The Norwegian Regime of Returns
A governmentality-perspective on the development of return practices in Norway

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Abstract

As immigration to Europe continuously increase, so does governments efforts to control and manage these moving populations, and their national borders. Today, returning migrants without a residence permit is often regarded as a natural measure within the immigration control apparatus, but the means to ensure return, the populations targeted and their legal rights have changed over time. This thesis aims to understand the developments of return policies in the case of Norway, from 1988-2010. By combining the analytical approach of governmentality with theorisations about deportations and migration policy development, I seek to understand how the return regime has been established and transformed. The analysis is based on policy documents as the main material, and the qualitative content analysis reveals that the return regime has developed from several measures initiated to achieve control over different challenging and unforeseen situations that arises throughout the period. Short term solutions create problems in the long run, and the solutions add on to create and establish the return regime.

Keywords: asylum seekers, return, Norway, governmentality, asylum policy
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# Table of Contents

1. **Introduction** .................................................................................................................... 1
   1.1 *Aim and Research questions* .......................................................................................... 2
       1.1.1 Delimitations ............................................................................................................ 2
   1.2 *Outline* .......................................................................................................................... 3

2. **Immigration and return in Norway - A background** ....................................................... 4

3. **Clarifying terms - Expulsion, deportation, return** ............................................................ 6
   3.1 *Defining the target group - returnable persons* ............................................................... 7
       3.1.1 Rejected asylum seekers/unreturnable ......................................................................... 8

4. **Previous research** ............................................................................................................ 9

5. **Theoretical framework** .................................................................................................... 13
   5.1 *What does “governmentality” mean?* ............................................................................ 13
   5.2 *Governmentality as analytical tool* ................................................................................ 16
       5.2.1 Deportability ............................................................................................................. 18
       5.2.2 Migration control theory .......................................................................................... 19

6. **Research design** .............................................................................................................. 20
   6.1 *Case study research* ...................................................................................................... 20
   6.2 *Methods and material* .................................................................................................. 21
       6.2.1 Some notes of caution on documentary research ....................................................... 22
       6.2.2 From reading documents to conducting analysis ......................................................... 23
   6.3 *Limitations* ................................................................................................................... 24
   6.4 *Time frame* .................................................................................................................. 24

7. **Findings** .......................................................................................................................... 26
   7.1 *The Establishment of the Control Regime (1988-1992)* .................................................. 26
       7.1.1 Fields of visibility ..................................................................................................... 27
       7.1.2 Technological aspects ............................................................................................... 28
       7.1.3 Thought and rationale .............................................................................................. 29
       7.1.4 Identity-formation ..................................................................................................... 31
   7.2 *Temporality and Repatriation - A different paradigm (1993-1999)* ............................... 32
       7.2.1 Fields of visibility ..................................................................................................... 32
       7.2.2 Technological aspects ............................................................................................... 34
1 INTRODUCTION

Expulsion and return as a form of controlling ‘the other’ is nothing new. Both in European and in Norwegian history, this has been directed towards different subjects and with different motivations. The use of exile as a punishment dates back to the ancient times, throughout the Roman Empire and the Middle Ages, while expulsion of the poor was a common practice in early modern Europe (Walters 2002, 268–270). The modern form of controlling ‘the other’ through means like border controls and deportation, has its roots in the early twentieth century (Caestecker 1998, 74).

Meanwhile, legal and political discourse on deportations depicts it as the right of a sovereign state to control their borders and decide over the aliens arriving in their territory (Walters 2002, 277). It is a normalized way of dealing with irregular migrants, as the actions of this group is in violation of the state’s territorial sovereignty and law (Cornelisse 2010).

Questions of immigration and asylum became politicised in the Norwegian debate during the late 80s and early 90s. Different forms of return\(^1\) has played a role during this whole period but has been especially important to the Norwegian government from 2003 (Thorgrimsen 2013). Despite uncertainties on its efficiency (Thielemann 2003), the role of return in immigration control seems to be ever increasing. In 2014, the government expressed their aim in immigration policies to return more migrants than ever before. 7259 migrants were forcefully returned that year compared to 4900 two years before. 2800 of the returned in 2014 were persecuted for criminal acts. (“Statistikk Fra Politiets Utlendingsenhet” n.d.) In addition to these numbers come migrants that have returned with assistance from IOM (International Organization for Migration), or voluntarily and unassisted. Many of those subject to return policies in Norway are rejected asylum seekers.

While deportations have existed for a long time, its reasons and subjects have not been constant and the content of today’s deportation practices cannot be considered a given, or as something natural. It then becomes important to ask how this regime of returns came to entail what it does today, how it evolved into what is now so often regarded as the only valid reaction to some of the challenges posed by modern migration. Degrees of control have varied throughout different

\(^1\) The term return refers to all legalised forms of removal of foreigners by the state authorities. Research also uses the term deportation, either in the same way, or referring only to forced return. The reasoning behind this choice of terms will be accounted for in an upcoming chapter.
conjunctures, deregulation are followed by periods of regulation, liberal waves are followed by waves of control. (Kjeldstadli 2013)

In this thesis, return will be studied within the framework of governmentality, meaning that it presupposes the existence of a return regime. As I will go more into detail on below, researchers have studied the use of return and deportation as a regime of practices where the governing of migrants within this regime is problematized. This form of analysis draws on Foucault’s idea of governmentality, a way of analytics that seeks to question and problematize governmental practices that are often taken for granted (Dean 2010, 48). This analytics is concerned with the means of calculations, the type of governing authority, and the forms of knowledge and techniques that seeks to shape conduct (Dean 2010, 18), and allows a study of the practices that form the regime of returns, meaning policy measures and legal measures that aim to motivate the return of rejected migrants in the country.

1.1 AIM AND RESEARCH QUESTIONS

The aim of this thesis is to show how the Norwegian return regime is maintained and transformed during the time period 1988-2010. A set of research questions is developed to help reach this aim:

1. Which groups have been deemed returnable and how are they identified and expected to act?
2. What techniques and practices have been used to achieve the goal of return and how did they emerge and become normalized?
3. How can the increased emphasis put on return as policy be understood/explained?

Describing and analysing developments in Norwegian return policies over a relatively long period of time is an important empirical contribution to this research field. Despite this empirical weight to the project, I believe that it is crucial to connect theoretical conceptualizations to this empirical material, as theory on migration control is abundant. By combining the governmentality perspective with central theoretical ideas about return and migration policy I synthesize separated but related theoretical fields that gives potential to develop new theoretical perspectives.

1.1.1 Delimitations

As return is a consequence of the decision made by immigration authorities, whether there’s a reason for an immigrant to be approved residence in Norway or not, the system that proceeds the cases has a lot of power. Politicians and bureaucrats alike seems to have a lot of fate in the
security, legality and accuracy of this system. Because of the strong connections between reception and returns one cannot be viewed in isolation from the other. It is however beyond the scope of this thesis to also analyse the reception and application processes, but this connection should nevertheless be kept in mind when dealing with this issue.

Also, I have made a trade-off in regard to scope and depth in designing this research. Investigating a large time-span allows me to uncover longer lines of development, while I’m not able to go so much in depth into the material due to the scope of a master thesis. Considering what kind of research that already exists, I believe that that by analysing a larger time span, I can best contribute to new empirical findings.

1.2 Outline

I begin with a short background chapter that aims to present the context of the study and its contents to readers unfamiliar with Norwegian immigration and asylum policy. This provides an overview of recent immigration history to Norway, and recent key developments in the Norwegian asylum system. Chapter 3 discusses different terms related to this thesis, and explains the choices that I’ve made in regards to the sometimes confusing terminology in the field. In chapter 4, I present the relevant existing literature on the field, in order to place the contribution of this thesis. I argue that the main contribution of this thesis is both empirical and theoretical, as I present a narrative of Norwegian return policies that I have not been able to find in the existing literature, and combining the theoretical contributions of governmentality, deportability and migration policy research. This theoretical contribution is further presented in the fifth chapter. Here, the meaning of governmentality according to Foucault and Foucauldian theorists are explained, so is the toolkit of ‘analytics of government’ which is central to my analysis. The contribution of governmentality is synthesized with the already mentioned conceptual contributions from research on deportability and migration policy.

Chapter 6 explains the research design which is a case study, and the method and material used to execute the research. The methodological implications of governmentality is described, with weight on its consequences for the qualitative content analysis that I use to analyse the data. The use of policy documents as sources is discussed, along with possible challenges and strengths.
2 IMMIGRATION AND RETURN IN NORWAY – A BACKGROUND

Kjeldstadli (2013) concludes that controlling foreigners is a phenomenon with roots that go back further than often believed, and disagrees with Bauman in that it has its roots in modernity. As he sees it, population control has been important as means of controlling “the other” for a longer time, be it the poor, the sick, the criminals, the foreigner etc. While the means and the subjects have varied, the motivation has stayed the same: protection of the nation and its citizens. Kjeldstadli goes on to argue, that it is not the existence of nation, or belonging to the "wrong" nation that historically have been the motivation for exclusion, but rather poverty, both then and now. The distinction between the desired and the undesired was often drawn on basis of social class and fortune – when Jews were refused entry into Norwegian territory, exceptions were made for those belonging to the higher social classes. This line between desired resourceful foreigners and undesirable foreigners that might be a burden on the society is still being drawn in today’s immigration control policies.

Different forms of identification developed in the last half of the 19th century and beginning of the 1900s, identification cards or passports, as well as physical stigmas and later on photographs and fingerprints that identified prisoners. These means to classify, identify and register gave the authorities room for action, like denying entry at the borders, expulsion, or banishment. It was mostly Jews that were denied entry at the border, while poor people, criminals and to a certain extent political activists were expelled. Banishment was used towards a city's or town’s own inhabitants, usually because of religion or because they were convicted of certain crimes. Norway reintroduced passports and visa restrictions under the new Aliens Act of 1917. Border control was moved beyond the territorial border for the first time – to consulates and embassies. The same law introduced internal control of aliens.

Norway started to receive significant numbers of asylum seekers in the 80s, following the Iran-Iraq war. The system was in no way prepared for these numbers, and in the media, rhetoric about migrants “flooding the country” started to get hold while migration became a politicized topic (Lyden 2011). Especially the Progress Party on the right wing adopted the issue of migration, gaining votes by playing on people’s xenophobia in this new situation (Lyden 2011).

The Norwegian immigration management authorities was restructured in 1988 alongside the enactment of a new Aliens Act, to meet the new challenges following from increased immigration to Norway. The new Norwegian Directorate of Immigration (UDI) remains a central institution in the immigration management system. Their capacities and funds have
increased, reflecting both an increased in migrant arrivals and the heightened political emphasis put on immigration management. Significant amounts of the funding have been directed towards departments working with asylum seekers, despite this only having contributed to about 3-8% of the total immigration the past couple of decades (Tolonen 2011). This was likely because the asylum process is extensive and resource intensive.

At the time of creation, the UDI was given a lot of attention, but little critique. The situation with asylum seekers was so new, that interest and curiosity dominated the attention. But as numbers increased, the politicians started to look for possibilities as to how they could limit the arrivals, for example by reintroducing visa requirements. The Balkan wars constituted the largest challenge of Norwegian immigration administration at the time, taking up almost all resources in the system.

An immigration appeals board (UNE) was created in 2001, taking over responsibility for appeals from the Ministry of Justice, aiming to take away politicians involvement in individual cases, and strengthening the legal position of asylum seekers. Currently, politicians have a limited influence on individual cases that are being processed by UDI, but they do have influence over how the law should be interpreted. UNE is independent, but seem to be sensitive to political signals (Tolonen 2011).

In 2004, returnable persons in Norway was denied staying in reception centres and receiving financial aid, lost their work permits and their right to healthcare. To avoid that these migrants should end up in a precariously destitute situation, the government created so-called waiting centres in 2005, where rejected asylum seekers could live while they were waiting for their return arrangements to get finalised. In addition, an arrangement where returnable persons are offered money for returning to their home country was enacted in collaboration with IOM. The waiting centres was closed in 2010 after protests from the asylum seekers staying there, regarding the living situation in these centres.
3 CLARIFYING TERMS - EXPULSION, DEPORTATION, RETURN

There are three terms that are important to distinguish and define, namely expulsion, deportation and return. The word ‘expulsion’ is defined by Goodwin-Gill as “that exercise of State power which secures the removal, either “voluntarily”, under threat of forcible removal, or forcibly, of an alien from the territory of a State” (1978, 201). It is any kind of removal from the territory. ‘Deportation’ is defined by De Genova and Peutz as “the compulsory removal of “aliens” from the physical, juridical, and social space of the state” (De Genova and Peutz 2010, 1). They see it as removal that involves any kind of force or the threat of force. Walters on the other hand uses ‘deportation’ “to refer generally to the removal of aliens by state power from the territory of that state, either ‘voluntarily’, under threat of force, or forcibly” as that is a common use of the term today (Walters 2002, 268). ‘Return’ does not have a clear academic or political definition, but is usually used as a general term for all forms of removal of a foreigner from state territory.

