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Subversive citizens: Using EU free movement law to bypass the UK's rules on marriage migration

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In 2012, new and restrictive spousal reunification laws were implemented in the UK. EU free movement rules however have enabled British citizens to circumvent those restrictions by residing for a period in another Member State, and then returning with their family member to the UK. The article examines the resulting tension between national and EU law. It explores use of the *Surinder Singh* route (named after the court case which established the rule) against a background in which a much wider group of British citizens than previously are now ineligible for family reunification under national laws. The route is perceived as a threat to government authority in a critical area of national sovereignty, as demonstrated by its invocation in the Brexit process. The article draws on interviews with twenty families who used or planned to use the route and discusses how it provides a safety valve for those with high cultural, but insufficient economic, capital to fulfil the domestic rules. It provides insight into how legal categories are fluid and contingent, demanding analytical flexibility and awareness of their dynamic effect on the lives of marriage migrants and sponsors.

Keywords: Spouses; European Union; cultural and economic capital; marriage migration

Introduction

In 2016, the British Prime Minister Theresa May said: 'If you believe you are a citizen of the world, you are a citizen of nowhere'.[1] Her words dismayed those who saw themselves not as 'citizens of nowhere' but as outward looking British citizens and who experienced her words as an attack on their values and outlook. Her populist, nationalistic message was not only a matter of political rhetoric but a distillation of the immigration policies instigated by her when she was Home Secretary. As part of a drive

[1] Theresa May PM, Conservative Party conference 5th October 2016.

to reduce all immigration, marriage migration was made more difficult, primarily through high income requirements introduced in 2012. Mobility across national borders, including from the EU, was increasingly framed as a threat to the 'social order and imagined cultural homogeneity' (Moret et al, this issue) of the British nation state.

The income requirement for spousal migrants, in particular, drew a wider range of citizens than before into the orbit of controls, including many who never expected to be adversely affected. Individuals caught between national laws and their commitment to a cross-border marriage have found that their British citizenship does not allow them to live in the UK with their partner. Until the UK leaves the EU however, they can position themselves not as 'citizens of nowhere' but as European citizens, an identity that allows them to exercise their EU free movement rights in order to avoid unwanted separation. Citizens moving to another Member State can utilise EU family reunification laws that are more accommodating than national laws and can then return to their own member state with their family member, still using EU law. The process is known as the *Surinder Singh* route after the parties to the case in which its use was first endorsed by the European Court of Justice.[2] It is distinct from the uni-directional process of European free movement discussed, for example, in Andrikopoulos (forthcoming) as the rule deals specifically with the position on return to the member state of origin following the exercise of free movement rights.

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[2] *R v Immigration Appeal Tribunal Ex p. Secretary of State for the Home Department* (C370/90) 1993 3 CMLR 358.

Little is known about how many individuals and their families use the *Surinder Singh* route or their characteristics. There has been some research in Denmark where there are longstanding restrictions on the admission of non-Danish spouses, which shows that many couples went to Sweden before moving back to Denmark. This was convenient as proximity allowed the Danish partner to continue working in Copenhagen (Rytter 2012; Wagner 2015). This article focuses on the experience of British citizens drawing on interviews with twenty families who had used, or were contemplating using, the *Surinder Singh* route to achieve family reunification because they could not meet the requirements in national law.[3] The primary issue in all but one of the interviews was the high income threshold for sponsorship by the British citizen. Demanding financial criteria in the form of a minimum income, capital deposits or freedom from welfare are now common in many European states (Wray et al 2014; Kofman 2018' Pellander forthcoming). The *Surinder Singh* route may be used to bypass onerous national requirements, whatever form they take. In Denmark, common reasons for using the *Surinder Singh* route also include the 'combined attachment' requirement, which requires couples to show that their combined attachment to Denmark is greater than to any other country and a prohibition on consanguineous marriages even when these are lawful in Denmark (Rytter 2012; Wagner 2015).

The article contributes to the themes of this special issue in several ways. The findings demonstrate how state-generated migrant categories are problematic, changeable and contested. Marriage migration is a threat to states' sovereign power to determine the cultural, economic and ethnic composition of the nation and states will

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[3] These rules also apply to non-EU citizens of the European Economic Area (Norway, Iceland and Liechtenstein) and of Switzerland.

designate certain marriages as unacceptable. Those interviewed for this article however did not easily fit the stereotype of the problematic marriage migrant. It is not suggested that old axes of exclusion have disappeared but that new complex, fluid ones have emerged so that analytical categories may need some expansion or adjustment.

