently called off.883

5.4.2.3 Conflict and constraints

It would take a number of years before much progress was made with regard to the age limit, as there were a number of constraints that would have to be negotiated. Early on, Cryer fought intra-party skepticism and initially met with little support from her colleagues.884 It did not help her popularity within the Parliamentary Labour Party at the time when she began lobbying for the age limit that she had opposed the war in Iraq. My interviews suggest that there was some division within the Party, perhaps especially between those MPs who dealt with forced marriage cases in their constituencies, and those who did not. Two interviewees identified Tony Blair as being particularly uninterested in both family immigration and forced marriages. It was arguably also in the interest of the Labour Party to tread somewhat carefully, as the target populations of a potential age limit would clearly include many Labour constituents.885 Britain’s Asian and Asian British population is 7.5% of the total population, a majority of whom has historically voted Labour.886 Cryer did have some success getting through to David Blunkett - himself an MP for Sheffield - and in 2003 and 2004 he followed up on her lobbying by raising the age limit for spousal sponsorship from 16 to 18 for applicants and then for spouses. As this was the age of majority, it did not garner a great amount of controversy.

While there was some hesitation within the Labour Party, the Conservative Party was rather more positive to the proposals early on. It is notable that the 2004 Kirkhope Commission on Immigration policy, set up by the Conservatives as a forum for policy development on


884 Interview, January 2013.

885 Interview, IPPR, February 2013.

immigration and led by MEP Timothy Kirkhope, strongly supported the measure, noting that “thanks to the persistent lobbying of the Labour MP for Keighley, Ann Cryer MP, the Home Office recently raised the minimum age for sponsoring a spouse from 16 to 18. Cryer has lobbied the government to raise the age to 21…” After noting the Danish age limit, the high number of international arranged marriages in the Pakistani and Bangladeshi communities, and the “problems of social cohesion for newly arrived wives who have no knowledge of Britain”, the commission “agreed with Ann Cryer’s proposal”. By 2007, the Conservatives were pressing for action.

The third obstacle in the way of the age limit lay within the bureaucracy. Former immigration minister Phil Woolas claimed that a major reason why it took so long before the age limit was implemented was opposition from two important Ministries. Firstly, the Treasury opposed immigration controls in general – reflecting a free market type of belief in open borders, where labor should flow as freely as capital, benefiting British employers. This finding is consistent with findings by other researchers as well as news reporting suggesting conflict between the Home Office and Treasury on immigration. It also coheres with my findings in the Norwegian case with regard to the different interests of different government agencies in immigration control, where the Ministry of Research and Education opposed restrictions on family immigration. One might speculate that this is why there was never an age limit for dependents of skilled workers entering under the Points Based System – a fact which neither Woolas nor Cryer were aware of. Secondly, Woolas “was advised that the judiciary would not

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887 He had also chaired a similar group the year before which examined asylum policy.
890 This latter point is corroborated in Somerville, Immigration under New Labour.
891 Devitt, Labour Migration Governance in Contemporary Europe: The UK Case, 4.
893 Interviews, 2013.
accept [the age limit].” As he said, “I had an argument with Jack Straw, who was by then the Justice Secretary… I said we should take the judges on and he said we shouldn’t.” As it turned out, Straw was prescient about this, but it would take several years for the legal challenge to make its way through the system. Support was taking hold within the Home Office itself, however. The age limit was first announced as official policy to prevent forced marriages in the 2007 ‘Securing the UK Border’ White Paper. By then the Home Office had already worked on it for some time: In 2006, they commissioned a team of researchers led by Dr. Marianne Hester of the University of Manchester to investigate the potential effects of setting an age limit for spousal sponsorship at 18, 21 or 24. As Devitt notes, “evidence-based policy has become the byword for UK policymaking since Labour came into office in 1997”. This instance, however, seems a classic case of the ‘substantiating use of knowledge’, rather than conforming to a rationalist pursuit of better policy. The research was commissioned with a view to substantiating a policy that was already defined, i.e. the age limit. The report that came back, however, did not support such a policy. The Home Office promptly shelved the report once it was finished in 2007, claiming the data was not sufficiently reliable, following Boswell’s prediction that knowledge intended for substantiation will be published quite selectively. The full report only became available as a result of a Freedom of Information request from the enterprising immigration lawyer Colin Yeo. The authors have since published their findings in

894 Interview, Phil Woolas, February 2013.
896 Marianne Hester et al., “Forced Marriage: The Risk Factors and the Effect of Raising the Minimum Age for a Sponsor, and of Leave to Enter the UK as a Spouse or Fiancé (e),” Bristol: University of Bristol, 2007.
901 https://www.whatdotheyknow.com/request/forced_marriage_research#incoming-50936
other (peer-reviewed) venues,\(^{902}\) casting doubt on the Home Office’s contention that the research was sub-par. Notably, the researchers found that age was not the most pertinent protective factor against forced marriages. 14 of the 38 cases examined involved a transnational spouse, and the problem of forced marriages as they described it was clearly much broader than a visa strategy. They discouraged the use of an age limit.\(^{903}\) Yeo suggests that the Home Office shelved the report on purpose, as it did not support their policy objectives.\(^{904}\)

This same approach can arguably be identified in the Home Office’s approach to the 2007 consultation on the age limit. In late 2007, the Home Office issued a consultation on the issue (without publicizing it much), insisting they had an open mind.\(^{905}\) Unlike their Norwegian counterparts, they did ask an open question, simply inviting a response “Do you think we should increase the minimum age at which someone could sponsor or be sponsored as a spouse from 18 to 21?”\(^{906}\) The consultation itself is difficult to examine in much depth, as the responses are not publicly available. The Home Office would not release them either, arguing that respondents had not agreed to publication.\(^{907}\) Most major organizations have published their responses, however, and as Wray notes, the major organizations were against the measure. The Home Office, however, anonymized all responses in the 2008 compilation “Marriage visas: the way forward”,\(^{908}\) and treated individuals on par with organizations, thus obscuring the fact that most major stakeholder organizations, including the Southhall Black Sisters and Rights of Women,


\(^{903}\) Hester et al., “Forced Marriage.”

\(^{904}\) Yeo, “Raising the Spouse Visa Age.”


\(^{906}\) Ibid., 9.

\(^{907}\) This author submitted an unsuccessful Freedom of Information Request in March 2012.

were against the proposal. Both Yeo and Wray reach the conclusion that the support was lukewarm at best, even though nominally 45 of 89 respondents favored the age limit. The most common objection (27 responses) was that the measure could be discriminatory. It was mainly women’s and minority organizations that responded to the income rule consultation. There was not, initially, significant mobilization among migrants’ rights groups, as many felt that forced marriages lay beyond their area of expertise. Many, however, were skeptical about the use of the immigration rules as a place to fight non-immigration related crimes, or to fight crimes in general, preferring a human rights solution to a human rights problem.

5.4.2.4 Implementation

Once politicians had decided to implement the age limit, opposition from some experts and stakeholders was of little practical consequence. The change itself only required a change to the Immigration Rules. Perhaps the only consultation response that might have tipped the scale in the other direction came from the Commons Select Committee on Home Affairs. The committee has over the years held a number of hearings on forced marriage and related issues of family violence, and they expressed concern that the Home Office had not provided sufficient evidence of the effectiveness of the proposed measure. The Home Office, in its compilation of the results of the consultation, presented some basic statistical data which was claimed to address this concern and which appeared to show that forced marriages were more prevalent with victims under age 21. Yeo argues that this evidence is in fact much ‘thinner’ than the very evidence the Home Office had rejected in the Hester report.

In the Equality Impact Assessment carried out between June and November 2008 the Home Office responded to the discrimination concerns expressed by stakeholders exactly as their

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909 The exception here was Karma Nirvana, a group that works with victims of forced marriage and which supported the rule.
910 Yeo, “Raising the Spouse Visa Age.”
911 Interview, Migrants’ Rights Network, January 2013.
912 Select Committee on Home Affairs, Domestic Violence, Forced Marriage and “Honour”-Based Violence (House of Commons, 2008).
913 Yeo, “Raising the Spouse Visa Age.”
Danish counterparts had in 2002, by repeatedly noting that the rules would apply to “all migrants regardless of race, nationality, religion, ethnicity and sexual orientation”. The possibility of indirect discrimination was acknowledged in that the Home Office that the impact would be felt mostly by those groups where it was common to marry young, but it was argued that the “benefit of preventing forced marriage and delaying forced sponsorship” outweighed the concerns and thus made such indirect discrimination justifiable. As such, it seemed that the Home Office was not terribly concerned about the marriages of minority Britons (especially Britons of Pakistani and Bangladeshi origin) – known to be among those who married young – who would be affected by the age limit. The Home Office also argued in support of the measure that Denmark practiced an age limit. It was argued that this age limit was only intended to prevent forced marriages, ignoring the Danish policy’s other objectives. They also referred to the Dutch age limit, which they argued was intended to promote integration. Curiously, and supporting my claim that this was not primarily a question of harmonization with European policy standards, no reference was made to the EU Family Reunification Directive.

The policy itself was announced by then-Minister of State for Immigration Phil Woolas in November 2008. One and a half years later, however, he announced some changes to it that arguably undermined the policy itself by exempting one group from a policy that was supposed to be non-discriminatory through universal application. In 2010, the 21-year limit was lowered back to 18 for members of the Armed Forces. As Woolas announced in Parliament “this recognises the role of partners in supporting those on the frontline. I believe that it is important that we give the armed forces special consideration to reflect the unique circumstances in which they operate.”

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914 Bennett, *Equality Impact Assessment: Raising the Marriage Visa Age from 18 to 21*, 16.
915 Ibid., 15.
917 HC Deb, 4 November 2008, c18WS.
918 HC Deb, 18 March 2010, c71WS.
5.4.2.5 Failure

As I have argued, there is a vibrant and large community of British immigration lawyers and organizations who eagerly take on cases challenging immigration decisions – partly in the absence of other means to influence policy in a liberal direction. It was in this spirit that the JCWI, took on a legal case to challenge the age limit, representing the British/Chilean couple Amber Aguilar and Diego Aguilar Quila. JCWI – working to help immigrants since 1967 and thus one of the older organizations in the field – in fact almost went bankrupt pursuing the case.919 Mr. Quila had been an exchange student in the UK, and had fallen in love with and married a young British woman when they were 18 and 17 years old respectively. Having failed to obtain a visa for Mr. Quila through family reunification proceedings due to their age, Ms. Aguilar was forced to move to Chile. In 2010 the couple moved to Dublin, exercising Ms. Aguilar’s treaty rights to move freely in the EU for the purpose of study. Mr. Quila finally obtained a visa to the UK in February 2011, but the continued proceedings were justified by the case’s “general importance”.920

The couple lost in the High Court,921 but won in the Court of Appeal.922 The case ended up going all the way to the new UK Supreme Court. The Supreme Court ruled in the couple’s favor, which eventually led the coalition government to revoke the age limit in November 2011. The ruling is interesting, as we can identify where the government ‘went wrong’ with its age limit policy. Lord Wilson’s majority opinion set out the issue:

The Secretary of State’s purpose is clear. It was not to control immigration. It was to deter forced marriages. At the heart of the appeals is her analysis of the nexus between

919 Interview, JCWI, February 2013.
920 Block and Bonjour also document an instance of the Dutch government issuing a permit to try to pre-empt court proceedings. The Dutch government succeeded in doing so in a case on the pre-entry language requirement. Block and Bonjour, “Fortress Europe or Europe of Rights? The Europeanisation of Family Migration Policies in France, Germany and the Netherlands.”
922 Quila & Ors v Secretary of State for the Home Department & Ors [2010] EWCA Civ 1482 (England and Wales Court of Appeal 2010).
entry into a forced marriage and the increase in the minimum ages requisite for the grant of a marriage visa. No one could contend that the nexus is very obvious.  

Here, we see Lord Wilson using the same logic suggested by Lord Brown (incidentally the justice who dissented in this case) in *Mahad* (see below), arguing that justices must assess a measure in light of its official, stated objective, and that objectives cannot be “divined by reference to supposed policy considerations”.  

Lord Wilson noted that “assisting claims for UK residence and citizenship” was one of 13 motives for forcing someone to marry published in the November 2008 guidance on forced marriages, making clear that immigration was by no means the only motivation for a forced marriage.  

In assessing a possible breach of article 8, he concluded that the denial of a visa and postponement of life in the UK for three years (until the claimants turned 21) was a ‘colossal interference’ in family life. The assessment of whether the interference was in fact a violation of article 8, however, would hinge on the question of proportionality, i.e. whether the measure was ‘necessary in a democratic society’; as the two other criteria (that the measure have a legitimate aim and be in accordance with the law) were considered to be satisfied. Lord Wilson pointed out that the Secretary of State had not attempted to quantify the number of forced marriages that might be prevented by the measure, and recalled that obtaining an immigration permit was only one of thirteen identified motivations for forced marriage. He also raised a list of ten different concerns arising from the measure itself, such as young women being kept abroad until they were old enough. Concluding for the majority, he famously found the measure disproportionate; using a “sledgehammer [without attempting to] identify the size of the nut.”

In a separate reasoning, Lady Hale expressed a second reason for unlawful interference which is interesting in light of the discussion of proportionality, objectives and means. She noted that the

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924 Mahad (and others) v. Entry Clearance Officer, UKSC 16 (UK Supreme Court 2009).


926 Ibid., para. 58. This quote was mentioned by several of the interviewees as they spoke of the case.
Secretary of State had argued that the measure was lawful with reference to the *Abdulaziz* case (see 2.2.1.1 and 2.2.2.2). However, as Lady Hale argued, “The Secretary of State cannot at one and the same time say that she is not doing this for the purpose of controlling immigration and rely upon jurisprudence which is wholly premised on the state’s right to control immigration”. As forced marriages had been claimed in official documents to be the only objective, the measure could not stand. While it is a risky endeavor to speculate in counterfactuals, the outcome may have been different if the age limit had been ascribed broader objectives, as this would have altered the proportionality assessment.

### 5.4.2.6 Summing up

The implementation of the age limit in British family immigration rules was a slow process, mainly due to the slow build-up of political support. After several years as a relatively solitary figure, Ann Cryer eventually gained support for her proposal both among Labour and Conservative politicians. External constraints on policymakers were of relatively limited consequence, as policymakers limited access to the debate. Expert knowledge doubting the efficacy of the measure was subdued or hidden away by the Home Office through the shelving of the expert report they had ordered, and through the presentation of consultation responses wherein no special weight was placed on responses from respected stakeholder organizations. As the introduction of the measure was a matter of changing the Immigration Rules, it was quite straightforward and required no parliamentary debate.

When the age limit subsequently failed, it was through the broadening of conflict again, as immigration activists and lawyers challenged the measure through the most viable avenue

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927 This is the same case that led to the leveling down of rights to reunification in the 1980s, with the application of the primary purpose rule to women sponsors.


929 It may, however, have failed on other grounds than article 8 in that case, such as discrimination (article 14), and it is not certain that the UK Supreme Court would have considered an objective such as “reducing family immigration” to be legitimate. Outside of Britain, this ruling has been given little credence. It was considered not important by Norwegian policymakers in 2014, see Justis- og beredskapsdepartementet, “Horingsbrev - endringer i utlendingsloven (24-årsgrense for familieetablering),” June 26, 2014, http://www.regjeringen.no/nb/dep/jd/dok/hoering/hoeringsdok/2014/HORING--ENDRINGER-I-UTLENDINGSLOVEN-24-ARSGRENSE-FOR-FAMILIEETBLERING/Horingsbrev.html?id=764609.
available to them - the courts, newly empowered to assess the compatibility of legislation and executive action with human rights norms. There, they argued successfully that the measure was disproportionate, as it had been set out with one sole objective - the prevention of forced marriages - while it had effects well beyond this. At the same time, it showed the difficulty of pursuing supposedly non-immigration control related objectives through immigration control measures. When the stated policy objective (regardless of whether other, implicit, objectives were also present) pursued is a ‘nut’, politicians cannot employ their ‘sledgehammer’.

