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UNIVERSITA' DEGLI STUDI DI ROMA
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WORKING PAPER

BALANCING NATIONAL OBJECTIVES AND SETTLING RIVALRIES.
TOWARDS A NEW EUROPEAN ASYLUM SYSTEM?

Balancing national objectives and settling rivalries. Towards a new European asylum system?

by

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Abstract.

We offer a holistic view (and formal representation) of the Common European Asylum System (CEAS), in which the national objectives of the states emerge in terms of trade-off between control and respect of the asylum seekers' human rights. Control of access implies spillover of the flows towards neighbouring states and rivalries between the states in a non-cooperative game. An asylum system is a set of rules designed to settle rivalries, balancing out the national objectives. Thus, on the basis of a Pareto (unanimity) criterion, one system is preferred to another if all the states are better able to achieve their national objectives. We examine the conditions under which a relocation system based on quotas may be preferable to the Dublin rules, and the reasons why closer harmonisation of standards can favour adoption of such a system. Finally, we comment on the possible outcomes when unanimity is not achieved.

Introduction

As a result of geopolitical upheavals we have recently seen a considerable increase in flows of asylum-seekers towards Europe, taking different directions than hitherto observed. In particular, some countries on the fringes of the Schengen area have seen quite notable inflows, raising fears that inequality in the refugee burden borne may be further aggravated. On the evidence of Eurostat and UNHCR historical data, since the 1980s imbalance has characterised the refugee burden borne by the various states (e.g. Thielemann and Armstrong, 2013), and the data of the last few years show that not all the Member States take on the burden in similar fashion. In 2014 Germany, Sweden, France and Italy bore the weight of over 70% of all the applications in the EU-28. Germany and Sweden alone accounted for 50% of the total (Oel (2014)). In

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Conferences and forums[1] politicians and practitioners return to the old issues, demanding greater solidarity and responsibility sharing among the Member States, contemplating forms of asylum-seeker relocation and reconsidering the idea of an explicit burden-sharing system.

It looks clear that even though solidarity features among the fundamental principles of the Union, it cannot alone ensure widespread political consensus on the part of the states (Thielemann and Armstrong 2012, Kaunert and Leonard 2011).

The reference to humanitarian principles appears to take on a certain importance in the agenda and, moreover, to be in line with the harmonisation policy pursued for some time by the Commission which had already led to recast of the Dublin system[2]. One may well wonder whether the opposition of certain states to the migration agenda is dictated by scant sympathy for the rights of the asylum-seekers, or by the fact that they are at present receiving relatively small shares and are unwilling to take on greater burdens; one may also wonder whether such opposition may be mitigated by the perception that the pattern of the flows may change in the future in terms of both quantities and destinations. Another question that arises is whether a majority vote may imply persistence of the latent conflicts amongst the states, which could in the future undermine the cohesion of the CEAS. A final point to consider is the extent to which pursuit of a harmonisation of the norms that places greater emphasis on the rights of the asylum-seekers may alleviate these conflicts and implicitly entail greater cohesion.

The problem we address in this paper is to provide a theoretical framework to examine the political viability of the new rules, based on analysis of the reasons why states may spontaneously adhere to the agenda or, on the other hand, have it forced on them, which would constitute a factor kindling future disputes.

On this point we have a substantial body of literature addressing the issue of why the various states have agreed to a common asylum system. Guiraudon (2000, 2003) and Lavenex (2006) pointed out that the Europeanisation of immigration and asylum policy gave national governments the opportunity to engage in 'vertical forum (or venue) shopping' so as to avoid national legal and human rights guarantees for migrants. As they pointed out, among the specific motivations of national political and administrative actors in resorting to European protection was the will to weaken and circumvent national judicial protection of migrants. One criticism is that many countries have found in Europe a less restrictive approach than they might have had without the common rules (Ackers 2005, Fullerton 2005). Moreover, Kaunert and Leonard (2012) observe, also in relation to the entire European 'system of venues', that the trend has been towards an improvement in legal standards, reducing the probability of restrictive measures. Other approaches stress those aspects of migration policies that involve matters of security (Buzan et al. 1998; Huysmans 2000, 2006; Bigo 1998, 2001, 2002; Guild 2003a, 2003b; for a critical view see Kaunert 2009).

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[1] E.g. European Commission DG-Home: Relocation 25 September 2013, Brussels. 2nd Resettlement and Relocation Forum: "Solidarity in Practice" 25 November 2014, Brussels.
[2] Directives 2013/32/EU, 2013/33/EU and Regulation (EU) No 604/2013 of 26 June 2013.

These approaches are limited by their failure to account for the interactions and possible conflicts that may arise among countries in the European 'venue' over contrasting national objectives. For example, the Dublin system entails an uneven distribution of refugees which has, in many cases, given rise to contention between the outlying countries, which see initial entry into Europe, and the more central states, some of which fear that the particular attractions they show would draw most of the flows towards them. One example was the dispute between France and Italy in 2011 over the inflow of asylum-seekers caused by the 'Arab Spring'. Obviously an agreement holds as long as all eventually find advantages in the common system that override the possible conflicts. Ultimately, a common system can prove successful if its rules imply the possibility to resolve external conflicts while at the same time balancing internal national objectives.

In this paper we present a holistic view of the European asylum system, indicating the national objectives and going on to examine how all of them entail a clash of interests amongst the states. About this, for instance, the approach related to the concept of public goods (Thielemann and Dewan 2006; Thielemann and Armstrong 2013) does not consider the 'rivalry' amongst the states, which the term public good excludes by definition[3]. Des Places and Deffains (2003) present an insightful view of asylum in Europe as a non-cooperative game, in which competition is conducted by modifying the national asylum standards. However, they fail to provide analytic representation of the objectives of the individual states, confining themselves to qualitative discussion. This aspect of the European asylum system remains therefore under-researched in the current literature.