Linked to this, the article suggests that the construction in law and policy of the problematic marriage migrant is contingent and context-driven. Those interviewed could use EU law, not because the EU is more sympathetic to their position but because, free movement rules, while pre-supposing some level of economic activity or self-sufficiency, prioritise pan-European citizenship. In consequence, concerns about the suitability of marriage migrants, including those who originate from outside the EU, are subordinated to the facilitation of intra-EU movement. It is not surprising therefore that EU law is more expansive than national law and that conditions seen as critical by states, such as integration and language tests or minimum income levels, do not apply in the EU context. The disparity between EU priorities and the importance of immigration control in the national framework was a significant factor in the Brexit referendum result of June 2016 (Hobolt 2016). [4]

The introduction to the special issue also observes that controls over marriage migration shape the lives of both the migrant and the sponsor. Interviewees were active strategists adjusting their plans to maximise their chances of their desired outcome, although they were not always comfortable acting in opposition to the state. While the

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[4] The *Surinder Singh* route's significance is demonstrated by inclusion of measures to inhibit its exercise in the agreement reached prior to the referendum on changes to follow a vote to remain: *Extract of the Conclusions of the European Council of 18-19 February 2016* (2016/C 69 I/01) OJ 23.02.2016.

use of EU laws was a tactical decision, it was more than a mere instrumental use of the law but was often a transformative experience, confirming and enhancing interviewees' own self-perception and outlook and highlighting personal resources and flexible work practices which are not acknowledged in national rules .

The article starts by discussing how the *Surinder Singh* route presents a challenge to national legal hierarchies before briefly explaining its history and how it may be operationalised. It then reports on interviews carried out in Spring 2015 with twenty families. In each case, one interviewee was British and the other a non-EU citizen, and they had used, or were contemplating using the *Surinder Singh* route, to achieve family reunification because they could not meet the requirements in national law. Most participants came through an appeal on a closed Facebook group which supports those using the route, others through a call on the website and Twitter account of the NGO BritCits, which campaigns for cross-border families divided by the UK's national laws.[5] The interviews explored the demographic characteristics, motivation and experiences of each couple or family unit, as well as their plans for the future. The semi-structured interviews were mainly conducted with the British citizen, but the non-EU partners were often present and actively involved. Most interviews took place over Skype although some preferred an online or telephone interview. Participants' names have been changed.

[5] Website: http://britcits.blogspot.co.uk/; Twitter: @BritCits.

The *Surinder Singh* route as a challenge to conventional legal hierarchies

A couple can usually expect that, having made the public commitment of marriage, they can choose how to live their married life free from state supervision. This is not so for couples subject to immigration control. In the UK, couples of different nationality have the right to marry, subject to additional scrutiny, which may be a substantive disincentive to irregular migrant partners (Wray 2015) but there is no right to reside together within the territory. From a state perspective, supervision is justified because a claim for admission based on marriage is considered, as Abrams (2011) observed, a significant benefit to be bestowed cautiously. While some fraud occurs, the questions of whether the parties merit the 'privilege' of spousal admission and of whether the marriage is 'genuine' are often elided and marriages which are 'poor quality' from an immigration control perspective are designated as fraudulent (Wray 2015).

As the introduction to this special issue demonstrates, a cross-border marriage is regarded as inherently more suspect and as more susceptible to regulation than other marriages. Most countries impose conditions on the admission or stay of non-national spouses (see Wray et al 2014 on European states) but, in the UK, these have become particularly onerous. Couples must share intimate aspects of their lives, show financial probity and good character, and display intimacy in ways that are not required outside the immigration context (Finch 2007; Carver 2014). The 'marriage' part of 'marriage migration' is subsumed into the 'migration' part and becomes subject to an extended process of border securitisation (D'Aoust 2013; Wemyss et al 2017).

Immigration control is strongly associated with sovereignty and coercive state power. As sovereignty has been eroded in other domains, control over immigration has become symbolically more important (Dauvergne 2004). Governments legitimise policy

through discursive slippages and stigmatisation and defend the pre-eminence of immigration control by pointing to its democratic legitimacy. Spousal migrants in particular are seen by the public to carry particular risks (Ford and Heath 2014, 7). While resistance to the 2012 changes has had some limited effect politically and legally (see Wray 2017 for a discussion), many remain affected by restrictions on their intimate life and personal autonomy and reject the legitimacy of the controls applied to them. By activating their EU citizenship, they can avoid the worst consequences of the domestic immigration rules.

Spousal reunification rules in EU free movement law are much more accommodating than in many national regimes (Wray et al 2014). Spouses and registered partners (if recognised in the state's own law) have a near unconditional right to accompany or join an EU citizen who is a worker or self-employed in another member state. Even students and the self-sufficient need only adequate resources and sickness insurance. There are no requirements as to housing, integration or language competence. Spouses and partners have rights to work, study or reside, to reunite with their own family members, to equal treatment and to permanent residence. Expulsion is much more difficult than under national laws. The position is broadly similar, with some exceptions, irrespective of nationality. [6]

A claim may be refused where there is 'abuse of rights', including a marriage of convenience, but a marriage is not one of convenience because it brings an immigration or any other advantage.[7] While member states may investigate individual suspect cases,

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[6] Directive 2004/38 of 29th April 2004 [2004] OJ L 158/77;

[7] *Communication from the Commission to the European Parliament and to the Council on guidance for better transposition and application of Directive 2004/38/EC,* COM(2009) 313 final.

systematic checks are not permitted.[8] The burden of proof is on the member state, unlike in UK domestic immigration law (for a discussion, see Berneri 2015). Thus, while there is some scope for investigation, bi-national couples who come under EU law enjoy much of the same freedom from scrutiny as couples whose marriages are not governed by immigration law.

