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Foreword

This paper has developed out of the M.A. thesis Mariya Shisheva submitted for the M.A. program in International Relations *Global Governance and Social Theory* which is offered jointly by the University of Bremen and Jacobs University Bremen. During her studies, Mariya Shisheva worked as a student assistant in the research project *Internationalization of the Monopoly of Force* which I directed at Jacobs. It formed part of the collaborate research center *Transformations of the State* funded by the *Deutsche Forschungsgemeinschaft*. Christiane Kraft-Kasack, who was a Research Associate in the project, and Mariya Shisheva have subsequently turned the M.A. thesis into the present paper, by not only shortening it substantially, but especially by making a more concise argument and by providing more empirical evidence.

The paper develops a clear framework for the application of Liberal Intergovernmentalism to the policy area of migration. It then shows to what extent Liberal Intergovenrmentalism can explain the communitarization of the policy area that occurred with the Amsterdam Treaty. Liberal Intergovernmentalism was developed to explain economic cooperation – it is interesting to test whether it is of explanatory use in other issue areas. This is what the present paper explores.

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The Communitarization of Asylum and Immigration Policy at Amsterdam: A Liberal Intergovernmentalist Account

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This study addresses the question of how successfully the liberal intergovernmentalist theory of European integration explains the communitarization of the European Union's asylum and immigration policy negotiated during the Amsterdam Intergovernmental Conference (IGC).
It adapts the theory to the areas of asylum and immigration policy and investigates its explanatory power concerning the state preferences of Germany, the United Kingdom and France, and the outcomes of the Amsterdam IGC. The study shows that Liberal Intergovernmentalism can provide a plausible account of the changes in the analyzed policy areas, but needs to expand its base to include the demands of the general public. When domestic demands are weak and losers and winners are not easily discerned, ideas may provide a more complete account of institutional choices.

Amsterdam Treaty; EU; Justice and Home Affairs; Liberal Intergovernmentalism; migration; preference formation

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1. Introduction: Communitarization as the Puzzle

The European Union's Justice and Home Affairs (JHA) policy is a remarkable case: being only a recent addition to European Union (EU) policies, it has grown tremendously in terms of policy output and structure. Its roots lie in the so-called Trevi Group which was established in 1975 as an intergovernmental forum. Trevi was mainly founded to coordinate anti-terrorist work (Lavenex and Wallace 2005: 459). It represented a loose network rather than an institution (Monar 2001: 750) and operated outside the scope of the European Communities (EC) Treaty, so its conclusions were not binding upon members. Gradually, four areas developed as the core of JHA policy: immigration policy, asylum policy, police and judicial cooperation.

There were also initiatives to cooperate among only some member states, outside the EU Treaty framework, especially through the Schengen Agreement signed in 1985 by five states to ensure completely free movement of people across their borders. It effectively connected the removal of borders with "compensatory" measures to counteract the negative externalities of free movement.

These developments, coupled with increased security concerns about the growth of organized crime and inflows of asylum seekers and irregular immigrants, brought JHA cooperation to the agenda of the 1991 intergovernmental conference (IGC). While the resulting Maastricht Treaty did not subject JHA policies to Community competence, but created an intergovernmental third pillar under the EU umbrella, the Amsterdam Treaty of 1997 communitarized parts of JHA – policies on visa, asylum and immigration.

Asylum and immigration policies are of crucial importance to the nation state. By retaining control over these policy fields the state can define who is allowed to reside on its territory. Such power of definition is essential for control of the territory. If states give away the opportunity to decide unilaterally under what conditions new residents can be admitted, we witness a significant transformation of the state.

These policies are intimately linked to sovereignty, which explains the initially informal cooperation. Only three decades later, however, member states granted legislative initiative to the Commission and committed themselves to harmonization of their laws governing admission standards. The puzzle is: *Why were governments willing to transfer competences to the European Community in asylum and immigration policy?*

In answering this question we utilize a particular theory of European integration: Liberal Intergovernmentalism (LI). As Schimmelfennig has noted, LI "is used as a 'first cut' to explain new developments in European integration" (2004: 75). While Moravcsik, who developed LI, has attempted an account of the Amsterdam negotiations (Moravcsik and Nicolaïdis 1999), a thorough explanation of the JHA developments is still missing. Accounts focused on them are not country-specific (Stetter 2000) or dismiss their importance (Guiraudon 2003: 270-272). LI was developed for economic integration – we test whether it is applicable to a different policy field, providing insights into the scope and generalizability of the theory.

We analytically focus on the positions of Germany, the United Kingdom (UK) and France, the negotiations and the outcome of the IGC. The most important reasons for choosing these states are their considerable influence on decision-making on the one hand and their diverse institutional structure, legal and political traditions on the other. The study relies on both secondary and primary sources, the latter consisting of governmental papers, official letters, statements and debates in national parliaments.

In the following section we operationalize LI for the field of asylum and immigration policy. Next, we test the resulting hypotheses empirically. The conclusion assesses the theory's explanatory power with regard to our policy area.

2. Adapting Liberal Intergovernmentalism to Immigration Policy

Andrew Moravcsik developed LI in "The Choice for Europe" (1998). With regard to its explanatory program, it is an agency theory with governments as the major actors. They are assumed to be rational actors, following the logic of consequences. It treats preferences not as exogenously given as classical rational-choice models do, but seeks to endogenize them by a liberal explanation. According to LI, the driving forces of integration are governments taking substantial decisions at major EU negotiations. Each such round of negotiations can be divided into three parts: national preference formation, interstate bargaining and institutional choices. Each process is explained by a separate theory.