‘Return’ in this thesis refers to both forced, voluntary under threat, and voluntary expulsion from the country, and is the chosen term for a handful of reasons. While ‘deportation’ is commonly used by researchers, and ‘expulsion’ is common in international law (Walters 2002), Norwegian authorities usually use ‘return’ and it is my belief that by using the same terminology, it becomes clear that I also study the same phenomenon as is referred to in public documents, political debates and by public institutions. Deportations is commonly only used to refer to forced returns in the Norwegian context, and I use it the same way in this thesis. The Norwegian Police distinguishes between ‘removal’ – that a migrant without a valid residence permit needs to leave the country, with no additional measures taken, and ‘deportation’ – an order to leave the country and the migrant is refused entry to the country for a defined period of time (politi.no 2015). The Norwegian Directorate of Immigration uses ‘return’ as a general term, or to refer to the different options for organised return through IOM or repatriation support. The government also uses ‘return’ generally, and breaks down three different forms of return: ordinary return – voluntary and self-organised return, assisted return - return with assistance from Norwegian authorities, and deportation/forced return – use of police force to remove the migrant from the country (Justis- og beredskapsdepartementet 2014).

One critical point to make about ‘return’ as a term, is that it implies that the destination is “home”. This is not always the case, as returns happen with so-called “safe third countries” as destinations, as for example in the case of returns following from the Dublin Regulation. Also,
children that are born in the country to asylum seekers, irregular migrants or migrants with temporary residence permits, can be returned to countries they have never been to.

While I consider all migrants potential subjects to return, return procedures as a control measure is most commonly connected to, and mentioned in connection labour migrants and asylum seekers. Since Norway accept very few labour migrants, I mainly focus on asylum seekers, which also can be seen as mixed motivation migrants.

I use return as my default term, and I further separate between expulsion and repatriation as this is the two common phenomena described in the sources. Expulsion usually refers to reactions towards criminality of different sorts, and is further discussed in relation to the first phase, 1988-1992. It includes an entry ban, either for a limited time, or permanent. Repatriation, on the other hand is when the migrant is encouraged to return home, mostly voluntary, but sometimes with elements of force for example under the threat of forced return.

St. meld. 17 (1994-1995) (p.56) distinguishes between different forms of return:

- Return of asylum seekers that have been given a final rejection of their asylum application. If they do not comply with the decision, they can be returned by the police.
- Return for people that have been offered temporary protection. They can leave voluntarily within the period of protection, or they can stay until the temporary protection is not extended anymore which presupposes return. Again, a failure to comply can result in forced return effectuated by the police.
- Voluntary return when permanent residence is granted.

Furthermore, in the time period under focus, two main types of return becomes clear: voluntary and forced. For these terms, I also use assisted return, corresponding with both voluntary return and repatriation, and deportation, which corresponds to forced return including expulsion.

3.1 Defining the target group – returnable persons

Return policies are most commonly directed towards rejected asylum seekers, but a number of migrant groups are affected by them. In addition to rejected asylum seekers, return policies affect those with a temporary permit that is not renewed and certain individuals expelled as a consequence of criminal acts. The latter group is not big, but is important to the topic as these people are often migrants with a residence permit, possibly also a citizenship, that instead of being imprisoned in Norway, get their residence permit or citizenship revoked and are expelled to their country of origin. This practice can be seen as a part of a blurring of the lines between being an asylum seeker and being a criminal, and raises the question: when does someone stop
being returnable? As labour migration to Norway is limited and highly regulated, they constitute a very small group, but some might refuse to leave after not getting a temporary permit renewed, thus becoming ‘irregular’.

3.1.1 Rejected asylum seekers/unreturnable

A rejected asylum seeker is a person who has claimed and applied for protection through the asylum system, but has gotten a so-called “final rejection”, after having exhausted all possibilities for appeal, and are thus not regarded as having a need for international protection.

An unreturnable person can mean two different things. The (Norwegian) state usually defines an unreturnable rejected asylum seeker as a person that, despite having cooperated with the immigration authorities on returning voluntarily still cannot return due to withstanding dangerous conditions in the destination country. It is also possible that the state will not accept them or guarantee for their safety (according to the principle of non-refoulement) or that the destination country would not confirm their identity. In other fora, ‘unreturnables’ might include groups that cannot be deported, but could return, according to the government, if they would cooperate with the authorities. (see Ot. prp. nr. 112 (2004-2005))
4 PREVIOUS RESEARCH

Although there exists a number of studies on return in Norway of descriptive and evaluative character, fewer contribute to theory development, and even fewer analyse return as a larger phenomenon that includes all forms of return policies targeted at migrant groups. Most research either focus on assisted return or forced return in isolation. The exception in several studies by Brekke, studying asylum and return from different perspectives and different time-frames (Brekke and Søholt 2005; Brekke 2008; Brekke 2004; Brekke 2002; Brekke 2010; Brekke 1999). I believe that all forms of return directed at migrants is a part of the return regime, and if there are significant differences in the governmentality of the different forms, this will be captured by the analysis. While ideas of governmentality and focus on governing practices and its ends is present in the research, there is, according to my knowledge, no such study that uses the analytics of government in a systematic way. This thesis can thus contribute, not only with increasing understanding of Norwegian return policies, but can also help contribute to further theorisation and conceptualisation of returns by explaining its role and position within the larger frame of immigration control policies, bridging contributions by somewhat different research ‘camps’.

The topic of assisted return programmes and their effects have been given significant attention in research on return policies, both in the case of Norway, other European countries and on Europe as a whole. The effect of these programs are debated among researchers, although it is popular among governments. A plausible reason is the humanity and dignity that is associated with this way of returning migrants, as well as the economic benefit compared to forced return (Black, Collyer, and Somerville 2011). Brekke (2010) analyses the position and use of voluntary return in Norway in the time period 2002-2010, and find that the effectiveness of such programs are dependent upon the parallel threat of forced returns. This strengthens the impression that assisted voluntary return is only partly voluntary (Blitz, Sales, and Marzano 2005; Øien and Bendixsen 2012; Webber 2011).

The research on the use of other forms of return in Norway is more limited. Thorgrimsen (2013) shows how return has come to play a more important role in Norwegian immigration control policies, as funding, attention from governments and number of measures to promote return steadily increased during the period from 2000-2012. Other researchers have pointed to several measures that are designed with the goal to make migrants return voluntarily. As highlighted by Brekke and Søholt (2005), among others, the incentives are partly created by making the stay in Norway seem unattractive. Johansen (2013) identifies such measure as a part of what he
calls the funnel of expulsion. This is how the undesired populations are managed in a way where they, in the end, are forced into a life of destitution in Norway, if they don’t leave the country. The funnel of expulsion consists of governmental techniques of controlling the population, and is thus a relevant concept for this thesis. He’s work is among few that studies Norwegian policies and uses it for theory development. Johansen identifies three features of these control measures (Johansen 2013): The calculations of how bad their situation has to get before it is better for them to return home, the isolation of the group and creating obstacles so they cannot get around the law, and lastly how they are no one’s responsibility.

This funnel of expulsion relates to the concept of deportability, another conceptualisation of deportation. Here it is argued that the real misery comes from the possibility of being deported at any time and the insecurities this brings with it (De Genova and Peutz 2010). Both deportation and identification is closely linked to citizenship, and several researchers has sought to scrutinize and conceptualize these connections. By comparing modern deportation to historical uses of expulsion Walters (2002) sets deportation into a wider field of political and administrative practices and investigates the role deportation plays for citizenship as a marker of identity. Deportations are seen as not only a consequence of the territoriality of states, but as a technology of citizenship that is “actively involved in making this world” (De Genova and Peutz 2010, 10–11), helping in the act of dividing people into national populations. Identification is significant because it defines a person as a non-citizen or a citizen, and thus contribute to this act of allocating people to different sovereign territories (Walters 2002).

Aas (2013) described identification as a way for the authorities to determine if someone can be trusted or not, and a missing identity is seen as a security threat that legitimises extreme measures. An insecure identity can be seen as a criminal identity: The most important is not to determine who someone is, but where they belong. Do they belong in the group of desired or undesired migrants?

The ineffectiveness of deportation practices has been highlighted by several researchers (De Genova and Peutz 2010, 22?). According to the UNHCR, the effectiveness of the asylum system is secured when the system is both fast and fair, because this will limit the incentive of making an unfounded claim. Effective immigration control is a priority in many European countries, and rapid returns is one measure that has been expressed by the Norwegian government as central to this. Having an effective system might also be hoped by governments to send signal effects to prospective migrants, and thus limit the number of asylum seekers that approach the border. Brekke (2004) finds that different aspects of the asylum process is, by
some civil servants in the immigration authorities, seen as tools that can prevent asylum seekers from coming to the country. Examples of procedures that are highlighted in this study as having this effect is ID- and age-checks, cuts in financial aid and reception programs and 48-hour fast track for unfounded applications. It seems to be believed that an effective way of deterring asylum seekers is by creating an image of Norway as a restrictive country. One possible negative effect highlighted in Brekke’s study is that asylum seekers are stigmatized and tensions between the majority and the minority population might arise.

An interest in studying migration control policy among European states is pretty widespread among scholars. Thielmann (2003) aims to understand how relevant pull-factors are in terms of forced migration. It is a common assumption among policy makers that limiting certain pull-factors, will reduce the number of asylum seekers that arrive on the borders.

However, there are major uncertainties around the signal effects of restrictive policies within the research field. Although few researchers find any deterring effect of such policies, the authorities continue to believe that strict asylum policies will limit the arrivals of asylum seekers. Brekke (2004) concludes that the field of asylum is only partially within the authorities’ control, especially because of a lack of certainty as to how effective the policies are in achieving what they are designed to achieve. He writes that this uncertainty may be pushing states into developing overall tough and restrictive asylum policies:

> The imperfect knowledge of the asylum seekers’ motivations and actions may tempt the authorities to put on all the breaks instead of working with more precision to obtain the wanted effects on arrivals. The risk may be that people that are qualified for protection are not secured their right to file an application. This is a constant consideration in this field of policy. (Brekke 2004, 43)

He concludes that that the most important factor in determining asylum destinations is the reputation of a country, and while such a reputation may be changed with stricter control policies, this isn’t necessarily the case.

According to Castles (2004) one way of increasing understanding of the formation of migration policies, is by examining the interests of the state and their articulations, the functioning of the political system and that the declared objectives are not always correct. He emphasise the need to understand how non-migration policies affect migration. Migration policies will, according to him, fail when they don’t understand migration as a social process, and ignore the aspects of North-South relations of migration. His contribution will be examined in depth in the next chapter.
Deportability is concerned with how migrants are put in a state and assigned an identity by the government that regulates their rights, duties and way of life. The *funnel of expulsion* is similar, and conceptualizes how certain policies of immigration control deliberately seeks to change the behaviour of its subjects through limiting their rights. These contributions are directly concerned with how government control its subjects. In the other end, Brekke, Thielmann and Castles tries to understand the immigration control policies, the intentions and rationale behind them. Castles directly argues that we should try to understand the interests through how governments articulate the problem and the solutions. I understand all of these contributions to meet within the spectrum of governmentality. In the chapter below, I explain in what way and how I bridge and concretize these approaches to create my theoretical framework.
5 THEORETICAL FRAMEWORK

As governmentality-scholars are often careful to point out, governmentality should not be seen and used as a complete theory which can provide us with explanations of social phenomena and predictions for the future (Walters 2012; Lippert 1999). It should be used as an analytical toolbox that help us understand the practical activities of governance. Governmentality can provide us with a diagnostics of the society, or the part of society that we are studying and thus help to "denaturalize features that have become second nature" (Walters 2012, 14). When it is successfully paired with other theories and concepts, it has, according to Walters, the capacity to uncover subtle shifts in rationalities, strategies and technologies of government. As such, it has both theoretical and methodological implications, and in this chapter I explain how I pair governmentality with conceptualizations of migration policy and practices to create a sensible and useful analytical framework for this thesis.

5.1 WHAT DOES “GOVERNMENTALITY” MEAN?

Foucault’s work on sexuality, madness and criminality is widely famous, but fewer are familiar with his work on government and state administration. While his work on the government represents a shift from the social towards the political, also this work has its foundation in the main ideas about the microphysics of power and the methodological genealogy that has come to be what people most often associate Foucault with.

In Foucault’s work, governmentality is used in a variety of ways, making it difficult to give an exact definition. It is necessary to understand the way he uses the terms, and not just his original definition of it.