In order to carry out explicit examination of the states' asylum objectives, we will single out two factors that have for some time been at the centre of debate, namely control of the refugee flows and respect for their human rights. The latter factor, respect for rights, does not generate rivalry between the countries and can constitute a positive externality of a common system,. Control of the flows, on the other hand, can foment rivalry amongst the states. We will in fact contend that they tend to control the flows with measures restricting access, and that these restrictions also have the effect of rerouting the asylum-seekers towards other countries in Europe, with consequent spillover effects. The other countries, equally intent on control, act upon perception of the policies pursued by their neighbours, aiming to adjust their restrictive policies in turn. This results in interdependence between the restrictive policies and creates rivalry between the countries, competing with one another in pursuit of their national control objectives and the final distribution of asylum-seeker flows amongst the countries, therefore, is the result of a balance between actions and reactions.

A first original contribution derives from the fact that we can supply formal, i.e. mathematical, representation of these concepts. To this end we will represent the objectives not only of control but also of respect for rights, as an element contrasting

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[3] The definition of a public good is that no participant can be excluded from consuming the benefits of public good (non-excludability) and the consumption of the good by one participant doesn't reduce the amount available for consumption by others (non-rivalry).

with excessively severe application of restrictions, so that we can in fact represent a trade-off at the national level between the two aims.

On this basis we can pursue rigorous lines of study, and go on to compare alternative asylum systems. An asylum system consists in a set of rules, and comparison is therefore made considering how the rules of the diverse systems determine different values for the objective of the various countries. For example, an explicit relocation system entails a distribution of the asylum-seekers amongst the countries, which of course implies differences in achievement of the national objectives with respect to the Dublin system. In terms of game theory, we may say that a different set of rules entails differences in the final equilibriums in which countries achieve their objectives in different ways.

We can, then, compare the various systems, calculating the different equilibriums and comparing them with one another. The systems we will compare are the Dublin system and an explicit relocation system based on quotas. Furthermore, we will assess how a harmonisation process favouring greater respect of the asylum-seekers' rights can influence the choice of one system rather than another. This is the second original contribution, and the answers arrived at provide indications regarding CEAS developments.

Trade-off, restrictions and national objectives

The various countries' migration policies contain two elements in contrast with one another: on the one hand, they seek to control the number of migrants having access to their territory, while on the other hand they stress the respect for human rights inherent in the articles of their constitutions and in the sensibility of their citizens. Attention then comes to focus on the trade-off effects between the control objectives of the individual states and their humanitarian motivations regarding the rights of migrants (Lavenex 2001a and 2001b; Morris 2002; Joly 2004; Rush and Martin 2008). Also the mainstream political economy approach to migration sees the objective function of the government as the result of the influence of various pressure groups, which have different attitudes towards favouring migration (Epstein, 2013). Statham and Geddes (2006) highlights the role of the political élites in determining migration policies.

In order to provide formal representation of the trade-off, we observe that control of access is achieved through restrictive measures. In the case of asylum-seekers they may serve as deterrents, as classified, for example by Thielemann (2004), including control of access, tightening of procedures, and restriction of integration measures. They can, however, also consist in direct restriction measures: measures for protection of borders, pushing back asylum-seekers, and stratagems to evade the European regulations. Brochman (1998) offers evidence on the resort to 'implicit' control achieved with discretionary interpretation of the procedures and standards. All these measures can have perceptible effects on the flows of asylum-seekers: Havinga and Böcker (1999), Holzer et al. (2000), Hatton and Williamson (2004), Hatton (2009), Thielemann (2004) and (2012).

In some cases the restrictive measures may violate the asylum-seekers' rights. As for definition of these rights, various approaches may be followed.

One such approach makes reference to the subjective rights of refugees, e.g. Mehta and Gupte (2003). This approach is also followed by international humanitarian organisations; see e.g. Amnesty International (2014), ECRE- AIDA annual report, as from 2012.

Another approach takes reference from the EU legal standards, such as those contained in the ECPHR (European Convention for the Protection of Human Rights and Fundamental Freedoms) or other fundamental charters. In this respect, there are reports of serious, repeated violations of the European standards by a number of countries, leading to sanctions by the ECtHR (European Court of Human Rights) as well as infringement procedures undertaken by the European Commission.[4]. This approach also refers to the judicial dimension, since it is primarily juridical actors and courts which establish whether a restriction amounts to a violation of human rights.

In order to provide formal representation of the trade-off we will set a value, represented with the symbol R, for the restrictive measures applied by a State, like e.g. an index like that formulated by Thielemann (2004). We will identify a value for R such that it does not infringe the asylum-seekers' rights, determined on the basis of some criterion such as the above. We will indicate this value with $\hat{R}$, representing the 'fair value' of restrictions applied by a state. For example, $\hat{R}$ might represent the maximum level of restrictions consistent with the ECPHR.

For the purposes of analysis we need an indication of the departure from the fair value, thus let's put $r = \hat{R} - R$. Thus $r = 0$ is the fair value of the restriction index we take as reference. In cases of $r < 0$ it is understood that restrictions are underway and the refugees' rights are violated.

Let us now consider a second European state in play, and indicate with a star the variables referring to it. Thus we consider the index r^* defined in a way similar to that for the first state. As will be clear in the next chapter, state 1 doesn't know the real value of r^*, so consideration will focus on a forecast or a conjecture of what the restriction of the other state will be. Let's indicate it as $r^{*(e)}$.

We will indicate with N the number asylum-seekers a state has to deal with. Obviously N depends on the restriction r implemented by the state and, in the presence spillover, by the restrictions carried out by the other state, i.e. on the value of $r^{*(e)}$. As to the spillover effect and interaction between the policies of the states, they will be discussed in the following chapter. Thus we can write $N = N(r, r^{*(e)})$. But what is worth noting, is that the value of N depends on the rules (implicit or explicit) which give rise to a system of burden sharing among the states. The picture thus is that, given the rules (e.g. the Dublin regulation or else quotas) the state uses r

