

WHY LIBERAL STATES RESTRICT WANTED IMMIGRATION:
CITIZENSHIP REGIMES AND THE POLITICS OF HIGHLY-SKILLED IMMIGRATION
POLICY

by

MELANIE KOLBE

(Under the Direction of Markus M. L. Crepaz)

ABSTRACT

What explains cross-national differences in rights-allocations of highly-skilled immigration (HSI) policies among Western industrialized countries? This study is motivated by a striking empirical puzzle: most industrialized countries design policies intended to secure a competitive edge in the global market by attracting qualified migrants (e.g. engineers, researchers, or IT specialists), however, many of the policies are much more restrictive, in particular in regard to work rights, than one would expect. Some states restrict immigration of highly-skilled immigrants more than their generally welcoming and expansive rhetoric would suggest. Why can some countries be open to highly-skilled immigrants while others cannot?

While previous work on labor immigration policies has focused on client-politics arguments, highlighting the instrumental role of labor unions and employer associations in policy-making, or the importance of institutional arrangements and state actors, this study argues that the difference in work rights granted to highly-skilled immigrants is also determined by how inclusive or exclusive conceptions of nationhood are. In institutionalized form, citizenship configurations act as frameworks for discursive opportunities, making some arguments on immigration more

legitimate than others in policy discourse, and crucially affect the trade-off between different policy goals. To test my theory I use a mixed-methods approach consisting of a quantitative and qualitative analysis. I empirically analyze policy restrictiveness in regard to work rights by developing a measure for 16 countries from 2002 to 2012 and conducting four representative, qualitative within-case studies.

The study finds evidence that conceptions of nationhood affect labor migration politics and policy output. Moreover, it delivers evidence that interest group politics with its rationalist outlook on material costs and benefits of migration, is not all what it is made out to be. National and symbolic politics can, when harnessed by discourse coalitions, undermine efforts towards more expansionist policies for highly-skilled migration, although the benefits of migration under liberal regulations would be higher.

INDEX WORDS: Immigration, Immigration Policy, Political Economy, Citizenship, Europe, Finland, Austria, Germany

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For my parents, Karin and Andreas.

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CHAPTER 1

INTRODUCTION

What explains the cross-national differences in work rights for highly-skilled immigrants (HSIs) among Western industrialized countries? In this modern day of technological advancement, almost all industrialized nations have come to recognize the need to attract highly-skilled immigrants due to the increasing magnitude of competitive, knowledge-based industries in the global economy. Yet, there are not only stark differences in how these immigration policies select qualified individuals, but also what work, family and residence rights they will receive. It is puzzling that some countries design their immigration policies very restrictively in terms of work rights granted to immigrant workers, sometimes to the point that renders the work offer less attractive than proclaimed. Why do some countries make work offers that are neither attractive nor competitive?

Highly-skilled immigrants are commonly defined as individuals who possess “a university degree or extensive equivalent experience in a given field” (Iredale 2001, 8). They tend to work in internationally competitive private sectors, but also public arenas such as healthcare (Cerna 2010, 1). However, definitions for these highly-skilled workers vary across studies and countries. In response to changes in the global economy, favoring knowledge-based human capital, specifically in science and technology, highly-skilled immigrants have become an increasingly targeted demographic group (Mahroum 2001, OECD 2002, Chiswick 2005, Lowell 2005, Cerna 2009b).

Expecting that converging policy pressures would lead to the adoption of similar policies among industrialized countries, it is curious that national responses are so highly diverse. Lowell

(2005) and Cerna (2009a) found that in around 20 countries a great variation among highly-skilled immigration policies exists in regard to admission criteria, selection principles, and work rights. It is particularly striking that some policies are far more restrictive than intended or proclaimed, while broad consensus prevails that highly-skilled immigrants are wanted and needed in order to maintain a competitive edge in the global marketplace. Highly-skilled immigrants are often considered to be social and economic assets—they tend to pay more into social systems while being less reliant on them; they tend to integrate faster in the labor market and assimilate well into society; they tend to be complementary to the existing domestic work force; and are a publicly less controversial immigrant group (Boeri et al. 2012, 2, Triadafilopoulos and Smith 2013, 2, Portes and Rumbaut 1996, 293, Collett and Zuleeg 2009, 346). Consequently, most governments have adopted a generally welcoming and expansive rhetoric towards highly-skilled immigration.

Yet, their practical policies are often more restrictive. This reflects a curious case of the ‘gap hypothesis’ in immigration studies: while politicians publicly try to appear “tough” on immigration, immigration policies on paper are often more liberal (Kolb 2003a, 491-492, Czaika and de Haas 2011). The fact that developed nations often accept more immigrants than their generally restrictive rhetoric and policies intend, prompted Joppke (1998b) to ask “why liberal states accept unwanted immigration?” In the case of highly-skilled immigration, this gap hypothesis is reversed: We can observe a gap between an overall expansive and welcoming rhetoric towards highly-skilled immigrants, while eventual policies are more restrictive in practice.

Restrictive immigration policies need not be problematic, if restrictiveness is confined to the dimension of admission and selection, as it may reflect greater awareness of labor market needs or desired immigrant integration outcomes.¹ Yet, restrictiveness in work and residence rights for

¹ Australia, for example, has tightened their admission and selection criteria to achieve a better labor market fit and greater parity between natives and immigrants’ incomes (Hawthorne 2008).

highly-skilled immigrants seems to be counterintuitive to the goal of attracting and retaining skilled labor. Highly-skilled immigrants do not migrate purely based on external stimuli: When deciding whether and where to migrate, highly-skilled immigrants look not only for job prospects and high wages, but also substantial rights and quality of life benefits (Papademetriou, Somerville, and Tanaka 2009, Papademetriou and Sumption 2012, Ruhs 2013, p. 43). Thus, it is puzzling that some countries can be open to highly-skilled immigrants while others cannot. What explains the cross-national differences in work rights for highly-skilled immigrants among Western industrialized countries?

What do we know about this topic? So far, the general issue of labor migration has been marked by the argument of agency versus institutions. Political economy approaches of labor migration assume that immigration policies are largely driven by economic considerations, either expressed through highly-organized economic interest groups (Freeman 1995, 2002, Cerna 2009b) or public opinion based on the perceived labor market competition of specific immigrant groups (Facchini, Mayda, and Mishra 2008, Mayda 2006, Citrin et al. 1997). In particular, the interest group aspect of immigration policy-making—referred to as client-politics (Freeman 1995)—has dominated the field of immigration policy studies for years. Locating the drivers of labor migration policy—not in the sphere of individual agency of economic groups but the nation state—institutionalist scholars have criticized the client-politics model for overlooking how domestic institutional structures shape not only interest group representation, but have created independent institutional actors, such as the judiciary and bureaucracies (Hollifield 1992, 2000, Guiraudon 1997, Boswell 2007, Joppke 1999, 1998b).

Thus far, very little is known about non-economic considerations and how they shape labor immigration policy as well as policy actors (for recent exceptions see Triadafilopoulos 2013b, Ruhs

2013). There are significant gaps in our understanding of how the formal and informal socio-cultural context influence immigration policy-making, especially questions of membership and citizenship, which have emerged as key issues in the political economy of immigration (Triadafilopoulos 2013b, Hollifield 2000). How, and in what ways, national identity and ethnic relations shape labor immigration policy is therefore an important question. Hence, the purpose of this study is to identify the relationship between different conceptions of national citizenship and the work rights granted to highly-skilled immigrants. Additionally, this study will explore the interplay between these conceptions and interest group politics, and their combined effect on the formation of various highly-skilled immigration policies.

In this study I intend to show that highly-skilled immigration policy is the outcome of countervailing forces over policy choice—between those forces that would like to enable, and those that would like to impede the immigration of highly-skilled immigrants. While businesses have been identified as “accelerating” forces, and labor unions as “braking” forces in the development and reform of highly-skilled immigration policies, I suggest that understandings of national citizenship act as a third, shaping force of highly-skilled immigration policies. But whereas businesses and unions have been active agents in policy-making, akin to gas and brake pedals of a car, configurations of citizenship are a force more aptly described as a handbrake, used to firmly anchor a country’s conception of national identity (Koopmans et al. 2005, 6, Joppke 1998a, 31). The vector sum of competing forces, active or passive in nature, determines how liberal or restrictive the rights granted in highly-skilled immigration policies can be.

More specifically, this study argues that the difference in work rights granted to highly-skilled immigrants is determined by how inclusive or exclusive national understandings of cultural identity and ethnic relations are. They do so in two important ways: as frameworks for discursive

opportunities, and as potential weight tipping the scales between different policy objectives. Furthermore, in interaction with institutional or electoral veto-points, the effect of exclusive citizenship understandings are amplified, while in conjunction with strong interest group support, the effects of exclusive citizenship notions can be ameliorated. Despite the complex interaction between agency, institutions and national identity, this study makes a clear case that even if highly-skilled foreign workers are needed and desired, exclusive citizenship configurations will make it politically difficult to be open to highly-skilled migration, and in consequence lead to restrictive work rights for highly-skilled foreign workers. It challenges one-sided arguments about the power of interest groups, and probes where policy preferences of state-actors originate from.

Thus, this study contributes theoretically, empirically and in policy-regard to the scholarly research on labor migration policy generally, and highly-skilled labor migration policy specifically. The relatively new phenomenon of greater skill selectivity in immigration policies, and the emergence of a discourse of global competition for the ‘best and the brightest,’ makes the study of highly-skilled immigration policy-making significant for the larger study of immigration policy of Western destination countries, in particular in Europe. Exemplifying a fundamental shift from previous ‘zero-immigration’ policies, banning labor migration at large, highly-skilled immigration policies signify a break with traditional paths. In directing attention to national identity and ethnic relations, this study provides a corrective for what many in labor migration studies consider “conventional wisdom”: the primacy of organized economic interest groups in shaping labor migration.

Beyond the theoretical input, this study also makes an empirical contribution to immigration policy research, by building and analyzing an original dataset comparing the work rights granted to highly-skilled immigrants in 16 OECD countries. While grounded in previous

measurement instruments of highly-skilled immigration policy (see Lowell 2005, Cerna 2009a), this dataset covers policy provisions over three time points—2002, 2007, and 2012. Lastly, this study also provides insight for the making and reform of public policies. While immigration policies might not be the primary factor attracting qualified immigrants from abroad, they are far from trivial. In an analysis of the effect of different national immigration policies on the migration of highly-skilled immigrants, Brucker et al. (2012a, 85-87) find that policies focusing on greater skill-selectivity resulted in a twelve-percent increase in the share of highly-skilled immigrants relative to low-skilled immigrants. Moreover, highly-skilled immigration policies can also cause qualified workers to leave. Restrictions and hurdles to switching employers or job occupations, as well as restrictions on spousal employment, may threaten the economic livelihood of immigrant families. In addition, barriers to permanent residence often preclude immigrants from taking advantage of welfare services, free movement within their host-state, and increase the overall insecurity of their legal status. As migrating is a costly process with unassured benefits, the granting of generous work rights contributes to attracting and keeping highly-skilled immigrants.

In testing my theory, I employ quantitative and qualitative methods of analysis in the form of a nested multi-method approach (Lieberman 2005). Quantitatively, I conduct a large-N cross-national analysis of work rights granted in highly-skilled immigration policies by constructing and using a work rights index, while controlling empirically for several alternative predictors. In the qualitative part, I analyze, compare and contrast the policy process in four cases that were selected based on the quantitative analysis. These cases cover three countries—Germany, Austria and Finland, and three time periods—2002, 2007, and 2012, and allow to process-trace the extent and quality of the hypothesized causal relationships. The data for the qualitative analysis were directly gathered through field work in all three countries, yielding 31 personal interviews with politicians,

administrative and academic experts, and interest group representatives. In addition to one-on-one interviews, I used several different sources of data including public statements and international reports, parliamentary and committee protocols, and various secondary sources.

While this study covers a broad range of concepts and relationships, the scope of the study is limited in several ways. First, the topic of labor migration is majorly discussed in regard to highly-skilled immigration. While of theoretical and empirical interest, low-skilled immigration concerning the labor migration and respective policies to manage the migration of low or unskilled foreign workers, and skilled immigration, which concerns individuals with a completed secondary education and specialized vocational skills (Ruhs 2013, 56), are not subjects of this study. Similarly, while admission criteria and selection principles contained in highly-skilled immigration policies are referenced, their quantitative treatment is only peripheral since the major focus of this study is on work rights.

Third, and related to the previous point, three particular areas of work rights are discussed here: employer portability, spousal employment, and access to permanent residence (see Cerna 2009a, Lowell 2005). While other immigrant rights, such as social rights including access to social systems, and political rights are interesting, they are commonly not part of steering instruments such as immigration policies, but are rather embedded in welfare state structures and immigrant integration policies, thus excluded for the analysis at hand. Fourth, this study analyzes policy output—legal regulations and laws pertaining to the governance and management of immigration—rather than their implementation, or their outcomes—the intended or unintended consequences of immigration policies (Hollifield 1986, Bjerre et al. 2015, 6).

Fifth, policies discussed in the context of this study are explicitly geared toward managing highly-skilled immigration from third-countries. Consequently, this excludes migration in context

of regional free movement agreements, such as the EU or NAFTA, and migration of individuals entering under policies of other supra-national origin, such as the EU Blue Card or the GATS. Lastly, the analysis covers data from 2000 to 2012, as skill selective policies have largely been uncommon in Europe until the early 2000s.

The remainder of the study is organized into eight chapters, a bibliography and appendices in the following manner. Chapter 2 situates the puzzle of highly-skilled work rights divergence in the context of related literature on labor migration, outlining the contribution of a citizenship-based approach to immigration policy studies. Chapter 3 delineates the formulated theory and causal mechanisms. Chapter 4 conceptualizes and operationalizes all variables discussed. Chapter 5 outlines the research design and methodology of the study, and also presents and discusses the findings of the quantitative analysis. Chapter 6 analyzes two policies and their making in Germany—the IT-Green Card in 2000, and the Residence Act in 2004. Chapters 7 and 8 analyze the cases of the Red-White-Red-card in Austria in 2011, and the Aliens Act in Finland in 2004. Chapter 9, lastly, contains the summary, conclusions of the quantitative and qualitative analyses, and discusses caveats as well as future research avenues of this study.

CHAPTER 2

PUZZLE AND LITERATURE REVIEW

What explains the cross-national differences in work rights for highly-skilled immigrants among Western industrialized countries? To first understand the significance of this question for immigration policy research, two convergences—labor shortage pressures and responding objectives; and one divergence—immigration policies—will be examined in this chapter. After a review of the current state of research on highly-skilled immigration and labor migration more generally, I will outline how a citizenship-based approach to labor migration policy will help answers not only the research question at hand but also close gaps in our understanding of how formal and informal socio-cultural contexts influence immigration policy-making.

The Puzzle of Highly-Skilled Immigration Policy Divergence

In the last two decades, economic evolution has increased international pressures on countries. The forces of globalization have brought about an augmented focus on knowledge-based human capital, specifically in science and technology, as a factor of innovation, productivity, and economic progress (Mahroum 2001, Lowell 2005, OECD 2002, Chiswick 2005, Cerna 2009b), so that demand for the scarce amount of the ‘best and brightest’ has led more advanced industrial countries to competitively acquire talent from around the world (Mahroum 2001, Bauer and Kunze 2004, Shachar 2006, Hawthorne 2008, Cerna 2009b). Since the late 1990s, every major advanced, industrialized country has shifted gears in their respective immigration policies to strategically act upon these pressures, including European countries such as Germany and Austria that departed

from their previous ‘zero-immigration’ policies of the 1970s. Most advanced, industrialized countries are also affected by similar domestic pressures. They face aging populations as well as low fertility rates, and in consequence experience difficulty in financing their social security systems (Zimmermann 2009, OECD 2003, 104, Cerna 2009b).

Moreover, they all display a surplus of low-skilled workers, and a shortage of highly-skilled immigrant labor. Labor market shortages²—sometimes also referred to as skill mismatches—in key sectors such as information-communication technology, engineering, life sciences, and public health have led to initiatives to target and admit more highly-skilled workers (OECD 2002, Bauer and Kunze 2004). The 2012 European Vacancy and Recruitment Report identified these professions as ‘bottleneck’ occupations that have been empirically observed since 2007 (Commission 2012, 90). Every advanced economy by now has publicly acknowledged and professed that they need to attract highly-skilled immigrants to gain a competitive edge in the global economy.

Expecting that converging policy pressures would lead to the adoption of similar policies among industrialized countries, it is curious to note that national responses are highly diverse. These policies differ in three ways in regards to macro models, admission mechanisms, and work rights. First, governments’ approaches to attracting HSIs can be differentiated according to the overarching goal of these policies—to increase human capital, or to overcome labor market shortages (Iredale 2001, 8, Cerna 2010, 6). Human capital models of highly-skilled immigration follow the notion that highly-skilled immigrants are an essential part of the country’s nation-building process, and hence this model regards immigration and integration in a long-term

² Labor shortages are commonly attributed to either shirking on the labor force supply side by restricting or controlling entrance to specific professions or occupations by professional associations, or to technological change that increases demand for higher-skilled workers, while a sufficient domestic skill base to meet this demand is lacking (Cerna 2010, 1).

perspective. Labor shortage models, in contrast, view highly-skilled immigration as a short-term relief for skill shortages or skill mismatches in the economy; not as a long-term strategy. Hence, they assume that highly-skilled immigrants are only temporary workers. Human capital models are prevalent in settler countries such as the Australia or Canada. However, recently they have adopted policies to meet temporary labor shortages as well. Labor market shortage models have been mainly adopted in Europe (Cerna 2010, 6).

Second, highly-skilled immigration programs differ across their admission and selection procedures. While some countries have modified previous immigration policies to allow higher quotas (Canada, USA, Australia) or select more strictly according to the immigrants' employability in specific sectors (Australia, New Zealand), other countries, particularly in Europe, have adopted policies ranging from fast-track admittance (Netherlands) over specialty visa programs (France, Germany) and points systems (United Kingdom, Denmark, Austria) to green cards (Ireland, EU). This diversity among policies can not only be distinguished in government and employer-driven approaches to selecting immigrants,³ but also in terms of how admission mechanisms and granted work permit rights are distributed. Lowell (2005) and Cerna (2009a) found that in around 20 countries a great variation among policies exists regarding admission, selection and rights of highly-skilled immigrants.

Third, the divergence of HSI policies in regard to work rights is striking—some policies are far more restrictive than proclaimed. While greater selectivity of applicants can serve overarching immigrant integration goals or very specific labor market needs,⁴ a restrictiveness in

³ Government-led approaches are usually based on occupation shortage lists that are compiled by agencies to determine which skills are needed. Government-led approaches can also attract and enable independent admission. Otherwise, applicants require a company sponsor (Papademetriou, Somerville, and Tanaka 2009, 269-273).

⁴ Australia, for example, has tightened their admission and selection methods to achieve a better labor market fit and greater parity between natives and immigrants' incomes (Hawthorne 2005, 2008).

work rights, however, seems counterintuitive to the goal of attracting and retaining skilled labor. Highly-skilled immigrants are not reflexive migrants—individuals who migrate purely based on external stimuli: When deciding whether and where to migrate, highly-skilled immigrants look for the overall attractiveness of the “immigration package” (Papademetriou, Somerville, and Tanaka 2009, Papademetriou and Sumption 2012). Countries appear more attractive if they offer not only good job prospects and high wages, but also substantial rights (Ruhs 2013, 43).

There is a good argument to be made that immigrants are initially more swayed in their migration decision by factors other than what work rights they receive under a specific immigration permit such as the presence of a job offer, the type of welfare and tax regime, needed language abilities, the presence of established cultural or ethnic networks, the relative income and even the climate (Doomernik, Koslowski, and Thränhardt 2009, Papademetriou, Somerville, and Tanaka 2009). Yet, while immigration policies might not be the primary factor that draws immigrants’ attention, they are certainly a motivating factor to leave for personal reasons. Restrictions and hurdles to switch employers or occupational fields, as well as restrictions for spousal employment threaten the economic livelihood of migrant families. In addition, barriers to permanent residence often preclude immigrants from taking advantage of welfare services, free movement within their host-state, and increase overall insecurity of their residence status. The most intriguing part of this puzzle thus concerns the variation of work rights granted through these policies, which raises the question of why some countries are more restrictive than others?

The State of Highly-Skilled Immigration Research

The current body of literature on highly-skilled immigration reveals the lack of systematic cross-national studies on highly-skilled immigration policy-making. Research on HSI policy has focused on three objectives so far. First, documenting policies and tracing changes in them (Salt and Findlay 1989, Salt 1997, McLaughlan and John 2002, Christian 2000, Mahroum 2001, Iredale 2001, Papademetriou 2003, Chiswick 2005, Zaletel 2006, Avato 2009, Cerna and Hynes 2009, Wiesbrock and Hercog 2010, Papademetriou and Sumption 2012). Quantitative measures of variation in HSI policies were developed by Lowell (2005), Cerna (2009a), and Ruhs (2013). Second, studies have focused on the broader implications of HSI policies, such as the consequences for sending and receiving countries (Martin 2003, Hunger 2003, Bhagwati and Hanson 2009, Regets 2001, Borjas 2009), its significance vis-à-vis low-skilled immigration policy (Ruhs and Martin 2008, Ruhs 2013), and the evaluation of HSI policy outcomes (Bauer and Kunze 2004, Doomernik, Koslowski, and Thränhardt 2009, Oishi 2012, Kahanec and Zimmermann 2010). Third, a few studies have also engaged in exploring the origins and formation of HSI policies (Lavenex 2007, Cerna 2009b, Shachar 2006, 2013, Triadafilopoulos 2013b).

In the latter strand of research, two major explanations of the origins of HSI policies have emerged: 1) the international competition approach (Shachar 2006, 2013, Lavenex 2007), and 2) the factor coalition politics model (Cerna 2009b). The international competition approach suggests that the proliferation of HSI policies is due to spiraling competitive, two-level games whereby national governments attempt to either keep up or exceed each other in making their HSI policies more attractive to applicants in order to gain a competitive edge (Shachar 2006). This is caused by an overall neoliberal turn international relations and increasing globalization. It is argued that the influence of regional trade agreements and the GATs that regulate movement of skilled workers,

as well as the leverage of multi-national corporations and professional associations, have led to a competition for HSIs and an increasing deregulation of immigration barriers (Lavenex 2007).

Intuitively, this international competition approach is appealing when one considers the drastic snowball-like spread of highly-skilled immigration policies between 2000 and 2012, as well as the relaxing of requirements on permanent residence and citizenship access for highly-skilled migrants (Shachar 2013, 98). While the international competition approach provides useful insight on the sequence and emergence of HSI programs, the argument, however, does not explain their divergence. As a matter of fact, the approach would seem to predict that these policies would become ever more liberal as countries are in competition to acquire the best, and make the most attractive offer. However, as Cerna's (2008), Lowell's (2005) and my data⁵ demonstrate, this is not the case. Thus, if we really are witnessing the rise of "competitive immigration regimes" (Shachar 2013, 89) then why do so many countries make "bad" offers. Moreover, Triadafilopoulos and Smith (2013, 7) observe that instead of a "battle for the brains" scenario we rather observe a brain-drain dynamic. Lastly, the international competition approach does not regard national conceptions of membership as an explanatory factor for HSI policy development, but rather argues that the increase in need for labor immigration has led to a change in citizenship policies to increase the competitiveness of national immigration policies, implying that national membership is renegotiated when it hinders economically-motivated immigration goals (Shachar 2013, 85, 97-98). While this an intriguing mechanism, however, it is also possible that the relationship is reversed.

⁵ Cerna (2009a) has measured policies for the year 2007; Lowell (2005) provides no information on the exact year.

The factor coalition politics approach, in contrast, argues that different coalitions between economic interest groups, in particular high-skill labor unions, low-skill labor unions and employers' associations, have led to differing HSI policy outputs across countries (Cerna 2009b). This model is a variant of the dominant political economy approach to labor immigration policy which, ranging from interest group politics (Freeman 1995), over sectoral or firm-centered approaches (Menz 2009, Caviedes 2010, Salt and Findlay 1989) to demand and supply models (Ruhs and Martin 2008, Ruhs 2008), assumes that economic concerns are the key determinants of labor immigration policy. And indeed interest group politics have been found instrumental to understanding why, for example, the adoption of an immigration points system in the United States failed (Gary Freeman, Leal, and Onyett 2013), or why and how, in the case of the United Kingdom, the “economic migration stream” was reformed between 2005 and 2010 (Somerville 2013).

Yet, while the factor coalition politics model very compellingly argues how economic interest group politics can explain restrictiveness in HSI admission policy, it does not effectively explain why some countries offer more rights and accommodation to highly-skilled immigrants than others? By directing the analytical focus on interactions and policy preferences of interest groups, and treating political considerations as second order explanations, this approach does not pay attention to the national context of policy-making. Even in traditional immigration societies such as Canada, Australia and the United States economic needs were not the sole reason for changes in immigration policies but instead reflected the interaction between changes in international norms, international pressures, and domestic politics; in particular a move away from previous all-white policies (Triadafilopoulos 2013a, Tavan 2013, Wolgin 2013).

The role of different understandings of national identity and ethnic relations, the power and interest of the state, and the organization of interest group representation, importantly shape policy

preferences and feasibility of certain policies. Without an explicit eye for how interest group politics are situated and shaped by the national context, explanations of highly-skilled immigration policy outputs remains incomplete, and overestimates the agency that interest groups assume as well as the power of economic considerations in immigration policy-making.

Beyond Agency and Structure: A Citizenship Contribution

A citizenship-based approach that captures the essence of conceptions of national identity and ethnic relations offers not only a contextualized analysis of highly-skilled immigration policy but immigration politics more broadly. Classical arguments about determinants of labor migration politics have focused either on the agency of interest groups, or the structural influence of the state and state institutions. I argue, that beyond agency and structure, the importance of culture in the form of configurations of citizenship is an influential factor that shapes the eventual extent and form of immigration policy that crucially interacts with both policy agents and state institutions.

Political economy approaches of labor migration and immigration policy studies assume that immigration policies are largely driven by economic considerations, either expressed through economic interest groups or individual preferences (Borjas 1989, 1994, Freeman 1995, 2002, 2006, Freeman and Kessler 2008, Caviedes 2010, Cerna 2009a, Facchini, Mayda, and Mishra 2008, Mayda 2006, Citrin et al. 1997). In particular, the interest group aspect of immigration policy-making—referred to as client-politics (Freeman 1995)—has dominated the field of immigration policy studies for quite a while. The classic interest group axiom of labor migration policy runs along the following lines: Sectoral or general employer associations wish to have as little restrictions on their ability to hire foreign workers as possible, and consequently have an incentive to lobby government for liberal regulations to entry and work rights. In contrast, unions are wary

of wage dumping and possible competition for domestic workers, and therefore seek to restrict the entrance and work rights of immigrants (Freeman 1995, 2002, Facchini, Mayda, and Mishra 2008, Cerna 2009b, Boräng 2012).

This essentially relegates policy-makers such as politicians and bureaucrats to a passive role, aggregating simply interest group demands, and overlooks how state institutions such as the domestic structure of interest group representation or institutional veto-points shape interest group demands and behavior (Boswell 2007, Bartram 2005). This criticism has been particularly voiced by neo-institutionalist scholar who advocate for greater analytical focus on the effects of institutions on immigration policy-making (Hollifield 1992, Boswell 2007). The client-politics approach is deemed as weak in explaining substantive policy preferences and criticized for neglecting the symbolic and socially contentious aspect of migration (Boswell 2007, 77-79). Neo-institutionalists argue that socio-economic considerations are necessary but not sufficient in explaining immigration policy (Hollifield 2000, 165). Greater emphasis should be placed on the formation of policy preferences and how these are channeled through not just interest groups, but also institutions and states (Hollifield 1992, Boswell 2007, 79). In consequence, neo-institutionalist studies have focused on the impact of state structures such as the judiciary and bureaucracy (Guiraudon 1997, 2000) and labor market institutions and welfare states more generally (Bommes and Geddes 2000, Boräng 2012).

Moreover, the state in itself may have policy preferences that are independent of interest group preferences. While principle motivations for the design or reform of labor migration policies can be found in the economic realm—such as bridging labor shortages, becoming more competitive in certain industries, or maintaining wage levels—there are also specifically political motivations embedded, such as domestic security or maintaining social cohesion and national

identity, that may deem some of the economic considerations more or less feasible (Ruhs 2013, 33, 109). Indeed, Koopmans et al. (2005, 83) find empirical evidence that a large share of publicly articulated demands regarding certain aspects of immigration policy are made by state and party actors. State interest, loosely defined, is therefore a considerable alternative explanation to interest group politics (Hollifield 1992, Boswell 2007, Ruhs 2013).

Yet, while the neo-institutionalist approach uncovered the effect of political structures on immigration policy-making, the socio-cultural context in which policy actors and institutions interact has not been addressed. Culture, along with structure and agency, is one of the major theoretical lenses of analysis in comparative political studies. There are significant gaps in our understanding of how the formal and informal socio-cultural context influences immigration policy-making. Of particular significance is the practice of citizenship, which has become a key issue in the political economy of immigration in Europe, and widely affects state policies and behavior (Hollifield 2000, 11). Citizenship is more than a status of legal belonging, but represents a broader understanding of what it means to be a member. “Citizenship,” T. H. Marshall writes, “requires a bond of a different kind, a direct sense of community membership based on loyalty to a civilization which is a common possession” (Marshall 1964, 92). To Marshall, this unity of citizenship includes social, economic and political equality of status and treatment, which, through the gradual expansion of rights, had an integrating effect on members, and helped ameliorate class differences and conflicts (Marshall 1964, 65-122).

However, Marshall’s conception of citizenship is inward-looking, and does not address issues of immigration and naturalization. Rogers Brubaker expands the concept of citizenship by an outward-looking focus on access to citizenship. Citizenship is an instrument of closure towards noncitizens, based on different patterns of national self-understanding about what makes a citizen

a citizen (Brubaker 1992, 21-34). He principally differentiates between citizenship based on an ethno-cultural understanding, institutionalized in the principle of *ius sanguinis*, and citizenship based on republican-assimilationist understanding, institutionalized in the principle of *ius soli* (Brubaker 1992, 81-82). Brubaker's typology has inspired the development of several different classifications of immigrant incorporation models (see for example, Soysal 1994, Castles 1995, Greenfeld 1998, Kleger and D'Amato 1995, Safran 1997, Castles and Miller 2009). Marshall's conception of citizenship has also been expanded in its inward-looking quality by scholars focusing on the inclusion and participation of immigrants. Influenced by the human rights discourse in liberal, democratic societies, they argue that rights to cultural integrity and diversity are an important part of modern citizenship practice (Taylor 1992, 1994, Kymlicka 1995, 2012, Bloemraad, Korteweg, and Yurdakul 2008, Bloemraad 2015). The modern conception of citizenship has retained this two-fold focus on openness of membership and cultural pluralism (Buckley 2013, Weldon 2006, Wright and Bloemraad 2012, Koopmans et al. 2005).

The effect that different citizenship understandings has on politics, policy, and public opinion towards immigration is well documented. Inclusive citizenship regimes are associated with more inclusive conceptions of national identity among native-born citizens (Wright 2011), and shape what kind of approaches governments take towards immigrant integration (Huddleston and Vink 2013). Furthermore, different configurations of both, access to citizenship and multicultural rights, affect how natives react to diversity (Kesler and Bloemraad 2010, Weldon 2006, Crepaz 2008, Wright 2011), the formation of immigrant public opinion in these regimes (Buckley 2013) and the demands that immigrant groups make toward government (Koopmans et al. 2005), as well as immigrants' socio-political integration (Wright and Bloemraad 2012).

This suggests that configurations of citizenship may also be an influential factor that shapes the eventual extent and form of immigration policy. This requires, however, taking the relationship between citizenship regimes, interest groups, and state institutions more seriously, which has so far not been done. I argue that the field of labor immigration politics should consider more insights from citizenship studies, because it contextualizes the preferences and behavior of policy actors in ways previously not explored. However, conceptions of national membership does not work in the same manner as political structures do by shaping policy-making authority and power dispersion, either. Rather conceptions of citizenship inform substantive policy preferences and their weighting in trade-offs between different goals.

Whether work rights granted to highly-skilled immigrants are more restrictive or more liberal depends on the extent to which national configurations of citizenship mediate economic interest group pressures. When policy-makers such as politicians and bureaucrats design or reform highly-skilled immigration policies, they not only do so in the context of interest group demands, but also in regard to how much and what kind of diversity is socially acceptable. As such, a citizenship approach aims at exploring immigration policy-making beyond arguments about interest group agency or political structures. In the following chapter this point will be developed more in-depth.

CHAPTER 3

IMMIGRATION POLICY AND CONFIGURATIONS OF CITIZENSHIP

In creating or reforming immigration policies, policy-makers consider a variety of economic objectives and pressures, such as labor market shortages, industries' or employers' interest in hiring from abroad, as well as labor union positions on these matters (Boräng 2012, 16). However, I will argue that conceptions of national membership —how inclusive or exclusive a country is in regard to immigration and ethnic relations—play a role as well, as they function as a framework for discursive opportunities of collective and individual actors involved in immigration policy-making (Koopmans et al. 2005, 7). As “[...] institutional framework for discursive opportunities – the legitimating discourses about citizenship,” citizenship configurations “[...] determine which points of view about the relationship between migrants and the state and host society are held to be more sensible, realistic, and legitimate” (Koopmans et al. 2005, 234).

As a point of departure, I will elaborate on how conceptions of belonging and national identity structure particularly affect the formulation or reformulation of immigration policies, paying specific attention to its effects on work rights for highly-skilled immigration. Moreover, as immigration policy is a contentious issue, the politics of immigration policy is an interactive process requiring a broader analysis of how citizenship configurations interact with political institutions and interest representation organization, and how policy-makers and policy actors navigate through all of them. Lastly, I will also discuss alternative explanations for the variation in highly-skilled immigration policies that exist, and which ones are theoretically the most salient to consider.

Non-economic Consideration of Highly-Skilled Immigration Policy

Drawing from Koopmans et al. (2005), I argue that conceptions of citizenship, crystallized in rights to naturalization and cultural pluralism, constitute one significant, albeit not the only, definition of state interest in regard to immigration. National configurations of citizenship are the institutional boundaries of national self-understanding and therefore indicate how immigrants are perceived, thought of, and treated (Koopmans et al. 2005, 6). As Brubaker (1992, 16) aptly states:

State interests in an expansive or restrictive citizenry are not immediately given by economic, demographic, or military considerations. Rather, judgments of what is in the interest of the state are mediated by self-understandings, by cultural idioms, by ways of thinking and talking about nationhood.

The rights that immigrants receive reflect, to a certain degree, the nation's larger approach towards dealing with newcomers. As such, conceptions of national belonging define and limit the sphere of the acceptable amount of rights granted to immigrants. While there is flexibility in policy-making, policy proposals granting rights that stand fundamentally in contrast with the discursive understanding of membership and ethnic relations, will be difficult to justify politically.