The regulation of free movement has long been intertwined institutionally with immigration control (Shaw and Miller 2013) but, in almost all cases, British citizens cannot use EU law within their own state so that domestic immigration controls and EU free movement laws run in parallel. This separation breaks down when British citizens can make themselves subject to EU law within the UK, as with the *Surinder Singh* case. *Surinder Singh* sits within EU law and, as this prevails over domestic law, immigration law concerns are, strictly speaking, immaterial. However, in practice, it crosses the boundaries of immigration law without adopting the values of the immigration law domain, particularly as regards the extent to which marriage and married partners should be scrutinised. In so doing, it undermines immigration law's pre-eminence in the domestic sphere.

The *Surinder Singh* Rule

In February 1983, a British woman, Rashpal Purewal and her Indian husband, Surinder Singh, moved to Germany where they both worked, Ms Purewal part-time. Late in 1985, they returned to the UK. Mr Singh received a series of short-term residence permits. After a *decree nisi*, the penultimate stage in divorce proceedings in July 1987, his permit was revoked and he was subjected to deportation proceedings. Mr Singh

[8] Ibid.

argued that his expulsion would contravene European Community (later European Union or EU) law and the case was referred to the European Court of Justice.[9] In 1992, the Court of Justice ruled that, where an EU citizen has worked in another member state with a spouse, the member state of origin must allow the readmission and residence of that spouse, irrespective of nationality, when the couple returns. To do otherwise would hinder free movement as EU citizens might be reluctant to move with a spouse if they were unsure that they could return together.[10]

Thus the *Surinder Singh* principle was born. Although it was uncertain at that time how far it extended beyond the facts of that case, the judgment provided a new opportunity for citizens to live with their non-citizen family members in their own home if they did not qualify under national laws. For some years, however, it was a background feature in the complex UK immigration/free movement landscape and did not attract much attention. While statistics on how many used the route are not available, numbers seem to have been very small. There were, for example, almost no reported legal cases on the rule. Possible factors were uncertainty about its scope and lack of knowledge except amongst specialist practitioners. It was also an option only for those able to exercise economic activity outside the UK. Immigration policy at that time particularly targeted non-white spouses from the UK's former colonies (Wray 2011). Ms Purewal's mobility was relatively unusual amongst the impoverished and marginalised communities who were the main victims of these policies.

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[9] The European Union came into existence in 1993, after the Maastricht Treaty, one year after the *Surinder Singh* judgment. At the time of the judgment, the usual term was European Communities or European Community. All further references in this article are to the European Union.

[10] As the parties were not yet divorced, Mr Singh was still treated as a spouse; *Diatta v Land Berlin* (C-267/83) [1986] 2 CMLR 164.

After the election of a Labour government in 1997, rule changes enabled more sponsors to bring in a spouse. Those who could not because, for example, of their very low income, were also the least well-placed to exercise economic activities elsewhere in the EU. New concerns soon emerged however to bring EU law into sharper focus. A rapid growth in asylum claims and undocumented migration meant large increases in the number of irregular migrants living in the UK and their expulsion was difficult for legal and practical reasons (Wray 2013). Some of these married non-British EU citizens in the UK, giving rise to rights under EU law. Their in-country rights were enhanced by Court of Justice decisions, in 2003, that the motive for reliance on EU free movement rights was immaterial and in 2008, that unauthorised entry by a non-EU citizen is not a bar to their exercise.[11] Increasingly, family reunification rights in EU law were discursively associated with sham marriages and presented as a 'loophole' (Wray 2011: 161-167).

However, while spousal reunification under free movement laws were increasingly in the spotlight, the *Surinder Singh* rule was not particularly prominent. Two factors changed that: first, the far-reaching changes to the rules for spousal reunification in the UK implemented in 2012 and, second, a 2014 Court of Justice judgment, *O and B*.[12] The Conservative/Liberal coalition government in power from 2010 to 2015 was committed to reducing 'net migration' (i.e. the sum of those arriving minus those leaving the UK) from above 200,000 to the 'tens of thousands'. Since movement by EU citizens and emigration by British citizens could not be controlled, the

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[11] *SSHD v Akrich* (C-109/01) [2003] ECR I-9607; *Metock v Minister for Justice, Equality and Law Reform* (C-127/08) [2008] ECR I-6241.

[12] *O and B v Minister voor Immigratie, Integratie en Asiel* (C-456/12) [2014] 3 CMLR 17.

primary focus inevitably fell on non-EU immigrants. Amongst these, partners were the largest single group (Charsley et al 2012). In 2012, the government made major changes to the family migration rules, including new and onerous financial requirements. Sponsors now needed an income of at least £18,600 pa, more if children were also sponsored (Office of the Children's Commissioner (OCC) 2015, 23-27). This was an abrupt change from the previous regime where financial requirements were tied to welfare levels. In addition, the future earnings of the incoming spouse and support from third parties, such as family members, were excluded. Evidential requirements became very demanding and the cost of applications soared, with the initial application alone now costing £1,523.