First, to explain preference formation, Moravcsik employs liberal International Relations theories. The main actors in international politics are conceptualized as rational

and risk-averse individuals and private groups seeking to promote differentiated interests under the constraints of material scarcity, conflicting values and unequal societal influence (Moravcsik 1997: 516). The state is not an actor in itself, but a representative institution: Representative institutions serve as a "transmission belt", transforming the interests of domestic actors into state policy (Moravcsik 1997: 518). The government fulfils social actors' interests because it is captured by them or – and we share this earlier assumption – because it wants to be re-elected (Moravcsik 1993: 483-484). Re-election as a goal is theoretically parsimonious, as we only assume that rational actors seek power and thus serve the interests of those they need to stay in power. The government accordingly has some self-interest, but its concrete preferences depend on social actors' interests.

At the international level, the state is the primary instrument through which domestic actors can influence international negotiations, functioning as a unitary actor pursuing national preferences. Moravcsik defines the latter as "an ordered and weighted set of values placed on future substantive outcomes, often termed 'states of the world,' that might result from international political interaction" (1998: 24).

Moravcsik's approach is political economic (1998: 35). Economically, governments seek cooperation to restructure the pattern of policy externalities. If markets render preferred policies incompatible or allow the costless adjustment of a unilateral policy to achieve the desired outcome, cooperation is unlikely. Conversely, when cooperation can eliminate negative externalities or create positive ones more efficiently than unilateral action, states will have an incentive to cooperate.

Politically, the approach is concerned with distributional effects. Coordination of economic policies creates domestic winners and losers. When costs or benefits are concentrated on a group, i.e. when the average costs or benefits per group member are high, the group will exert great pressure on the government, giving it high political power. On the opposite, if costs and benefits are dispersed, those affected will not care as much, find it difficult to organize and are thus politically not as relevant. In economic policy, effects are always concentrated on producers, which allows Moravcsik to focus on their positions when determining governmental preferences (1998: 36). Producers' interests depend on their position in the world market and can thus be deduced with the help of the market mechanism.

In the field of immigration and asylum policies, producers' interests and the market mechanism do not suffice. For a successful transfer, we need to determine whose domestic interests matter in the new issue area and what mechanism is at work that allows for the theoretical deduction of these interests. In the case of immigration, benefits are concentrated, while costs are diffuse. Groups benefiting from immigration accordingly tend to mobilize. These are employers', ethnic and civil rights groups. On the other hand, trade unions and nationalist groups tend to be more restrictionist, but are – like the general public – affected less intensively. The first group should thus exert more influence on governmental policies, resulting in rather expansive immigration policies.

This argument was put forward by Gary Freeman in a seminal article (1995). However, we cannot impute that all governments always favor expansive policies. Rather, Freeman himself has argued that in the countries of our study the pattern has changed since the 1973 oil shock: During recession, employers no longer seek foreign workers, while ethnic and civil rights groups were not strong enough since immigration was a rather recent phenomenon. So strong pro-immigration lobbying subsided. On the other hand, "the costs of immigration appeared to be both more concentrated and to fall on a larger portion of the population" (Freeman 1995: 893). The governments thus tried to reassure voters by taking a restrictionist stance. The argument depends on two factors: having experienced large-style immigration only recently and recession. However, Alan Kessler and Gary Freeman have shown recently that recession and even personal unemployment do not increase anti-immigration views (2005: 840-841). They will nonetheless decrease pro-immigration lobbying by employers.

Terri Givens and Adam Luedtke have put forward an interesting argument that explains the prevailing restrictionist stance of European governments as a response to (on average) restrictionist publics (2005: 7). Starting from the agenda-setting theory of Baumgartner and Jones (1993), they claim that in times of heightened public attention the public becomes more important. As most substantial decisions are taken when an issue is salient, we can assume that restrictionist public views matter to government preferences.

Moreover, it makes sense to distinguish three types of immigration: asylum, labor migration and irregular immigration. Employers will only lobby for labor migration, but will also favor policies that make irregular immigration easy as they profit from cheap

labor. Considering that ethnic and human rights groups are rather weak in our countries, the interests of the restrictionist public should prevail in asylum policies, but to a lesser degree in irregular immigration policies and only during recession in the field of labor migration (when employers do not push for immigration).

Granting the unorganized public such an important role in national preference formation constitutes a modification of LI, which traditionally only cares for peak organizations. But if the national government's primary interest is in re-election, it must take into account the positions of the voting public.

State preferences also reflect the interests of political actors on a sub-state level, which have to ratify and implement EU treaties. Immigration policies are of special interest to the German *Länder,* which pay social benefits for asylum seekers. The preferences of these actors also derive from their interest in re-election. However, they may nonetheless differ from national governmental preferences because they represent different constituencies.

Thus, LI predicts:

> *Hypothesis 1: (a) Cooperation is preferred when unilateral policies are ineffective due to policy interdependence. (b) The government's preferences will be determined by the demands of the dominant and well-mobilized actors which have high stakes in a given policy.*

Secondly, Moravcsik employs bargaining theory to explain substantive outcomes. He is concerned with two dimensions of the outcome: efficiency and distribution of gains (Moravcsik 1998: 51). The first one refers to whether the result is Pareto-efficient, the second one focuses on how gains from cooperation are distributed among the member states.

