

# EU Member States and Asylum Policy: Theoretical Approaches

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MALLORY A. INZETTA, MAY 28 2012

### **Why member states have been willing to cede some sovereignty to the EU level in the field of asylum policy: A theoretical approach**

Some policy areas within the European Union (EU) are more integrated than others for varying reasons. Often times member states (MS) are more willing to cede power to the EU level when they do not feel any national interest or national sovereignty is at stake. On the contrary, member states often hesitate giving up control in policy areas that are directly related to national security and protection of its citizens. Therefore, it may be puzzling as to why MS have been willing to cede some power to the EU level in the area of asylum, as this policy area can be directly related to national security and national interest. This essay will explore, in theoretical terms, why member states have been willing to make concessions at the national level and direct authority upward to the supranational governing body in the field of asylum policy. The essay will analyze the ceding of decision-making power utilizing the two most mainstream European integration theories, neo-functionalism (NF) and liberal intergovernmentalism (LI). It is important to recognize there are other theories that provide an explanation for the question at hand, however NF and LI are two theories that have had a significant influence upon the study of European integration. Therefore, these two theories will be analyzed more closely in this essay. The first section of the essay will examine why MS have been willing to cede power to the EU as explained by the neo-functionalist theory. The essay will then conduct the same examination, however, utilizing the liberal intergovernmentalist theory in the next section. The final section of the essay will determine which, if either, offers a better explanation as to why member states have been willing to give up some authority in the area of asylum. In the end, after analyzing both theories in relation to this policy area, neither neo-functionalism nor liberal intergovernmentalism will be found to be a superior explanation but ultimately, it will be seen that it is a combination of the two theories that provides the best explanation.

### **Neo-functionalism and Asylum Policy Integration**

Ernst B. Haas has been credited with recognizing the idea of neo-functionalism as a potentially important element of integration. Haas understood the idea that member states of the EU would typically set an agenda, and as much as they could, attempt to control the subsequent results, but that the MS were unable to control all results (Schmitter 2005, p. 257). He called this "spillover," a term that is often used in attempting to understand and explain European integration (ibid). In the case of migration and specifically asylum, the EU established firm principles in this policy area in the Treaty on the European Union (TEU) and then further communitarized these principles in the Amsterdam Treaty (AT) (Stetter 2000, p. 80). Through the lens of the neo-functionalist, it would be logical for asylum policy to be ceded to the supranational level for a multitude of reasons related to ensuring the functionality of previously established EU policies.

It has been argued that informal harmonization of asylum policy was underway prior to the TEU and AT, after the signing of the Single European Act (SEA), but before its enactment (van Selm-Thornburn 1998, p. 627). With the inevitable changes forthcoming in the EU after SEA enactment, it can be viewed as reasonable for attempts to have been made in harmonizing immigration and asylum policy during this time. Integration in one area can lead to unforeseen challenges in another that can only be solved by further integration (Guiraudon 2000, p. 254). Prior to the

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implementation of the SEA, EU member states had differing qualifying prerequisites in order to gain asylum; some MS were far more lenient than others in this area (van Selm-Thornburn, p. 630). The SEA led to adoption of the Single Market (SM) which in turn led to the opening of borders and free movement within most European states, effectively changing member states' security and border controls as well as widening the burden in migration and asylum policy. The change led to more formal harmonization efforts in order to standardize humanitarian policy, where previously MS did not have (nor was there a need for) uniform policies. It has been argued that whether indirectly or directly, the EU and its member states have implemented welfare policies that are narrow-minded in scope and sometimes even considered chauvinistic (Huysmans 2000, p. 753). The opening of borders within Europe, leading to the free movement of people from one state to another meant it was crucial to establish standardization of asylum policy in the EU. According to van Selm-Thornburn, the opening of national borders led to states' realization that this was an area in which they are unable to stand alone (van Selm-Thornburn 1998, p. 634).

In addition to further policy integration, one scholar describes the process of spillover in asylum policy as an aid in the development of the European identity 'project' due to the opening of borders and free movement within the Union (Guiraudon 2009, p. 254). It is important to acknowledge the differing views in this area, however. It has been argued that the new policy related to migration and asylum has made it evermore challenging to promote a single European identity (Huysmans 2000, p. 753). This challenge comes from the securitization of migration policy as Europe has viewed the eradication of internal borders as posing many new security threats (ibid). These threats have undermined the European identity project due to the exclusivity of rights and duties now within the EU after the communitarization of asylum policy (ibid). This exclusivity results in a struggle to promote one single union based on multiculturalism because the distribution of privileges misses asylum-seekers almost entirely (ibid). Nevertheless, it can still be argued that ultimately the ceding of decision-making power in asylum is spillover from the effects of the Single European Act and more specifically the implementation of the single market.

It is necessary to mention that not all scholars agree that burden sharing has been expanded with regard to asylum policy in the EU. Eiko Thielemann, author of *Why Asylum Policy Harmonization Undermines Refugee Burden-Sharing*, argues that when focusing on harmonizing asylum policy across the EU, it does not widen the burden sharing, but in fact undermines it (Thielemann 2004, p. 64). The suggestion made by Thielemann is to harmonize and focus upon the structure of asylum procedures as this could lead to lessening of the burden in specific countries where asylum applications are high (ibid). Perhaps this is the next step in the process at the EU level in order to reduce the burden and cost among specific member states. The increase in burden sharing and cost reduction, leads into the next section of the essay, in which the liberal intergovernmentalist viewpoint as to why MS have been willing to cede power on asylum policy to the EU level will be discussed.