5.4.3 Case 2: the Coalition’s income and attachment proposals

While Labour throughout much of its time in government tried to move toward ‘migration management’, where immigration was framed as more positive and benefiting Britain economically, they struggled increasingly to sell this story in their third term. The Conservatives fought the 2005 election partly on Labour’s immigration record, and while this did not immediately pay off, the question of the number of immigrants and pace of immigration became increasingly thorny for Labour towards the end of the 2005-2010 term. This is the context in which the shift towards the income requirement for family immigration occurred. In this section I will first outline the context of the change of government in 2010 and the new net migration target. As in Norway, there was a long history of using a form of income rule, so I will briefly review the history of the income requirement before proceeding. I then look at the genesis and objectives of the proposals, the constraints politicians had to negotiate, and the finally the abandonment of the attachment requirement and the implementation of the new income threshold. I will argue that the income requirement policy avoided some of the pitfalls of the age limit through the use of wide policy objectives and outsourcing parts of the policy to experts for legitimization.

5.4.3.1 Counting immigrants: the coalition and the cap

During Labour’s period in government, the question of the number of immigrants was controversial first with regard to asylum seekers and then EU migrants. In an influential report from 2008, the House of Lords sowed doubt about the government’s claims about the benefits of

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high immigration, implying that a target range for net immigration should be part of immigration policy. In the report, family immigration was generally defined as “non-managed migration”, but it was singled out as an area where international obligations are of a more malleable nature than with regard to asylum.\textsuperscript{931} Here, again, we see a suggestion that the state’s obligations may be shaped by the government through its discourse and action. The Labour government did not, however, address the number of family migrants as a problem out loud – although some have concluded that they did indeed wish to bring numbers down.\textsuperscript{932} Although Gordon Brown’s major policy speech on immigration leading up to the 2010 election focused on how to control immigration and the levels of immigration to Britain, the only comment he made with regard to family immigration was that “no major party proposes to stop” it; using this argument to discredit the idea of an immigration cap, as he considered that only work and study migration could effectively be capped.\textsuperscript{933} In making this argument, he was seeking to undermine the Conservatives’ election message. Their 2010 manifesto included a pledge to “take net migration back to the levels of the 1990s”.\textsuperscript{934} As the 2010 election resulted in a hung parliament, with no single party holding a majority, the Conservatives ended up going into a coalition with the Liberal Democrats; the country’s first coalition government since the Second World War. Decisions on how the Conservatives and the Liberal Democrats would govern together were formalized in the May 2010 ‘Coalition Agreement’, where they announced that they would “introduce an annual limit on the number of non-EU economic migrants admitted into the UK to live and work”.\textsuperscript{935} No specific indications on how this would affect the family stream were given. They avoided giving specific numbers, but Prime Minister Cameron and his immigration minister maintained the vow of reducing ‘net migration’ from the ‘hundreds of thousands’ to the

\textsuperscript{931} House of Lords, \textit{The Economic Impact of Immigration} (Select Committee on Economic Affairs, 2008).

\textsuperscript{932} See for instance Spencer and Pobjoy, “The Relationship between Immigration Status and Rights in the UK: Exploring the Rationale,” 35.

\textsuperscript{933} Gordon Brown, “Controlling Immigration for a Fairer Britain” (Speech, University of East London, March 31, 2010).


‘tens of thousands’ in subsequent policy speeches. Net migration to the UK in 2013 was 212,000.

The 2008 House of Lords report on the economic impact of immigration pointed out, however, that net migration is “extremely difficult to predict because of the complexity and variability of its determinants”, and had only suggested a much vaguer form of target range. As net migration is a function of immigration minus emigration, it involves several migratory flows definitively beyond the government’s control, such as emigration – which is not controlled in democracies – EU free movement and the return of British citizens from overseas. As such, this policy target has been subjected to wide criticism, as it is not clear how it could be reached.

It surely does not help that British immigration statistics are “seriously inadequate” for the purpose. Indeed, it is practically impossible to obtain comparable statistics from the UK as those provided in Scandinavia. In such a context, however, the government reached for practically any means to reduce immigration. Apparently, one strategy pursued by the government has been to make life in the UK less attractive, organized through a “Hostile Environment Working Group” set up by the Prime Minister. Family migration was, however, a natural target, as it

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938 House of Lords, The Economic Impact of Immigration, 14.


940 House of Lords, The Economic Impact of Immigration, 10.

941 Whereas Norway, for instance, has population-wide registry data on the foreign-born population as well as comprehensive data on immigration permits issued by category/citizenship/status of sponsor, much of the British immigration data is based on the International Passenger Survey, which is in turn based on interviews with a relatively small sample of persons coming through British airports. Data on immigration permits issued is largely internal to the UKBA, and the family numbers are further marred by confusion between first entry data and settlement data.

makes up a significant proportion of immigration to the UK. The spouse category is the single most important category of long-term migrants to the UK, making up 39% of settlement in 2008 and 40% in 2009.\textsuperscript{943}

5.4.3.2 Heritage – income requirements before the cap

As in Norway, income requirements are not a new feature of the British family immigration rules. Rather, there has been a long-standing provision that sponsors should demonstrate a certain level of income: as Justice Blake summarized the income rules in the 2013 High Court ruling in \textit{MM}, “the maintenance requirements for the admission of spouses have been essentially the same since 1973”.\textsuperscript{944} As in Norway, however, the target groups of these rules have varied somewhat over time. Both before and after the 1971 Immigration Act, “wives and children under sixteen of Commonwealth citizens settled in the UK had a statutory right of entry” and “did not need to have a home to go to or a guarantee of being maintained”.\textsuperscript{945} However, “in all other cases where dependants or relatives [were] being admitted to the UK, the sponsors must be able and willing to maintain and accommodate their dependants without recourse to public funds in accommodation of their own or which they occupie[d] themselves”.\textsuperscript{946} The privileged status of male Commonwealth citizens, as we know, was subsequently eroded in the name of gender equality, leading also to the extension of maintenance requirements.

While all “spouses, civil partners, fiancé(e)s, proposed civil partners, unmarried partners, and adult dependant relatives” as well as non-citizen children under 18 where one or more parent was not settled in the UK had to show that they were “adequately maintained without recourse to...
public funds”, the requirement was not extremely onerous. The income level that applicants have had to demonstrate has been interpreted as being equivalent to a “British family relying upon Income Support”. Use of the NHS and state education did not count as having ‘recourse to public funds’. Both the earnings of the sponsor and the prospective earnings of the applicant might be taken into consideration. Skills and qualifications would be taken into account, so whereas skilled applicants might get by even if they did not have a job offer, those with few skills would have to demonstrate a firm offer.

The question of whether third-party support could be taken into account remained for a long time unresolved. The government had argued that only the family’s income could count, and that third-party support could not be relied on. Anomalously, however, third-party support was allowed with regard to the parallel requirement of secured accommodation. Lord Brown J considered in the 2009 Supreme Court case Mahad that the “intention [of the rules] is to be discerned objectively from the language used, not divined by reference to supposed policy considerations”. The stated objective of the rule was to ensure non-reliance on public funds, and there was no explicit ban on third-party support in the rules. The Supreme Court therefore established that third-party support could be used to fulfill the income requirement. We might conclude that this was another case of a strict rule failing for having objectives that were too narrow, although the case was not decided on article 8 grounds.

Not everyone was happy with the old income requirement. As with many other areas of immigration, there were concerns about fraud with contracts, pay slips, etc. Ann Cryer MP raised the same concerns that were seen in Norway with regard to income requirements and forced marriages, i.e. that “if you were only 18 and you were still doing your A-levels, there would be a

948 Ibid., 11.
949 Prospective earnings of the applicant could not be taken into account for fiancé(e)s.
950 Clayton, Textbook on Immigration and Asylum Law, chap. 9.
951 Mahad (and others) v. Entry Clearance Officer, UKSC 16, 10 (UK Supreme Court 2009), vol. UKSC 16, para. 10.
lot of pressure on that girl to leave school to get a job”.952 As these concerns had not been operationalized in the Immigration Rules themselves, however, they were not taken into account by the Court – and could perhaps be solved through better casework. The practicability of the ‘no recourse to public funds’ provision also posed challenges. As noted, migrants had access to schooling and the NHS, but were technically excluded from other types of public funds. But as one interviewee argued, the fact that certain benefits – such as those related to having children – are given at a family level rather than at the individual level, means spouses married to British citizens cannot easily be excluded from those benefits.953

The government did not only target potential family migrants’ use of benefits – the income requirement did occur within a broader context of benefit cuts.954 In a context of wishing to bring down immigration numbers, while also undertaking broader benefit cuts, it is not difficult to see how the income rules could become a target of change.

5.4.3.3 Genesis and objectives

The Coalition began to take steps to change family immigration policy in 2011, after having already introduced changes to other immigration streams. The proposals for new family immigration rules were first announced when they published a broad consultation on family immigration from July to early October 2011.955 In September 2011, Minister of Immigration Damien Green held a major speech on family immigration policy at the Center for Policy Studies,956 making it clear that the government would “take action across all routes of entry to the UK” in order to reduce net migration – even though the Coalition agreement had specified ‘economic’ migration.957 Gordon Brown was thus wrong to suppose that no major political party

952 Interview, January 2013. Note that she did not think that families with foreign spouses but effectively British children should be barred from accessing benefits.
953 Interview, IPPR, February 2013.
956 Green, “Immigration.”
would seek to curb family immigration. As Green said - framing the issue as a public rather than a private concern:\footnote{958}

marrying is a personal decision. But settling in a country is a decision that has important implications, both for the individual and for society. It is therefore right that we consider what should be expected of those wishing to settle in the UK as a spouse or partner.\footnote{959}

The Family Migration Consultation garnered around 5,000 responses from organizations and members of the public, mostly through an online questionnaire. The major organizations in the field generally submitted written responses, of which many are available online. The consultation contained a large number of proposals, but I will concentrate on two central ones here: attachment and income. These were also the focus of Minister of Immigration Damian Green’s family migration speech in September 2011.\footnote{960}

Green vowed in his speech to defend the 21-year rule, and announced that “we are keen to learn from practice in other European countries. An example is the attachment requirement in Denmark […] It is argued that this promotes effective integration and provides a further test of the genuineness of the relationship” through requiring that the intended spouse have visited Denmark at least twice. Somewhat perversely, he noted that 100% of Afghan marriage visa applicants sampled by the Home Office in 2009 had never visited the UK\footnote{961} – ignoring the obvious fact that Afghans, coming from a refugee-producing country, might neither get a visitor visa or have the means to travel to the UK for leisure. According to the consultation document, the attachment requirement would “support better integration of family migrants, [and] provide

\footnotesize{\begin{itemize}
  \item \footnote{957} Ibid.
  \item \footnote{958} See Baumgartner and Jones, \textit{Agendas and Instability in American Politics}.
  \item \footnote{959} Green, “Immigration.”
  \item \footnote{960} Green, “Damian Green’s Speech on Making Immigration Work for Britain.”
  \item \footnote{961} Green, “Immigration.”
\end{itemize}}
additional safeguards against abuse of family migration through sham and forced marriages”.

Unlike for most of the other proposals, the attachment requirement question had no room for write-in comments in the online questionnaire.

As for the income requirement, Green argued “too often, we have seen family migrants without the means to support themselves, unable and on occasion unwilling to integrate into British life”. To improve integration, the period to qualify for settlement would be extended from two to five years, and the possibility of immediate settlement for spouses who had lived together abroad for four years would be abolished. Better English skills would also be required - a move he argued could save the Department of work and Pensions £2.6 million in translation and interpretation costs per year. Arguing that the maintenance requirement in place - equivalent to the level of Income Support - was insufficient, he said “our message is clear - if you cannot support your foreign spouse or partner you cannot expect the tax payer to do it for you”. In the consultation, it was held that the minimum income requirement would “make it easier for sponsors to determine whether they qualify”, make up a basis for participation in “everyday life and integration in British society”, and “reduce the risk that a spouse or partner becomes a burden on the tax payer”.

With regard to the objectives of the policy changes, we see an approach analogous to what we have previously seen in both Denmark and Norway: broad and diverse objectives underlying the policy changes, in stark contrast to the age limit which was supposed to only prevent forced marriages. Indeed, in the Policy Impact Assessment a fourth objective, “to contribute to reducing net migration”, was also added. This goes directly into the proportionality assessment, which was another concern reflected in the consultation. In Britain, however, the income requirement was never tied to forced marriage prevention in the way it was in Norway.

963 Green, “Immigration.”
965 Ibid.
5.4.3.4 Conflict and constraints

Again, political opposition to the new income rules was muted. While Labour has opposed parts of the Coalition’s new immigration policies, they have only voiced relatively subdued opposition against the new income rules. Responding to questions from JCWI after a major immigration speech, shadow Home Secretary Yvette Cooper only went so far as to say that “on the [income] threshold, we did say to them when it was being discussed in Parliament they ought to consider other options.” She did not object to the idea itself - noting that “clearly there is a need to say that you should be able to support someone you want to bring into the country” – but suggested that they should have come up with a more flexible system. In fact, the Liberal Democrats can perhaps be said to have been more vocally opposed to the income rules, most importantly through the opposition of former Cabinet Minister Sara Teather, who is leaving Parliament in part due to unhappiness with the immigration issue. Labour has seemingly been most concerned with apologizing for their own perceived shortcomings on immigration, such as the decision not to introduce transitional measures for the 2004 EU accession countries. One interviewee noted that “every other word [Ed Miliband] says on immigration is sorry. About Poles, about Europe, about this, that and the other.” Chris Bryant MP, the shadow immigration minister, had little to say about the new family immigration rules in a major 2013 speech on immigration; only noting a need to ramp up efforts against ‘sham marriages’. There has thus been limited political opposition to the rule.

Through the consultation there was somewhat more resistance, especially from NGOs and legal organizations. It is important to note that when the consultation was issued, the level of the

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968 Aitkenhead, “Sarah Teather”; Aitkenhead and Wintour, “Lib Dem MP Attacks Coalition’s Plans for Immigration Reform” Teather has in fact announced she will retire, partly out of frustration with immigration policy.

969 Interview, JCWI, February 2013.

income requirement was still to be determined, and it does not feature in the consultation document. Respondents thus did not have full information about what the proposal might look like. With regard to the attachment requirement, on the other hand, they knew what they were up against. Looking at the responses to the consultation, it is perhaps not surprising that responses from organizations were overall much more critical than responses from members of the public. 971 With regard to the income rules (whose level was then to be determined), 57% of individuals supported them, but only 31% of organizations. 972 Many pointed out that an income requirement did, indeed, exist already. And whereas only approximately 35% of organizations thought the attachment requirement would fulfill the stated objectives, over 60% of individuals thought the same. 973 Many of the major migrants’ rights organizations were very vocally opposed to the rule, and arguably used one of the more powerful arguments at their disposal when some claimed it “could effectively act as a new version of the old ‘primary purpose’ rule”. 974 Citing expert legal advice suggesting the Danish attachment rules might breach ECHR article 14 (discrimination), JCWI suggested somewhat sarcastically that “potential illegality is a very good reason not to implement such Rules”. 975 The Migrants’ Rights Network speculated that the attachment rule had been put in to the consultation as a ‘red herring’, intended to rile up the migrants’ rights organizations so that the government could later say that they had listened to the public and declined to pursue it, while pursuing other restrictive measures instead. 976 Others were disillusioned with the government, expecting they would do whatever they could get away with. JCWI noted that the measure was, in fact, the first they looked for when the new Rules were announced in 2012, suggesting how it had struck a nerve. At any rate, the only

972 Ibid., 5.
973 Ibid., 4.
976 Interview, January 2013.
announcement regarding the attachment requirement was that “we will not be making this change”.977

Why might the Government have quietly dropped the attachment requirement, while pursuing high income rules instead? We can briefly identify some reasons why. The attachment rule, requiring those couples with inferior combined attachment to the UK to relocate to another country to pursue family life, would have gone directly against existing jurisprudence on when, under article 8, such relocation could be expected, and was therefore likely to face court challenges.978 In a wider context of benefit cuts and focus on ‘securing tax payers’ money’, a harsh requirement of economic independence also fits a broader pattern where the government enforces individual economic responsibility at potentially high cost to the individual concerned.979 Furthermore, as combined attachment would require a subjective assessment on the part of Entry Clearance Officers, it would be difficult to operationalize. The income requirement, however, would be easier to implement in practice - this has in fact been one of the government’s arguments for it.980 In the following, I will look at how this was pursued.