As decisions in IGCs are taken by bargaining which requires unanimity and accordingly ensures that states can reject a deal which would fare poorly compared to alternatives, all outcomes are assumed to be Pareto-improving. The explanatory focus is hence on the distribution of gains. Here, the outcome depends on the relative bargaining power of the states involved, which in turn depends on two factors (Moravcsik 1998: 60-63). First, the distribution of information influences bargaining power. Since Moravcsik assumes that information on national preferences and institutional choices is readily accessible, bargaining power only depends on the second factor: the pattern of policy interdependence. Here, the "power of each government is inversely proportional to the

relative value that it places on an agreement compared to the outcome of its best alternative policy" (Moravcsik 1998: 62): If you really want something, you are willing to compromise.

Thus, LI expects:

> *Hypothesis 2: States which depend more on a given agreement will also be more willing to make concessions in order to achieve agreement.*

Thirdly, Moravcsik employs a functional theory to account for institutional choices (Schimmelfennig 2004: 78). The central institutional choice in the EU is whether to delegate or pool sovereignty, i.e. to grant decision-making powers to supranational institutions or to introduce qualified-majority voting (QMV). Moravcsik refers to the need for credible commitments and for ensuring other governments' compliance (1998: 73): Pooling or delegation is chosen when efficiency is more important than veto powers (1998: 75).

Domestic actors who benefit from common policies favor pooling or delegation because they will reap the advantages of compliance (Moravcsik 1998: 74). However, not all domestic groups advocate supranational measures. Sub-state political actors are likely to insist on keeping influence. Their costs, i.e. losing power to supranational institutions, are high, while their expected utility is low, as the benefits from policy cooperation would be ascribed to the national government.

Regarding the conditions for pooling and delegation, Moravcsik states:

> *Hypothesis 3: "delegation and pooling are most likely to arise in issue-areas where joint gains are high and distributional conflicts are moderate, and where there is uncertainty about future decisions" (1998: 75).*

High conflict would make governments want to retain a veto, so as not to be neglected on important issues. If future decisions were not uncertain, they could be taken right away.

3. The Amsterdam Intergovernmental Conference

The Amsterdam negotiations on immigration policies focused on moving JHA provisions on immigration and asylum to the Community Pillar, which would ensue a greater role for the Community institutions – the Commission and the European Parliament (EP) – and the introduction of QMV.

In what follows we first describe the state preferences as well as negotiations and outcome. An analysis using the theoretical framework outlined above follows the descriptive part.

3.1. Member States' Preferences

The German position was delineated in the paper "Deutsche Ziele für die Regierungskonferenz" (Bundesregierung 1996) and in a letter by Chancellor Helmut Kohl and the French President Jacques Chirac to the European Council (1995).

Substantively, Germany saw the completion of an area of free movement as a priority task – such an area should be guaranteed by common provisions, particularly on asylum and immigration (Kohl and Chirac 1995).

Institutionally, Germany favored communitarization as well as increased roles of the Commission, the EP and the European Court of Justice (Kinkel in Deutscher Bundestag 1996: 11420). In 1995, Foreign Minister Klaus Kinkel called for QMV in all areas, supported by Minister of the Interior Wolfgang Schäuble (Beuter 2002: 96). Klaus Kinkel mentioned explicitly that the EP should be granted co-decision on all legislation subject to QMV in the Council (Deutscher Bundestag 1996: 11420).

The initial position of the UK government was outlined in the White Paper "A Partnership of Nations" (published in March 1996). The government rejected what it considered unnecessary transfers of powers to supranational institutions. The EU should concentrate "on what needs to be done at a European level, and doing it well" (quoted in Best 2002: 361).

Substantively, the UK subscribed to the creation of an area of freedom, security and justice, but coordination should counteract only serious threats to the EU citizens that necessitate cross-border cooperation (Best 2002: 366).

Institutionally, the UK was firmly against communitarization and in favor of unanimity. In the UK's view, intergovernmentalism need not jeopardize smooth and efficient decision-making. Thus, it suggested measures to improve the efficiency of JHA cooperation, while keeping the role of the Commission and the EP strictly limited (British Government 1996). The UK believed that the EU obtains legitimacy via the national route. National parliaments and not the EP should hence be given a greater role in JHA policies (Best 2002: 362).

The official French position on the IGC was drafted in November 1995 and published in February 1996 (Le Figaro 1996).

Substantively, France wanted to strengthen JHA policies.

Institutionally, while France rejected communitarization, it called for the use of some institutional elements of the community pillar. QMV should be introduced, but only if the decision for removing internal borders was taken unanimously. But France opposed other aspects of the community procedure, especially the legislative monopoly of the Commission (Deloche-Gaudez 2002: 145). France was against the introduction of any changes which would disrupt the balance of powers between the Council and the EP (European Parliament 1996).

3.2. Negotiations and Outcome of the Intergovernmental Conference

The UK seemed adamantly opposed to proposals involving supranational measures, but was not completely isolated because elections in 1997 were expected to bring a new more pro-European Labour government into power. When Tony Blair came into power, the UK secured opt-outs for asylum and immigration cooperation.