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[4] For ECtHR sentences see the site:
http://www.en.refugeelawreader.org/index.php?option=com_docman&task=cat_view&gid=2013&Itemid=
For EC infringement procedures, ECRE publishes a number of reports e.g.
http://ecre.org/component/content/article/70-weekly-bulletin-articles/666-european-commission-launches-infringement-procedures-against-bulgaria-and-italy-for-possible-refoulement-of-syrian-refugees.html
See also the site of European Commission http://ec.europa.eu/atwork/applying-eu-law/index_en.htm

as a tool in order to reach its objectives. To represent these, we assume that state 1 has a target-value for N, let's indicate it as A_1. The state decides on a level of restriction r so as to attempt to maintain N as close as possible to A_1, at the same time balancing the violation of human rights implied by the restriction, namely, as long as a restriction is in place i.e. $r < 0$, with a value of r as close as possible to zero. So we assume that, for a given conjectured restriction $r^{*(e)}$ by the other state, the first state sets out a policy r in order to minimize the loss function

$$L\big(r, r^{*(e)}\big) = [N(r, r^{*(e)}) - A_1]^2 + \nu\, r^2 ; \qquad (1)$$

As restriction increases (r negative or decreasing) N diminishes but r^2 increases; thus the two objectives clash. ν represents the relative (first-state specific) weight so as to balance the two control and rights objectives in the trade-off. The same for the second state, which has a loss function of the type

$$L^*\big(r^{(e)}, r^*\big) = [N^*(r^{(e)}, r^*) - A_2]^2 + \nu^*\, r^{*2} . \qquad (2)$$

Parameter ν has an important role to play in the analysis, for in the first place it represents the weight each state attributes to the refugees' human rights. However, this weight can be affected by the common standards. There is fairly general agreement that the standards have advanced in the direction of greater respect for rights (Thielemann (2004) and (2006)). However, this trend is possible only as long as the states are prepared to accept such changes, until the clash with control objectives becomes too great. Actually, the recent recast of Dublin III directives and regulations implies advance towards a more equitable protection of human rights, although it may be argued that they do not go far enough, e.g. Peers (2013). Essentially, many observers hold that Europe's migration policy is predominantly restrictive, placing the stress on control of the flows to keep people out of Europe (Uçarer 2001; Brouwer and Catz 2003; Guild 2004; Levy 2005 and 2010; Baldaccini and Guild 2007; Chebel d'Apollonia and Reich 2008). Many authors and humanitarian organisations recognise a certain aversion shown by the states to taking on quotas of refugees, above all, as the analyses reveal, for reasons of domestic politics (Budge et al. 2001; Boswell 2003, Thielemann 2003; Klingermann et al., 2007). Thieleman et al. (2010, page 111) also stress as prevalent the social and political costs of admitting asylum-seekers, concluding that the States actually have a 'fierce aversion' to receiving refugees. For all these reasons in the following series of equations we will consider various possible values for ν, but will focus in particular on small ν values. Furthermore we do not consider other kinds of costs, like monetary and administrative costs, which many of the authors mentioned hold to be negligible in comparison with the political costs.

Spillover and strategic interaction: the non-cooperative game
One point to highlight here is that the European countries naturally form part of a common asylum system. To the eyes of asylum-seekers, one European country is as good as another (apart from specific pull factors), and this is because many countries show similar levels of economic development and welfare, and also because they are geographically close. This creates an inevitable interdependence between asylum policies for these countries. If a country puts restrictive measures into place, we are likely to see a shift in the flow of asylum-seekers toward neighbouring countries.

This happened recently, for example, when Belgium adopted expedited procedures and the number of asylum-seekers heading toward France increased[5]. So, what we see is a refugee spillover effect among European countries as a result of national policies. The possibility of restriction spillover was stressed e.g. Toshkov (2012), Toshkov and de Haan (2012) and Thielemann (2004) and (2012). Des Places and Deffains (2003) make reference to a generic utility function of the states with occurrence of spillover, but fail to develop the idea at the analytic level.

The occurrence of spillover implies strategic interaction amongst the states: each state expresses a conjecture or a forecast of what the policy of the other state will be. This conjecture may be based on information received or on past behaviour when massive flows of asylum-seekers arrived. Given the conjecture, the state designs its policy so as to minimize its loss. This modifies the flow toward the other state, which in turn receives evidence upon which to change its conjecture and thus its policy, again in order to minimize its own loss.

The way the conjecture is arrived at is an issue to be studied thoroughly, and will be the object of future work. As a matter of fact, as we aim to study the equilibrium outcome of the game we need to know only the final actual equilibrium-value of the conjectures. According to the Nash-equilibrium definition, in fact, in the final position both the players forecast the actual value of the policy of the other, so that each state adopts a restrictive policy and this simultaneously leads to optimal achievement of the individual national objectives. Formally, in our model a Nash equilibrium is a pair of policies (r_0, r_0^*) such that $r_0 = r_0^{(e)}$ and $r_0^* = r_0^{*(e)}$ and both L and L^* are simultaneously minimized.

Of course, the values for L and L^* in equilibrium depend on the asylum regime implicit in the loss functions, as explained in the previous chapter. For these reasons, whatever the form the system effectively takes, it can be viewed as a set of incentives (rules) to implement an equilibrium between cohesion and rivalry amongst states. Different systems for the European asylum system, namely different rules, imply different equilibriums and thus different values for L and L^*. This opens the way to compare different systems for CEAS.

Comparing alternative systems for CEAS

For each state obviously a regime is better than another if the former implies a smaller loss than the latter. For instance, let's indicate with L^D and L^C the values of the loss under the Dublin regime and a quota regime respectively. So, quotas are preferable for this state if $L^D > L^C$.

For the system as a whole, we can refer to Pareto dominance: a system is preferable if all (both) the states are better off. This entails unanimous consensus. Comparison will then be possible with the case where there is unbalanced achievement of national objectives by the states. To make the point clearer, let us indicate with ϕ the number of asylum-seekers who wish to reach state 1. If state 1 implements a restriction r this will reduce the number. If state 2 implements restriction r^*, the spillover effect will

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[5] We still lack statistics on 2014 flows. This claim is based on the opinions of home-office officials of some European member states.

raise the number of forced migrants seeking to reach state 1. So we write the following equation:

$$A = \sigma\, r - \lambda r^* + \varphi; \tag{3}$$

where A represents the number of asylum-seekers who reach the country and σ and λ represent the two effects respectively. Note that as long as a restriction is in place, i.e. $r < 0$ then it reduces the number of asylum-seekers for state 1, whereas the other-state restriction (with $r^* < 0$) entails an increase in this number[6]. In much the same way we can write

$$A^* = \sigma^*\, r^* - \lambda^*\, r + \varphi^*. \tag{4}$$

For the sake of simplicity we normalize to 1 the total number of asylum-seekers coming into Europe and state $\varphi^* = 1 - \varphi$ ($\varphi < 1$); φ, therefore, represents the share of asylum-seekers initially (before the restrictions of the two states are in place) favour state 1 as destination.