The government, strategically, outsourced the policy development to the Migration Advisory Committee (MAC). The MAC was initially set up in 2007 to advise on the Points Based System, and - while its independence has been questioned - it has been argued to have been “the ‘brain’ behind labor immigration policy”.981 It is made up of mainly labor market economists, with representation from the UK Borders Agency (UKBA) and the Commission for Employment and Skills. Family immigration did not initially lie within its remit and this task was quite different

978 Helena Wray, personal communication, March 2014.
979 For instance, persons on permanent disability have been forced to go through new assessments carried out by the private company Atos. The procedures have come under harsh criticism for imposing unnecessary stress on persons with disabilities and wrongly deeming individuals fit for work. Felicity Morse, “Atos Itself Not Fit for Work? Disability Benefit Test Provider May Finally Have Contract Terminated,” The Independent, February 18, 2014, http://www.independent.co.uk/news/uk/politics/atos-itself-not-fit-for-work-disability-benefit-test-provider-may-finally-have-contract-terminated-9136353.html.
980 See MM, R (On the Application Of) v The Secretary of State for the Home Department [2013] EWHC 1900 (Admin) (EWHC (Admin) 2013).
981 Devitt, Labour Migration Governance in Contemporary Europe: The UK Case, 31.
from their previous undertakings. The government asked the Migration Advisory Committee the following question:

What should the minimum income threshold be for sponsoring spouses/partners and dependants in order to ensure that the sponsor can support his/her spouse or civil or other partner and any dependants independently without them becoming a burden on the State.

As the Committee’s chair Metcalfe said - quite defensively - at the All-Party Parliamentary Group (APPG) on Migration Evidence Session in February 2013, the MAC did not choose the question. In their report, they carried out such a calculation in accordance with several different models, of which they ended up recommending a target of £18,600 to £25,700, based on “the annual gross pay at which no income-related benefits would be received”. They examined only the income of the sponsor, and did not factor in the potential income of the incoming spouse. As Metcalfe said, the Home Office wanted it to be simple - but arguably, the calculation was overly simplistic in failing to take into account the fact that family migrants have no recourse to public funds, that the incoming spouse might earn money too and that having two earners would actually reduce the household benefit claims.

According to Lib Dem MP Sarah Teather, Tory MPs had argued for an income requirement of £40,000 during intra-coalition negotiations, but the Liberal Democrats had successfully argued for the lower £18,600 level. It should be noted that the MAC highlighted that “family

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982 Interview IPPR, January 2013.
984 Ibid., 1.
migration regulations are not determined by economic factors alone”, and that they “did not try to prejudge what might be considered necessary or proportionate in the light of Article 8(2)”, but that this was the one aspect they had been asked to consider. By their own calculations based on previous sponsors’ income, 45% would not qualify under the £18,600 limit. This - along with the reputed £40,000 proposal - are reasons why the measures have been widely interpreted as derived from the immigration cap rather than purely from the desire to prevent burdens on the taxpayer.

Once the proposed level was made public in November 2011 – some weeks after the public consultation had closed, meaning stakeholders were unable to provide input on the actual level – there were mixed reactions, and quite a few protests. Don Flynn of the Migrants’ Rights Network has argued that rather than seeing families as a critical cultural resource within our communities […], in inviting the MAC to set the parameters within which migrant families can be united in the UK on purely economic terms, the Coalition Government has chosen to operate with a different lens, seeing the family as a unit of consumption which should not be subsidized by the public revenue.

Sir Andrew Green of Migration Watch argued that “it's hard to see why the taxpayer should pay for the importation of foreign wives” – a populist argument with some resonance, even though it is quite problematic in light of the fact that these ‘wives’ have no recourse to public

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987 Migration Advisory Committee, Review of the Minimum Income Requirement for Sponsorship under the Family Migration Route, 1.
988 Ibid., 18.
989 Ibid., 1.
990 Ibid., 75.
991 See for example Sibley, Fenelon, and Mole, Family Reunification Requirements: A Barrier or Facilitator to Integration? United Kindom Country Report, 25.
funds. Matt Cavanagh of the Institute for Public Policy Research (IPPR) (former immigration advisor for Labour), was more nuanced, noting that

it isn't unreasonable – particularly in the current economic climate – to ask whether, if someone is destitute or entirely dependent on benefits, they should be allowed to bring in a spouse or partner who is likely to end up in a similar position […] But introducing an income threshold at £25,700, the level of the national median income […] would effectively bar half the population from bringing a spouse or partner from abroad. This is another example of immigration policy being distorted by the net immigration target.

While the government faced criticism over the income rules, these criticisms were not of major consequence. Some doubted to what extent the government intended to listen to stakeholder organizations to begin with – as the British Institute for Human Rights pointed out, the Home Secretary announced that changes would be introduced before the consultation process was finished, suggesting that “this consultation is a ‘done deal’ rather than being a genuine consultation process”. Notably, the MAC process and the consultation occurred at the same time.

The more complicated and intangible obstacle to the policy changes was arguably posed by article 8. As I noted earlier in this chapter, the Coalition government and the Home Secretary Theresa May were not pleased with the Courts’ evolving approach to article 8. As some respondents argued, the government effectively contributed to the misleading coverage of article 8 jurisprudence in the press by blurring the difference between deportation related cases and immigration related cases (see section 2.2.2.2). We can see, however, that the government’s arithmetically based approach to the income requirement was in many ways mirrored in its approach to the balancing of the right to family life and immigration control, set out in the June 2014 version of the Immigration Rules. Note that this was the upper range proposed, and that this interview is from the time when the MAC report was published. The final requirement was set at the lower end of the range.

Cited in Whitehead, “Half of Population Could Be Barred from Bringing in a Foreign Partner under Family Visa Reform.”

British Institute for Human Rights, “Response to the Family Migration Consultation.”

For instance the British Institute of Human Rights.
In the Government’s view, the problem was a “lack of a clear public policy framework”; a “policy vacuum” due to the failure to explicitly change the Immigration Rules after the introduction of the Human Rights Act. As such, the government sought to regain the monopoly over the interpretation of what proportionality was supposed to mean, and this is reflected in the remarkably declarative language used in the statement of intent. As they noted, “these requirements are proportionate because there is a strong rationale and evidence base, including in the Migration Advisory Committee’s report on the income threshold, for why they serve the public interest” (my emphasis). Further, they argued that “if proportionality has already been demonstrated at a general level, it need not, and should not, be re-determined in every individual case”. This latter claim is, arguably, particularly tenuous in light of the Strasbourg Court’s highly fact specific case law, where it is indeed the individual circumstances that are weighed in the proportionality assessment. The entire idea of ‘rebalancing’ article 8 was rejected by major human rights groups and experts as a “flawed idea”.

This interjection aside, the attempt to make sure family immigration rules were both strict and proportional reflects the similar efforts taken in Norway’s 2004 expert report. Here, however, expert knowledge was used symbolically in the assessment – by drawing on the calculations of the MAC – rather than more instrumentally in having the experts carry out the assessment itself. With regard to discrimination concerns, the government responded (like the Labour government before it) that the rules would apply equally to everyone, but added that “to the extent that there

999 Ibid., 9.
1000 Ibid., 10.
1001 Ibid., 9.
1002 Ibid., 11.
may be indirect discrimination, it is justified as a proportionate means of achieving a legitimate aim”. 1004

5.4.3.5 Implementation

The new rules were introduced in June 2012. Again, they involved changes to the Immigration Rules rather than primary legislation, so there was limited parliamentary debate. The introduction of the income rules was, of course, controversial, and many groups have campaigned against it – perhaps most well known is the campaign “United by Love – Divided by Law”1005 (sometimes also “United by Law – Divided by Theresa May”…) as well as the work of the advocacy group BritCits. 1006 The APPG on Migration has also held a series of meetings on it, publishing a report in 2013 criticizing aspects of the rules. 1007 The rules are currently making their way through the court system. In the MM case from July 2013, Judge Blake found the income rules were disproportionate for citizens and refugees,1008 but it was not apparent from the ruling that income rules would have to be scrapped entirely in order to comply with the ruling (the government could likely lower the level somewhat or amend the documentary requirements). Just as this dissertation was being completed, on July 11 2014, the Court of Appeals ruled in favor of the government in MM,1009 finding the rules “discriminatory but justified”. 1010 The Court found that, while the Home Office had not provided “irrefutable evidence” that the high income requirement would improve integration, it was sufficient that

1005 Joint Council for the Welfare of Immigrants, United By Love - Divided by Law, 2012, http://www.jcwi.org.uk/policy/united-love-divided-theresa-may#overlay-context=po...
1009 MM (Lebanon) & Ors, R (on the application of) v Secretary of State for the Home Department & Anor [2014] EWCA Civ 985 (EWCA (Civ) 2014).
they had a “rational belief” that it would do so.\textsuperscript{1011} The Court considered this belief rational, and thus did not further question the policy objectives. The case may still be appealed to the Supreme Court which, Helena Wray has argued, has been more liberal than the lower courts on rights questions in the immigration context.\textsuperscript{1012} For the time being, however, the government has secured the measure through appealing to broad and ‘rational’ policy objectives.

5.4.3.6 Summing up

The income requirement was implemented through the reliance on expert knowledge and the use of very broad policy objectives. The debate was narrowed by outsourcing some of the most important decisions to an independent expert committee, which could subsequently be relied on as a legitimizing factor – despite the fact that the group had cautioned against using only their results as input for policy development. The level of the income requirement was only announced after the public consultation had closed, and likely at a much higher level than anyone had envisaged. Some interviewees suggested that the attachment requirement proposal may even have been included to distract them from the income requirement.

The use of an income requirement itself was justified in a different manner than in Norway, with no particular focus on forced marriages. Rather, there was much more focus on self-sufficiency and non-reliance on public funds. This may have something to do with the party in charge, as the Norwegian income rule was implemented by a center-left coalition, and the British one a coalition led by a right-of-center party which was at the same time pursuing large cuts to welfare. At the same time, the income rule was implemented in the context of the desire to dramatically cut net immigration. In that context, an income requirement that had been calculated to exclude 45% of sponsors from obtaining reunification would certainly make a dent in the overall number of family migrants. While the government was somewhat circumspect about claiming that this was indeed their objective, it was certainly not unwelcome. While the income requirement is also being challenged in the courts as this is written, the government has a better argument for proportionality with its broad, ‘all-purpose’ policy objectives. This time the sledgehammer is not

\textsuperscript{1011} MM (Lebanon) & Ors, R (on the application of) v Secretary of State for the Home Department & Anor [2014] EWCA Civ 985, 141 (EWCA (Civ) 2014), para. 141.

\textsuperscript{1012} Wray, Regulating Marriage Migration Into the UK.
being targeted at a nut, but at the entire family immigration stream, and the government is making a strenuous effort to argue that this has significant overall benefits for the ‘tax payer’, integration and self-sufficiency. While the government lost in the High Court, the Appeals Court found the rules justified. With its broad objectives, this measure - preventing many more from sponsoring family members than the age limit ever did - remains likely to hold up better than the age limit.

5.5 Chapter conclusion

5.5.1 Control and creativity

It has often been assumed that family migration cannot be managed on par with other forms of migration flows - that it is “immigration subie” - but indeed there is always a form of double selection. On the one hand, family migrants are selected by their sponsors in the UK but, on the other hand, they are also selected by the state through the imposition of requirements. The first decade of this century has seen the UK test several kinds of requirements for family immigration. While the UK had previously been free to put in place frankly absurd requirements such as the primary purpose rule, policymakers found themselves bound to some extent by their own hands through the implementation of the Human Rights Act and the subsequent possibility for human rights claims to be justiciable in British courts. This, however, should not be understood as a total bar on restrictive family immigration policy. Indeed, the 2007-2012 period in particular showcases a measure of policymaking creativity with regard to restricting family migration, with a number of different types of measures being implemented and tested.

While the age limit for spousal sponsorship failed for the same reasons in the UK as in Norway - albeit in the different venue, i.e. the courts rather than through policy consultations - the income requirement that was subsequently introduced had much farther reach. Whereas the income rule in Norway remained a strategy to prevent forced marriages, while also being a measure to ensure migrant families’ independence from the welfare state, the British income rule mainly emphasized the latter of these two objectives. The income rules must also, most importantly, be understood in the context of wide ranging efforts to reduce net immigration to the United Kingdom, and also in a wider context of benefit cuts.
5.5.2 Transnational learning?

One question we can ask to summarize the findings in this chapter is whether what I have observed entails transnational learning - as the UK implemented policies already in use elsewhere in Europe. Some have thought that the EU is a type of transfer platform for policies, but the age limit did not emerge out of EU cooperation. The main proponent of the idea in the British debate instead picked it up through the Council of Europe - somewhat ironically, given that the Council of Europe’s Human Rights Commissioner was quite critical of the Danish rule. More or less direct ‘learning’ from Denmark also appears to be behind the attachment requirement, as the consultation very specifically asked if a requirement analogous to the Danish one should be implemented. References to restrictive rules in other countries do occur in policy documents much more often than references to the EU family reunification directive, which the UK opted out of.

While Norway is presently the only other European country with an income requirement remotely as high as the British one (high in absolute terms, but lower when taking into account average wages), I found no evidence that the income requirement as such was inspired by Norwegian policies. Rather, as in Norway, the income requirement builds on past practice but has been significantly tightened.

5.5.3 Social learning?

Can we instead observe social learning? Learning, as it goes, is generally difficult to observe. But it is notable that the more recent policy changes take a different approach than before to the problem of proportionality. As we saw, the age limit was argued to only be meant to prevent forced marriages, and it was this very narrow objective - the nut - which was the policy’s downfall in court. It was considered a much too far-reaching measure and thus disproportionate. The research the government had commissioned did support the measure, and even internal guidelines on forced marriages suggested immigration was only one part of the story. Further,

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1014 Gil-Robles, *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on His Visit to Denmark.*
while arguing that the measure was not a form of immigration control as such, the government defended the measure with reference to its own margin of maneuver to control immigration.

The income requirement on the other hand had a number of policy objectives at once, preempting similar objections. It had also been legitimated through the outsourcing of the policy to the Migration Advisory Committee, meaning criticism of the policy could be deflected to these academic experts who were hardly in a position to defend it - other than to say that they responded to the question that they were asked. One might think that this new approach to regulation and to the management of proportionality under ECHR art. 8 reveals a measure of learning from past mistakes, and adapting to the new, post-Human Rights Act environment. While it was not as easy for them as in the pre-HRA era of the primary purpose rule, British policymakers showed that they broadly retained the power to control family immigration.
Chapter 6

6 Comparative Perspectives

While family immigration accounts for the largest single share of arrivals to Europe, the broader literature on immigration control has only engaged with the regulation of family immigration to a limited degree. In this chapter, I reflect back on the existing literature on immigration control that I presented in chapter 2. I consider what these existing analytical approaches can bring to bear on the empirical findings from the past three chapters, and seek to systematize the importance of the ‘constraints’ identified in the academic literature to date in light of my own findings. I will, again, draw attention to the agency of policymakers, which I have argued is important to explain outcomes better. The goal is to reflect on the observable implications of the research for the existing literature on immigration control, and the chapter is broadly modeled on Peter Hall’s comparative analysis in *Governing the Economy*.

The design and ambition of this dissertation is comparative and inductive. Starting from the empirical evidence, I have sought to develop plausible accounts of why and how family immigration policies have changed in Denmark, Norway and the United Kingdom. I will provide analytical summaries of each of these cases in the second half of the chapter. As I explained in the introduction, this thesis examines both an overarching trend of more restrictive family immigration policies, as well as different manifestations of this trend with regard to instruments adopted. Drawing on common factors, I seek to explain the variance in outcomes between the cases, i.e. why Norway and the UK pursued an alternate course of family immigration regulation than Denmark. Finally, I will return to the question of “who cares?”, discussing the broader implications of my findings.