In his lecture ‘Governmentality’, Foucault (1991, 102) gives a three-part definition of the term:

1. The ensemble formed by the institutions, procedures, analyses and reflections, the calculations and tactics that allow the exercise of this very specific albeit complex form of power, which has as its target population, as its principal form of knowledge political economy, and as its essential technical means apparatuses of security.

This definition, however vague, comes towards the end of the lecture, in which Foucault describes ‘the art of government’ as it has developed since the Middle Ages. He begins with Machiavelli’s ‘The Prince’, written in the sixteenth century when, according to Foucault, the problem of government is beginning to be problematized. In ‘The Prince’ government is primarily concerned with the means for the Prince to keep his power, which is a power over the territory, and over the inhabitants of that territory. This is contrasted to La Perriére’s Miroir Politique in which the subjects of governments is things. Foucault believes this is to show “that
what government has to do with is not territory but rather a sort of complex composed of men and things.” and he furthermore quotes La Perrière: “government is the right disposition of things, arranged so as to lead to a convenient end”. This leads Foucault further towards the part one of the definition, as he interprets this to mean that government has a plurality of aims, and it employs a variety of tactics in order to reach its objectives. ‘The art of government’ is concerned with the kind of practices that are deliberate and calculated, often a consequence of investigations and guided by knowledge.

In its broadest sense then, governmentality means “the conduct of conducts”. Foucault found governance to be not only restricted to the state, but happens wherever groups and individuals act and tries to shape the actions of others. He investigates governance through the practices, techniques and rationalities that intends to shape action. (Walters 2012, 22) The attention is turned towards how to govern a population in a way that makes the population act in a desired way.

Foucault’s analysis does not understand the state as an actor, but as an effect of historical practices that developed over time. In his genealogy of the modern state (Foucault 2007: 354) Foucault identifies three different forms of state power: the pastoral, the disciplinary and the liberal. These forms of power do not exist independent of each other, but additive, one dominates for a while and then another takes over. Foucault understands of ‘the state’ as the result of practices and techniques that give definition and meaning to it. Weber defined power as “the ability to control other, with or without their consent”, while for Marx, power was a relation of domination and subordination. Foucault’s concept of power lies closer to that of Weber, as something that can enable conduct, both one’s own and other’s. The three forms of power that he identifies have different ways of achieving their goals. Pastoral power exercises power over the soul, disciplinary power exercises power over the physical bodies and the liberal power exercises power over the population.

Governmental power is often regarded as the power of authority to shape the actions of its subjects to achieve different goals. Thus, it is often connected to the liberal forms of power. The concept when used in this sense provides an understanding of how the state controls and governs the people using more subtle techniques and practices as is typically connected to liberal power, as opposed to ‘policing’ forms of power.

The rest of the definition targets what Foucault calls “governmentalization”: 

14
2. The tendency which, over a long period and throughout the West, has steadily led towards the pre-eminence over all other forms (sovereignty, discipline, etc.) of this type of power which may be termed government, resulting, on the one hand, in the formation of a whole series of specific governmental apparatuses, and, on the other, in the development of a whole complex of *savoirs*.\(^2\) (italics original)

3. The process, or rather the result of the process, through which the state of justice of the Middle Ages, transformed into the administrative state during the fifteenth and sixteenth centuries, gradually becomes ‘governmentalized’.

Governmentalization happens as the mechanisms of government themselves become subject to problematization. The state is concerned with governing the governmental system, not the population. According to Foucault, there is a development towards governmentalization through history. Throughout modernity, the techniques of government becomes “the only political issue, the only real space for political struggle and contestation” and Foucault argues that this keeps the state alive (Foucault 1991, 103).

Walters (2002) takes the example of deportations: “When deportation rates become ‘targets’ to be met by immigration and other departments, when national and international agencies seek to compare levels and techniques of deportation across nations and exchange information for ‘best practice’, then it seems we have governmentalization of government.” It seems then, that migration control policy is highly subject to this governmentalization.

To sum up, governmentality entails a specific way of seeing and studying power and rule, where focus is on the more or less subtle techniques and practices that is used by the government to shape the behaviour of the population. More specifically it can also be understood as the way that practices and techniques of government has defined the modern state. There is also a third way of understanding Foucault’s use of the term – as those practices and techniques that are typical to the liberal state, but this is not directly relevant to the use of governmentality in this thesis.

This concept guides this thesis, which means that I identify those practices and techniques that are relevant to the development of a return regime in Norway. I pay special attention to more or less ‘hidden’ meanings or unintended consequences. The next section gives a more concrete description of what governmentality means for the theoretical foundation and analytical execution of this research.

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\(^2\) *Savoir* is a French word that usually refers to a general knowledge, or to be “aware of” something. Foucault contrasts this to *connaissance* which in French refers to specific knowledge like that of an expert or scientist.
5.2 GOVERNMENTALITY AS ANALYTICAL TOOL

Governmentality is an alternative to the traditional way of studying government, where the state is treated as the actor and focus is set on how the state as an authority is legitimized. As described above, Foucault sees the state as a result of practices in the past (Lippert 1999) and regards governance as something that includes a plurality of governing authorities, behaviours and outcomes. This has implications on the method of analysis (Dean 2010, 17–18).

The aim of a governmentality analysis is to examine the way government attempts to shape human action. “To analyse government is to analyse those practices that try to shape, sculpt, mobilize and work through the choices, desires, aspirations, needs, wants and lifestyles of individuals and groups.” (Dean 2010, 20) As an approach, it provides us with a framework for relating politics and ethics, by encouraging thinking about connections between governments, politics and authority and the identity and the self (Dean 2010, 20).

Governmentality presumes that there is a rational aspect to governing, in the meaning that its thinking about how things are or ought to be strives to be clear, systematic and explicit (Dean 2010, 19). The means are more or less systematically created to contribute to the meeting of specifically desired ends. As “mentalities of government” governmentality sees thinking as a collective process within the government that entails knowledge, expertise and know-how.

The concept of governmentality has been used in many different ways, but common for them all is its basis in Foucault’s work. Neo-liberal ways of governing is often subject to governmentality studies, but increasingly, scholars use governmentality to understand the emergence of a way of governing that is less liberal and more of a disciplinary nature. This perspective has been used in studies about border controls and deportation, (Fassin 2011; Johansen, Ugelvik, and Aas 2013; Walters and Haahr 2005; Walters et al. 2010) and also more overall studies on immigration control (Bigo 2002; Conlon 2010). The way states combine liberal forms of governance with disciplinary forms, or policing (Walters 2002), is easily illustrated in the studies of immigration control, as states apply liberal principles on migration of desired groups of migrants, and illiberal forms of governing through an increase in control measures addressed to undesired groups of migrants.

In migration research, governmentality has mostly been used in researching topics like borders and deportability. And many studies analyses these topics beyond the realms of ‘state’ and ‘politics’.

16
This thesis uses governmentality as an analytical tool as developed by Dean (2010). He describes it this way:

An analytics is a type of study concerned with an analysis of the specific conditions under which particular entities emerge, exist and change. […] An analytics of government examines the conditions under which regimes of practices come into being, are maintained and are transformed. (Dean 2010, 30-31)

I make use of this analytics in order to describe the emerging return regime, to identify its central components and targets, more specifically the measures that emerge and the group that these measures are targeted towards.

To the basis of this thesis lies the presumption that a regime of returns currently exists in Norway in the time period 1988-2014. According to Dean (2010), a regime of practices consists of sets of ways of doing things in certain places or at certain times. They includes the different ways in which practices can be thought and made into subjects of problematization. The analytics of such a regime

[…] seeks to identify the emergence of that regime, examine the multiple sources of the elements that constitute it, and follow the diverse processes and relations by which these elements are assembled into relatively stable forms of organization and institutional practice. It examines how such a regime gives rise to and depends upon particular forms of knowledge and how, as a consequence of this, it becomes the target of various programmes or reform and change. It considers how this regime has a technical or technological dimension and analyses the characteristic techniques, instrumentalities and mechanisms through which such practices operate, by which they attempt to realize their goals, and through which they have a range of effects.

**Four analytical dimensions**

Dean (2010) identifies four analytical dimensions that are important to the analytics of government. These are not mutually exclusive, but exists in all practice regimes to some degree. When I use these dimensions in this thesis, I more specifically show how the return regime have developed on each dimension throughout the selected time-span. Each dimension consists of a set of questions, to a large extent how-questions, which Dean (2010) argues is essential to an analytics of government. Different regimes of practices can illuminate the same phenomenon in different ways.

**Fields of visibility**

Here, the visual and spatial dimension of government is identified. How are certain things illuminated and defined, while others are overshadowed and obscured? What light is shed on the problem, and on the solution? This describes the main aim of the policy.
Technological aspects of government

On this dimension one seeks to identify the concrete measures that are put to use in order to reach the goal that is set forth by the authorities. By what means, mechanism, procedures, instruments, tactics, techniques, technologies and vocabularies is authority constituted and rule accomplished?

Thoughtful and rational activity of government

In this dimension, the regime of government is identified, by looking for the rationale and ideas behind the solutions to the already identified problems. What forms of thought, knowledge, expertise, strategies, and means of calculation or rationality are employed in practices of government? How does though seek to transform these practices? How do these practices give rise to specific forms of truths? How does thought seek to render particular issues, domains and problems governable?

Formation of identities

This dimension in concerned with how subjects and identities are formed. It defines the target of the policy and practices. What forms of person, self and identity are presupposed by the different practices of government? What transformation do these practise seek? What forms of conduct are expected, and what rights and duties do they have? How are certain aspects of conduct problematized?

5.2.1 Deportability

As described in the chapter on previous research on the field of return, a number of researchers has sought to conceptualize deportations/return. One of the most widespread ones, is De Genova’s concept of deportability which argues that it is not the act of deportation or return that needs to be problematized, but the situation of deportability. The situation defines and excludes its subjects.

Here, I want to return to Johansen’s contribution as mentioned in Chapter 4. Following from De Genova’s conceptualization of deportability, it becomes interesting to understand how the state constructs this situation, the light, the technologies, knowledge and production of subjects that defines and constructs the situation of deportability, the way that Johansen has shown with his investigation of the temporary residence centres in Norway, where migrants are being pushed into a funnel of expulsion (Johansen 2013).
5.2.2 Migration control theory

Economy, size of immigrant population, foreign policy relations, wars and terror threats, and ideology are among the factors that can explain the immigration control policies in a country (Meyers 2004).

A feature of the state that Foucault pointed to was that of failure. When policy fails, it is usually does not mean abandoning the system or creating new institutions, but creating additional policy: "So successful has the prison been that, after a century and a half of 'failures,' the prison still exists, producing the same results and there is the greatest reluctance to dispense with it." (Foucault 2012; Lippert 1999) It becomes interesting then, when examining asylum policies, to look into the failures they have encountered, and try to identify what changes that followed. What are the reasons for failure in migration policies, and how are these failures handled?

It has become pretty clear that most European governments think it is important to control migration, but as I write this, several of them claim to be in a state of crisis due to an increase in asylum applications in European countries during the second half of 2015. Judging by the rhetoric alone, migration is now less in control than ever before.

Usually, policies succeed in some way or another. What is here meant by failed policy, is when it does not achieve its defined objectives, or have unintended consequences. (Castles 2004: 854)

Castles (2004) aims to diagnose migration policies, by defining the reasons why migration policies tend to fail, and what they need to consider in order to be successful at reaching their goals. He identifies 3 sets of reasons that consists of a variety of factors that is present in the spectrum between migration flows and migration control. Most importantly, he claims that effective migration policies are hindered by one sided explanatory models of migration and conflicts of interest, resulting a policy structure challenged by contradictory objectives and hidden agendas.
6 RESEARCH DESIGN

As the use of return and deportations in modern European states has been identified as a regime of practices in earlier research contributions (See for example Walters 2002, De Genova 2012), my aim is identify and explain the Norwegian return regime. My analysis is based on the analytical approach of Dean (2010), and draws on concepts and conclusions from the previous research on deportations. As there has not been developed any complete theory my project is not to reject or deny the conclusions drawn by previous researchers, but to further develop the understanding of the regime of returns.

In this chapter I aim to show how I bridge governmentality and methodology, and what kind of toolkit that I form in the encounter between the two. The governmentality approach has some significant methodological implications, as it already dictates what kind of information that is interesting to an analytics of government (practices, techniques, mechanisms, knowledges etc.) and how this information can tell us something about the regime that is being ‘diagnosed’ to use a term from Foucault. This means that the research design does not fit easily into boxes like “process tracing” or “discourse analysis”.

This study is qualitative and designed as a case study. The aim is not to explain the policy-process and outcomes, but to empirically show how the regime of practices has been transformed and developed over time, and been established as a significant part of migration control policy. As the regime of return is not clearly been identified by previous research, it is necessary for me to identify and describe it. This means that my research also has a descriptive side to it.