Let us now examine the Dublin system (we will refer to it as the D system), based on the 'state of first entry' principle. This means that the burden of asylum-seekers for state 1 is simply $N(r, r^*) = A$ and $N^*(r, r^*) = A^*$ for state 2.

As regards quotas (referred to as the C system) this case entails that the total number of arrivals into Europe is shared out between the states. A synthetic index could be based on size of population, size of territory and GDP per capita. The agenda adds to this parameters the unemployment rate and numbers of asylum seekers and of resettled refugees already present in all member states. Such indices were debated during the nineties (des Places, 2002; Hailbronner, 2000; Harvey, 1998; Suhrke, 1998; Schuck 1997), some viewing them as an attempt by over-burdened States to reduce an excessively large number of asylum-seekers.

For the sake of simplicity we consider identical capacity for the states, so the weight is ½; of course, other weights might be considered. Thus we have that $N(r, r^*) = \frac{1}{2}(A + A^*)$ and also $N^*(r, r^*) = \frac{1}{2}(A + A^*)$.

Inserting the appropriate number of asylum-seekers in loss functions (1) and (2) we obtain expressions to use to calculate the equilibriums in the two cases, i.e. Dublin and quotas (details provided in the appendix).

We must now identify the key variables for comparison, i.e. the factors of change that can, for example, lead to departing from the Dublin system in favour of another. In the light of the points made in the introduction, these, among other possible factors, are:

1. changes in the quantity of asylum-seekers reaching Europe and, above all, changes in the shares bound for the various states. With our symbols, this implies changes in φ, which also represents the share of the total of the arrivals having as destination state 1[7].
2. progress in the harmonisation process, also implying greater respect for the refugees' rights. With our symbols, this implies an increase in the values of ν and ν^*.

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[6] One objection that might be raised here is that it is the total restriction R that influences the number A of asylum-seekers. The mathematical simplification is normal: an explanation is given in appendix Remark 1.

[7] Let us recall that we normalise at 1 the total number of asylum-seekers arriving in Europe.

The method consists, then, in assuming a series of diverse values for the variables indicated above in points 1 and 2. For each value it is possible to calculate the minimum value of the loss functions of each of the two countries, in the cases of both Dublin and the quotas. This is achieved with a routine process normally used to calculate Nash equilibriums, illustrated with mathematical details in the appendix. Having established the calculation process, the simulations are performed at the numerical level using a simple Excel spreadsheet.

The results of the simulations in case 1 and case 2 are represented in the following two graphs (readers interested in a conceptual summary can go straight to the conclusions). The values of the parameters used for elaboration are shown beneath each graph and are to be considered indicative, serving solely to reflect qualitatively the present situation of the CEAS and the factors of change. The realistic qualitative hypotheses are: $\sigma > \lambda^*$ and $\sigma^* > \lambda$, i.e. there is some spillover, but not all who are rejected make for the neighbouring state; some depart from Europe. The graphs refer to parameter values hypothesising equality between the two states, i.e. all the parameters take on equal values for the two states. If the states are equal, then a 'fair' share of asylum-seekers for each state amounts to 0.5. This situation of equality is useful as conceptual reference to analyse each of the consequences of an asymmetrical distribution of asylum-seeker flows, i.e. of ϕ values other than 0.5. In fact, if the states are equal the only difference in their behaviour derives from the asymmetric value of the flows. We will, however, assume, in accordance with the considerations made in the previous chapters, that in all the cases examined both states have restrictive aims, or in other words the values of both A_1 and A_2 are lower than 0.5 (in the graph we put the value for both at 0.3). The assumption of equality between the states can of course be relaxed, bearing out the validity of the results also in general cases (see Remark 2 in the Appendix).
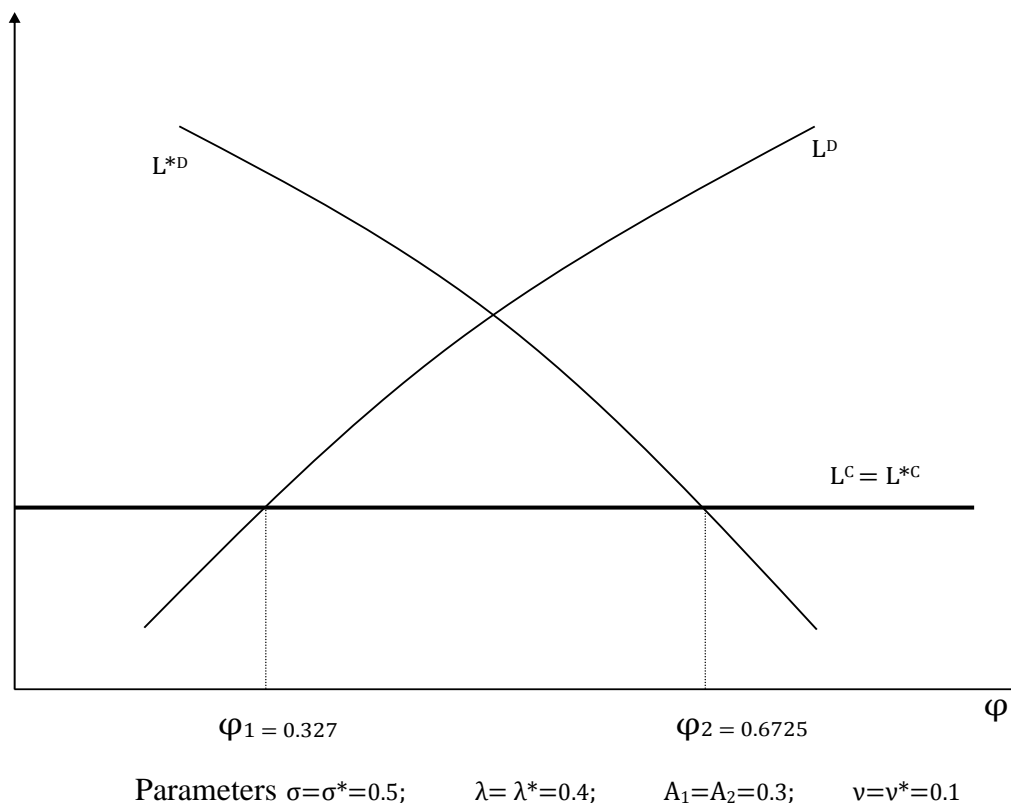
φ