That is not to say that there is no leeway for extending rights. For example, there are clear and significant differences in the work rights accorded to low-skilled and highly-skilled immigrants (Ruhs and Martin 2008, Ruhs 2013). But rather that conceptions of citizenship play an important role in the weighting of different political and economic objectives in migration policy-making. For example, during Germany's immigration policy reform in 2001, a frequently named role model for a successful highly-skilled migration policy was Canada's liberal points system (Süssmuth 2001). Yet, in the policy process, it turned out that although the commission consisting of members of industry, union, church, social groups and academic experts was in support of such

a system, it was politically difficult to reach consensus on parliamentary and ministerial levels. Matters of economic benefit and positive immigrant image were quickly overshadowed by discussions about existential questions such as whether Germany is a country of immigration or not. This public political debate became much more controversial as Germany does not have the Canadian style understanding of immigration and national identity that underlies their migration system. While this is only anecdotal evidence, it does uncover the fact that an exclusive citizenship regime may inhibit liberal immigration reform ambitions, despite support of union and industry leaders.

When do Citizenship Configurations Matter and How: The Causal Mechanism

The above example illustrates an important dynamic in migration reform. Immigration policy is characterized by compromise, as many competing and conflicting interests try to influence reform outcomes (Czaika and de Haas 2011, Boswell 2007, Freeman 1995, Cerna 2009a). In context of this struggle it is useful to view migration policy as the subject of “discursive coalitions” (Czaika and de Haas 2011, 492). “A discourse coalition is [...] the ensemble of a set of story lines, the actors that utter these story lines, and the practices that conform to these story lines, all organized around a discourse” (Hajer 1993, 47). In particular in the context of exclusive understandings of nationhood, policy reforms aiming at a liberalization of previous immigration policy, can lead to the emergence of two competing discourses that struggle for hegemony in the policy-making process. The immigration reform controversy then plays out as a challenge of the traditional discourse on immigration by the discourse of pro-skilled labor migration. To make this more explicit, I will illustrate a stylized causal mechanism as depicted in Figure 3.1.

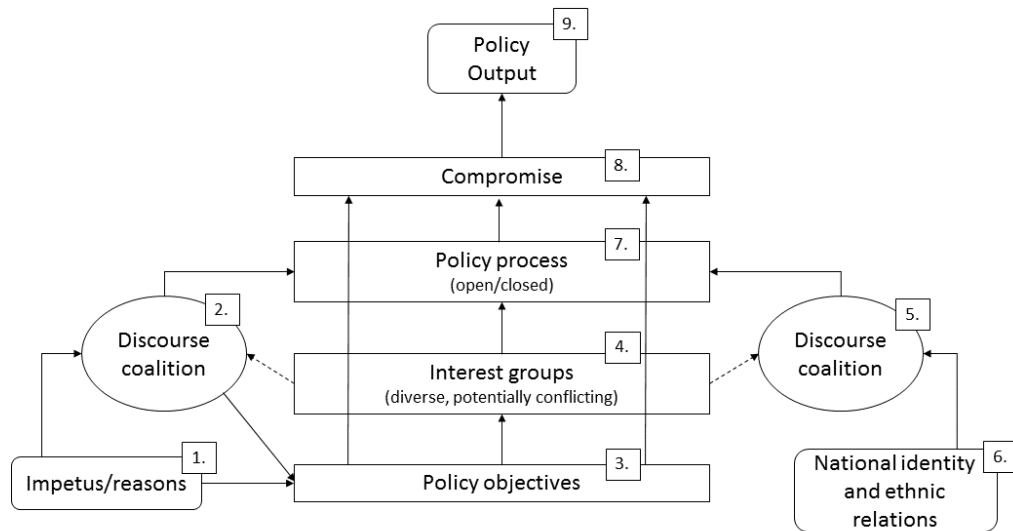


Figure 3.1: Theoretical Framework for the Analysis of Highly-Skilled Immigration Policy

[1] A pro-skilled immigration reform can be initiated through a mix of different pressures, which depend on the country in question. But generally it is a response to international pressures such as competition in the international economy, for example, and domestic pressures, such as the lack of domestic skilled workers, or demographic challenges, for example. [3] These pressures serve as constitutive elements for the formation of a discourse coalition of actors that take up these policy impulses and form concrete policy objectives in response – such as, for example, “bridge labor shortages”, “attract the best and the brightest talents”, “make the national economy more competitive.”

[2] This discourse coalition can be composed of actors from different political sources, such as economic interest group, policy expert networks, political parties, national or local ministries, and the bureaucracy, etc., but they are all united by a shared set of story lines that favor a pro-skilled migration policy. In consequence, the initiative for policy reform is not tied to a

specific type of actor, but rather a discourse. This discourse can appear in differing form depending on the set of nation-specific reasons for policy-reform, but can be captured in several key story lines, such as:

- Demographic challenges necessitate immigration.
- Highly-skilled immigration is unambiguously beneficial (in social, economic, and political regards).
- Domestic unemployed workers cannot fill current vacancies due to skill-mismatches.
- Globalization and international migration cannot be managed with outdated migration policies.

[4] In the translation of general policy objectives into specific policy output, interest groups, economic or societal in character, influence the policy process as well. Traditionally, labor unions have acted as “brake” pedals to attempts to increase foreign labor migration, while employer associations have acted as “gas” pedals, lobbying often for more liberal migration laws. Policy preferences of different interest group types can therefore be potentially diverse and conflicting. Restrictive policy preferences are created by coalitions formed between highly-skilled and low-skilled labor unions, highly-skilled labor unions and employer groups, and if a coalition between low-skilled union and capital is too weak to effectively push for policy openness (Cerna 2009b). However, when unions and employer associations find common ground, it can be expected that this will make an all too restrictive regulation of work rights less likely. When both factions are in disagreement or have no strong policy preferences either way, liberalization of work rights is less likely.

The strength and significance of labor and employer groups, and hence the weighting of their preferences, however, is determined by the prevailing system of organized interest representation and labor relations. In states where union and employer interest representation is constitutionally or conventionally strongly integrated in the policy decision-making process in form of peak associations, such as in neo-corporatist Sweden or Austria, their policy preferences

become more important. In states where union and employer interests are not formally part of the policy-making process, such as in pluralist countries as the United States or Great Britain, their representation relies stronger on lobbying efforts and organizational resources.

[5] Immigration policy is deeply-conflictual and thus the formation of a pro-skilled migration discourse coalition often entails story lines that regard migration as positive, and hence prescribe an inclusive take on immigration reform. If this is a new alternative discourse to the traditional immigration discourse, it potentially challenges established conceptualizations of the purpose and goal of immigration policy. The strength of traditional discourse on immigration is aided, if it resonates with popular concerns of perceived “mass” immigration or simple xenophobia, “as discursive coalitions seek to win electoral and parliamentary support for particular migration policies” (Czaika and de Haas 2011, 492). Traditional discourse coalitions therefore pursue specific strategies to further their political goals.

[6] The specific story line of traditional discourse coalitions depend on entrenched understandings of ethnic relations and national identity. In countries with exclusive conceptions of nationhood, the traditional discourse on immigration rests on the established conceptualization of immigration policy as a matter of defense and closure. In countries with more ethnic-monocultural conceptions of nationhood, public discourse is dominated by a view of immigrants as a marginal group, whose entry and exit and residency rights matter the most (Koopmans et al. 2005, 88). Consequently, the organization of immigration control is achieved through restrictive means, such as granting few rights, and limit the number of admissions. Exclusive conceptions of national identity and ethnic relations can potentially act as “applied handbrakes” to expansive policy reform. In a more exclusive discourse, any kind of immigration reform raises red flags, and the greater the distance between status quo on immigration and the reform idea, the harder it is to

sell politically. However, in countries with a more inclusive citizenship understanding, in contrast, discourse is mostly about matters of immigrant integration and status volatility, and less about immigration per se (Koopmans et al. 2005, 88). Thus, inclusive conceptions of nationhood aid the creation of an inclusive discourse that is more compatible with pro-labor migration reform arguments, making a case for highly-skilled immigration easier. While a pro-skilled discourse coalition may have strong reasons to grant generous work rights to attract or keep qualified individuals, for example, their success depends on how much their demands and claims are seen as legitimate in the context of understandings about national citizenship and identity (Koopmans et al. 2005, 78).

[7] The institutional context of migration policy-making—how closed or open the policy-process is—also shapes policy development and outcome, and can potentially influence to what extent policy processes can lead to a liberalization of work rights.⁶ How political conflict between different actors and discourse coalitions is played out is shaped by the structure and number of “veto-points” along the decision-making-process, which have been established by constitutional or procedural arrangements such as federalism, parliamentary government, or electoral systems (Immergut 1992). The more decentralized decision-making is, the more space there is for actors to be involved, making it likely that conflict between different political levels of government or

⁶ Can HSI policies also become more restrictive? Theoretically, yes, but the legal frameworks in liberal democracies such as those granting particular rights to currently-residing immigrants, often cannot be violated in crafting new immigration legislation (Soysal 1994, Ruhs 2013, 32 f., Hollifield 1992). This “liberal constraint” thus prevents more restrictive policies and places migration policy on a more liberal trajectory (Boswell 2007, 79; Hollifield 1992, 94). However, smaller moves into a more restrictive direction can be the outcome of policy adjustments due to political pressures, less economic need or overall changes in immigration policy preferences. In the case of Great Britain, for example, the Highly-Skilled Migration Program (HSMP) was scrapped and replaced with the Tier 1 and 2 program of Britain’s new points based system in 2008, featuring smaller adjustments made to the rights and numbers of applicants eligible in the new program. Similarly, even traditional immigration countries, such as Canada and Australia have made changes to their long-standing and overall successful immigration systems (Hawthorne 2008). A full reversal of formerly generous rights is, however, uncommon, even in light of the financial crisis and subsequent economic troubles (Cerna and Hynes 2009). In this dissertation I will therefore focus on HSI policies becoming more liberal, rather than more exclusive.

between government agencies and ministries will occur. The more centralized and coordinated the decision-making is—to paraphrase Guiraudon, the more decisions are made “behind closed doors”—the less space there is for actors to come in, and policies are discussed by expert communities or networks (Guiraudon 1998, 293-297). Consequently, I expect that in countries with decentralized decision-making, political struggle among different discourse coalitions can form more easily, and hence notions of exclusive national identity are likely to be amplified. In contrast, the more centralized that decision-making is, the more likely it is that political contestation in policy-making is avoided, and issues of exclusive national identity are most likely muted.

[8] As immigration politics are a contentious field, trade-offs among conflicting policy goals are usually interactive, dynamic, and multi-dimensional (Ruhs 2013). The weighting of considerations about national identity vis-à-vis economic interests, and the thusly emerging compromises, are shaped by conceptions of national belonging as well. In exclusive citizenship regimes, the foreign highly-skilled labor force is predominantly viewed in the context of economic demand, and not necessarily as future citizens. If policy-makers want to attract highly-skilled rather than low- or unskilled workers, they should grant more specific accommodations and work rights that make immigration to their country more attractive. However, in the national context, this signals a pro-immigration stance. Thus, a trade-off between work rights and admission criteria is struck: either the admission criteria are so narrowed down, that it is justifiable to promise generous work rights to the “lucky few,” or the admission criteria are less restrictive but therefore less generous work rights are granted.

[9] The first strategy leads to a more skill-selective policy that tightly circumscribes who is considered highly-skilled, how many individuals of that category can be admitted per year, and

what type of occupation is considered in need of additional labor. This meets the findings by Brucker et al. (2012a, 74-79) that comparatively general migration policies in OECD countries displayed much greater selectivity in skills in 2005 than in 1980—in particular, requirements for entry, and a greater emphasis on pro-high skill policies. The second strategy leads to a less skill-selective policy, with lesser or very few work rights, and consequently, less overall appeal, by signaling only a conservative opening for immigration. While economic or political demands may drive policy initiation, the second strategy is more of a smallest-common-denominator outcome of politics, leading to policies that merely “pay lip service” to highly-skilled migration.

[8] In inclusive citizenship regimes, in contrast, the weighting of the trade-off between different demands is less pronounced—foreign highly-skilled labor force is predominantly viewed in the context of human capital, and as potential future citizens. If policy makers want to attract HSIs rather than low-skilled workers, they face less contention over entry and residence regulations, but rather controversy about immigrant integration. [9] It is therefore easier to grant more rights if they are perceived as conducive to labor market integration and social integration, and rely on supply-driven immigration which allows a wider pool of eligible applicants, as long as certain mandatory criteria are fulfilled.

Hypotheses

In the above account of expected effects of different conceptualization of national membership, I stated that we should expect more restrictive work rights to the extent that conceptions of national identity and ethnic relations serve as opportunity structures for discursive coalitions, shaping what considerations regarding immigrants and immigration are perceived as legitimate. Additionally, I argued that citizenship configurations help to shape policy goal trade-offs between economic interest and social cohesion. The more exclusive citizenship configurations

are, the more likely are restrictive work rights granted in highly-skilled immigration policy. Furthermore, I accounted for the importance of political institutions and interest groups in contributing to policy outcomes. I hypothesized that in interaction with the number of institutional or electoral veto-points, the effect of, in particular, exclusive citizenship understandings are amplified. This means, that at higher levels of citizenship inclusiveness, an increase in veto points is associated with a greater increase in work rights restrictiveness than at lower levels of inclusiveness. In addition, the stronger unions are coordinated, the more restrictive are work rights, and the stronger corporations are coordinated in business networks or associations, the less restrictive are work rights. In conclusion, the outlined relationships can be expressed as follows:

$$\begin{aligned}
 \text{work rights} = & \beta_0 + \beta_1(\text{citizenship configuration}) + \beta_2(\text{union coordination}) \\
 & + \beta_3(\text{corporate coordination}) + \beta_4(\text{veto points}) \\
 & + \beta_5(\text{citizenship configuration}) * (\text{veto points}) + \varepsilon_1
 \end{aligned}$$

While it is comparatively easier to measure legal provisions to assess configurations of citizenship, it is not quite as easy to observe abstract processes such as national identity acting as discursive opportunity structures. To paraphrase Checkel (2006, 365), how would one recognize discursive opportunity structures if they were to walk through the door? This requires a careful uncovering of traces left by the proposed causal mechanism (Bennett and Elman 2006, 459-460). To this end, I first specify what information needs to be found, if the causal mechanism were to be true. These ‘causal process observations’ (CPOs) include evidence for the existence of a proposed cause (independent variable CPO), evidence for observable intermediary steps between cause and effect (mechanism CPOs), and evidence for outcomes that are a byproduct of the causal

relationship between cause and effect (auxiliary outcome CPOs) (Mahoney 2010). The following information needs to be found to test each hypothesis:

H₁: Citizenship configurations shape discursive opportunities about immigration.

- If the causal story were true, we would find evidence of inclusive or exclusive discourses about immigrants. For example, an exclusive discourse would treat immigrants as a marginal group that has to be regulated in its entry, whereas an inclusive discourse would feature a rhetoric concerning immigrants' socio-economic integration⁷ outcomes and their rights.
- If the causal story were true, we would also observe as an auxiliary outcome, that exclusive discourses feature assimilationist undertones, while inclusive discourses feature multicultural undertones.

H₂: Citizenship configurations shape policy goal trade-offs.

- If the causal story were true, references should be made about national identity and ethnic relations, and whether economic interests are feasible in this context.
- If the causal story were true, we would find that the definition and admission criteria of highly-skilled immigrants is inversely proportional to rights in the context of exclusive citizenship configurations.

H₃: Interaction effect between veto-points and citizenship configurations.

- If the causal story were true, we should observe that in a more centralized institutional decision-making context, bureaucrats or networks of policy experts matter more as primary policy-makers, and in a more decentralized institutional decision-making context, politicians and parties matter more.
- If the causal story were true, we should observe that in a decentralized institutional decision-making context and exclusive citizenship configuration, issues of immigration become more politicized.

H₄: Conjunctural effect between interest group support and citizenship configurations.

- If the causal story were true, we should observe interest group support in the context of exclusive citizenship configurations leaving traces of a “braking” effect, i.e. the acknowledgement of obstacles posed by narrow national identity and ethnic relations understanding.

⁷ The term ‘integration’ as used here does not imply cultural convergence with the majority population, but participation in the labor market, and participation in social and political life.

In the next chapter, chapter 4, I will discuss how the key variables of this study are conceptualized and operationalized, while in the following chapter 5 I will test whether the expectations outlined here are borne out by the data.

CHAPTER 4

CONCEPTUALIZATION AND MEASUREMENT

Conceptions of citizenship, if overly exclusionary, make it politically difficult to be more open to highly-skilled immigrants, and crucially inform the weighting of various migration policy objectives against each other. As such, a state that attempts to drive highly-skilled immigration policies with their “handbrake applied” may unexpectedly constrain their own reform engine. However, in order to understand how citizenship configurations affect work rights granted under highly-skilled immigration policy-making, two sets of conceptual questions have to be addressed. First, what constitutes highly-skilled ‘work rights,’ how are highly-skilled ‘work rights’ measured, and how are policies containing these rights selected? Second, what are national ‘configurations of citizenship,’ how are they measured, and how do they differ from ‘work rights’? Addressing these issues is important, as intuitively both concepts seem to be part of the same underlying construct: immigrant rights. In this chapter, I will argue that both concepts actually operate in quite theoretically and empirically distinct ways. Lastly, I will also discuss the conceptualization and measurement of the additional factors outlined in chapter 3, as well as control variables.

Highly-Skilled Immigrant Work Rights

Policies can be understood as “government statements of what it intends to do or not to do, including laws, regulations, decisions or orders” (Knill and Tosun 2012, 347). When discussing immigration policy, I will explicitly focus on policy output—legal regulations and laws pertaining to the governance and management of immigration—rather than their implementation, or their

outcomes—the intended or unintended consequences of immigration policies (Hollifield 1986, Bjerre et al. 2015, 6). At the highest level of abstraction, *immigration policies* need to be differentiated by their stated objectives from other policies. They can be defined as “laws, rules, measures, and practices implemented by national states with the stated objective to influence the volume, origin and internal composition of immigration flows” (Czaika and de Haas 2011, 5). Within this policy family, several categories operate analogous to the different purposes of entry (employment, family reunification, asylum, etc.). National labor immigration policies are consequently defined as immigration policies that follow the objective to influence the volume, origin, and internal composition of labor immigration. In this study, the focus is particularly on policies aimed at the regulation of third-country, highly-skilled nationals. Labor immigration policy consists of the admission criteria and selection of labor entrants, the rights and conditions of entry for them, and the policy objectives driving these mechanisms (Ruhs 2013, 2008). Lastly, most labor migration policies are designed with a temporary status in mind, and not permanent; meaning, there is no guaranteed permanent settlement permit attached, or no permanent residence status granted on arrival. However, this does not mean that there is no option for attaining a permanent settlement permit later on (Ruhs 2006, 8-9).

Work rights granted under highly-skilled immigration policies focus on the legal regulations and restrictions for admitted migrants regarding the scope of participation in the national economy and labor mobility. They are a significant part of immigration policies, because for migrants they form the basis of their economic livelihood; and for companies they define the costs and benefits of their employment. In the case of highly-skilled immigrants, these regulations are also a crucial tool to attract qualified workers, as they are able to choose between many possible migration destinations. Countries appear more attractive if they offer not only good job prospects

and high wages, but also substantial rights (Ruhs 2013, 43). Because highly-skilled immigrants are a small but in-demand pool of workers they enjoy a greater choice of where they go (Cerna 2009a, 79, Ruhs and Martin 2008), and look for the overall attractiveness of the “immigration package” (Papademetriou, Somerville, and Tanaka 2009, Papademetriou and Sumption 2012).

Following Cerna (2009a), three types of work rights are of particular concern here: employer portability, spousal employment, and access to permanent residence. *Employer portability rights* define the restrictions and hurdles of migrant workers to switch employers. These rights are significant insofar as they are part and parcel of the specific type of work visa that immigrants receive, and can tie foreign workers to a specific employer, occupation, sector, or even region of employment for a given time. Curtailing or limiting the flexibility in changing employers, however, is prompted by various motivating factors. First, it affords employers with an increased security that the workers they invested in will stay sufficiently long enough to capture the benefit of returns to their investment (Cerna 2009a, 74). Second, it may also protect domestic workers, by decreasing highly-skilled competitiveness on the overall labor market. Third, it may be part of their region-specific development programs. For example, Australia as well as Canada strategically invite immigrants to areas that would economically benefit from their skills, but simultaneously want to avoid migrants who, once settled, might switch prematurely to more attractive, urban areas.

Spousal employment rights are restrictions and hurdles for spouses to participate in the labor market. These rights are significant insofar as the reality of modern migration includes families, in particular for highly-skilled immigrants. While almost all countries by now allow for family reunification—meaning that spouses can legally move with or follow their employed spouses to the host-country—most work visas contain explicit provisions on the ability of spouses

to take up work there, as well. While male immigrants from developing countries often reside separate from their spouses and send remittances home, high- and low-skilled immigrants face different incentive structures (Ruhs and Martin 2008). As highly-skilled immigrants are fewer in number but are more in demand, they enjoy a wider selection over their migration destination, and their initial migration decision may be influenced by the prospect of spousal work rights (Cerna 2009a, 78-79).

Lastly, rights to *permanent residence* define the ability and barriers to become a legal and long-term resident in the respective host-country. Most work visas are temporary in nature (Ruhs 2008, 88), meaning they do not offer permanent residence on arrival, but may come with renewable provisions, or offer a path towards permanent residence. This right is important; otherwise, migrants have to leave the country immediately after their work contract ends or visa expires. A long-term residence card usually removes the temporary status, and therefore increases the overall security of the residence conditions. Moreover, the exact time until and conditions to receiving a more permanent status also affects labor mobility, as most residence permits allow free access to the labor market. While temporary residents enjoy basic access to social services, the unconditional or unrestricted access to social welfare services are often still tied to a long-term or permanent residence status (Joppke 1998b, Aleinikoff and Klusmeyer 2002, 62-77, Guiraudon 2002).⁸ While some scholars have defined immigration policies exclusively as policies of admission and selection, settlement regulations, and therefore residency rights, belong to the realm of immigration policies, because they are determinant factors in the livelihood of immigrants (Bjerre et al. 2015, 8).

⁸ To clarify, I do not incorporate theoretical or empirical measures of access to social services here. Rather I am suggesting that permanent residence opens up other rights, which are, however, not directly linked to work rights as conceptualized here.

Objectives of Migrant Work Right Legislation

The design of labor migration policy can aim at a variety of objectives: increased economic efficiency, control of income distributions, regulation or maintenance of national identity or social cohesion, or national security and public order (Ruhs 2013, 51). While the objectives in regulating migrants may differ, and how much they are weighted relative to each other may vary, nation-states use regulations on numbers, selection criteria, and rights of migrants to achieve their policy goals (Ruhs 2013, 51). Because the legal status granted under labor migration policy is mostly temporary⁹ (Ruhs 2006), migrants are legally also more volatile to state regulations, and their rights can thus be restricted or expanded in order to pursue specific objectives. For example, national labor immigration programs award more liberal rights to highly-skilled migrants than lower- or medium-skilled migrants to incentivize economically or socially desired migration, and dis-incentivize unwanted migration (Ruhs and Martin 2008, Ruhs 2013). This means that work rights for migrants are a strategic, instrumentalist tool used to pursue and achieve specific policy goals.

This instrumentalist conceptualization of work rights is further supported by the political reality of immigration policy-making and migration movement. Work rights have become one of the few areas of migrant rights that can still be regulated by national governments. This is due to two larger developments that restrict the national policy space. First, most democratic countries have extended basic civil and social rights to foreign residents. The majority have granted foreign residents basic access to the welfare and social security provision, sometimes even local voting rights (Guiraudon 1998, 2002, Aleinikoff and Klusmeyer 2002, 62-77), and the right to family

⁹ This means that there is no guaranteed permanent settlement permit attached, or a permanent residence granted on arrival. However, this does not mean that there is no option for attaining a permanent settlement permit later on (Ruhs 2006).

reunification, which is probably the strongest of all immigrant rights (Koopmans et al. 2005, 31-32). Furthermore, legal frameworks in liberal democracies such as those granting particular rights to resident immigrants, cannot be violated in crafting new immigration legislation (Soysal 1994, Ruhs 2013, 32 f., Hollifield 1992, Boswell 2007).

Second, immigrant rights have been extended and institutionalized through supra-national legislation. In particular, the European Union has contracted the national policy space on immigrant rights. There are binding European regulations that cannot be circumvented by individual countries, such as labor mobility for citizens of EU member states, or numerous asylum and refugee regulations (Boswell and Geddes 2011, 151, 162-163). Furthermore, international agreements, such as the GATS, have de-facto taken intra-company transfers out of the scope of national regulation (Martin 2006, 14-16, Lavenex 2007). Consequently, the nation state has been severely constrained in actively regulating certain aspects of immigration, and made labor immigration of third-country nationals essentially one of the few immigration policy areas that can still be controlled by national governments.

Selection of Highly-Skilled Immigration Policies

A particular challenge is presented by the selection and measurement of HSI work rights. I first turn to the question of which national labor migration policies—the unit of analysis of this study—are considered? While several empirical works have attempted to systematize the differences in the extent and quality of HSI policies (Lowell 2005, Cerna 2009a, Ruhs 2013), the case selection has not always been transparent. This is mostly due to the fact that HSI policies are often not clearly identifiable by name or description, and thus comparisons of, and inferences on, HSI policies run the danger of being biased through the method of case selection. For example,

there are ‘one size fits all’ labor immigration policies that are not specifically geared towards HSIs but are still attractive to them. Do they qualify as HSI policies then? In addition, given that some countries have more than one program for skilled entrants, should only one be considered? And, if yes, which one? With this in mind, I first define the unit of analysis as the country-year observation of HSI policies that qualify as national highly-skilled labor immigration policies with the objective to regulate and influence the flow of highly-skilled, third-country nationals into the host country.

Lowell (2005, 2) identifies highly-skilled immigrants as, “persons with a ‘tertiary’ education, typically meaning persons in adult age who have completed a formal two-year college degree or more”. Yet, in policy and scholarly debates, the term is often implicitly understood as migrants from the Science and Technology sectors (McLaughlan and John 2002, Cerna 2009b, Chaloff and Lemaitre 2009), potentially excluding unduly other types of qualified entrants. Moreover, national policies refer to differing terminologies, oftentimes using generic terms and descriptions and other times concrete attributes (such as income-level, occupation, or skill-level), and frequently equating ‘skilled’ with ‘highly-skilled.’ Moreover, in practice and discourse, they are occasionally compared to workers who are in-demand due to labor shortages. However, while the occupations of skilled trades, sales representatives, engineers, truck drivers and technicians head the top five occupations of difficult to fill positions in Europe (Commission 2012, 93), not all of them are highly-skilled in nature.

To identify highly-skilled policies, a consistent and comprehensive understanding of highly-skilled immigrants is necessary. For the purpose of my analysis, I have combined different levels of skills, occupational terms, and income levels according to how selective the pool of possible entrants is, and classified immigration policies accordingly. Expanding on Ruhs (2013) ,

I differentiate policies into the class of “highly skilled” (HS1) if they require the most basic tertiary degree, B.A. or comparable qualifications and experiences, which allows for a wide pool of potentially eligible applicants. Most often, this resonates with specific government-compiled lists of occupations that are in need, or occupations that receive preferential treatment. As the class of “highly-highly-skilled” (HS2) were classified policies that require at least a second tertiary degree, an M.A. or even Ph.D., or require an income threshold to qualify as highly-skilled that was more than 1.5 times higher than the national wage average, this narrows the pool of eligible applicants considerably. In addition, more specific occupational needs, such as a focus on researchers or IT personnel, further narrow the pool of eligible candidates.

Table 4.1: Identification and Classification of Highly-Skilled Immigration Policies

Size of Pool	Skill	Occupation	Income Level	Class
Narrow	M.A. & Ph.D.	Researcher, Science & Technology	More than 1.5 times higher than the national wage average	Highly-highly-skilled (HS2)
Wide	B.A.	Shortage or Occupation List		Highly-skilled (HS1)

This definition excludes policies which focus on skilled rather than on highly-skilled immigrants, which are defined as individuals with a completed secondary education and specialized vocational training or trades qualifications (Klugman and Pereira 2009, 5, ILO 2012, 12-13, Ruhs 2013, 56). Of course, there are also policies that do not explicitly target only HSIs but are nonetheless applicable to them, such as Sweden’s labor migration policy, or Canada and Australia’s skilled points systems. The former “one-size fits all” policies do not differentiate between different skill-levels sufficiently enough in their requirements or granted rights, and are

therefore excluded. The latter, however, are considered insofar as they hold specific HSI channels that clearly differ in their quality from other tiers within the same program. General work migration policies and programs that tie the acquisition of a work permit almost completely on the possession of special skills and experience are de facto highly-skilled immigration policies, as in Switzerland or Austria, and will be considered as highly-skilled as well.

Further excluded are policies that are part of regional free-movement agreements, such as in the European Union or NAFTA,¹⁰ or policies that are geared towards business-migrants and students.¹¹ I also chose to exclude policies of supra-national origin, such as the EU Blue Card. First, the Blue Card did not replace or alter national programs but rather complemented them. Second, during my field work as well as in national statistics, it turned out that only few individuals apply for a Blue Card, and significantly less than in comparison to national, often more liberal, migration schemes. Moreover, since labor immigration policies are mainly of a temporary character (Ruhs 2006), I will focus on HSI policies that provide temporary residence and labor markets rights wherever possible, excluding policies that are aimed at the accommodation of short-term foreign workers who are not considered immigrants, such as working holiday-makers and au-pairs (Ruhs 2013, 58).

Lastly, if a country had more than one HSI program, I selected the program that was the most clearly focused on highly-skilled immigrants, was temporary but had a minimum of a one-year stay, that created the widest pool of eligible applicants (HS1), and that had the most liberal

¹⁰ The entrance of foreign nationals through regional free-movement agreements, such as in the European Union or NAFTA, are regulated in separate supra-national legislation that are usually not immigration policies per se but part of larger efforts of regional integration (Ruhs 2013, 58). Policies that are regulated by multilateral labor agreements are internationally negotiated as well (Ruhs 2013, 57, Christian 2000) and therefore excluded.

¹¹ Business migrants, meaning intra-company transfers such as senior executives or senior managers, do not enter host countries for the purpose of seeking employment but have been internally transferred by their company. Moreover, their immigration does not fall under national immigration regulations but is regulated under the GATS agreement (Ruhs 2006, Christian 2000). A similar case can be made for foreign students.

accommodations and rights. Equally, when countries offered temporary and permanent schemes, such as Canada or Australia, I opted for the more liberal provision. As I am interested in explaining differing levels of policy restrictiveness, it is my desire to test the most generous provisions offered.

Obviously, there is a certain degree of subjectivity and sometimes detailed case knowledge involved in assessing whether programs qualify as highly-skilled or not. For example, while Germany provides a very generous accommodation to “highly-skilled” titled workers (§19 of the Residence Act), they are more appropriately classified as highly-highly skilled, whose immigration is regarded as of particularly economical and societal interest (de facto in an academic capacity), and have an expected income of around 60,000 Euro (in 2009), which is 1.7 times higher than the average national income (Heß 2009). These types of hurdles minimize the applicant pool in such a way that it would unduly skew the general provisions for well-qualified immigrants (with a minimum of a tertiary degree). Therefore, the broader but less generous, skilled migrant category (§18 Residence Act) was chosen for the purpose of this study.

In other cases, such as Denmark, more than three different migration schemes exist that target highly-skilled workers—the Positive List (an occupation shortage list), the Green Card Scheme (a job search permit), and the Pay Limit Scheme (a permit based on a minimum expected annual salary of roughly 50,000 Euros and over). While initial conditions of entry differ, work and residence rights are roughly the same. Since most individuals tend to attain permits under the Pay Limit and Green Card Scheme, these two are the point of reference, but counted as just one policy in this case. In the case of the United Kingdom’s Points-Based System (PBS), where two tiers apply—Tier 1 (General) aims at highly-highly-skilled immigrants and Tier 2 (General) aims at

highly-skilled/skilled immigrants—the second tier was chosen since the first tier has been effectively closed to external immigrants since 2011.

Table 4.2: Highly-Skilled Immigration Policies for 16 OECD Countries

Country	Scheme/Program	In force in
Australia	General Skilled Migration Stream	2002, 2007
	Points Based Skilled Migration/ Employer and	2012
	Regional Nominated Migration	
Austria	Work Permit	2002, 2007
	Red-White-Red Card for Key Workers	2012
Canada	Independent Skilled Workers Program	2002
	Canada Skilled Worker Program	2007, 2012
Denmark	Positive List Scheme	2002
	Green Card/Pay Limit Scheme	2007, 2012
Finland	Specialists Work Permit	2002, 2007, 2012
France	Fast Track Scheme for IT Specialists and HSIs	2002
	Compétences et Talents (CET)	2007, 2012
Germany	Green Card for IT Specialists	2002
	Work Permit for Skilled Workers (§18 Residence Act)	2007, 2012
Ireland	Green Card	2007, 2012
Netherlands	Fast Track Scheme for IT Specialists	2002
	Knowledge Migrant Scheme	2007, 2012
New Zealand	Skilled Migrant Category	2007, 2012
Norway	Specialist Work Permit	2002, 2007, 2012
Portugal	Research or Highly Qualified Activities Permit	2007, 2012
Spain	Highly qualified professionals	2007, 2012
Switzerland	Residence Permit	2002, 2007, 2012
United Kingdom	Highly Skilled Migrant Programme (HSMP)	2002, 2007
	Points-Based System (PBS), Tier 2 (General)	2012
United States	H1-B	2002, 2007, 2012

This operationalization led to a universe of 16 countries over three distinct time-points: 2002, 2007, and 2012, yielding 44 country-year observations. Table 4.2 reports the policies that met the case selection criteria, but do not constitute a complete list of all labor migration policies. The countries included are Australia, Austria, Canada, Denmark, Finland, France, Germany, Great

Britain, Ireland, the Netherlands, New Zealand, Norway, Portugal, Spain, Switzerland, and the United States.¹²

Measurement of Highly-Skilled Immigration Policies

What constitutes ‘HSI work rights’? While rights granted in immigration and integration policy are theoretically very different, they are often empirically conflated (Bjerre et al. 2015, 7). For example, Klugman and Pereira (2009) measured immigrant rights by drawing from indicators such as immigration, integration and incorporation policy. Modifying the index used by Cerna (2009b) and Lowell (2005), the dependent variable *work rights* is measured by coding for the type and extent of rights to worker mobility, accommodation and labor market access of spouses, as well as possibilities to acquire permanent residence.