France's basic problem was that its proposals were rather incoherent, reflecting the desire to further European integration without conferring too much power on the supranational bodies. As a result, the French view that QMV should be introduced without communitarization was not supported. France still indicated in the course of negotiations that communitarization was acceptable as long as the Commission did not have the exclusive right of legislative initiative (Beach 2002: 609). The French proposal for a "High Constitutive Council" of thirty MPs from the member states to oversee the community institutions was dismissed early on (Duff 1997: 177).

Germany pursued rather stable and coherent preferences throughout the IGC, insisting on communitarization and QMV. Chancellor Helmut Kohl produced a big surprise when he suddenly "insisted, against the wishes of the presidency and the Commission on retaining the veto on the introduction of QMV in the field of immigration and asylum in five years time" (Duff 1997: 156).

In sum, the Amsterdam Treaty envisaged the following.

– Communitarization: a new Title IV of the EC Treaty was created through which the issues of internal and external border control, policies on visa, asylum and immigration and judicial cooperation in civil matters were brought under the First Pillar. For the first five years, the Commission would share the legislative initiative with the member states, after that period it would be granted a monopoly of initiative (Article 67 (1-2) EC).
– Introduction of QMV: Article 67 (1) EC stipulates that for five years, the Council shall decide by unanimity. After this period, it may unanimously decide to switch to QMV (Article 67 (2) EC). QMV is foreseen right away for adopting a list of third countries requiring or not requiring visas for stays under three months and for decisions on a uniform format for such visas by paragraph 3 (this goes along with granting the Commission the monopoly of initiative right away).
– The role of the EP: Article 67 also states that it will only be consulted (paragraph 1), but a move to co-decision is possible in five years (paragraph 2) and foreseen in paragraph 4 for procedures and conditions for issuing three-months visas by Member States and for rules on a uniform visa.

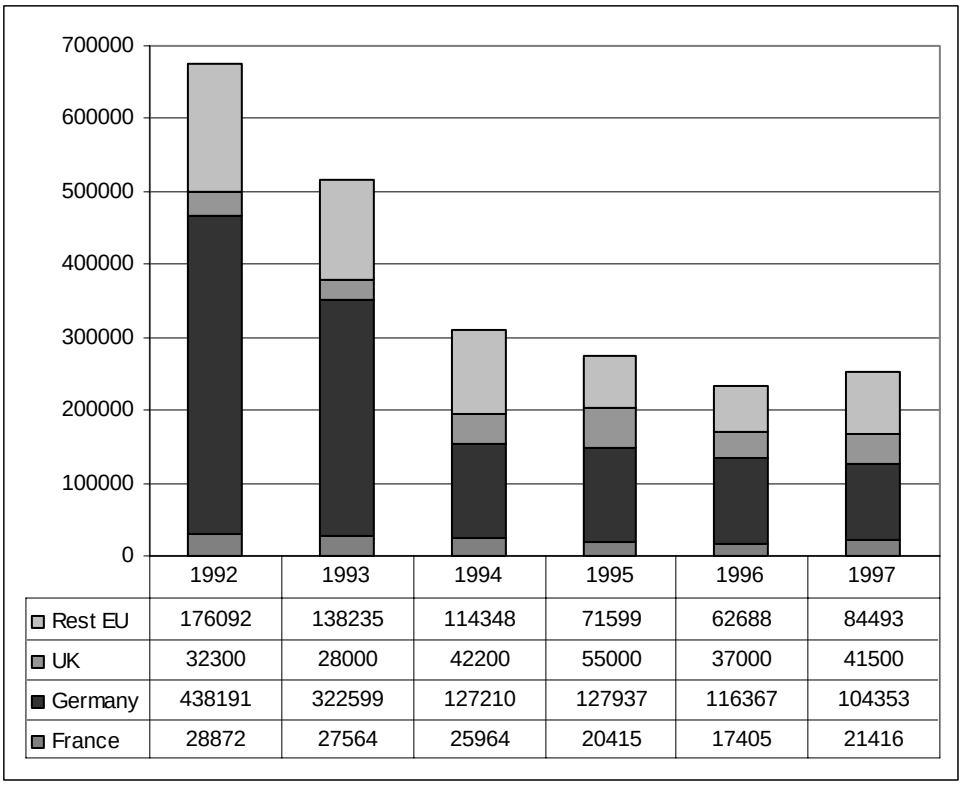
The initial positions of Germany, France and the UK as well as the outcomes are summarized in Table 1.

Issue / Country	**Germany**	**France**	**United Kingdom**	**Outcomes**
Increased cooperation	In favor	In favor	Rather sceptical	Realized
Communitarization of the Third Pillar	In favor of the communitarization of visa, asylum, and immigration policy	Against communitarization, in favor of problem-specific solutions	Against the communitarization of any third pillar issue	Communitarization of visa, asylum and immigration
Introduction of QMV	In favor of QMV in the field of visa, asylum, and immigration policy	In favor of QMV in the field of visa, asylum, and immigration policy	Against QMV in any third pillar issue	Unanimity as a rule for the first 5 years; switch to QMV to be decided by unanimity
Increased role of the EP	In favor of co-decision	Against	Against	EP is only to be consulted in most areas

Table 1. Government preferences and outcomes.