Figure 1

Parameters $\sigma=\sigma^*=0.5;$ $\lambda=\lambda^*=0.4;$ $A_1=A_2=0.3;$ $\nu=\nu^*=0.1$

Figure 1 shows the result obtained by each state, i.e. the loss value, for various values of ϕ, which represents the share of asylum-seekers headed towards state 1. We have also established $\nu = \nu^* = 0.1$. To understand the graph, note that we have represented with a thin line with the loss values in the case of Dublin, i.e. the minimum values for L^D and L^{*D}, while a bold line shows the minimum loss values in the case of quotas, i.e. L^C and L^{*C}. Note that L^C and L^{*C} are constant and take on the same value for both states. To apply the Pareto criterion we have to see when the losses of both states are lesser in the case of C than in the case of D. In the graph this comes about when all the thin lines lie above the bold line.

Figure 1 offers a significant indication to begin with. Note that when system C is not preferable (e.g. for values of $\varphi < \varphi_1$), the states achieve their national objectives in an imbalanced way. In fact, the state registering the higher inflow of asylum-seekers has a very considerable loss. It is in the interest of this state to move on to an explicit burden-sharing system, while the contrary applies to the other state. The reason is clear enough, and it evidences the unresolved tensions underlying the Dublin system, for it lies in the greater rivalry implied by the system, which sees spillovers having a more pronounced effect on each state's national objectives. In fact, the simulations show that the restrictions on the part of both states are more severe (r^* and r are comparatively smaller) in the case of Dublin than in the case of C. On the other hand,
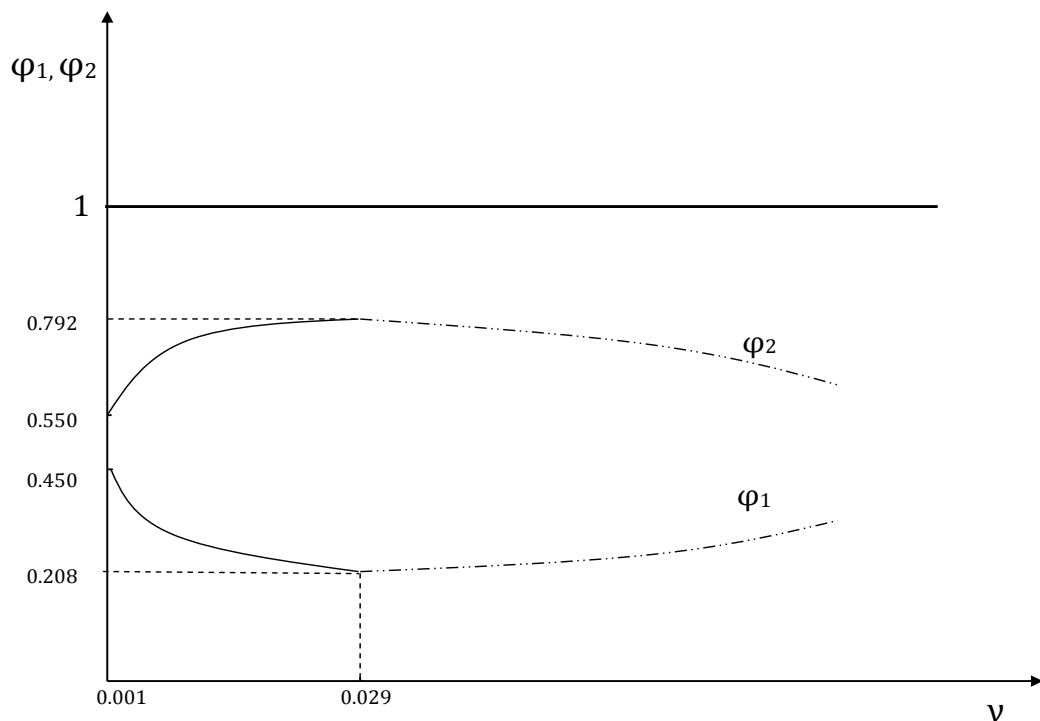
system C distributes the flows between the two states whatever their initial asymmetry. Thus a system like C implies less severe restrictions and a loss value better balanced between the two states than with the Dublin system, and to a reasonable extent it settles the conflicts between the states.

Developing the analysis in depth, we find there are two thresholds, which we indicate with φ_1 and φ_2, that delimit an interval within which C is preferable to D. Given the position of the thresholds, we see that C is preferable even if the share of asylum-seekers initially heading for state 1 is asymmetric; in fact, in the example calculation C is preferable whenever it happens that $0.3275 \leq \varphi \leq 0.6725$; thus, for example, a distribution of 33% in the first state and 67% in the second still implies the preferability of the quota system. The result shows that, if the flows that had previously been markedly unbalanced towards some states shift even slightly towards others, then a solution based on quotas is preferable for all the states. This finding is not self-evident, since while it is reasonably clear that with a fairly symmetrical initial distribution system C may prove better, it is not immediately obvious that this may also hold for a broad situation of asymmetries.

The second question that arises now is: what happens if greater harmonisation of the European standards, insofar as they are shared by the states, entails greater respect for rights, or in other words if ν and ν^* increase? Will it reduce or increase the possibility of C being preferable to D? The answer can be seen in Figure 2.