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6.1 Analyzing immigration control

In this section, I review the analytical approaches to immigration control which were laid out in Chapter 2; beginning with the scholarly literature on constraints on the liberal state and continuing to reiterate my contention - based on the evidence examined - that more attention should be put to policymakers’ agency.

6.1.1 The search for constraints

As I noted in Chapter 2, scholars have sought to explain why liberal states accept immigration that they do not ‘want’ to admit by identifying different constraints on state action. How do the different constraints hold up in light of the analysis in the preceding chapters, and which ones stand out as particularly relevant?

6.1.1.1 International constraints

The first source of constraints that was identified in the mid 1990s during the so-called ‘golden age of human rights’, was related to globalization and the development of international human rights law. It was argued that the codification of international human rights changed the relationship between the state and non-citizens, compelling the state to respect their rights qua humans, or ‘denizens’. Blurring the lines between citizens as rights-holders and people as rights-holders complicated questions of border control and strengthened the claims and position of migrants. Prominent proponents of this view were Yasemin Soysal, David Jacobson and Saskia Sassen. It must be admitted that this analytical approach seems insufficient for our purposes at first view. First of all, there are some evident problems at the individual level of analysis. Soysal focused on the extension of rights to non-citizen ‘members’ and the development of denizenship or postnational membership. An interjection here could be that depending on which family migrants one examines, the rights claims at hand may in fact be those of citizens, in which case the

1017 Kawar, “Juridical Framings of Immigrants in the United States and France.”
1018 Soysal, Limits of Citizenship; Jacobson, Rights, Across, Borders; Sassen, Losing Control?.
1019 Carens, “Who Should Get In?”. 
claims of denizens are perhaps less relevant. Further, in Denmark we saw an obvious distinction in discourse between ‘real Danes’ and others, implying that this process of post-national equalization is at best uneven. On the other hand, it appears that some non-citizens have been able to benefit from the extension of rights. These are not, however, necessarily those who have developed membership over time – rather, instant family reunification rights are given to highly skilled workers in both Norway and the UK through exemptions from the rules in place for other applicants. Some, then, are more equal than others – a finding that is consistent with Shachar’s recent work on the extension of membership to ‘super-talents’, which is also critical of post-nationalist claims.1020

The material presented in this dissertation may be read as proving Soysal right on one count, however. In 1994, she argued that EU citizenship represented the apex of postnational membership; a claim which Joppke has refuted as non-nationals of EU countries cannot access it, and which Hansen has argued is a moot point because EU citizenship itself does not generate rights.1021 Here, however, EU citizenship and attendant free movement rules provide the ‘exit’ option through which individual actors can obtain family reunification in spite of national restrictions. The dynamics affecting the development of EU free movement rules have been very different, encouraging rather than restricting movement, and in so doing extending family reunification rights.1022 Importantly, however, when families choose to use the EU exit option, they forego the alternative of ‘voice’ through legal challenges to the rules.1023

Secondly, at a more general level, one might think that in a globalized age of human rights – with increased mobility and increasing rates of transnational family life – there would be a tendency towards liberalizing rather than restricting family immigration policies. Examining these countries in this macro-lens, furthermore, it is difficult to see how an explanation focused on human rights or postnationalism could account for the variation in specific policies and levels

1021 Hansen, “The Poverty of Postnationalism.”
1022 See Staver, “Free Movement and the Fragmentation of Family Reunification Rights.”
1023 This analysis concurs with a recent PhD thesis in political theory, see Wagner, “Exit as Voice”; Wagner, “‘Transnational Civil Dis/obedience’ in the Danish Family Unification Dispute.”
of restrictiveness between the three countries. All three countries, a priori, face the same constraints. They are all liberal democracies and have committed themselves to the same human rights treaties – the UN human rights covenants, the Convention on the Rights of the Child, and most notably the European Convention on Human Rights. All three countries are thus bound to respect the right to private and family life, including in their immigration legislation – and all three countries have indeed been parties to cases argued in front of the Strasbourg court on article 8, where they have both won and lost. Arguably, given practically identical international constraints stemming from human rights law, we should observe three countries with more or less equally liberal policies – but in practice, Denmark has stricter policies than the other two and there is variation in the types of policies they have.

Why might this be? A first response – both to this question and to the entire postnationalism debate – is that my findings suggest that how states might respond to human rights norms in general, or to specific legal decisions, is not predetermined. As Benhabib has argued, international norms are subject to debate and interpretation. As has been observed, the UK previously used the Abdulaziz ruling on article 8 and article 14 (where it lost) to its advantage in order to level policies down instead of up. The fact that article 8 cases are highly fact-specific, and that the case law is relatively inconsistent and difficult to draw firm conclusions from, also means that states can argue quite easily that individual decisions do not have general implications for policy. As I have argued in this dissertation, human rights obligations are to some determined by the discursive strategies of policymakers, through which they position themselves and their actions in relation to these obligations.

To dampen the human rights optimism further, it must be acknowledged that the European Court of Human Rights has most often ruled in states’ favor in cases concerning immigrant admissions.

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1024 Benhabib, “Claiming Rights across Borders.”
1026 See for example de Hart, “Love Thy Neighbour” It is notable that opposite conclusions were reached in Omorregie and Nuñez, to which Norway was party.
1027 Two examples of this are the Norwegian responses to the Nuñez and Butt cases, where Norway was found to be in violation of ECHR art. 8. Both concerned expulsion.
It is mainly with regard to expulsion and deportation that appellants have successfully challenged European states, as the Court has distinguished a ‘negative obligation’ not to interfere from a ‘positive obligation’ to facilitate family life. In March 2014 the Court, to the surprise of some legal observers, upheld the Danish 28-year rule, which established that the attachment requirement applies to individuals who have been Danish citizens for less than 28 years, and thus distinguishes some citizens from others.\textsuperscript{1028} This is one example of how broad states’ margin of maneuver is in entry control cases. The Court carries out a proportionality assessment in each individual case, but as I have suggested this assessment is open for state manipulation. The Court has generally taken states’ stated policy objectives at face value, without conducting in-depth assessments of their validity.

A second source of international constraints, which has been emphasized in recent years, is the supranational influence of ‘Europe’ through the deepening of European integration. Since the late 1990s, the EU has worked to harmonize immigration policies across the Union, addressing all immigration streams, and shifting large parts of immigration policymaking to the European level.\textsuperscript{1029} The most work has been put towards a harmonized asylum system, where an application for asylum will only be examined by one European country\textsuperscript{1030} - the first country of arrival – under the assumption that standards of treatment should be the same across the union.\textsuperscript{1031} The rights of long-term residents and rules for specific groups of migrants such as students, researchers and highly skilled workers have also been codified through a string of EU Directives. Quite early on in the harmonization process, family reunification rules for the family members of third-country nationals were also codified in the 2003 Family Reunification Directive (2003/86/EC).

\textsuperscript{1028} Biao v. Denmark (European Court of Human Rights 2014).


\textsuperscript{1030} This is known as the Dublin regulations, presently in its third reincarnation.

\textsuperscript{1031} The so-called Common European Asylum System (CEAS) is being completed in 2013-2014, but it is admitted that there is some way to go before harmonization is achieved in practice. The rates at which asylum seekers receive recognition as refugees vary widely.
As I have noted, Norway is not a member of the EU, while the UK and Denmark have both been members since 1973. Given the evident influence of ‘Europe’ on migration policy writ large, EU membership might seem like a relevant source of variation that could explain different outcomes in the countries under study. This is, however, not the case, as the Family Reunification Directive does not apply to either Denmark or the United Kingdom. Denmark has a complete Justice and Home Affairs opt-out and Britain has a selective opt-in system; deciding early on in the process not to opt in to the Family Reunification Directive. As such, the European commitments that the three countries face are quite similar and cannot directly account for variation.

Paradoxically, I find that the development of Norwegian immigration policy in the 21st century has, if anything, been more concerned with European harmonization than its EU member counterparts. EU immigration policy developments have previously been found to be influential in non-member countries, although this has most often concerned accession countries that know they must at any rate implement these rules. We may also note that the early part of the Norwegian reform process was quite expert-driven and focused on reviewing the status of immigration policy in comparable countries. This is, in fact, an explicit instruction for any such expert committee. Both these factors favor particular attention to the EU. In the UK on the other hand, politicians opted out very early on, expecting that the Directive might force them to give migrants rights that they did not want to extend. Experts and stakeholders in the UK have not appeared to pay as much attention to EU developments, and indeed some of the

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1032 The 1972 referendum in Norway ended in a no vote - as did the second referendum in 1994 which gave way instead to the European Economic Area agreement which gives Norway access to the internal market.

1033 Fischer, Nicolet, and Sciarini, “Europeanisation of a Non-EU Country.”


important actors in the UK age limit process were not even aware that there was an age limit provision in the Family Reunification Directive.

It is notable in this light that the British were ‘right’ not to opt in in order to retain their margin of maneuver, even though the Directive ended up radically more restrictive in form than it was at the time they declined. All three countries examined here have ended up with family immigration rules that are in different ways stricter than those allowed under the Directive; the maximum age limit allowed is 21, and the income rules should not exceed minimum wage standards. This could be interpreted as supporting arguments about the ultimately liberalizing effects of European harmonization of family immigration rules,1037 suggesting that it is a relevant constraint on state action that these three states have in different ways avoided.

All told, an explanatory model focused solely on international constraints falls short. It cannot easily account for why there has indeed been a restrictive turn in family immigration policies, and it cannot adequately explain the observed variation in outcomes – for instance why the age limit could not pass muster first in Norway and later in the UK, while it was considered acceptable in Denmark – as it was effectively measured against the same international constraints all three cases. To add further complexity, we can also add the point that at the supranational level – especially with regard to family immigration rules for persons exercising their right to free movement in the EU – there is an opposite development towards more liberal rules.1038 Developments at the supranational level, then, do not automatically translate into developments at the domestic level. It is imperative to look, instead, at how constraints were handled. This leads us to look inside the state.

6.1.1.2 Domestic constraints

As I noted in Chapter 2, the first source of domestic constraints was identified by Freeman in the 1990s. He argued that the ‘expansionary bias’ in immigration policy was caused by client

1037 See Block and Bonjour, “Fortress Europe or Europe of Rights? The Europeanisation of Family Migration Policies in France, Germany and the Netherlands”; Hardy, “The Objective of Directive 2003/86 Is to Promote the Family Reunification of Third Country Nationals.”

1038 See Legomsky, “Rationing Family Values in Europe and America”; Staver, “Free Movement and the Fragmentation of Family Reunification Rights.”
politics, through the lobbying of some strong pro-immigrant groups (business and ethnic communities).\textsuperscript{1039} Twenty years later, Freeman and Tendler maintain that interest groups should matter in Europe too,\textsuperscript{1040} although the empirical evidence remains ambiguous.

In this study, the only country where we might see hints of such relationships are in Norway, where the policy process has been quite open to some activist-like actors, although ethnic organizations have not been very important. As I have argued in this dissertation, and others have argued before me,\textsuperscript{1041} such access to policymakers has generally not been available in the UK, although the UK has larger minority populations which do carry political heft. Freeman envisaged that minority political groups would lobby for more open immigration policies, but that is however not exactly what the evidence suggests. In the United Kingdom, such groups did not have easy access to the policy process. Furthermore, with regard to the age limit issue minority groups were split on whether or not to support it. The same was true in Norway, and some of the most important activists were in favor of stricter rather than more open immigration policies. Client politics, then, gets us no further.

This is perhaps no surprise - even at the time, Joppke countered that Freeman’s argument did not apply at all in the United Kingdom (which Freeman was inclined to agree with), and only applied in other European countries in the very brief period of guest worker recruitment.\textsuperscript{1042} Instead, Joppke advanced the argument that the true source of ‘self-limited sovereignty’ was found in constitutional politics and domestic courts. This line of argument developed in reaction to Freeman but also to the human rights explanations mentioned above, noting that international human rights are not self-executing, but only actionable through domestic legal structures. For instance, appeals to the ECHR are only possible once domestic legal remedies are exhausted - and domestic institutions vary between countries. Following from this, it has been argued that \textit{domestic}, rather than \textit{international}, legal norms, such as constitutional rights to family life, for

\textsuperscript{1039} Freeman, “Modes of Immigration Politics in Liberal Democratic States,” 886.
\textsuperscript{1040} Freeman and Tendler, “Interest Group Politics and Immigration Policy.”
\textsuperscript{1041} Statham and Geddes, “Elites and the ‘organised Public.’”
instance, can explain variation in immigration policy.\(^{1043}\) Here, the decisions of the French Conseil d’Etat and German Bundesverfassungsgericht from the 1970s are usually mentioned: the constitutional right to family life mattered more than the human right.

Domestic courts have indeed featured in this dissertation – and the growing influence of British Courts led to the abandonment of the British age limit for spousal sponsorship. At the same time, they have not been obvious constraints in Denmark and Norway - where human rights legislation has been entrenched in domestic law for a long time. In the United Kingdom, the entry into force of the Human Rights Act in domestic legislation formally only brought the UK into line with the two other countries. Neither of these countries, however, have constitutionally entrenched rights to family life.

I suggest that the variable impact of domestic courts cannot be accounted for by examining the existence of constitutional or domestic legal norms alone - again, these norms are not self-executing. Rather, the findings in the previous three chapters suggest that the influence of domestic legislation may be mediated by two other factors. Firstly, the potential influence of Courts is affected by litigating behavior and wider institutional opportunity structures in which potential litigants operate. In the Scandinavian countries there has been limited litigation on immigration in general and family immigration in particular. I have argued that there has been limited litigation in Denmark due to the fact that reuniting in Sweden has been much easier than pursuing the case in court. Indeed, moving to Sweden is swift and inexpensive compared to years of legal struggle, and for Danes from the Copenhagen area it has even been possible to do so while keeping their jobs in Denmark. A potential court constraint has to a large extent been disabled by the fact that potential litigants have had an ‘exit’ option which is much more attractive than ‘voice’.\(^{1044}\) In Norway, the judiciary has historically been quite reluctant to intervene in immigration cases\(^{1045}\) – and other forms of influence over policy are much more accessible to individuals (public consultations, direct lobbying). Norwegians who fail to obtain family reunification have also begun to use the ‘Swedish route’, and this approach is in fact

\(^{1043}\) Joppke, *Immigration and the Nation-State*.

\(^{1044}\) Hirschman, “Exit, Voice, and the State.”

\(^{1045}\) Abdi, Rt. 1991 586 (Norwegian Supreme Court 1991); see also Soennecken, “Extending Hospitality?”.
recommended by a pressure group on family immigration issues. In both the Scandinavian countries, then, options other than litigation in order to influence policy appear more attractive, making for limited legal action. This is important because it has meant that no ‘judicial constraint’ has materialized, letting countries keep restrictive policies that should presumptively have been challenged in the courts and that many legal experts have argued entail violations of the European Convention on Human Rights. This also suggests that European countries are less self-limited than either Joppke or Freeman’s analyses would lead to believe.

While the ‘EU route’ is of course available to British citizens as well - indeed, it originated with the Surinder Singh case against the UK - Britain’s geography does not allow cross-border work in the same way as the Scandinavian countries. Further, as the EU route largely depends on working in the other country, language problems may also arise (or the fact that there are few jobs available in Dublin). Thus, only in the UK are the opportunity structures such that litigation is the most obvious choice for individuals to pursue in order to challenge immigration policies and immigration decisions, providing an institutional context in which a judicial constraint is more likely to be exercised with the assistance of a large community of activist-minded immigration lawyers.