The governmentality approach demands a method of analysis that is sensitive to context and hidden meanings, and I therefore use documentary research approach together with qualitative content analysis. This will be further explained below, after an account of what a case based design means for the current study.

6.1 CASE STUDY RESEARCH

As my main unit of analysis is the Norwegian return regime, one single case that is studied in depth, this research can be defined as a qualitative case based design. As defined by George and Bennett, a case is an instance of a ‘class of events’, which can be any phenomenon of scientific interest (George and Bennett 2005, chap. 1). Case studies are suitable for empirically focused research that aim to develop new theory (6 and Bellamy 2012, 115). The events that is studied, are return policies in Norway from 1988 to 2013. I examine the changes of return
policies during this time period. Several theorists of governmentality have pointed to the importance of historically contextualizing governmental practices, as also Foucault himself did (Walters 2012).

More specifically, I deploy the four analytical dimensions from Dean (2007) which will be used as overarching categories in the qualitative content analysis. They are broken down into sets of questions like “Who and what is being governed?” and “Which techniques are utilized in order to meet the government’s goals?” Added to these are questions derived from the conceptual framework. A complete outline of this is given further down in this text.

According to George and Bennett (2005), defining questions like these are important to case study research, in order to ensure data collection standardization and comparability. This also applies to individual case studies like the current, as that can increase the value for further use in a comparative setting. (2005, chap. 3) One challenge I encounter in order to standardize the data collection across the selected time frame, is the large variation that can be expected, both in the available material and the relevant policies at a given time. I approach this challenge by conducting the analysis iteratively, moving back and forth between the material and the theoretical framework. This will help me adapt to the variations, and achieving a context-sensitive yet systematic design.

George and Bennett (2005) further argue for how the case study is important as a research design, because of its potential as a building block that can add to previous research, as well as contributing to theory development by filling a gap.

6.2 METHODS AND MATERIAL

Policy documents from the selected time period are used as primary sources for the content analysis. I regard these documents as representative for the period, as they make up a large proportion of the total amount of relevant public documents that were produced during the period, and they are all central documents. They are also supported by other public documents that are not directly referenced here. As I will describe below, public policy documents have potential for systematic bias in the presentation of the situations they describe. To preserve the representativeness of the overall picture drawn here, I also use other contextual documents like newspaper articles and secondary sources.

When conducting documentary research, the social and political context that these documents occurred within, must be included in order to make informed interpretations of the material (May 2011, 199; George and Bennett 2005). Qualitative content analysis can be sensitive to
context like this, by going beyond the texts itself (Mayring 2000; Kracauer 1952), and when “the text is approached through understanding the context of its production by the analysts themselves” (May 2011, 211). This sensitivity to context is important to fulfil the ambition of the analytics of government. I ensure contextualization of the information from policy documents by using secondary sources and media coverage as supplementary source material, although these are only contributing to my understanding of the source material, and are not analysed as source material in themselves.

The selection of documents include law and legislative propositions, white papers and press releases. These are selected with departure in secondary sources on the development of Norwegian asylum policies, through which I have identified a selection of important policy turns and milestones:

- The Aliens Act of 1988, in which the reform of the Norwegian immigration authorities and the establishment of a new Directorate of Immigration were decided.
- Handling the Balkan-war 1993-1996
- 2004 when rejected asylum seekers were refused housing in reception centres while also losing their right to health care and social security
- The new Aliens Act of 2008

I also make use of some descriptive statistical data on the numbers of returns and asylum seekers during the period. In these data, I include the numbers for 2011-2014 even though they fall outside of the selected time-span.

6.2.1 Some notes of caution on documentary research

Using documents as data comes with possibilities of bias (May 2011, 216; George and Bennett 2005). When interpreting policy documents, one must consider who is speaking to whom, and for what purpose? (George and Bennett 2005, chap. 5). There is also potential for distortion of the content for political reasons upon the release of such documents (especially in cases where they were classified). Policy documents are official, and can be regarded as representative of the author and the institution, and their authenticity should not need to be questioned. It is, however, important to consider their place in the policy process. The most important form of documents used as sources for my analysis is Ot. prp. – a legal proposition from the government to the lower parliamentary chamber Odelstinget (from 2009, the parliamentary structure in Norway has been one chamber), St. meld. – a report from the government to the Storting (the upper chamber until the reform in 2009), and Press Releases from the government.
Some policy documents used as sources in this thesis are reports written on commission, whereby the credibility of the source might be compromised. Conclusions can have been adapted to fit to the commissioners wishes, causing alternative perspectives to be ignored and overshadowed by perspectives that support the views of the commissioner (Holden et al. 2014). Another note of caution when using policy documents is that they are constructed as a part of a political project. This means that they should not be regarded as conveying objective facts or information, and that their credibility must not be taken for granted. Parts of the policy formation process is documented in papers and reports that are not publicly available due to issues of security or sensitivity, and while the content of such documents would contribute a great deal to an investigation like this, it has not been possible for me to access such documents. I believe that the way I combine the use of policy documents with other sources along with being mindful of these issues still make the analysis reliable.

6.2.2 From reading documents to conducting analysis
As I’ve already touched upon previously, the analytics of government approach requires a method sensitive to context as well as ability to grasp surrounding factors such as unintended consequences, under communicated intentions etc. It is important that I as a researcher is able to go beyond the written content of the documents, to be able to conduct an analytics of government. One of the strongest advantages of qualitative content analysis is its flexibility which also allows the researcher to consider how new meanings are developed (May 2011, 211). This is important in order to conduct an analytics of government, as it is deeply concerned with how problems, identities and rationalities are developed.

The process of content analysis begins with a reduction of the data. I begin reading the documents and singling out the relevant parts of the texts with the overarching dimensions from Dean (2010) in mind. When the body of text is reduced to what is relevant for my study, I start coding. I make use of what Mayring (2000) calls Deductive category application. This is an iterative process that begins with categorising pieces of the text according to the dimensions and the questions they consist of. After this initial round of coding, I go forward with a more thorough coding that aims to construct sub-categories within each dimension.

Quotes from the documents are given throughout, and is translated by me, with original text provided in the footnotes.
6.3 LIMITATIONS

Case based research can usually not provide generalizable results. As I only study the Norwegian return regime it is not a given that my findings can be relevant to similar regimes in other countries. The work done for this thesis may therefore be most useful to develop theory and add basis for further research on the topic (6 and Bellamy 2012, 104). However, it might be possible that the results provided by this thesis can be relevant to other cases that are of a very similar nature. One might for example imagine that return regimes in some other European countries look similar due to political and cultural similarities, and to the degree of European integration through the EU. Norway appears to have immigration policies that are typical of Europe, and is in no way an extreme or outlier case.

6.4 TIME FRAME

The chosen time frame for this investigation spans a total of 22 years, a selection that tries to strike a balance between depth and scope. This frame includes several governments (see Appendix 1 for an overview of the government and Prime Ministers during the period) and changes to Norwegian immigration policies, and can therefore give a thorough account of the developing trends over time. This timespan allows me to investigate the development of return policies during most of the period where immigration has been a salient political issue in Norway.

Figure 1: Forced returns per year from 1988-2014.

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3 Although Norway is not a member of the EU, the country have applied a number of EU policies, and can thus be said to be a part of the EU integration. Most relevant to this thesis is the EU Return Directive, implemented in 2011, and the Dublin Regulations.
I decided not to go beyond 2010 in my investigation. The data material was already very large, and needed to be limited in a way that made sense. I wanted to be able to give an account of the development of the return regime as a whole, and while the first couple of years did not have a large material available and the return focus was not very strong, it was important to contextualize the development that was to come later on. When I looked at the statistics for forced return (expulsions) I quickly saw that something happened in the years 2000-2010. While the total number of expulsions had been quite stable, less than 700 total per year in the period 1990-2000, it started to rise in 2002(900) and 2003(1100). In 2005 the total was 1300, and by 2010 it had reached 3400. The rise in expulsions continues towards the present, with a total of 5300 in 2014. These numbers can be seen in Figure 1. I interpret this to signal that the return regime formed in the years prior to 2002/2003, and was pretty well established by 2010.
7 FINDINGS

In this section, I present the content of the material following the structure of the analytics of government. The structure of the chapter follows the time-periods that I’ve divided the material into. 1988-1992 is a period when the modern immigration politics is first established, and immigration becomes a politicized topic in the public debate. I argue that it is the beginning of the formation of the control regime that is dominating still.

The next phase, 1993-1999 consists of documents surrounding the changes that followed from the Yugoslavian wars. This period is dominated by an idea of migration as temporary, and the first dedicated return programmes emerge.

As mentioned in section 6.4, there is a large increase in returns during the period 2000-2010. Policies are initiated with the expressed aim to motivate return, both assisted and forced.

Figure 2: Number of asylum seekers to Norway 1988-2014 (Source: UDI)


The two main sources used is Ot. Prop. 46 (1986-87) and St. meld. 39 (1987-88), both being largely concerned with the proposed Immigration Act (1988) that was enforced in 1990.

During the 1980s one saw that immigration became a more politicized issue, as the arrivals of asylum seekers increased. The current legal and practical system for reception was not suited
to the developments in the refugee and asylum situations across Europe, and with the proposition for a new Immigration Act, the process of restructuring the system began.

7.1.1 Fields of visibility

On this dimension, I highlight the expressed aims of the policies, who they are targeting, the way the topic is problematized by the authorities and the solutions that are proposed.

The general picture painted of immigration to Norway is of a growing challenge that was in need of control measures. The aim of the new Immigration Act (1988) was to provide the necessary legal framework for the authorities to conduct the best and necessary immigration policies at all times, and give protection to refugees. The old law was from 1956 and thus did not include the necessary tools for the current immigration situation, and almost 10 years had passed since the last report to the Storting on the topic.

The report to the Storting (St. meld. 39 (1987-88)) emphasized the need for regulating immigration to Norway, and especially asylum seekers as this was an unpredictable and costly form of migration in which Norway experienced a significant rise in the previous years. It proposed a strict control regime, and can be seen as the beginning of the political line of control that has followed. Immigration was described as a challenge to the welfare state: “Norway cannot solve the global refugee and emigration challenges by allowing residence to everyone that would want it” (St. meld. 39 (1987-88), chap. 4). And the limitations and measures of control is therefore a necessity. Expressed goals of the immigration policies are to reduce the numbers of asylum seekers and control the migration movements. However, a distinction is drawn between refugees and asylum seekers, and it is stated that a lowest possible number of refugees is not a goal. (St. meld. 39 (1987-88), chap. 4)

When it comes to return, which is the main concern of this thesis, this is not a measure that takes up any significant attention at this point. Mainly, return is seen as the natural response to a declined asylum application while expulsion is effectuated when a foreigner has conducted a criminal act. This includes serious violations of the Immigration Act, and less serious violations in isolation could constitute reason for expulsion if they together could be seen as serious. (Ot. prp. nr. 46 (1986-1987)) Forced return thus applies to foreigners that for some reason was seen as unwanted. Beyond this, return was voluntary and took the form of repatriation. There were few policies intended to stimulate return in effect or up for serious discussion.

4 «Norge kan ikke løse verdens flyktninge-og utvandringsproblemer ved å la alle som ønsker det få bosette seg her.»
7.1.2 Technological aspects

This dimension seeks to identify and describe the specific means and tools that are used in order to achieve the goals of the government.

The draft for the law opens up for immediately returning asylum seekers that claims asylum on unwarranted grounds: “[the draft includes] the possibility to send out asylum seekers before their application is processed and their claim decided if there is “obvious” that the requirements for protection are not fulfilled. Quick implementation will often be of importance in order to effectuate return to the first safe country, and the deadlines will often be short”

The first country of safety-rule enables return to any safe country that the asylum seeker has stayed in before arriving in Norway. Following from this principle, no asylum seeker, also those that did not fulfil the requirements for asylum, would be returned to a country where they would be in danger of political persecution or inhumane treatment. They would be granted residence on humanitarian grounds. The proposed policy for the future, however, was to limit the use of this type of status.

In 1988 it was reported an increase in the numbers of denied asylum seekers. This increase was thought to be a consequence of a more effective processing and a stricter practicing of this first country of safety-rule along with visa requirements for the biggest group of asylum seekers, namely Chileans. (Cappelen 23 July 1988).

This strict enforcement of the rule got a lot of media attention in the following years. In 1992, Norwegian authorities was supposed to return a Bosnian man to Austria because he had spent 3 hours in transit there, despite him having a brother already living in Norway. He appealed, but still had to return to Austria while awaiting the conclusion of his case. The case got a lot of attention, and resulted in a softer interpretation of this rule for Bosnian war refugees. (Torgersen 31 July 1992)

Some international voluntary repatriation schemes for refugees had been developed for refugees from Latin-American countries. These were not available to asylum seekers. For returning home after a declines asylum application, the state would assist economically “if necessary”. (St. meld. nr. 39 (1987-1988), chap. 4) Few measures to inform about these programs or stimulate foreigners to use them existed.