Figure 2

Parameters $\sigma = \sigma^* = 0.5$; $\lambda = \lambda^* = 0.4$; $A_1 = A_2 = 0.3$; $\nu = \nu^*$

The Figure shows the values of thresholds φ_1 and φ_2 that emerge when the values of ν and ν^* increase. The situation that interests us, in the light of the points made above, is one in which ν and ν^* are low (in the example shown in the Figure below 0.029), i.e. respect for rights takes on relatively little weight vis-à-vis the control objectives. All this holds important consequences for our analysis. In fact, it is seen in Figure 2 that, for very low values of ν and ν^*, if C is to prove preferable to D the need is for the asymmetries in the initial flow distribution (i.e. the distance of φ from intermediate value 0.5) to be fairly small (for example, if $\nu=\nu^*=0.001$ then the prospective inflow distribution must be fairly uniform – somewhere between 45% and 55% for the first state). With ν and ν^* growing, however, an improvement in the standards of rights constitutes an incentive to adopt explicit C-type burden-sharing, even if a significant inflow asymmetry persists. For example, for $\nu=\nu^*=0.029$ the prospective distribution bearing on the first state may range between 20.8% and 79.2%. This is because greater respect for rights to some extent 'ties the hands' of the states in applying restrictive measures. Thus the control is less effective, and it is, above all, the Dublin system, which stresses the importance of control, that proves more heavily penalised, with comparatively greater losses. (For a more detailed explanation see Remark 3 in the appendix).

Conclusions

Having clarified the interrelated behaviours of the states and the criterion to compare the various asylum systems, we can leave the model behind and enter upon explanation of the principal indications.

Among the first points to note is the fact that behind the Dublin system lie unresolved tensions amongst the states. In fact, when spillover occurs it entails more extreme restrictions, each being incentivised to counteract the other states' policies. Moreover, as long as it is in force, given the asymmetric distribution of asylum-seeker inflows towards them, the European states pursue their national objectives in somewhat disharmonious ways, the state receiving a disproportionate number of asylum-seekers achieving its goals decidedly worse than the other. This could in itself lead the state that felt it was being penalised to opt out of the common asylum system, or break the European rules. By contrast, an explicit burden-sharing system shows greater stability since the states achieve their respective national objectives in a more uniform and balanced manner, opening the way to a common system within which the rivalries amongst the states find mediation. In fact, there is less inherent rivalry in the burden-sharing system, each state having an interest in controlling the overall inflows to the whole of Europe, while the spillovers take on less importance. Thus the system can also stand up better to unbalanced flows varying over time, indirectly representing a form of cooperation (Schuck 1997). However, we need to examine the circumstances in which the states would be ready to join such a system. It may seem obvious that relocation would be accepted by the states if the original distribution of asylum-seekers were balanced among them. Nevertheless, we find that an explicit burden-sharing system is preferable for both states even if the original distribution of flows is somewhat unbalanced. This depends on the weight that

respect of rights takes on in the trade-off which represents the national objectives. In fact, we find that if more binding standards on respect for rights are implemented, it follows that a quotas system is (à la Pareto) more advantageous even when the trend in flow distributions is towards greater imbalance. Indeed, to some extent the more binding standards 'tie the hands' of the states in implementing restrictions for control purposes. Hence the Dublin system, in which rivalries between states entail a greater tightening of restrictions than a relocation system, becomes relatively more 'costly' in terms of both flow control and respect for rights. In sum, relocation and harmonisation are synergic the need being to continue to pursue the latter to facilitate the former. Returning to the issue of the ongoing migration agenda, at this moment, as a consequence of a majority decision, an unbalanced situation seems likely to arise, a situation in which some win while others lose in terms of their respective national objectives. This would not be efficient and might herald future contrasts with possible opt-outs or misapplication of the common rules. Some states seem to oppose the quotas, amongst them states receiving a small number of asylum seekers, but it isn't clear whether this is because they aren't destination countries or because they deflect refugees by implementing substantial restrictions, nor indeed whether the reason for their opposition is an irresponsive attitude to refugees' rights. Our theoretical framework, calibrating the parameters, is appropriate for examination of these issues, but also empirical study is needed. This will be the object of future work. Some mitigation of contrasts could be achieved, according to our analysis, by forging ahead with harmonisation in the direction of greater respect of refugees' rights. However, we must also face up to a certain reluctance by some states to accept more binding rules on respect for rights, precisely because they are aware of the limits they would put to their control action. In the near future, according to our analysis, the CEAS equilibriums will depend to a significant extent on a change in the distribution of flows amongst the states, taking into account geopolitical events as they may arise.

References

Ackers, D. (2005) 'The Negotiations on the Asylum Procedures Directive', *European Journal of Migration and Law*, 7: 1-33.

Amnesty International (2014) 'The human cost of Fortress Europe: Human rights violation against migrants and refugees at Europe's borders'

Baldaccini, A. and E. Guild (eds) (2007). '*Terrorism and the Foreigner: A Decade of Tension around the Rule of Law in Europe'*. Leiden: Martinus Nijhoff

Bigo,D. (1998a). 'Europe passoire et Europe forteresse: La sécurisation/humanitarisation de l'immigration' in Rea, A. (ed.), '*Immigration et racisme en Europe'*. Bruxelles: Complexe, pp.203-241.

Bigo, D. (1998b). 'L'Immigration à la Croisée des Chemins Sécuritaires', *Revue Européenne des Migrations Internationales*, 14 (1), pp.25-46.

Bigo, D. (2001). 'Migration and Security' in Guiraudon, V. and C. Joppke (eds), *Controlling a New Migration World.* London: Routledge, pp.121-149.

Bigo, D. (2002). 'Security and Immigration: Toward a Critique of the Governmentality of Unease', *Alternatives*, 27 (Special Issue), pp.63-92.

Brochmann, G. (1998), 'Controlling Immigration in Europe. Nation-State Dilemmas in an International Context' in H. Van Hamersfoort, J. Doomernik, *International Migration. Processess and Interventions*, IMES, Amsterdam.

Brouwer, E. and P. Catz (2003). 'Terrorism and the Struggle for Competence in Community Law' in Brouwer, E., Catz, P. and E. Guild (eds), '*Immigration, Asylum and Terrorism: A Changing Dynamic in European Law'*. Nijmegen: Instituut voor Rechtssociologie/Centrum voor Migratierecht, KU Nijmegen.

Budge, I., Klingemann H-D., Volkens A., Bara J. and Tanenbaum, E. (2001) *'Mapping Policy Preferences. Estimates for Parties, Electors, and Governments'* *1945-1998*. Oxford: Oxford University Press.