These changes made it impossible for many British citizens to sponsor a spouse. In 2015, three years after implementation, 41% of the adult working population could not meet the income threshold with higher percentages amongst some groups: women, the young, ethnic minorities and those living outside South-East England (Sumption and Vargas-Silva 2016, 10). The changes led to a prolonged legal challenge, following which the government was required to make more provision for children and to apply the rules more flexibly, although the £18,600 threshold remains in place (Wray 2017).

Unlike earlier restrictions, the financial restrictions did not affect only the cross-border marriages of the UK's ethnic minorities but wider sections of the population, including individuals not otherwise marginalised but whose earnings were low due to factors such as regional disparities or caring responsibilities, modestly paid public sector or service jobs, or who were at the start of professional careers. A survey of 100 unsuccessful sponsors found that 71% were white British and 66% had graduate or postgraduate qualifications. While the sample was not necessarily representative, it indicates the wide reach of the policy. Typically, these sponsors were young (43% were

under 34 and 79% under 44) and lived outside London and the South-East of England (77% of respondents; OCC 2015, 119-120).

Unlike the UK's ethnic minorities, the majority population do not have direct experience or a collective memory of state intrusion into their personal lives; the trend in the past fifty years outside the immigration arena has been towards more personal autonomy in intimate relations. Meanwhile, other social changes have brought international marriage into the mainstream. Movement into and out of the UK has increased, not just due to the arrival of migrants but through expanded opportunities for travel, study and holidays abroad by British citizens, with increased opportunities for cross-border relationships. The spread of workplace precarity and portfolio careers means that many, particularly the young, do not have the kind of secure jobs and incomes that the financial requirements demand. Thus, the financial conditions have created new axes of exclusion that supplement but do not replace the more familiar ones of gender and race (Sirreyeh 2015; Kofman 2018).

Unsurprisingly, some of those affected by the financial requirements looked for alternative ways to live with their partner, including through EU law. Since 2012, there seems to have been a marked increase in British citizen sponsors moving elsewhere in the EU before returning to the UK using the *Surinder Singh* rule. As there are no consistent records of admissions under *Surinder Singh,* the hypothesis is difficult to prove definitively but there are several indications. The overwhelming majority of visa applications made by EU citizen family members in Ireland, a popular destination for those using the *Surinder Singh* route, are from the family members of British nationals (Brazil and Cosgrave 2018, 12, fn 13). Self-help groups have emerged on social media

to support those using *Surinder Singh*.[13] The route has started to be discussed in the media and on legal and immigration blogs.[14]

The use of *Surinder Singh* in this way is not confined to the UK and, in 2014, the Court of Justice delivered a key judgment on *Surinder Singh*, referred from the Netherlands. In *O and B*,[15] the Court of Justice found that *Surinder Singh* rights arise when co-residence in the other state has been 'sufficiently genuine so as to enable that citizen to create or strengthen family life' (para. 51), not a very demanding criterion. It can apply to any core family member (spouse, ascendant or descendant relative) so long as the EU citizen has exercised free movement in another member state with their relative. Provided the parties have genuinely moved and exercised their rights, their motive (e.g. to obtain family reunification) is not material (para. 42). In summary, therefore *Surinder Singh* rights are not difficult to activate for those who have the resources to move and to be economically active or self-sufficient. The judgment was predictably unpopular with the British government who misrepresented its effects in an attempt to reduce its effectiveness.[16] The rule is likely no longer to apply in its current

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[13] See, for example, the Facebook page *The Surinder Singh Route* (liked by nearly 2,000 people as at July 2017) and the closed Facebook group *Surinder Singh Route – EU Free Movement – Advice Centre and Support* (more than 4,000 members in July 2017).

[14] For example, 'The Britons leaving the UK to get their relatives in' *BBC News* 25th June 2013; *My experience of going the Surinder Singh Route so Far* (British Expats.com) http://britishexpats.com/articles/uk/surinder-singh-route/; File on Four *Breaking into Britain* (BBC Radio 4 22nd January 2017); *Surinder Singh route for spouses and families of British citizens* 1stforImmigration http://www.1st4immigration.com/surinder-singh-route.php.

[15] *O and B v Minister voor Immigratie, Integratie en Asiel* (Case C-456/12) [2014] 3 C.M.L.R. 17

[16]. Perhaps the most significant ways in which the implementing reflections do not reflect the judgment is the requirement that the British citizen transferred their 'centre of life' to the

form in the UK if Brexit goes ahead, although it will still be effective in the rest of the EU.[17]

Who uses *Surinder Singh*?

As discussed, there has been little research into individuals and families who have utilised the *Surinder Singh* route. Individual accounts have appeared in the media and have been mentioned in larger studies (for example, OCC 2015), but there has been has been no attempt to understand its potential strategic use and the socio-economic and cultural characteristics of those who take it.