A second important factor that mediates the influence of domestic legal norms as well as supranational ones relates again to the question of proportionality. In these three countries, the relevant domestic legislation provision is ECHR article 8 - and not constitutional rights to family life - as the ECHR has been incorporated into domestic legislation in all three countries. As we know, this is a qualified right, and whether state action breaches it depends on whether interference is proportional. As I have argued, this factor again is open for manipulation by policymakers through the enumeration of broad policy objectives, which may render interference

1046 See http://grenseloskjaerligt.com/hva-er-e%C3%B8s-losningen/, where they in fact provide a ‘recipe’ for how to obtain family reunification under the EU rules if you have been denied reunification under the ordinary rules. Accessed 9 July 2014.
1048 It should be noted that the Quila couple did move to Dublin to be together after their application for family reunification had been denied. Quila & Anor, R (on the application of) v Secretary of State for the Home Department [2011] UKSC 45 (UKSC (2011) 2011).
more proportionate than it would otherwise be. When states are pursuing broad objectives which are considered legitimate, such as if they say they want to prevent forced marriages or improve integration outcomes, they legitimate more dramatic types of interference in family life. The extent to which courts concern themselves with taking these objectives at face value, or if they investigate them more closely, appears to vary. The Strasbourg court, in *Biao*, accepted Denmark’s policy objectives as they were presented to the court. The British Supreme Court, on the other hand, actually asked whether the objective of forced marriage prevention through the immigration rules made sense. This new British approach reflects that the relationship between the executive and the judiciary altered course after the introduction of the Human Rights Act.\footnote{Cf. Soennecken, “Extending Hospitality?”}. The potential influence of courts, then, depends on different actors’ agency and not merely on rules in themselves. The potential and actual agency of both litigants and policymakers, as well as the relationship between the executive and judiciary, must be taken into account in order to explain how a priori similar constraints may have differential impacts leading to a failure of the age limit in the UK but not in Denmark.

### 6.1.2 Context and agency

As I have contended throughout this thesis we can better explain the development of family immigration policy if we conceptualize a clear role for agency within and against constraints in the policymaking environment. The quest for finding the right constraint leads to an overemphasis on structure, to the detriment of a nuanced account of the actions of policymakers and central actors in immigration policymaking. A more nuanced analysis examines how policymakers negotiate potential constraints and pursue their policy objectives - and also how the agency of other actors may play a role.

This begins with the acknowledgement that policy objectives may be complex, multiple and potentially at odds with each other. What the state ‘wants’, and that it wants to prevent immigration, is not necessarily a given. As Christina Boswell has argued, the functional imperatives of the state may pull it in different directions in pursuit of immigration control.\footnote{Boswell, “Theorizing Migration Policy.”}
In an era where states have again opened themselves up to labor immigration, this is particularly pertinent, as immigration control has developed to involve selection rather than prevention. Some family migrants may even be quite attractive to the state: we have seen both in Norway and the United Kingdom that rules for family members of skilled worker migrants have made been somewhat more lenient just as they have been tightened for other groups.\textsuperscript{1051} Even the Danes put in place exemptions from the age limit and attachment requirement for sponsors in shortage sectors. This may also require a more nuanced view of the ‘state’, as different government agencies may have different interests. In this era of migration management and labor immigration, contrasts may be particularly pertinent between Ministries such as Finance, Treasury and Labor on one hand, and public order and justice-oriented ministries such as the Home Office or Ministry of Justice on the other. The former kind of Ministries have proved to be markedly more friendly to what is sometimes referred to as the ‘Wall Street Journal case for open borders’;\textsuperscript{1052} encouraging the free movement of labor to serve the interests of business.

As I keep returning to, the enunciation of different policy objectives has been particularly important to investigate when examining policymakers’ pursuit of restrictive and selective family immigration policies. Analysts of the ‘international constraints’ stemming from the right to family life have not adequately taken into account that this is a qualified and not an absolute right, and that interference only becomes a violation of the human rights norm if it fails the test of proportionality. As I have argued, depending on the policy objectives pursued through restrictive policies, potential interference in family life may well be considered lawful, as broader policy objectives tip the scales towards proportionality. What this means is that what policymakers say they want to do has implications for whether or not they may be ‘allowed’ to do it. As we have seen, policy objectives ascribed to the income rules were much broader than those ascribed to the age limit both in Norway and the UK. In Denmark, restrictions from 2002 onwards were continually argued to aim to reduce immigration, improve immigration and prevent forced marriages – all at once. The majority in the Biao case in Strasbourg recently

\textsuperscript{1051} See also Shachar, “Race for Talent”; Shachar and Hirschl, “Recruiting ‘Super Talent’”; Shachar, “Talent Matters.”

\textsuperscript{1052} The Wall Street Journal suggested the following Constitutional Amendment in a 1984 editorial: “There Shall be Open Borders”.

accepted these objectives wholesale.\textsuperscript{1053} Policy objectives are thus not only an empirical question - which must be uncovered rather than assumed - but they are also potential objects of strategic manipulation in the pursuit of more restrictive policies.

6.1.2.1 Time and timing

Time has increasingly been recognized as a relevant variable in analyses of politics and policies,\textsuperscript{1054} and as I have argued time may matter in different ways.\textsuperscript{1055} I have focused on the dimensions of \textit{timing} with regard to important debates in society at large\textsuperscript{1056} as well as time in the sense of \textit{speed}. How quickly does a policy process unfold? Time, in this sense, is at once a contextual variable and a tool of policymaking. Whether the timing of a particular reform is good evidently depends on factors that lie beyond the control of policymakers. 9/11, of course, was also a fully external event. However, it is more up to policymakers whether they capitalize on these external events by pushing through reforms at a propitious time – and in Denmark this was done to a particularly striking degree. Secondly, the question of time scale may in part be within policymakers’ control. We have seen how policymakers have been able to influence whether or not public consultations are held and how long these are open; influencing the speed of the policy process.

6.1.2.2 Debate limitation

I have contended that the changes in policies examined in this thesis can be better explained through a model that combines two aspects of \textit{debate limitation}: firstly, efforts to control venues and the scope of conflict at the material level, and secondly at the level of framing and use of knowledge claims. It matters which venue policy is made in, and whether this venue is open or closed. This, in part, determines the scope of conflict.\textsuperscript{1057} Access of different actors to the

\textsuperscript{1053} Biao v. Denmark (European Court of Human Rights 2014).
\textsuperscript{1054} Pierson, \textit{Politics in Time}.
\textsuperscript{1055} Dussauge-Laguna, “The Neglected Dimension.”
\textsuperscript{1056} Hansen and King, “Eugenic Ideas, Political Interests, and Policy Variance.”
\textsuperscript{1057} Cf. Schattschneider, “The Semi-Sovereign People.”
policymaking process can in part be manipulated and determined by policymakers, and through the limitation of access they may more easily pursue their goals.

We have seen some examples of this process through the limiting of response times for consultations or the partial hiding of consultation responses. Some questions of scope are more difficult to control, namely access to the courts. As I argued above, the behavior of different actors in the Courts context matters: is there litigation? In the absence of litigation, Courts cannot rule. The outcomes of court challenges, again, may be influenced by the enunciation of policy objectives; so politicians have some indirect influence over this venue through their framing strategies.

The other important variables that I have emphasized in this dissertation relate to less tangible and more ideational factors, namely framing and the use of expert knowledge. The question of framing concerns how restrictions on family immigration are presented, and has been highly important in all three cases. Indeed restrictions have been presented as rights-preserving rather than rights-violating (with regard to forced marriages), and they have been presented as complying with wider social values and objectives (with regard to preserving the welfare state and improving integration). When policymakers successfully use these frames, their policies can more easily be implemented. In this, my findings are entirely consistent with Baumgartner and Jones’ expectations.

Finally, the question of expert knowledge is interesting. The cases at hand display some variation in knowledge utilization - in Denmark it was shunned, whereas in Norway employed in a problem-solving manner – almost ritually so - and then deemphasized once the ritual had been completed. In the UK, politicians first used a strategy compliant with expectations about the substantiating use of knowledge, as the commissioned research was not published when it was seen not to substantiate the policy. With regard to the income rules, the usage is more difficult to characterize. It was not an instance of substantiation, as the position of the government was not made up in advance with regard to the level of the requirement. It had some aspects of problem-

1058 Fischer, Reframing Public Policy; Helbling, “Framing Immigration in Western Europe.”
solving, as the experts were asked to come up with their own solution, but it was also clearly strategic. The government drew on the authority and legitimacy of the MAC, but strategically so, through the formulation of the question they put to them.

It is clear that Boswell’s typology of three uses of expert knowledge does not, fully, cover the uses and roles of expert knowledge identified here. Boswell does not explore instances where knowledge is avoided, *explicitly and on purpose*. While having criticized some work on the instrumental function of knowledge for taking for granted that policymakers might want to rationally improve policies, she maintains the assumption that policymakers want research – just for other and more symbolic other reasons. The Danish case, however, displays an almost absolute dearth of either interest in or respect for expert knowledge. Here, policymakers did not want to know. This, arguably, can be related to the political climate at the time. Within the anti-establishment culture of the Danish People’s Party, and also the populist policies of the more mainstream parties, ‘expertise’ was consistently discredited. Prime Minister Anders Fogh Rasmussen entered office arguing that ‘superfluous’ research organizations should be closed down, as the people did not need *smagsdommere*, or ‘arbiters of taste’. In such an environment, knowledge will not serve a legitimizing function and legitimation is achieved in other ways – in this case a popular mandate from the recent elections. Having lost legitimacy, in turn, knowledge will not be sought for substantiation either.

In the Norwegian case, expertise was much more valued than in Denmark. It appears, however, that the use of expert knowledge had a highly ritualized character. As Boswell noted in passing, there is an “almost ritualized respect for, and investment of resources in, social research”. In Norway, this is expressed through the ritual of naming expert commissions to develop Norwegian Official Reports (NOU) when considering new legislation or policy changes. In one sense, this is a problem-solving approach. By allowing experts to define the policy problem and propose solutions to it, one does at least theoretically pursue evidence-based policies in the traditional sense. Sometimes these reports are ignored, however. In the second round of the

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1060 Ibid., 39.
1061 Recent examples are the two NOUs on gender equality structures and policies published by a commission led by Professor of Political Science Hege Skjeie, which have not been followed up with any action at all.
Norwegian family immigration reform, when policymakers developed and implemented the income rules, the ritual of expert input had already been completed, and no additional research was commissioned even though they were pursuing a completely different policy than what the experts had considered. The expert report had, however, shaped how policymakers viewed family immigration.

One policymaking strategy which I expected to have great importance at the beginning of this project, but which interviews and further documentary research led me away from, is policy transfer, or

the process by which knowledge about policies, administrative arrangements, institutions and ideas in one political system (past or present) is used in the development of policies, administrative arrangements, institutions and ideas in another political system.\(^{1062}\)

Scholars of policy transfer have focused mainly on transnational *learning* (or lesson drawing) and *emulation*, where the latter is a more mindless and less rational exercise than the former,\(^{1063}\) but the two are very difficult to distinguish in practice. The available evidence did not suggest learning or emulation so much as a form of *strategic reference* to policies in other countries. Pointing to policies in other countries is arguably a form of knowledge claim or marshaling of evidence that could serve as legitimization of policy proposals. The latter was certainly at work in the UK, as policymakers argued that the age limit must be acceptable as it was used in Denmark. Policymakers did not want to adopt the Danish policy wholesale, but it was useful for them to point to in order to legitimize the measures. It might also be helpful to point to the ‘model’ of tough family immigration in order to bolster one’s own policy position as ‘tough on immigration’. Policy transfer has not been widely explored in the migration literature, with some exceptions.\(^{1064}\) Contact between different countries, whether in the context of the EU or not, however, should be examined in more detail.


\(^{1064}\) Somerville and Goodman, “The Role of Networks in the Development of UK Migration Policy.”
6.2 Three routes to stricter regulations

In this section, I will break down the three countries’ paths towards more restrictive family immigration policies in accordance with the variables I laid out in the previous section. First, I will examine the ‘discovery’ of family immigration as an object of control, which occurred in relatively similar ways in all three countries and could be related back to similar pressures. Then I will provide analytical accounts of the policy processes in each country, before finally comparing the three.

6.2.1 ‘Discovering’ family immigration as an object of immigration restrictions

This section addresses what I call the ‘discovery’ of family immigration as an object of control, and the shift towards more restrictive policy. Britain in fact carried out a significant liberalization of family immigration policy through the elimination of the ‘primary purpose’ rule upon Labour’s entry into office in the early summer of 1997. This policy change was arguably not primarily intended as a measure to liberalize immigration, but it spoke to the long-standing political debate over race relations and was aimed at Labour’s many ethnic minority voters who had long struggled against the ‘primary purpose’ rule. The rule was seen by many Labour voters and activists to be practiced in an overtly racist way, and its abolition can be seen in light of Labour’s extension of the Race Relations legislation and introduction of the Human Rights Act, going explicitly against the British Conservatives (which, as Theresa May warned in 2002, had come to be seen as the ‘Nasty Party’ – unconcerned about poor people and minorities and only concerned with the interests of business).¹⁰⁶⁵

Going back a year or two, forced marriage entered the public discourse in Denmark in the mid-1990s thanks to the pressure group UNGsam, and already around 1998 policymakers in the Social Democrat-led coalition government had begun to use immigration legislation for the purpose of targeting unwanted behavior such as forced marriages. The pace and nature of immigration to Denmark was simultaneously becoming more and more politicized, fueled by the ethno-nationalist discourse of the Danish People’s Party but also members of mainstream parties,

such as Eyvind Vesselbo – who wrote about the exponential growth of a small Turkish community of immigrants. The marital practices of immigrants became an important public concern.\footnote{Schmidt, “Law and Identity,” 260.}

Norway’s ‘discovery’ of forced marriages as a problem to be solved through immigration legislation occurred later than in Denmark, and was arguably influenced by this neighbor to the south – in part by way of activists such as Hege Storhaug who maintained close contact with key Danish politicians. Around 1998 Norway also experienced one of its first high profile forced marriage cases, but initial legislation put forward by the Christian Democrat-Conservative-Liberal coalition did not emphasize immigration law as a site to address such problems. Again, individual cases were central to the politicization of forced marriages, and the 2002 honor killing of Fadime Sahindal in Sweden has often been identified as a catalytic event. As I showed in chapter 3, 2002 marked a peak both with regard to attention to forced marriages in the media and with regard to asylum inflows and ‘panic’ over asylum policy. The center-right coalition government, which was returned to office in the 2001 election, held the view that liberal family immigration rules might attract asylum seekers – so in the government’s response to the 2002 panic over forced marriages and the peak of asylum arrivals, there was a double emphasis on the possible unfortunate impact of liberal family reunification rules. This led to the first restrictions on family immigration in the form of an expansion of the income requirement to young citizens and persons with humanitarian status – to prevent forced marriages among the former, and to deter asylum seekers in the latter case.

In Britain, forced marriages also came on the political agenda in 1999-2000. There, from around 2002, the central Labour party activist Ann Cryer campaigned for stricter immigration rules; believing that the abandonment of the primary purpose rule had led to an increase in forced marriages. While Conservatives soon came around to this idea, for instance as we see in the 2004 Kirkhope Commission report on immigration policy, central politicians in the Labour Party would take somewhat longer to come around to the idea of an age limit. While Home Office ministers and civil servants were positive, there was more resistance in the Treasury and Justice Department.
In all three countries, then, politicians faced similar external pressures at the turn of the century. Having faced divergent migration contexts in the past, the situations in many ways converged. Family immigration was quite high all around, and a significant proportion of this migration was made up of transnational arranged marriages among members of minority populations, in particular from India, Pakistan, Bangladesh and Turkey. This represented a shift in family migration flows from the previous decades, as family migrants were not always actually reuniting. The development caused similar concerns in all countries: it could represent poor integration of the descendants of immigrants – and thus, perhaps, a failure of multiculturalism – and it could hide forms of abuse such as forced marriages.

The reform process was triggered through different processes in the three countries, however. In Denmark, the trigger was the contested 2001 election, which changed the makeup of the Danish parliament and the role of the far right, creating new opportunities for change in the immigration policy area. The Conservative-Liberal coalition relied on the support of the far-right Danish People’s Party, and new immigration policy was elaborated through negotiations between the government and the DPP.

In Norway, immigration reform was rather an expert-led process, as politicians acknowledged around the turn of the century that existing legislation was insufficient and named an expert commission to write a proposal for a new immigration act. Peaks in asylum flows also mattered however, triggering the 2003 changes and the 2009 attachment requirement, as well as serving as a backdrop to the income requirement. This had to do with the specific understanding in Norway of family immigration rules as a pull factor for asylum seekers. In the UK, Ann Cryer was a lone crusader within the governing party, only slowly building support from other political actors. With regard to the income requirement, the 2010 election and the net migration target were important triggering events. In the following I will examine each country in turn along the variables I have identified as important.

