Strategic Asylum Law Making in Europe

Workshop on the Economics of Forced Migration

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1. Introduction

Restrictive asylum policies are harmful to both:

- Refugees
- Less possibility of entry
  - Less rights
  - Higher probability of being rejected
  - Higher probability of being deported

- States
  - Cost (administrative, control)
  - Little success:
Introduction

Asylum applications in the EU, 1982-2004

Source: UNHCR
Introduction

Why do states continue to introduce restrictive asylum policies?

Source: Hatton 2004
2. Prisoner’s dilemma

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<th>Cooperation (C)</th>
<th>Defection (D)</th>
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<td>Cooperation (C)</td>
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Conditions for prisoner’s dilemma:

- CC < DC
- CD < DD
Bilateral cooperation CC

Minimal sense: absence of restrictive policies

⇒ No change (= 0)
Unilateral defection DC

Two effects:

1. Externality effect: good for votes
2. Costs
Externality effect

Asylum Applications

- Asylum 1 → Asylum 2
- Asylum → Illegal
- Illegal
Costs

- Control costs = costs of applying policies
  - Border controls
  - Internal controls

- Secondary costs
  - Increased trafficking
  - Increased share of illegal immigrants
  ⇒ Impact on security, taxes, integration
Unilateral cooperation CD

- No costs of policies
- But: negative externality from the policy in the other country

Bilateral defection DD

- Costs of policies
- But: No (small) externality effect
Prisoner’s dilemma

- **Condition 1**: \( CC < DC \)
  - \( 0 < \) positive externality - costs
  - Governments use restrictive policies, so their net gain must be evaluated \( > 0 \)

- **Condition 2**: \( CD < DD \)
  - Negative externality \( < \) costs of policies
  - Governments use restrictive policies in order to avoid the negative externalities
Extension to $n$ countries
3. European strategies

1. Schengen

2. The Common European framework in theory

3. The Europeanization of asylum policy in practice
The Schengen Agreement

- Intergovernmental contract for freedom of movement that potentially increases the asylum externalities
- Includes measures to prevent this effect: limitation of movement of asylum seekers, responsibility of treatment of application
- Cooperation in asylum matters linked to free movement: increases gains from cooperation
The effect of Schengen on cooperation

Prisoner's dilemma

Cooperation: snowball effect

k : critical number

# of countries cooperating
The advantages of the European framework

2 stages:

- Intergovernmental approach
- Common approach:
  - 1992 Maastricht Treaty: question of common interest
  - 1997 Amsterdam Treaty: Integration in the EU
  - 2004: Minimum standards, 1st pillar
  - Future: Common asylum system
Escaping the prisoner’s dilemma

- Not all asylum issues can be linked to other areas
  - European level: cooperation on asylum is linked to cooperation in all other areas
  - EU can guarantee that the critical number of countries is met to make cooperation beneficial
  - EU can initiate less restrictive policies without strategic loss
  - Less pressure from the electorate
A reluctant Europeanization

Amsterdam: change of governments in key EU countries
⇒ Shift in evaluation of costs and externalities

But: governments use anti-asylum rhetoric and policies to gain votes
⇒ Shift in evaluation not big enough to concede European control over asylum
A reluctant Europeanization

- Result: The EU cannot control or determine national asylum policies
- The Common European Asylum system is founded on national policies
  - Norms are still developed nationally
  - The transfer of competencies is largely illusionary
A reluctant Europeanization

- Post 9/11 shift in priorities in EU from asylum to security
  - No move to prevent restrictive policies

Will Europe stop the downward spiraling of asylum policies?
  - There is no reason to believe so
Further research

- Governments’ vote maximizing behaviour: defending both the right to asylum and anti-refugee policies

- Dynamic model: how is public opinion influenced by policy?
We've bolted the back door. Use the front.