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5 «I likhet med nå gjeldende lov, åpner også utkastet til ny utlendingslov muligheten for å sende ut søkere før det er truffet et endelig asyl- vedtak hvis det er «åpenbart» at vilkarene for vern ikke er oppfylt. Hurtig iverksetting vil ofte være avgjørende for å få gjennomført utsendelse til første asylland, og fristene vil ofte være meget knappe.» (St.meld. 39 (1987-88))
The proposition for the Immigration Act, Ot. prp. 46 (1986-87) suggested the following measures of control and “mild” coercive measures to ensure compliance in cases of forced return: “[...] duty to notify the police, submission of passport and other ID papers and a specified place of residence”\(^6\) (Ot. prp. 46 (1986-87)). Furthermore, public authorities was given a duty to report name and address to the immigration authorities when it was requested. The reason given, was that asylum seekers often change address without informing the authorities, with the result of delaying their application processing time. (St. meld. 39 (1987-88), chap. 4) In Ot. prp. 46 (1986-87, chap. 6) these measures are also mentioned with connection to securing compliance of the immigration act and implementation of administrative decisions.\(^7\)

In cases where a foreigner is compelled to return home, this either has to happen immediately or within a set deadline. If there is a substantiated suspicion that the decision will not be complied with, or it already has been ignored, the law opens up for limited use of force. Regular prisons should not be used, according to the government. (Ot. prp. nr. 46 (1986-1987)

7.1.3 Thought and rationale

This section describes the dimension of the thoughts and rationalisations behind the suggested and implemented policies and measures.

The legal protection of immigrants emphasized throughout the documents. Included in this is ensuring the principle of non-refoulement\(^8\), which is important in relation to the return of asylum seekers. With goals such as shortening the processing time and limiting the use of residence on humanitarian grounds, ensuring non-refoulement becomes important. This challenge is acknowledged in the report to the Storting (St. meld. 1987-88):

Asylum decisions are of high importance to the applicants. Errors in assessments leading to expulsion is not only regrettable, but may have fatal consequences. In the worst cases, it may result in return to death penalty, torture or other inhumane treatment. Securing legal protection of the applicant is therefore of high demand, especially in a situation when it is needed to draw clear lines between refugees and those that have similar need for protection, and those that seek asylum on a general reasons or reasons of welfare.\(^9\)

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\(^6\)“de mildere tvangsmidler, eller fengslingssurrogater, som kan komme på tale i utlendingssaker, er meldeplikt, innlevering av pass eller annet legitimasjonspapir og bestemt oppholdssted, jfr. lovutkastet § 41 annet ledd.”

\(^7\)The term implementation of administrative decisions (No: iverksetting av vedtak) usually refers to use of force i.e. imprisonment, detention or forced return.

\(^8\)To not return a migrant to a country where they can be in danger of persecution, torture or inhumane treatment

\(^9\)“Avgjørelser i asylsaker har meget stor betydning for søkerne. Feil i asylvurderingen som fører til utsendelse er ikke bare beklagelig, men kan fa tragiske følger. Det kan i verste fall føre til hjemsendelse til dødsstraff, tortur og annen inhuman behandling. Behandling av asylsaker stiller derfor store krav til rettssikkerhetsgarantier. Dette er særlig viktig i en situasjon hvor det må trekkes et klart skille mellom dem som er flyktninger eller har
In addition, the principle of non-refoulement was included in the Immigration Act §15.

Furthermore were the foreigners’ connection to Norway considered an important factor when deciding whether asylum should be granted and if return/expulsion should be used:

The access to return a foreigner to another country [due to the first country of asylum-rule] should not be used when the refugee has a strong connection to Norway, making Norway the most suitable place to provide protection" (Ot. prp. nr. 46 (1986-1987), 205).

Some areas of policy has overlapping aims as immigration regulating policies, such as foreign policy. The need to see how migration is both national and international is highlighted, and immigration policies are therefore connected to foreign policy issues of importance to the Norwegian government like development aid and peace work. Other areas have conflicting interests, an example being integration and legal protection and the need for control. This tension is evident in the legal work that was developed at this time, and especially legal protection for foreigners in Norway was a priority.

Combining that with control was a challenge. The government at the time showed a belief in using control policies to send signals and expulsion and rejection was highlighted as important tools in order to reduce the numbers of asylum seekers.

It is believed that [negative decisions and rapid returns] can have an indirect effect, by negative decisions becoming known to people that could want to apply for asylum in Norway and that is in a similar situation as those that are rejected and returned (Ot. prp. nr. 46 (1986-1987))

Control was furthermore argued as necessary in order to protect the Norwegian welfare state, and the government express the need to evaluate levels of control according to how the welfare state accommodates to the increased immigration (St. meld. nr. 39 (1987-1988)).

The use of force in the form of imprisonment and physical control against certain groups of asylum seekers that are rejected is rationalised as a necessary tool in order to ensure that foreigners that do not want to return voluntarily actually leave.

As control was quite a new thing in Norwegian asylum policy, knowledge and statistics was on the area was rather scarce. In order to gain an overview of the population and the policy effects,
the government called for comprehensive statistics on immigration. Specifically, they requested information on return and circular migration.

7.1.4 Identity-formation

On this dimension, I extract the identifications of the policies and practices. I describe the targets, how they are distinguished from other groups and how their conduct is problematized by the government.

Norway began to systematically distinguish migrant categories in the 1970s when the stop in labour immigration was introduced. The window was kept slightly open in order to allow desired labour migrants to enter as well as accepting resettlement refugees though the UNHCR. With increased arrivals of asylum seekers during the mid-1980s, one could also see a distinction between the refugee and the asylum seeker, with some people seeing the latter group as being illegitimate refugees (Brochmann and Kjeldstadli 2014). In the policy documents, this is reflected in the goals for the policy: to accept refugees and asylum seekers with a real need for protection. (St. meld. nr. 39 (1987-1988), chap. 4)

In order to protect the welfare state, the country cannot accept “everyone”, and thus priorities have to be made: “There is a limit to how many people that can settle here on the condition that immigrants should have the same rights to social welfare as the rest of the population. Therefore, refugees and family reunification will be prioritized.”12 (St. meld. 39 (1987-88), chap. 4) The distinction between the two groups is justified by the authorities by this logic: a large number of asylum seekers will limit the number of resettlement refugees that it is possible for the country to accept from the UNHCR. (St. meld. 39 (1987-88)) In other words: if the arrivals of asylum seekers is not controlled, there will be more UNHCR refugees that will not be resettled to Norway.

Certain groups are protected against forced return (expulsion). Norwegian citizens and foreigners born in Norway cannot be expelled, and the same is the case for foreigners that have established a strong connection to the country. An immigrant that fulfils the criteria for a settlement permit (equals 3 years of residence) can be expelled only as a consequence of serious crime (that equals a punishment of 10 years or more), for reasons of national security or of compelling social considerations13 It is argued that a strong connection to the country cannot

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12 “Det er begrenset hvor mange som kan få bosette seg her, når forutsetningen er at innvandrere skal ha samme rett til velferdsgoder som befolkningen forøvrig. Familiegenforening og flyktninger vil derfor bli prioritert.”
13 Tviungende samfunnsmessige hensyn (bl.a. innenrikspolitiske forhold og risiko for særlig samfunnsfarlig kriminalitet, og kan omfatte terrorvirksomhet som ikke har den norske stat som mål.)
only be measured in terms of length of residence, other factors that can establish a connection should also be basis for protection against forced return such as marriage or other family connections, or even integration. In addition, a foreigner that holds a residence permit is guaranteed to stay in the country until a decision for expulsion is final. (Ot. prp. nr. 46 (1986-1987), chap. 6) This also indicates that foreigners without a residence permit can be expelled without a final decision.

7.2 Temporality and Repatriation – A different paradigm (1993-1999)

The context of the first half of the 90s is important to understand the policy development of this time. In the Norwegian context, it was quite extraordinary as the country had not had a large inflow of asylum seekers before. It was the first refugee crisis after the Second World War. 3 million people were fleeing in 1993, caused by the conflict in the Balkans. The dissolution of the Soviet Union and the situation in the affected countries was an additional cause for concern, as it could be the cause of a future, even larger refugee crisis. (Justisdepartementet og Kommunal- og arbeidsdepartementet 1993) New instruments were perceived to be needed in order to handle the changed refugee situation. In 1992, no refugees from the former Yugoslavia were given asylum in Norway. Most of the applications were not being processed at all, but no one was returned at this point. The authorities were awaiting the development of the situation. (Molde 7 July 1992) When the temporary stop in returns ended in February 1993, hundreds of Kosovo Albanians sought sanctuary in Norwegian churches to avoid deportation.

7.2.1 Fields of visibility

During this period, a new view of refugee politics gained popularity – a comprehensive refugee-and immigration policy. The main idea was to see the international dimension of the refugee situation. This included different measures that could prevent people from fleeing or being displaced, development aid to sending countries, conflict management in zones of conflict in addition to repatriation and accepting resettlement refugees and asylum seekers nationally. Repatriation programs was combined with economic measures with the aim of reconstructing and rebuilding the local communities the refugees were returned to. (St. meld. nr. 17 (1994-1995))

Temporary residence was highlighted as the solution to the ‘refugee problem’, not only in Norway, but throughout Europe. It meant that residence could be given on a temporary basis,

14 «En helhetlig flyktingepolitikk»
without having to evaluate the need for protection in terms of the Refugee Convention until a possible renewal was in question. This presupposed that the migrants should return to their home country when the situation there changed and they would no longer need protection. According to a governmental report, it would not become more difficult to get protection in Norway, only permanent protection would be limited. Permanent settlement of refugees were the least desired of the solutions to the refugee crisis. (Justisdepartementet og Kommunal- og arbeidsdepartementet 1993, 4, 25)

Return was framed as the normalization of the situation so that the refugee could go back to living their life the way they were used to, and the word used throughout is “repatriation”, and not return (St. meld. nr. 17 (1994-1995), 56). It is of great priority for the Norwegian government at this time that return is safe and dignified as the best solution to a refugee situation. It is highlighted that Norwegian cooperation with UNHCR is important and that UNHCR repatriation projects should be given continued financial support.15

While the report states that return should first and foremost be voluntary, it also acknowledges that temporary protection means that return is a likely outcome, also when the refugee would want to stay. It is highlighted that this also is the case for other types of residence permits like work based permits. (Justisdepartementet og Kommunal- og arbeidsdepartementet 1993, 26)

Bosnian refugees, or “persons from Bosnia-Herzegovina”16 was targeted with some special measures that did not concern other asylum seekers or refugees, as stated in the special statute described in Ot. prp. 13 (1994-1995). They were given permission to work, and reunite with family members during their residence period regardless of the regulations for family reunifications.

It was an expressed wish from the government to encourage refugees to return, and strengthening the programs for repatriation is an important part of this. Return is furthermore highlighted as the main goal of immigration policy measures of 1994. The government said that it would work to ensure that everyone that had received protection in Norway would return home when conditions in the home country are suitable for it. (St. meld. nr. 17 (1994-1995), 118)

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15 UNHCR was a strong proponent for temporary permits and repatriation as the solution, and even declared the year 1992 as «The year of voluntary repatriation».
16 «Personar frå Bosnia-Herzegovina» The government also included people of other nationalities that had been residents in Bosnia.
No specific part of the refugee population was targeted for repatriation, however, women were considered to have an extra important role:

Women will probably have the key role in repatriation. They will usually feel responsibility for the family members that are still in the home country, and be carriers of the cultural heritage and pass traditions on to the next generations. The women will probably face major challenges when returning home. Having lived for a period in a society characterized by ideals of gender equality, many will return to a society in which women’s role is related to the home and where women in any circumstances are subordinate men.17 (St. meld. nr. 17 (1994-1995), 118)

It is important to note here that despite the strong emphasis put on return during the first half of the 1990s, most forced returns of Bosnian refugees were stopped. In 1996, the Ministry of Justice announced that no Bosnian refugees would be returned home, and that all returns would be voluntary, due to a strong pressure from the civil society and the political opposition. This line was followed up by the next government (led by the Christian Democratic Party), promising a more liberal interpretation of the existing legal framework (Aure 25 July 1998). However, all the time, it was communicated how important return was, but the emphasis was put on voluntary return.

7.2.2 Technological aspects

Temporary permits was already a reality by 1993. The parliament had also given temporary residence of 6 months both to asylum seekers and UNHCR refugees, among them 900 previously detained Bosnian refugees and their families. If the situation remained the same after the 6 months had passed, their permit to stay would be renewed. (Justisdepartementet og Kommunal- og arbeidsdepartementet 1993) These permits were paired with another new measure: protection on collective basis. The large groups of people that were displaced made it administratively necessary to be able to grant protection to groups as a whole (Justisdepartementet og Kommunal- og arbeidsdepartementet 1993, 28). When temporary protection on collective basis was given, the individual need for protection was not considered at all. This meant that their asylum application was put on hold and would be assessed when the temporary permit ran out. After four years of temporary residence, the refugee would be given an individual review of their need for protection.