Buzan, B., Wæver, O. and J. de Wilde (1998). '*Security: A New Framework for Analysis'*. London: Lynne Rienner.

Chebel d'Appollonia, A. and S. Reich (eds) (2008). '*Immigration, Integration, and Security: America and Europe in Comparative Perspective'*. Pittsburgh, PA: University of Pittsburgh Press.

Des Places, S. B. (2002). 'Burden sharing in the field of asylum. Legal motivations and implications of a regional approach' Working Paper of the European University Institute, Florence, RSC No. 2002/66.

Des Places, S. B. and Deffains, B. (2003) 'Cooperation in the Shadow of Regulatory Competition: The Case of Asylum Legislation in Europe', *International Review of Law and Economics* 23(4): 345-64.

Epstein, G.S. (2013) 'Frontier issues of the political economy of migration' in Constant, A.F. and Zimmermann K. F. (eds.) *'International Handbook on the Economics of Migration'* Edward Elgar, Cheltenham UK and Northampton, MA,USA.

Fullerton, M. (2005), 'Inadmissible in Iberia: The Fate of Asylum Seekers in Spain and Portugal', *International Journal of Refugee Law*, vol. 17, no.4, pp.659-687.

Guild, E. (2003a). 'International Terrorism and EU Immigration, Asylum and Borders Policy: The Unexpected Victims of 11 September 2001', *European Foreign Affairs Review*, 8(3), pp.331-346.

Guild, E. (2003b). 'Immigration, Asylum, Borders and Terrorism: The Unexpected Victims of 11 September 2001' in Gökay, B. and R. B. J. Walkers (eds), *11 September 2001: 'War, Terror and Judgement'*. London: Frank Cass, pp.176-194.

Guild, E. (2003c). 'The Face of Securitas: Redefining the Relationship of Security and Foreigners in Europe' in Craig, P. and R. Rawlings (eds), '*Law and Administration in Europe: Essays in honour of Carol Harlow'*. Oxford: Oxford University Press, pp.139- 153.

Guild, E. (2004). 'Seeking Asylum: Storm Clouds between International Commitments and EU Legislative Measures', *European Law Review*, 29 (2), pp.198-218

Guiraudon, V. (2000) 'European integration and migration policy: vertical policy-making as venue-shopping', *Journal of Common Market Studies*, 38(2): 251-71.

Guiraudon, V. (2003) 'The Constitution of a European Immigration Policy Domain: A Political Sociology Approach', *Journal of European Public Policy*, 10(2): 263-282.

Hatton T. J. (2009) 'The Rise and Fall of Asylum: What Happened and Why?', *Economic Journal* 119(535): 183-213.

Havinga T. and Böcker A. (1999) 'Country of Asylum by Choice or by Chance: Asylum-Seekers in Belgium, the Netherlands and the Uk', *Journal of Ethnic and Migration Studies* 25(1): 43-61.

Hailbronner, K. (2000). *Immigration and asylum law and policy of the European Union*. Dordrecht: Kluwer.

Harvey, C. J. (1998). 'The European regulation of asylum: Constructing a model of regional solidarity'. *European Public Law*, *4*, 561.

Huysmans, J. (2000). 'The European Union and the Securitization of Migration', *Journal of Common Market Studies*, 38(5), pp.751-777.

Huysmans, J. (2006). '*The Politics of Insecurity: Fear, Migration and Asylum in the European Union'*. London: Routledge

Kaunert, C. (2009). 'Liberty versus Security? EU Asylum Policy and the European Commission', *Journal of Contemporary European Research*, 5 (2), pp.148-170.

Kaunert, C. and Léonard, S. (2011) 'The EU Asylum Policy: Towards a Common Area of Protection and Solidarity?', in S. Wolff et al. (eds) *Freedom, Security and Justice after Lisbon and Stockholm*, The Hague: T.M.C. Asser Press.

Kaunert, C. and Léonard, S. (2012): The development of the EU asylum policy: venue-shopping in perspective, *Journal of European Public Policy*, DOI:10.1080/13501763.2012.677191

Klingermann, H-D., Volkens, A., Bara J. and Budge I. (2007) '*Mapping Policy Preferences: Estimates for Parties, Electors and Governments in Central and Eastern Europe', European Union and OECD 1990-2003*. Oxford: Oxford University Press.

Joly, D., (2004), 'Temporary protection and the Bosnian crisis: a cornerstone of the New European Regime', in D. Joly (edited by), *Global Change in Asylum Regime. Closing Doors*, Palgrave Macmillan.

Lavenex, S. (2001a) '*The Europeanisation of Refugee Policies: Between Human Rights and Internal Security'*. Burlington: Ashgate.

Lavenex, S. (2001b) 'The Europeanization of Refugee Policies: Normative Challenges and Institutional Legacies', *Journal of Common Market Studies* 39(5): 851-74.

Lavenex, S. (2006). 'Shifting Up and Out: The Foreign Policy of European Immigration Control', *West European Politics*, 29(2), pp.329-350

Levy, C. (2005). 'The European Union after 9/11: The Demise of a Liberal Democratic Asylum Regime?', *Government and Opposition*, 40 (1), pp.26-59

Levy, C. (2010) 'Refugees, Europe, Camps/state of Exception', *Refugee Survey Quarterly*, 29(1): 92-119.

Mehta, L. and Gupte, J. 'Refugees, Oustees and the Challenges of Right Based Approach in Forced Migration', *Developmement Research Centre on Migration, Globalisation and Poverty,* 2003   www.migratriondrc.org

Morris, L. (2002), *'Managing migration. Civic stratification and migrants' rights'*, Routledge, London and New York.

Oel, M. (2014) 'From crisis to structure - CEAS, recent developments and outlook for the future ' key note presented at the Presidency Conference "Managing Asylum Flows: Strengthening the tools, Strengthening the System" Rome 18-19 November.

Peers, S. (2013) 'The second phase of the Common European Asylum System: A brave new world – or lipstick on a pig?' *Statewatch* http://www.statewatch.org/analyses/no-220-ceas-second-phase.pdf.

Ruhs M. and Martin P.(2008) 'Numbers vs. Rights: Trade-Offs and Guest Worker Programs', *International Migration Review*, 42(1), , 249–265.