3.3. Explanation

In the following, both preferences and outcomes are explained using the LI framework. Each country section starts with the three substantive issues, i.e. asylum, irregular immigration and labor immigration, accounting for substantive preferences for or against cooperation (Hypothesis 1). Next, institutional choices regarding communitarization, QMV, the EP's role and flexibility are illuminated (Hypothesis 3), as well as bargaining outcomes wherever applicable (Hypothesis 2). Each section ends with a short evaluation of the LI hypotheses. Tables 2 (below) and 3 (on page 13) are referenced throughout.



	1992	1993	1994	1995	1996	1997
Rest EU	176092	138235	114348	71599	62688	84493
UK	32300	28000	42200	55000	37000	41500
Germany	438191	322599	127210	127937	116367	104353
France	28872	27564	25964	20415	17405	21416

Table 2. Asylum applications in the EU, 1992-1997.
Source: UNHCR (2001: 113).

3.3.1. Germany

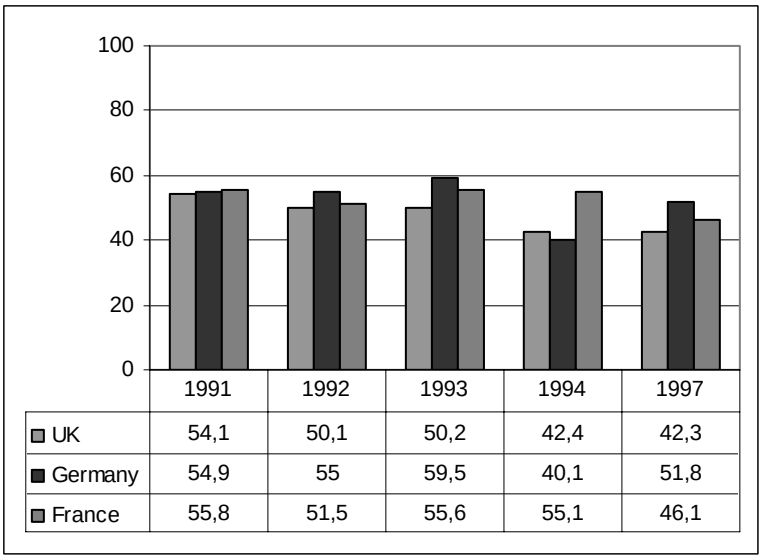
Concerning Germany's position on asylum, LI seems to provide a fairly good explanation. The government had reasons to seek a common European solution as Schengen had rendered its asylum policy interdependent. Germany already received the largest number of asylum applications among the EU member states (almost two thirds of all applications to EU countries in 1992 and 1993). Numbers were feared to rise after the

removal of borders, when those who had unsuccessfully claimed asylum in other countries would come to Germany. The German Minister of Interior Rudolf Seiters stated: "Those who say 'yes' to Europe without borders must also say 'yes' to a common European asylum policy because we can only cope with the constantly increasing influx of refugees and asylum-seekers through European solutions" (Deutscher Bundestag 1992: 7297). However, the fairly generous right to asylum in Article 16 of the German *Grundgesetz* hindered participation in common asylum measures. In particular, Germany could not use those Schengen procedures that referred responsibility for asylum claims to the first member state the applicant had passed through and that denied asylum to those who had been rejected elsewhere. Germany accordingly sought to reform its constitutional provisions on asylum (Seiters in Deutscher Bundestag 1992: 7298-7300). Following extensive debates and an escalation of racist violence in 1992/1993 (Thränhardt 1999: 33), a compromise among the main political parties was achieved. The constitutional right to asylum was retained, but restricted. It can be denied to citizens of countries declared free of persecution as well as to those who, on their way to Germany, have passed through "safe countries" (Article 16a (2)-(5)).

Despite the 1993 changes Germany still received around 127,000-128,000 asylum applications in both 1994 and 1995, which represents more than 40% of all applications to EU member states (Table 2). Segments of the German population were strongly dissatisfied with this inflow as claims were believed to be motivated by economic reasons rather than actual persecution (Lavenex 2001: 47-48). Around half of the population held restrictionist views (Table 3). Parties of the extreme right performed comparably well in the first half of the 1990s, campaigning against asylum seekers.[1] These developments were also influenced by strong propaganda that asylum seekers (and irregular immigrants) were taking away employment from Germans (cf. Marshall 2000: 47).

The government's preference for cooperation can thus be explained as a response to the public's demands because cooperation would allow to share the financial and administrative burden with other countries and thus to reduce the number of immigrants.

[1] For example, the Republican Party received 10.9 % in the elections in *Baden-Württemberg* in 1992, and 9.3% at the municipal elections in Frankfurt in 1993, where the NPD (*Nationaldemokratische Partei Deutschlands*) had gathered 6.6% 3 years earlier. The DVU (*Deutsche Volksunion*) gained 6.3 % in the *Schleswig-Holstein* elections in 1995 (Meyers 2004: 160).



	1991	1992	1993	1994	1997
UK	54,1	50,1	50,2	42,4	42,3
Germany	54,9	55	59,5	40,1	51,8
France	55,8	51,5	55,6	55,1	46,1

Table 3. Percentages of respondents who claim that there are too many foreigners in their country, 1991-1997.
Source: Kessler/Freeman (2005: 831), based on Eurobarometers 35, 37, 39, 42 and 48.

On irregular immigration, there has been little debate in Germany because irregular immigrants could apply for asylum (Thränhardt 1999: 44). Thus, the issues of cooperation in this field were merged with those on asylum.