While marriage migrants come from a very wide of countries (Charsley et al 2012), South Asia remains by far the largest region of origin under national laws, accounting for about one third of all admissions.[18] The profile of this interview sample

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other state and provision that rights do not apply where the purpose is to circumvent national immigration laws (Immigration (European Economic Area) Regulations 2016/1052, para. 9). The UK government asked for and obtained acceptance in principle of these limitations in the agreement negotiated before the EU referendum in 2016, but now superseded by the referendum result, suggesting implicit agreement that they do not represent the law (*Extract of the Conclusions of the European Council of 18-19 February 2016* (2016/C 69 I/01) OJ 23.02.2016). The European Commission has been investigating the UK's compliance on this issue since 2014 ('EU to investigate UK interpretation of Surinder Singh' *Free Movement* 2nd September 2014).

[17] A version will also apply if the UK joins the European Economic Area: *Jabbi v Norway* (E-28/15) unreported 26 July 2016 (EFTA); see Bierbach 2017.

[18] National Statistics *Immigration Statistics January to March 2017* (25th May 2017), Visa Tables Volume 3, Table_vi_06_q_f.

was very different. Of the twenty interviewees (nineteen with partners and one with a parent), only one family member came from Bangladesh. This was a small sample and not representative but this profile is consistent with the wide variety of nationalities represented in the study of sponsors and spouses affected by the income requirement mentioned earlier in this article (OCC 2015) and supports the suggestion that controls over marriage migration have a wider reach than in the past (see also Charsley 2012).

At the time of interview, seven couples were contemplating use of the *Surinder Singh* route, eight had already embarked on it, four couples had returned to the UK, while one had decided not to use it. Ireland was the most popular destination due its geographical and cultural proximity to the UK, and a reputation for work opportunities and friendliness. Others chose Spain, Portugal and Italy, citing a low cost of living, shared culture (especially for South American or Filipina partners), family ties by the non-EEA citizen partner, and a sizeable British community (especially in Spain) as factors. Others went to Eastern Europe because it is cheap to live there or they had prior connections. One individual moved to the Czech Republic in a spirit of adventure and mindful of its reputedly well-established English-speaking community. Many were keen to explore the world and gain exposure to other cultures, at first glance resembling Theresa May's 'citizens of the world' although this was usually intended to be temporary, suggesting a more complex, less binary identity.

The British participants were usually already mobile. The vast majority met their partners in the country of origin of that partner. Others met online or in the UK. The majority had lived together before marriage. The participants were relatively young; of the twenty couples, sixteen were both under forty, and eight were both in their twenties. Most were well educated, with high levels of cultural capital (Bourdieu 1987). Almost all the UK partners held a bachelor's degree and some had or were studying for

postgraduate research degrees. Half the non-EEA citizen partners had at least a bachelor's degree or had completed a vocational course of four years. Again, this is consistent with findings elsewhere that those affected by the post-2012 restrictive marriage migration rules are well educated (OCC 2015, 120), although it is also possible that the well-educated are more likely to resist onerous rules and to participate in surveys and interviews. Despite their high cultural capital, however, these interviewees did not have much financial capital, reflecting current precarity of employment even among the well educated. They sometimes struggled even to find the means to move. For example, Louise, who was completing her doctoral research, explained that when she and her partner moved to Spain:

> … we had a little bit of money, just for the move [to Spain]. Just we had like… we had basically about two weeks' worth of money to live on before we were going to need to get some income.

Participants were flexible and adaptable. Several worked online, for example doing IT related jobs, editing, proofreading, freelance journalism or writing and so did not need to be in a particular location. One participant, Bruce, worked in the events industry and only needed to be in the UK for three months a year. Around half of couples had children or were expecting a child at the time of the interview but children were mainly very young and had not yet started school, so did not constrain their parents' mobility. One couple with older children home-schooled them whilst in Europe. Most of the interviewees did not have onerous financial obligations such as mortgages that might have inhibited their movement.

The picture that emerges is of a young, mobile, well-educated and flexible population without established careers and commitments. They lacked the type of steady work needed to meet the domestic rules but they had other resources and

capabilities that enabled them to move relatively easily. They bore little resemblance to the poorly educated, welfare dependent, culturally unenlightened and parasitic 'migrant with poor prospects', commonly identified as the target of policy. These 'classed, culturalized and gendered constructions' (Bonjour and Duyvendak 2018, 898) may be ill-founded but it is striking that current policy excludes also those who might previously have expected to escape such categorisations. British immigration policy has a long history of refusing spousal migrants but, until recently, excluded categories were almost always differentiated through race and/or gender (Wray 2011). As discussed above, there has, since 2010, been an increased emphasis on reducing numbers for their own sake through any means possible, with the result that new demographic groups have been shocked to find themselves caught by restrictions.

Strategic Use of the *Surinder Singh* Route

Although legal, financial and personal factors varied, the common feature was participants' inability to meet UK immigration rules. Some participants were living outside the UK when the 2012 changes occurred, preventing their return as a family. Some earned low local salaries or worked in poorly paid sectors, such as Salma's husband who had a degree but worked in agriculture. Others foresaw difficulties in earning a sufficient salary in the UK, given regional inequalities. One example was Gerry who comes from the North of England and wanted to return there:

> … just to find a job, that's near the threshold, it isn't easy in this part of the England. … I mean somebody did a quick sort of analysis. I think it said that 56% of the people in Merseyside don't earn over £18,600. …in London, it wouldn't be too much of an issue. But up here, I mean, this is where all my family lived.