1067 The exact composition of the migrant populations of each country varied, with Pakistanis and Bangladeshis dominant in the UK, Pakistanis in Norway and Turks in Denmark.
6.2.2 Denmark: culture and control

Denmark was presented in this dissertation as a sort of ‘model’ in Europe of restrictive family immigration policy.\(^{1068}\) I have argued that the particular combination of speed, framing, political control of the scope of conflict and the discrediting of ‘expert knowledge’ allowed for the remarkable turnaround of Danish family immigration policies. I will review the individual parts of this argument in the following.

6.2.2.1 Time

One of the most notable aspects of the Danish reform was the swiftness and totality of its nature. Most of the reform was completed in the summer of 2002 in one single piece of legislation, and the 2003-2010 period mainly involved tinkering around the edges of the new model.\(^ {1069}\) In this case, we saw a new group of politicians on the Danish right seizing the momentum of their recent electoral victory, ramming through dramatic policy changes without stopping to study potential impacts or indeed solicit much input from different stakeholders. The low number of veto points – especially under conditions of bloc politics – were important institutional conditions for swift reform.\(^ {1070}\)

As I showed, the Danish conservatives had been unhappy about the family immigration rules since they were put in place two decades earlier. When finally given the opportunity – and with the support of the far right - they changed them almost immediately. As an illustration of the rush with which they proceeded, we can note that consultations were generally only open for approximately two weeks, and that respondents almost universally decried the lack of time to elaborate proper responses. As the presentation of new legislation in parliament followed hot on the heels of the consultation rounds, respondents could be forgiven for suspecting that their input

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\(^{1069}\) Bech and Mouritsen, “Restricting the Right to Family Migration in Denmark: When Human Rights Collide with a Welfare State under Pressure.”

\(^{1070}\) Imagine, as a contrast, American immigration reform, which never seems to materialize in the complicated political system of ‘checks and balances’ with veto players at many levels.
carried little weight – indeed, the Ministry’s responses to various consultations generally consisted of reiterating their original position *ad nauseam*.

Time, then, mattered in the Danish context in two ways. First, the reform was ‘well-timed’ at the peak of the ‘crisis of multiculturalism’[^1] and political support for the far right. It followed an election fought precisely on the issue of immigration, where the government perceived that they had been given a clear mandate to proceed with immigration restrictions.[^2] Second, the *speed* of the reform prevented effective counter-mobilization. Swiftness - which was in part possible due to the institutional set-up and lack of veto points - as well as resonance with broader debates allowed for strict immigration rules to be pushed through.

### 6.2.2.2 Debate limitation

The question of debate limitation has several dimensions. Firstly, there is the question of the scope of conflict and control over venues. Then, questions of framing and the use of knowledge should be reviewed.

As I showed when examining the parliamentary debates over immigration reform, there was relatively limited political conflict over the changes. I showed that only the very small parties at the political center and left were vocal in their opposition to the new legislation. There was a near consensus on many aspects of the legislation between the right and the Social Democrats - and indeed the Social Democrats and Social Liberals had taken the first steps toward reform two years previously when they introduced the first iteration of the attachment rule. Even the left-center opposition only objected to minor aspects of the reform – and when they did, they fell into the trap of ‘us versus them’, focusing on the impact on ‘real Danes’.

This is not to say that there was no criticism of the 2002 reform. Rights groups and international actors, including the Council of Europe and the UN, voiced concerns over the consequences of


[^2]: Østergaard-Nielsen, “Counting the Costs.”
the rules and their compatibility with international human rights norms. As the reform had been so swift, however, many of these objections came too late; the Council of Europe Human Rights Commissioner only published his report in 2004. Most of the criticism also had limited resonance with politicians, however, who relied on their popular mandate and endless iterations of their original position on the rules’ compatibility with international human rights norms, anti-discrimination rules and so forth. They were able to maintain the claim that there was no violation of international human rights as Denmark was not convicted in domestic or international courts of any such violations. I have argued that the judicial constraint was undercut by the fact that it was much more rational for individual couples who could not obtain family reunification in Denmark to pursue reunification under EU free movement rules across the border in Sweden than to pursue court challenges in Denmark. One of the very few court cases on the rules - the very recent Biao ruling in Strasbourg - upheld the rules relying on their broad objectives and subscribing to the Danish definition of discrimination put forward to defend the 28-year rule on the attachment requirement.

The most important framing strategy - which all politicians in all three countries used, but Danish politicians used first - was to present restrictions on family immigration as a rights-preserving measure rather than a rights-violating measure. The importance of the right to marry whomever one wants was emphasized strongly, while the right to family life was portrayed as a marginal provision. By playing up the forced marriage argument, government representatives also narrowed the conflict through framing, as it is effectively very difficult to argue against forced marriage prevention. This dynamic was quite clear in the rather unfortunate attempts that the opposition made, which ended up focusing on the effects of the reforms on ‘real’, white, Danes and playing into the ‘us’ and ‘them’ view. Additionally, however, the age limit was presented as the solution to a series of other problems, involving marriage patterns, integration and the pace of immigration to Denmark. Here, there was a clear subtext of culture, seeing the pace and nature of immigration to Denmark as a ‘threat’ to Denmark as a nation and its national culture, but at the same time it is equally difficult to argue against ‘good’ immigrant integration.

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Rights norms were also objects of framing. Article 8 of the European Convention was presented not as a foundation of family immigration policy but as a fringe requirement that would sometimes oblige Denmark to make exceptions from the rules. Discrimination was framed as a question of applying the same rules to all cases, not as investigating the impact of the rules on specific groups. It was also argued that the relevant comparator in any discrimination question was another person marrying a foreigner, not another person marrying.

The Danish reform is notable in one other respect: the practical absence of expert knowledge. External experts were not solicited to write legislation, and their input - particularly that of the Danish Institute for Human Rights, which barely survived the 2002 reforms - was hardly welcomed. This is consistent with Jørgensen’s argument that the Danish government has relied mainly on in-house knowledge and marginalized research from the elaboration of integration policy. Here, then, we might add a category to Boswell’s different uses of expert knowledge in immigration policy. In addition to the problem-solving, legitimizing and substantiating uses of expert knowledge, we might want to add a fourth category, namely strategic or deliberate non-use. This is different from the selective publication of substantiating research findings, which Boswell mentions, as they did not commission research in the first place. As I noted in Chapter 3, only one study on discrimination emerged in the decade up to 2006, and Danish policymakers preferred instead, in Jørgensen’s words, an ansvarsbefriende dementi, or evasion of responsibility through denial. We might speculate that one reason for this is that experts would be quite unlikely to provide the sort of evidence they wanted. One of the ways in which restrictions on family immigration were legitimated was through the complete conflation of arranged and forced marriages. Experts in the field would be highly unlikely to make such a conflation, and indeed the Norwegian and British experts who weighed in in the context of the age limit were all careful to distinguish between the two. Broadly, the policies were based on ‘common sense’ assumptions about the behavior of immigrants, which were unlikely to stand up to scientific scrutiny.

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1074 Jørgensen, “Understanding the Research–Policy Nexus in Denmark and Sweden.”
As such, I have argued that the Danish reforms were put through swiftly and with limited debate due to control over venues, few veto points, and the use of specific framing strategies.

6.2.3 Norway

In Norway the process of immigration policy reform began when the center-right coalition government named an expert commission in 2001. After a change of government and much back and forth, a new Immigration Act was passed in 2008 and entered into force in 2010. In the intervening period, Norway first tried to follow Denmark’s lead and implement an age limit and attachment requirement. This did not work out. Afterward, they instead pursued a strict income requirement.

6.2.3.1 Time

In Norway, both the timing and the speed of immigration reform were different than in Denmark. Norway again followed the recipe for immigration reform that both Scandinavian countries had employed in the late 1970s and early 1980s – i.e. the creation of an expert commission to define and propose immigration policy. The Commission was named under the center-right government led by Kjell Magne Bondevik, and delivered its proposal while they were still in government. The following year, however, Labour entered government in a coalition with the Socialists and the Center Party, following their victory in the 2005 election. The new government vowed to continue the reform work, but it dragged out, and while draft legislation was repeatedly promised it was not presented in Parliament until 2007. That only happened after the long and contrived process of consultations and reconsiderations – as well as much disagreement within the actual coalition.

The original expert proposal was submitted to a broad public consultation in 2005, which itself operated on two different schedules; one for ‘urgent’ measures that one might want to implement into existing legislation as well as in a future new Immigration Act, and one for the remainder of the proposal. As one outcome of this consultation process was resistance towards the expert proposal’s age limit on its own from many stakeholder organizations, policymakers returned to their desks and tried again to formulate a combined attachment and age requirement which might solve the concerns with the age limit alone (namely a concern that young persons might be stranded in the country of origin until they were old enough). Labour’s Minister of Immigration
aired the idea of an age limit yet again in February of 2006, but it took another several months before a consultation document was formally issued, and throughout that entire year the debate was running. During this time, central politicians and bureaucrats also went to speak to their Danish counterparts, to get a better idea of the functioning of the attachment requirement.

This slow process meant that there was not the same momentum for radical change that we saw in Denmark. At the peak of the immigration debate in 2002, the reform process was still tucked away in the expert commission, and while the then government seized the opportunity and made the first round of changes to the income rules, the time was not right for drastic policy change as they still awaited the expert proposal. The reform process also ended up being driven forward by different party coalitions with divergent approaches to immigration policy, in the midst of successes of the Progress Party in the polls that all the other parties tried to deal with. The slow reform process also meant that there was more space to build and voice opposition to the proposal, which I will examine below.

Once policymakers had eventually abandoned the age limit idea, the reform to the income rules moved somewhat swifter. It was launched in the late 2007 Bill, passed as a ‘main rule’ in the April 2008 legislation, and elaborated during the fall of 2008 in the income rule consultation. The summer of 2008 saw a new peak in asylum arrivals, close to the 2002 levels. This new peak made the government bring back the attachment requirement in 2009, as well as forming the backdrop for the introduction of the high income requirement. This time, time and timing were more propitious.

6.2.3.2 Debate limitation

In Norway, we see more and less successful attempts at debate limitation. Stemming partly from the slow speed and timing of reform, the scope of conflict was tremendous surrounding the age limit, especially during 2006. Conflict raged in different venues and among different actors. There was intense media controversy, with activists and experts arguing in the opinion pages about whether the age limit would or would not prevent forced marriages.\(^{1076}\) Tabloid media

outlets also chimed in about the unfortunate effect the measure could have on Norwegian men with Russian wives.\textsuperscript{1077} The policy consultation in 2006 elicited an almost unprecedented number of responses for an immigration policy consultation (65),\textsuperscript{1078} which were frequently so opposed to it that other scholars have argued that the politicians could not possibly carry through with it and preserve the legitimacy of the consultation system.\textsuperscript{1079}

While the policy was proposed by Labor, it was highly contested within the government coalition itself, and even local Labor party politicians as well as the youth wing of the party (AUF) were against it on the grounds that it seemed too much like something the Progress Party would do. It the end it was intra-coalition conflict that was decisive. The Socialists were staunchly opposed to the measure, and the Socialist Minister of Finance managed to veto the rule. This shows how the institution of coalition government - under conditions of somewhat low internal coherence – enables veto players in a Scandinavian parliamentary system. In this sense, the conflict over the age limit represented the broader conflict between the Progress Party and the Norwegian political left (or indeed the Progress Party and the rest of the political spectrum), and as such it became part of a wider political cleavage.

With regard to framing, Norwegian politicians followed the Danish lead in presenting the age limit as a rights-protecting measure: it was intended to prevent young persons from being victims of forced marriage. The logic, as in Denmark, relied on a sort of common-sense argument about maturity: with age, potential victims would gain the strength to resist parental pressure. Both Labour and politicians on the Norwegian right promoted this view. The framing strategy was, however, less successful than it had been in Denmark. Norwegian experts on forced marriage were concerned that the approach did not in fact take into account the scope of the force that may be exercised against the young potential victims,\textsuperscript{1080} and as I have shown, there is a routinized respect for expert input in Norway far exceeding that seen in Denmark. Furthermore, the four

\textsuperscript{1077} Lia and Zaman, “Norske Menn Hardt Rammet.”
\textsuperscript{1078} It should be kept in mind that Norway is a small country…
\textsuperscript{1079} Skjeie and Teigen, \textit{Likesstilling Og Minoritetspolitikk}.
\textsuperscript{1080} Bredal, “Farlig Enkelt Mot Tvangsekteskap.”
intervening years since the Danish reform had been implemented had not brought definitive
evidence that forced marriages were in fact prevented there. The head of a Danish women’s
shelter was widely cited in Norwegian media and in consultation responses – including from the
coalition partners in the Socialist Party - as suggesting the reform made it more difficult to assist
victims. Thus, while policymakers insisted that the measure was intended to prevent forced
marriages – and only to prevent forced marriages – the framing strategy was not entirely
successful. Many, including experts,\(^{1081}\) suspected that the measure was in fact intended to
reduce immigration – despite the Minister’s strident insistence that it was not – and the
effectiveness of the measure was disputed.

Compared to the age limit, the income rule elicited much less controversy. The measure was
presented in the 2007 draft legislation, but given the fact that an income requirement had in fact
always existed in Norwegian law, it was merely a question of which groups, exactly, it would
apply to. Removing exemptions is arguably easier than introducing new rules, as the overall
legitimacy of the rule – in place in one form or another since 1975 - was already widely
accepted. Opposition to the extension of the rule was quite restrained in Parliament, with only
minor objections from the Christian Party, due to concerns over effects on low-income
individuals. As was customary, the specific rules, which were laid out in secondary legislation,
were out for consultation subsequently. Only 13 organizations, of which half were government
agencies, responded to the consultation, and there was much less media coverage. No migrants’
rights groups or stakeholders even responded to the consultation. Part of this lack of controversy
related to the low visibility of reform. The change concerned the removal of an existing
exemption in secondary legislation, rather than the introduction of new primary legislation. In
2012, especially, there was some media controversy about white Norwegians who failed to
obtain family reunification under the new rules. In Norway, as in Denmark, pressure groups have
encouraged use of the ‘EU route’, undercutting the incentive to pursue legal challenges against
the rules.

\(^{1081}\) Bredal, “Border Control to Prevent Forced Marriages: Choosing between Protecting Women and Protecting the
Nation.”
At the level of framing as well, the debate was much more successfully controlled than with the age limit. It was, again, presented as a rights-protecting measure that would prevent forced marriages, but this time the causal logic was clearer. Age, in itself, was not the mechanism by which independence would be gained, but rather it was the existence of an income adequate for self-sufficiency and attachment to the labor market over time. The concerns expressed by both experts and activists 2003-4 about how this might lead young persons to abandon university degrees in order to fulfill the income rules were not prominent the second time around. The income rule would also fulfill a number of other objectives, however. In Norway, there is a long-standing perception that liberal family reunification rules act as a pull factor for asylum seekers. The increased income requirement was also framed as a measure to reduce high asylum inflows – an objective which many actors could support. Lines were also drawn to the welfare state and the importance of self-sufficiency. The income requirement was essentially presented as a panacea.

As noted, migration experts were essential in the early part of Norwegian reforms, as the entire process of creating a law proposal was outsourced to an expert commission. This is common practice in Norway, and commissions made up of a mix of bureaucrats and academics are routinely requested to investigate and provide possible solutions to societal problems. As such, experts often play a key role with regard to problem and issue definition. In this case, they played an important role with regard to clarifying and circumscribing Norway’s international obligations, as well as with regard to bringing in the question of EU policy developments despite Norway’s position as a non-member state. This, then, conforms with a more classic problem-solving use of expert knowledge – perhaps with the added bonus that the international obligations as the Commission defined them was narrowed down through the separation of family formation and reunification, which politicians could draw on for substantiation when they reintroduced the attachment requirement in 2009. However, the use of expert knowledge in this way is highly ritualized – and inscribed in formal guidelines for policymaking. While the NOU was influential with regard to problem definition, the experts had in 2004 explicitly warned

against the income requirement as it was later implemented. Expert knowledge was not solicited further in the 2008 income reform. As the experts had already been consulted, the box had been ticked and reform could proceed without them in a manner that policymakers determined themselves.