An application for renewal would, according to the report to the Parliament, only be relevant

17 «Kvinner vil antakeligvis ha en nøkkelrolle ved tilbakevending. De vil vanligvis føle ansvar og omsorg for familie som er igjen i hjemlandet, være bærere av familiens kulturarv og formidle tradisjoner videre til neste generasjon. Kvinnene vil sannsynligvis møte store utfordringer ved hjemreise. Etter å ha levd en periode i et samfunn preget av bl.a. idealer om likestilling mellom kjønnene, skal mange tilbake til et samfunn der kvinners rolle i langt større grad er knyttet til hjemmet, og der kvinner i mange forhold er underordnet menn.»
[...] if the situation in the home country has undergone a fundamental positive change and the individual need for protection has disappeared. Such a change could be that dictatorship was replaced by democracy, actions of war was cancelled in favour of a peaceful solution, or if there has been a marked improvement of the human rights situation.18 (St. meld. nr. 17 (1994-1995), 77)

In cases where the migrant resisted return, the authorities were allowed to use force. This was assumed to be necessary in order to make the temporality real. The legal phrasing were “implementation of measures”19. This could include different levels of force depending on the resistance or the likelihood of resistance from the refugee, such as arrest and detention. (St. meld. nr. 17 (1994-1995), 73) However, in all cases of return the migrant was given a time limit before the decision would be implemented by force. It is stated in the reports that one should consider longer time limits for people that have had temporary residency on collective grounds, as they might have lived in Norway for several years and needed time to conclude their stay. (St. meld. nr. 17 (1994-1995), 77)

To some degree, return would be postponed in cases where there was not found any individual need for protection, but the migrant refused voluntary return, and the situation in the home country was of such a character that forced return was not desirable. However, in 1996, it was decided that no refugee from Bosnia would be forcefully returned. 12 000 Bosnian refugees resided in Norway by this time.

In order to fully prepare the migrants for return, the government wanted what they called “the return perspective” to be prominent throughout the reception system. This meant that measures focusing on return would be present in the reception- and settlement-process (St. meld. nr. 17 (1994-1995), 77). More specifically, they should be offered courses and education that would provide relevant competences in the home country, language training in their mother tongue and a world language such as English. Training in how democratic political systems works was also suggested. Such programs were intended to encourage active participation and self-organization, and to put the refugee in a better position to handle the period in exile, as well as motivate to return.20 (St. meld. nr. 17 (1994-1995), 118)

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18 «Både i forhold til personer med asyl og opphold på humanitært grunnlag vil avslag på søknad om fornyelse bare være aktuelt dersom det har skjedd en grunnleggende positiv endring av situasjonen i hjemlandet, og det individuelle behovet for beskyttelse har falt bort. En slik endring kan f.eks. innebære at diktatur er avløst av demokrati, krigshandlinger er avblåst til fordel for en fredsløsning, eller dersom det har skjedd en markant forbedring av menneskerettighetssituasjonen.»

19 «iverksetting av tiltak»

20 “tilby kvalifiserende kurs som kan gi kompetanse i yrkeslivet i hjemlandet. I et tilbakevendingsperspektiv vil undervisning i morsmål og i et verdensspråk som f. eks. engelsk være aktuelt i tillegg til undervisning i norsk. Et annet relevant tiltak kan være opplæring i hvordan et demokratisk politisk system fungerer. Grunnleggende i
Furthermore, information about repatriation programs was seen as crucial – and a lack of information and return perspective is held as main reasons to why so few had previously used this opportunity.\(^{21}\) Of the concrete measures proposed was strengthening of translator-services, repatriation programs in home countries and development aid for repatriation purposes. (St. meld. nr. 17 (1994-1995), 117) The way the report to the Storting put focus on solutions to potential problems in regards to the repatriation policies show that the authorities knew that this policy would meet a lot of challenges upon realization.

Within the idea of a comprehensive refugee- and immigration policy lied humanitarian aid as an important foundation. Initiatives that would strengthen human rights and promote peaceful solution to conflicts before they produced refugees was of high priority (Brekke 1999).

7.2.3 Thought and rationale

A large portion of the asylum seekers at the time did not qualify for refugee status according to the 1951 Refugee Convention, and the government started to worry that the asylum system as an institution would lose its integrity if asylum was given to people that was not individually in danger of persecution.

Providing temporary protection instead of permanent meant that over time, one could offer a larger number of people protection given the cost to the society of receiving refugees (Justisdepartementet og Kommunal- og arbeidsdepartementet 1993, 4). The idea was that if a new refugee crisis emerged, one could provide protection to yet a large number of refugees, while permanent settlement would “fill up the system”, making it difficult and costly. It is also highlighted that it could have a positive effect on the local communities, as resourceful people returning home would play a positive role in democratisation and reconstruction. (St. meld. nr. 17 (1994-1995), 119)

Temporality became relevant as a consequence of international developments of the time. It was a strong belief that conflict could be solved through international pressure and cooperation, as well as a rise in the number of people that was fleeing from war, human rights violations and violence. Solutions that could give protection to a large number of people quickly became important and temporary protection was one of these, collective protection another. (Justisdepartementet og Kommunal- og arbeidsdepartementet 1993, 27)

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\(^{21}\) Only 600 people returned home using a repatriation program between 1990 and 1993. Chileans was the main target, and only 1/10 Chileans took the opportunity.
Moreover, a report from the government stated that the term *temporary protection* was supposed to signal that a situation that causes people to flee is unacceptable, and temporary protection is a short term solution. The *lasting* solution is international measure that ensure that the refugee can move back home:

“[…] the only acceptable durable solution in such a situation is international measures to ensure that the displaced can return home, quite simply because the international community cannot accept that people should be displaced in the way we have seen examples of in recent years.”

(Justisdepartementet og Kommunal- og arbeidsdepartementet 1993, 28)

To ensure return of as many previous refugees as possible, the government put emphasis on the need for information about repatriation programs. All measures aimed at refugees would contain this “return perspective”. However, not all refugees could return home, and that was acknowledged by the government, and so the challenge was to develop measures that both motivated return and encouraged participation in the host society. (St. meld. nr. 17 (1994-1995), 118)

Therefore, focus was also turned towards integration and the importance of a positive experience during the stay in Norway, even though this might make return more difficult. Education and work experience is seen as something positive in relation to the re-establishing in the home country. It was a duality in the priorities, where both return and integration was major goals.

In 1998, the focus was still on return, however only voluntary as the return perspective and temporality in immigration politics up until then had not had the effects that the authorities had hoped for. Important priorities was to encourage voluntary return by informing about the situation in the home country, education and qualification programs, development of competences relevant to rebuilding the home country, reconciliation and democracy building and development of competence in local repatriation work (Kommunal- og arbeidsdepartementet 13 October 1997).

7.2.4 Identity-formation

Both types of protection, individual and collective is seen as equal – the need for protection can in both cases be equally strong. It was decided that temporary protection should be given both in cases of individual protection and collective protection, and that form categories from the

22 «(…) den eneste akseptable varige løsningen i en slik situasjon er internasjonale tiltak som sikrer at de fordrevne kan vende hjem, kort og godt fordi verdenssamfunnet ikke kan godta at mennesker skal kunne fordrives på den måten vi har sett eksempler på de siste årene.»
likelihood of return. As temporary-protection was introduced as the main principle, everyone that is granted protection in Norway at this time had to prepare for return if there was a change in the situation in their home country.

In the proposed legal draft a change is introduced that specifies a distinction between legal and illegal residence in regards to the legal rights of immigrants in Norway: “Unless otherwise provided by applicable law, the foreigner during his lawful stay has the same rights and obligations as Norwegian nationals”23 (Ot. prp. nr. 13 (1994-1995), §3). This clarifies the legal distinction between immigrants with legal and illegal stay in the country. What illegal stay means is further clarified: anyone that overstays their visa or temporary residence permits, or those that don’t leave after their application for residence is declined and cannot be appealed anymore, or those that should have been denied entrance upon arrival, but avoided border control.

7.3 BACK TO THE ROOTS? REFINING THE CONTROL REGIME (2000-2010)

As shown in Figure 1, the total number of asylum seekers peaked in 2002. A new wave of refugees, Kosovo Albanians, started arriving in 1999 and was met with the same return perspective as had been dominating the reception of Bosnian refugees. They were given protection on a collective basis and prepared to return as soon as the situation would change. This time, it immediately looked more successful and most Kosovo Albanian refugees returned within a short time frame. However, arrivals of asylum seekers continued, and what was now different from before, was that they did not belong to one or a few migration flows, but originated in several different sending countries. Part of the increase was ascribed to Norway’s accession into the Schengen Agreement. (NTB 26 February 2002) According to the Ministry of Justice, as much as 40% of all asylum seekers in 2001 had an unfounded asylum application (Aftenposten 14 December 2001). Again, the authorities had to come up with new techniques in order to gain control over immigration, and the new centre-right government that took power in 2001 shifted the focus of asylum politics back to control.

7.3.1 Fields of visibility

The authorities in Norway were clear about the intention when accepting refugees from Kosovo Albania was evacuating people until they could return (St. prp. nr. 59 (1998-1999)), but the government continued their parallel focus in the reception system for some more years: both

23 «Dersom ikke noe annet følger av gjeldende rettsregler, har utlending under sitt lovlige opphold i riket samme rettigheter og plikter som norske statsborgere.»
preparation for return and integration. This intention is made clear in the proposal to the parliament, where reception, integration and settlement is a dedicated topic. In addition, most of the funding was given to integration measures in the proposal for budgetary changes for 1999 (St. prp. nr. 59 (1998-1999)). Only a few months after the budgetary changes was accepted, the actions of war in Kosovo came to a halt, and the refugees immediately wanted to return.

But rapid changes continued, and in the beginning of 2000, the situation in Kosovo was again unstable, putting a stop to the returns. Refugees that had returned previously even came back to Norway, and so the issues related to temporary protection and return continued.

These challenges with return was discussed in a report to the Storting (St. meld. nr. 6 (2000-2001)). Here, two circumstances where problems with return arose were specified: First, when return was impossible because the home country did not want to accept forced returns of their citizens. This happened in many of the cases where Kosovo Albanians did not want to return. Two, when return could not be carried out because the identity of the migrant was uncertain. (St. meld. nr. 6 (2000-2001), chap. 6.1) The report states that the migrant often would hold back information knowingly, in order to tactically delay their case so that they could not be returned (St. meld. nr. 6 (2000-2001), chap. 6.3).

In another report to the Storting from the same year, St. meld. 17 (2000-2001), emphasis is put on what there is to be learned from the experiences with return from the former years. An expressed aim is to find ways to make measures promoting return more targeted than previously. The government admitted that parallel focus on return and integration did not seem to work. One wanted instead to stimulate to and facilitate return, and prepare for return as the outcome of the asylum process.

In 2002, the government announced changes to the asylum policies (NTB 26 February 2002). The Minister of Local Government, Erna Solberg, told the media in 2003 about the situation and how the government was working to gain control, but the changes within the government and the administration had already started. The large number of what they called unfounded asylum seekers was presented as the main issue, due to the strain it put on the reception system:

The government therefore thinks that it’s a big problem that many asylum seekers without a need for protection come to Norway and seek asylum. Few fulfil the criteria to get asylum, and about 80% of the applicants are denied. Therefore, we will make it less attractive for this group to come to Norway.\(^{24}\) (Solberg 2003)

\(^{24}\) “Regjeringen ser det derfor som et stort problem at asylsøkere som ikke har behov for beskyttelse, søker asyl i Norge. Mange fyller ikke vilkårene for å få asyl, og ca. 80 prosent av søkerne får ikke opphold i landet. Derfor skal det gjøres mindre attraktivt å komme til Norge for denne gruppen.”
The specific measures to achieve this goal is described in the next section, but the most important one was evicting rejected asylum seekers from the reception centres. The goal was to stimulate assisted return, by making the situation for that group undesirable. The government themselves stated that it did not breach with human rights, as the asylum seekers still had access to emergency aid.²⁵ (Ot. prp. nr. 112 (2004-2005))

Resistance and debate followed, leading the authorities to establish transit centres. The aim with these was to ease the burden on the municipalities, as well as signalling a new phase of the asylum process: the asylum application have been evaluated and rejected, and now the foreigner does not belong in the reception system anymore. The information and activities in the centre should be directed towards motivation and facilitation for return. (Ot. prp. nr. 112 (2004-2005))

The pressure to make more asylum seekers return continued throughout the years that followed. In 2007, the focus turned to those with an unclarified identity. An asylum seeker that have trouble proving their identity will usually not be given asylum, but there are also issues connected to deporting a person with an unclarified identity. Therefore, there are some people that get stuck in a situation where they cannot get asylum, but they also cannot be deported. To minimize this group, the authorities are dependent on cooperation from the asylum seeker in order to clarify their identity. It became necessary to target this group with measures that would motivate such cooperation (Arbeids- og inkluderingsdepartementet 1 June 2007)

The preparation for a new Immigration Act started in 2004, and concluded in 2008. The purpose of the law was to regulate the entry and exit of foreign nationals, and their stay in the country. Furthermore, to facilitate lawful movements across the national borders, ensure legal protection of foreign nationals in the country and to provide basis for protection of foreign nationals who are entitled to protection under international law. (Ot. prp. nr. 75 (2006-2007))

The government argued against liberalising their asylum policies with the following arguments: the development aid policies are a more suitable tool to help disadvantaged people so that they do not have to flee. Also, the need to harmonise practice with the rest of Europe is highlighted – having more liberal policies than the rest of Europe would overload the reception system and result in a reversal anyway (Ot. prp. nr. 75 (2006-2007)). Hence, strengthening the possibility to consider immigration control as a factor when handling cases.