- *Employer mobility*—a high score is given if the migrant worker can work only for the original employer and in one place; declining points are given for the degree to which work authorization is ‘portable’ between employers.
- *Spousal employment*—a high score is given if the spouse is not permitted to either accompany the worker (or other dependents) or to work; declining points are given if the spouse is permitted to obtain independent working rights, or the spouse has unlimited working rights.
- *Permanent residence*—a high score is given if the temporary migrant is prohibited from transitioning to any permanent status; declining points are given if transitions are relatively possible, or there is an additional transition to naturalized citizenship Lowell (2005, 7) .

These rights are most often directly included in highly-skilled immigration policies, or adjacent regulations, and can therefore be safely distinguished from other rights granted in social legislation, such as access to health care, unemployment benefits, or family support. Using them

¹² In addition to these countries, Malaysia, Singapore, Japan and Korea (Castles and Miller 2009, Park 2013), Poland, Italy and the Czech Republic have adopted HSI policies as well. Due to data limitations, however, I will focus only on the identified 16 OECD countries’ policies.

to build a cumulative index measuring work rights for highly-skilled immigrants, they offer a parsimonious and transparent scale of policy restrictiveness. While certainly arguments can be made for building more complex indices to capture nuances better and avoid measurement error (Coppedge et al. 2011, 249-251), the subject scope of this project does not lend itself to much more gradation. Matters of worker safety, minimum wage regulation, or unemployment compensation are usually not part of immigration policies but general, binding national labor laws that apply regardless of visa status or nationality. Nonetheless, it could be justifiable to include the length of initial work permits, and how often they are renewable as well as the exact provisions for leaving the country when the employment ends (time granted for new job search, etc.). However, the length of a visa can be less clearly identified as a work right, since both indicators would measure status volatility that might be partially captured in permanent residence provisions.

I gathered data describing the extent and quality of the three index components through immigration laws from websites and national authorities, policy reports, secondary literature, legislative documents, and administrative questionnaires. In coding work rights, I have followed Cerna (2009a) and adapted her sub-categories. Each indicator received a score between 3 and 0, where (0) indicates the least restrictive rules (referred to as liberal from here on) and (3) indicates the most restrictive provisions. The three dimensions were added up and normalized into a composite index ranging from 0 to 1, with (1) being the most restrictive.¹³ Each indicator was equally weighted. As I expect that each rights dimension originated in a different political force, and reflects a different trade-off between and combination of interests, it would be difficult to theoretically justify weighing one item more heavily than any of the others. For example, a program may be liberal when it comes to spousal employment and permanent residence access

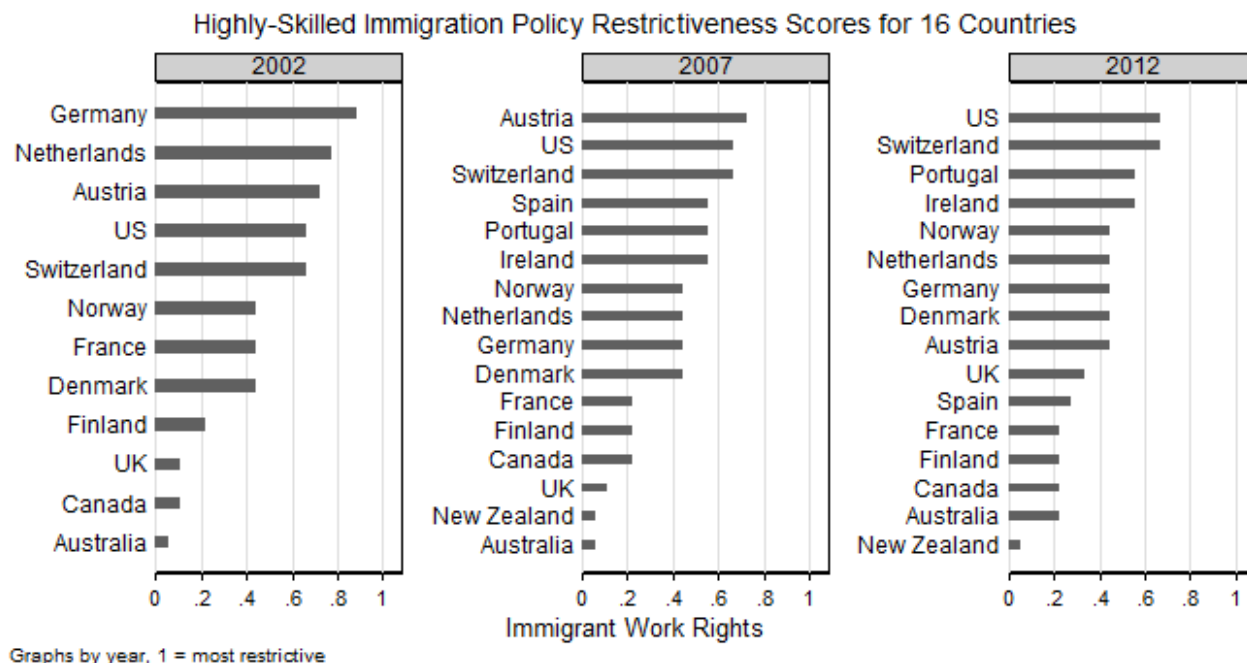
¹³ For a full explanation, please see Appendix A.

because companies want to win and keep qualified workers that they have invested in through visa-sponsoring and such, but the same program may still have restrictions on worker mobility, to assure opposing unions that domestic workers are not outcompeted. A test for scale-reliability yielded a Cronbach's alpha of 0.40, which indicates a poor internal consistency of the items in the scale. While there is an established scholarship, highlighting the value of combining these three measures in order to assess overall work rights (Lowell 2005, Cerna 2009a), a better scale needs to be developed to more reliably measure work rights for highly-skilled immigrants.

The cumulative work-rights index shows a country's score according to the total sum of scores for each of the rights items. However, this index does not contain scores for the restrictiveness of admission criteria. Figure 4.1 provides an overview of all scores. In order to assure that the coding is consistently applied, three independent coders scored each indicator according to a general coding scheme with the same information.¹⁴ A calculation of Krippendorff's alpha for ordinal data yielded a reliability coefficient of 0.79 for the entire index. This means that in roughly 80 percent of the cases agreement existed, which is within conventional levels for drawing tentative conclusions about coding reliability.

The most liberal programs can be found in Canada, Australia, and New Zealand, followed by Finland, France, and Spain. The most restrictive programs, in terms of rights, are found in the United States and Switzerland. Unlike other traditional settler nations, the U.S. has less generous provisions for spousal work employment (it is not an option on the principle applicants' work permit), and therefore is higher ranked on the restrictiveness scale. There are a couple of interesting developments observable in Figure 4.1.

¹⁴ The full coding scheme can be found in the appendix.



Note: All calculations and coding is based on my own compiled data. Ireland, New Zealand, Portugal and Spain had no HSI program or policy in 2002, and are therefore not included in the graph.

Figure 4.1: Cumulative Work Rights Index

First, there is a clear trend towards liberalization among non-traditional immigration countries, notably, Austria, Germany, and the Netherlands. Most changes to existing migration policies have taken place in the mid- to late 2000s. At the same time, however, we see slight increases in restrictions in the United Kingdom, Canada and Australia. This is quite interesting, and may be indicative of adjustments in HSI policies. The United Kingdom replaced their former Highly-Skilled Migration Program (HSMP) with a general, tiered Points-Based System (PBS) in 2008, while Canada and Australia pursued more economically oriented changes, such as specific regional or occupational needs for workers, which often resulted in more stringent worker portability conditions (Hawthorne 2008). More recently, Canada has undertaken revisions that

further focus on facilitating skilled labor immigration, rather than highly-skilled migration. The points-system, while beneficial for the latter type of immigrant, makes it difficult for skilled trade workers to enter. But there is also an interesting persistence of programs or regulations, such as in the United States, Switzerland, Denmark or Norway.

Configurations of Citizenship

While immigration policies and citizenship configurations are neighboring fields, they are analytically and empirically distinct from each other. Immigration policies define the terms of admission and entry, while citizenship policies have more to do with the access and eligibility to full membership (Helbling 2013, Goodman Forthcoming, Bjerre et al. 2015). They both differ from integration policies—a third type of immigrant-related policy—which is defined as “rules and practices that guide the incorporation of newcomers into aspects of host society life” (Goodman, p. 815), and determine the successful settlement of individuals through granting additional political, economic, and social rights (Goodman 2010, 822-823, Aleinikoff and Klusmeyer 2002, 42-61).

Adapting Koopmans et al.’s conceptualization, citizenship is understood as the legal status of individuals belonging to a specific state, in which their membership is linked to particular rights, duties and identities (Koopmans et al. 2005, 7). National configurations of citizenship are the institutional boundaries of national self-understanding, and consist of *individual* and *group rights dimensions* that define the ethnic relations in a given state (Koopmans et al. 2005, 6-8). As outlined in the introduction, citizenship contains a fundamentally cultural dimension, which has led scholars to explore the patterns of ethnic relations imbedded in different citizenship regimes. Brubaker (1992) differentiated citizenship regimes according to outsiders’ ability to acquire

citizenship. The “ethnic” citizenship model, represented most notoriously by pre-2000 Germany, is characterized by the principle of *ius sanguinis*, meaning that citizenship can only be obtained through descent and blood-relationship. In contrast, the “civic-territorial” citizenship model, represented by France, is characterized by the principle of *ius soli*, meaning that citizenship can be acquired much easier through naturalization and political-territorial membership.

Ius soli can further be differentiated for second- and third-generation immigrants in *ius soli at birth* (children of non-citizens automatically acquire citizenship of the state in which they are born either immediately or depending on parents’ residence status), and *ius soli after birth* (granting children born to non-citizens either an automatic or discretionary option to apply for citizenship, or facilitated naturalization after a predetermined residence time), *double ius soli* (granting third-generation immigrant children automatic right to citizenship at birth) (Honohan 2010, Aleinikoff and Klusmeyer 2002, 7-21). *Ius sanguinis* often recognizes a child born to parents where at least one parent is a citizen of the state in question, yet in some cases it is specified whether either the mother or the father has to be that parent. Of course, countries can and have combined *ius sanguinis* provisions with *ius soli* elements (Aleinikoff and Klusmeyer 2002, 721, Howard 2010, 17-36). This glimpse at the variations of access to citizenship provisions makes it easy to understand the variety of different citizenship conceptualizations in the scholarly literature. Castles et al. (2014, 67), for example, differentiate between the imperial, ethnic, republican, multicultural and even transnational model of citizenship. Yet, for greater analytical clarity in this study, the individual dimension of citizenship will be conceptualized as ranging between ethnic and civic-territorial conceptions of membership only.

Ethnic relations have also been assessed in terms of cultural group rights (Kymlicka 2012, Kesler and Bloemraad 2010, Bloemraad 2006). Granted in multicultural policies, cultural group rights legally recognize individuals' and groups' prerogative to preserve their cultural identity and subsequent cultural, ethnic or religious practice. To that extent multicultural policies also contain state-sanctioned and state-supported means and resources to create voices and channels of political participation for these cultural groups. Advocates of multiculturalism have argued that these legal provisions help minority groups to achieve parity with the majority population, and therefore create greater equality between diverse groups in society (Taylor 1992, 1994, Kymlicka 2012, 1995). Such policies involve, for example, the inclusion of ethnic representation in public media, dual citizenship, exemptions from dress codes, the funding of ethnic group organizations, affirmative action, or the funding of bilingual education or mother-tongue instruction (Banting and Kymlicka 2013). The group dimension of citizenship can therefore be understood as ranging between culturally monist—emphasizing a narrow definition of cultural identity and belonging usually tied to the majority population—to culturally pluralist conceptions—emphasizing ethnic, racial and religious diversity that allows for a broader definition of identity and belonging (Koopmans et al. 2005, 51-71).

Combined, individual and group dimensions of citizenship indicate how open or closed access to national and political membership in a given state actually is (Buckley 2013, Weldon 2006, Wright and Bloemraad 2012, Koopmans et al. 2005), and should be treated as a conceptual space in which different actors, including nation-states comprised of policy-makers and interest groups, operate. As such, configurations of citizenship are a dynamic conceptualization of membership, meaning that they can change, even if they do so slowly (Koopmans et al. 2005, 9). Depending on the combination of these two dimensions, four different ideal-type configurations

are identified by Koopmans et al.: assimilationism, segregationism, universalism, and multiculturalism (see Table 4.3). As an ideal-type, the assimilationist cell features an approach in which newcomers are expected to assimilate into the majority culture, giving up or at least muting their own cultural or ethnic ties. Becoming a citizen is therefore tied to demonstrating certain aspects of assimilation, and often accompanied by renouncing former citizenship, making dual citizenship rarely possible (Koopmans et al. 2005, 10-16).

Table 4.3: Typology of Different Configurations of Citizenship

Group Dimension	Individual Dimension	
	Ethnic	Civic-Territorial
Cultural Pluralism	Segregationism	Multiculturalism
Cultural Monism	Assimilationism	Universalism

Note: Adapted from Koopmans et al. (2005, 10)

In contrast, the cell type of segregationism rests on the toleration if not outright support of retaining cultural and ethnic identities, yet immigrants are excluded from the political community as ‘community’ is based on shared ethno-cultural ties and not territorial belonging. The universalist and multicultural cell types capture the history of former European colonial powers. Universalist configurations are characterized by civic-territorial notions of citizenship allowing for *ius soli* acquisition of citizenship. However, because of a strong understanding of equal treatment of citizens, explicit rights and legal recognition for newcomers are not the norm, and convergence with the main political and cultural identity is expected. In contrast, multicultural type does not only rest on civic-territorial understandings of belonging, but also enshrines specific protections of cultural identity and political participation, often allowing for dual citizenship for newcomers (Koopmans et al. 2005, 10-16).

Measurement of Citizenship Configurations

I have operationalized the independent variable *citizenship configuration* as a composite index, combining the Multicultural Policy Index (Banting and Kymlicka 2013) and Citizenship Policy Index (Howard 2010).¹⁵ The group rights dimension is based on Banting and Kymlicka's assessment of eight different indicators measuring the extent and quality of multicultural arrangements in a given country. Each indicator was scored between 0, 0.5, 1 and aggregated to range between 0 and 8; (0) denoting the weakest, and (8) denoting the strongest multicultural arrangements (Banting and Kymlicka 2013). The list of indicators includes the following items:

- constitutional, legislative or parliamentary affirmation of multiculturalism, at the central and/or regional and municipal levels;
- the adoption of multiculturalism in school curriculum;
- the inclusion of ethnic representation/sensitivity in the mandate of public media or media licensing;
- exemptions from dress codes, either by statute or by court cases;
- allowing of dual citizenship;
- the funding of ethnic group organizations to support cultural activities;
- the funding of bilingual education or mother-tongue instruction;
- affirmative action for disadvantaged immigrant groups (Banting and Kymlicka 2013, 583).

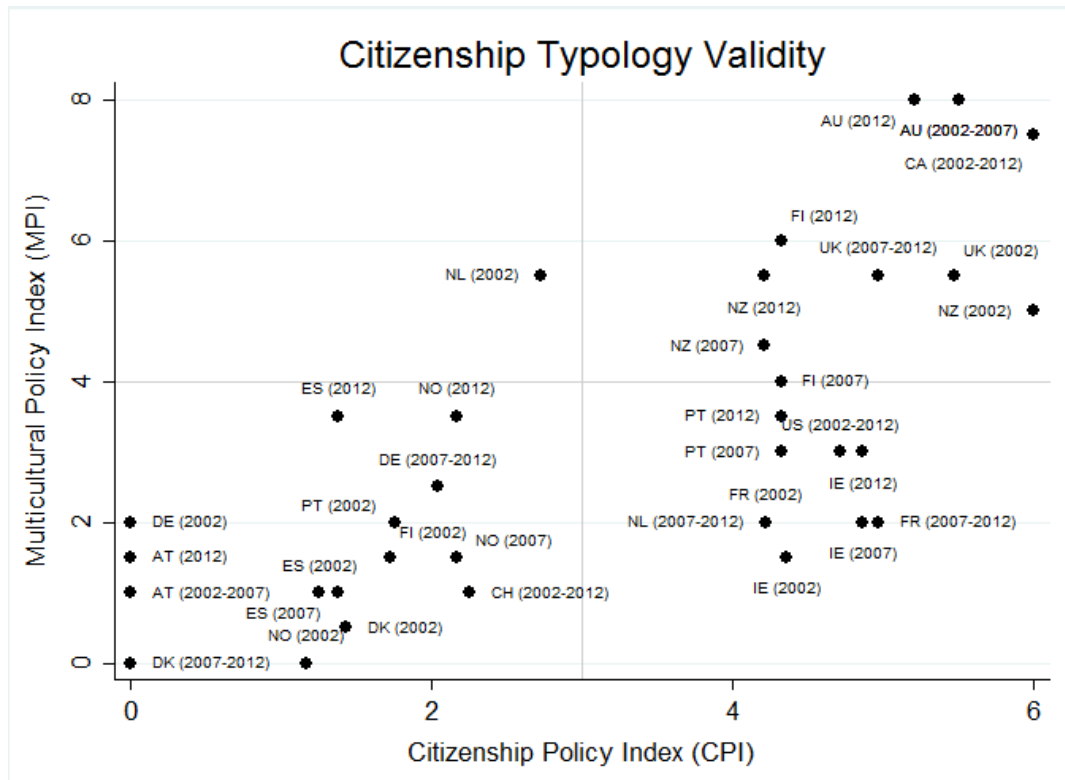
The individual dimension is based on Howard's (2010) measure for the openness of naturalization policies. While the MPI mainly overlaps with Koopmans et al.'s own measure, the CPI focuses exclusively on assessing a country's *ius soli* provisions, residency requirements for eligibility and dual citizenship provisions, or lack thereof. Koopman's et al. include in their measure voting rights for non-naturalized individuals, conditions for expulsion of foreign residents, and anti-discrimination laws (2005, 34-49). I agree with Goodman (Forthcoming, 823) that, Koopmans et al. (2005) as well as Castles and Miller (2009) conflate citizenship with

¹⁵ For data see: Multiculturalism Policy Index, www.queensu.ca/mcp. Missing data points for 2005 were replaced by consulting coding procedures, data provided by the authors, and additional data gathering.

integration policies. Therefore, I focused mainly on a clearly citizenship-related measure. However, I disagree with Goodman on defining cultural recognition as a separate integration policy, as citizenship has a strong cultural dimension as argued above. The CPI measures the eligibility requirements for immigrants to naturalize in the respective country and is based on three different indicators, scored as 0, 1, and 2, yielding a score between 0 and 6; (0) denoting the least liberal, and (6) the most liberal citizenship policies. The MPI provides data for the years 1980, 2000 and 2010, while the CPI provides data for the 1980s and 2008.¹⁶

Notwithstanding the challenges presented by this data structure, I chose ‘snapshot’ measures for the years 2000, 2005, and 2010, effectively lagging the independent variable by two years as there may be considerable time between changes in the explanatory variables and corresponding changes in the dependent variable. As outlined above, four distinct types of citizenship configurations should be discernible: assimilationism, segregationism, universalism, multiculturalism. Plotting every country-year observation, Figure 4.2 contains scores along the individual and group dimension of citizenship as conceptualized and measured. As one can see, there are indeed distinctive clusters observable that fall into the three outlined citizenship configurations possibilities.

¹⁶ Missing CPI values for the year 2005 were imputed based on original coding schemes and my own calculations. The CPI values for 1980 were used as an approximation for the 2000 time point.



Note: All calculations and coding is based on my own data.

Figure 4.2: Citizenship Configurations by Country and Year

In Figure 4.2, we see that the theoretically-derived citizenship typology is supported by the measurement of both, individual and group rights. Country-year observations fall into three clusters. Countries that are typically associated with the assimilationist model, for example Germany or Switzerland, fall into the lower-left quadrant characterized by a low score on multicultural rights and low score on access to citizenship. Countries that are often heralded as models of multicultural citizenship (after abandoning all-white policies during the 1950s and 1960s), such as Canada or Australia, fall into the upper-right quadrant featuring predominantly multicultural rights and broad access to naturalization. The middle spectrum is taken by countries such as the United States and France that feature civic-territorial citizenship rules but mainly a

moderate level of cultural policies and recognition. The only observation in the upper-left quadrant representing cases deemed segregationist are the Netherlands in 2002. There are some notable trends to be observed. First, the figure shows the dynamic aspects of citizenship configurations. Rather than remaining in one type of configuration, countries have displayed remarkable changes. On the one hand, Finland, once best described as assimilationist in character, has expanded its citizenship law to allow for more cultural recognition, making it now much more multicultural than a decade before. On the other hand, we see an opposite trend in the case of the Netherlands. Once strongly segregationist by granting immigrant groups distinctive rights in political participation and status, but not particularly furthering immigrant naturalization, the Dutch government has reversed its policy stance significantly, and falls now much more into the universalist cell type, allowing for *ius soli* principles but fewer multicultural policies (Entzinger 2006). Second, some countries have made smaller changes that did not lead to *inter*-type change but still show clear signs of *intra*-type change, such as Germany, which included important *ius soli* elements with the Staatsangehörigkeitsgesetz (Nationality Law), that had come into force after 2000, or the United Kingdom, which contracted some aspects of residency requirements with the passing of the Borders, Citizenship and Immigration Act (BCIA) 2009, in force since 2011. Some countries like the United States or Switzerland have essentially remained unchanged in their citizenship provisions.

The measure of citizenship configuration proposed here is multi-dimensional in character. However, in particular, the property space featuring exclusive naturalization policies but inclusive multicultural policies should be compressed on logical, empirical and pragmatic grounds (Elman 2005, 300-308). While the properties of a segregationist cell type are theoretically possible, they are logically highly improbable. It is unlikely that countries that take exclusive understandings of

citizenship—and therefore rights that are tied to citizenship—would simultaneously endorse strong cultural rights for non-citizens. Most countries that are exclusive in their definition of national membership are primarily exclusive because of their cultural or ethnic conception of belonging. Second, compression can also be empirically justified, as depicted in Figure 4.2. Except for the observation of the Netherlands in 2002, all observations fall into either of the other cell types. The Dutch case, however, provides only a weak rebuttal of the logical reason for compression. As pointed out above, the 2002 observational point relies on citizenship scores based on the 1980s laws, however, key changes decreasing multicultural provisions in the Netherlands have taken place during the 1990s, which are not captured by the measure (Entzinger 2006). This data-induced inaccuracy therefore explains why the observations here fall into the segregationist cell type.

Lastly, this cell type can also be compressed due to pragmatic reasons. As outlined in the previous chapter, I hypothesize that the more inclusive citizenship configurations are, the less restrictive will be work rights for highly-skilled immigrants. There is no theoretically grounded reason to expect that observations falling into a predominantly segregationist citizenship configuration will produce a different effect. The fourfold typology has been compressed to a threefold one, which makes itself amenable to construct a linear measure. To that end, I combined both indices to yield the *citizenship configuration* variable, and normalized it to range from 0-1; (0) being the most exclusive, and (1) being the most inclusive. A test for scale-reliability yielded a Cronbach's alpha of 0.84, which indicates good internal consistency of the items in the scale.

Differences Between Work Rights and Configurations of Citizenship

Intuitively, one may assume that immigrant work rights are just one aspect of rights granted to immigrant individuals, and hence closely related to citizenship rights of immigrants. More explicitly stated, it may be that migrant work rights and citizenship configurations are part of one and the same incorporation or integration regime. Yet, this assumption is not warranted for several reasons. As outlined in this chapter, citizenship configuration and immigrant work rights are theoretically different from another. Work rights are part and parcel of labor migration policies, which are policies that seek to regulate the labor migration influx, and not part of citizenship configurations, which concern rights to citizenship in individual and group dimensions. As such, their respective objectives separate them into what Hammar (1985, 7-9) has termed immigration control policy and immigrant policy.

But beyond this, they also crucially differ in the legal and social status that they are attached to. The differences in legal status that are associated with each policy realm draw a line between being a member versus not being a member of the state, as well as the social and political community. Immigrant labor rights are attached to a status that is recognized prior to becoming a legal member. While residency principles grant permanent immigrant residents' access to social rights (Joppke 1998b, Guiraudon 2002), it is the notable absence of guaranteed and full rights that differentiates the resident alien status from full membership (Bosniak 2006). Not being a citizen bars immigrants from voting rights, protection from deportation, ability to travel without restrictions, and state employment (Bloemraad 2015, 2, Just and Anderson 2015, 190). Thus, the matter of rights continues to meaningfully separate citizens from non-citizens. In their objective to influence the volume, origin and internal composition of labor immigration, labor migration policies use rights strategically as a tool to fulfill their respective political objectives (Ruhs 2013).

Moreover, while they appear to be logically connected, labor migration policies operate on a different time-horizon than do citizenship configurations. Explicitly and implicitly, labor migration legislation is mostly focused on regulating short-term labor, and consequently limit foreign workers' stay on a temporary basis (Ruhs 2006, 2013, Chaloff and Lemaitre 2009). The temporary characteristics of labor programs set it apart from the permanent character of citizenship provisions. Citizenship assumes a permanent stay, as naturalized individuals have legally become a part of their new host society. While in the past, many individuals who were admitted as temporary workers remained for the long-term and did not return to their home countries as anticipated (such as in the case of the guest-worker program in Germany), it is a fallacy to assume that labor migration programs are crafted with the assumption of permanent settlement.

More generally, citizenship configuration and immigrant work rights are also theoretically distinct because citizenship configurations do not just concern the inclusion of immigrants, but more fundamentally define the relationship of citizens to their state (Vink and Bauböck 2013). Vink and Bauböck (2013) outline five functional purposes of citizenship that are not tied matters of immigration: ensuring intergenerational continuity, territorial inclusion of members, ensuring that the tie between citizens and state is unique and unambiguous, while also providing for specific groups that are thought to belong to society or political community regardless of their citizenship status, and avoiding over-inclusion of individuals who no longer belong to the community.

Similarly, multiculturalism should not be misunderstood as a mere celebration of diversity, but as creating an important inclusionary effect for its residents (Kymlicka 2012, Kesler and Bloemraad 2010, Bloemraad 2006) by providing means and resources to create voices and channels of political participation, in order overcome hierarchical relationships between majority

and minority groups and ensure greater democratic ties between citizens and the state (Kymlicka 2012, 6).

Notwithstanding the diversity in the anticipated duration of stay in labor migration programs, this also holds true for highly-skilled immigration programs. Governments' approaches to attracting highly-skilled immigrants have been described in terms of two larger models: the human capital model and labor market shortages model (Iredale 2001, 8, Cerna 2010, 6). The majority of highly-skilled programs are driven by labor shortage considerations or international competition aspects (Chaloff and Lemaitre 2009), and shortage models that offer instant access to a permanent residence card as part of the immigration package remain rare (for example, Germany's provision for exceptionally well-qualified key workers).

Furthermore, they are also different in regard to what causes change in them. The liberalization of citizenship policies and rise of multiculturalism is rooted in the development of the international human-rights discourse, with its core value of equal treatment of all races and peoples. The rise of an international human-rights based discourse in the post-war era challenged previous state policies based on discrimination and illiberal treatment of resident individuals according to racial, ethno-cultural or religious differences, and consequently paved the way for multicultural policies that explicitly emphasized equal treatment of different cultural or religious groups (Kymlicka 2012). Notwithstanding the greater diversity in causes, the liberalization of citizenship policies was similarly characterized by the dissonance of norms of equal treatment and citizenship practices. In particular in Europe, citizenship reform processes followed on the one hand in response to international pressures pointing out the need to reform often outdated citizenship provisions, and on the other hand in response to domestic pressures, such as the large number of foreign residents, whose integration needed to be regulated more explicitly (Howard

2010). Liberalization of citizenship policies was in particular successful when and where they were carried out on the elite-level, whereas it was less so where far-right parties were able to mobilize public anti-immigrant sentiment on the issue of citizenship, and turn the purpose of citizenship reform away from a means of integration to a tool of national identity expression (Howard 2009, 2010, Vink and Groot 2010). Changes in highly-skilled immigration policies, in contrast, have been motivated by perceptions and discourses of international economic competition, in conjunction with labor shortages and consequences of demographic changes on the domestic labor force more generally (Shachar 2013, Lavenex 2007, Cerna 2009a)

Lastly, they also differ in regard to their general development: citizenship policies have been characterized by the closing of legal and social gaps between foreign residents and natives through *ius soli* provisions for second- and third-generation immigrants and increased acceptance of dual citizenship (Vink and Groot 2010), and the continual expansion of cultural rights and recognition of diversity (Banting and Kymlicka 2013). While this development is by no means uniform and still features national variation, the general convergence towards more liberal citizenship configurations stands in contrast to the growing divergence of rights granted in labor migration policy. While highly-skilled immigrants receive more and more generous rights, low-skilled immigrants' rights become more restricted and fewer in number (Ruhs 2013, Czaika and de Haas 2011, 490, Boeri et al. 2012). While states have thus become internally more inclusive, they have simultaneously become externally more exclusive and selective.

Table 4.4: Differences between Immigration and Citizenship Policy

	Immigration Policy	Citizenship
Objective	Influence and control composition of labor migration.	Terms and conditions of including individuals in country.
Dimensions	Admission, selection, rights and conditions of entry.	Naturalization and multiculturalism.
Expected stay	Temporary.	Permanent.
Causes of change	Perceived or actual international competition, labor shortages and demographic challenges.	Human-rights revolution, increasing number of foreign residents.
Development	Divergence.	Convergence.

But immigrant work rights also differ from citizenship rights empirically. Freeman (2006) raised considerable doubt about the common assumption that institutions, regulations, and measures that aim at the integration of immigrants are coherent. One reason for this observation may be the fact that migrant rights—social, economic or political ones—stem from different sources, such as legal constraints of liberal democracies (Hollifield 1992), supranational regulations (Menz 2009), human rights discourses (Soysal 1994, Joppke 2010), national integration policies, or welfare regimes (Sainsbury 2006). Migrant rights may therefore be outcomes of different political processes and different national goals, rather than one cohesive integration regime.

Indicative of this are the findings by Ruhs (2013). If national citizenship configurations are rooted in the same political source as work rights, then we should observe little variation in labor migration policies. However, the opposite is true. Despite the same national configurations of citizenship, migrant work rights differ significantly for immigrants of various skill-levels (Ruhs

2013). Upon closer inspection, in the case of the Netherlands and the United States, the relationship between work rights and citizenship configurations is rather counter-intuitive, for example. The Netherlands, a country with a mostly multicultural citizenship configuration, has provided very little work rights to highly-skilled immigrants in the past. Yet, while generous provisions for multicultural liberties have been significantly decreased since the 1990s (Entzinger 2006), highly-skilled immigrants have been granted more generous work rights than before. Similarly counter-intuitive is the case of the United States. Historically, a settler society, the United States is a good example of the universalist citizenship model. And while family migration and residence rights are firmly anchored in U.S. migration policy (Gary Freeman, Leal, and Onyett 2013), work rights for highly-skilled immigrants are more restrictive; in particular, independent employment rights for spouses are denied.

Of course, these illustrations could be isolated cases, not refuting an empirical overlap between work rights and citizenship configurations in general. *Citizenship configuration* values vary from 0 to 1, where (0) indicates the most exclusive and (1) the most inclusive citizenship configuration. *Work rights* values vary from 0 to 1, where (0) indicates the least restrictive work rights and (1) the most restrictive work rights. To test the potential congruency of both measures, I investigated their empirical association. A test for Pearson's r revealed a strong, negative relationship between work rights and citizenship configurations, $r(44) = -.606$, with citizenship configuration explaining 36 percent ($r^2 = 0.369$) of the variation in highly-skilled work rights. While this alone does not mean that both variables overlap, it does show that there is a strong association between these two.

The largest potential overlap in the conceptualization and measurement of both dependent and independent variables is the inclusion of settlement rights, i.e. entitlement and time until acquisition of a permanent residence status. While it conceptually makes sense to include them as an important aspect of work rights, they clearly lie at the confluence of immigration and citizenship policies (Bjerre et al. 2015, 7-8). Therefore, I excluded this indicator of permanent residence rights from my work rights measure, and conducted the test a second time. A test for the Pearson's r reported this time a strong correlation, $r(44) = -.517$, $p < .001$, which indicates a continuing strong relationship between both variables, even after removing the potential overlapping measure of settlement rights. Taken together, the theoretical and empirical evidence suggests that while highly-skilled immigrant work rights are connected to citizenship configuration, the concept and measure of both are sufficiently different from each other.

Conceptualization and Measurement of Additional Independent Variables

As discussed in chapter 3, several intervening factors need to be considered. First, I accounted for political *veto points* using the Veto Player dataset from Jahn et al. (2014),¹⁷ who measures constitutional veto-points and their ideological policy preferences measured on a left-right index parties (Jahn 2010). The predictor runs from 0 to 38.79, where (0) indicates the least amount of viable veto players. As an alternative measure, I used the Political Constraints dataset from Henisz (2002).¹⁸ I expect that veto points unfold different effects depending on their interaction with citizenship configurations. In particular, I expect that when citizenship configurations are more exclusive, an increase in veto points will correspond to more restrictive

¹⁷ For data see: Jahn et al. (2014), Veto Player dataset, <http://comparativepolitics.uni-greifswald.de/data.html>.

¹⁸ For data see: Henisz (2002), Political Constraints dataset, <https://mgmt.wharton.upenn.edu/profile/1327>. Most recent data version from 2013.

rights. Measuring the strength and policy integration of unions in the variable *union coordination*, a composite index was constructed, composed of three indicators from ICTWSS data¹⁹ compiled by Visser (2013b): the level at which wage bargaining takes place, the extent of coordination in wage-setting, and the routine involvement of unions and employers in government decisions on social and economic policy. ‘Bargaining level’ is an ordinal variable running from (1) local or company level, to (5) central or cross-industry level. The extent to which wage bargaining is coordinated is captured by a second categorical variable, ‘bargaining extent’ and runs from (1) ‘fragmented wage bargaining, confined largely to individual firms or plants’, to (5) ‘centralized bargaining by peak association(s); or industry-level bargaining by a powerful and monopolistic union confederation; or extensive, regularized pattern setting and highly synchronized bargaining coupled with coordination of bargaining by influential large firms.’ Lastly, the absence or presence of policy concertation is measured by a categorical variable, ranging from (0) ‘no concertation’ to (2) ‘full concertation’ (Visser 2013a). For every time point observation and each variable, I averaged the values for the past five years.²⁰

The three variables were then normalized to range between 0 and 1, and added together. The index was again recoded so that it ranged between 0 and 1, (0) denoting little union coordination and (1) denoting high union coordination. As an alternative measure, I controlled for the national level of *employment protection*, using an OECD index that consists of 21 different measures assessing how strongly and in what ways employees are legally protected from dismissals. The summary indicator ranges between 0 and 6, where (0) denotes minimal protection

¹⁹ For data see: Visser (2011), Data Base on Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts, 1960-2011 (ICTWSS), <http://www.uva-aiaa.net/208>.

²⁰ The decision to consider four years prior and the year in question for calculating the observation score is subjective, and driven by the intent to capture general union strength between the observation point in question and the prior one, which are five years apart.

and (6) denotes maximum protection.²¹ Higher values imply stronger protection and bargaining power of employees. I also used Visser's (2013b) measure of policy concertation separately.