Regarding labor migration policy, the government successfully met the demands of the trade unions and the employers' associations domestically. A major concern at the time was not external immigration, but immigration from within the EU. The lower wages of immigrant workers allowed them to compete successfully in the domestic labor market thereby threatening the breakdown of internal immigration control (Thränhardt 1999: 43-44). The influx of EU workers left few vacancies which were filled mostly with workers from Central and Eastern Europe on the basis of a quota system (Meyers 2004: 147). This satisfied the employers' demand for additional workers and was supported by the trade unions (Kühne 2000: 50). The government had successfully dealt with domestic demands in labor immigration without the EU and did thus not seek EU cooperation on the matter.

Institutionally, LI expects states to delegate or pool sovereignty when joint gains from cooperation are high, distributional conflict is low and future decisions uncertain. Germany had a lot to gain from the commitment of other governments to cooperation: a strict commitment to minimum requirements for the acceptance of asylum claims, for

example, would ensure that no state introduces excessively restrictive laws, resulting in an ever greater influx of refugees in Germany.

Second, distributional conflicts were moderate, as states found it easy to agree on the restriction of irregular immigration and asylum regulations. A redistribution as a zero-sum game was unlikely, but an overall restriction resulting in each country receiving less immigrants was desired by all governments.

Future decisions depended on the consequences of Schengen and were hence uncertain.

Since Germany should accordingly favor pooling and delegation, we expect it to prefer communitarization and QMV. Germany supported communitarization and initially sought to introduce QMV. However, the German *Länder* insisted on retaining unanimity (Duff 1997: 155, Devuyst 1998: 623). Ratification of the Amsterdam Treaty requiring *Bundesrat* approval, Chancellor Helmut Kohl had to give up the preference for QMV.

However, LI cannot explain that Germany insisted on more EP influence. LI predicts that domestic political actors would oppose such an extension because co-decision strengthens the role of the EP at the expense of the Council and they exert influence only on the latter. Only if the EP was to support a state's position substantively, would a power increase make sense. The EP is rather pro-immigration and restrictionist states should hence not seek a stronger role for it.

In sum, LI can explain almost all German preferences. The government did not seek cooperation on labor migration policy, which it could resolve domestically. But it strove for collaboration regarding asylum and irregular immigration where it faced interdependence following Schengen and growing demands from the public for more restrictive policies, which it could not address unilaterally.

The theory performs well in all matters domestic actors had high stakes in: communitarization and the introduction of QMV. The last-minute reversal of Germany's position on QMV illustrates that the preferences of domestic political actors can override a government's other considerations when these preferences are strong. Actual state behavior only deviated from LI expectations on the EP – a matter which domestic actors did not have a strict preference on.

3.3.2. The United Kingdom

Moravcsik and Nicolaïdis claim that LI rightly predicts UK opposition to cooperation on asylum and immigration for its specific geographical position which provides it with a unilateral policy option to counteract the influx of asylum seekers by exercising stricter border control than its continental counterparts (1999: 63).

A closer look at British policies and behavior questions this explanation. As a unilateral policy option was not easily available, the UK sought cooperation, but preferred intergovernmental coordination to communitarization.

The number of asylum applications in Britain increased substantially in the late 1980s, reaching an eleven-fold increase between 1989 and 1991 (Meyers 2004: 74). The government tried to curtail these numbers through the 1988 "Immigration Act" and the 1993 "Asylum and Immigration Appeals Act". The latter gave officials greater authority to reject questionable claims and to deport unsuccessful applicants (Boswell 2003: 57). Moreover, it introduced the concept of "safe country" and repealed the right to appeal against rejections in certain cases. As a consequence, ever fewer applications were successful: the rejection rate increased from 14% to 76% (Meyers 2004: 75). However, application numbers did not decrease correspondingly: the peak of 1991 was surpassed in 1995 (UNHCR 1999). A renewed attempt to reduce numbers was made in 1996, when the new "Asylum and Immigration Act" decreased the benefits for asylum seekers waiting to have their appeals processed and denied benefits to those who claimed asylum once they had already entered the country and not at the point of entry. However, this legislative measure again had a short term effect only: a decrease in applications in 1996 to 37,000 was followed by a sharp increase in the next two years to 41,500 and 58,487, respectively. While the UK received only 5 % of EU asylum applications in the early 1990s, numbers were up to 13-20 % between 1994 and 1997 (cf. Table 2).

The laws reflect the government's strong preoccupation with asylum and hence the issue's salience. It was the most controversial issue within the debate on immigration (Layton-Henry 2004: 325). The strain on the welfare system by people who claimed asylum not for political reasons but to secure their residence in the UK and to receive benefits was widely discussed (Boswell 2003: 58). This debate was echoed by Michael Howard, Secretary of the State for Home Department, when he remarked: "Britain has a proud record of giving refuge to those fleeing genuine persecution, but we cannot ignore

the fact that our procedures are being abused" (House of Commons 1995: Column 699). The media also featured stories on bogus asylum claims (Boswell 2003: 59).

Besides the domestic legislative measures, the government was open to European coordination. It initiated an Ad-Hoc Group on Immigration already in 1986 and it wholeheartedly supported the Dublin Convention (Vink 2001: 8, 10). To advocate European cooperation seems to have been a matter of consensus reflected in the government's proposals for strengthening the Third Pillar.