Those who were still in education or had recently graduated found it difficult to meet not only the financial requirements but the requirement of a minimum six-month work history in the UK. This also affected those outside the UK who would, in practice, have to return alone to the UK to secure a job with the prescribed salary and work for six months before the family could reunite (see OCC 2015).

As well as the financial requirements, participants referred to the long delays and heavy costs of the UK process with high application fees, and legal, administrative, and travel costs during the period of separation. Participants felt strongly that they should not be separated for an indefinite period: 'there is a desire that let's get the ball rolling' (Samuel) so as 'to live together and not to stay separated for a while' (Lynne). This was a particular factor for those who had already lived apart, or who had a joint child:

> Interviewer: So you basically wanted to stay together?
>
> Participant: Well, of course, yeah. I mean that's the priority. I mean we've got an infant child. That's a huge thing. We'd all like to be united.
>
> Non-EEA citizen spouse: And the kid needs the father.

Although the option of living together in the non-EEA citizen partner's home country sometimes arose, this was not the preferred option and was sometimes not viable for linguistic (China), work (China, Cuba) or security (Bangladesh) reasons.

Fear that the application under UK law might fail, magnified by the uncertainty caused by frequent rule changes, pushed many towards use of EU law. Gerry spoke of a story that he had followed in the media, which summarised the anxieties shared by many participants:

> At the same time, we started hearing about many people who had fallen foul of these rules. Some of them have elected to stay in the UK and just duke it out in

> the courts. Often it seems to take years. I mean we read about… the couple in Cornwall, the fellow was South African and she was British and they had a child, a baby as well, just like us. They had like three years… falling off… contesting with the Home Office and then eventually, I think this month they got the visa… you know, they just about got it. But the whole thing was, you know it just seemed like a nightmare and they were spending thousands and thousands of pounds to keep the fight going, you know.

Thus, the decision to use EU law was a strategic one that would allow them to have a joint life in the UK faster and more easily than under domestic laws. Some aimed to live in an EU state for the shortest time necessary to qualify under the *Surinder Singh* route. For example, Mahdi already had a job secured for his return. Others planned a longer stay, maybe a year. Sometimes, this was for reasons of career development. For example, Yu-Jie's move to Hungary was partly motivated by an opportunity she would not get in the UK. Daniel, on the other hand, envisaged spending more time in Ireland to amass financial capital for their future joint life in the UK when he would not have a paid job as he would be writing up his postgraduate thesis. Most participants wanted to return to the UK for reasons of career, study, family or health-care, for example, to give birth to a child or after a poor experience of the non-EEA country's healthcare system when their child was seriously ill. The ability to do this was important for participants. In the words of Louise, 'we don't want to risk' not being able to return to the UK as a family.

For some however, the main attraction was the ability to exercise free movement rights, and return to the UK was not always definitively planned. Instead, they aimed to acquire an EU, typically Irish, citizenship for the non-EEA citizen partner. This would allow either permanent life in the new EU country or return, depending on future

circumstances. For others, the non-EEA partner's EU citizenship would permit a transnational life as 'we can go to England and back and forth' (Morgan). Brian and his partner were not yet sure of their long-term plans but had decided to obtain an EU family permit for his partner and 'use it in the future after we decide what to do'. As some couples had not yet lived permanently in the UK as a family, they wanted to experience life in the UK before deciding on a permanent home. Salma, a US citizen, said:

> … I said to my husband, in a perfect world, we just want to go [to the UK], have him look for a job, settle there for a little while, see if we want to stay there and raise our children there as opposed to raising them here [in the US].

Some felt that describing themselves as using the *Surinder Singh* route was over-determinative, even though they were aware of the possibilities it offered. For instance, Bruce wanted to focus on free movement:

> Well, I think… you need to be and I also think that people need to be a little bit careful … the *Surinder Singh* is a piece of old case law that allows nationals to come back to their country of origin with their family members, and but it is not a ... I think to call it a route is slightly creating as an obvious subversion of national immigration rules. …I didn't go to Portugal for the *Surinder Singh* Route. I went to Portugal because, a) my wife wanted to live somewhere quiet, b) I had a long association with Portugal … I knew that if we ever wanted to return to the UK it would be possible. So I just slightly qualify because I know, I can guess title of your research is *Surinder Singh* Route … But actually I think what significantly would be from my perspective a better title would be Free Movement.

So, while all participants were partially motivated by problems in complying with national laws, reasons for their decision were often complex and moving to another European state was not a necessary evil but approached positively. Their decisions were framed by a complex web of temporally contingent and competing financial, social, cultural, emotional, and other considerations, mobilities and fluidities. The interplay of such factors strategically determined the planned use of the *Surinder Singh* route, with careful consideration of individual and family-related advantages and disadvantages, and of opportunity and adventure-seeking negotiated within a particularly flexible mindset.