Measuring the strength and policy integration of employers in the indicator *corporate coordination* is unfortunately not as straightforward. An ideal measure of corporate interest would mirror the coding of union strength, but data on employer associations is very limited. As an alternative measure, I modified and replicated Hall and Gingerich's (2009) measure of corporate governance. The concept of corporate governance, as defined by the authors, captures the extent to which firms in a given market economy are more or less strategically coordinated. As conceptualized according to the 'varieties of capitalism' approach, a high level of corporate governance is found in coordinated market economies (CMEs) in which firms are closely connected by dense corporate networks, which make it more likely for them to interact strategically (Hall and Gingerich 2009, 452-453). While their measure was originally developed to trace institutional complementarities and different modes of firm interaction, it can also be used in this related context. Firms which are part of dense corporate networks use them to interact with other actors to, among others, ensure that workers have the needed skills (Hall and Gingerich 2009, 452-453). It is reasonable to expect that if strategic coordination is present, this also provides opportunity structures to voice positions in matters of economic and social policy making, such as labor migration policy.

Using updated measures by Shleifer et al. (2008),²² I constructed a *corporate coordination* index based on indicators suggested by Hall and Gingerich (2009)—measuring shareholder power, dispersion of control of shares, and size of the stock market. To measure the average share holder

²¹ For data see: OECD (2013), Indicators of Employment Protection, <http://www.oecd.org/employment/emp/oecdindicatorsofemploymentprotection.htm>.

²² For data see: Shleifer et al. (2008), Antidirector Rights Index, <http://scholar.harvard.edu/shleifer/publications/law-and-economics-self-dealing>.

power in a given country, I used the revised anti-directors index (Spamann 2010). This index runs from 1 to 5, (5) indicating the highest degree of shareholder protection, based on six indicators, reflecting “the legal protection and likely-influence over firms of ordinary shareholders relative to managers or dominant shareholders” (Hall and Gingerich 2009, 445). Ownership concentration measures the “average percentage of common shares owned by the top three shareholders in the ten largest non-financial, privately-owned domestic firms in a given country. A firm is considered privately-owned if the State is not a known shareholder in it” (La Porta, Lopez-de-Silanes, and Shleifer 2006, 9). It ranges between 0 and 1, where (1) indicates that shares are concentrated in the hands of a few, big shareholders. Lastly, the index also includes the average of the ratio of stock market capitalization to the gross domestic product for the period 1999–2003. Data availability for these indicators is restricted to the year 2002/2003, and has been duplicated for the observations in 2005 and 2010. Unfortunately, this restricts the index to only cross-national variation. The three variables were normalized to range between 0 and 1, and then added together. The index was again recoded so that it ranged between 0 and 1.

Conceptualization and Measurement of Control Variables

Business Cycles

Economic scholars have taken a macroeconomic view of immigration, arguing that demand and supply models best predict labor migration policies (Rodrik 2002). This approach relates to variations in immigration policy to supply and demand shifts for foreign labor (Chiswick 2000, 2005, Borjas 2009). One should expect that when the demand for foreign labor decreases, due to an economic downturn, and unemployment and social expenditures are expected to rise, governments will adopt more restrictive, less immigration-conducive policies, and thus decrease

work rights. I controlled for its effect using World Bank data, measuring the two-year average of annual percentage of *GDP growth* for a given observation²³ and the average *unemployment rate* of the past five years as a percentage of the total labor force.²⁴ However, Cerna and Hynes (2009) found that countries did not significantly tighten or reverse their HSI policies in response to the global recession of 2008/2009. I therefore do not expect a strong effect of business cycles.

Welfare Regime

Despite negative public attitudes toward immigration in many Western countries, their governments have been far more inclusive towards immigrants than public opinion might suggest, and have granted them a variety of rights (Guiraudon 2000, Bommers and Geddes 2000). Welfare states have been found to play an important role in this outcome (Sainsbury 2006, Boräng 2012). It has been argued that the inclusive nature of universal welfare states induces greater levels of solidarity and empathy toward immigrants (Boräng 2012, 49, Ervasti, Fridberg, and Hjerm 2008, 191).

Yet, it may be that the generosity of welfare services matters not as strongly as the underlying principle understanding of equality. Universal welfare states are based on convictions of equal entitlement and treatment of its members, while conservative welfare states, for example, maintain a certain level of status stratification, and liberal welfare states are the most stratified in their eligibility criteria and social benefits (Esping-Andersen 1990). While previous findings on the relationship between entitlement amounts and immigration have been confined to refugees (Boräng 2012), a more general measure of universal equality in a given country may serve as a

²³ For data see: World Bank (2015a), GDP growth (annual %), <http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG>.

²⁴ For data see: World Bank (2015b), Unemployment, total (% of total labor force) (modeled ILO estimate), <http://data.worldbank.org/indicator/SL.UEM.TOTL.ZS>

better predictor of equal rights granted to immigrants. If societies have greater internal stratification, they are most likely also inclined to restrict rights for newcomers. We can therefore expect that the more inequality a given state features, the more restrictive policies toward highly-skilled immigrants will it hold.

To control for this effect, I constructed a categorical variable *welfare regime* based on Ervasti, Fridberg, and Hjerm's (2008) conceptualization. The 'Nordic/universal' welfare state model includes Denmark, Norway, Finland and Sweden; the 'Continental/conservative' model includes Austria, Germany, France, the Netherlands, Switzerland, as well as Spain and Portugal,²⁵ and the Anglo-'Saxon/liberal' model includes Great Britain and Ireland. The category 'Nordic/universal' served as the baseline category. As an alternative measure, I also employed Scruggs et al.'s (2014) comparative welfare entitlement dataset that includes an index measuring unemployment insurance, sick pay insurance and public pensions; ranging from 0 to the highest value of 42.²⁶ In contrast to the welfare state typology used by Ervasti, Fridberg, and Hjerm (2008), this predictor accounts for the overall welfare states' generosity, i.e. the extent of services provided, and less for the stratifying outcome of different entitlement rules.

Public Opinion

Immigration is often rejected by the general public. An elaborate literature, based on Benhabib's (1996) median-voter theorem, argues that natives will prefer immigration if it has complementary instead of replacement effects, and will vote accordingly. Labor market competition makes unskilled or low-skilled workers more opposed against low-skill immigrants

²⁵ Ervasti, Fridberg, and Hjerm (2008) place Spain and Portugal in a separate 'Mediterranean' model. For my purposes, however, I categorized them rather as conservative welfare states.

²⁶ For data see: Scruggs, Jahn, and Kuitto (2014), Comparative Welfare Entitlements Data Set 2, Version 2014-03, <http://cwed2.org/>.

that might outcompete them, but not so much against high-skilled workers, whose skills are presumed to complement and even create additional jobs. Skilled voters, however, have the opposite problem (Mayda 2006, Citrin et al. 1997, Scheve and Slaughter 2001, Sides and Citrin 2007). While in the long-term HSI may be beneficial for the economy, voters consider short-term labor market competition or anticipated financial burdens of immigrant welfare recipients, leading them to oppose further immigrations, and translates in particular in majority vote electoral systems into restrictive labor immigration policy (Benhabib 1996).

Mayda (2006) finds that individuals with higher levels of skill are more likely to be pro-immigration in high per capita GDP countries and less likely in low per capita GDP countries, while Brucker et al. (2012b) find that individuals' skill-levels reliably predict their preferences towards labor migration. However, Hainmueller and Hiscox find that this does not hold true when controlling for a vast array of fiscal and educational predictors. Highly-skilled immigration is always preferred regardless of the skill level of individuals in Europe and the United States, and in contrast, differences in attitudes towards immigration appear to be driven by individuals' cultural values and tendency towards ethnocentrism (Hainmueller and Hiscox 2007, 2010). Whether or not preferences towards high-skill immigration are divided by natives' skill level or not, these preferences seemingly do not appear to translate into policy outputs (Brucker et al. 2012b).

Anti-Immigrant Parties

A common "culprit" of restrictive policies toward immigrants has been anti-immigrant parties. Many far-right, but also some center-right, parties have been successful in politicizing the topic of immigration and mobilizing voters against immigration since the 1990s (Betz 1994,

Schain, Zolberg, and Hossay 2002, Givens 2002, Ivarsflaten 2008, Schain 2006). Thus, they could specifically frame and mold a fear of cultural “Überfremdung” (“over-foreignization”) and translate it into restrictive policies. However, Mudde (2013) argues that the actual influence of these parties on immigration policy is small, and often they hold too few seats to significantly shape policy. In addition, comparing public demands regarding immigration policy, Koopmans et al. (2005, 84) find that far-right actors rarely make concrete policy proposals.

An alternative effect of anti-immigrant parties on immigration policy-making, however, may be indirectly exerted through party competition. If anti-immigrant parties compete with centrist conservative parties over a similar electoral pool, increasing vote-shares for anti-immigrant parties may lead centrist parties to adopt an anti-immigrant stance as well (Bale 2008). To account for the influence of *anti-immigrant parties*, I followed McLaren’s (2012) example, and measured the vote share of anti-immigrant parties in national parliamentary elections for the lower house close to the time-point of interest using national election statistics. As specifically anti-immigrant I classified parties that made stances against immigration one of their core campaign issues.

To account for a potential “contagion effect” of anti-immigrant parties on conservative parties, I also control for the *electoral system*. Presumably, under majoritarian systems the threat of anti-immigrant parties will be minimal, whereas in proportional systems it might be more important. Using Bormann and Golder (2013) data on electoral systems, I constructed a dummy variable where (0) was assigned to countries with a plurality or majority based system, including mixed-member majority systems, and (1) was assigned to countries with a proportional representation system, including mixed-member proportional systems.²⁷

²⁷ For data see: Bormann and Golder (2013), Democratic electoral systems around the world, 1946–2011, http://www.nccr-democracy.uzh.ch/publications/bormann_es2013.

Nevertheless, highly-skilled immigration policy is probably the least contentious immigration policy (see Hainmueller and Hiscox 2007, 2010), and many actors besides far-right parties influence immigration policy-making (Akkerman 2012). Therefore, I do not expect an indirect effect of anti-immigrant parties on work rights either.

Size of Foreign-born Population

Closely tied to this, an argument could be made about the relative size of foreign-born inhabitants. European publics, for example, have shown to be sensitive to the overall number of residing foreigners, and often opted for more restrictive policies towards newcomers. Since they have the power to vote, politicians may be more likely to respond to these preferences. The possible effect of the *size of foreign-born population*, expressed as the percentage of the general population, was tested by using OECD (2012) data.²⁸ As an alternative measure, I calculated the relative change in the size of the foreign-born population between time-points. However, Sides and Citrin (2007) have found that most people grossly overestimate the actual amount of resident foreigners. In addition, as argued above, most anti-immigrant parties who have been the most apt at exploiting fears of “over-foreignization”, have achieved little policy-making power to really influence policies. It is more likely that perceptions about immigrants are a matter of visibility in the public and media realm, making racial and religious differences easier to recognize. However, this is difficult to quantify.

²⁸ For data see: OECD (2013a), OECD Factbook 2013: Economic, Environmental and Social Statistics, <http://www.oecd-ilibrary.org/sites/factbook-2013en/01/02/01/index.html?itemId=/content/chapter/factbook-2013-6-en>.

Size of Competitive Industries

Internationally competitive industries such as IT, consumer electronics, biotechnology, and so forth may have a specific interest in easier immigration and more attractive offers for external researchers. Large sectors or corporations, but also private research centers with significant resources and opportunities for hiring researchers, may be a point of consideration of policy-makers who seek to increase technological competitiveness in these areas. The significance of such industries might be best captured in the amount of research and development (R&D) spending per country. Findings by Brucker et al. (2012a, 91-93) seem to suggest that R&D spending is indeed related to policies emphasizing higher-skilled foreign workers. I measured the size of competitive industries through R&D intensity, using OECD (2015b) data on intramural *R&D expenditure*, as a percentage of the national GDP.²⁹ As an alternative measure, I employed OECD (2015) data on the employment share (in percentage) of high and medium-high technology manufactures in the total economy.³⁰

Left-Party Government

Traditionally, left or left of center parties have held more positive stances toward immigration and immigrants than most other parties (Immerzeel, Lubbers, and Coffe Forthcoming, Alonso and Fonseca 2009, Howard 2009). However, do they have the capacity and incentive to endorse more liberal immigration policies? In particular in context of populist right-wing parties, center-left parties often face competition over a similar electoral pool, and thus may take more restrictive stances toward immigration to capture these voters. So far center-left parties have

²⁹ For data see: OECD (2015b), Gross domestic expenditure on R&D, http://stats.oecd.org/Index.aspx?DataSetCode=GERD_SCIENCE.

³⁰ For data see: OECD (2015a), Employment share of high and medium-high technology manufactures in the total economy, <https://stats.oecd.org/Index.aspx?DataSetCode=STANINDICATORS#>.

reacted very differently to competition on the right, and stances on immigration have depended of inter-and intra-party conflicts and positions (Bale et al. 2010). In order to test the potential influence of a left-leaning government on national migration policy-making, I constructed the control variable *Left government*, which is a dummy variable where (0) denotes countries that prior to the implementation of a highly-skilled immigration policy had no left or center-left government in power, and (1) denotes countries that did.

Supranational Legislation

Lastly, an intuitive answer to differences in highly-skilled immigration policy may be related to supranational legislation. On the European Union level, legally binding agreements have been made in regard to the right to family reunification (2003/86/EC), long-term residence status (2003/109/EC), third-country national researchers (2005/71/EC) and highly-skilled workers (2009/50/EC).³¹ Authors such as Menz (2009) argue that withstanding diverse national labor immigration policies, the Europeanization of many policy domains do shape national immigration policies as well. Yet, while the EU is much more ambitious and liberal in regard to immigration law, some states have responded in implementing additional conditions for family reunification, such as integration or language requirements (Goodman Forthcoming, 818-819). In order to control for the influence of the EU on national migration policy-making, I constructed the control variable *EU member*, which is a dummy variable where (0) denotes countries that are not part of the EU, and (1) denotes countries that are a member of the EU. Table 4.5 includes a summary of the main properties of the variables used in the empirical analysis.

³¹ As discussed in the theory section, I do not consider the EU Blue Card directive an HSI policy according to my definition.

Table 4.5: Descriptive Statistics for Dependent, Independent and Control Variables

Variable	Mean	Std. Dev.	Min	Max
HSI work rights	0.413	0.224	0.0556	0.889
Citizenship configuration	0.478	0.287	0	0.969
Corporate coordination	0.414	0.249	0	1
Union coordination	0.476	0.330	0	1
Veto-points	7.149	9.716	0	38.791
Welfare regime	2.188	0.734	1	3
Generosity index	31.76	6.318	20.92	43.14
Left government	0.333	0.476	0	1
GDP growth (2-year average)	2.049	2.523	-3.700	9.600
Anti-immigrant party vote share (in %)	7.257	9.185	0	28.90
Electoral system	0.688	0.468	0	1
R&D intensity (in %)	2.057	0.721	0.78	3.9
Size of foreign-born population (in %)	13.09	6.456	2.600	27.80
EU member	0.625	0.489	0	1

CHAPTER 5

RESEARCH DESIGN, METHODOLOGY, AND QUANTITATIVE ANALYSIS

In chapter 2 I asked: what explains the differences in work rights granted to highly-skilled immigrants across countries? I theorized in chapter 3 that citizenship configurations importantly shape the discourse on highly-skilled immigration policies and trade-off between different policy objectives. Thus, the unit of analysis of this study are the specific national labor migration policies targeting highly-skilled immigrants. In testing my theory, I employ quantitative and qualitative methods of analysis in the form of a nested multi-method approach (Lieberman 2005). In the quantitative part, I conduct a large-N cross-national analysis of work rights granted in highly-skilled immigration policies, using the work rights index outlined in chapter 3. This allows me to test my hypothesis while controlling empirically for several different predictors.

While a quantitative analysis of this data will help to make broad-strokes inferences about determinants of highly-skilled immigration policies, it cannot account for the substantive and interactive environment of policy decision-making, as discussed in chapter 3. Policy outputs are the outcome of ‘conjunctural causal relations’, i.e. the working of two or more factors together (Ragin 2008). Furthermore, the conceptualization of highly-skilled work rights and time-frame has led to a coverage of only 16 countries, which may lead to causal inference problems as there are too many explanatory variables for too few cases to analyze (King, Keohane, and Verba 1996),³² and both the dependent and the independent variables are slow-moving (Wright 2011). Brady and

³² One could also decrease the number of explanatory variables, but this would possibly lead to omitted-variable biases. However, reducing the number of explanatory variables may not do so if the included variables are theoretically informed.

Collier (2004) suggested that a causal-process observation may help overcome small-N inference problems by providing information on context, process and causal relationships.

Therefore, focused case studies that compare the policy processes and outcomes across cases are better suited to illuminate the extent and quality of the hypothesized causal relationships. In line with Lieberman (2005), the quantitative analysis will serve as a stepping-stone to selecting cases that allow a further testing of the hypothesis. In this chapter, I will outline how variables are operationalized and measured, discuss descriptive and empirical findings, and proceed to elaborate on the selection of cases studied in chapters 6, 7, and 8.

Large-N Analysis

Descriptive Findings

I hypothesized that the more inclusive citizenship configurations are, the less restrictive HSI policies are in regards to work rights. I also argued that the strength and policy integration of interest groups, and political veto points function as intervening variables. The y-axis in each plot holds the index scores for HSI policy rights restrictiveness where values towards (0) indicate low restrictiveness, and values toward (1) indicate high restrictiveness. There is a negative trend in the data, suggesting that the more inclusive citizenship is, the lower the restrictiveness in rights. The level of corporate coordination also appears to be negatively associated with rights, while a strong positive effect on rights is exerted by the level of union coordination, i.e. the greater union coordination and strength, the greater the restrictiveness in rights. The number of veto points and players, however, appears not to be associated to higher or lower restrictiveness in rights by itself.

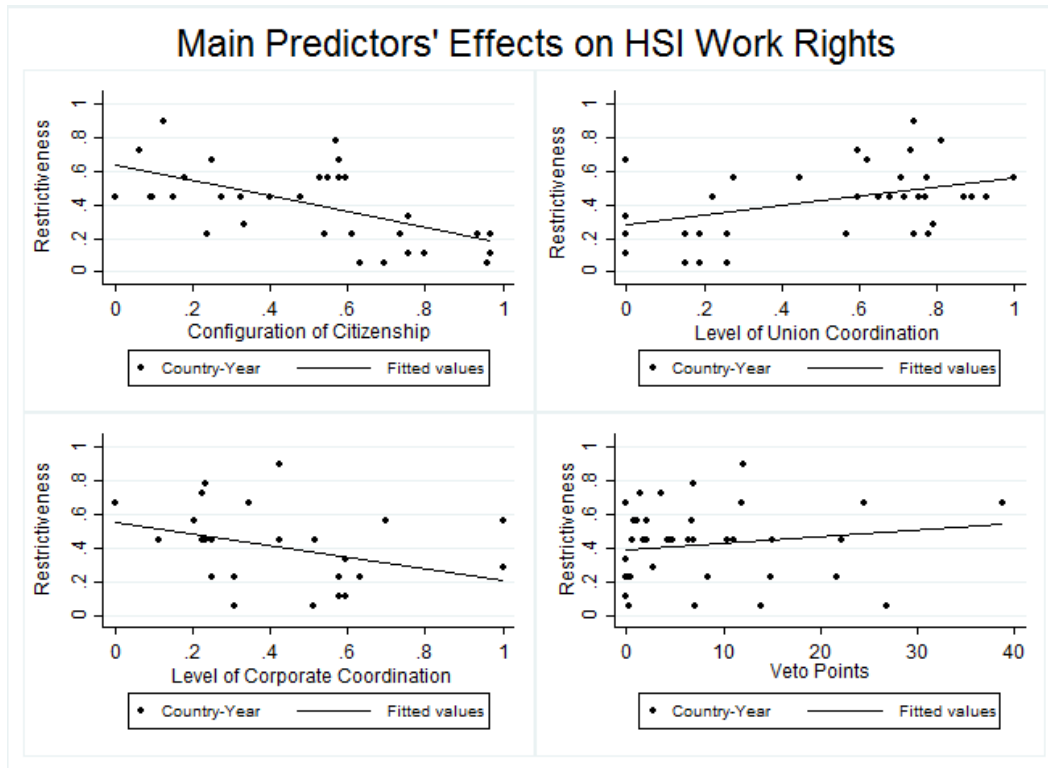


Figure 5.1: Descriptive Scatterplots of Bivariate Relationships

In order to investigate the main independent variable's bivariate relationship with rights more, I examined it separately in Figure 5.2, which contains a scatter plot, plotting values for the dependent and independent variables for all country-year observations.³³ The y-axis holds the scores for policy restrictiveness where values towards (0) indicate low restrictiveness, and values toward (1) indicate high restrictiveness. The x-axis shows the scores for the institutions of incorporation index where inclusive regimes tend toward a value of (1), and exclusive regimes toward (0). A Pearson's r test of -0.60 supports that the association is strong.

³³ Countries were abbreviated in the following way: Australia (AU), Austria (AT), Canada (CA), Denmark (DK), Finland (FI), France (FR), Germany (DE), Ireland (IE), Netherlands (NL), New Zealand (NZ), Norway (NO), Portugal (PT), Spain (ES), Switzerland (CH), United Kingdom (UK), and United States of America (US).

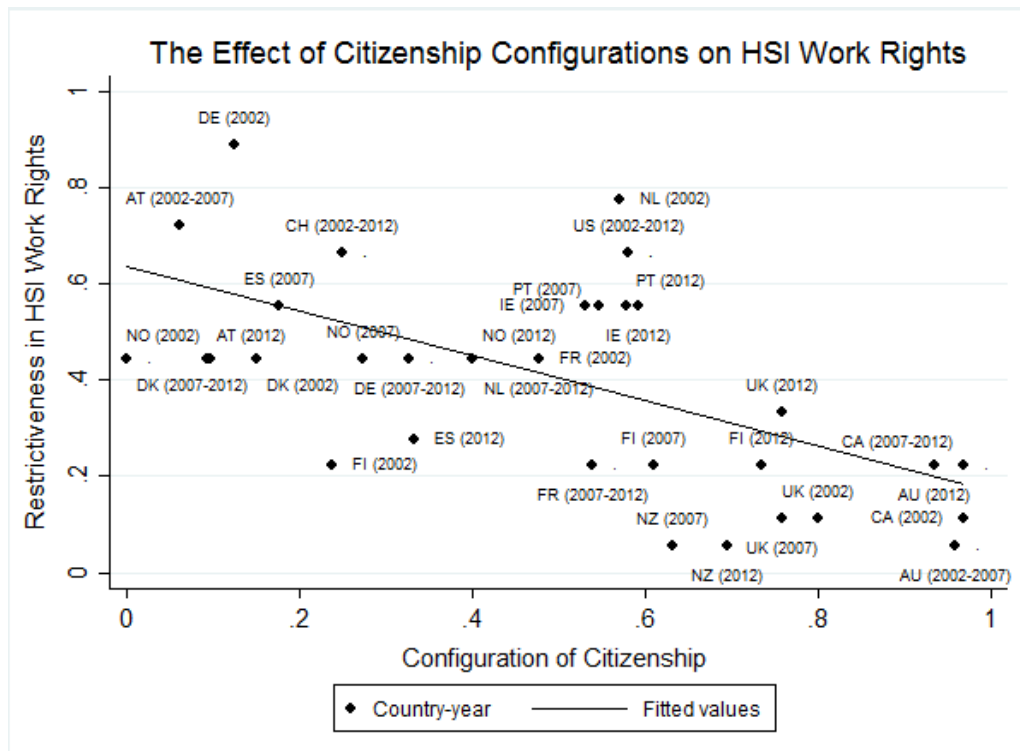


Figure 5.2: Scatterplot of Bivariate Relationship between Citizenship and Work Rights

Observations with relatively low citizenship scores are associated with medium-to-high rights restrictiveness, while observations that share a medium citizenship score tend to vary from high to little restrictiveness. Lastly, observations with high citizenship inclusion demonstrate low restrictiveness in rights. Of note is the dynamic relationship between different observations from the same country. For example, the United States and Switzerland have identical observations for all years, while observations for Germany, Finland, and Norway demonstrate clear variation over time.

Regarding my expectation that countries within these groups cluster around specific HSI scores, I constructed a vertical boxplot that shows the distribution of HSI scores between the cell-types. Figure 5.4 supports that observations that fall within the multiculturalist citizenship type are

clearly associated with less restrictive rights, while data points in the low-low type tend to be more restrictive. The whiskers indicate the range, the greatest and least value, in an observations group, excluding outliers. The diamond symbol shows the mean, while the white line indicates the median observation. Further, we can observe that the means of the multiculturalist and universalist regimes are different, that the universalist groups' mean is higher, and that the bulk of the two scores do not touch each other. France in 2007 and 2012 appear as an exception to the universalist type, with much less restrictive rights. Lastly, Finland in 2002 and Spain in 2012 similarly are less restrictive despite featuring rather assimilationist citizenship provisions, and appear to be almost outliers, driving the average score of the assimilationist type.

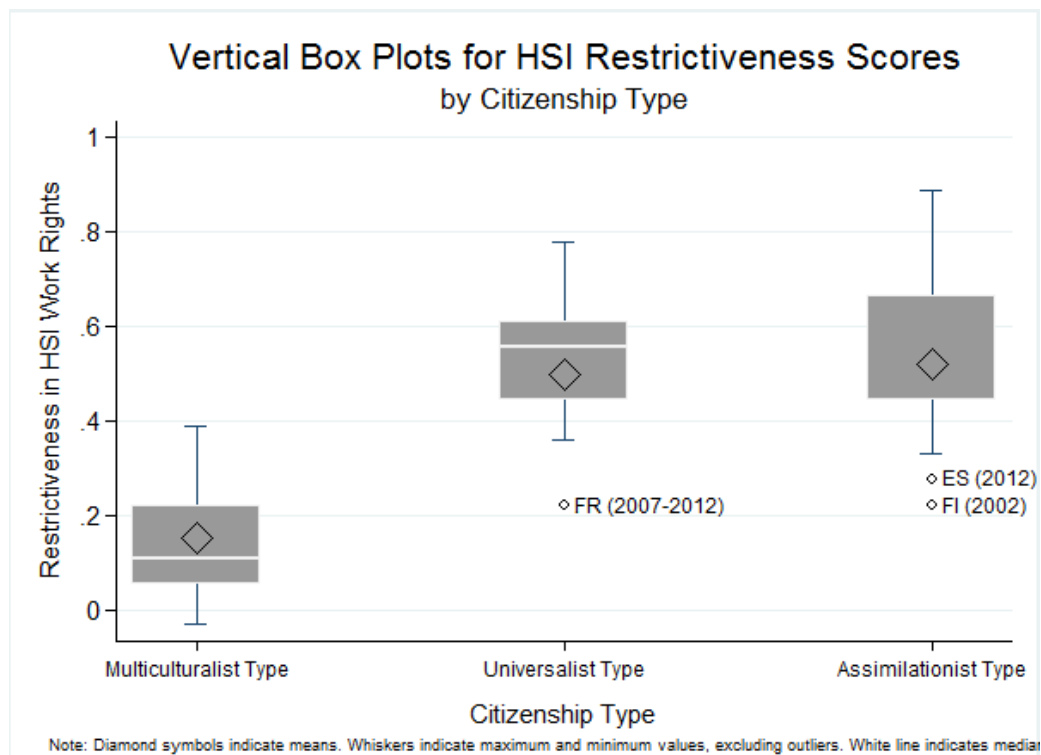


Figure 5.3: Vertical Boxplot for Work Rights by Citizenship Configuration Type

Empirical Findings

As both the dependent and the independent variables are slow-moving variables and only measured at three time-points, the most appropriate approach to analyze the data is to focus on a pooled, cross-national analysis rather than a longitudinal one (Goertz 2011). I therefore estimated two ordinary least-square (OLS) regression models and one hierarchical linear model. Model 1 (see Table 5.2) includes the main independent variable *citizenship configuration*, the interest group predictors, and the strongest, significant predictor of the control variables, *welfare regime*. Since the number of observations is quite low, the reduction of degrees of freedom through adding additional parameters is of particular concern here. I have therefore included only the four main estimators in the model, plus each additional control separately to test for their effect. The results are shown in Table 5.3.

My analysis concerns time-points that are nested in countries, meaning that observations across time in a given country share more similarities with each other than with observations in another country. As such, this violates the assumption that observations are independent of each other. To address this, Model 2 includes the same variables, but this time was run as an OLS regression with clustered standard errors. Model 3 estimates the same but as a linear random-effects model. The comparison of the results from all the models (shown in Table 5.2) suggests that the results are robust to estimation method.

The first thing to note is that the main independent variable, *citizenship configuration*, has a clear significant and substantive effect on the dependent variable, *work rights*. Across all estimation methods, the coefficient remains significant and only slightly decreases in its size. The coefficient size of -0.40 suggests that a one unit increase in citizenship inclusiveness is associated with a 0.40 decrease in work rights restrictiveness on average and holding all else held constant.

Table 5.1: Main Determinants of HSI Work Rights

	Model 1	Model 2	Model 3
Citizenship configuration (t-2)	-0.40** (0.141)	-0.40** (0.132)	-0.40* (0.159)
Veto-points (t-2)	0.01 (0.005)	0.01* (0.003)	0.01 (0.005)
Citizenship configuration*Veto-points (t-2)	-0.02 (0.010)	-0.02 (0.009)	-0.01 (0.010)
Union coordination (t-2)	0.24* (0.110)	0.24* (0.090)	0.24 (0.129)
Corporate coordination	-0.36*** (0.100)	-0.36** (0.115)	-0.35** (0.120)
Welfare regime	0.15** (0.047)	0.15** (0.043)	0.14* (0.055)
Constant	0.31* (0.142)	0.31* (0.111)	0.33* (0.167)
Observations	44	44	44
R-squared	0.618	0.618	0.614
R-squared adj.	0.555	0.555	
R-squared within			0.053
R-squared between			0.730
Number of countries			16

Standard errors in parentheses

*** p<0.001, ** p<0.01, * p<0.05

Second, both traditional predictors—union coordination and corporate coordination—are significant as well. As expected, the more powerful, integrated, and coordinated unions are, the more restrictiveness in work rights can be observed. However, in the hierarchical model, this effect is not significant at conventional levels. A one-unit increase in union coordination is associated with a 0.24 increase in the restrictiveness score on-average and holding all else constant. In contrast, corporate coordination has the opposite effect—the more that corporate interests are coordinated, the less restrictive work rights are. A one-unit increase in corporate coordination is associated with a 0.36 decrease in the restrictiveness score. This effect remains stable in all model

specifications. However, I remain cautious about conjectures that corporate coordination is more reliable as a predictor. In comparison to all other variables, observations across time show less variation, and hold duplicates due to data limitations.

Of note is the effect of the veto-points variable. When not including an interaction term (See Table 5.2, model 4), the effect of veto-points on work rights restrictiveness is only significant at level $p < 0.07$. However, in the expanded model (Table 5.1, model 2), a one point increase in veto-points is associated with a 0.01 decrease in work rights. As figure 5.4 illustrates, the impact of veto-points also varies over the levels of citizenship: when citizenship is at its lowest (0), we see the positive influence leading to an increase in restrictiveness; when citizenship rises to its higher levels, .5 and .75, however, veto-points exert a negative influence leading to greater liberalization in work rights. Notwithstanding this finding, the effect of veto-points does not remain statistically significant when used in different model specifications. Moreover, using Henisz's measure this effect could not be reproduced.

Lastly, the welfare type was also a significant predictor across all estimation methods, but its effect is comparatively small—switching from the universalist welfare regime to the conservative one, and from the conservative to the liberal regime, is associated with a 0.15 increase in the work rights index. As the welfare regime type approach is a little cruder than an exact measure of specific unemployment, pension or other social benefits, I used the generosity index as an alternative measure. The results were not significant.

I also tested whether the effects of union and corporate coordination, as well as welfare regimes, on work rights changes at different levels of citizenship inclusiveness. I created interaction terms and individually tested for them in separate models. None of them were significant. Furthermore, I used the alternative measure of *employment protection* in lieu of union

coordination, to test indirectly for greater union power, as well as the general level of concertation for interest groups and government. Both indicators remained non-significant in various model specifications.

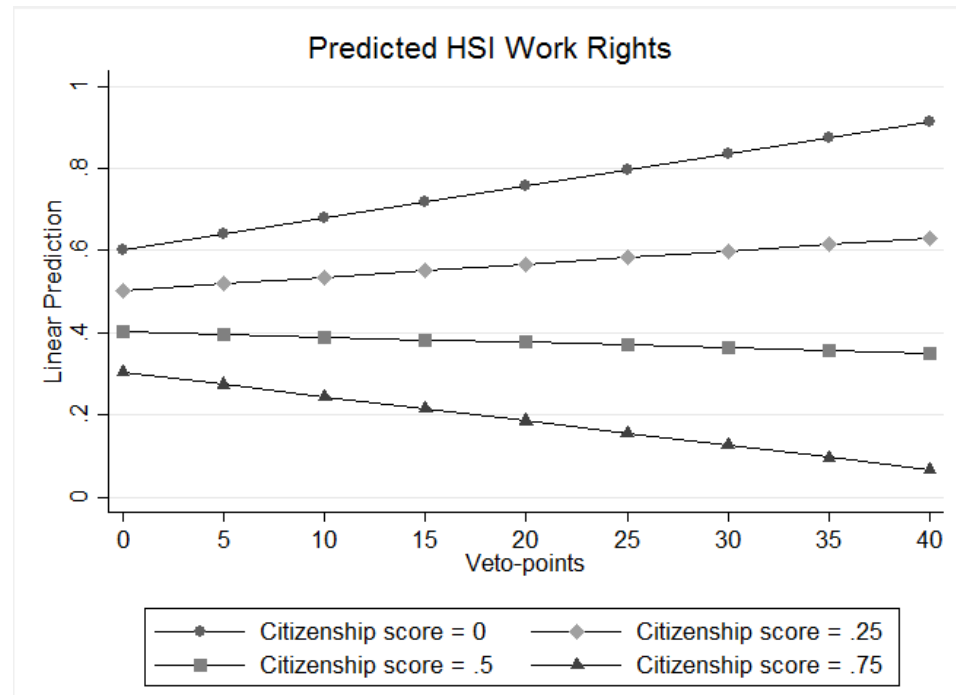


Figure 5.4: Interaction Effect of Citizenship Configuration and Veto Points on Work Rights

Turning to the control variables in Table 5.2, we can see that previous theoretical expectations about a diminished role of these determinants is supported. In Models 4 through 10, I included one of the controls at a time. As demonstrated in the adjusted R-squared scores, model fit was not enhanced by adding any of the variable, except for controlling for the presence of a left-leaning government in interaction with veto-points. The presence of a center-left government is associated with a 0.15 decrease in restrictiveness, but with increasing veto-points this effect gets closer to 0, i.e. the more veto-points are present, the less of a mediating influence do center-left parties have on restrictiveness in work rights.