In sum, there was a great demand from the public to reduce refugee numbers and unilateral action was not efficient as an ever larger number of people reached UK territory to claim asylum. The government was thus ready for European cooperation.

Incomplete border controls also had effects for the situation concerning irregular immigration. Although precise figures are notoriously difficult to obtain, numbers are said to have been rising steadily since the 1990s (National Criminal Intelligence Service 2000). In 1995 there were 10,500 detentions of irregular migrants: a significant increase compared to the year before when 7,500 arrests were made (Koser and Salazar 1999: 327). Britain became an important destination for immigrants which increased the fears in the public of the country being "swamped" with migrants reaching Britain through EU countries (Boswell 2003: 67). Opinion polls reflect the public's negative sentiments: in 1995, The British Social Attitudes Survey showed that around 65% of the population wanted to see immigration reduced (Geddes 2005: 730, cf. also Table 3).

By contrast, the UK could deal with the issue of legal labor migration unilaterally. Unlike Germany, Britain had no tradition of implementing foreign worker programs and had managed to fill its labor shortages with migrants from the Commonwealth or, later on, with EU workers. When – after widespread unemployment in the early 1990s – the unemployment rate started to decrease considerably in 1996, some employers voiced concerns over labor shortages, leading to the Seasonal Agricultural Working Scheme (Meyers 2004: 77). The Confederation of British Industry played a major role in the introduction of the program as it lobbied for more immigration (Layton-Henry 2004: 297). This lobbying was translated into governmental policy rather easily because labor unions did not counteract the proposals seriously. As the government could thus respond to domestic demands unilaterally, it did not seek international cooperation.

So far we expect the UK to favor cooperation on asylum and irregular immigration. The UK did subscribe to cooperative initiatives. But institutionally, the UK was opposed to communitarization and to QMV, although both would enhance the government's ability to tackle issues requiring international coordination. Although the UK was not a member of it, Schengen would provide a much greater possibility for those who wish to enter Britain irregularly to reach its ports once they entered the Schengen area. Thus, the UK would have gained from participation in shaping the rules governing the EU's external borders.

Britain's adamant opposition to an extended role of the EP fits LI, since UK agreement would be controversial in domestic politics (George 1997: 111). The majority in parliament (backing the Government) suggested to further scrutiny by national parliaments (Carter 2001). LI can however not predict the exact way national actors want their power to be strengthened.

To sum up, LI could account for the British government's substantive preferences on cooperation. With regard to labor migration policy, the government managed to meet demands unilaterally and did not seek cooperation. In the field of irregular immigration and asylum, the demands of the public for greater control could not be met through national solutions alone and the government thus sought collaboration.

The UK nonetheless institutionally opposed pooling or delegation. Ideas-based explanations focusing on fears about the loss of national identity and sovereignty to Europe might explain why rationalist concerns about the possible benefits of such institutional choice did not win the day.

The stances on an extended role of the EP, however, were clearly influenced by rationalist motives. With regard to EP competences, the national parliament as a domestic political actor was wary of losing power.

3.3.3. France

In France, a major driving force was the expected increase of asylum applications after the implementation of Schengen (Lavenex 2001: 165). In the preceding years, the immigration debate had focused on irregular immigration, integration and citizenship, leaving the generous provision for granting asylum enshrined in the Preamble to the constitution untouched (Boswell 2003: 20). The asylum issue may have been less cen-

tral due to the comparably low numbers of asylum seekers: in 1994, only 25,964 applications were submitted while in the next two years the numbers decreased to 20,415 and 17,405 respectively (UNHCR 2001: 113), hovering at around 8% of all EU applications (Table 2).

Nevertheless, the public and the right-wing government led by Edouard Balladur feared that after the implementation of Schengen many asylum seekers would choose France rather than countries with tightened asylum procedures. The French Minister of Interior, Charles Pasqua, remarked that an increase in asylum applications would threaten "French preoccupations in the field of security" (quoted in Lavenex 2001: 165) since, if France stayed outside of cooperation, it would have to deal with applications rejected by the cooperating countries. France had become increasingly aware of the interdependence of European asylum policies and the resulting lack of unilateral solutions. The government accordingly sought EU cooperation.

France also preferred cooperation regarding irregular immigration because of the limited success of its own restrictionist efforts. The second Pasqua law of 1993 contained regulations aiming to restrict the permanent settlement of foreigners and to control irregular immigration (Campani 2002: 12-13). Initially, it seemed that the law served its purpose: officially, immigration flows decreased from 135,000 in 1992 to 68,000 in 1995. But this came at the expense of an increased number of irregular immigrants, fuelling a sense of insecurity as well as xenophobia and racism (Hollifield 1999: 79), with around 55 % displaying anti-immigrant views (Table 3).

Other reasons for the government's support of cooperation on irregular immigration were the implementation of Schengen and the fear of the *Front National*. The latter's anti-immigrant rhetoric apparently resonated with parts of the French electorate as it received 12.4 % of the votes in the first round of the 1993 parliamentary elections (Hollifield 1999: 74).

Concerning labor migration, it should be noted that France has a tradition of recruiting foreign workers dating back to the 19th century. After 1974, French immigration policy focused on avoiding unwanted labor migration (Rudolph 2003: 610). In 1993, legislation on equal pay for posted workers was put forward (Menz 2002: 729). Trade unions favored the regulation. But also the employers' association, *Conseil national du patronat français* (CNPF) did not apply pressure on the government to recruit cheap

foreign labor. Instead, the sectoral association of construction employers expressed concerns over wage dumping and the CNPF accordingly expressed its sympathy with the legislation. Thus, the government satisfied the demands of trade unions and employers' associations. No EU cooperation regarding labor migration was necessary.