²⁵ However, there was confusion in the municipalities as to what that meant, and large discrepancies in how the different municipalities handled the situation. A letter from the government went out in the autumn of 2004 informing about the rights of these rejected asylum seekers and the kind of aid the municipalities had to offer. (Arbeids- og sosialdepartementet 2004)
7.3.2 Technological aspects

From 2001, the focus was turned from voluntary repatriation to forced return. Difficulties returning Kosovo Albanians required another form of reaction, according to the authorities. 1st of March got set as the deadline for rejected Kosovo Albanians to plan their travel home in order to receive the repatriation grant. Only 180 out of 2.300 rejected asylum seekers from Kosovo had agreed to leave by the deadline, the rest would be returned by the police. (Holm 3 March 2001) This is a very clear example of how voluntary the voluntary returns really was.

The Immigration Act (1988) was already at the time of its implementation clear on one cause for return (expulsion) – serious and repeated violations of the Act. In a report to the Storting (St. meld. nr. 6 (2000-2001), chap. 4) the government clarifies what kinds of violations that can be cause for expulsion. Illegal stay in Norway is the first concrete cause mentioned. If it is 100% longer than the legal stay, it will result in expulsion. Illegal stay for 1 week or less will result in rejection, which practically is similar to an expulsion, only without an entry ban. The length of the entry ban depends on the length of the illegal stay. Typically, the length of the entry ban will depend on how serious the violation is assessed to be. Second, working without a permit will result in expulsion. Third, giving incorrect or misleading information, or withholding information to the police can result in expulsion. When this is considered to be serious, the entry ban will usually be indefinite. If a decision for expulsion is ignored, the entry ban will usually be set to indefinite, in cases where it originally was limited. (St. meld. nr. 6 (2000-2001), chap. 4)

As mentioned above, the Minister of Local Government announced a stricter line, targeting what they called ‘unfounded asylum seekers’. (Solberg 2003) In 2002, they started TV-campaigns on Russian and Ukrainian television, to show the conditions in Norwegian reception centres and spread targeted information to potential asylum seekers without need for protection (Olaussen 21 July 2002). They introduced a 48-hour track in 2003 to process these kind of applications quicker, in order to ensure return as soon as possible. This would help to avoid that asylum seekers that had no need for protection established a connection to Norway, which often made return more difficult.

The second, and also most debated measure that was made use of, was withdrawing rejected asylum seekers’ right to stay at reception centres, with the exception of families with children and unaccompanied minors. The aim of this is to stimulate more people to use the return programmes provided by IOM. (Solberg 2003) Furthermore is the importance of establishing
return agreements with sending countries highlighted. Without such agreements, only people returning by their own initiative would be accepted back.

Losing the right to stay in reception centres had major consequences for those affected. At the time of implementation, this was about 700 persons (Klassekampen 19 January 2004). They would be left without a roof over their heads, no access to the labour market (apart from the black market) and no right to receive healthcare.

As health care and social services are a municipal matter, this resulted in issues for many Norwegian municipalities, who had problems accepting that people in their local environment were now marginalised. After a lot of debate and resistance, the government decided to create transit centres, places where rejected asylum seekers could stay while waiting for deportation. The centres had a significantly lower standard compared to the reception centres, with few or no activities offered.

In 2007, the government made a change in the immigration regulation regarding the so-called unreturnables, that made it possible for them to get their decision changed, meaning that they, in certain cases, could get a residence permit. The condition was that they would have had to cooperate to clarify their identity.

When it comes to the previously mentioned first country of safety-rule this was altered in connection to Norway’s entry into the Schengen Agreement, which also included signing the Dublin Regulation. This regulation replaced the first country of safety-rule to a large degree. At the same time, Norway entered the Eurodac system – a European database for the fingerprints of asylum seekers. In the media, Norwegian authorities were criticized for returning foreigners under the Dublin Regulation to countries with bad reception systems or imprudent evaluation of asylum applications. This was dismissed by the government with the statement that all countries in the Dublin agreement have ratified the 1951 Refugee Convention (Ot. prp. nr. 75 (2006-2007)).

7.3.3 Thought and rationale

The effect of the return focus from the 1990s was judged to be positive, but in need of further evaluation. The government emphasised the need for more initiatives to get information about assisted return (repatriation) out to the asylum seekers.

The situation for the Bosnians and the Kosovo Albanians was very different, and the return measures proved more effective with the latter group. The main reason that is highlighted in the report, was that the conflict was solved within a short time frame. The majority of the
refugees still lived in reception centres by the time they could safely return, and they were far less connected to and established in Norway. However, return proved more difficult than first thought when the situation in Kosovo changed for the worse, leaving the government with new return challenges.

When trying to gain control of the increased asylum arrivals, the government wanted to prioritize return to the larger sending countries. The idea was that this would have a preventive effect: “Quick return of asylum seekers have a preventive effect on people that have no need for protection but plan to travel to Norway. It is therefore a goal to make deportations of people with a final negative decision more effective.”²⁶ (Solberg 2003)

The belief in the signals that these restrictive measures would give to prospective asylum seekers was quite strong. Solberg said that the goal for the policies was that the asylum arrivals for the next year would be reduced to 10 000, which is a reduction of 6000 asylum seekers. (Solberg 2003) As can be seen in Figure 2 in the beginning of chapter 7, the actual reduction was about 2000.

Although the focus on forced return increased during this time, voluntary (assisted) return was preferred. It is referred to as the “dignified travel home”²⁷ (Ot. prp. nr. 112 (2004-2005)) The government highlights several positive sides to return through IOM:

In most cases, IOM provides transport in the home country after arrival, while during deportation one is accompanied to the airport in the capitol or another big city. When travelling with IOM, the foreigner travels as anonymous as other passengers, and the police is not involved. […] Returning with IOM is also free. When being deported by the police, the person is obliged to cover all costs (their own travel and possibly security). If one would want to travel to Norway later on, a visa, work permit or residence permit would usually not be granted until those costs are paid.²⁸ (Ot. prp. nr. 112 (2004-2005))

Evicting rejected asylum seekers from the reception centres had a clear intention of stimulating assisted return. In a letter to the municipalities, dated 13th of October 2004, Erna Solberg, Minister of Local Government repeated the motivation behind the initiative and the reasoning

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²⁶ “Rask retur av asylsøkere har en preventiv effekt overfor personer uten beskyttelsesbehov som planlegger å reise til Norge. Det er derfor et mål å gjøre uttransporteringen av personer med endelig avslag mer effektiv.”
²⁷ «En verdig hjemreise»
behind it. She repeated the fact that a rejected asylum seeker had been given a thorough evaluation of their need for protection or any particularly strong connection to the country that can be a basis for asylum. The alternatives for return were also repeated along with the statement: “rejected asylum seekers have a real choice” (Solberg 2004). Forced returns in themselves became a means to stimulate the asylum seekers to return “voluntarily”.

The draft to the new Immigration Act (Ot. prp. nr. 75 (2006-2007)) discussed the need to take humanitarian considerations into account in return-cases. Such considerations can be health situation and the possibility for medical treatment in the home country, the social network in the home country that can help the asylum seeker when s/he returns, the possibilities for social stigma, especially in cases involving women. In cases concerning unaccompanied minors, the best interest of the child need to be considered, which according to the authorities in most cases means being with the parents or other caretakers instead of being alone in Norway establishing a new life of their own.

Conditions regarding poverty, lack of infrastructure or lack of housing cannot in itself constitute a reason for not returning, apart from certain cases regarding specifically vulnerable groups.

7.3.4 Identity-formation

An expressed goal, as already mentioned, was return policies that were better targeted at certain groups of asylum seekers. In 2000/2001, this was mainly Kosovo Albanians. As the asylum seeking population became more heterogeneous, the focus shifted to the top sending countries: Russia/Chechenia, Afghanistan, Serbia Montenegro and Somalia. (Solberg 2003) Many in this group were seen as unfounded asylum seekers that in reality were economic migrants looking for better opportunities.

Another group that was specifically targeted, was a group of Kurds from Northern Iraq. They were granted temporary protection without a right to family reunification (MUF-permits) in 2000, a form of protection that was admittedly undesirable, and it also became a case of political struggle and conflict.29

The return measures are often directed towards rejected asylum seekers. Usually, an asylum seeker is given a deadline for return a couple of weeks after rejection. Not leaving within the deadline constitutes illegal stay in Norway, and the asylum seekers then becomes defined as an

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29 This case is too complex to be accounted for in a proper way in this thesis. See Tolonen (2011) for a thorough account.
irregular migrant. This aspect was emphasized in the legal preparation for the Immigration Act (Ot. prp. nr. 112 (2004-2005)).

In addition to distinguishing between legal and illegal migrants, the authorities now made a distinction between asylum seekers that would cooperate, and those that did not, especially in relation to clarifying identity and return. Those whose identity remained unsettled and that refuse to return voluntarily are characterized as lacking the will to cooperate (Arbeids- og inkluderingsdepartementet 1 June 2007). The decision to grant residence to asylum seekers that cooperate was intended to draw a clear distinction between those who cooperate and those who do not (Ot. prp. nr. 75 (2006-2007)).

As mentioned in section 7.1.4, there were rules in the Immigration Act that protect some immigrants for expulsion. These rules were slightly changed, from only having to fulfil the criteria for a settlement permit to now having to have been granted a permanent settlement permit. (Ot. prp. nr. 75 (2006-2007)) In addition, there were certain countries or areas that the authorities considered unsafe for returns for certain categories of asylum seekers, usually following the recommendations from UNHCR (Ot. prp. nr. 75 (2006-2007)).
8 Discussion of findings

This analysis is separated into the same sections as the previous chapter, following Dean’s (2010) dimensions of the analytics of government. Together, these four dimensions gives an account of the governmental regime of return. The previous section was purely descriptive, providing a chronological account of the most important policies and practices. In this section, I analyse the material by using theory and previous research to make sense of and analyse the findings.

8.1 Fields of visibility

Throughout the time period under focus, the overall aim of return policies are more or less the same: to aid in controlling immigration to Norway. In the first period from 1988-1992 the main focus seems to be gaining control over a pretty new form of migration to Norway, namely asylum seekers. The issue is that asylum migration is unpredictable, as opposed to taking resettlement refugees from the UNHCR. Return (or lack of thereof) is not problematized in itself in the documents. Return is presented as a part of immigration control measures, but mostly, it seems it was just there. It seems to have been seen as a very natural role as a given consequence of rejection (in contrast to asylum) that was not further problematized. This contrasts to the way return is treated later in the period. The reason for this is probably that there had not yet been any issues with foreigners refusing to return when their application for residence were rejected. The government focused on finding ways to achieve control over asylum seekers and refugees that arrived, and saw control as a necessity in this new global environment with potential new crises’ that Norway would not be able to solve only by accepting refugees.

Having immigration policies that respond to the international situation continued to be seen as important during the early 1990s, and Norwegian authorities were quick to adapt to the international focus of asylum policies where development aid was seen as a crucial component in restricting any refugee crisis that developed. A quickly escalating conflict and refugee crisis had to be solved without too much time to evaluate potential long term consequences. The policy was recommended by the UNHCR with the hope that it could provide a solution for the Bosnian refugees without the receiving countries overloading their reception system and threatening to close their borders (Haagensen 1999). This is the situation from which the idea of temporality emerged. What characterizes the period 1992-1999 was short term solutions to handle a refugee crisis, while including a humanitarian focus.
Temporality as it was constructed included return as a given component. It rested on the assumptions that the Balkan refugee crisis would be short-term, while one saw a potential for new conflicts in other countries that could also lead to a refugee crisis. The solution to this was to create a system that allowed for the refugees to be exchanged. When the conflict was over, they could return and Norway could accept new refugees from other areas of the world. As a solution, it was tempting, attractive, and easily combined with Norway’s idea of itself as a humanitarian country working to create peace and stability other places in the world.