## Liberal Intergovernmentalism and Asylum Policy Integration

Andrew Moravcsik has long since been a promoter of the idea that rational choices made by states in order to further their own national interests is what drives European integration (Moravcsik 1998, p. 18). This theory is traditionally called Liberal Intergovernmentalism. Within LI, Moravcsik argues that international agreements are negotiated on the basis of three stages including 'national preference formation, interstate bargaining and institutional choice' (ibid, p. 20). This section of the essay will focus on the rational choices made by leaders in order to promote the national preferences formed prior to the bargaining stage.

It is important to analyze not only the political costs and benefits related to asylum policy, but also the monetary costs and benefits, which enhance the logic behind LI's argument as to why member states have been willing to cede power to the EU level. Moravcsik and Nicolaïdis assert that, within the Amsterdam Treaty negotiations, certain member states that had significant national interests related to asylum policy advocated for further integration at the EU level (Moravcsik and Nicolaïdis 1999, p. 63). At the time, Germany was receiving a significant amount of immigrants in comparison to other EU member states, therefore German officials were advocating most prominently for additional EU involvement in this area (ibid). In addition to Germany, other EU member states (France, the Netherlands, Belgium and Denmark) have received significantly high numbers of asylum applications (Havinga and Böcker 1999, p. 45). These MS may receive a greater number of applicants due to their previous colonial ties to third world countries where many asylum-seekers have originated (ibid, p. 51).

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However, in addition to asylum-seekers migrating to the previously mentioned countries due to historical ties, they are also moving to countries within the EU where there are stronger economic opportunities (ibid, p. 54). This can, essentially, affect many, if not all EU member states, as economic opportunities are typically more abundant when compared to the states from which asylum-seekers come. At the same time, future areas where migrants will go are also unpredictable (Thielemann 2009).

One scholar explains how this unpredictability leads states to act rationally with regard to asylum policy through the comparison of states' willingness to share the burden to the individual's reasoning for purchasing catastrophic health insurance (Schuck 1997, p. 273). One might take out a health insurance policy and pay a modest monthly premium in order to avoid extremely high costs in the case of an accident. Due to the unpredictability of asylum-seekers' behavior, it is rational for states (all states) to share the lower costs now in order to avoid incurring 'large, sudden, unpredictable, unwanted and unstoppable' inflows of refugees in the future (Thielemann 2009). This comparison, displays the rationale, in monetary costs, behind the reason states have been willing to cede some sovereignty to the EU level in this particular area. It also explains the political reasoning for ceding sovereignty as asylum policy impacts the political climate in states and has the potential to create even more cleavages between political parties that are already apparent within a state. It is undeniable that asylum policy offers political opportunities within states' governments and within national elections, (Schuster 2003, p. 253) thus increasing tension in the member state. This tension could potentially be avoided by ceding decision-making power to the EU level, which would be a rational decision and in the interest of the member state. Liberal intergovernmentalism effectively argues that EU member states are willing to cede some national sovereignty in the area of asylum policy because it is in their best interest politically and economically to do so.

## **Neo-functionalism or Liberal Intergovernmentalism?**

From the above analysis and exploration as to why MS have been willing to cede some sovereignty to the EU in asylum policy, it is found that the two most mainstream integration theories both provide valid explanations for this movement, though not exclusively. Neither theory provides a more superior explanation for the changes that have occurred, because the two theories tend to compliment each other in this manner. It appears to be clear that the ceding of power to the EU level in asylum policy occurred due to spillover from the enactment of the SEA and implementation of the single market, but that also it is in member states' best interests to integrate this policy. It is in the best interest of the MS, due to reasons based upon national security, political cost and the economic cost, both today and in the future, to integrate asylum policy. Although some countries have not been affected to the degree that others have (Thielemann 2009), liberal intergovernmentalists would argue it was a conscious decision of MS to integrate due to the unpredictable nature surrounding migration and asylum. From the neo-functionalist point of view, asylum policy integration was inevitable and vital for the functionality of other policy areas in the EU (Guiraudon 2000, p. 254). Therefore, it cannot be argued that either theory provides a better explanation than the other for this occurrence. Realistically speaking, both theories compliment each other and provide a thorough explanation as to why the ceding of some sovereignty has occurred.

## **Conclusion**

This essay has provided a comprehensive analysis of the two most mainstream European integration theories with regard to asylum policy in the EU. First, it explained why EU member states have been willing to cede some sovereignty in the area of asylum policy according to the neo-functionalist theory. Secondly, an examination of asylum policy integration through liberal intergovernmentalism was conducted in order to explain why ceding some sovereignty in asylum policy is a rational choice for each nation. Finally, the last section of the essay analyzed the two theories' capabilities of explaining why this ceding of national sovereignty has occurred. The essay was originally developed to determine which theory was stronger in explaining why this concession of decision-making power occurred, however after investigation, it has shown that ultimately neither theory is exclusively able to provide the best explanation. The combination of the two integration theories provides the most complete explanation when answering the question as to why member states in the EU have been willing to cede some sovereignty in the area of asylum.

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