Given these substantive preferences, LI expects France to prefer delegation and pooling of asylum and irregular immigration policies to ensure credible commitments by other governments. Such commitments would be essential to the common endeavor of restraining immigration and asylum flows. Gains from delegation and pooling would have been considerable. As mentioned above, the other criteria of Hypothesis 3 (low distributional costs, uncertain future outcomes) were also fulfilled.

However, the predictions were only partially confirmed. France indeed endorsed the extension of QMV, but at the same time it opposed communitarization, afraid that the Commission would be given extensive powers. France favored thus pooling, but not delegation. French reluctance towards delegation cannot be explained by lack of concern with compliance (cf. Moravcsik 1998: 76), but seems to have ideological roots (cf. Moravcsik 1998: 488, for an account: Jachtenfuchs 2002: 255).

While LI cannot account for this ambiguity, it can explain under what circumstances France came to agree to communitarization. Communitarization was not such an issue to France if the Commission did not grow too powerful (Beach 2002: 609). Once this was ensured by agreeing on a shared right of initiative for the Commission and the member states, France could accept communitarization and made acceptance dependent on issue-linkages and side-payments: It managed to link the issue with the strengthening of measures in the fight against crime – an issue of serious concern to the French government. As side-payments, France received the guarantee that the EP would meet in Strasbourg, as well as the recognition of its special relationship with French overseas territories. France's agreement to communitarization in exchange for these concessions substantiates LI: states that place little value on a certain issue will manage to exert gains through side-payments and issue-linkages.

France's negative stance on the EP and its idea of strengthening national parliaments was in line with the LI prediction that political actors would try to preserve and, if possible, strengthen their power. The French suggested a "high parliamentary council" consisting of members of national parliaments. Again, that precise choice cannot be ex-

plained by LI. The position remained, however, isolated (Deloche-Gaudez 2002: 148) as it clashed with Germany's insistence on strengthening the EP and with the British preference for strengthening national parliaments directly.

In sum, LI explains France's desire to cooperate on asylum and immigration, but not labor migration. The need for credible commitments accounts well for the support of QMV. While LI cannot explain France's original preference against communitarization, it can provide a plausible account for its subsequent turnaround. The rational worries of domestic political actors about losing power can explain France's preference against extending powers for the EP.

4. Conclusion

This case study has demonstrated that the LI framework can by and large explain the changes to policy-making on asylum and immigration negotiated at the Amsterdam IGC. Regarding the first step of the model – preference formation – Hypothesis 1 was confirmed. Governments' preferences were shaped domestically. When domestic demands could successfully be dealt with nationally and when there was little international interdependence, no common European policy was attempted. Labor migration constitutes a good example: as third country nationals were not entitled to move across borders freely to take on jobs and as labor shortage only occurred in very few specific sectors, governments could easily resolve the problem nationally with quotas.

The situation regarding asylum and irregular immigration was different. Due to the increased permeability of borders and with Schengen's entry into force drawing closer, interdependence increased. For an evaluation of LI, the basic question is which actors governmental preferences can be traced back to. Significant parts of the population shared the feeling that the immigration level was too high. Opinion polls, election results and physical attacks on immigrants and refugees all showed this. Immigration was seen to contribute to economic problems and to constitute a threat to internal security. While LI originally assumes that governments would be guided by the demands of specific societal segments, represented by interest groups, we have claimed that demands of the unorganized voting public must also be taken into account, as governments have an interest in re-election. This expanded approach has proven successful.

Bargaining can also be explained by referring to the hypotheses for the second step of the LI model. Asymmetrical interdependence was a good predictor of bargaining power (Hypothesis 2). Communitarization is an example: As France was not so dedicated to it, it was able to exert side-payments and issue-linkages.

The third step in the LI model, institutional choice, is only partially explained by the LI focus on credible commitments (Hypothesis 3). The most notable case in which LI failed to predict preferences over institutional choice was Britain. Although the UK would have benefited from credible commitments by other governments considering its vulnerable borders and the uncertain impact of Schengen, it opposed delegation or pooling. The reluctance might have stemmed from the fact that "more Europe" was seen as a threat to national identity and the domestic political order.

LI also encountered problems explaining state preferences when no strong domestic demands were present. This applies especially to the preferences on an extended role of the EP. Here, ideological motives might provide more plausible accounts. This has also been conceded by Moravcsik (1998: 68-9, Moravcsik and Nicolaïdis 1999: 61), but does not fit easily with the basic tenets of LI. Ideas-based explanations remain important for institutional decisions when winners and losers are not easily discernible (Jachtenfuchs 2002: 260).

LI could not explain why France preferred pooling, but not delegation – because Moravcsik has yet to provide an account of when a state prefers which. Throughout his work, "pooling and delegation" appear as if they constituted a single concept. Meanwhile, ideological approaches provide for more differentiated accounts (cf. Jachtenfuchs 2002: 243).

In a nutshell, while LI can provide a plausible account of the changes in asylum and immigration negotiated during the Amsterdam IGC, it should expand its base to include the demands of the general public.

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