Repatriation was the end point of migration, and the most central form of return during this time-period. It was in general seen as a voluntary form of return. From 2000-2010, making immigrants and asylum seekers return became a goal in itself, largely due to the experiences one had from earlier years. As repatriation and return turned out to be more difficult than expected, motivating return became a large concern for the authorities. Asylum seekers that did not get their temporary permits renewed had sought sanctuary in the churches in several “waves” during the 1990s, creating problems for the government and the politicians in charge.

To avoid that asylum seekers would refuse to return, the government aimed to develop measures that were better targeted towards specific groups of asylum seekers. The goal was to stimulate return, and forced return was to an increasing extent used as the consequence of not complying.

The overall aim of return policies seems to have narrowed and become more specified and targeted during the whole period. Return starts out as a consequence of the general immigration policy, and ends up as a core aspect of the control regime, the one measure that can maintain the integrity of the asylum system by signalling who should get asylum and who should not.

8.2 TECHNOLOGICAL ASPECTS

Some key instruments of control and return were developed in the earliest period from 88-92. An element of coercion was needed to be able to secure expulsion in some cases, so the new Act opened up for using arrest and imprisonment when it was deemed absolutely necessary. The first country of safety-rule seemed to be of central importance to the authorities, possibly because this could shift the responsibility for the refugee to another state. Along with visa requirements and carrier sanctions, most people will have stayed in another safe country before arriving in Norway because of the geographical position in the periphery of Europe. The importance of returning unfounded asylum seekers quickly was already then seen as important.

In the next phase, the most important new tool was temporary protection on a collective basis, an instrument that, as already mentioned, pictured return as the only long term solution. Return
was ideally to take the form of repatriation, but also returns to first countries of safety or other safe places in the same region as their home country were seen as good solutions.

In order to facilitate return, three main tools were used. First, repatriation programmes had been used in a small scale to return Latin American refugees, and the belief was that if the government got information out to the asylum seekers, this would help to motivate return when the situation stabilized in the home country of the immigrants. Second, incorporating the so-called *return perspective* into all aspects of the reception system was an extension of this information-work. This was intended to take the form of courses and information meetings during the refugee’s stay in the reception centres, but also when they had been resettled in a municipality. Third, the use of coercion was admitted to be needed in some cases where the foreigner refused to cooperate to return. This was to take the form of what in the Immigration Act and policy documents are called “implementation of measures” usually referring to arrest and detention.

During the last phase, voluntary return was still the preferred form of return, and a lot of efforts were introduced in order to facilitate this. The need to get information out to the asylum seekers was still seen as important, but the effects was not as large as the authorities had hoped for. One solution to the recurrent return issues was to show that they were willing to put force behind their intentions. Forced returns in the form of deportations got a lot of focus, and as shown in Figure 3 below, this is reflected in the statistics.³⁰ In the material, this increased focus is illustrated when the government emphasizes which violations of the Immigration Act that is serious enough as to cause expulsion, reducing the length of punishment that is equivalent to expulsion in comparison to the old Immigration Act of 1988. Other researchers have pointed to this as a blurring of the line between penal and administrative justice (Johansen 2014) and increased criminalisation in the asylum system (Kyle and Siracusa 2005; Aas 2013).

³⁰The reason why voluntary return is at 0 in 2000 is probably because this is the year when IOM started to coordinate the programs for voluntary return, so there is a lack of proper statistics for the previous years.
Increased attention on force in the return perspective was followed by two concrete measures. First, the authorities wanted to specifically target the group that they called *unfounded asylum seekers*. They introduced a fast-track processing system that was supposed to take maximum 48 hours before the application was processed, so that the foreigners would not have the time to develop any connection to Norway while they waited. Second, they evicted rejected asylum seekers from the reception centres. This was intended to make the stay in Norway more difficult for them and to motivate them to return by their own will.

### 8.3 Thought and Rationale

Throughout the time-period a recurring rationale is the idea of policy having a signal-effect that could prevent new asylum seekers from coming. From 1988-1992, expulsion and rejection were seen as important instruments in order to send such signals to prospective asylum seekers. In the next period, the signals had a humanitarian side to it as the aim was to send a signal that the forms of conflict resulting in the refugee crisis was unacceptable. The conflict in the Balkans was to a large extent one of ethnic conflict and the thought was that by accepting those that had to flee on a permanent basis, one would “help” the authorities persecuting them to achieve their goals. The focus on repatriation was a way to say that the conflict had to be solved in an acceptable way. From 2000-2010, return was prioritized to the largest sending countries, in order to signal what was waiting for prospective asylum seekers in Norway if they decided to apply for asylum there. Information campaigns in the sending countries were also used to show the same group that the life they would find in Norway would not be that good.

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*Source: Brekke (2010)*
Another recurring theme throughout the period was the wish to balance control and humanitarianism. It is clear in the initiatives that seek to secure legal protection and human rights. In 1992-1999 the idea of humanitarianism coincided well with the ruling ideas behind the immigration paradigm, while in the two other periods humanitarianism as an interest collided with the aims of control and sending out signals of being a strict country for asylum seekers. From 2000-2010, the government aimed to secure human rights by implementing the human rights as laws, but especially when pushing rejected asylum seekers out on the streets with little access to rights in the middle of the winter, it could seem like those rights did not apply to everyone.

Johansen (2014; 2013) describes the process and rationale of evicting rejected asylum seekers from the reception centres thoroughly in his work, and the initiative was also evaluated by Brekke and Søholt (2005) and Valenta and Thorshaug (2011). Brekke and Søholt (2005) describes how the government saw it as the responsibility of the asylum seeker to return after they had been rejected asylum, and when they decided not to, that was their responsibility. This line of thinking reflected in my material where we find a statement from the Minister of Local Government about ending up in a situation without a roof over their heads or social rights was their own choice, because they could just return home (Solberg 2004).

When the government tried to stimulate asylum seekers to return voluntarily, as they started to do in 1990s, the means to do so increased in intensity throughout the years. Towards the middle of the 2000s, forced return became a means to put strength behind the intention of voluntary returns. Voluntary return was voluntary – but under the threat of deportation. Still though, the authorities kept referring to it as voluntary return. Not until 2013 did they change the term to assisted return. The main argument for preferring this form of return over forced returns were that this was a more dignified way of going back, than with the police escorting the foreigner on the plane. However, it is possible that it was also due to the assisted return process being easier and less costly for the authorities. Despite the economic support given by the state in cases of assisted return, forced return resource heavy and expensive in comparison, according to the Directorate of Immigration (Sandvik 12 July 2012).

8.4 IDENTITY-FORMATION

While the groups that were targeted by control and return policy remained generally stable during the period, there were some variations in who was being prioritized. In the beginning of the phase, the authorities singled out asylum seekers and opposed them to refugees, in terms of
who were easier to control and who was the “preferred”. Refugees were ok, but asylum seekers were to be limited as much as possible. In the second period, the government started to bring attention to the difference between legal and illegal migrants, emphasizing that those that refused to return within the set deadline would become illegal migrants in Norway. Specifically, this was targeted towards those that sought sanctuary in the churches. Rejected asylum seekers are specifically singled out during the last period. This phase is also characterized by an expressed aim to target specific groups (i.e. nationalities). Furthermore, rejected asylum seekers are divided into two groups: those that cooperate and those that do not. Towards the end of the period, rejected asylum seekers that cooperate to clarify their identity and to return but still cannot leave Norway are granted the right to a residence permit.

Preferably, immigrants to Norway are expected to cooperate from the beginning. The ideal as expressed in the first period is that people in need of protection come through the resettlement process of UNHCR and not as asylum seekers, as that is an unpredictable and difficult to control-form of migration. In the second period it is very interesting to see how two relatively opposing ways of conduct are called for. The authorities want both a migrant that will integrate into the local communities, but also be willing to return back home after 4-5 years in order to contribute to rebuilding the country using what they learned while in exile.

The making of a returnable group begins with the temporary permits, and continues as the difficulties in making them return build up. As measures towards them intensifies, they become excluded, and to use the term from Johansen (2013), they are directed into a funnel of expulsion – a set of techniques that are designed to exclude to the point where voluntary return becomes the only alternative. This making of the returnable group corresponds to De Genova’s concept of deportability – becoming objects of the power of the state to exclude people that is still within the jurisdiction of the state (De Genova and Peutz 2010, 25).

8.5  THE COMPLETE PICTURE

Return includes different policy measures that have somewhat different aims. On one hand, it is a measure that enables a state to exclude certain migrants, most commonly migrants that have conducted certain criminal act(s). It has also been used as a measure that is supposed to give the state the possibility to help even more migrants, by returning migrants that can now safely reside in their home country or a safe third country, one ‘makes room’ for helping new refugees. A third kind of policy measure that make use of return are those designed to deter possible asylum seekers. These hope to signal that asylum seekers will not be easily accepted, that being
In order to reach the level of establishment of the return regime that we can see in the final period, the authorities have taken steps in order to identify the target group and create a governable domain. The four dimension are each central components in order to achieve this. Fields of visibility shows the way that the topic is problematized, whether it is unpredictable arrivals, a refugee crisis or a group that will not cooperate. The technological aspects are the concrete tools that are taken into use in order to achieve the overall aims such as temporary residence permits and making the living situation for rejected asylum seekers more difficult. Thought and rationale highlights the important ways of thinking and rationalising around the problem and the solutions that are initiated as for example the signal the policy may send to prospective asylum seekers. Identity formation is the creation and identification of the targeted group, and the definition of their rights and ideal way of action, an example being how cooperating asylum seekers may be granted extended rights based on their cooperation.

From 1988 to 2010 the measures that are initiated are not often led by any complete and integrated set of ideas of what kind of asylum policy the country should have. It is dominated by short term thinking and having to revisit the laws and regulations in order to fix problems caused by previous solutions. Creating the return regime does not seem to have been a goal in itself, but it was formed over the years as a result of various measures that had unintended consequences. Following from Castles (2004), this is an indicator of policy failure.

What is described in this chapter is the way that the government manages the population subject to return, and the techniques that is implemented in order to shape their actions. This is the governmentality of return.
9 Conclusion

In this thesis I have shown how the return regime was formed during the time period from 1988 to 2010. In order to identify the practices that together contributed to its development, I made use of Foucault’s idea of governmentality and Dean’s analytics of government that derives from it. The four dimensions that he describes are used throughout the thesis, and together, they show how the different aspects of government form the regime.

The development during the studied years confirms the impression of an increase in the way that return is governmentalized, becoming a subject of governing in itself and targeted by concrete measures, in the same way as argued by Walters (2002) in his study of deportation.

The three research questions that have guided the thesis was:

1. Which groups have been deemed returnable and how are they identified and expected to act?
2. What techniques and practices have been used to achieve the goal of return and how did they emerge and become normalized?
3. How can the increased emphasis put on return as policy be understood/explained?

To summarize my answers to these questions: First, refugees and asylum seekers have been targeted by the return policy and made returnable. They are divided into distinguishable groups, such as rejected asylum seekers, illegal migrants and those willing to cooperate, according to how they respond to the policy measures that have been formed and initiated. They are identified according to their status as asylum seekers or forms of protection, and expected to act in cooperation to the authorities and the laws and regulations. Also groups of different nationalities have been specifically targeted.

Second, I will highlight three main practices that were central to creating the return regime within the period: First, the use of coercion in order to realize rejections is present throughout the time period but intensifies and the bar for when it can be used becomes gradually lower. Second, temporary permits and the belief in repatriation is essential for how the return regime develops in the following years, creating a group of returnable people that are seen as a valid target for intensified measures later on. Third, the measures that were strictly aimed at facilitating return, such as the eviction of rejected asylum seekers from reception centres.
To answer the last research question, the increased emphasis on return during the period can be understood as a consequence of globalization and increased immigration on a general level. More specifically for Norway, as shown in my material, it should mainly be understood as an unintended consequence of short term thinking and failure to realize the problems that immediate short term solutions could create for the future.

Further theorizations in connection to historical and empirical descriptions on the topic is important to increase the understanding of these unintended consequences and the society they are contributing to. I believe that research that draw on the perspective of governmentality like this does could be enhanced by including the less formal and public mechanisms, for example changes to internal practices, that also might play a role in the complex process of forming practices and power. My results indicate several instances of policy failure, mainly in the form of unintended consequences. It is beyond the scope of this thesis to further explain why these policies failed, but increasing this understanding could be an important aim for further research.
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Governments and Prime Ministers 1986-2013

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