6.2.4 Britain

British reforms, again, were initially slow but later picked up the pace, especially after the change of government in 2010. Income rules were passed after the age limit was struck down in British courts as disproportionate.

6.2.4.1 Time

In Britain, as in Norway, the process of policy reform was slow – but for a different set of reasons. Whereas the other two countries in this study have dramatically changed their entire immigration legislation in the 2000s, the British 1971 Immigration Act remains the basic structure of immigration legislation. And whereas Labour in the post-9/11 period introduced Immigration Bills approximately every other year, family immigration was not generally central to the proposed policy changes; rather they reformed asylum and labor migration policies.

From the early 2000s, however, the Labour backbencher Ann Cryer worked for the age limit, which she first heard of from Denmark through her European engagements in the Council of Europe. She slowly built support both among other Labour politicians (successfully lobbying for an age limit of 18 in 2003/2004) and perhaps even more easily among Conservatives. It took until 2007-8 before the policy went from idea to reality, however, and she has herself decried the very slow progress. Again, neither the speed nor timing was entirely propitious for dramatic policy change. It should be noted that unlike in Norway, family immigration rules in the UK have not been politicized as a pull factor for asylum seeking, but there were rather associated primarily with Britain’s large minority groups descended from colonial and post-colonial

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1083 Somerville, *Immigration under New Labour*.

1084 Indeed, family immigration is almost exclusively regulated in the Immigration Rules, as so was rarely the topic of such Bills.
migrants. It has been rather more contentious to criticize the marriage practices of minorities, as seen in the criticism faced by Home Secretary Blunkett when he suggested young persons of minority background should marry in England rather than overseas.

The British income rules came about under rather different circumstances. Somewhat similar to the Danish political situation in 2002, the new British coalition government had come into office with a popular mandate for the cause of bringing down overall immigration to the UK. While the Danish Conservatives relied on the support of the far-right, however, the British Conservatives were in coalition with the Liberal Democrats, suggesting that the comparison should not be drawn too far. Regardless, there was relatively broad support among the British public for a stricter immigration policy with lower over-all inflows. Here, as in Denmark, politicians seized the opportunity, and although they first prioritized other areas of immigration policy, they moved on to the family field in 2011. The changes were presented in June 2012, after a consultation the previous fall.

6.2.4.2 Debate limitation

In the UK, as well, we see more and less successful attempts at debate limitation. The scope of conflict with regard to the age limit was initially relatively limited. For many years it was a proposal that was known, but not highly controversial and indeed not moving forward, and the 2003-4 initial raising of the age limit to 18 elicited few complaints. There was a relatively limited consultation on the issue in 2007-8, but mainly women’s rights organizations responded to it, and there was some disagreement among them about whether this was a desirable course of action.\(^\text{1085}\) The mainstream immigration and migrants’ rights organizations did not initially get involved. The conflict was, however, moved to another venue and reignited once the prominent migrants’ rights organization JCWI took on the case of Amber and Diego Aguilar. In that couple, they found the perfect case with which to challenge the rule: a lovely couple in what was obviously not a forced marriage, where the British wife was potentially forced to move to Chile for three years and postpone her education on account of the age limit. Lawyers clearly saw the case as a strategically smart one to pursue, given the immense likeability of the couple.

\(^{1085}\) For instance, the organizations Southhall Black Sisters and Karma Nirvana were on opposite sides.
As in Norway, the age limit had been presented as a rights-preserving measure, which was only intended to prevent forced marriages. Some of the statements of the Minister contradicted this somewhat, however, as did the expert evidence. As in Norway, there was some doubt about the government’s ‘real’ intentions, but what mattered in court were the stated policy objectives. The narrow objective became the rule’s downfall as it led to its determination as disproportionate in the UK Supreme Court.

Political conflict over the new income rules was quite subdued. After losing the 2010 election, Labour struggled to find a new stance on immigration, resorting to apologizing for their own political record and refraining from taking a stance against the income rules. There was actually more resistance among the Liberal Democrats; notably former Cabinet Minister Sara Teather, who has been vocally opposed to the changes. This time, however, many of the migrants’ rights organizations have been ready to fight the rules. For instance, the Migrants’ Rights Network has led the campaign United By Love/Divided by Law (alternately Divided by Theresa May), and a new pressure group, BritCits, has sprung up in response to the rules. The outcomes of their protests are, however, yet to be determined - and may be influenced by the broad objectives ascribed to the policy changes.

The income requirement was rather presented as a solution to a number of different problems at once: it would ‘safeguard the economic wellbeing of the UK’, ‘reduce burdens on the tax payer’, ‘promote integration’ and ‘tackle abuse’, all the while being transparent and easy to understand and operationalize. As such it moved away from an individual rights frame altogether, placing the immigration rules at the service of broader society in an appeal to those same voters that supported the Conservatives’ net migration target.

Evidence-based policymaking was the byword for New Labour’s approach to policymaking in general, and indeed the Home Office solicited expert input when preparing to introduce the age limit; asking a team of researchers to investigate whether age was a protective factor against forced marriage. When the report came back concluding that it was not, the Home Office did

1086 Aitkenhead, “Sarah Teather.”

their best to shelve the report, arguing that it was not sufficiently reliable. It only became available after repeated Freedom of Information requests. This instance conforms to Boswell’s expectations about the substantiating use of expert knowledge and the highly selective publication of results.

The Coalition took a different approach to expert knowledge with the income rules some years later. Under Labour, the Migration Advisory Committee was set up to get solid advice from labor market economists on the best way to manage labor migration. The MAC considered which professions had shortages and what sorts of skills Britain might need from new migrants – and while it was never perceived as an entirely neutral body it conformed in many ways to the instrumental or problem-solving use of expert knowledge. Family immigration had, however, never been within the MAC’s remit or indeed expertise. The coalition government, however, asked them to calculate at what level the income requirement should be set to make sure family migrants were not a burden on the public purse. The Home Office tightly circumscribed the MAC’s margin of action by asking a very specific question which implied that the response be a number rather than a broader assessment of policy. By asking this question of labor market economists, they also knew they were unlikely to get an assessment of relevant human rights norms in return. The experts emphasized that they expected the government to take into account other factors besides their report, but subsequently the government has referred to the Migration Advisory Committee repeatedly when justifying their new policy. This instance is difficult to categorize in Boswell’s schema, although it may most closely align with the legitimization function. Policymakers drew on the institutional legitimacy of the MAC, and have explicitly referred to the expert assessment as a solid evidence base for the policy.

### 6.2.5 Comparing trajectories

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<thead>
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<th>Variable</th>
<th>Denmark</th>
<th>Norway</th>
<th>UK</th>
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<tr>
<td>2002 reform</td>
<td>Age limit</td>
<td>Income rule</td>
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1088 Hester et al., “Forced Marriage”; Yeo, “Raising the Spouse Visa Age.”
Table 15: Comparison of reforms in the three countries.

I have sought in this table to draw together a schematic version of the reforms in the three cases, and show how those reforms that were successful in Norway and the United Kingdom shared a number of the characteristics of the 2002 Danish reforms: broad policy objectives, swifter passage of new rules, and more limited conflict. These factors, I argue, allow policymakers to circumvent or manage constraints on policymaking and pursue stricter rules. The possible effect of expert knowledge is less clear-cut – although it was generally more limited in the cases of reforms that went through. In the following section I will return to the main question of this thesis, drawing some conclusions from this comparison.

6.3 Why did Norway and the UK choose to regulate family immigration by income and not by age?

A key question in this dissertation was why Norway and the United Kingdom - after initially pursuing family immigration regulation based on a “Danish Model” focused on age limits -
subsequently both adopted high income requirements as centerpieces of their family immigration rules. The immediate answer to this question is that the age limit failed in both countries. But why did it fail?

In Norway, the age limit failed at an early stage due to the immense controversy it generated. The slow speed of reform, the ultimately suboptimal timing and the broad scope of conflict meant the age limit could not succeed. Immigration reform dragged out over several years, and the age limit debate itself dragged out for the entire year of 2006 – after its announcement in February, the consultation was not published until October. This gave opponents quite a bit of time to mobilize against the proposal. Stakeholders from Denmark were invited to talk about the measure, and their reports were not positive – the proposal came long enough after the original Danish policy change that one could say that no real evidence of its supposed positive effects on forced marriage rates had been demonstrated. Again, while experts had initially supported the rule, evidence of its effectiveness became increasingly disputed. As it was largely an expert proposal to begin with, coming out of the NOU, evidence-based policymaking was arguably ‘activated’ as a relevant mode. When other experts chimed in, and broader evidence from Denmark was gathered, this undermined the proposal. Its ultimate downfall was the opposition of the Socialists, however. They could not be persuaded with the forced marriage argumentation, which became rather more halting than in Denmark, and they resisted further restrictions. Respect for expert opinion was also much more routinized and institutionalized in Norway than in Denmark.

The Labor-led coalition could introduce new income rules without any of these complications, however. As the income rule already existed in secondary legislation, expanding it was a matter of removing existing exemptions rather than passing new legislation. As such, the changes were more likely to pass under the radar. Additionally, this was done in 2008, when asylum arrivals were again high - which was tacked on as an additional motive for the rule. As such, timing and speed was more propitious. The scope of conflict was also narrow, with few responses to the relevant consultation and limited debate in Parliament, and the skeptical Socialists had agreed to it behind closed doors in the coalition. Finally, a raft of objectives were put forward to which the income rules were the solution.
The story in the UK is actually quite similar. The age limit failed for similar reasons as in Norway, but in a different venue – courts rather than consultations – showcasing an interesting institutional difference between two types of parliamentary democracies. Whereas Norwegian non-state actors have had the possibility to influence policy through consultations or direct lobbying, the courts have emerged in the UK as one of the more viable means through which organizations can influence policy, especially in the post-HRA era. As one interviewee said, the Human Rights Act added a “whole new layer” of arguments to put forward in British courts. The young British-Chilean couple Amber and Diego Aguilar, supported by the organization JCWI, won by challenging the proportionality of the measure under article 8 and disputing evidence of its effectiveness.

The income rules came about at a more propitious time, in the context of broad efforts to bring down immigration to the UK supported by the Coalition’s mandate from the recent election. Labour, still reeling from its election loss and seeking a new stance on immigration, did not put up significant opposition to the income rules. The consultation was held without informing respondents about what the required income level would be, which means that opposition at that stage was probably more limited than it might have been. Such tactics would likely not have been considered appropriate in Norway, with its more institutionalized consultation system. Outsourcing it to the respected Migration Advisory Committee, with its expert credentials, legitimized the level itself. As noted, the government argued that the income requirement would fulfill a number of objectives at once. This may tip the scales of the proportionality assessment as the measure makes its way through the courts – and even if it is found disproportionate, the Government can likely comply by lowering it slightly or slightly changing documentary requirements.

Generally speaking, then, the income rules were easier to implement in both countries because a) they already existed and were an accepted tool of family immigration regulation, lessening conflict and allowing for a swifter policy process, b) they had a veneer of neutrality which did not as clearly stigmatize those communities where transnational arranged marriages among young people were common and c) they could be ascribed a variety of different purposes, making them highly flexible with regard to the question of proportionality.
6.4 Why does it matter?

One might legitimately ask why exactly it matters what form family migration regulations take - if it matters whether a country chooses one instrument over another - and whether this is worth dedicating a dissertation to. I argue that it does indeed matter, for two different reasons: first, the fact that there are a number of different tools in the family immigration regulation toolbox is important, because it expands the margin of maneuver of policymakers in the face of constraints. This, arguably, is what I have demonstrated throughout this thesis: when one tool failed, another one could be put in its place. This demonstrates the agency of policymakers in the face of constraints on the state.

Part of this agency is exercised simply through their ‘talk’. I have argued throughout this thesis that the constraint on politicians stemming from the right to family life is, to a large extent, ‘what they make of them’, both if we consider the right to family life a broad, moral norm and if we consider it a legal threshold in a court context. Policymakers’ discursive positioning vis-à-vis their human rights obligations can influence the assessment of the proportionality of any restriction on family immigration. We have seen throughout this dissertation that restrictive measures that have been implemented have been ascribed ever-broader policy objectives, ranging from forced marriage prevention and deterrence of asylum seekers to preserving the welfare state and ‘saving tax payers’ money’. While this is important strictly in the sense of ‘talk’ and justifying measures with regard to voters and stakeholders, it can also be important in the context of actual legal challenges. We have seen that there has been limited litigation in Scandinavia. I have argued that opportunity structures are so that using the ‘exit option’ of EU law has undercut the potential for litigation. In the United Kingdom, where there have been legal challenges to the rules, the income rules were just deemed “discriminatory but justified” in the Court of Appeals, demonstrating policymakers’ possibility to influence outcomes even in the courts through their ‘talk’ and enunciation of policy objectives.1090

1089 Viz. Boswell’s argument that political organizations are judged on “talk” and “decisions” just as much as output per se. Boswell, The Political Uses of Expert Knowledge, 41–44.

1090 It should be noted that this decision may be appealed to the Supreme Court which, Wray has argued, has often been more liberal than the lower courts. Wray, Regulating Marriage Migration Into the UK.
There is, however, a second aspect to my findings which I consider important. This concerns the ‘economic drift’ in family immigration legislation. Studies of immigration, multiculturalism and ethnic relations during the late 1990s and early 2000s zoomed in on the politics of belonging, culture and the distinctions inherent in family immigration regulations between ‘us’ and ‘them’. Such discourses were used to distinguish those who should benefit from a right to family reunification from those who should not, and were on display in Chapter Three, where I examined the Danish immigration reforms. As I showed, only those with adequate ‘combined attachment’ to Denmark should be able to reunify there. These reforms were informed and influenced by the Danish ethno-nationalist far right, but even the Danish Left fell in to discourses distinguishing between ‘real’ and Danes descended from the Vikings and those ‘other’ Danes who did not. This form of regulation which looks not only at the formal immigration status of the would-be sponsor, but at what I would call the quality of their insider status, and what Laura Block has called ‘social membership’. Family reunification has often been conceptualized as a ‘right of insiders’, with insider status usually being determined by formal membership, i.e. citizenship. As we have seen, however, Denmark began to employ more fluid - and stricter - measures of the quality of ‘insider-ness’, where citizenship as a formal status was not in itself sufficient evidence of being a ‘real Dane’. The attachment requirement holds that in order to qualify for family reunification, the couple's combined attachment to Denmark must be equal (from 2000) or superior (from 2002) to their attachment to an alternate country of residence. The way they have assessed this has arguably been quite esoteric; the Norwegian policymakers who went on their study tour to Denmark in 2006 could not quite make sense of how the rule was applied, and British policymakers also gave up on it in 2011. Most importantly, however, such rules differentiate between some citizens and others - an approach that was legitimized in the Biao ruling in Strasbourg in 2014 (against the strenuous protests of the Court’s dissenting minority).

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1091 I owe this term to Eleonore Kofman, from the 2013 Metropolis Conference in Tampere, where we both presented in a workshop on family immigration regulation.

1092 Block, “Regulating Social Membership and Family Ties: Policy Frames on Spousal Migration in Germany.”

1093 Carens, “Who Should Get In?”.

1094 Interviews, spring 2012.
Immigration regulation through income rules is of a different nature, however, and it is not fully comprehensible through a cultural lens. Income requirements for family immigration are historically quite common, and have, for instance, been included in both Norwegian secondary legislation and British immigration since the 1970s. The general rule would be that the sponsor would have to be able to provide some sort of support for immigrating family members. These regulations were often of a ‘passive’ nature, such as with the British rule that family migrants would not have recourse to public funds, and many groups were exempted - in Norway, no income rules applied to citizens until 2003. Income rules would also be set at levels that were within reach for most people - if a level was set, it would be at the level of income support, or sponsors would have to show that they were not reliant on public funds at the time of application. Housing rules were often also relatively lax. In Norway, the Directorate of Immigration long objected to strict housing rules on the reasoning that it raises difficulties of enforcement. In Britain, it was sufficient to dispose of one’s own room in housing owned or rented by a third-party.