Table 5.2: Robust Regression of Main and Secondary Determinants of HSI Work Rights

	Model 4	Model 5	Model 6	Model 7	Model 8	Model 9	Model 10
Citizenship configuration (t-2)	-0.52** (0.146)	-0.48** (0.126)	-0.53** (0.147)	-0.54** (0.165)	-0.54** (0.134)	-0.52** (0.133)	-0.51** (0.155)
Union coordination (t-2)	0.22* (0.091)	0.23** (0.077)	0.23* (0.090)	0.22 (0.261)	0.25** (0.072)	0.27* (0.097)	0.22* (0.087)
Corporate coordination	-0.34** (0.113)	-0.31** (0.097)	-0.35** (0.110)	-0.34* (0.122)	-0.35** (0.101)	-0.34** (0.108)	-0.38** (0.126)
Welfare regime	0.15** (0.048)	0.16*** (0.033)	0.15** (0.049)	0.14* (0.054)	0.19** (0.052)	0.18** (0.055)	0.16** (0.044)
Veto points (t-2)	0.00 (0.002)	-0.01 (0.005)					
Left government		-0.17* (0.069)					
Left government*Veto-points		0.01* (0.006)					
GDP growth (%)			-0.00 (0.010)				
Anti-Immigrant Party (AIP) Vote Share				-0.01 (0.010)			
AIP*Electoral system				0.01 (0.010)			
Foreign-borns (%) (t-2)					-0.01 (0.007)		
R&D intensity (t-2)						0.05 (0.055)	
EU member							0.05 (0.076)
Constant	0.36* (0.130)	0.37** (0.108)	0.37** (0.123)	0.43 (0.206)	0.36** (0.094)	0.17 (0.251)	0.34* (0.114)
Observations	44	44	44	44	44	44	44
R-squared	0.585	0.669	0.585	0.595	0.602	0.604	0.592
R-squared adj.	0.531	0.604	0.530	0.516	0.549	0.551	0.538

Linear regression with clustered standard error. Robust standard errors in parentheses

*** p<0.001, ** p<0.01, * p<0.05

Furthermore, neither the presence of strong anti-immigrant parties, changes in economic growth, EU membership, R&D expenditure, nor share of foreign-borns as a percentage of the total population had a statistically significant effect on work rights. Alternative measures including

unemployment rate, increase in foreign-borns, and R&D measured as percentage of employment share of high and medium-high technology manufactures did not alter the regression results.

Turning to robustness tests of the main model specification, I first conducted collinearity diagnostics summarized in Table 5.4. A test for the variance inflation factor (VIF) for each predictor reveals that none of the variables share a strong linear relationship with each other. Generally, a value higher than 10 should give concern. The tolerance measures for each predictor show that only roughly 28 percent of citizenship configurations and 34 percent of union coordination's and welfare regime's variances are independent of other variables. The condition index, an alternative to the VIF, indicates that there is only a moderate, but still acceptable, problem with the welfare regime predictor.

Table 5.3: Summary of Collinearity Diagnostics

Variable	VIF	Sqrt VIF	Tolerance	Eigenvalue	Condition Index
Work rights	2.410	1.550	0.415	4.913	1
Citizenship configuration	3.520	1.880	0.284	0.647	2.755
Corporate coordination	1.400	1.180	0.715	0.296	4.075
Union coordination	2.870	1.690	0.348	0.100	7.005
Welfare regime	2.940	1.710	0.341	0.0263	13.66
	Mean VIF	2.63	Condition	Number	16.83

Further, I tested for heteroscedasticity to discern whether the error terms are indeed, as assumed, uncorrelated and uniform. A Breusch-Pagan test yielded a low chi-square value, indicating that heteroskedasticity was not a problem. I then inspected which observations may have larger than average residuals and/or greater than average leverage. Since I have a small sample size, I need to check for influential observations that have an unduly strong effect. A test for Cook's distance reveals that two cases may be problematic, Finland (2012) and Netherlands

(2002), as they are slightly over the cut-off point of acceptable values for leverage and residuals. A hat- test for leverage also identifies Ireland (2007) as slightly higher than the average, yet with 0.32 it remains under 0.5, which is usually considered the threshold for an undue leverage.

Now, considering that Finland (2012) and Netherlands (2002) appear to be problematic, I tested the differences between regression coefficients when the two observations are included and when they are excluded from the sample. The test was positive, meaning that excluding the cases shifted the coefficient at least one standard error. I therefore re-ran the model to account for this in the OLS model, robust regression model, and in the linear hierarchical model, resulting in the loss of statistical and substantive significance for the union coordination variable in all specifications. There are two potential explanations for this. First, union coordination is an unstable predictor by itself, not clearly related to an increase in restrictiveness, which may be indicative that unions are not always against highly-skilled immigration. Second, Finland and the Netherlands are just two extreme cases with very strong unions but relatively liberal work rights, and assuming the sample size was larger, these cases would not exert so much influence on the regression coefficients.

To further test theoretically worrisome observations, I tested differences in estimates by excluding cases that held extreme values of the main explanatory variable, citizenship configuration. This affects all observations from Canada and Australia, with the most inclusive provisions, and all observations of Denmark and Austria with the most exclusive provisions. First, excluding observations from Denmark and Austria led to a citizenship coefficient of -0.62, indicating that an increase in inclusiveness is associated with a 0.10 point greater decrease in restrictiveness than with these cases. All other coefficients and significance levels remained stable. Second, excluding only observations from Australia and Canada, the citizenship coefficient was

at -0.45, roughly a 0.08 point increase in restrictiveness than with the observations included. Results for all other variables held, but were now statistically significant at a 0.01 level.

Lastly, I further considered that one of the work rights index's indicators, permanent residence, could strongly overlap with citizenship provisions. I therefore used an alternative work rights index that was based only on worker portability and spousal employment rights. Running the main models again, the citizenship coefficient remains significant, with a slightly lower coefficient. All other predictors remain stable, except for union coordination.

In conclusion, there appears to be a significant effect of citizenship configuration on work rights for highly-skilled immigrants, and the results of robustness tests and different model specifications provide further evidence for the reliability of my findings. However, results for union coordination seem not to be very stable, and the interaction effect between citizenship configuration and veto-points, though not reaching conventional levels of significance, require further analysis.

Small-N Analysis

Case Selection

As the findings of the large-N analysis are largely robust and the relationships have been found as predicted, a small-N analysis was conducted to gather further evidence for the proposed relationship (Lieberman 2005). As discussed above, the results were satisfactory, i.e. coefficients aligned with theoretical interpretations and were statistically significant, and the model fit was acceptable. Additional tests using different model specifications supported that the findings are robust. Passing these criteria, the model can be used for further testing in detailed case studies, selecting typical cases that are “on the regression line”, i.e. that are best predicted by the model to

test the stated causal mechanism hypotheses (Lieberman 2005).³⁴ Since the country-year observations are not available for every year, but only at three larger periods, immigration policies or reform of immigration policies in these periods are considered. Furthermore, since the large N-analysis was mainly confined to cross-sectional analysis, the small-N analysis offers the opportunity to track changes between different observations. As suitable cases, I identified four observations, as depicted in Figure 5.5—Austria’s policy reform from 2009-2010, Finland’s policy reform from 2003-2004, Germany’s 2000-2001 and 2002-2004 policy reforms.

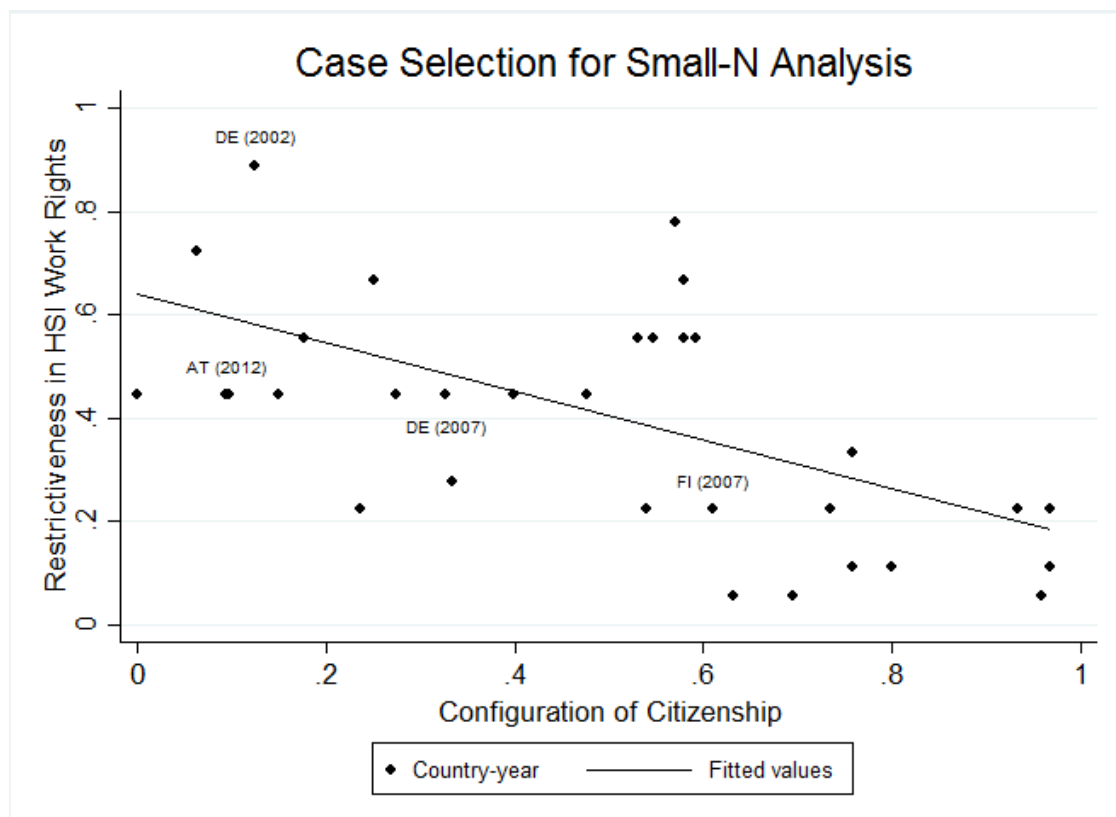


Figure 5.5: Case Selection for Small-N Analysis.

³⁴ While theoretically intriguing, deviant cases are better suited for generating new hypotheses and contributing to model-building, rather than hypothesis and model-testing (Lieberman 2005, Gerring 2007, 89, 105-108).

The extent of changes in policies is particularly interesting, given the theoretical argument about policy output being the outcome of vector sum of competing forces. This suggests that case selection should also avoid selection bias in regard to the extent of changes in policies. The first reform in Germany resulted in relatively restrictive work rights, while the second reform resulted in greater liberalization of work rights. The Finnish reform resulted in liberal work rights, but was not substantially more liberal than before. The Austrian case resulted in liberal work rights, and was substantially more liberal than shown previously. The case selection here focuses on changes in work rights, remaining silent on changes in admission criteria. Individual case analyses, however, will address both. Some characteristics, such as the overall interest group system are held constant (all countries feature more or less neo-corporatist policy-making).

Table 5.4: Case Selection Criteria in Relation to the Extent of Change in Work Rights

		Configurations of Citizenship	
		Inclusive	Exclusive
Change	Substantial	Germany (Immigration Law, 2005) ³⁵	Austria (Red-White-Red Card, 2011)
	Marginal	Finland (Aliens Act, 2005)	Germany (IT Green Card, 2001)

Methodology for Small-N Analysis

In order to test the proposed causal relationships, I have conducted field work in all three countries, consisting of 35 interviews with politicians, administrative and academic experts, and interest group representatives. I recruited participants through a non-random sampling method, selecting suitable participants from public records, and while on-site, also through snow-ball sampling for additional interviewees. Since I employed both approaches, I covered a wide variety

³⁵ This case has been placed in the conceptual category featuring inclusive citizenship configurations and substantial changes for pragmatic analytical reasons. Although German citizenship configuration at that time falls into the exclusive citizenship typology cell, it is substantially more inclusive than in the previous time period.

of participants in order to avoid selection biases. Each participant was subjected to a one-hour, face-to-face, semi-structured interview. All questions and follow-up questions were based on an 18-question questionnaire, inquiring about different potential causes for highly-skilled immigration.³⁶ Additionally, I employed a “branching and building strategy” (Checkel 2006, 369), modifying and refocusing some questions according to information gathered in previous interviews, while maintaining the theoretical core of the questions. In addition to interviews, I used several different sources of data including public statements and international reports, parliamentary and committee protocols, and various secondary sources.

In the following chapters, I will outline the findings of all case studies. In chapter 6, the two Germany cases are discussed, while chapter 7 examines the Austrian case, and chapter 8 analyzes the Finnish case. In chapter 9 the main hypotheses, according to the observations and evidence gathered, are subjected to necessary and sufficient tests of causal relevance. In order to avoid confirmation bias, I also gathered data on all rival explanations: interest group preferences, interest group power and coalitions, influence of the European Union, influence of right-wing anti-immigrant parties, the type of welfare state, the business cycle, the number of foreign-born residents, and the size or relevance of the IT-industry.

³⁶ A questionnaire sample is included under Appendix C.

CHAPTER 6

GERMANY, GREEN CARD FOR IT-SPECIALISTS (2001) AND RESIDENCE ACT (2005)

Reform of highly-skilled immigration policy in Germany has been an incremental policy process, uncovering the particular power of veto-players and veto-points. But the two German cases represented here are also of significance because they demonstrate the dynamics of changing understandings of national identity and ethnic relations. These changes have not only provided leverage for a more open immigration policy, but also have produced a greater push-back against an all too open stance on immigration. The cases indicate how contentious the change of the German Nationality Law in 2000 was, and in particular how politicians have used exclusive understandings of ethnic relations to mobilize public opposition.

This chapter documents and analyzes the two policy processes. The first one (1999–2000) resulted in the adoption of the IT-Green Card; the second policy process (2002–2004) resulted in the adoption of the Immigration Act, which is a bundle of different reforms, including the Residence Act. Briefly situating the both processes in the larger context of immigration to Germany in the post-war era, I turn first to Germany's citizenship regime and how it is related to perceptions about national identity and ethnic relations. After laying out reasons for the policy development of the IT-Green Card along with principle policy actors and their policy preferences, I will analyze which considerations played out during the policy-drafting and passing of the bill. I will then discuss the Immigration Act, and elucidate which changes have taken place in regard to policy actors' preferences, and analyze the policy process. To conclude the findings, I will discuss

the observations and evidence according to main and alternative theories, and compare the findings to the first policy process.

Background: Immigration to Germany

Germany's labor migration history reaches far beyond the post-war era, but of particular interest for this analysis is the trajectory of recent immigration policies influenced by the guest-worker system and later humanitarian migration. In need of mainly manual labor during the 1950s, the German government forged several bilateral guest-worker agreements with Italy, Spain, Greece, Turkey, Morocco, Portugal, Tunisia and later Yugoslavia, and actively advertised Germany as a migration destination (OECD 2013b, 68). As these guest-workers were hired for temporary labor shortage relief, the explicit expectation was that these workers leave after the end of their contracts; consequently, little effort was made to include foreign workers legally or politically. Implementing the formal regulation of residence and work authorizations for the new influx of workers, the Aliens Act of 1965 provided bureaucracies with broad discretionary power to use legal regulations as an instrument of migration control (Sachverständigenrat 2004, 126). Between 1955 and 1973, more than four million immigrants entered Germany under this legal framework (Kolb 2013, 61).

With the oil-shock in 1973 and the following recession, Germany officially declared an end to foreign worker recruitment (*Anwerberstopp*) in 1973 barring all further labor migration indefinitely (Cyrus and Vogel 2005, 2, Kolb 2013, 61). Though the decision of a general restriction on labor migration was justified mainly through a lessened demand for foreign workers, increasing family migration, and several legal exemption ordinances to facilitate targeted labor migration if needed, contributed to the maintenance of the *Anwerberstopp* (Sachverständigenrat 2004, 126,

Kolb 2013, 61-62). During the 1970s and 1980s, most effort was focused on incentivizing return-migration, explicitly seeking to prevent integration of guest-workers (Bade and Bommes 2000, 174-175). However, very few of the former guest-workers returned to their home countries as anticipated, but rather brought their spouses and families to Germany as well (OECD 2013b, 69). The failure of an intended temporary labor migration led to the wide-spread perception that immigration was essentially impossible to control (Schönwälder 2013, 281). As the number of asylum seekers drastically increased—within five years from 9,600 to 108,000— the German government saw itself forced to adopt even more restrictive policies (Sachverständigenrat 2004, 126).

The political reality was, for the most part, characterized by rather pragmatic approaches to immigration (Bade and Bommes 2000). Yet, with the start of the 1990s, the growing foreign-population sparked an immigration debate that was further politicized with the arrival of another mass migration of asylum seekers after the fall of the iron curtain in 1989. Although the German government increased border controls and tightened asylum law as well as admission for ethnic Germans, the public anti-immigrant controversy drowned out arguments for substantial immigration reforms (Cyrus and Vogel 2005, 1-2, OECD 2013b, 69). Even the passing of the new Aliens Act in 1990, introducing new regulations of work admission and residence provisions as well as a list of occupations exempted from the recruitment stop, did not entail significant changes to the “zero-immigration” policy of the past decades (Sachverständigenrat 2004, 127, OECD 2013b, 69).

Citizenship Configurations and National Identity

Germany falls into the assimilationist category of citizenship configurations. Since Brubaker's (1992) seminal work on traditions of nationhood, Germany has been known as a country with strong *ius sanguinis* tradition, i.e. the acquisition of German nationality was largely tied to descent. An outcome of the German nation-building process, emphasizing national belonging as shared through common ancestry, language and history, the *ius sanguinis* principle has been in force since the Nationality Law of 1913 (*Reichs- und Staatsangehörigkeitsgesetz*) and remained essentially unchanged until the 1990s (Bauder 2013, 13-14). In light of the increasing number of foreign residents, however, criticism arose that recently arrived ethnic Germans were privileged in access to naturalization over former guest-workers who had been residing for decades in Germany, as well as the inability of second-generation immigrants born in Germany to acquire German citizenship at birth (Bauder 2013, 14).

This led to an important reform of the Nationality Act in 1999, in force since 2000. With the passing of the new Act, immigrants were now eligible for naturalization after a permanent legal residence in Germany of eight years (Ministry of Interior 2011, 133). Most importantly, German nationality can now be acquired automatically by *ius soli at birth* retroactively even by children of non-nationals born in Germany since 1990. However, this *ius soli* element comes with several conditions. First, at the time of birth of the child, the parents must have had their legal residence in Germany for at least eight years on an unlimited permanent residence permit, or be a national of another EEA or EU member state. Second, children born to non-national parents are entitled to German citizenship but have to decide for one citizenship at the end of their 22nd year, otherwise their German citizenship is automatically revoked (EUDO 2015, Winter 2013, 35).

The obligatory choice between one of two nationalities shows also the limitations of German national identity change. Dual nationality became a decisive bone of contention in the policy process for the new Act. The initiation of a nationality law reform came in the wake of the national election in 1998, after which the governing coalition of the Social Democrats (SPD) and Green Party emerged. While the governing coalition favored dual citizenship provisions for children born in Germany, the major opposition party—the Christian-Democrats (CDU)—were vehemently opposed, arguing that such a provision would incentivize mass migration, and undermine the naturalized citizens' loyalty to the German state. The controversial issue was politically exploited during regional electoral campaigns of the CDU in the election in the federal state of Hessen in 1999, and successfully mobilized the public through populist arguments against a dual citizenship provision. The electoral success of the campaign effectively changed the voting distribution in the upper house of the German parliament, the *Bundesrat*, in favor of the conservatives. Dependent on the support of the *Bundesrat*, the coalition parties therefore agreed to the Christian-Democrat's demand to remove a full *ius soli* principle. Thus, the liberal step towards a more inclusive definition of German nationality provoked a conservative backlash (Winter 2013, 36, Bade and Bommes 2000, 191-192, Cyrus and Vogel 2005, 2).

Multicultural policies and commitments are less developed in Germany. Although Germany has some recognized autochthonous minorities such as the Sorbs in East Germany, or the Danish in North-Western Germany, there are no extensive privileges or minority rights attached to this status.³⁷ Traditionally, multicultural policies have been tied to minorities, and not

³⁷ The Danish minority does enjoy electoral threshold exceptions for their ethnic party and funding for schools and cultural associations in the state of Schleswig-Holstein. The Sorbs have a recognized right to cultural preservation by the states of Sachsen and Brandenburg, and within the Sorb-dominated communities bilingual street and city signs are granted. However, in both cases, these concessions have been made by the regional governments, and do not extend to other minorities.

to immigrants. Not until the 1980s and 1990s did general principles of multiculturalism emerge as a subject in public debates. However, despite increasing attention to Germany's potential multicultural character, these debates have remained on an intellectual level with no practical policies following (Kraus and Schönwälder 2006, 203-204). There is no explicit constitutional or legislative affirmation of, or commitment to multiculturalist goals, and Germany lacks affirmative action laws. Furthermore, while multicultural education, funding for ethnic groups, and bilingual or mother-tongue instruction exist, they vary strongly in their extent. Depending on the city or regional context, they are not necessarily part of explicit, mandatory multicultural agendas (Kraus and Schönwälder 2006, 205-210, Tolley 2011, 43-48). There are, however, to some extent, exemptions for immigrants in regard to dress code, but it is not consistently applied and is still controversial (Tolley 2011, 43-48).

Policy in Question No. 1: IT-Green Card (2000)

The Green Card for IT-Specialists (*Verordnung über die Arbeitsgenehmigung für hoch qualifizierte ausländische Fachkräfte der Informations- und Kommunikationstechnologie*) was Germany's first publicly visible step away from its 'zero immigration policy' since the recruitment stop in 1973. The Act is geared towards individuals holding a tertiary degree in computer science and communication technology, or comparable qualifications (measured in a prospective income of at least 51,000 EUR), and have a concrete job offer in Germany. It serves mainly as a fast-track work and residence permit: Individuals who are granted this work permit are exempted from labor market tests, and face a less bureaucratic immigration process (Sachverständigenrat 2004, 132-133). The Green Card was valid for a period of three years, and could be renewed for one year to up to a five-year maximum stay. However, no legal channel included more permanent provisions

after the five years were up. While workers under the Green Card were able to switch employers after one year, their permit was tied to the occupational field of computer science and information technology. Applicants were further allowed to bring their spouses with them, and after a waiting period of two years, they were eligible to apply for a regular work permit, labor market tests pending (OECD 2013b, 46).

Reason for Policy Reform

The Green Card for IT specialists is indirectly the outcome of a general social reform climate during the late 1990s,³⁸ and directly a result of a proclaimed demand for foreign IT-specialists in the German economy (Sachverständigenrat 2004, 132-133, OECD 2013b, 70). Publicized by the occupational IT interest group BITKOM, the IT and communication sector were lacking 70,000 skilled workers (OECD 2013b, 70). BITKOM claimed an acute scarcity of qualified workers in the German IT industry, which would endanger the future of this sector and Germany's economic development in general.³⁹ It was anticipated that through this immigration scheme around 20,000 foreign skilled workers should come to help bridge temporary labor shortages in the German economy (Sachverständigenrat 2004, 132-133).

Policy Actors

Among bureaucratic policy-makers, the most important policy actors resided in the government ministries.⁴⁰ However, their position is less influential due to the fragmented policy-process of German politics. The German political system is characterized by multiple institutional

³⁸ Author interview with executive officer, German Institute for International and Security Affairs (May 15, 2014, Germany).

³⁹ Ibid.

⁴⁰ Author interview with policy expert, University Duisburg-Essen (May 21, 2014, Germany).

veto-points, established through constitutional federalism that grants strong competencies to federal units—for example, in regard to immigrant integration policy (Cyrus and Vogel 2005, 27). In addition, networks between legislators and stakeholders are a common source of policy-making. Germany is characterized by a neo-corporatist mode of policy-making, although not as strongly as Austria and Finland, in which the participation of social and economic stakeholders in forming commissions tasked with reform proposals and advisory groups is a common practice (Cyrus and Vogel 2005, 29). Particularly strongly involved in economic policy-making are peak employer interest groups, such as the Federation of German Industries (*Bundesverband der Deutschen Industrie*, BDI)—an umbrella organization representing over 30 industry sector associations; the peak employer association Confederation of German Employers' Associations (*Bundesvereinigung der Deutschen Arbeitgeberverbände*, BDA), and the Chamber of Commerce and Industry (*Industrie- und Handelskammer*, IHK). A similarly strong position do peak labor unions assume, in particular the umbrella organization, Confederation of German Trade Unions (*Deutscher Gewerkschaftsbund*, DGB).

Lastly, political parties were a crucial player in the policy debate, although their positions were by far more complex and juxtaposed than it seems. Within the two largest parties—the conservative CDU and the social-democratic party SPD—ambivalent positions prevailed. While the socially-conservative wing of the CDU was against any further immigration, their business wing was in favor of easier hiring regulations for companies. In the SPD, politicians with ties to the unions acted more as a braking force, while the socially liberal wing of the SPD was strongly for an affirmative and open stance toward immigration.⁴¹ Vogel and Wüst (2003, 269) group the major political parties from openness to restrictiveness in regard to their immigration policy

⁴¹ Author interview with policy expert, Bertelsmann Foundation (May 23, 2014, Germany), and policy expert, Institute for Migration Research and Intercultural Studies (July 11, 2014, Germany).

stances as follows: Greens, Free Democratic Party (FDP), SPD, and CDU. It is important to note that in terms of national identity, both parties, SPD and CDU, held similar convictions.⁴² With the difference that in the past, conservative parties had favored ethnic migrants, while social democrats had favored foreigners (Vogel and Wüst 2003, 267).

Policy Process

In 2002, Chancellor Gerhard Schröder somewhat spontaneously announced the Green Card initiative during the “CeBIT”—an international computer trade show (Kolb 2003b, 235, Bade and Bommes 2000, 168). During the more concrete development of the scheme, the DGB was one of the more conservative forces in line with previous restrictive positions on the recruitment stop in 1973, and the Aliens Act reform in the 1990s.⁴³ The DGB was almost reflexively opposed to the Green Card,⁴⁴ as it was argued that Germany had enough qualified domestic workers already, and labor migration would increase competition for German workers and the risk of wage dumping.⁴⁵ The big unions were not principally opposed to highly-skilled labor migration per se, as highly-skilled immigrants often worked in white-collar and managerial occupations; hence, they were viewed as complementary and not as a replacement of the domestic work force. But they were opposed generally to any further foreign labor immigration.⁴⁶

⁴² Author interview with executive officer, German Institute for International and Security Affairs (May 15, 2014, Germany).

⁴³ Author interview with executive officer, Expert Council of German Foundations on Integration and Migration (May 14, 2014, Germany), and executive officer, German Trade Union Confederation (DGB) (June 2, 2014, Germany).

⁴⁴ Author interview with executive officer, Expert Council of German Foundations on Integration and Migration (May 14, 2014, Germany).

⁴⁵ Author interview with executive officer, German Trade Union Confederation (DGB) (June 2, 2014, Germany), and policy expert, Institute for Migration Research and Intercultural Studies (July 11, 2014, Germany).

⁴⁶ Author interview with executive officer, German Trade Union Confederation (DGB) (June 2, 2014, Germany).

The employer associations were ambivalent toward the idea of a Green Card for IT specialists. On the one hand, the BDI—an umbrella organization representing over 30 industry sector associations—expressed little interest in the Green Card chiefly because the big industry companies had less of a need for a new legislative instrument. In its original conception, the Green Card was thought to be a political tool for middle-sized companies, as larger international corporations were able to make use of inter-company transfer provisions to satisfy their labor demand (Sachverständigenrat 2004, 133).⁴⁷ Yet, the middle-sized companies feared the risks associated with employing foreign workers whose qualifications and language proficiency were difficult to compare to German standards. Hence, the BDA and the IHK were also only marginally interested in the Green Card process.⁴⁸ In contrast, IT sector associations such as BITKOM were vastly pushing for a liberalization of highly-skilled labor migration regulations, but did not really represent the corporate opinion.⁴⁹

On the national political level, attitudes toward the Green Card were far more conservative. While the card was tailored toward a specific group of immigrants, ostensibly economically needed and whose migration promised wider economic benefits of an increased IT-labor force, public opinion was opposed toward any more immigration (Kolb 2003a, 28-29). Political parties emerged as the key force in the public and policy debate, acting as independent policy-actors shaping support for or opposition to immigration (Kolb 2003a, 21, 28-29). Again the latent anti-immigrant discourse was used to mobilize against the Green Card, and as part of regional electoral

⁴⁷ Author interview with executive officer, Expert Council of German Foundations on Integration and Migration (May 14, 2014, Germany).

⁴⁸ Author interview with executive officer, Expert Council of German Foundations on Integration and Migration (May 14, 2014, Germany), and executive officer, German Institute for International and Security Affairs (May 15, 2014, Germany).

⁴⁹ Author interview with executive officer, German Institute for International and Security Affairs (May 15, 2014, Germany).

strategies, although this time less successfully so.⁵⁰ In a controversial public diatribe, the CDU-candidate for the regional election in the state of North Rhine-Westphalia demanded that instead of hiring foreign workers from India, Germany should invest in the IT education of German students; adding that the focus should be on the integration of already residing foreigners instead of hiring new ones. This understanding of ‘integration’ was rather assimilationist, however (Spiegel Online 2000).⁵¹ While an extreme outlier in the public discourse, the incidence showed that discussions on legislative proposals signaling an opening toward migration were strongly controversial; uncovering Germany’s conflictual relationship to immigration. The public controversy over whether explicit immigration laws after almost 30 years of the recruitment stop were necessary or not (Bade and Bommers 2000, 168) prompted the Ministry of Interior to initiate an “independent commission immigration” (*Unabhängige Kommission Zuwanderung*). The commission was tasked to develop core principles of a German immigration law and was publicly known as the *Süssmuth-Kommission*, named after the chair of the commission, Rita Süssmuth (OECD 2013b, 71).

Although the Green Card was a step toward immigration liberalization, it remained comparatively strict in regard to immigrant work rights.⁵² While there were also other parts of immigration and immigrant integration that were in need of reform, the Green Card was selected and publicized because an opening for highly-skilled immigration was deemed as easiest to pass.⁵³ Yet, an understanding that highly-skilled immigrants were not only part of the economy, but also would live in Germany as part of German society, was still lacking among policy-makers.⁵⁴ The

⁵⁰ Author interview with policy expert, University Duisburg-Essen (May 21, 2014, Germany).

⁵¹ In context of the upcoming election in North Rhine-Westphalia, he proposed to cut local mother-tongue instruction classes for student (Online 2000).

⁵² Author interview with executive officer, Expert Council of German Foundations on Integration and Migration (May 14, 2014, Germany).

⁵³ Ibid.

⁵⁴ Author interview with executive officer, German Trade Union Confederation (DGB) (June 2, 2014, Germany).

previous restrictive legislative framework concerning questions of security, visa application and family reunification for labor migrants remained in force and were not adjusted for the Green Card.⁵⁵ Consequently, work rights were rather restrictive, in particular in regard to worker portability and access to permanent residence titles. In a de jure sense, the Green Card was a continuation of using exemption ordinances to allow for targeted labor migration while upholding the recruitment stop. Thus the scheme did not fundamentally change German immigration policy (Kolb 2013, 62). Yet, in the given context, the Green Card provisions were as liberal as it was politically viable at that time.⁵⁶

Policy in Question No. 2: Residence Act (2005)

The ‘Law for Managing and Containing Immigration and for the Regulation of the Residence and Integration of EU-Citizens and Foreigners’—known more commonly as the Immigration Act—is the first systematic legal attempt to regulate immigration to Germany (Kolb 2013, 65). It is a bundle of different laws—the Residence Act, the Act on General Freedom of Movement for EU Citizens, and several amendments to additional legislation. The Residence Act is the key legislative instrument for the regulation of labor migration (Cyrus and Vogel 2005, 5), outlining three main types of targeted migrant groups: highly-skilled workers, investors, and international students graduating from German universities (OECD 2013b, 74).

Under the new Residence Act, two types of highly-skilled labor migrants are recognized. Under §18 of the Residence Act, “skilled migrants” are identified as individuals in managerial positions, scientific personnel for R&D, journalists, IT specialists and academics more generally,

⁵⁵ Ibid.

⁵⁶ Author interview with executive officer, Expert Council of German Foundations on Integration and Migration (May 14, 2014, Germany).

senior executives, and intra-company transfers (Heß 2009, 19). While these individuals can acquire a temporary work and residence title, they are still subject to a labor market test. This means, employers have to demonstrate that no German, EU citizen or permanently residing third-country national who applied was more qualified than the applicant (Feldgen 2003, 135).

Under §19 of the Residence Act, “highly-skilled immigrants” are individuals in the areas of research and teaching who are expected to contribute to a special extent to German socio-economic interests, and have an expected income of around 60,000 EUR (in 2009), which was 1.7 times higher than the average national income (Heß 2009, 20-21). The original amount specified in the Residence Act stipulated 80,000 EUR (twice the national average), but was amended in 2008 through the Labor Migration Governance Act (*Arbeitsmigrationssteuerungsgesetz*). The particularly high hurdle to clear in order to qualify as a “highly-skilled immigrant” according to §19 indicates that permit holders under this channel are more appropriately categorized as “highly-highly-skilled” workers. Their special status is confirmed through the labor rights they receive under this status. Principle applicants, as well as their families, receive an immediate work and long-term settlement permit, which basically guarantees all the rights that citizens enjoy, minus voting rights. Moreover, they are exempted from participating in immigrant integration classes, which is mandatory for all other types of labor migrants if they wish to continually reside in Germany.⁵⁷

Reasons for Reform

The Immigration Act, and with it the reform of existing legal instruments to manage migration, was influenced by several considerations. First, the perceived failure of the Green Card

⁵⁷ Author interview with executive officer, Expert Council of German Foundations on Integration and Migration (May 14, 2014, Germany).

required a re-thinking of existing legislation. The Green Card had not nearly reached the anticipated numbers of applicants, and most of those that did come under the program were not the publicly anticipated IT specialists from India (ostensibly the target of the IT Green Card) but workers from Eastern and Central Europe. A key reason for the difference in migration composition was that knowledge of German was a requirement for hiring for most German employers. In addition, the dot-com bubble burst right after the official start of the Green Card program, essentially contracting the need for further workers (OECD 2013b, 71).⁵⁸

Nevertheless, the Green Card was an important stepping stone in the process of incremental immigration policy reform over the next decade. As it allowed for publicly-visible migration affirmation for the first time since the recruitment stop in 1973,⁵⁹ the Green Card had “opened the door” for further legislative liberalization.⁶⁰ Moreover, the Green Card was an ice-breaker for the political inertia prevalent in immigration politics. The public discussion surrounding the Green Card, as well as the changes in the German Nationality Act, had sparked general questions about Germany’s national identity and how it would deal with immigration in the future (Kolb 2013, 65).⁶¹ The Green Card and Nationality Act initiated a social and political process leading to the realization that Germany was de facto a country of immigration, despite public claims to the contrary.