Participants' experience of using EU free movement rights: 'No-Commitment Families'

Participants did not have major material, employment-related or social commitments or onerous financial obligations, making relocation less problematic. Since most had no children or children who were either still young or home-schooled, educational issues were not prominent. Given the early stage of their career, a period spent abroad '*Surinder Singhing'* (Samuel) and away from the UK labour market was not seen as disadvantageous. Participants saw themselves as taking advantage of their relative freedom and autonomy. Samuel talked of being a 'no-commitment' family:

> … our aim is very much about experiencing the world and working in the Northern hemisphere … And we thought when we made this decision, we sold our house, sold the business and took the kids out of school.

Six participants secured a job in the other European country of equivalent status to their pre-movement work, although this was not always highly skilled. For instance, Anne worked as a waitress in a restaurant in the UK, and in Ireland as a shop assistant. Lynne

was offered work in a services company in Spain similar to her work at home. Some even managed to enhance their careers. Katherine was recruited in Ireland into a project manager position that she found very fulfilling after having spent time out of the labour market home with her child. Not all stories were positive however and some participants reported deskilling. For example, George previously worked as an IT coordinator, but became a window cleaner due to lack of other opportunities.

While most interviewees were pragmatic, some were uncomfortable using a route that has been construed discursively as a grey, somewhat illicit operation that 'circumvented' UK national law, causing them to feel guilty and non-compliant, that they were doing something ethically problematic. This reflects the normative force of even controversial national laws and how European law is regarded as an external threat to the UK's well-being. As Daniel put it, the route felt like a 'legal loophole', where the UK citizen was 'bending the spirit of law'. Their discomfort illuminates the ambiguous position of citizens in cross-border marriages as both 'insiders' and 'outsiders' (De Hart and Bonjour forthcoming) and how even non-binding legal norms may be internalised. Restrictive family migration policies 'are a central part of contemporary politics of belonging' (Bonjour and de Hart 2013: 64) and the regulation of spousal migration places intimate relationships under a harsh spotlight. Eggebo (2013: 783) has shown how official interrogation can even cause individuals to momentarily doubt their partner, while state-generated paradigms have a powerful effect on how individuals shape their own narrative (Kraler 2010). Respondents had also lived for many years in a climate that delegitimised and exteriorised European law. It is perhaps not surprising that some found their anomalous legal position troubling.

Other interviewees however resisted such feelings, often from the perspective of legality but this time through asserting the legitimacy of supra-national legal norms,

sometimes accompanied by self-identification as autonomous and well-travelled. Thus, Samuel looked forward to 'experiencing the world' and Bruce saw himself as exercising 'free movement' laws. Bruce also asserted his rights as a European citizen, observing that the politicised and negative approach was constructed by the state:

> I feel the Home Office has become a political wing, obviously of the government. And they don't seem to want to enter into the spirit of the Treaties that they had … freely entered into. And that puts them into an adversarial position with their citizens.

Another participant's US partner observed that the idea of a superseding supra-national law in the sensitive area of immigration was difficult to understand for lay people working from a methodologically nationalistic framework and Yu-Jie said that:

> … this [*Surinder Singh* route] shouldn't be a grey area, this should be a very clearly, correctly identified right that British citizens should deserve to have.

Despite their different perspectives, however, all respondents were keen to be seen as legally compliant, even if some referenced the European rather than the domestic legal regime. For them, law is an 'internal point of view' (Hart 1994:98), not an externally imposed obstacle. Work on legal consciousness shows us that, despite the inequalities and imperfections of law and the legal system, legal values command widespread acceptance (for example, Ewick and Silbey 1998) although recent work has drawn attention also to 'legal alienation', scepticism about the legitimacy of law arising over time in response to events (Hertogh 2018). It is possible that alienation was pre-empted in these instances by the alternative available to respondents, suggesting that supra-national law may have a useful role to play in terms of preserving confidence in the law.

The challenge to analytical categories

The aim of this special issue is to examine 'the complex entanglements of state politics and migration research' (Moret et al, this issue). This article has shown how open-minded examination may yield unexpected results. While all marriage migrants are a suspect category, regulation has always applied differentially and the interviewees discussed in this article do not fit easily into the usual paradigms of marriage migration policy or research. While the survey sample was small, its findings are consistent with evidence elsewhere which suggests that the implementation of a high income requirement in UK law has created a new state-generated category of problematic cross-border marriages, i.e. those not underpinned by substantial financial capital. The UK is not alone in this; an 'economic drift' (Staver, 2015) in family migration policy has been detected elsewhere in Europe. The literature on marriage migration has predominantly analysed controls through the prism of ethnicity and gender. These remain key but this article, alongside other recent work (Sirreyeh 2015; Kofman 2018; Chauvin et al forthcoming), suggests that they now need to be inflected to a greater extent than before by considerations of class.

If social class has emerged as a more significant category of exclusion, the article also illustrates some of its complexities. The construction of the 'migrant with poor prospects' (Bonjour and Duyvendak 2018) draws on the 'growing culturalization of economic deprivation and a conflation of economic and cultural characteristics … often associated with racialized migrant groups' (Kofman 2018, 1-2). Economic criteria are not a standalone factor but intersect with and refine other exclusionary categories, as the discussion in Chauvin et al (this issue) demonstrates.