More recently, these income requirements have gone from simple, often ‘passive’ requirements to much more complex requirements that are both objectively higher and also technically more difficult to comply with due to documentation requirements. They have also been extended to new groups - most importantly citizens and certain groups of refugees who were previously exempted.1095 As I have demonstrated, income rules have become the centerpiece of family immigration regulation in recent years in Norway and the UK. Non-compliance with the income rules has become the most common grounds of refusal of family immigration applications in Norway. In the UK, the income requirement introduced in 2012 was set at a level that, it was calculated, would have led to the rejection of 45% of the applications lodged in the previous year.

These income rules do not make very obvious sense through a cultural lens. As I showed, their effects in Norway have been that highly skilled workers have a much easier time at obtaining family immigration than Norwegian citizens - and this has not only affected citizens of minority

1095 Both Norway and the UK have distinguished between ‘pre flight’/family reunification and ‘post flight’/family formation, i.e. imposing stricter rules on family members of refugees to whom they were not married before flight.
background, but also many ethnic Norwegians. It appears from the evidence presented here that economic considerations have played an important role in family immigration policies – and that family immigration policy is not immune from the selective logic of ‘migration management’. Arguably, in Norway the family members of skilled workers are admitted for instrumental reasons, as it is expected that the ‘brightest minds’ would only choose to work in Norway under sufficiently attractive conditions. If they expected difficulty bringing their family members, they might instead choose to work somewhere else – and Norway has seen an important demand for skilled workers such as engineers, in particular in the oil and gas sector. The UK is a more obviously attractive migration destination, but here, as well, the Treasury put its foot in the way of more restrictive rules for dependents under the Points Based System. Paradoxically, the state – which, most would agree, allows family immigration fundamentally because of moral and legal constraints – may in fact provide family reunification under more favorable conditions when these constraints are not its primary motive for action, such as when family migration is used as a ‘carrot’ to attract workers from abroad. This, again, mirrors Shachar’s findings that membership is used to attract talent.

Arguably, this suggests that the income based family rules do not reflect a ‘racial project’ or a desire to separate ‘us’ and ‘them’, so much as a tool to select migrants on economic grounds. The income requirement indirectly selects family migrants based on the sponsor’s position in the labor market and the sponsor’s class. This has particularly interesting consequences when looking at skilled labor migrants. Through (the spouse’s) work, it seems that class – as evidenced by one’s position at the ‘top end’ of the labor market in sectors such as engineering – ‘trumps’ race or ethnicity.

The idea of management, then, has seeped into family immigration too. While the culturalist approach did not find enough resonance in Norway and the UK, the ‘modern’ managerial approach did. The income requirement reflects ideas about class and deservingness for family immigration that have not adequately been picked up in existing analyses of family

1096 Myrdahl, “Legislat ing Love.”
immigration policy or immigration policy in general. It is this conceptual change that these changing policy instruments illustrate: the changing nature of family immigration away from a right and towards an earned privilege.

6.5 Conclusion

In this dissertation – and in this chapter – I have compared the trajectories of family immigration reform in Denmark, Norway and the UK. I have argued that those restrictive reforms that were successfully implemented shared some important characteristics: politicians were able to control the scope of conflict in the policymaking venue, and successfully frame their policy instrument as either protecting individual rights or protecting the nation or its economy. Successful reforms were also swifter than those that were not, as time allows the buildup of opposition, and better timed with regard to external events (elections in Denmark and the UK, and peaks in asylum arrivals in Norway).

Through this comparison I have provided a plausible explanation for why Norway and the United Kingdom ended up with income requirements rather than age limit-based family immigration regulation. I have argued that this matters because (1) it demonstrates the agency of policymakers to act in the face of constraints by finding new tools in their toolbox, and (2) because it showcases an ‘economic drift’ in family immigration policies whereby obtaining family reunification is becoming a mark of economic privilege rather than a right which permits families, no matter their income, to uphold family life across borders. These developments should be put in the context of Shachar’s findings that states are reconfiguring membership to attract talent,1098 and signal an important change in immigration policy which scholars should pay close attention to in the future.

1098 Shachar and Hirschl, “Recruiting ‘Super Talent.’”
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Appendix A: Political parties in Norway and Denmark

Both Norway and Denmark have multiparty systems with a relatively large number of political parties that may be difficult to keep track of.

<table>
<thead>
<tr>
<th>Party</th>
<th>Abbr-eviation</th>
<th>Description and bloc alignment</th>
<th>International Party Group</th>
<th>Stance on immigration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social Democrats/ Socialdemokratiet</td>
<td>S</td>
<td>Scandinavian social democratic. Left bloc.</td>
<td>Socialist International/Party of European Socialists</td>
<td>Split</td>
</tr>
<tr>
<td>Social Liberals/ Radikale Venstre</td>
<td>RV</td>
<td>Social liberal. Center/left bloc since early 1990s, aligned with the right before that.</td>
<td>Liberal international/Alliance of Liberals and Democrats for Europe</td>
<td>Liberal</td>
</tr>
<tr>
<td>Conservative People’s Party/ Konservative Folkeparti</td>
<td>K</td>
<td>Moderate conservative. Right bloc.</td>
<td>European People’s Party</td>
<td>restrictive</td>
</tr>
<tr>
<td>Ny Alliance</td>
<td>SF</td>
<td>Liberal/classic liberal. Center/right bloc.</td>
<td>Alliance of Liberals and Democrats for Europe</td>
<td>“realistic” immigration policy/&quot;human” refugee policy; relatively strict</td>
</tr>
</tbody>
</table>

1099 I use the abbreviations employed in Parliamentary records, which are not the same as the ones employed elsewhere.

1100 Liberal Alliance was the new name of Ny Alliance, founded in 2007 by former Social Liberal and Conservative MPs. It moved more right after gaining seats in Parliament in the 2007 election, leading one of the founding members to leave the party.
Table 16: Danish political parties.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Venstre</td>
<td>56</td>
<td>52</td>
<td>46</td>
<td>47</td>
</tr>
<tr>
<td>Social Democrats/</td>
<td>52</td>
<td>47</td>
<td>45</td>
<td>44</td>
</tr>
<tr>
<td>Danish People’s Party</td>
<td>22</td>
<td>24</td>
<td>25</td>
<td>22</td>
</tr>
<tr>
<td>Conservative People’s Party</td>
<td>16</td>
<td>18</td>
<td>18</td>
<td>8</td>
</tr>
<tr>
<td>Socialist Party</td>
<td>12</td>
<td>11</td>
<td>23</td>
<td>16</td>
</tr>
<tr>
<td>Social Liberals</td>
<td>9</td>
<td>17</td>
<td>9</td>
<td>17</td>
</tr>
<tr>
<td>Enhedslisten</td>
<td>4</td>
<td>6</td>
<td>4</td>
<td>12</td>
</tr>
</tbody>
</table>

1101 The Christian People’s Party changed names to The Christian Democrats in 2003, but has not been able to reach the minimum vote threshold in recent elections.

1102 Note that the Social Liberals and the Liberals have the same international affiliations, but the Social Liberals are (not surprisingly) more liberal on social issues including immigration policy. The Norwegian liberals fall inbetween these two parties but have recently had more in common with the Social Liberals.
<table>
<thead>
<tr>
<th>Party</th>
<th>Description</th>
<th>International Affiliation</th>
<th>European Affiliation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labor Party/Arbeiderpartiet</td>
<td>Ap</td>
<td>Social Democratic. Centre-left. (Divided over EU).</td>
<td>Party of European Socialists</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Progressive Alliance; Socialist International (observer)</td>
<td></td>
</tr>
<tr>
<td>Progress Party/Fremskrittspartiet</td>
<td>FrP</td>
<td>Populist, relatively far right, but not as far as the Danish People’s Party (between DPP and Danish Liberals)</td>
<td>N/A</td>
</tr>
<tr>
<td>Conservative Party/Høyre</td>
<td>H</td>
<td>Right. Internationalist (pro-EU).</td>
<td>European People’s Party (associated member)</td>
</tr>
</tbody>
</table>

Table 17: Distribution of seats in the Danish Parliament in elections 2001-2011.

Norway, like Denmark, is a constitutional monarchy, with a Parliament (*Stortinget*) of 169 members elected every four years through proportional representation. 19 of those mandates are awarded in accordance with a leveling system to the parties that achieve a result above the election threshold (currently 4%). In the 2009-2013 period, seven parties were represented in the Storting.

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1103 Parliament has had 169 members since 2005 when it was adjusted up from 165, which had been the number of MPs since 1989. Between 1985 and 1989 there were 157 MPs and between 1973-1985 there were 150. These adjustments are undertaken regularly in line with population growth and movements, evening out the mandate distribution between counties.

1104 The Liberal Party’s vote share has hovered around this threshold, which explains the fluctuating number of mandates.
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Labor Party/ Arbeiderpartiet</td>
<td>65</td>
<td>43</td>
<td>61</td>
<td>64</td>
</tr>
<tr>
<td>Progress Party/ Fremskrittspartiet</td>
<td>25</td>
<td>26</td>
<td>38</td>
<td>41</td>
</tr>
<tr>
<td>Conservative Party/Høyre</td>
<td>23</td>
<td>38</td>
<td>23</td>
<td>30</td>
</tr>
<tr>
<td>Socialist Left Party/ Sosialistisk Venstreparti</td>
<td>9</td>
<td>23</td>
<td>15</td>
<td>11</td>
</tr>
<tr>
<td>Centre Party/ Senterpartiet</td>
<td>11</td>
<td>10</td>
<td>11</td>
<td>11</td>
</tr>
</tbody>
</table>

---

1105 This party was the predecessor to the Coastal Party, and the same MP represented both. Both parties ran on an anti-EU conservative agenda.
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Christian Democratic Party/ Kristelig Folkeparti</td>
<td>25</td>
<td>22</td>
<td>11</td>
<td>10</td>
</tr>
<tr>
<td>Liberal Party/ Venstre</td>
<td>6</td>
<td>2</td>
<td>10</td>
<td>2</td>
</tr>
<tr>
<td>The Coastal Party/ Kystpartiet</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Non-partisan deputies / Tverrpolitisk Folkevalgte</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

Table 19: Distribution of seats in Norwegian Parliament, 1997-2009

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1106 This party was the predecessor to the Coastal Party, and the same MP represented both. Both parties ran on an anti-EU conservative agenda.
Appendix B: Citizenship regimes

Denmark

Denmark has one of the most restrictive citizenship regimes in Western Europe, and its naturalization requirements have been restricted along with other aspects of immigration and integration policy. Dual citizenship has until now not been accepted, but will be allowed in the future following a June 2014 vote in the Danish Parliament.\(^{1107}\)

The residence requirement for naturalization is 9 years (8 years for persons with refugee status). This is very long in a European comparative perspective. Up to three years can be discounted for persons married to a Danish citizen (one year per year of marriage). A high level of proficiency in Danish is required, and applicants must show that they have not received any social benefits in 4½ out of 5 years and not in the last year preceding application. Naturalization processes are carried out twice per year by a parliamentary ‘citizenship committee’ (infødsretsutvalg).

Persons born in Denmark acquire citizenship by birth if at least one of their parents is a Danish citizen.

Non-EEA citizens can vote in municipal and county elections after three years of residence. EU and Nordic citizen residents do not have to wait three years.

Norway

Norway’s citizenship regime is somewhat less restrictive than Denmark’s. However, Norway still does not allow dual citizenship, except in cases where the other citizenship cannot be renounced (e.g. Iranian citizenship), or if it would be unsafe for the applicant to contact the authorities of the home country (e.g. refugees). Children who automatically obtain two citizenships at birth and did not apply for either one, may retain dual citizenship.

The residence requirement for naturalization is 7 years. Up to four years can be discounted for persons married to a Norwegian citizen (one per year of marriage). The applicant must have permanent residence and no criminal record (this will lead to a quarantine). There is no citizenship test at the time being (although a test was introduced in 2014, no clear sanction is associated with not taking it), but as of 2008 applicants must demonstrate that they have some proficiency in Norwegian or Saami, or that they have completed compulsory language and civics classes. Citizenship applications are handled by the Directorate of Immigration (UDI), under the authority of the Ministry of Equality and Social Inclusion.

Citizenship is acquired by birth if at least one parent is a Norwegian citizen.

Non-EEA citizens can vote in municipal and county elections after three years of residence. EU and Nordic citizen residents do not have to wait three years.

**United Kingdom**

British nationality law is incredibly complex due to the country’s history as a colonial power and the fact that it was reformed by bits and pieces throughout the 20th century – a process to which books have been dedicated and some of which is recounted in this dissertation. It cannot be easily summarized here, but some key points for comparison will be outlined. The United Kingdom allows dual citizenship.

For those married to a British citizen, naturalization is possible if they have indefinite leave to remain (or equivalent status) at the time of application and have lived legally in the UK for three years. They must be of “good character” and they must have passed the “Life in the UK test” or prove that they have attended language and civics classes, and they must speak English (those who pass the “Life in the UK test” are deemed to speak English). Somewhat stricter rules exist for those not married to a British citizen, namely a longer required period of residence (five years, and one year of indefinite leave to remain status) and an intention to continue to live in the UK.

Persons born in the UK to at least one parent who is a British citizen or settled (i.e. permanently resident) in the UK acquire citizenship at birth, meaning that birthright citizenship is more broadly available to the children of immigrants than in the Scandinavian countries.
Commonwealth citizens and citizens of Ireland have voting rights at all levels. EU citizens have voting rights at local, regional and supranational levels.
Appendix C: Interview guide

I conducted semi-structured interviews that followed this broad topic guide, but the course of each interview was also determined by how the conversation developed and what the interviewees brought up in conversation. The interview guide was developed before the *Quila* ruling and the British income requirement, and these were topics that the interviewees in the UK generally addressed.

A. Information about the interviewee

- Role (elected official, former elected official, civil servant..)
- Experience with immigration policy

B. Overall views of family reunification policy

- What, in your opinion, are the goals of family reunification policy?
- Is family reunification a human right? (for which family members?)
- Should couples have a choice as to where to live?
- The composition of migration flows – is there an optimal composition? Should politicians try to alter it? How?
- Are there any competitive dynamics at work in family migration policy, do you think? (viz. asylum)

C. Cross-national learning

- Do you keep informed of family reunification policy in other countries? By what means?
- Are you in touch with policy makers/others in other European countries who work on similar issues as yourself?
- Which places do you look to? Why?
• Models of family reunification policy – which country has the “best” policy?

• Should other countries seek to follow?

• Is it important to have similar policies as other countries?

D. The EU

• Have you heard of the family reunification directive? Did you follow it when it was developed?

• Do you keep up with EU developments with regard to family reunification? How?

E. Denmark

• The Danish model – when did you hear about it? Tell me about it.

• What is the reason for the age limit in Denmark, in your assessment?

• What do you know about the effects of the Danish policy?

• Did you discuss the Danish model as an example for policy here?

• What did you see as the upsides and downsides?

F. Age limits

• What is the purpose of an age limit for marriage migration?

• What age should such a limit be set at?

• In your opinion, is an age limit likely to prevent forced marriages?

• What other effects could it have?

• When you proposed a similar rule to the Danish one, why did you set it lower than they did?

G. Only for Norway
• Tell me about how you experienced the process of immigration reform with regard to family migration.

• How would you assess the new act? (Improvement? Worse?)

• How did you experience the public consultations that occurred with regard to the Act and the age limit?

• Did you identify specific pro or anti age limit organizations or groups?

• What did you think of their arguments? Which did you find most convincing?

• Why do you think that the proposed age limit was not, in the end, implemented?

• What do you think is the effect of the four-year rule?

• Did you support it?

H. Only for the UK

• How did you experience the public consultations that led to the increased age limit for spousal sponsorship?

• Did you identify specific pro or anti age limit organizations or groups?

• What did you think of their arguments? Which did you find most convincing?

• Tell me about your experience with the age limit while it was in place?

• What was your reaction to the court decision in Quila?