Schuck, P. (1997). 'Refugee Burden-Sharing: A Modest Proposal'. *Yale Journal of International Law* 22.

Statham, P. and Geddes, A. (2006) 'Elites and the 'organised public': Who drives British immigration politics and in which direction?', *West European Politics*, 29:2, 248-269.

Suhrke, A. (1998). 'Burden-sharing during refugee emergencies: The logic of collective versus national action', *Journal of Refugee Studies*, *11*, 396.

Thielemann, E. R., (2003), *'Between Interests and Norms: Explaining Burden-Sharing in the European Union'*, Journal of Refugee Studies, Vol.16, No.3, pp. 253-73

Thielemann, E. R. (2004), *'Why European Policy Harmonization Undermines Refugee Burden-Sharing',* European Journal of Migration and Law, Vol. 6, No. 1,

Thielemann, E. R. (2006), 'Burden-Sharing: The International Politics of Refugee Protection', The *Center of Comparative Immigration Studies, University of California, San Diego*, Working Paper No. 134.

Thielemann, E. R. (2012), *'How Effective are National and EU Policies in the Area of Forced Migration?'* Refugee Survey Quarterly, Vol. 31, No. 4, pp. 21–37.

Thielemann, E. R. and Dewan, T. (2006), *'The Myth of Free-Riding: Refugee Protection and Implicit Burden-Sharing'*, West European Politics, Vol. 29, No. 2

Thielemann, E. R. Williams, R. and Boswell, C., (2010), *'What System of Burden-Sharing between Member States for the Reception of Asylum Seekers?'.* Report for the European Parliament,

Thielemann, E. R. and Armstrong, C. (2012) 'Evaluating the Prospects for Enhanced Solidarity in the Common European Asylum System' *European Policy Analysis* 15.

Thielemann, E. R. and Armstrong, C. (2013) 'Understanding European asylum cooperation under the Schengen/Dublin system: a public goods framework.' *European Security*, 22 (2). pp. 148-164.

Toshkov, D. (2012) 'The Dynamic Relationship between Asylum Applications and Recognition Rates in Europe' unpublished, http://www.dimiter.eu/

Toshkov D. and de Haan L. (2012) 'The Europeanization of Asylum Policy: An Assessment of the EU Impact on Asylum Applications and Recognitions Rates', *Journal of European Public Policy*.

Uçarer, E. M. (2001) 'Managing Asylum and European Integration: Expanding Spheres of Exclusion?', *International Studies Perspectives*, 2 (3), pp.288-304.

Appendix

Solving for Nash equilibriums.

The loss functions in the D- and the C case are:

$L^D = (A - A_1)^2 + v\,r^2, \qquad L^{*D} = (A^* - A_2)^2 + v^*\,r^{*2}$

and $\quad L^C = [\tfrac{1}{2}(A + A^*) - A_1]^2 + v\,r^2, \qquad L^{*C} = [\tfrac{1}{2}(A + A^*) - A_2]^2 + v^*\,r^{*2}.$

A Nash equilibrium is obtained when each state minimizes its loss, given the restrictive policy of the other state. By routine, this consists in the two equations

$$\frac{\partial L^i}{\partial r} = 0 \ \text{ and } \ \frac{\partial L^{*i}}{\partial r^*} = 0, \ \text{ where i = D,C.}$$

Since the loss functions are quadratic, first derivatives are all linear. So, in each case we have two simultaneous linear equations to solve in order to obtain the couple $(r_0, r_0{}^*)$ of the Nash-equilibrium solutions. This can be made simply by means of a Cramer's rule. Then one can easily compute A and A^* by equations (3) and (4). Then, introduce these values into (1) and (2) both in the D and C case so as to compute the equilibrium loss.

Remark 1. Considering equations (3) and (4) the restrictions which affect the number of asylum seekers should be R and R^*, we used instead r and r^*. Since $r = \hat{R} - R$, this entails that the expression for A should have a constant additional term. We might insert this term, but computation shows that results would not be affected in substantial way, as also some example might explain. Such process is largely adopted in mathematics. e.g. in application to economics.

Remark 2. Using the spreadsheet, consideration can extend to states differing in capacity for restriction ($\sigma \neq \sigma^*$), extent of spillover ($\lambda \neq \lambda^*$) and policy approaches, i.e. with $A_1 \neq A_2$ e/o $v \neq v^*$. In these more general cases the results are found, on testing, to be qualitatively similar; only the interval (φ_1, φ_2) is different, and no longer symmetrical. Here we may speak of a 'relative asymmetry' between the two states, and our finding – that there is an ample range of initial flow distributions for which C is preferable and that the ongoing changes in these flows can entail this different system – therefore remains valid.

Remark 3. Figure 2 exhibits a non-linear shape. Apparently, when v and v^* are small an increase of v and v^* entails a wider range of initial distributions ϕ such that C is prevailing. Instead, when v and v^* assume larger values, an increase of them implies a narrower set. In order to give an explanation let's consider how changes φ_1. The value of φ_1 depends on the relative position of the curves L^D e L^C in Figure 1. When v and v^* increase both the curves show an upward shift. The reason is because a greater respect of rights in some way 'ties the hands' of the states, both in the D and in the C cases. This translates in higher losses for both the states, because the control objectives are achieved to a lesser extent, with the added cost of a larger loss for the part that refers to the rights. It is then clear from Figure 1 that φ_1 shifts leftwards if L^D shifts upwards more than L^C. From the data of excel sheet (not shown here), we note that in the case of Dublin, in the face of an asymmetric distribution of the flows, the restrictive reactions and counter-reactions by the states are accentuated if v and v^* are small, because the goal of control prevails in the loss function. Instead, when v and v^* are large, the first summand in the loss function (1),

which is the target of control, is very small and all the loss is attributable to the second term, which is the target for the rights. As a result L^D moves slightly. In case C, however, the reactions are more uniform in the two cases (numbers confirm this), because the system C by itself mediates the rivalry between states and attenuates their restrictive reactions. So the relative shifts of the two curves are different in the case 'ν and ν * small' compared to the case 'ν and ν * big' and give an explanation of the non-linear results.