Most of the interviewees were not members of the UK's ethnic minorities and most spouses did not come from the countries commonly associated with marriage

migration to the UK. They were also of above average education, young, well travelled and economically active or self-sufficient. Previously, they would have encountered few problems meeting the requirements for sponsorship and entry but they were now excluded from admission under the domestic laws because they could not meet the financial criteria.

These criteria depend only on one measure: income or, in a few cases, possession of substantial savings. Yet, as Kofman (2018) observes, class position depends on economic, cultural and social capitals (as conceived by Bourdieu 1987) in different proportions. As a class-based category, the income requirement is crude and the government declined to nuance it by permitting wider family support or recognising the spouse's prospective earnings. It seems to promote one type of economic citizen only: the full-time self-sufficient worker who does not rely on others to meet his (and it is a gendered construction) needs and thereby a particular, individualist conception of citizenship (Van Walsum 2012),

These interviewees, with their partial and complex claims to an international identity and their high cultural capital, could overcome their exclusion in UK law by relying on EU law. This is more than a matter of different legal regimes, instead reflecting different underlying purposes. EU free movement law aims to minimise friction in the implementation of free movement and thus seeks only to regulate married life minimally; national immigration laws, by contrast, require marriage to be heavily policed. The threshold for participation in EU law is formally quite low; there is no need for the EU citizen to undertake skilled or even full-time work. In that respect, it is more inclusive than national laws. However, the class element has not disappeared, once class is seen as extending beyond simply financial means. Those seeking to use the *Surinder Singh* route possess resources that facilitate their ability to navigate it. While

this was only a small study, it suggests that the *Surinder Singh* route provides a safety valve for a relatively select group who are able to mobilise specific resources or privileges - ethnic, financial, cultural, educational - and have the necessary flexibility to work and live in another member state. It shows how exclusionary categories cannot be detected only by looking at formal rights and account also needs to be taken of the opportunities that exist for exercising them.

The literature on marriage migration features studies both of how states exclude disadvantaged groups and of how marriage offers migration opportunities to those who otherwise lack leverage (Kraler and Bonnizzoni 2010; Palriwala and Uberoi 2008). This reflects differences between regulatory regimes but also demonstrates that the relationship between social and legal categories is fluid and variable. Cross-border marriage requires agency and resources but not always in the same way, creating unexpected opportunities for some but entrenched exclusion for others. As the introduction to this special issue points out, categories, whether generated by governments or scholars, must always be approached critically.

The challenge to government

The interviewees were active strategists, planning their future and adjusting their plans to obtain their desired outcome. In so doing, they were aware of acting against the government's wishes and this was not always something with which they felt comfortable. However, the use of EU laws, while a strategic necessity, sometimes corresponded with interviewees' own self-perception and outlook and, in all cases, drew on personal resources whose value is not acknowledged in the national immigration regime.

Use of the *Surinder Singh* route has been bitterly resisted by the British government for reasons hinted at by some interviewees when discussing their unease in using the route. Governments jealously guard their sovereignty over immigration control and, as observed in the introduction to this special issue, cross-border marriages particularly challenge nation-state boundaries. Good citizens should collaborate in maintaining these boundaries as part of the nation-building project, even at some cost to themselves, hence the description of the *Surinder Singh* route as a 'loophole'. That these individuals are not otherwise 'failed citizens' (Anderson 2013) does not diminish the normative force of this expectation. Immigration controls demand compliance for its own sake, not just for the ends they fulfil, reflecting their symbolic function as an expression of state sovereignty and their association with 'the essence of the nation' (Dauvergne 2004, 589).

The use of the *Surinder Singh* route however highlights the gap between the loyalty that the state demands and what it offers. The minimum income requirements go much further than needed to protect the nation state against the indigent and feckless (Wray 2017) and penalise those affected by the casualization and deprofessionalisation of previously secure occupations under the governance of that same state. Yet it is precisely this lack of security, alongside new global ways of working and the absence of personal or professional commitments that enabled interviewees to leave the UK for at least a period. In so doing, they had experiences that were richer and more complex than might be expected from a purely instrumental approach even if they would have preferred to use national law and there were also some negative effects. Immigration controls are not just a block on movement but have dynamic effects, here enhancing mobility and the subversion not only of state-generated categorisations but of the values and ideology that underpin them.

Conclusion

After a period of marginalisation (Kofman 2004), the study of family migration in general and of marriage migration in particular has come into the mainstream. As it becomes an area of mature research, research questions and modes of analysis are refined and developed. This special issue advances the study of marriage migration in a number of dimensions: empirical, epistemological and methodological. This article's contribution lies in going beyond the usual excluded categories to study a group of marriage migrants who, unexpectedly, have found themselves refused under national controls but able to capitalise on EU. In so doing, it suggests that the exclusionary categories generated by governments are fluid and changeable, depending on the overall legal and political framework in which they exist and that their significance for individuals is determined by the social context as well as by legal specificities. Those in cross-border marriages who encounter government-imposed obstacles and seek ways round them may find that their pre-existing self-identification as international citizens is paradoxically reinforced by measures designed to achieve precisely the opposite.

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