This process included a multitude of immigration related concerns, most importantly the socio-economic integration of citizens and individuals of foreign backgrounds which developed

⁵⁸ Author interview with executive officer, German Trade Union Confederation (DGB) (June 2, 2014, Germany).

⁵⁹ As outlined before, there were legal instruments to facilitate labor migration despite the recruitment stop. But the administrative responsibility for decisions in regard to this was with the bureaucracy, and consequently, little public discussion of these exemptions was present.

⁶⁰ Author interview with policy expert, Bertelsmann Foundation (May 23, 2014, Germany). Policy expert, University of Hamburg (July 23, 2014, Germany).

⁶¹ Author interview with executive officer, German Institute for International and Security Affairs (May 15, 2014, Germany).

into a primary subject during policy-making, along with the balancing act of maintaining the recruitment stop while simultaneously allowing exceptions for specific immigration types, such as highly-skilled immigrants.⁶² Among all parties, however,—even the conservative ones, as well as the peak interest groups—it was recognized that Germany had to find a new legal framework for the regulation of labor migration, as highly-qualified labor migration was viewed as the natural outcome of globalization pressures (OECD 2013b, 72, Cyrus and Vogel 2005, 3, Feldgen 2003, 134).⁶³

And lastly, important but not decisive reasons for immigration reform also included the lack of legal residence channels for individuals with a Green Card permit at the end of the stipulated program length in 2005. This would have meant that previously hired specialists would have to leave the country—a politically problematic outcome.⁶⁴ A second minor concern related to the fact that over time Germany had accumulated a complex system of residence titles that was also in need of streamlining into much fewer titles (OECD 2013b, 74).⁶⁵

Change in Policy Actors

While the general set of policy actors remained the same in the case of the Residence Act, there are two important differences to note. First, in an advisory and public discourse-shaping capacity, the new-found independent commission ‘immigration’ emerged as a new policy actor. Tasked by the German parliament with the development of policy principles for the new immigration law, the commission—which included politicians, interest group representatives, and

⁶² Author interview with executive officer, German Institute for International and Security Affairs (May 15, 2014, Germany).

⁶³ Author interview with policy expert, Bertelsmann Foundation (May 23, 2014, Germany).

⁶⁴ Author interview with executive officer, Expert Council of German Foundations on Integration and Migration (May 14, 2014, Germany).

⁶⁵ Author interview with Member of Parliament, Social-Democratic Party (May 23, 2014, Germany).

other social actors—compiled the justification and arguments for highly-skilled labor migration to Germany. The commission—headed by Rita Süßmuth, former presiding officer of the lower chamber of the German parliament—was instrumental in publicizing several significant arguments for skilled labor migration: (1) highly-skilled immigration was an outcome of increasing globalization; (2) highly-skilled immigrants were needed to assure innovation and Germany’s competitive edge in the global economy; (3) demographic changes have led to labor shortages that needed to be solved through labor migration, as family politics alone was not sufficient to ensure a sufficient work force; and (5) labor shortages during high unemployment were due to skill-mismatches and therefore could not be met with domestic unemployed workers alone (Süßmuth 2001). Essentially, the consequences of demographic change and economic impact of present and anticipated labor shortages became the prime argument for the development of a comprehensive immigration system.⁶⁶

A second focal difference in comparison to the actor constellation during the Green Card discussion was the position of unions, who were not as protectionist-minded as previously.⁶⁷ This change in policy preferences was partially due to their active involvement in the commission, and the realization that with the demographic change qualified immigration was seen as necessary to sustain the domestic labor force, not as a replacement of it.⁶⁸ The employer associations BDI, BDA, and IHK were also in favor of a general liberalization of labor migration rules; the BDA

⁶⁶ Author interview with policy expert, Bertelsmann Foundation (May 23, 2014, Germany), policy expert, University of Hamburg (July 23, 2014, Germany), head of Independent Commission “Immigration” (formerly) (July 15, 2015, Germany), and executive officer, German Institute for International and Security Affairs (May 15, 2014, Germany).

⁶⁷ Author interview with executive officer, Expert Council of German Foundations on Integration and Migration (May 14, 2014, Germany), and policy expert, Bertelsmann Foundation (May 23, 2014, Germany).

⁶⁸ Author interview with head of Independent Commission “Immigration” (formerly) (July 15, 2015, Germany), policy expert, Bertelsmann Foundation (May 23, 2014, Germany), and executive officer, German Trade Union Confederation (DGB) (June 2, 2014, Germany).

was favored even a job offer independent visa.⁶⁹ In the case of the immigration law reform, but also later policy adjustments in 2008 and 2012, a general process of interest convergence between the interests of unions and employer associations can be observed.⁷⁰

Policy Reform Process

In 2001, the commission suggested a comprehensive proposal for a new immigration law, with the particularly novel aspect of a points-system to regulate labor migration. Elaborated in §20 of the Residence Act, the points-system should allow especially qualified immigrants to immigrate without a job offer in hand (Feldgen 2003, 135). While alternative models for selection criteria and the points allocated to them were raised,⁷¹ there was a strong consensus that the Canadian-style points-system was deemed the best practice to attract highly-skilled migrants.

As the main stake-holders were part of the commission, their general stances did not significantly diverge from the proposal. The DGB argued that new immigration laws should emphasize the improvement of the labor market force through human capital, and not just labor shortage hiring, which made them critical of provisions requiring a job offer for qualified migrants, and endorse family migration, independent work rights for the spouses.⁷² The employer associations BDI, BDA, and IHK were supportive of the commissions' proposal, however, the

⁶⁹ Author interview with executive officer, Confederation of German Employers' Associations (BDA) (May 27, 2014, Germany).

⁷⁰ Author interview with policy expert, Bertelsmann Foundation (May 23, 2014, Germany).

⁷¹ Different visions of the particular selection criteria and the points allocated to them were discussed. The DGB argued that a strong economic selection should be de-emphasized, and the legal equality of immigrant workers should be addressed instead. To that end, the DGB preferred New Zealand's points system, because the Canadian one was seen as too static, too slow in adjusting selection criteria, and not flexible enough to account for different occupations. Author interview with executive officer, German Trade Union Confederation (DGB) (June 2, 2014, Germany).

⁷² Author interview with executive officer, German Trade Union Confederation (DGB) (June 2, 2014, Germany).

BDI and BDA were not significantly involved in the committee work.⁷³ However, the BDA stressed that the real need for foreign workers will arise in the area of skilled workers, not highly-skilled ones. Similar to the DGB, the BDA expressed that immigration has to be a long-term option because of the demographic change, and in consequence requires offering them a permanent perspective of living in Germany.⁷⁴

Despite disagreement on particular details of the commissions' recommendation, conflict over the draft did not take place among the core interest groups, but rather between parties and ministries. The Committee for Interior, where the proposal entered parliament, was the main locus of this conflict. The principle line of conflict was between politicians and government officials advocating liberal admission on economic and socio-demographic grounds, and those opposing liberal admission in defense of domestic workers and high unemployment numbers (Bauder 2013, 15).⁷⁵

The following public and political debates surrounding the immigration law unveiled the continuing “fundamental contradictions between migration and ethnic belonging” (Bauder 2013, 11). In particular, the points-system became the lynchpin of conflict to acknowledge that Germany is a country of immigration (*Einwanderungsland*), which carries a connotation of permanent settlement (Cyrus and Vogel 2005, 3-4, Bauder 2013, 18).⁷⁶ The conviction that one has to fulfill the demands of the economy, but simultaneously must prevent Germany from turning into a major immigration destination was prevalent in public discourse.⁷⁷ Reflecting on this public debate,

⁷³ Author interview with executive officer, German Institute for International and Security Affairs (May 15, 2014, Germany).

⁷⁴ Author interview with executive officer, Confederation of German Employers' Associations (BDA) (May 27, 2014, Germany).

⁷⁵ Author interview with Member of Parliament, Christian-Democratic Union (May 22, 2014, Germany).

⁷⁶ Author interview with head of Independent Commission “Immigration” (formerly) (July 15, 2015, Germany).

⁷⁷ Author interview with executive officer, German Trade Union Confederation (DGB) (June 2, 2014, Germany), and head of Independent Commission “Immigration” (formerly) (July 15, 2015, Germany).

Bauder (2013, 14-15) argues that this “[...] illustrates that the German population and media have not entirely come to terms with the idea that Germany is an immigration country.”

The CDU, as the largest opposition party, had learned during the Nationality Act reform that the political mobilization of the exclusive discourse on immigration held electoral pay-offs (Bade and Bommers 2000, 194), and consequently became a key opponent of the new immigration act. The CDU argued that the new immigration law would significantly change the composition of the German population, maintaining that Germany was not a classic immigration country, and consequently with limited capacity to integrate newcomers. Rejecting a demographic necessity for labor migration, it was argued that Germany already possessed sufficient regulatory instruments to facilitate the immigration of highly-skilled immigrants. Integration, not immigration, should be emphasized (Deutscher Bundestag 2001). After very emotional and also populist public debates, the resolution was a rhetoric compromise—Germany was a *Zuwanderungsland* (a country of “to-migration”), an alternative term indicating that Germany was a country with immigration history but was not a nation of immigrants (Bauder 2013, 18, Cyrus and Vogel 2005, 3-4).⁷⁸

Underlying this split political attitude of “come, but stay out,” was the continuing general public opposition to more foreign residents.⁷⁹ While on the political level, politicians realized that Germany was de facto a country of immigration; in public opinion, the term “immigrant” carried a predominantly negative connotation, and was associated with economically poor individuals in need of assistance.⁸⁰ Repeated arguments about the preeminent mass migration of predominantly

⁷⁸ Author interview with head of Independent Commission “Immigration” (formerly) (July 15, 2015, Germany).

⁷⁹ Ibid.

⁸⁰ Author interview with Member of Parliament, Social-Democratic Party (May 23, 2014, Germany), policy expert, Bertelsmann Foundation (May 23, 2014, Germany), policy expert, University of Hamburg (July 23, 2014, Germany), policy expert, Bertelsmann Foundation (May 23, 2014, Germany), and policy expert, Institute for Migration Research and Intercultural Studies (July 11, 2014, Germany).

poor foreigners into the social systems, warning of a significant strain on the welfare state, furthered the opposition to a liberalization of immigration law (Deutscher Bundestag 2001, 2003).

To combat this opposition, the immigration reform was strategically framed around highly-skilled immigrants, although only a small subset of the entirety of the immigration law deals specifically with highly-qualified immigrants. While objectively labor shortages were more prevalent in medium-skilled occupations than higher-skilled ones, it was easier to pass regulations for highly-skilled immigration than for skilled workers. Although it was clear that certain sectors in the German economy were in need of more labor, this was politically difficult to admit.⁸¹ As immigration was still a taboo topic, the passing of the Residence Act was supposed to prevent a public perception that now thousands of immigrants were flocking to Germany. Similar to the Green Card, this resulted again in a compromise—opening the door for “more” immigration was permissible but only in selective and carefully defined areas.⁸² Consequently, the Residence Act became rather restrictive in admission and work rights for qualified skilled immigrants, but was more than generous for the select few that qualified as highly-highly-skilled immigrants. Moreover, as the official title of the immigration law “Act on the control and limitation of immigration and the regulation of residence and integration of EU-citizens and foreigners” (*Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern*) indicates, the law was to communicate a closure rather than an opening toward immigration.

The points-system became the root of the conflict between economic interests and national identity, as it symbolized a turn to becoming a classic country of immigration, and thus another meaning was superimposed to the legal discussion, increasing the political costs of endorsing more

⁸¹ Author interview with head of Independent Commission “Immigration” (formerly) (July 15, 2015, Germany).

⁸² Author interview with Member of Parliament, Christian-Democratic Union (May 22, 2014, Germany).

open immigration laws.⁸³ It was not surprising that the parliamentary vote on the new immigration law was highly divided; in particular, in the Bundesrat—the upper chamber of parliament composed of representatives of the regional parliaments. It passed with a slight majority in early 2002 but was immediately challenged by the conservative opposition on procedural grounds. In late 2002, the German Constitutional Court agreed, and the law was revoked and had to be passed again (Cyrus and Vogel 2005, 4).

However, in the course of the next few years, decisive factors in the German political landscape and opinion climate changed. First, after the national election in fall 2002, the Red-Green coalition emerged again as a winner, but only with a narrow electoral majority. This meant that they required cross-partisan support for the second attempt at passing the immigration law (Cyrus and Vogel 2005, 4). Second, the aftermath of the 9/11 attacks had contributed to an increasing focus on security issues that undermined arguments for a more liberal approach to immigration (Cyrus and Vogel 2005, 4, OECD 2013b, 72). Third, with the bursting of the IT bubble in 2001/2002, labor shortages became less important as well, and along with it a key argument of proponents of the new immigration law (OECD 2013b, 72). Fourth, simultaneously, the accession of the EU-14 in 2004 intensified fears that migrants from the new member states would now migrate to Germany, solidifying a general opposing attitude toward migration, which also affected highly-skilled immigration (OECD 2013b, 72-73).

These changes in the political environment tipped the renewed passing of the immigration law in the Bundestag toward a more conservative direction. The CDU maintained their strict line of rejecting the coalition's bill, and emphasized that without explicit containment of migration on a larger scale, and the deletion of §20, it would not support an immigration bill. While the CDU

⁸³ Author interview with executive officer, German Institute for International and Security Affairs (May 15, 2014, Germany).

cited as their reason for their insistence that an unaltered bill would threaten domestic unemployed workers, the party also clearly stated that it wanted to preserve the identity of state and society (Deutscher Bundestag 2001, 2003).

A conciliatory committee was formed, and negotiations were conducted largely behind closed doors until an agreement on the exclusion of several aspects of the 2001 draft was found and passed in parliament. Most importantly, this affected the points-system and exemptions from requirements of job offers, which had been particularly opposed by Christian Democrats (Cyrus and Vogel 2005, 4, 9, OECD 2013b, 72). Again, it showed that the switch to a points-system was a far stretch for most politicians whose traditional view of labor migration was employer-driven.⁸⁴ In light of an unemployment number hovering around 4.5 million, further labor migration was categorically rejected, upholding the general recruitment ban regardless of skill-level (Cyrus and Vogel 2005, 10). While the new Residence Act effectively combined work and residence permits, differentiating only between permanent and temporary titles, labor market tests were maintained for all labor migrants who did not hold a permanent residence title (OECD 2013b, 74).

Opposing views were largely muted. The immigration council (*Zuwanderungsrat*), the expert advisory body meant to guide the development of a points-system, was still formed after the defeat of a points-system in 2003; yet, their more progressive and drastic—but politically uncomfortable—suggestions for further amendments to the Residence Act led to its dissolution (Cyrus and Vogel 2005, 5).⁸⁵ Yet, later amendments to the legislation in 2008—where the strict income requirements for highly-skilled immigrants were loosened, and 2012 introduction of §18c, which effectively is a job search visa for highly-skilled immigrants (Kolb 2013, 66)—

⁸⁴ Author interview with executive officer, German Institute for International and Security Affairs (May 15, 2014, Germany), and policy expert, Institute for Migration Research and Intercultural Studies (July 11, 2014, Germany).

⁸⁵ Author interview with executive officer, German Institute for International and Security (May 15, 2014, Germany), and executive officer, German Trade Union Confederation (DGB) (June 2, 2014, Germany).

outlined a continuing but careful trajectory towards liberalization. A key contributing factor to this development was that later amendments received much less public attention, and discussions on policy details were kept apart of any other immigration-related legislation.⁸⁶ In addition, with the economic upswing and greater visibility of immigrants in public bodies and interest groups, there was decreased controversy surrounding immigration reform.⁸⁷ But most importantly, a vast societal consensus emerged with the realization that skilled labor migration will be needed in the long-term, and the German immigration system has to become more open (Vogel and Wüst 2003, 274-275, Schönwälder 2013, 275).

Conclusions

The development from the Green Card to the Residence Act, and even beyond, shows that immigration policy-making in Germany has been an incremental process. Consequently, highly-skilled immigration policy has evolved in small, often conflictual steps, and was embedded in controversies over the recasting of German national imagination, that had traditionally excluded non-ethnic residents (Bauder 2013, 11). Despite important changes, a certain uneasiness with Germany's status as a country of immigration remains, leading to the existence of "[...] legislation that provides immigration channels *de-jure*, along side politicians who are unwilling to actively make *use* of such opportunities – public opinion won't allow it" (Cyrus and Vogel 2005, 5).

The analysis of the development of the Green Card provided evidence that exclusive understandings of national identity and ethnic relations contributed to the eventual policy output of overall restrictive work rights. I found that arguments for a curtailing of immigration in regard to entry and residence, best exemplified by the affirmation of the 1973 recruitment ban, were

⁸⁶ Author interview with Member of Parliament, Social-Democratic Party (May 23, 2014, Germany)

⁸⁷ Author interview with policy expert, Bertelsmann Foundation (May 23, 2014, Germany).

prevalent during the policy discussion. Yet, I also found that this line of argument carried to a particular extent a symbolic rather than a pragmatic meaning, as evidenced by the continuation of the previous system of exemption ordinances as a tool to facilitate targeted labor migration, largely unknown to the population. An overly liberal Green Card, however, that would have resulted in the symbolic and substantial dismantling of the recruitment ban system, was highly difficult to achieve, despite sustained arguments for the economic benefits of such a policy.

In addition, while the inclusion of *ius soli* elements in the German nationality law had marked a watershed moment, it also unveiled that the law was controversial in public discourse, and a recasting of belonging and membership was only possible to a certain extent. The initial full *ius soli* provision had become the victim of a politicized and unfavorable political environment. It is thus not surprising that the increased inclusiveness of German nationality provisions did not lead to an immediate, principle change to a human capital rather than a labor shortage focus in immigration politics. Overall the Green Card development demonstrates the continuation of exclusive national understandings of the purpose and accommodation of foreign workers.

Moreover, the Green Card also highlighted the key role played by political parties in shaping support for or opposition to immigration during the policy process, and underscored the subordinated role of interest group preferences. Support for the Green Card among major interest groups was weak: While unions were mainly opposed to a new immigration-affirming law regardless of skill complementarity, large scale employer associations were somewhat ambivalent. While the IT-industry was referenced in policy and public discourse as the main beneficiary of the scheme, even the public lobbying of the BITKOM interest group did not translate into a greater accommodation of work rights. This calls into question explanations resting on the client-politics approach. Furthermore, immigration politics just as other policy areas in the German

political system, was shaped by the institutional structure of veto-points. The fragmentation of decision-making led to an overall predominance of political parties as policy-actors, using the Green Card for their electoral advantage by politicizing it.

The causal pattern outlined so far continued largely during the drafting of the immigration law. I found evidence regarding a continuing exclusive discourse on immigration, while also discovering inclusive elements in regard to human capital considerations and the accommodation of highly-skilled immigrants and their families, in particular voiced by the major interest group as well as the commission. Notably, the preferences of economic groups had begun to converge toward a pro-qualified immigration stance. Moreover, the debate over the immigration law also witnessed a shift in national identity – if only a moderate one – prompting an official acknowledgement that Germany was indeed a country of immigration – a notion that had been reflexively denied over the past decades. While economic and demographic arguments for more migration have become more accepted and commonplace during the immigration law discussion, they did not contribute to the hoped for greater extent of liberalization.

This is in particular evidenced by the prevalence of trade-offs between economic interests and national identity. While granting generous work rights to highly-skilled immigrants, their admission and selection criteria were designed so selectively that it substantially narrowed down the pool of potentially eligible applicants. With a general mindset of “exclusive rights for an exclusive group,” otherwise highly-skilled immigrants that did not fit the narrow definition of this privileged demographic continued to receive little work rights. Moreover, recognizing Germany as a country of immigration came at the expense of the general and explicit upholding of the recruitment ban, and the defeat of the proposed Canadian-style points-system. More so than in the case of the Green Card, the immigration reform clearly demonstrates the “braking effect” of an

exclusive national identity leveraged in political contest. Despite the broad consensus among stakeholders, the proposal of the commission was ignored in many parts in the final bill. As in the Green Card case, the political decentralization of decision-making, due to constitutional and electoral veto players, greatly contributed to this outcome.

What about other alternative explanations? Anti-immigrant right-wing parties played in neither of the policies a role as the conservatives monopolized the anti-immigration policy space in the German party landscape. I also did not find evidence that the EU played a direct role during either of the two policy processes, though it is not improbable that the EU had more of a conditioning, indirect effect on national labor migration policy-making. However, interviewees indicated that EU attempts to communitarize labor migration police for third-country nationals, were successfully prevented on the supranational level by in particular Germany, which opposed a binding regulation in order to preserve German national interests.⁸⁸

While I found little specific welfare state related considerations in both cases, arguments against a liberal immigration law were often grounded in fears of a perceived mass immigration into social systems. Lastly, the somewhat growing German economy during the late 1990s, and consequently growing IT industry, aided the inception of the Green Card, yet, it did not translate into more work rights. However, high unemployment figures during the immigration law process definitely did not help arguments for more immigration, despite arguments linking unemployment to structural causes and skill-mismatches rather than competition through foreign workers. Evidence for the size or relevance of the IT-industry during the immigration law debate has not been found, but more general arguments about global competition have been prevalent. In

⁸⁸ Author interview with policy expert, Bertelsmann Foundation (May 23, 2014, Germany), policy expert, Institute for Migration Research and Intercultural Studies (July 11, 2014, Germany), and policy expert, University Duisburg-Essen (May 21, 2014, Germany).

conclusion, only alternative explanations regarding the effect of macroeconomic factors such as economic growth and unemployment numbers appear to be a sufficient, but not a necessary condition for the small changes in highly-skilled work rights in this case.

CHAPTER 7

AUSTRIA, RED-WHITE-RED CARD (2011)

The case of the Austrian immigration reform process was heralded as a “paradigmatic” shift away from previous restrictive policies to a now openly and transparently inviting labor migration system. And indeed this remarkable transition—in the backdrop of decades of increasing hurdles to family-migration, tightened conditions for asylum, and a general halt on low-skilled labor migration—seems to contradict the posited influence of exclusive national identity and ethnic relations understanding.

Yet, upon closer inspection, the shift towards a liberalization in admission criteria and work rights is only relevant for highly-skilled and highly-highly-skilled applicants and their families, and has been importantly shaped by Austria’s national identity and understanding of ethnic relations. Consistent with my theoretical prediction, a pervasive exclusionary discourse on immigrants could only be buffered through informal, “behind closed door” policy-making innate to Austro-corporatist interest representation, and strategic changes in rhetoric and immigration instruments in response to those discourses. The opening for labor migration in an exclusive citizenship regime was only possible by a trade-off between skill selectivity and work rights. I will argue that the comparatively generous treatment of highly-skilled immigrants came at the cost of maintaining restrictions in admission and work rights for all other migrant types.

This chapter documents and analyzes the policy reform process resulting in the adoption of the Red-White-Red-card (RWR-card) in Austria, starting out by briefly situating the reform process in the larger context of immigration to Austria in the post-war era. Furthermore, I will

outline and discuss Austria's citizenship regime, and how it is related to perceptions about national identity and ethnic relations. After outlining reasons for the policy reform process and principle policy actors and their policy preferences, I will discuss which considerations played out during the policy-drafting and passing. To conclude the findings, I will discuss observations and evidence according to main and alternative theories explaining the policy output.

Background: Immigration to Austria

Since 1993, labor migration to Austria has been restricted—unless clear and strong economic needs were presented—due to the negative reception of past immigration, and the increasing restrictions on national immigration control by the European Union (Biffl 2011, 19). Migration during the 1960s and 1970s was characterized by mainly low-skilled labor migration as part of a guest-worker system, and later their dependents. The number of foreign workers increased quickly within just a decade from 21,000 in 1963 to 227,000 in 1973. However, the increase was not taken seriously or regarded as negative—immigration was politically wanted, and workers remained largely invisible in public life (Fassmann 2013b, 696). Only in light of the economic recession and welfare state adjustments in the 1970s, the number of foreign workers reduced with the implementation of Employment of Foreign Workers Act 1975 (Fassmann 2013b, 696-697, Kraler 2012, 29). However, even while the numbers of foreign workers decreased significantly after 1973, the topic of immigration began to receive greater public attention (Fassmann 2013b, 697).

Austrian immigration policy during the 1990s was synonymous with asylum policies, due to the drastically increasing flows of asylum-seekers and transit migrants from Eastern Europe after the fall of the iron curtain, and conflict in the former Yugoslavia (Kraler 2012, 33). From

1985 to 1994, the number of foreign residents doubled from 301,000 to 670,000—250,000 alone between 1989 and 1992 (Fassmann 2013b, 698-699). This mass immigration coincided with a greater crisis of the Austrian welfare state, and contributed to the consolidation of a strong public opposition against any further immigration (Bauböck and Perchinig 2005, 740).⁸⁹ This led to a shift of migration-related politics from the arena of the social partners—Austria’s formal and entrenched peak interest associations—to the arena of parliamentary political contest (Kraler 2012, 30, 45). Hence, increasingly restrictive laws on migration and settlement, asylum, and immigrant integration were passed during the early 1990s, affecting by proxy also approved labor migration that took the proverbial backseat during this time (Biffl 2011, 19, Fassmann 2013b, 700-701, Krings 2013, 8, Bauböck and Perchinig 2005, 735).

Since 1993 (and modified in 2002 and 2005), a quota system for all labor migrants, including key workers, had been in place as the prime instrument of migration control. Quotas are numerical ceilings of work permits that can be granted per year. However, the Austrian quota system was not deemed effective in controlling migration, as most individuals did not immigrate under quota-regulated entry channels but through other means, such as family reunification (Fassmann 2013a, 3, Kraler 2012, 42). The existing quotas for key workers were in fact often not reached, despite increasing the quota annually (Krings 2013, 11, Biffl 2011, 21). Kraler (2012, 42) concludes, that “the quota system as a mechanism of migration control was thus reduced to its symbolic policy—a function it always had, allowing successive governments to be strict on migration by maintaining previous quota levels or lowering them for particular categories of aliens.”

⁸⁹ Author interview with executive officer, International Centre for Migration Policy Development (June 30, 2014, Austria).

However, the impotence of the quota system did not prevent further restrictive laws passed during the early 2000s under the right-wing government coalition between the conservative ÖVP and the right-wing populist FPÖ. With the Aliens Act of 2002, quotas for unskilled and semi-skilled workers were abolished, and labor migration was principally only possible for ‘key workers’ (Kraler 2012, 35-36). Although comprehensive reforms of previous settlement and residence, family reunification, asylum, and foreign police acts were passed in the Aliens Act of 2005, these were not due to internal motivations but rather due to outside pressure of EU directives that had to be transposed into national law, and in turn featured more restrictive provisions for non-EU regulated aspects of immigration (Biffl 2011, 25, Gächter 2008, 9, Kraler 2012, 38).⁹⁰ The development and introduction of the RWR-card was, on the contrary, mainly initiated by domestic actors, and the implementation of the new migration-affirming scheme came rather surprisingly for the public (Fassmann 2013b, 13).

Configurations of Citizenship and National Identity

Austria falls into the assimilationist model of citizenship, featuring restrictive naturalization and a small amount of multicultural provisions. Citizenship acquisition is based on the *ius sanguinis at birth* principle, i.e. a person born to an Austrian national automatically acquires Austrian citizenship, while simply being born in the territory of Austria does not entitle one to nationality. Non-nationals can acquire citizenship with the fulfillment of the residence requirement of six years, and demonstrated knowledge of the German language. Furthermore, dual citizenship is only permissible if a person with Austrian descent acquired another nationality

⁹⁰ Author interview with public official, Austrian Ministry of Interior (July 3, 2014, Austria).

through the *ius soli at birth* provision there. Naturalized individuals, however, have to submit evidence of being released from their former nationality (EUDO 2015).

Of note is the controversial 1998 citizenship reform. Principally, the ÖVP, the FPÖ, and later also the SPÖ argued for greater selectivity in naturalization eligibility. They were against proposals advocating a shortening of the prior 10-year residence requirement, and for a required language proficiency in German, as well as mandatory attendance of integration courses. After coalition-internal debates, the residence requirement for naturalization was lowered to six years if the applicant demonstrates evidence of personal and labor market integration, and possesses a permanent residence permit; otherwise the regular 10-year requirement applies (Fassmann 2013b, 708-709).

Austria offers very little multicultural provisions. When the multiethnic Austro-Hungarian Empire dissolved into different nation-states in 1918, only the German-speaking part of the Empire was left over. After 1945, a nation-building process set in via active culture politics that led to the construction of a unique Austrian identity that explicitly shed its multicultural past (Wischniarski 1994, 82).⁹¹ While government does grant legal protections, and some rights and funding to autochthonous minorities such as Slovenes, Croats, Hungarians, and Czechs, it does not grant any protections to recent immigrants or other minorities. There is no federal commitment or official recognition of cultural diversity. While mother-tongue or bilingual instruction is offered, it depends heavily on local funding resources (Tolley 2011, 14-17). It should be noted, however, that Austria's long-standing Law on Islam (1912) provides Muslims with autonomy in religious practice and safeguards for the practice and teaching of Islam, which has led to the strong

⁹¹ Author interview with policy expert, University of Vienna (July 1, 2014).

cooperation of Muslim religious bodies with local and regional authorities (König and Perchinig 2005, 15)

Policy in Question: Red-White-Red Card (2011)

In 2011, Austria implemented a points-based immigration system called the Red-White-Red-card (*Rot-Weiß-Rot-Karte*) as part of a larger reform package referred to as Alien Right Reform Act (*Fremdenrechtsänderungsgesetz*), including among others the Settlement and Residence Act for Foreign Nationals (*Niederlassungs- und Aufenthaltsgesetz*), as well as the Asylum Act (*Asylgesetz*). Under the new four-tiered immigration-scheme, applicants fulfilling certain criteria and with a work offer of around 2,600 EUR per month⁹² could apply as highly-skilled workers (*Schlüsselkräfte*) (Fassmann 2013a, 5, Bittmann 2013, 24). While initially granted a work and residence permit for only one year (RWR-card), the worker can receive a permanent work permit (RWR⁺-card), which grants unrestricted labor market access, and spouses are granted immediate access to the labor market, provided they have demonstrated basic German knowledge (Kraler 2012, 43). The RWR⁺-card also entitles the applicant after four years to a permanent residence permit (Krings 2013, 12). Apart from this tier, there is also a tier for highly-highly skilled applicants aiming at exceptional talents in the tradition of Steve Jobs or Bill Gates.⁹³ While applicants under this tier do not have to have a concrete job offer and even qualify for a six-month job search visa (Bittmann 2013, 18), the admission criteria narrows the pool of eligible individuals significantly.

⁹² The concrete wage limit changes every year, and is based on a 50 to 60 percent of the average national mandatory social insurance contribution (Bittmann 2013, 24).

⁹³ Author interview with chief executive officer, Austrian Chamber of Business (June 24, 2014, Austria).

Reasons for Policy Reform

The development of the RWR-card reflected two prominent considerations: a need for more qualified labor immigration, and the political impetus of the EU Blue Card initiative in 2009. First, when in 2006 and 2007 the Austrian economy boomed, arguments for a need for more qualified workers arose from the economic sector, stating that present shortages could not be met by employing domestic workers alone.⁹⁴ However, the then present restrictive immigration quota system made a bridging of skilled and highly-skilled labor shortages difficult, as argued by the employer associations,⁹⁵ and potential changes in quotas were highly politically conflictual, in particular in regard to family reunification (Fassmann 2013b, 3-4). Under the quota system, family members of third-country nationals had a right to family reunification, but it was regulated by quota as well. Furthermore, spouses could only apply for a work permit after four years of residence or if they were self-employed (Biffl 2010, 28). Moreover, Austria's educational system had produced a comparatively low number of tertiary educated workers, and in conjunction with the rising demographic challenge, qualified immigration was deemed a possible solution for the purported lack of specialist workers (see Biffl 2010, 2011).

A further impetus to change the labor migration policy came from the 2009 European Union proposal for a common EU immigration regulation of highly-skilled workers, called the EU Blue Card. However, the proposed EU Blue Card was deemed too restrictive to meet the Austrian requirements, in particular by business interest groups. The wage minimum was considered too high, and according to the original proposal a further migration to other EU states was not possible.⁹⁶ In response, policies needed to be reformed in order to address these pressures.

⁹⁴ Author interview with chief executive officer, Austrian Chamber of Business (June 24, 2014, Austria).

⁹⁵ Author interview with executive officer, Federation of Austrian Industry (June 26, 2014).

⁹⁶ Author interview with chief executive officer, Austrian Chamber of Business (June 24, 2014, Austria).

However, aside from an additional “push” to reform the national immigration system, the EU Blue Card was not deemed to be of importance in the development of specific criteria or tiers of the RWR-card.⁹⁷

Policy Actors

An important feature of Austrian politics is the executive dominance over the parliament in legislating, which leads to bills being largely written by bureaucrats in the ministries who possess strong knowledge and power to determine the interpretation of policy formulations (Fassmann 2013a, 7, Gächter 2008, 3). Two bureaucratic agencies possess high levels of competence in migration administration—the Ministry of Interior, and the Ministry for Labor, Social and Consumer protection (Biffl 2011, 25). During the drafting of the RWR-card, the Ministry of Interior was dominated by the conservative ÖVP, while the Ministry of Labor was headed by the union-affiliated SPÖ,⁹⁸ creating a somewhat natural conflict of interest between the two parties despite being in a grand coalition. The Minister of Labor almost always has political roots in the labor union.⁹⁹ In the past, the Ministry of Interior had been a key actor in passing restrictive migration and asylum policies between 1991 and 1993, with support of labor unions and employer associations (Gächter 2008, 10, 14), which generally had marked a period of stronger legislative policy-making, abandoning prior conventions of informal policy-making through the social partners (Kraler 2012, 30, 54).

⁹⁷ Author interview with chief executive officer, Austrian Chamber of Business (June 24, 2014, Austria), and public official, Austrian Ministry of Interior (July 3, 2014, Austria).

⁹⁸ Author interview with public official, Austrian Ministry of Labor, Social Affairs and Consumer Protection (July 1, 2014, Austria).

⁹⁹ Author interview with policy expert, Danube University Krems (July 4, 2014, Austria).

Although diminished in their activity and influence during much of the last decade, the interest groups in Austria are important players. Austria's interest representation system is strongly neo-corporatist, i.e. interest groups are a regular, organized, and formally recognized part of government decision-making (Schmitter 1981). Referred as 'social partnership' (*Sozialpartnerschaft*), this system of interest representation included several peak associations: the Chamber of Business (*Wirtschaftskammer Österreich, WKÖ*)—representing small- to medium-sized companies; the Trade Union Federation (*Österreichischer Gewerkschaftsbund, ÖGB*)—representing blue-collar workers; and the employee interest group Austrian Federal Chamber of Labor (*Bundesarbeiterkammer, BAK*). As the name 'social partners' indicates, the relationship between the social partners should be understood as more of a coordinated effort, rather than competitive policy-making.¹⁰⁰ The unions, in particular, understand themselves as supportive of the state, and hence are interested in macro-economic stability rather than rent-seeking.¹⁰¹ Apart from the peak associations other influential policy actors included the business interest lobbies, such as the Federation of Austrian Industry (*Industriellenvereinigung, IV*)—representing larger industry—and partially the inter-governmental organization International Organization for Migration (IOM) (Krings 2013, Fassmann 2013a).¹⁰²

While the business groups were in favor of a more liberal market access for skilled foreign nationals and more generous work and residence rights, the major labor union and employee interest groups were very skeptic. The ÖGB, in particular, had little interest in expanding or preventing highly-skilled immigration, and was concerned with the general implications of

¹⁰⁰ Author interview with public official, Austrian Ministry of Labor, Social Affairs and Consumer Protection (July 1, 2014, Austria).

¹⁰¹ Author interview with policy expert, Danube University Krems (July 4, 2014, Austria).

¹⁰² Technically, the 'big four' of Austrian corporatism also includes the Chamber of Agriculture (Traxler 1998), but has not been a significant player in the development of the RWR-card and is therefore not further discussed here.

increased labor migration for the domestic work force.¹⁰³ Both the ÖGB and the BAK had been previously strongly opposed to further labor immigration (Gächter 1995) and were instrumental as part of a coalition with the FPÖ and BAK to exclude seasonal workers from unemployment benefits in 2002 (Kraler 2012, 37).

As a last set of policy actors, Austria's biggest parties, the social-democratic SPÖ (*Sozialdemokratische Partei Österreichs*) and the conservative ÖVP (*Österreichische Volkspartei*) were generally committed to immigration reform, and had made it part of their grand coalition government agreement in 2008. However, opposition parties such as the right-wing, anti-immigrant FPÖ (*Freiheitliche Partei Österreichs*) and national-conservative BZÖ (*Bündnis Zukunft Österreich*) were strongly opposed against further migration of any kind, and consequently demanded greater restrictiveness of the RWR-card. The Green party, in contrast, argued for even more progressive provisions (Fassmann 2013a, 7).

Policy Reform Process

A first proposal to reform the old quota system in favor of a criteria system for skilled labor came from the Green party, and was taken up by the industry lobby group IV, favoring a points system inspired by Canada (Kraler 2012, 42). The new points system was promoted by the IV, and the peak employer group WKÖ. Beginning in 2008, these two groups launched several media campaigns to advocate for a new labor immigration system and developed a first working paper draft (Fassmann 2013a, 6). WKÖ urged the SPÖ and ÖVP parties during coalition formation to include a new migration reform commitment in the coalition agreement.¹⁰⁴

¹⁰³ Author interview with executive officer, Federation of Austrian Industry (June 26, 2014).

¹⁰⁴ Author interview with chief executive officer, Austrian Chamber of Business (June 24, 2014, Austria).

Congruent with the neocorporatist tradition, government delegated the concrete development of a migration system to the social partners in 2009. In developing their points system, delegations of government officials and interest group representatives examined programs in Canada, Australia, New Zealand and the United Kingdom.¹⁰⁵ While Canada's system was the preferred model for the Austrian scheme, it was also acknowledged that the steering of migration is politically not as easily done as in traditional settler societies. The Canadian as well as the Australian system were considered as too focused on economic aspects in determining eligible applicants, such as points' criteria for age, education, and health. Austria's existing legal framework on human rights would make it difficult to have such a hard, selective system. Thus, the Canadian system was modified for the Austrian context in regard to current immigrant rights, and trimmed-down in regards to the specific points' criteria.¹⁰⁶

During the informal negotiations, the business interest groups pushed for a more liberal market access and more rights for third-country foreign nationals, while the major labor union ÖGB and employee interest group BAK were putting brakes on the process. In anticipation of the general labor market opening for workers from the new EU member states in 2011, they feared that a further liberalization of immigration provisions would lead to wage dumping and a strain on social systems.¹⁰⁷ In addition, it was argued that current levels of migration from other EU member states were already high, and labor market needs could be met through the domestic labor force (Biffl 2011, 29-30). In order to reach a consensus, a bargain between the peak employer and union groups was struck in 2010. In return for supporting an immigration points-system, additional domestic worker protection regulations were endorsed to avoid wage dumping. The anti-wage

¹⁰⁵ Author interview with chief executive officer, Austrian Chamber of Business (June 24 2014, Austria).

¹⁰⁶ Author interview with former director, Austrian Integration Fund (June 30, 2014, Austria), and policy expert, University of Vienna (July 1, 2014).

¹⁰⁷ Author interview with chief executive officer, Austrian Chamber of Business (June 24, 2014, Austria).

dumping law was implemented along with the RWR card in 2011 (Fassmann 2013a, 9, Krings 2013, 13).¹⁰⁸ The policy proposal changed as well. While the first suggestion by the WKÖ saw three broad tiers for the main targeted employee groups, qualified migrants (medium to highly-skilled), top-manager, and shortage of low-skilled migration (IV, IOM, and WKÖ 2008), the jointly developed proposal by the social partners held much more tightly circumscribed conditions of admission (Sozialpartner 2010). In regard to the labor shortage tier, the unions demanded further restrictive regulations.¹⁰⁹ While the main parameters were developed by the social partners, the Ministry of Interior took on the challenge of fine-tuning the bill,¹¹⁰ and introduced it to the legislative process in 2011.

The role of political parties in this process, however, was negligible, and their attitudes toward immigration were described as rather “half-hearted” (Biffl 2011, 29-30). Undoubtedly, this was a result of an anticipated public backlash. By delegating the drafting and work on a new immigration affirming system to the social partners, the Austrian government avoided greater public attention for a controversial political field (Krings 2013, 13).

Because of its conception as a majorly mono-ethnic society, immigrant settlement and integration was for a long time politically not addressed, and labor migration traditionally steered through labor market mechanisms (Fassmann 2013a, 705). When the consequences of the neglected immigrant integration surfaced, immigration turned into a hotly contested political issue. “Immigration policy” became synonymous with the blocking of unwanted migration. Considerations that migration could be advantageous or beneficial did not exist.¹¹¹ Wischenbart

¹⁰⁸ Author interview with executive officer, International Centre for Migration Policy Development (June 30, 2014, Austria).

¹⁰⁹ Author interview with public official, Austrian Ministry for Europe, Integration and Foreign Affairs (July 9, 2014, Austria).

¹¹⁰ Author interview with public official, Austrian Ministry of Interior (July 3, 2014, Austria).

¹¹¹ Author interview with executive officer, International Centre for Migration Policy Development (June 30, 2014, Austria).

(1994, 84-87) explicitly links Austrian national identity politics to the increasing restrictiveness of immigration law. Politicized and popularized by FPÖ under Haider in the early 1990s, the understanding that Austria was not a country of immigration was solidified, and subsequent rhetoric was even adopted by the mainstream parties, with the consequence that “[...] the *foreigner*—the immigrant—is not accepted and invited to integrate slowly into an open society. Instead, a strict distinction between the alien and the native is enforced” (Wischenbart 1994, 87).

With the increasing realization that immigration may be needed, however, a policy change including an opening towards labor migration was politically only possible if framed explicitly in the context of an extra-ordinary economic added-value of migration (Biffl 2010, 7).¹¹² The political debates clearly reflected the population’s struggle to recognize itself as a country of immigration, and an expressed fear that any acknowledgment of Austria as an immigration destination would invite even more immigrants.¹¹³ But it also reflected a fear that Austrian cultural identity would be lost by increasing its diversity. Austrian national identity is still perceived as singular and mono-ethnic. As one interviewee put it: “You are either a Turk or an Austrian, but not both. That’s just like a soccer match: You can only cheer for one of the teams.”¹¹⁴

Being aware of what was politically feasible in this context, rhetorical means became an important tool in public discussion of the new migration system. First, while the term “qualified workers” (*Fachkräfte*) was used to differentiate workers from low-skilled or humanitarian immigrants in policy and public discourse, the goal of the new scheme was to address the perceived labor shortages in medium-skilled, sometimes highly-skilled, occupations in the manufacturing,

¹¹² Author interview with executive officer, International Centre for Migration Policy Development (June 30, 2014, Austria).

¹¹³ Author interview with former director, Austrian Integration Fund (June 30, 2014, Austria), and public official, Austrian Ministry of Labor, Social Affairs and Consumer Protection (July 1, 2014, Austria).

¹¹⁴ Author interview with former director, Austrian Integration Fund (June 30, 2014, Austria).

industry and the service sector.¹¹⁵ Highly-skilled workers were technically referred to as ‘key workers’ (*Schlüsselkräfte*). Consciously or unconsciously, however, the public discussion surrounding the new immigration system was framed around highly-skilled (*hochqualifizierte*) migration.¹¹⁶ This may appear as linguistic hair-splitting, but was a vital part of a communication strategy. The IV, the most influential lobbyist for the RWR-card, knew that the opening of the labor market was politically only possible by framing the discussion about ‘highly-skilled’ immigration.¹¹⁷

Second, the liberalization of the migration system was also framed as an economic and demographic “necessity.” In policy position papers as well as parliamentary debates, the key arguments for a new immigration scheme were the demographic change and resulting labor shortages (IV, IOM, and WKÖ 2008, 8, Nationalrat 2011a). In their joint policy statement, the social partners stressed positive economic consequences of highly qualified immigrants on macro-economic performance, innovation, export volume and so forth, referencing also to Austria’s need to become competitive in the race for “the best and the brightest” workers (Sozialpartner 2010). In particular, the social partners were aware of the fact that in public opinion further migration was seen as negative, and immigration regulation had historically served as a defense mechanism, not as an instrument of migration management.¹¹⁸ As one interviewee expressed: “The RWR-Card was a signal to the public, and there the topic ‘migration’ was rather difficult. It really depends on how the economy is doing at that moment.”¹¹⁹ While the public was not principally against highly-

¹¹⁵ Author interview with executive officer, Federation of Austrian Industry (June 26, 2014), and executive officer, International Centre for Migration Policy Development (June 30, 2014, Austria).

¹¹⁶ Author interview with chief executive officer, Austrian Chamber of Business (June 6, 2014, Austria), former director, Austrian Integration Fund (June 30, 2014, Austria), and policy expert, University of Vienna (July 1, 2014).

¹¹⁷ Author interview with executive officer, International Centre for Migration Policy Development (June 30, 2014, Austria).

¹¹⁸ Author interview with former director, Austrian Integration Fund (June 30, 2014, Austria).

¹¹⁹ Author interview with chief executive officer, Austrian Chamber of Business (June 6, 2014, Austria).

skilled migration, when discussing concrete policy proposals, however, highly-skilled migration was quickly lumped together with other forms of migration, reinforcing general public opposition.¹²⁰

Particularly, the business groups advocated for a stronger public relations effort to combat this, arguing that the question should not be “What can we do to curtail immigration in the future?” but rather “What do we have to do, so that well-educated people, who significantly contribute to economic growth and thusly job growth, are motivated to migrate to our country?” (IV, IOM, and WKÖ 2008, 8, 13). In addition, the parliamentary committee discussion of a first draft of the bill in early 2011, the policy was repeatedly labeled “responsible” and “flexible”, i.e. criteria could be changed, if need be (Nationalrat 2011a). This was echoed in the parliamentary debates, where the ÖVP and SPÖ affirmed that this policy would allow for an “ordered and well-regulated immigration under certain criteria,” arguing that economic needs and goals should take priority over other considerations (Nationalrat 2011b).

During parliamentary debate, it appeared to be especially difficult to separate labor migration endeavors from other coinciding reforms on asylum and immigrant integration. Because of the package format of the reform, there was a strong mixing of different immigration issues—purposefully or not—among the opposition parties. The subject of mandatory German knowledge intersected the discussion about the RWR-card the most: The FPÖ and BZÖ argued that highly-skilled immigrants and their spouses should not be exempt from the otherwise mandatory German skills requirement (Nationalrat 2011b). This is part of a larger development, in which the linking of integration measures (language requirements) to admission policy (not just naturalization requirements!) has become an important aspect of Austrian politics since 2002. It serves as a tool

¹²⁰ Ibid.

to allocate different rights to immigrants depending on their perceived capacity to integration, and also as a symbolic signal intended to discourage the further migration of family dependents, which were perceived to be predominantly unskilled women or Muslim individuals (Kraler 2012, 43-47). This led to two competing lines of argumentation over the past decade. While some viewed immigration as beneficial and integration requirements as violating cultural rights, others argued that immigrants should assimilate as fast as possible, giving up their cultural identity (Fassmann 2013b, 711-12).

The language requirement, however, clashes with the pragmatic realization that highly-skilled immigrants have a choice of where they go and consequently pay attention to their and their spouse's work and residence rights (IV, IOM, and WKÖ 2008). Granting unrestricted access to spouses and minimizing the conditions of time until family reunification was considered crucial to make the card more attractive, reflecting a clear understanding of highly-skilled migration and desirable permanent settlement (Kraler 2012, 43, IV, IOM, and WKÖ 2008, Nationalrat 2011a).¹²¹

The necessary compromise between public opinion and economic arguments therefore led to the view that if immigration is liberalized in any regard, it has to be clearly and stringently regulated in turn.¹²² Moreover, key workers and their dependents were exempted from mandatory language skills, but knowledge of German counted towards the admission's points score. However, all other applicants falling in any of the other tiers did not enjoy this privilege. This further presents evidence that trade-offs between work rights and admission criteria were driven significantly, but not exclusively, by national identity politics.

¹²¹ Author interview with chief executive officer, Austrian Chamber of Business (June 6, 2014, Austria), former director, Austrian Integration Fund (June 30, 2014, Austria), and public official, Austrian Ministry of Interior (July 3, 2014, Austria).

¹²² Author interview with public official, Austrian Ministry for Europe, Integration and Foreign Affairs (July 9, 2014, Austria).

Conclusions

Despite the strong pressure of interest groups, the RWR-card in and of itself became mainly an instrument of immigrant selection rather than an opening towards immigration in general. The Austrian points-system is still a labor shortage model—as was the quota system—with the main goal to satisfy demand for foreign workers, as a concrete job offer has to be present in almost all tiers of the system (Fassmann 2013a).¹²³ Restrictions in admission and work rights have remained at similar levels, considering the necessity to demonstrate a high-level of knowledge of German prior to migrating, admission has become probably more difficult.¹²⁴ Yet, indicators for a human capital approach can be found in the provision for a highly-skilled job search visa that allows temporary residence for the purpose of finding employment (Fassmann 2013a), as well as the rights and exceptions granted to them and their families.

This policy output can be explained by examining the gathered evidence. First, I collected evidence on how understandings of national identity and ethnic relations shape the general discourse on migrants. Austria's carefully curated mono-ethnic national identity led to a perception of immigration as a threat to social cohesion, rather than an enrichment. Discussion on immigrants was and is centered around a strong focus on the regulation of entry. Despite a strong discourse on immigrant integration, “integration” meant assimilation, best exemplified by arguments for German language proficiency, and perceptions of naturalization as the end of an integration process—i.e., successful assimilation.

Juxtaposed to these general tenor on ethnic relations, in particular, business interest groups and lobbyists argued for a greater opening for labor migrants. Business groups were able to do

¹²³ Author interview with public official, Austrian Ministry of Labor, Social Affairs and Consumer Protection (July 1, 2014, Austria), and public official, Austrian Ministry of Interior (July 3, 2014, Austria).

¹²⁴ Author interview with policy expert, Danube University Krems (July 4, 2014, Austria).

this, because of a reassertion of Austrian corporatist policy-making. During the 1990s, migration-related politics had shifted from the informal interest group bargaining level to the formal parliamentary discourse level (Kraler 2012, 30-45), opening space for more political actors and consequently was easier to politicize and play up national identity as a guiding principle in policy discussion. The outcome of which were increasingly restrictive laws on migration. Only by shifting debate back to the informal negotiations level of the social partners, and a successful bargaining between employer association and unions, a liberal migration policy was developed. Key details were discussed in small policy-circles, shielded from too much public attention and other policy actors. Its rather swift passing therefore came as a surprise, at least to the Austrian public (Fassmann 2013a, 13).

Yet, aware of the confines of the exclusive discourse and regulatory past, business groups as well as pro-immigration advocates, had to address these issues. On the one hand, they countered the exclusionary discourse, by stressing in public debate that the proposed reform was “responsible”, “economically and demographically necessary”, as well as “flexible.” On the other hand, in legal terms they stressed greater selectivity—a basic tenor that immigration should be improved qualitatively not quantitatively (Hundstorfer 2010)—which was the outcome of a trade-off between fears of renewed immigration, and economic arguments for more immigration. Highly-skilled immigrants’ work rights signaling greater openness and desired migration were only possible at the expense of tight admission requirements, and a strong hierarchy of immigration channels maintaining restrictive provisions for all other types of labor migrants, students, and family-migrants.

What about competing explanations? From the above elaborations, some tentative conclusions can be drawn. First, the influence of the European Union on initiating policy reform directly through mandatory transposing of EU directives, or indirectly through developing the EU-Blue Card cannot be denied. Second, interest group preferences aligned with the expectations of the client-politics literature. Moreover, a crucial point in the policy-process was the peak trade unions' bargain with the business groups. However, as suggested by several interviewees, the main focus on filling labor shortages was on medium-skilled 'Fachkräfte,' not highly-skilled workers per se. The focus on highly-skilled workers was a strategic part of shaping the discourse on "necessary" labor migration. This does not support the reasoning outlined by Cerna (2009b, 151) who stipulates that low-skilled unions form a coalition with capital because both see highly-skilled immigration as complementary to native workers.¹²⁵ Rather, the ÖGB used the issue of the RWR-card as a strategic bargaining chip to press concessions from the employer groups for their own legislative demands (Krings 2013, 7), which were mainly concerned with the upcoming end of restrictions on the labor mobility of the EU-14 (Fassmann 2013b, 9). The gathered evidence on the influence of right-wing anti-immigrant parties shows that they were of negligible importance since they did not hold a significant share of the seats, or were in control of particular veto points.

Lastly, I did not find explicit evidence linking the number of foreign-born residents, the welfare state, or the size or relevance of the IT- or other skill-intensive industries to highly-skilled immigration provisions. This leaves me mainly to conjecture: Austria's IT and research sectors are only marginally existent, and therefore probably of small significance to the RWR-policy-process. Similarly, arguments about the residing immigrant population in Austria involved mainly issues of immigrant integration rather than the skill profile. The booming Austrian economy in 2008 and

¹²⁵ Due to the near monopoly of worker representation through the ÖGB and BAK, there are no specific highly-skilled labor unions or lobby groups that were involved in the political process.

2009 might have not automatically led to the expansion of work rights, yet it has potentially lent credence to business interest group's claims for greater economic focus in Austrian immigration policies. Furthermore, the Austrian welfare state is a conservative-welfare, which is characterized by benefit differences according to status and prior earnings, and thus stratifies citizens rather than treat them equally in regard to social assistance. This may not have led automatically to differences in immigrant work rights by skill, but rather not posed a sufficient enough reason to treat all migrants the same. In conclusion, only alternative explanations on the preferences and policy integration of interest groups and the indirect influence of the European Union appear as sufficient, if not necessary conditions explaining the expansion of highly-skilled work rights in Austria.

CHAPTER 8

FINLAND, ALIENS ACT (2004)

The Finnish Aliens Act is of interest for this study as Finland, unlike the other countries examined, has had very little experience in labor migration, or migration in general for that matter, as it has been majorly a country of emigrants. However, over the past two decades Finland has tried to manage migration streams and immigrant integration more explicitly. Notably, Finland has some of the most liberal work rights provisions for highly-skilled immigrants, although commonly known as a rather mono-ethnic and closed country. Moreover, while Finland has become more inclusive over the past decades, explicitly in response to immigration, this has not resulted in a greater increase in liberal rights provisions.

However, placing immigration policy in the context of Finnish understanding of ethnic relations and notions of equality, I will argue that the Finnish case highlights how the welfare state and network-driven policy-making buffers exclusionary tendencies of the Finnish society in the legal realm, yet not entirely in the public one. In accordance with my theoretical predictions, the inclusionary take on ethnic relations allows for generous work rights, yet it also prevents greater selectivity based on skills, as particular trade-offs between economic arguments and national identity are weakly developed.

This chapter documents and analyzes the policy reform process resulting in the adoption of the specialist permit in Finland, starting out by briefly situating the reform process in the larger context of immigration to Finland during the post-war era. Furthermore, I will outline and discuss Finland's citizenship regime, and how it is related to perceptions about national identity and ethnic

relations. After outlining reasons for the policy reform process and principle policy actors and their policy preferences, I will discuss which considerations played out during the policy-drafting and passing. To conclude the findings, I will discuss observations and evidence according to main and alternative theories explaining the observed policy outcome.

Background: Immigration to Finland

Up until the 1990s, Finland has been largely a country of emigrants, not immigrants. Consequently, and despite the presence of autochthonous minorities, immigration and related issues have played no role in public debate and a clear immigration policy was missing (Raento and Husso 2002, 152-155, Koivukangas 2002, 4). However, towards the late 1980s and early 1990s, several international and political pressures induced critical changes. First, with the collapse of the Soviet Union, in particular Ingrian return migration set in, consisting of Finns who had lived in Russia for generations, but with the end of the Soviet Union hoped to return. In response, Finland adopted an ethnic return policy, similar to Germany's ethnic '*Spätaussiedler*' provision, granting Russian citizens with Finnish ethnic roots faster access to Finnish citizenship and social rights. With the onset of political crisis in Somalia as well as former Yugoslavia, the Finnish government also began to take in a high number of refugees (Forsander 2002a, 87, Koivukangas 2002, 5).¹²⁶ Lastly, with the admission of Finland into the European Union, and official membership in 1995 came also the pressure to accommodate the EU's free movement and labor mobility directives, and Finnish companies started to take advantage of the new labor pool (Koivukangas 2002, 5).

Within a decade, the number of foreign citizens residing permanently in Finland tripled from 21,000 in 1990 to over 100,000 in 2002, including more than 20,000 refugees alone. While

¹²⁶ Author interview with executive officer, City of Helsinki (June 5 and 6, 2014, Finland).

Finland's share of immigrants rose from 0.4 percent in 1990 to 1.9 percent in 2002, it was nowhere near comparable levels in other immigrant-receiving countries in Europe (Koivukangas 2002, 4). While for a nation of roughly 5.2 million inhabitants these pressures led to the adoption of more receptive and clearer immigration policies (Raento and Husso 2002, 158), the topic of immigration, and labor immigration in particular, remained a marginal issue in public, political and policy discourses.¹²⁷ Immigration policy was mainly limited to fulfilling international agreements or facilitating ethnic return migration, but was not used specifically as a tool in response to labor market considerations (Forsander 2002a, 87).

Configurations of Citizenship and National Identity

Since Finland has traditionally been a country of emigration, it possesses little experience with the larger social phenomenon of immigration, making discourse on immigration not a strong part of society. Finland is nowadays best described as a country with a multicultural citizenship configuration—featuring inclusive multicultural rights and access to nationality. However, prior to the 2003 reform of the Finnish nationality law, it resembled more of an assimilationist citizenship configuration. The 2003 Nationality Act expanded Finland's *ius sanguinis* tradition to also encompass *ius soli* elements and permitting dual nationality. Alien residents are now also entitled to acquire Finnish nationality, provided that the conditions, such as six-years minimum legal residence are fulfilled. This is noteworthy as most other European countries have discretionary, not entitlement-based, naturalization policies. Prior to 2003, however, a person wishing to acquire Finnish nationality had to renounce their previous nationality, and the residency requirement for naturalization was ten years (EUDO 2015).

¹²⁷ Author interview with executive officer, Finnish Immigration Service (June 9, 2014, Finland).

Similarly, although Finland has officially recognized that individuals, foreign or native, had a right to preserving their language and culture since 1991, its multicultural provisions are rather conservative (Ristikari 2002, 55). First, most multicultural provisions only extended to autochthonous groups. Despite the narrative of an ethnically homogenous Finland and Finnish national identity, indigenous minorities such as the Swedish-speaking Finns, Lapps or Sami, Jews, Tatars, Romanies, and Russians have been residing in Finland for centuries (Koivukangas 2002, 3). The narrative of homogenous Finnish society was promoted as part of the nation-state-building efforts since the 1800s (Raento and Husso 2002, 161, Ristikari 2002, 54).

Despite provisions for bilingualism, state-funding for ethnic groups and a strong commitment to providing mother-tongue instruction as well as appreciation of cultural diversity in the official school curriculum (Tolley 2011, 33-37), cultural rights for ethnic minorities are stratified.¹²⁸ The Swedish-speaking Finns have the most linguistic and cultural rights such as bilingual schools, ethnic media and party funding, and bilingualism by law in regions with Swedish-speaking citizens, such as the Helsinki-Helsingfors area (Raento and Husso 2002, 152-153). The Sami residing mostly in the North have some rights such as electing their own parliament, mother-tongue instruction, ethnic media and universities, but their rights were not officially recognized until the 1990s. Other groups, such as the Jews, are entitled to state-sponsored schools and newspapers, but are not recognized as special minorities per se. While the Romani are recognized as a culturally different minority, they do not receive special treatment, and most legislation in regard to them has been focused toward non-discrimination and integration efforts (Raento and Husso 2002, 153-155).¹²⁹

¹²⁸ Author interview with executive officer, City of Helsinki (June 5 and 6, 2014, Finland).

¹²⁹ Author interview with executive officer, City of Helsinki (June 5 and 6, 2014, Finland).

Cultural rights for immigrants are not as strongly recognized yet. The Act on the Integration of Immigrants and Reception of Asylum Seekers (1999) regarded immigrant integration as accomplished primarily over labor market participation, but also explicitly through preserving cultural life and identity (Martikainen, Valtonen, and Wahlbeck 2012, 132-133). School children in Helsinki, for example, have a right to mother-tongue/ethnic culture classes to learn about their own culture.¹³⁰ However, a closed society until the 1990s, Finland's "[...] old, state-promoted perception of homogeneity and subsequent attitudes are difficult to overcome. Recognition and respect of cultural difference and international exchange continue to be a novelty for much of the Finnish-speaking, Lutheran, and White majority population" (Raento and Husso 2002, 161).

'Multiculturalism' is mainly understood as a reaction to increasing diversity due to immigration, not as value in and of itself (Koivukangas 2002, 7, Ristikari 2002, 54). The granting of cultural rights was more pragmatic, asserting individual freedoms to culture and identity, more as a peaceful co-existence, rather than an explicit multicultural concept, and in practice often more assimilative (Ristikari 2002, 55, Martikainen, Valtonen, and Wahlbeck 2012, 140). One respondent, for example, argued that the granting of multicultural rights is also rooted in an awareness that to be internationally competitive, Finland needs to have greater international ties, as well as a strong equal treatment understanding.¹³¹ Similarly, another interviewee remarked, that Swedish is taught in schools for the benefit of the country, as one needs Swedish to communicate with other Scandinavian countries.¹³²

Despite granting more cultural rights, immigrants are still perceived as outside the conceptual boundaries of Finnish identity (Lepola 2000, cited in Koivukangas 2002, 7). This is

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² Author interview with executive officer, University of Helsinki (June 16, 2014, Finland).

best exemplified by the pejorative term ‘maahanmuuttaja’ which literally means “to the country mover”. All foreigners are considered ‘maahanmuuttaja’ (Ristikari 2002, 50).¹³³ A term, such as a hyphenated Finn, is not common. Liebkind even goes as far to argue that Finns still hold onto a defensive ‘minority’ national identity, sustained during occupations and domination by Sweden and Russia, creating a defensive attitude toward foreign interaction (Liebkind 1996, cited in Salmenhaara 2005, 12).

Furthermore, there is a clear hierarchy in which migrants are preferred—Somalis (the third greatest immigrant group) and Muslims are at the bottom, while ethnically more similar Estonians and Russians (the largest and second largest immigrant groups) are at the top (Ristikari 2002, 74, Koivukangas 2002, 5). This preference also finds its way into the labor market, as Finnish employers do not like to employ visibly different people.¹³⁴ From the results of her study on immigrant labor mobility, Forsander (2002a, 96) illustrates that among employers the conviction that “[...] it is specifically in *Finnish* jobs that one learns how to work *in Finland* [...]” is so strong that it overrules even extensive work experience outside of Finland. However, interviewees disagreed about the extent of xenophobia in the public, some arguing that Finns are more cautious and reserved rather than xenophobic towards newcomers.¹³⁵

Policy in Question: Aliens Act (2004)

In 2004, Finland passed the new Aliens Act (*Ulkomaalaislaki*), featuring a specialist channel for highly-skilled immigrants, and accorded generous work rights to applicants who fulfilled the conditions of this permit status. In contrast to regular work permits, ‘specialists’ enjoy

¹³³ Author interview with public official, Ministry of Labor (June 6, 2014, Finland).

¹³⁴ Author interview with executive officer, City of Helsinki (June 5 and 6, 2014, Finland).

¹³⁵ Author interview with policy expert, University of Tampere (June 3, 2014, Finland).

an unrestricted right to work without a temporary residence permit for an employed person (Section 79(6) of Aliens Act), which they acquire in a one-step process, not the regular two-step one. While foreign, third-country workers are tied to their occupational field, they can switch to a permanent residence permit after four-years of continuous residence to acquire unrestricted access to the labor market.¹³⁶ Spouses have unrestricted labor market access from the start. As ‘specialist’ qualify applicants whose salary is higher than the average Finnish salary (at least more than 3,000 EUR per month), and who possess special skills or expertise as needed by the employer and a minimum university degree.¹³⁷

Other than, for example, the Austrian or German definition of ‘highly-skilled immigrants’, there are no specific differences made between highly qualified and qualified applicants (Bärlund and Brewis 2013, 7-8). However, although the Finnish labor migration system for third-country nationals is employer-driven i.e., without a work offer this status cannot be obtained by itself (Bärlund and Brewis 2013, 8); highly-skilled immigrants do not have to pass labor market tests.¹³⁸ Even with labor market tests, more than the majority of work permit applications, regardless of specific category of entrance, are favorably decided (Forsander 2002a, 100), and around 90 percent of specialist permits are granted.¹³⁹

Reasons for Policy Reform

The motivation for a comprehensive immigration policy reform, addressing specifically different types of immigration, came at the confluence of different developments. First of all, since the last legislative act (the Aliens Act of 1991), over one-hundred amendments and regulations

¹³⁶ Author interview with policy expert, University of Tampere (June 3, 2014, Finland).

¹³⁷ Author interview with executive officer, Finnish Immigration Service (June 9, 2014, Finland).

¹³⁸ Author interview with public official, Ministry of Labor (June 6, 2014, Finland).

¹³⁹ Ibid.

were passed by the ministries of labor and interior to manage issues arising with the new forcibly displaced immigrants. However, these regulations did not have the status of laws, and the development of a new Act sought to streamline and re-model previous legal additions. This served importantly as a convenient “window of opportunity” to address immigration policy more generally.¹⁴⁰

Second, in the beginning of the 2000s, increasing awareness arose that Finland, just as other industrialized nations, was facing a demographic challenge. Estimations about the effect of 700,000 Finns retiring in 2011, set off not only a discussion about the support ratio between employed and dependent individuals, but also the speed at which it took place, which was considerably faster than in any other European country (Forsander 2002a, 88-89, Government 2006, Koivukangas 2002, 10-11). While official governmental considerations of the effect of this “pension bomb” (Forsander 2002a, 88-89) were not comprehensively and publicly articulated until 2006, it had already found a place in policy circles during the Aliens Act reform in 2004.¹⁴¹

Third, after the painful recession of the early 1990s, Finland recovered towards the end of the decade, and in particular the high-tech IT and communication industries started to boom. Consequently, in the beginning of 2000, the need of Nokia and other IT companies was discussed in public and policy-circles, as Nokia was the highest tax-paying company and major economic force in Finland.¹⁴² The argument was made that Finland needed to expand highly-skilled immigration in order to support the high-tech industry, which was in need of foreign labor to satisfy the current demand in the IT industry (Bärlund and Brewis 2013, 7). These considerations were reflected in Finnish universities’ initiative to establish over 350 English language engineering and

¹⁴⁰ Author interview with public official, Ministry of Labor (June 6, 2014, Finland).

¹⁴¹ Ibid.

¹⁴² Author interview with executive officer, City of Helsinki (June 5 and 6, 2014, Finland).

business programs in the course of the next five years,¹⁴³ but also in business sector's request for easier residence permit procedures to speed up the hiring process (Bärlund and Brewis 2013, 7).

Policy Actors

The 'specialist' immigration channel is in essence a government-led, national program,¹⁴⁴ and consequently the strongest proponents for highly-skilled immigrants were found among administrative policy circles, such as senior economist researchers in government positions and public stake-holders (Salmenhaara 2005, 4).¹⁴⁵ A particular characteristic of Finnish policy-making is the encompassing and cohesive interconnectedness between elite policy-actors. Informal networks have been crucial in coordinating, for example, industrial policy among public and private actors (Ornston Forthcoming). The Aliens Act, as well, was initiated in cooperation between the Ministries of Interior, Ministry of Labor, and also regional offices.¹⁴⁶ Specific policy guidelines for the 'specialist' category were developed between the Finnish Immigration Service and the employment administration (Bärlund and Brewis 2013, 7). As outlined above, the considerations from the governmental side were motivated by issues of demographic challenge and administrative streamlining.

Similar to Austria, Finland has a strong institutionalized concertation of key interest groups, making them influential in any kind of social or economic policy-making process. The Finnish process of drafting laws and policies is in general very inclusive, consulting with representatives of cities, universities, and bigger companies, which are collectively referred to as

¹⁴³ Ibid.

¹⁴⁴ Author interview with policy expert, University of Tampere (June 3, 2014, Finland), and public official, Ministry of Labor (June 6, 2014, Finland).

¹⁴⁵ Author interview with executive officer, Finnish Immigration Service (June 9, 2014, Finland), and executive officer, Helsinki Region Immigrant Employment Council (June 10, 2014).

¹⁴⁶ Author interview with public official, Finnish Immigration Service (June 18, 2014, Finland),

stake-holders.¹⁴⁷ Labor unions are very strong in Finland, yet, in comparison to other European countries, high volume immigration to Finland is a rather recent phenomenon for them, leaving unions with less precise and often fragmented preferences toward labor migration. While there was not distinct opposition to immigration during the reform of the Aliens Act, the unions' position was in favor of keeping labor market tests for all kind of labor migrants to decrease competition for Finnish workers, unless there was really a significant shortage in the work force (Salmenhaara 2005, 4).¹⁴⁸

Generally, the unions were also divided over how important immigration policy is. In a representative study of over 300 trade unionists, Helander (2011) found that responses to the question of how important they deem involvement in immigration policy-making, were strongly tied to the type of unions. Representatives of the blue-collar Central Organization of Finnish Trade Unions (*Suomen Ammattiliittojen Keskusjärjestö*, SAK)—the greatest trade union in Finland—found it most often important to influence immigration policy, while representatives of the white-collar union Finnish Confederation of Salaried Employees (*Toimihenkilökeskusjärjestö*, STTK), thought less often so. The least important was the issue to the high-skill union Confederation of Unions for Academic Professionals in Finland (AKAVA) (Helander 2011, so cited in Ristikari 2012, 49). While the SAK was mainly opposing increasing labor migration, their concern focused on the low-skill sector (EMN 2011, 28). In contrast, labor unions for academics, such as AKAVA were generally in support of easing labor migration policies for their constituency, but did not have very activist stances on this issue (Salmenhaara 2005, 5).¹⁴⁹

¹⁴⁷ Author interview with executive officer, City of Helsinki (June 5 and 6, 2014, Finland).

¹⁴⁸ Ibid.

¹⁴⁹ Author interview with policy expert, University of Helsinki (June 16, 2014), and policy expert, University of Tampere (June 3, 2014, Finland).

The employer associations, in contrast, were much more in favor of highly-skilled immigration. The industries, as represented through the Confederation of Finnish Industries (*Elinkeinoelämän Keskusliitto*, EK) argued that global talent is needed to compete in international markets, and suggested abolishing labor market tests and to consolidate work and residence permit into one title.¹⁵⁰ Think-tanks like the Finnish Business and Policy Forum (*Elinkeinoelämän valtuuskunta*, EVA) were advocating for a more liberal HSI policy as well.¹⁵¹ However, political support for greater accommodation of highly-skilled immigrants was contingent on not occurring greater costs for companies, and strongly driven by certain sectors, in particular the IT industry.¹⁵² While IT focused on global recruiting and worldwide talent pools (Forsander 2002a, 103-104),¹⁵³ in other sectors of the economy, employers were skeptic of employing visibly different people, who may differ in culture and language capabilities, and were wary of the cost-benefit of employing foreign workers (Koivukangas 2002, 9).¹⁵⁴

Of particular interest is here the role of Nokia. However, it is not quite clear how actively Finland's most important company was involved in the policy-drafting process. Some interviewees stated that Nokia was not directly lobbying for a more liberal policy but rather asked about their needs by local authorities,¹⁵⁵ while other interviewees argued that Nokia did push for more foreign migration, for example by publicly announcing it would need 5,000 foreign workers per year (Bärlund and Brewis 2013, 21).¹⁵⁶ Evidence from other policy fields, such as fiscal policy, suggest that Nokia was able to use informal networks to convince public and private sector actors to pass

¹⁵⁰ Ibid.

¹⁵¹ Author interview with policy expert, University of Tampere (June 3, 2014, Finland).

¹⁵² Author interview with policy expert, University of Helsinki (June 16, 2014).

¹⁵³ Author interview with public official, Ministry of Labor (June 6, 2014, Finland), and policy expert, University of Helsinki (June 16, 2014).

¹⁵⁴ Author interview with executive officer, City of Helsinki (June 5 and 6, 2014, Finland).

¹⁵⁵ Author interview with policy expert, University of Tampere (June 3, 2014, Finland), policy expert, University of Turku (June 4, 2014, Finland), and policy expert, Migration Institute Turku (June 11, 2014, Finland).

¹⁵⁶ Author interview with policy expert, University of Helsinki (June 16, 2014).

legislation in their favor (Ornston Forthcoming). Since some of the newer features for the specialist program included a taxation flat rate to make Finland more attractive for foreign IT professionals, and a faster application process,¹⁵⁷ there might be substance behind the claim that the ‘specialist’ permit was in essence a “lex Nokia” (Bärlund and Brewis 2013, 21).

Lastly, political parties constituted a final policy player. However, there was little political opposition to a general immigration reform—as up to that point, immigration had been a marginal part of society, and political discussion.¹⁵⁸ Most parties were in favor of labor migration,¹⁵⁹ but differed in their focus on aspects of labor market demands and integration (EMN 2011, 27). The conservative National Coalition Party (*Kansallinen Kokoomus*), for example, was pushing the idea of more highly-skilled immigration the most, as they saw themselves as the party of the highly-skilled, with backers from industries and entrepreneurs. Among the social democratic party (*Suomen Sosialidemokraattinen Puolue*), an endorsement of highly-skilled immigration was present as well, but not as strong as among the conservatives.¹⁶⁰ While one may be tempted to argue that the nationalist-populist The Finns Party (*Perussuomalaiset*)¹⁶¹ may have been opposed, almost all interviewees agreed that the Finns were more concerned with refugees and asylum migration, and not particularly opposed to qualified migration.¹⁶² Furthermore, in the 2003 national election, The Finn’s Party had won only three seats in the parliament, and was therefore only marginally important in policy-making.

¹⁵⁷ Author interview with policy expert, University of Tampere (June 3, 2014, Finland).

¹⁵⁸ Author interview with executive officer, City of Helsinki (June 5 and 6, 2014, Finland), and with policy expert, University of Tampere (June 3, 2014, Finland). The interviewees noted, however, that this changed with the circulation of the 2006 government statement calling greater attention to labor migration.

¹⁵⁹ Author interview with executive officer, Helsinki Region Immigrant Employment Council (June 10, 2014).

¹⁶⁰ Author interview with policy expert, University of Tampere (June 3, 2014, Finland), policy expert, University of Turku (June 4, 2014, Finland), and policy expert, University of Helsinki (June 16, 2014).

¹⁶¹ Formerly known as The True Finns.

¹⁶² Author interview with policy expert, University of Tampere (June 3, 2014, Finland), executive officer, Finnish Immigration Service (June 9, 2014, Finland), and executive officer, Helsinki Region Immigrant Employment Council (June 10, 2014).

Policy Reform Process

As outlined above, administrative and bureaucratic elites were the main drivers behind immigration reform. While stake-holders were part of the policy process, the great labor unions saw little need for a specific highly-skilled labor-related focus, and the great industry groups, despite preferring labor migration, were not particularly strong advocates or meaningfully involved. Only a handful of stake-holders had a pronounced position toward the issue. Thus, the reform discourse was dominated by three main issues that were discussed in policy circles—the strong welfare philosophy, the Finnish immigration experience, and the domestic labor market.

First, Finnish immigration policy is rooted in the Finnish welfare state philosophy and its strong core of equal treatment. The Finnish welfare state's self-prescribed goal is the diminishing of social differences between citizens of different strata or groups—all inequalities should be eradicated. In addition, the legalistic character of social policy focuses on individuals' rights rather than group rights. Thus, the Finnish understanding of equality is so inclusive that it also informs immigration policies and the rights that immigrants receive.¹⁶³ In a separate law on equal treatment, passed in 2004 as well, this equality principle was reiterated, and also addressed the equal treatment of immigrants.¹⁶⁴

Conversely, Forsander argues that while the welfare state promotes equality, it does so in reference to its roots in assumptions about Finnish national homogeneity, and therefore is less able to cater to problems that immigrants face in particular (Forsander 2002b, cited in Martikainen, Valtonen, and Wahlbeck 2012, 139). The tension between equal treatment and exceptions for specific groups is also visible in rights granted to different types of labor migrants. It is not

¹⁶³ Author interview with executive officer, City of Helsinki (June 5 and 6, 2014, Finland), executive officer, Finnish Immigration Service (June 9, 2014, Finland), executive officer, Helsinki Region Immigrant Employment Council (June 10, 2014), and executive officer, University of Helsinki (June 16, 2014, Finland).

¹⁶⁴ Author interview with policy expert, Migration Institute Turku (June 11, 2014, Finland).

considered appropriate to treat highly-skilled individuals with a softer hand than low-skilled foreigners,¹⁶⁵ and therefore not surprising that a stronger skill-selection could not be implemented through allocating different rights to different immigrant types, such as implemented in Austria or Germany. While Canada was mentioned as a role model for its successful immigration policy, the Canadian-style points system was and is a touchy subject in Finland because it essentially stratifies, by selecting specific types of immigrants over others. The points system was regarded as being counter to equal treatment, and as inhumane to rank people.¹⁶⁶

The role of state bureaucrats was ambivalent. In general, administrators have acted as safeguards to ensure the protection of immigrants living and working in Finland, with concerns about furthering strong ethnic segmentation of and marginalization in labor markets (Forsander 2002a, 101-102).¹⁶⁷ In a government pamphlet publicized in 2006, labor migration was outlined as a necessary tool in ameliorating the demographic change and the difficulty in financing social systems. Attention was paid in particular to the “human” side of immigration, recognizing that

[...] family life for foreign workers in Finland is a significant factor in promoting work-related immigration. The presence of a family furthers commitment to work and society. [...] Immigrants can help ease the shortage of labor, widen the skill-base, and make innovations. It must, however, be taken into account that immigrants are not merely an instrument for solving a problem, but they will become a part of that society whose problems are being solved (Government 2006, 4).

This indicates a much more human capital-oriented approach to highly-skilled immigration rather than a classic labor shortage model. However, there were no institutional actors

¹⁶⁵ Author interview with executive officer, University of Helsinki (June 16, 2014, Finland).

¹⁶⁶ Author interview with executive officer, Finnish Immigration Service (June 9, 2014, Finland).

¹⁶⁷ For example, work permits for foreign hires in the cleaning industry were denied to avoid ethnic segmentation of labor markets (Forsander 2002a, 101-102).

who would have deemed immigration as a particularly important issue prior to the political rise of the The Finn's Party and the subsequent politicization of the topic in 2011.¹⁶⁸

Conspicuously absent from debate on the Aliens Act reform were arguments about safeguarding economic interest through focusing on highly-skilled immigration (Forsander 2002a, 101-102). This can be explained by the lessened need for highly-skilled immigration. The Finnish labor market is in general very small, and the Finnish population is highly-educated. Only between 2006 and 2008 did Finland start to discuss labor migration more seriously, as it experienced a labor market deficit. If there were labor shortages, however, they were mainly in the low-skill end of the labor market.¹⁶⁹ Moreover, due to the recession and following mass unemployment during the 1990s, Finland had never been in a labor market deficit position comparable to Germany or Austria. In consequence, the need to hire foreign labor was not a pronounced consideration (Forsander 2002a, 93).¹⁷⁰ Moreover, among unions and employer associations, contemplations to become more international through international employees were stronger than arguments of a labor shortages.

There was no large public opposition to highly-skilled migration that could be used as political leverage in parliamentary politics. If immigration has been perceived as negative, then only in the context of the strong increase of asylum-seekers, competition for (blue-collar) jobs, and the use of social welfare benefits through immigrants.¹⁷¹ In particular, the interaction of a large number of Somali refugees and the Finnish recession in the 1990s had been a root cause for some

¹⁶⁸ Author interview with policy expert, University of Turku (June 4, 2014, Finland).

¹⁶⁹ This is due to structural unemployment rather than business-cycle dependent unemployment. Despite unemployment, the fact that low-skill jobs do not pay enough to entice Finnish workers from outside the cities to move to the cities, where chronic housing shortages have driven up prices tremendously (Forsander 2002a, 98). Immigrants therefore tend to be needed in low-skill jobs, rather than medium or high-skill occupations.

¹⁷⁰ Author interview with executive officer, City of Helsinki (June 5 and 6, 2014, Finland).

¹⁷¹ Author interview with policy expert, University of Turku (June 4, 2014, Finland), and executive officer, City of Helsinki (June 5 and 6, 2014, Finland).

of the pronounced anti-immigrant attitudes.¹⁷² Finland's history as a country of emigration has also contributed to a generally liberal stance towards immigration. As Finland had no particular need to protect their boundaries and comparatively small immigration flows, it is easy to have a liberal program.¹⁷³

Conclusions

Unlike Germany and Austria, Finland has not experienced a further liberalization of HSI work rights, but rather a liberalization of admission criteria, by expanding significantly the type of tasks and occupations that were counted as 'specialist' in the Aliens Act of 1991.¹⁷⁴ In addition, the Act resulted in the streamlining of the application process, providing tax breaks and other immigration incentives for highly-skilled immigrants, and the encoding of previous regulations into coherent law.

The Finnish case demonstrates that immigrant work rights and rights more generally were specifically linked to the central idea of equality. The universal welfare state, based on a notion of equal treatment and equal status of citizens, is a strong part of Finnish national identity, with a focus on individual rights that is strongly mirrored in their treatment of immigrants in regard to cultural rights and access to citizenship. Unlike in Germany and Austria, this welfare philosophy diminishes grounds for considerably unequal treatment of immigrants. Conversely, at the same time, it also undermined greater rights-based selectivity in immigration policy. However, it remains undetermined whether the welfare state is an intervening or an ontologically prior factor

¹⁷² Author interview with executive officer, City of Helsinki (June 5 and 6, 2014, Finland). A survey conducted in 1999, found that a remarkable percentage of Finns held racist attitudes (Salmenhaara 2005, 8).

¹⁷³ Author interview with policy expert, University of Tampere (June 3, 2014, Finland), public official, Ministry of Labor (June 6, 2014, Finland), and executive officer, University of Helsinki (June 16, 2014, Finland).

¹⁷⁴ Author interview with public official, Ministry of Labor (June 6, 2014, Finland).

to the Finnish citizenship regime. Even assuming that the welfare state did not have an identity-shaping effect, it was still fundamental in extending rights to immigrants, a conclusion that corresponds to findings by Crepaz (2008) and Crepaz and Damron (2009).

Further evidence for a more inclusive understanding of ethnic relations is provided by the absence of debates about regulating the entry of immigrants, and instead a greater focus on immigrant integration outcomes with a commitment to cultural accommodation, that had strongly pluralist undertones (at least on paper). Yet, the absence of debates on admission criteria is not conclusive. It can also be explained by the fact that Finland is a late developer in regard to immigration and related issues, and is only just now trying to figure out the particulars of how to address immigration (Salmenhaara 2005, 6).

The absence of immigration as a central political issue was also aided by a mode of policy-making, which was strongly government-dominated and done by piecemeal. Economic considerations, if any, were located in government ministries and policy networks, such arguments regarding the support of the comparative advantage of the Finnish IT industry. Furthermore, interest group pressure was weak. Unions were split along different occupational sectors—the blue collar union SAK was opposed to more immigration, while the high-skill union AKAVA was in favor, but not particularly active in the policy-process. Business groups were split along sectors as well: highly-skilled immigration was only of importance for the IT sector; other sectors were either more interested in low-skilled labor, or generally skeptic of hiring foreigners. The absence of strong policy preferences or significant involvement of interest groups then does not explain why highly-skilled work rights were so liberal to begin with, but may play a role as to why further liberalization was not on the table.

What about other alternative explanations? It is difficult to argue that the comparatively low number of immigrants, even considering Finland's population, was not a key factor as to why immigration has not taken the same place in public discussion as in Germany or Austria. Similarly, the growth of the Finnish economy and the influence of Nokia have created a favorable environment to think about immigration more systematically. Interestingly, EU policies such as the Blue Card and Researcher Directive were deemed largely irrelevant to Finnish authorities, as the provisions in the Aliens Act are more flexible and liberal than the EU instruments, and Finland possessed their own channels of attracting foreign workers already (EMN 2011, 9).¹⁷⁵ Yet, the acceptance in the European Union in 1995 propelled Finland on a trajectory of immigration-related policy, even if it only concerned implementing directives on refugees and family migration. In conclusion, only alternative explanations regarding the effect of the welfare state, and Finland's largely short and small immigration history appear to be sufficient for explaining highly-skilled work rights in this case.

¹⁷⁵ Author interview with public official, Ministry of Labor (June 6, 2014, Finland), and executive officer, University of Helsinki (June 16, 2014, Finland).

CHAPTER 9

CONCLUSION

Why do some countries have more restrictive policies for attracting highly-skilled immigrants than others? As countries compete to attract the “best and brightest”, it is puzzling that some design their policies very restrictively while others provide generous rights and accommodations for highly-skilled immigrants. The purpose of this study was to identify the relationship between different conceptions of national citizenship and the work rights granted to highly-skilled immigrants. Additionally, this study aimed to explore the interaction between these conceptions and interest group politics, and their combined effect on the formation of highly-skilled immigration policies in 16 OECD countries.

While previous work on labor immigration policies has focused on client-politics arguments, highlighting the instrumental role of labor unions and business associations, or the importance of institutional arrangements and state actors, this study argues that the difference in work rights granted to highly-skilled immigrants is also determined by how inclusive or exclusive national citizenship configurations are. As institutional frameworks for discursive coalitions, citizenship configurations make some arguments on immigration more legitimate than others in policy discourse, and crucially affect the trade-off between different policy goals. To test my theory I employed a nested analysis consisting of a quantitative and qualitative analysis. This included the development and analysis of a measure of policy restrictiveness in HSI work rights for 16 countries from 2002 to 2012, and an analysis of the posited causal mechanisms in four qualitative within-case studies

The large-N analysis in chapter 5 revealed a strong and statistically significant relationship between national citizenship configuration and work rights restrictiveness, controlling for several alternative explanations. The more exclusive national conceptions of belonging are, the more restrictive are work rights for highly-skilled immigrants. This effect was amplified in presence of a large number of veto-points. To a lesser extent but still statistically were also the levels of union coordination and corporate coordination, the type of welfare state, and the presence of left of center governments when interacted with the number of veto-points.

In chapter 3 I outlined what information, which causal process observations, needed to be found during the small-N analysis if the causal mechanism outlined in the same chapter were to be true. Examining the evidence presented in the within-case studies in chapter 6, 7 and 8, I found that citizenship configurations did function through the stipulated causal mechanism. The type of discourse on highly-skilled immigrants was shaped by the context of national understandings about ethnic relations and national identity. In cases with predominantly exclusive citizenship understandings public discourse centered on treating immigrants as a marginal group that had to be regulated in its entry, and if not possible to be regulated, at least regarded as in need of cultural assimilation into the mainstream society, as the case of Austria (chapter 7) illustrated.

Furthermore, evidence was found that citizenship configurations shaped policy goal trade-offs. In the cases of Austria and Germany, explicit references were made about the feasibility of economic interests in context of national identity and ethnic relations. In contrast, in Finland, where citizenship conceptions allowed for a more inclusive approach to immigration, particular notions of economic needs vs. preserving the essence of Finnish identity were absent. All cases also provided evidence for an inversely proportional relationship between the extent of work rights granted to highly-skilled immigrants and skill-selectivity in admission criteria. In context of

exclusive citizenship configurations, extensive rights for highly-skilled immigrants coincided with narrower definitions of who qualifies as ‘highly-skilled’, while in context of inclusive citizenship configurations no such trade-off was present.

In sum, the four within-case analyses lend credence to the conclusion that exclusive conceptions of membership are a necessary condition for observing restrictive work rights in highly-skilled immigration policy. However, the presence of an exclusive citizenship regime does not automatically translate into restrictive work rights. The case of Austria demonstrated that it is possible to observe liberal work rights for highly-skilled immigrants even in the presence of exclusive notions of national identity and ethnic relations. Therefore, configurations of citizenship can be regarded as a necessary but not a sufficient factor in observing restrictive work rights.

What additional factors contributed to work restrictiveness? I found evidence that the number and quality of veto-points played an interesting role. Given the exclusive national identities in Germany and Austria - with very similar exclusive discourse coalitions on immigration - the differences in work rights allocated to highly-skilled immigrants can be traced to the absence or presence of veto-points. Austria’s exceptionally neocorporatist mode of social policy-making, in combination with a pro-skilled migration discourse coalition, enabled a greater liberalization in work rights and the introduction of a points-system than in Germany which faced in both policy cases significant veto-players and strong traditional discourse coalitions. In consequence, the mode of change in Germany was incremental, rather than rapid.

However, outside of the interaction with exclusive discourse coalitions, support for the independent effect of veto-points was weak. In the large-N analysis the effect of veto-points on the extent of work rights was not stable across different model constellations. Furthermore, veto-points by themselves fail to explain the strong variation in work rights between the United States

and Canada, for example, two countries with very similar veto-structures. Veto-points should thusly be treated rather as a catalyst for the power of exclusive discourse on immigration than as a principle determinant of work rights.

Moreover, I also stipulated a conjunctural relationship between economic interest groups and national identity discourses. In particular in the Austrian case study where the influence of economic interest groups on the policy output was arguably the most significant, I found evidence that the employer associations were quite aware of the obstacles posed by the generally exclusive approach to immigration in Austria, and actively tried to counteract the “braking” effect of these exclusive discourses. However, more generally, the role of interest groups in highly-skilled immigration policy output was less clear. All cases featured to a certain extent a corporatist interest representation system, but only the Austrian case delivered a strong argument for the importance of interest group organization in labor migration policy-making. In the German Green Card case, interest group support was rather mixed, similar to the Finnish Aliens Act case. Yet, unlike in Finland, the exclusive national identity and surrounding issues outweighed economic reasons for a liberalization of labor migration voiced by policy elites and interest groups. Even with the convergence of policy preferences among unions and employer associations in the German Residence Act case, issues of national identity acted as a rhetorical brake to arguments for more liberal migration rules.

Lastly, the type of welfare state appears to have an effect on work rights restrictiveness as well. Although not specifically anticipated in my theory, the empirical analysis indicated a relevant causal connection. This relationship has been most explicit in the Finnish case, indicating that the strongly universalist welfare philosophy Finland’s provides legal and discursive grounds to treat immigrants in an equal manner to domestic workers. In Austria and Germany, two countries with

traditionally conservative welfare states, the notable absence of ideas of equal treatment and status as well as indications of welfare chauvinism provide further indirect evidence for an effect of welfare state type. On a side note, the equalizing function of the universal welfare state type may also be responsible for the overall lack of skill-selectivity based on right differentials among labor migrant groups in the Finnish case. It may also explain why, for example, Sweden, a similarly universalist welfare state, has only a ‘one size fits all’ labor migration policy, essentially granting the same rights to all groups of labor migrants.

Table 9.1: Comparison of Main Variables of Interest across Four Case Studies

	Austria (Reform 2011)	Germany (Reform of 2000)	Germany (Reform of 2005)	Finland (Reform of 2004)
Citizenship Configuration	Exclusive	Exclusive	Medium- Exclusive	Medium-Inclusive
Interest Group Support	Unified (strong)	Mixed (weak)	Unified (weak)	Mixed (weak)
Veto-Points	Few	Many	Many	Few
Welfare State	Conservative	Conservative	Conservative	Universalist
Work Rights	Medium- Liberal	Restrictive	Medium- Restrictive	Liberal

What about alternative explanations? Evidence for a significant role of the EU in national policy-making was scant, and only weakly relevant to the observed outcomes. The Austrian and the Finnish case illustrated that much more generous provisions were embedded in national policies rather than the EU Blue Card. It seems that the EU has served mainly as catalyst for policy reform both cases, but independent of this, the EU does not determine the extent of national work rights provisions: the differences in work rights in national labor migration policies among EU member states casts doubt on a significant effect of the EU.

Similarly, the study found no compelling evidence for the significance of right-wing anti-immigrant parties. While there was some indication that in the case of Austria, populist right-wing parties had previously assumed a decisive role in restricting asylum and residence policies during the 1990s and early 2000s, this outcome was due to a shifting of immigration policy from the closed, informal negotiations of the social partners, to the open parliamentary arena where the subject of immigration was politically mobilized. In contrast, the presence of a left leaning government seemed to contribute to the allocation of less restrictive work rights.

Furthermore, the number of foreign-born residents in and of itself did not appear as a determinant of work rights granted to highly-skilled immigrants. Rather, the increase in immigrant numbers through wave-like episodes, and the predominance of a particular type of immigrant, such as asylum seekers, seemed to be of significance in all cases. While this served certainly as a building block for an anti-immigrant political climate in the population, I found only weak linkages for a causal effect on work rights for labor migrants.

Tests for the relevance the national IT-industry delivered ambivalent observations. The importance of IT was referenced as a factor in immigration policy-making in Finland and in Germany, but only in Finland through this seemed to have corresponded causally to more accommodating work rights for highly-skilled immigrants. However, the evidence is not as compelling once one considers the importance of elite-networks in Finnish policy-making and the exceptional role of Nokia for the Finnish economy.

Lastly, and related to the last point is also the question of the relevance of the business cycle for highly-skilled immigration policy output. Episodes of economic growth or contraction appear to have lend credence to arguments for or against a liberalization of immigration, as the case of Austria, Finland and Germany show. Yet, I have not found explicit data linking the business

cycle to different outcomes in work rights, as the case of Austria, Finland and Germany show. It is therefore safer to suggest that times of economic growth create impetus for policy reforms, but do not determine the magnitude of rights granted.

Given the results of the quantitative analysis, should we care about the qualitative findings? Did anything emerge contrary to the findings of the large-N analysis? The qualitative findings confirmed and further illustrated the findings in the large N-study. The qualitative analysis also provided causal process observations that provided greater evidence for the proposed relationship between interest group dynamics and discourse coalitions. The analysis unveiled, for example, that in the Austrian case interest groups were aware of the obstacles created by exclusive discourses and actively attempted to counter them.

A particular surprise in the qualitative studies was that the figure of the highly-skilled immigrant was often used quite instrumentally to make unpopular immigration reforms more palpable. In all cases I encountered evidence that actual labor shortages dominated in industries reliant on medium-skilled labor, not academics. This raises questions about whether the need for highly-skilled immigrants in the discussed cases was really substantial, or rather part of an international discourse prompted by globalization and economic competition, or just a symbolic means for preparing later, gradual widening of liberal labor migration for skilled workers? A second and related surprise emerged in response to the conclusions that despite scholarly arguments for “paradigm shifting” changes represented by the Austrian RWR-card or the German Residence Act, previous immigration policies have been in essence continued.

This study comes with several caveats. First, my findings speak to the puzzle of policy divergence in work rights, but do not address differences in admission or selection mechanisms. To complement this study, an expansion of the dataset for admission and selection criteria could

help determine the relationship between admission and rights, which is partially addressed in the theoretical framework. Moreover, this study also only speaks to matters of policy output, but not to theoretically and empirically important questions about policy implementation and policy outcomes. Second, the case for the empirical and theoretical distinction between citizenship configuration and immigrant work rights remains an uneasy one, requiring further elaboration and testing to ensure that observations are indeed conditionally independent of each other.

Third, while the selection of national policies is theoretically guided, my coding decisions are based on case knowledge and personal judgement which may create room for measurement and coding errors. As the scale reliability of the work rights index was rather weak, greater improvements in the measuring of HSI work rights are necessary. Relatedly, the selection of some policies over others in cases where not only one but several policies target highly-skilled immigrants or different classes of highly-skilled immigrants, bears potential problems as well. A robustness check involving the testing for alternative policies where appropriate may be prudent to make sure that the case selection did not influence the findings.

Fourth, the case selection also did not include an observation from one of the traditional settler countries. The stipulated causal relationship between citizenship configurations and immigrant work rights should also be traced in detail in a case with a particularly liberal approach to immigration. This study has mainly focused on the effects of exclusive citizenship regimes – accepting the inverse relationship for inclusive citizenship configurations without an explicit test. Finland is a somewhat inclusive case, yet, an unambiguously inclusive case would be desirable.

Fifth, measuring rights is a tricky thing. As the Finnish case revealed, a quantitative measure of cultural rights may not say much about the quality or purpose of these rights and thus potentially violate assumptions about what the instruments actually do measure. Moreover, due to

data limitations the quantitative measure for access to citizenship prior to 2000 is not satisfactory, as it potentially introduced greater noise to the data. And lastly, the use of indices is problematic as well, since they consist of several indicators that are aggregated into one score. However, two observations with identical scores may still show great variation in indicators, potentially obscuring quite different causal relationships.

The outlined caveats suggest further research avenues, including an expansion and development of measuring highly-skilled migration policies. This study has done first ground work in weakening the client-politics approach, directing attention to the power of discourses and the shaping of policy discourses through understandings of nationhood and belonging. National conceptions can under specific circumstances and when activated politically, block liberalizing policy tendencies which eventually produce discursive gaps between initially stated policy goals and eventual policy output.

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APPENDIX A

CODING SCHEME

This scheme has been adapted and modified from Cerna (2009a).

- 1) *Employer Portability*: a high score is given if the migrant worker can work only for the original employer and in one place; declining points are given for the degree to which work authorization is ‘portable’ between employers.
 - a. 3 pts: Work authorization is tied to employer, occupation/ sector and place of work.
 - b. 2 pts: Work authorization is tied to employer (for a certain time period).
 - c. 1 pts: Work authorization is portable between employers in a given occupation/ sector or region (if switching to different occupation/sector/region new permit necessary).
 - d. 0 pts: No restrictions on employer portability (employment anywhere and in any capacity).

Penalties:

- If, under circumstances, an additional restriction applies a 0.5 penalty is added.
- 2) *Spouse’s Work Rights*: a high score is given if the spouse is not permitted to either accompany the worker (or other dependents) or to work; declining points are given if the spouse is permitted to obtain independent working rights, or the spouse has unlimited working rights.
 - a. 3 pts: Spouse is permitted to apply for independent working rights, but on the spousal permit they cannot work.
 - b. 2 pts: Spouse has unlimited working rights after a certain time period (2 years and more)/ no labor market needs test in the case where the spouse has to apply.
 - c. 1 pts: Spouse has unlimited working rights after a certain time period (less than 2 years) or expedited procedure/ no labor market needs test in the case where the spouse has to apply for independent working rights.
 - d. 0 pts: Spouse has unlimited working rights from the start.

Penalties:

- If spouses are allowed to work only part-time work/ are restricted in labor market access or any other capacity a 0.5 penalty is added.
- No penalty is added if spousal permit is tied to principle applicant’s permit.

- 3) *Permanent Residency Rights*: a high score is given if the temporary migrant is prohibited from transitioning to any permanent status; declining points are given if transitions are relatively possible, or there is an additional transition to naturalized citizenship
- a. 3 pts: No automatic transition (not a right) envisioned (i.e. need to switch programs) OR 10 years and more needed.
 - b. 2 pts: Possibility to apply for permanent status exists (more than 6 years).
 - c. 1 pts: Transition to permanent residency is relatively possible after some years (3-5 years).
 - d. 0 pts: Transition to permanent residency is relatively possible after very short time period: less than 3 years).

Penalties:

- A 0.5 penalty is added if individuals of specific countries of origin have less favorable treatment.
- A 0.5 penalty is added if approval of permit is tied to social benefit usage or integration classes.
- A 0.5 penalty is added if only long-term stay possibility exist (long, but needs to be renewed, not permanent).

APPENDIX B

INTERVIEW LIST

Organization	Organization Type	Date of Interview
Germany		
Executive officer, Expert Council of German Foundations on Integration and Migration	Advisory body	5/14/2014
Executive officer, German Institute for International and Security Affairs (Stiftung Wissenschaft und Politik)	Think tank	5/15/2014
Policy expert, University Duisburg-Essen	Research	5/21/2014*
Member of Parliament, Christian-Democratic Union (CDU)	Political party	5/22/2014
Member of Parliament, Social-Democratic Party, (SPD)	Political party	5/23/2014
Policy expert, Bertelsmann Foundation	Research/Think tank	5/23/2014
Executive officer, Confederation of German Employers' Associations (Bund Deutscher Arbeitgeber, BDA)	Employer association	5/27/2014*
Executive officer, German Trade Union Confederation (Deutscher Gewerkschaftsbund, DGB)	Trade union	6/2/2014
Policy expert, Institute for Migration Research and Intercultural Studies (Institut für Migrationsforschung und Interkulturelle Studien, IMI), University of Osnabrück	Research	7/11/2014*
Head of Expert Commission "Immigration" (formerly)	Party/ advisory body	7/15/2014
Policy expert, University of Hamburg	Research	7/23/2014*

* Phone interview.

Finland		
Policy expert, University of Tampere	Research	6/3/2014
Policy expert, University of Turku	Research	6/4/2014
Public official, City of Helsinki	Government	5&6/6/2014
Public official, Ministry of Labor	Government	6/6/2014
Executive officer, Finnish Immigration Service (MIGRI)	Government	6/9/2014
Executive officer, Helsinki Region Immigrant Employment Council (HERIEC)	Stakeholder organization	6/10/2014
Policy expert, Migration Institute Turku	Research	6/11/2014
Executive officer, University of Helsinki	Research	6/16/2014
Policy expert, University of Helsinki	Research	6/16/2014
Public official, Ministry of Labor	Government	6/18/2014
Austria		
Chief executive officer, Austrian Chamber of Business (WKÖ)	Employer association	6/24/2014
Executive officer, Federation of Austrian Industry (IV)	Employer lobby group	6/26/2014
Executive officer, International Centre for Migration Policy Development (ICMPD)	Think tank	6/30/2014
Former director, Austrian Integration Fund (ÖIF)	Para-public body	6/30/2014
Policy expert, University of Vienna	Research	7/1/2014
Public official, Ministry of Labor, Social Affairs and Consumer Protection	Government	7/1/2014
Public official, Ministry of Interior	Government	7/3/2014
Policy expert, Danube University Krems	Research/Advisory body	7/4/2014
Executive officer, Austrian Trade Union Federation (ÖGB)	Trade union	7/7/2014
Public official, Ministry for Europe, Integration and Foreign Affairs	Government	7/9/2014

APPENDIX C

SAMPLE QUESTIONNAIRE

1. Tell me a little bit about your background and your familiarity with highly-skilled immigration policy.

I will omit references to specific universities, firms, departments or other organizations from my notes.

2. Finland has received positive attention for its specialist program. Why do you think this program has been so successful?
3. Some say that countries that have no strong history of immigration are usually also countries where immigrants are generally less welcome. Is this characterization true of Finland?
4. Is anti-immigration sentiment in Finland related to threat of economic competition (take jobs away, use up social welfare), culture (preserving the Finnish way), or race (Germans or French are ok, Africans and Muslims are not)?
5. And what about specific types of immigrants? Is there a difference between low-skilled and highly-skilled immigrants?
6. Apart from their economic contribution, how welcome are highly-skilled immigrants in Finland would you say?
7. What organizations or institutions do you think are most important in creating or controlling highly-skilled immigration policy?
8. How great would you say, was the involvement of unions in the policy-making or reforming process? What was their stance on highly-skilled immigration?
9. And how great would you say, was the involvement of employer associations in the policy-making or reforming process? What was their stance on highly-skilled immigration?
10. What about the creation of the specialist program? Did [the organizations just discussed] facilitate policy reform here, too?

11. I read that the government announced a Future of Migration 2020 strategy that also tries to bring in more highly-skilled immigrants. Did [the organizations just discussed] facilitate policy reform here, too?
12. And what about the influence of the True Finns? Would you say their electoral success has had a direct or indirect effect on policy-making? How?
13. What about political parties in general? Were there general predispositions toward highly-skilled immigrants?
14. If applicable: How important was the EU in the formulation of highly-skilled immigration policy in your country?
15. How important were considerations of other country's immigration policies? Was there a model or a specific aspect of competition?
16. Is there anything else that you would like to add? Do you have any questions that you would like to ask me?